



# Oregon

Kate Brown., Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



July 7, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director

SUBJECT: **Agenda Item 5 July 21-22, 2016, LCDC Meeting**

## **DIRECTOR'S REPORT**

### **A. PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS**

ORS 197.090(2) requires the director of the Department of Land Conservation and Development (the department or DLCD) to report to the Land Conservation and Development Commission (the commission or LCDC) on each appellate case in which the department participates, and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires LCDC to review recent Land Use Board of Appeals (LUBA) and appellate court decisions to determine whether goal or rule amendments are needed.

#### **1. Department Participation in Appeals**

Between April 4 and June 3, 2016, the department received 31 copies of notices of appeal filed with LUBA. The department filed none of these notices, and was not named as a party in any of these notices.

#### **2. LUBA Opinions**

Between April 8 and May 31, 2016, the department received copies of 15 recently issued LUBA opinions. Of these, LUBA dismissed six, remanded eight, and affirmed one.

None of the decisions concerns the application or interpretation of a statewide planning goal or LCDC administrative rule.

#### **3. Appellate Court Opinions**

None

#### **4. Other Opinions of Interest**

None

#### **5. Appeal Notices of Interest**

Approval of Costco on Industrial-Zoned Land in Central Point: *Martin v. City of Central Point*, LUBA 2016-042, filed April 11, 2016. Appeal of a decision by the City of Central Point to approve a Costco retail store on land zoned for industrial use. This appeal is of interest as it relates to the conversion of industrial lands to other uses.

Measure 49 Property Line Adjustment in Yamhill County: *Friends of Yamhill County v. Yamhill County*, LUBA 2016-057, filed May 23, 2016. Appeal of a decision by Yamhill County approving a property line adjustment for two parcels created via an approved Measure 49 claim. This appeal is of interest because Measure 49 limits the size of new residential parcels in order to minimize the loss of farm and forest lands to residential uses. Legislation in the 2015 session clarified that such property line adjustments are not allowed, but this property line adjustment was approved prior to the effective date of that law.

Permanent Housing for Persons with Criminal Histories in the City of Eugene: *McCullough v. City of Eugene*, LUBA 2016-058 through LUBA 2016-063, filed May 23, 2016. Appeal of a series of building permit issuances by the city of Eugene for an apartment development known as The Oaks at 14<sup>th</sup>, consisting of 50 to 60 units of long-term, affordable, permanent housing – not transitional housing – for people with criminal histories, including veterans, seniors, and people with disabilities. This appeal is of interest as it relates to community controversies that make siting of housing for disadvantaged individuals more difficult.

### **I. ACTIVITIES AND INITIATIVES**

#### **A. OREGON COASTAL MANAGEMENT PROGRAM (OCMP)**

Marine Issues: The Ocean Policy Advisory Council (OPAC) meeting took place on June 13th, 2015, at the ODFW building in Salem. The Marine Affairs Coordinator provided an update on the progress of the TSP Work Group on the amendment to Part Three of the Territorial Sea Plan, Rocky Shores Management Strategy. This effort will eventually result in recommendations to the commission on the modification of Part 3, the Rocky Shores Management Strategy.

Coastal program staff representing the OCMP and the West Coast Ocean Data Portal attended the Oregon Ocean Science Trust (OOST) two-day workshop in Newport in May. The workshop brought together researchers, academics, state and federal agency representatives, and other interested parties to discuss the criteria and priorities the trust will adopt to guide its nearshore research funding decisions. The OOST board met at DSL on June 8<sup>th</sup>, and later reported to the State Land Board. The research that is eventually funded through the OOST will help the state and federal agencies through improved knowledge of nearshore ecosystems to better administer Goal 19 and the Territorial Sea Plan.

The Principle Power WindFloat project for the proposed site off of Coos Bay, currently under review by the federal Bureau of Ocean Energy Management (BOEM), appears to be unable to acquire the power purchase agreement it will need in order for it to move forward. Without the contract for the power it would produce, the project will not be able to receive additional federal funding and would likely be terminated. This is a potential loss of a significant investment in coastal Oregon for an industry seeking to develop marine renewable energy. The company has projects in California, Europe and Asia that are moving forward.

On June 2<sup>nd</sup>, The Marine Affairs Coordinator participated in the initial meeting of the Department of State Lands rulemaking advisory committee (RAC) that will assist the agency in amending several rules. The amendments will establish new regulations and proprietary rules governing marine renewable energy facilities in the territorial sea to implement changes resulting from legislative action under SB 606 (2013), HB 2694 (2015) and SB 319 (2015). This is more of an administrative formality rather than the conduct of a new process for deliberating the value and implementation of the Territorial Sea Plan. The department will continue to participate in meetings of the RAC, as DSL maintains the enforceable policies of the Oregon Coastal Management Program related to ownership of the seabed within Oregon's Territorial Sea.

The Pacific Marine Energy Center (PMEC) Collaborative Work Group met in June to discuss their (yet to be submitted) Federal Energy Regulatory Commission permit application for a Newport facility. The group has made considerable progress in resolving the ongoing issues regarding the cable route and resource protection under the monitoring and the adaptive management plans, as well as the suite of best management practices that would be applied to the project. PMEC is in competition with an initiative in California to establish a west coast marine renewable energy center on the central coast. Only one center will eventually receive federal funding and be established. When completed, the Newport South Energy Test Site or SETS, will provide a place that researchers and developers can use in the early stage development of new marine renewable energy conversion devices.

#### Coastal Processes and Hazards:

As reported in the May Director's Report, the OCMP was successful in its application for a National Oceanic and Atmospheric Administration (NOAA) "Project of Special Merit" grant for tsunami land use work. The OCMP is moving forward in its coordination with coastal communities regarding the grant and have determined that the department will work with Cannon Beach, Tillamook County (including a number of its rural communities), Waldport, Florence, Reedsport, and Coos County (including Charleston/Barview). The department may include additional communities if possible utilizing the available grant resources. The department is also utilizing additional but limited NOAA 309 resources in doing this tsunami land use work. The Project of Special Merit work will begin on October 1, 2016 but staff are actively developing draft memorandums of understanding and further preparing communities to get started as soon as October 1 arrives.

The department is very excited about the opportunity to work further with coastal communities. These grant resources will enable the department to accelerate its tsunami resilience efforts overall with our local government partners. The anticipated projects will generally include two parts, (1) The Department of Geology and Mineral Industries Beat the Wave modeling/mapping which is an important part of tsunami resilience planning, and (2) local tsunami land use resilience work utilizing the DLCD tsunami land use guide.

DLCD staff continue to work with Curry County on an all hazard project which should result in land use amendments to further address coastal natural hazards including coastal erosion, landslides, liquefaction, flooding, wildfire and tsunamis. Staff completed draft products (new natural hazards comprehensive plan chapter and development code overlay zones and hazard provisions for six natural hazards) and will be reviewing this information with the Curry County Project Management Team over the summer. Additionally, the department has applied for and hopes to receive a Federal Emergency Management Administration grant to work with Coos County on a similar all hazard effort soon. With declining resources for a variety of reasons the department is encouraged by these additional, although limited, funding opportunities and staff is working hard to utilize them.

Additional activities of note include the Coastal Shores Specialist's significant involvement and coordination with local governments and property owners on a number of dune management issues on both the north and central coasts. Some property owners do not see the value in adhering to the approved dune management plan for their area and there are ongoing management issues. In one of many examples of outreach and coordination, the Coastal Shores Specialist presented information to Pacific City homeowners in May on Goal 18 requirements related to dune grading together with county responsibilities. These issues are ongoing and will likely not be resolved for at least a few dune grading cycles.

As a result of significant storm and coastal erosion activities, the Coastal Shores Specialist has continued to coordinate with the Oregon Parks and Recreation Department and local governments on a number of additional beachfront protective structure issues and applications. Additionally, as coastal erosion increases there is more and more pressure from oceanfront property owners to review and potentially relax Goal 18 provisions related to beachfront protective structure eligibility requirements. Also, the Oregon Department of Transportation is working with applicable state agencies, including DLCD, on potential future options related to utilizing dynamic revetments (cobble berms) to protect Highway 101 in some areas of the coast.

Major Federal Consistency Reviews: The Federal Energy Regulatory Commission (FERC) has granted the applicants for the Jordan Cove Liquefied Natural Gas facility in Coos Bay a rehearing on the FERC denial of the project. Prior to a rehearing, state agencies continue to process the application pending a final decision from FERC. The department is working on a new stay agreement with the applicants as the current federal consistency deadline for this project is July 25, 2016.

## **B. DIRECTOR'S OFFICE**

An oral report will be provided at the meeting.

## **C. ADMINISTRATIVE SERVICES**

Fiscal (Budget, Accounting, and Procurement): The department's fiscal team continues to meet gold star dates for comprehensive annual financial reporting related to year end reporting. The department will submit the 2017-19 Agency Request Budget document to the Chief Financial Office August 1, 2016.

Information Technology: The department has implemented its lifecycle replacement plan in replacing computers and monitors over the last month.

## **D. PLANNING SERVICES**

Natural Hazards: Department staff continued their work in response to the biological opinion on the impact of the National Flood Insurance Program on species that are listed under the Endangered Species Act. In May, the department hosted three webinars, one of which was specifically targeted at local elected officials. In total, over 200 people watched the presentations. In June, the department held outreach events in Albany, North Bend and White City. Roughly 100 people attended. Seven more events are scheduled in July. More information is available online, including dates and locations for upcoming events:

[http://www.oregon.gov/LCD/Pages/NFIP\\_BiOp.aspx](http://www.oregon.gov/LCD/Pages/NFIP_BiOp.aspx)

Staff spent considerable time in June working on federal applications for buy-outs for buildings damaged in the December floods. Two homes in Milwaukie and a motel in Clatskanie were submitted to the Flood Mitigation Assistance program. They should be strong candidates for the federal funding because they each have had multiple claims on their flood insurance policy over the last ten years.

Also in June, staff held kick-off meetings in Tillamook and Medford for the projects to prepare local natural hazard mitigation plans. DLCD is preparing these plans on behalf of the local governments with federal funding from the Pre-Disaster Mitigation program.

Transportation: The applications period for grants from the Transportation and Growth Management Program (TGM) closed June 10. Forty applications were received, including two from tribal governments. The total amount requested (5.3 million) is over twice the amount available to award (2.5 million). Applications will be scored by staff at DLCD and at the Oregon Department of Transportation, with awards announced in August. More information is available online, including the list of applicants and complete text of the applications:

<http://www.oregon.gov/LCD/TGM/Pages/grants.aspx>

The Advisory Committee on Metropolitan Transportation Planning and Greenhouse Gas Reduction Targets met May 26 and July 6. The first meeting was primarily for DLCD staff to present the scope and background information so that committee members would start with a common understanding of metropolitan transportation planning. The second meeting gave each metropolitan area, and each interest group, and opportunity to present their perspective on the process of transportation planning, to identify difficulties, and to suggest improvements.

Measure 49: In May, the Yamhill County Circuit Court ruled on two cases involving vesting for Measure 37 claims. In both cases the judge did not agree with the position taken by DLCD that the claimant had lost whatever vested rights they might have had due to a discontinuance of over one year. The department will be appealing the cases to the Court of Appeals.

## **E. COMMUNITY SERVICES**

General Fund Grants Program: The status of the grants program is mostly unchanged since the last director's report. Nearly all grant funds have been awarded for the biennium and most awards have an effective grant agreement in place. One periodic review grant was terminated by the department due to lack of performance by the grantee and the department is in the process of using the released funds for a previously denied project. See also agenda item 6 regarding an example grant project completed last biennium.

Periodic Review and Urban Growth Boundaries: The department has not received or acted on any periodic review task or work program submittals during this reporting period. See agenda item 3 regarding the status of periodic review in Hermiston and Pendleton.

Regional Activities: In the Eastern Oregon Region, the DLCD regional representative, with assistance and input from department specialists, provides technical and grant management assistance to local communities on a wide variety local planning projects. Of note:

- The department awarded technical assistance grants to Wallowa and Grant counties to update the natural hazards elements of their comprehensive plans. The Eastern Oregon regional representative is the department's grant manager for both.
  - Wallowa County's project will result in a Community Wildfire Protection Plan and current Wildfire element in the Hazard Mitigation Plan (NHMP) as well as enhanced zoning standards to address fire safety in all rural zones. The county reports that "livability of developed areas at high-risk for wildfire will be enhanced, risk of property damage will be decreased, and, in the event of a wildfire, the safety of residents and emergency management personnel will be significantly increased.
  - In the Grant County project, the county will produce, for the city of Canyon City, a Natural Hazards Mitigation Plan. This plan will provide a framework for the city to reduce risk of life and property during future natural hazard events and to pursue federal funding for its infrastructure and other natural hazard mitigation projects. It will meet federal requirements in accordance with FEMA guidance.

- The department awarded a technical assistance grant to Harney County to analyze and produce a roadmap for changes in the natural resource inventories and corresponding programs within the Harney County Comprehensive Plan and possibly Harney County Zoning Ordinance. The grant offers Harney County an opportunity to explore Goal 5 program updates that more accurately reflect the community's perspectives related to the interface between the people of the community and the area's natural resources. An accurate and contemporary approach to these programs will provide more economic opportunity and certainty to the local community.

Planners Network Meeting: The department, in partnership with the Oregon chapter of the American Planning Association, conducted a Planners Network Meeting in Bend on June 29-30, 2016. The agenda for Wednesday included "Planning in Oregon 101," for new planners, in the afternoon and planning commissioner training in the evening. Department staff, along with a local planning director and city attorney and Oregon Department of Agriculture staff, conducted the trainings. Thirty-four people registered for both sessions while 10 registered just for the afternoon, and seven just for the evening session. The all-day Thursday session included (1) department project updates from the department director and staff; (2) a case-law update conducted by two local attorneys; (3) a presentation on Central Oregon housing issues and solutions conducted by an employment economist, a city housing program manager, and a private affordable housing provider; and (4) a roundtable for participants to share success stories and issues with other planners in the region. The Thursday session was followed a walking tour of a new redevelopment area south of downtown and a social gathering at a pub in the redevelopment. Thirty-four people pre-registered for the Thursday session, and a few more registered at the door.

This is the sixth quarterly Planners Network Meeting the department has conducted since it established a relationship with the Oregon chapter of the American Planning Association to help conduct the events. The agendas have become fairly routine for the organizers (helping make event planning more efficient), the training topics are tailored to the region so each meeting is relevant to the attendees. The evaluation request has not been sent to the Bend participants yet, but marks for past events around have encouraged us to continue conducting the Planners Network Meetings.

## **F. RETIREMENTS, NEW STAFF AND PROMOTIONS**

Paul Klarin, Marine Affairs Coordinator in the Ocean and Coastal Services Division, retired from DLCD effective July 1, 2016. Paul has been with the agency 26 years. Andy Lanier, current Coastal Natural Resource Specialist, has accepted a promotion to the Marine Affairs Coordinator position, also effective July 1. We are very pleased to have Andy's skills and experience with ocean and coastal issues to facilitate this transition. Laren Woolley, Coastal Shores Specialist will be retiring effective November 1, 2016. OCSD will be conducting interviews for the position in July.

**II. LCDC POLICY AND RULEMAKING UPDATES**

Please see agenda items 10, 11 and 12 for rulemaking. Please see agenda item 16 for the policy update briefing.