



Oregon

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May 29, 2009

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 13, June 4-5, LCDC Meeting**

DIRECTOR'S REPORT

I. INFORMATION UPDATES

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

ORS 197.090(2) requires the director to report to the commission 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 the Land Conservation and Development Commission to determine whether recent Land Use Board of Appeals (LUBA) and appellate court decisions require goal or rule amendments.

1. Department participation in appeals

Between March 24, 2009 and April 30, 2009, the department received notice of 13 appeals filed with LUBA. The department filed none of these notices.

2. LUBA opinions

Between March 24, 2009 and April 30, 2009, the department received copies of 14 recently issued LUBA opinions. Of these, LUBA dismissed 3, remanded 4, reversed 2, affirmed 5, and invalidated 0 local decisions, and transferred 0 petitions to circuit court.

Three decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule:

- **Goal 14, Goal 11, OAR 660-011-0060(1)(f)& -0060(2)** – Ralph Baxter and Janette Baxter v. Coos County, LUBA Nos. 2008-219 & 2008-221, filed April 30: Reversed county approval on remand of conditional use permit for a 179-space recreation vehicle

park on 42.84 acres with convenience store, recreation center, other accessory buildings, and trailers with water, sewer and electricity hook-ups. Development is an ***urban use of rural land prohibited by Goal 14*** under the Curry County case, and a ***sewer system prohibited by Goal 11*** and its rules.

- **OAR 660-033-0020(1)(a)(B) & 660-033-0030(3) & (5)** – Shelly Wetherell et al. v. Douglas County, LUBA No. 2009-004, filed April 30: Affirmed county determination on remand from LUBA and Oregon Supreme Court that a 160-acre parcel is non-resource land and may be divided into 5-acre lots for residential development.
- **OAR 660-023-0180** – Kenneth Stern, et al., v. Josephine County, LUBA No. 2008-171, filed March 25: Affirmed county addition of 33.86-acre portion of 66-acre EFU site to inventory of significant aggregate resources.

3. Appellate court opinions

Between March 24, 2009 and April 30, 2009, the department received copies of four, recently-issued opinions from the Court of Appeals. The Court dismissed 0 and affirmed 4 of LUBA's decisions.

4. Decisions of interest

Department appeals: None.

Measure 37/49

- Karol Susan Welch, et al. v. Yamhill County (Kroo claim), LUBA No. 2008-129, Court of Appeals No. A140952, filed April 29: The Court affirmed LUBA's reversal of county approval of a 10-lot subdivision on a 31.03-acre parcel zoned AF-20, based on a Measure 37 waiver.
- Pete's Mountain Homeowners Assoc., et al v. Clackamas County, LUBA No. 2008-065, Court of Appeals No. A140272, filed April 1: The Court affirmed LUBA reversal of county approval of a 41-lot subdivision on a 69-acre parcel zoned Agricultural Forest, based on as Measure 37 waiver. ***Issue of first impression: Whether ORS 215.427(3)(a), the "goal-post statute," encompasses Measure 37 waivers. Holding: Yes, but Measure 49 supersedes Measure 37 waivers, rendering the statute inoperable.***

Others

- On May 8, LUBA issued decisions on 10 appeals of decisions related to the City of Bend UGB amendment:
 - 4 appeals of the UGB amendment and city development code amendments (LUBA nos. 2009-012, 2009-013, 2009-031 & 2009-032) were dismissed for lack of jurisdiction because LCDC assumed jurisdiction under ORS 197.626 when the UGB amendment and city development code amendments were submitted to DLCD for review.
 - 4 appeals of the Water and Sewer Facilities Plans (LUBA nos. 2009-011, 2009-012, 209-2013 & 2009-020), which were suspended February 27, 2009: LUBA

ordered the parties to advise LUBA within 28 days whether they wish to (1) proceed, or (2) continue suspension until DLCD makes a final decision on the UGB amendment.

- The 2 appeals of the Deschutes County plan and code amendments (LUBA nos. 2009-033 & 2009-034), also suspended: LUBA ordered the County to advise LUBA within 14 days whether its adoption ordinances have been submitted to DLCD, after which LUBA will decide whether it has jurisdiction.
- Annunziata Gould v. Deschutes County, LUBA No 2008-068, filed April 22: Court affirmed county conditional approval of a conceptual master plan for a *destination resort* proposed by Thornburgh Resort Company, LLC.
- Scott Young and Robin James v. Jackson County, LUBA No. 2008-076, Court of Appeals No. A141027, filed March 25: The Court affirmed LUBA decision without opinion in this *RLUIPA* case.

5. **Appeal notices of interest:** None.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

The director and department staff met with the commission's Grants Advisory Committee on March 23 to discuss the current budget situation and to determine any preliminary grant priorities for 2009-2011. Department staff also met with the Grants Advisory Committee on May 28 for a revised budget update, and to refine grant recommendations from the committee. Staff and the committee will report back to the commission on that meeting in a separate agenda item.

In the meantime, the department continues to work on current grant projects and expects to complete projects currently underway prior to June 30. Staff members have begun to solicit informal grant proposals for the 2009-2011 budget. The department recognizes that funds may be limited in the coming biennium, but has committed to expedite the timeliness of awarding any funds that may be available. Local governments will receive formal invitations to apply for grant funds following direction from the commission and final approval of the grant budget.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

The department received requests from Portland, Tigard and Lake Oswego asking to continue with periodic review regardless of the department's ability to provide grant assistance with work tasks. The department recommends that those cities proceed with periodic review.

No other cities or counties submitted periodic review work tasks.

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. COASTAL MANAGEMENT PROGRAM

After about five years of staff stability, the Coastal Services Division has had a number of staff changes precipitated by the retirement of Greg McMurray, the marine science/policy specialist. Paul Klarin has replaced Dr. McMurray as the Marine Affairs Coordinator. He has been managing the wave energy planning work and will now take on all things ocean. Dale Blanton replaces Mr. Klarin as Senior Coastal Policy Analyst and will be the go-to guy for the last word on coastal policy. The State-Federal Affairs Coordinator position vacated by Mr. Blanton is being recruited.

Steve Williams, our Coastal Shorelands Specialist who worked out of our Newport office, resigned from the department on May 30 due to long-term health issues. Recruitment for that position is underway.

And, the Coastal Division will have a new NOAA Coastal Fellow beginning around Labor Day. Laura Mattison, who is completing her MA in Environmental Studies at Brown University in Providence RI, has agreed to join us as two-year NOAA Coastal Fellow to head up a project to begin planning for the effects of sea level rise on dikes and levees in coastal estuaries. This Fellowship is the result of a successful project application in October, 2008, and then a week-long selection process for Fellow finalists in Charleston, SC. Tanya Haddad (herself a former Fellow) represented the department at the Fellow matching meeting. This will be the department's fourth NOAA Coastal Fellow. Andy Lanier is the department's current Fellow.

B. COMMUNITY SERVICES

The Community Services Division continues to work with local governments on a wide variety of local and regional planning efforts. As the biennium comes to a close, regional representatives and other grant managers continue to provide a high level of assistance to grant recipients ensuring that grant products are completed on time.

The Community Services Division also met in April, in part to weigh in on the commission's/department's policy agenda, refining and prioritizing proposed efforts from the statewide and regional perspective.

Regional representatives also arranged meetings with the director and key department staff focusing on important efforts in several communities: Damascus, Lane County, Eugene/Springfield/Lane County, Douglas County, and the Columbia River Gorge Commission among others.

C. DIRECTOR'S OFFICE

Highlights of activities in the director's office during late April and May include:

- Director's recurring meetings with state agency heads, natural resources cabinet, Metro Reserves Steering Committee, Metro Policy Advisory Committee, Measure 37 post waiver group, Measure 49 group, natural resources cabinet, LNG coordination group, LCDC Legislative Subcommittee, and senior staff from the Oregon Department of Transportation and the Oregon Economic and Community Development Department.
- The director, Mr. Rindy and Mr. Morrissey continued to meet with legislators and others on the department's bills and legislation related to the department, particularly Big Look Task Force, state agency coordination, destination resorts, Measure 49, uses allowed on farm land, Goal 11, the Governor's Jobs and Transportation Act, and transfer of development rights.
- May 12 the department made a joint presentation to the Columbia River Gorge Commission on Oregon's statewide planning program with planning officials from the Washington Department of Community, Trade and Economic Development.
- May 14 met with Springfield, Eugene and Lane County staff regarding HB 3337 and UGB work.
- The acting deputy director, human resources manager, and Community Services Division manager have had one bargaining session on a new contract with the AFSCME local. A second meeting is scheduled to take place prior to the commission's June meeting. Negotiations are not expected to be complete until later in June.

D. OPERATIONS SERVICES

Operations Services team continues preparing for biennium year end activities—including establishing a new accounting structure aligning to the department's 2009-11 budget structure; federal and statewide financial reporting; and continued budget development activities. The unit also continues its efforts in meeting statewide Enterprise Security Office policies and procedures including: establishment of an Incident Response Plan; and development of several of required plans such as: Transporting Information Assets; Disaster Recovery Plan; Information Asset Classification; and Security Plan. The IT unit and department also continue its migration efforts to Outlook. Outlook training classes are anticipated May 22-June 3 with full migration to Outlook occurring by June 30.

E. PLANNING SERVICES

The Leadership in Energy and Environmental Design (LEED) for Neighborhood Development Rating System is a program of the U.S. Green Building Council. LEED-ND integrates the principles of smart growth, urbanism and green building into a national rating system for neighborhood design. LEED certification provides independent, third-party verification that a development's location and design meet a high level of environmentally responsible, sustainable development. The LEED-ND standards are designed to reward developments that offer superior alternatives to sprawl. Reducing VMT is among the system's major objectives. (See <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=148>).

Each of LEED-ND's three standing members (U.S. Green Building Council, the Congress for the New Urbanism, and the Natural Resources Defense Council) appoints five members to the Core Committee, which develops the rating system. Constance Beaumont of DLCD's Transportation and Growth Management program has been nominated to the committee; if confirmed as expected, her term will begin June 1.

III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF AND PROMOTIONS

Chris Schmoyer joined the department on May 11th as a Measure 49 Claims Analyst in the Measure 49 Development Services Division. Chris worked for 2½ years as an Associate Planner for the City of Bend. Prior to that, he worked in various planning positions with Deschutes, Jackson, and Polk counties.

Greg McMurray, Principal Marine Scientist, retired at the end of April, which set in motion a series of personnel changes:

- Paul Klarin has been reassigned as Marine Affairs Coordinator to replace Greg;
- Dale Blanton has been reassigned to Senior Coastal Policy Analyst to replace Paul.

B. DEPARTING EMPLOYEES

Greg McMurray, Marine Affairs Coordinator, retired April 30th.

Steve Williams, Coastal Shorelands Specialist, announced his resignation from the department effective May 29th due to health related disabilities.

Sandy Austin, Completeness Review Specialist, left the agency on April 30th.

C. RECRUITMENTS

The department is recruiting for a Completeness Review Specialist and two Claims Analysts in the Measure 49 Development Services Division.

The Coastal Services Division is recruiting for a Planner 3 in Newport to fill the vacancy left by Steve Williams, and for the Federal Affairs Coordinator position held by Dale Blanton.

The department is now working to fill positions held vacant in the Measure 49 Development Services Division to meet current budgetary restrictions, in anticipation of funding for 2009-11.

The recruitment for a rotational assignment to the Deputy Director position is continuing.