



Oregon

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TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 12, August 6 & 7, 2008 LCDC Meeting**

DIRECTOR'S REPORT

1. 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 April 10 and July 16, 2008, the department received notice of 49 appeals filed with LUBA.

On May 21, 2008, the department filed a notice of intent to appeal Lane County's resolution to defer a coordinated population forecast until periodic review (*DLCD v. Lane County*, LUBA No. 2008-075). (See "Decisions of interest" below for current status of this appeal.)

2) LUBA opinions

Between April 10 and July 16, 2008, the Department received copies of 90 recently issued LUBA opinions. Of these, LUBA dismissed 29, remanded 26, reversed 1, affirmed 13, invalidated 1, and transferred 5 petitions to circuit court.

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

- OAR 66-033-0020(1): *Doherty, et al v. Wheeler County*, LUBA No. 2007-236, filed 4-23-08.
- OAR 660-033-0130(4): *Young v. Crook County*, LUBA No. 2007-250, filed 6-11-08.
- OAR 660-004-0028(2) & (6): *Scott v. Crook County*, LUBA No. 2007-241, filed 6-5-08.
- OAR 660-023-0180(3): *Westside Rock--Hayden Quarry, LLC v. Clackamas County*, LUBA No. 2007-144, filed 5-22-08.
- OAR 660-004-0018(2), 660-004-0025 & 660-004-0028: *Landwatch Lane County v. Lane County*, LUBA No. 2006-235, filed 4-1-08.
- OAR 660-004-0028: *Lancefield Farm Co. v. Yamhill County*, LUBA No. 2007-188, filed 6-26-08.
- Goal 12 and OAR 660-012-0060: *Lufkin v. City of Salem*, LUBA No. 2007-259, filed 6-17-08.

None of these decisions requires goal or rule amendments.

3) Appellate court opinions

Between April 10 and July 16, 2008, the Department received copies of 17 recently issued opinions from the Court of Appeals. The Court affirmed 8, dismissed 5, and remanded and reversed 4.

4) Decisions of interest

Department appeals

- On May 29, LUBA consolidated the appeals of Lane County's population forecast resolution by DLCD, Creswell, Junction City, Oakridge, and Veneta (LUBA Nos. 2008-075 & 2008-078).
- *DCLD v. Klamath County*, LUBA No. 2007-009: The Court of Appeals affirmed LUBA's decision (filed 10-2-07, effective 7-2-08).
- *DLCD v. Jefferson County*, LUBA No. 2007-177, Court of Appeals No. A138022: The Court affirmed LUBA's reversal of the county's approval of a subdivision application based on a Measure 37 waiver issued to a deceased claimant (William Burk), filed 6-18-08.
- LUBA dismissed three department appeals.
 - *DLCD v. City of Boardman*, LUBA No. 2007-086, dismissed 4-15-08 at DLCD's request.
 - *DLCD v. Deschutes County*, LUBA No. 2007-095, dismissed 5-6-08 because DLCD didn't file an amended notice of appeal after the County withdrew the challenged decision.
 - *DLCD v. Umatilla County*, LUBA No. 2007-137, dismissed 6-10-08 because DLCD didn't file an amended notice of appeal after the County withdrew the challenged decision.

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- LUBA dismissed *Norwood v. Washington County*, LUBA No. 2008-058 (notice filed 4-17-08, dismissed 6-12-08) (approval of subdivision plat) at the parties' request.
- LUBA dismissed *Jacque Parsons, Trustee v. Clackamas County*, LUBA No. 2007-006 (notice filed 1-5-07, dismissed 6-30-08) (denial of subdivision application) at the petitioner's request.
- On July 2, LUBA transferred to circuit court four challenges to Yamhill County Measure 49 vesting decisions, for lack of jurisdiction: *Biggerstaff v. Yamhill County*, LUBA No. 2008-059 (filed 4-22-08), *Friends of Yamhill County v. Yamhill County Yamhill County* (McClure), LUBA No. 2008-060 (filed 4-22-08), *Friends of Yamhill County v. Yamhill County Yamhill County* (Maralynn Abrams), LUBA No. 2008-061 (filed 4-22-08), and *Kleikamp and Friends of Yamhill County v. Yamhill County Yamhill County* (Gregg), LUBA No. 2008-083 (filed 6-3-08).
- LUBA suspended *Petes Mountain Homeowners Assoc. v. Clackamas County*, LUBA No. 2008-065 (filed 5-2-08) pending a decision by the Court of Appeals in *DCLD v. Jefferson County*.
- *DCLD v. Jefferson County* (see report under "Dept. appeals," above).
- LUBA remanded two county subdivision approvals: *Hines, et al v. Marion County*, LUBA No. 2007-185, filed 3-19-08; and *Gardener and Parsons v. Marion County*, LUBA No. 2007-226, filed 5-13-08.
- LUBA affirmed the county's denial of a partition application in *Ratzlaff v. Polk County*, LUBA No. 2007-207, filed 6-19-08.

Other

- The Court of Appeals reversed and remanded in the consolidated appeals of LUBA's remand of the Adair Village UGB expansion: *Hildenbrand, et al v. City of Adair Village*, LUBA No. 2007-092, and *Hildenbrand, et al v. Benton County*, LUBA No. 2007-093, filed 2-6-08, effective 3-25-08.

5) Appeal notices of interest

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- *McKillip v. Marion County*, LUBA No. 2008-048, filed 4-1-08 (denial of subdivision application).
- *Friends of Yamhill County v. Yamhill County*, LUBA No. 2008-082, filed 6-3-08 (vested right determination).
- *Hoffman v. Jefferson County*, LUBA No. 2008-090, filed 6-23-08 (denial of subdivision application).

Other

- *Young and James v. Jackson County*, LUBA No. 2008-076, filed 5-21-08 (denial of reasons exception to Goal 3 for church within 3 miles of Ashland UGB).

- *Cascade Geographic Society v. Clackamas County and Cascade Geographic Society v. DEQ*, LUBA Nos. 2008-091 & 2008-092, filed 6-23-08 (challenge to DEQ approval of, and County refusal to review, ODOT's Erosion & Sediment Control Plan for US Highway 26 Salmon River Bridge--E. Lolo Pass Road Project).

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

To date, the department has funded 33 Technical Assistance grant projects and approximately 70 Planning Assistance grants in 2007-2009. General fund grants are essentially contracted or committed for the biennium; the department continues to reserve a portion of the grants budget for jurisdictions that develop periodic review work plans in 2008. So far, the Commission has initiated Periodic Review for a total of 10 jurisdictions, including a customized periodic review for Junction City. Periodic Review grant applications are expected to arrive during the remainder of 2008 following local governments' completion of individual work plans (see Periodic Review below). Once the department knows the demand for PR grant funds, staff will determine whether funds will be available for additional short-term Technical Assistance grant projects.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Hermiston and Keizer have submitted plan evaluations and draft work plans for review. Department staff received Keizer's work plan three weeks ago and has approved the work program as submitted. Department staff are currently reviewing Hermiston's draft work plan. The department continues to expect plan evaluation/draft work plan submittals from Forest Grove, Portland, The Dalles, Lake Oswego, Pendleton, Tigard and Troutdale.

Forest Grove and Portland are expected to submit final plan evaluations and draft work plans to the department by the end of August. The remaining cities have until November of this year to complete and submit their plan evaluations and draft work plans. At its June meeting the Commission approved a request from The Dalles to reinitiate periodic review, thereby giving the city until the end of the year to work with Wasco County, the Columbia River Gorge Commission and the Tribes to develop a comprehensive work plan that coordinates the interests of those government entities. Several of the cities now in periodic review are expected to request grant funds in the remainder of 2008.

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIATIVES

A. COASTAL MANAGEMENT PROGRAM

The North Coast Planning Commissioner Training Project:

This project was organized in the spring of 2008 by the Coastal Services Division based on a strong interest expressed by local officials, many of them new, for a course in land use planning. The department, with funding from the federal coastal zone management grant, contracted with consultant Mitch Rohse, AICP, to conduct a series of 15 training sessions during the spring. Of the total of 153 people who attended the 3 to 4 hour sessions, most were planning commissioners, along with some local elected officials, planning staff, and citizen committee members. The vast majority of participant responses to the workshops were very favorable, while several of the more experienced commissioners considered some of the content basic. The division will conduct additional workshops on the south coast this fall, and is also working toward developing an on-line training module.

B. MEASURE 49 DEVELOPMENT SERVICES

A milestone will be reached in early July when all Measure 49 elections will be due to the department. As of June 6, about 3,900 elections have been received out of about 6,500 eligible claims. The vast majority of these claims are of the Express variety--about 95%.

Staff continues work on processing the elections, with a goal of beginning to issue final orders in July. Much of this initial work involves working with the claimants and counties to verify and complete application information. The Measure 49 Development Services Division has begun to staff up to their eventual capacity of about 30 staff, from the current 12. The department is currently completing lease negotiations with the Department of State Lands as a location to house the additional staff. Alwin Turiel, who was recently appointed to serve as Oregon's Measure 49 Compensation and Conservation Ombudsman, has accepted employment elsewhere. Michael Morrissey, the Division Manager, recently accepted another position within the department. Recruitment for the manager position will begin immediately.

C. FEDERAL TIMBER PAYMENTS STATUS REPORT

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Frank Lackey joined the department on June 23 as the Operations Manager in the Measure 49 Development Services Division. For the last 6 years, Frank has been a Compliance Specialist with the Public Utility Commission. Prior to that, he has worked for the Department of Consumer and Business Services' Building Codes Division,

Citibank, and the U.S. Navy. Frank has his Bachelor's degree in Human Resource Management from George Fox University. Frank's training and experience will be a valuable asset to the Division.

Michael Morrissey, Measure 49 Development Services Division Manager, has accepted the rural policy analyst position in the Director's office. Please join us in welcoming Michael to this important new post. Michael will focus on rural and resource land issues and assist with both rulemaking and legislative matters. Congratulations Michael!

B. DEPARTING EMPLOYEES

Diane Lucas, Administrative Specialist for the Task Force on Land Use Planning, left the department effective July 16, 2008.

Alwin Turiel, Measure 49 Compensation & Conservation Ombudsman, will leave the Department on July 25. She accepted a position in local government planning in the Metro area.

C. RECRUITMENTS

Recruitment for the Accountant 3 position is in progress. At the time of the Commission meeting, the department anticipates that recruitment selection will be finalized.

The department will begin recruiting for the Measure 49 Development Services Division Manager (Michael's replacement) immediately. In the meantime Michael will continue to serve as the Division Manager in order to assist with a smooth transition.

Recruitments are in process to fill the numerous Measure 49 clerical, administrative, and program analyst positions. Several appointments are expected to occur in the next few weeks.

Planning Services Division is currently recruiting for a Planner 2 (Urban Planner) and a limited duration, Natural Resource Specialist 4 (Floodplain/Natural Hazards Specialist).

D. DIRECTOR ACTIVITIES

During the period of this report the director and acting director have been involved in several activities in support of the work of the department, both within the department and internally. Highlights of the director and acting director's activities include:

- Economic Revitalization Team (ERT), Director's Field Trip (April 1-2, Lower John Day Region/City of the Dalles)
- Participation in the Governor's Agency Advisors Committee

- Participation in the Natural Resources Cabinet
- Ongoing senior staff meetings with the Department of Transportation, to help improve coordination and communication between DLCD and ODOT
- Ongoing senior staff meetings with the Oregon Economic & Community Development Department, to help improve coordination and communication between DLCD and OECDD
- Eugene-Springfield Meeting (Salem, June 23)
- Planners Network Meeting (Hillsboro, June 24)
- North Coast Planner Training (Seaside, June 24)
- ERT Director's Field Trip (Southwest Region, June 30-July 1)
- Global Warming Commission, Land Use & Transportation Subcommittee (Portland, July 14)
- Transportation Vision/Environment Subcommittee (Portland, July 14, 22 & 29)
- Salem Periodic Review Meeting (Salem, July 15)
- Oregon Transportation Commission re: Big Look (Salem, July 16)
- Senate Environment and Natural Resources Committee (Salem, July 18)
- House Energy Committee (Salem, July 29)
- County Counsel (Bend, July 31)
- Annual Mayors Conference (Pendleton, August 1)

4. LEGISLATIVE UPDATE

A. DLCD LEGISLATIVE CONCEPTS

As reported in the June Director's Report, the department filed seven legislative concepts with DAS on April 4. In June, DAS informed the department that all the legislative concepts had been approved and sent to Legislative Counsel for drafting. However, the department later decided not to pursue one of its "placeholder" concepts – minor amendments to Measure 49. The department anticipates that legislative counsel drafting of the remaining six concepts may not be complete until late summer, and perhaps later.

The DLCD legislative concepts approved by DAS for drafting (excluding the Measure 49 placeholder) are as follows:

1. Land Supply for Affordable Housing (Placeholder; LCDC has appointed rulemaking workgroup to determine which statutes, if any, require amendment to authorize the intended affordable housing pilot project.)
2. Land Use Appeal Fees (Improve the opportunity for organized citizen planning organizations to have effective access to local land use appeals.)
3. Destination Resort Siting (Authorize LCDC to revise destination resort siting provisions to ensure that resorts function as intended – to attract and serve visitors and tourism rather than as residential or second-home communities; study and address issues with regard to concentrations of resorts in certain areas.)
4. Resource Land Conversion and Climate Change (Provide incentives for retention of working forest and agricultural resource land base; authorize transfer of residential development rights from at-risk but functional forest lands and farmlands to more conflicted lands or to UGBs; reduce residential development potential on lands being converted from forest cover to pasture or range in order to provide an incentive for reforestation; in forested areas that are already conflicted, cluster residential development but also provide for active management and fire protection on remaining lands.)
5. Big Look Task Force Implementation (Placeholder for the Task Force Recommendations. The Task Force is not expected to issue a final recommendation until late fall, at the earliest. The department will work with the office of Legislative Counsel regarding timelines for drafting of state agency legislation. In the event a final Task Force recommendation is not available in time for drafting, the department may choose to have Legislative Counsel draft a “placeholder” bill based on the latest available information about the Task Force recommendation under consideration at the time of the final drafting deadline. Under this scenario, amendments to the bill would need to be drafted later in order to match the final recommendations by the Task Force).
6. State Agency Coordination Program Update (Ensure local government issuance of a LUCS is not a separate land use decision where it is based on a prior permit decision; provide direction to DLCD to update the SAC program rules to improve coordination between state agency permit decisions and local land use planning and to make this program more transparent.)

The department reported to DAS that two of these concepts would have fiscal impacts that could not be absorbed by the Department’s base budget – Concepts 2 and 4. Fiscal impacts must be accounted for in the Agency Request Budget. A Policy Option Package (POP) has been prepared for concepts #2 and 4 (see item 14 on the Commission’s August meeting agenda).

B. OTHER LEGISLATIVE ITEMS

The department is monitoring interim legislative committees. In general, several committees are scheduling hearings on issues that are anticipated to continue into the general 2009 Legislative Session. The department is also monitoring legislative concepts proposed by other agencies, and is participating in discussions with ODOT regarding an proposed legislative concept concerning ----.

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

At its March and April meetings, the Commission appointed an advisory workgroup for the Affordable Housing rulemaking pilot project. The workgroup held its first meeting on May 27, which primarily included a general discussion of the issues for this project. The workgroup met again on June 17 and July 14. The department's website has information and materials regarding this project. Future affordable housing workgroup meetings are scheduled and have been listed on the department's website at the following link: http://www.oregon.gov/LCD/meetings.shtml#Affordable_Housing_Work_Group

At its June 18 meeting LCDC appointed a "Phase 2 UGB Workgroup" to consider new "safe harbors and other administrative rules intended to clarify and streamline the UGB process. The full workgroup held its first official meeting on July 15, and two "subcommittees" of the workgroup also met in July to discuss and propose ideas for new UGB safe harbors. This group has also scheduled future meetings, which are listed on the department's website, along with other information, at the following link: http://www.lcd.state.or.us/LCD/ugb_rulemaking_project.shtml

B. OTHER POLICY ACTIVITIES

New Rulemaking

The department is proposing new rulemaking regarding wind power generators on farmland (see item 7 on the August LCDC agenda).

Metro Urban and Rural Reserves

The department is continuing to participate in Metro's process for designating Urban and Rural Reserves, and to coordinate with other state agencies in that effort. The Metro Reserves Steering Committee has met four times and anticipates designation of "Reserve Study Areas" by August 2008.

Status Report on Destination Resorts in Oregon

At the March 20, 2008 LCDC meeting, the department presented a legislative concept to authorize the Commission to study and revise destination resort requirements by consolidating destination resort policy in Goal 8, which can be revised by LCDC, rather than locking these requirements into statutes. This would be accomplished by removing all but certain key requirements from state law, including general principles that set forth the intent of destination resort policy, and certain protections such as those for high value cropland and critical habitat. The legislation would direct LCDC to evaluate the resort policy and its implementation, update key requirements, and address issues through special studies and public hearings, and ultimately amendments to the Goal in response to these studies and hearings.

There are 8 counties that currently have adopted destination resorts programs and maps identifying lands eligible for destination resorts. Provided below is a brief update and status report for each of these counties. In general, the department works closely with each county adopting a destination resort program, and participates in hearings for the approval of individual resort applications.

Crook County: Program adopted in 2002. There is one resort currently operating in the county, Brasada Ranch. Hidden Canyon has conceptual approval, but no master plan has been submitted. Another resort, Remington Ranch has received tentative approval for their first phase. One other resort is proposed (Crossing Trails) and is currently being reviewed by the county.

In May 2008, the county held an election on Ballot Measure 7-47 to remove the destination resort map thus preventing approval of more resorts. The measure passed. On June 26, 2008, the department received a post acknowledgment plan amendment to consider “amendments to destination resort overlay to implement ballot measure 7-47, requesting removal of the destination resort overlay to prevent approval of more resorts in a manner that would not affect existing resorts.” The first evidentiary hearing is tentatively schedule for August 27, 2008.

Deschutes County: Program adopted in 1992. There are four Goal 8 destination resorts in the county, Eagle Crest, Pronghorn, Tetherow and Caldera Springs.

Another resort, Thornburg, received conceptual master plan approval from the county in 2006. That plan was appealed to LUBA, who remanded the conceptual master plan. In response to the remand order, the county approved a second conceptual master plan. That plan has also been appealed to LUBA. A date for oral argument before LUBA has not been scheduled. Even though the conceptual master plan is under appeal, the applicant submitted a final master plan for the resort, and the county has started to hold hearings.

The county will be considering revising its destination resort map as part of a county-wide effort to update its Comprehensive Plan. The tentative time-line is to begin data gathering and analysis through this summer, have conversations with the communities this Fall and

Winter 2008/2009, prepare draft text, goals, policies and implementation measures
Spring/Summer 2009, have public review and hearings Summer/Fall 2009, and then
consider adoption in 2010.

Jefferson County: Amendments to the county's plan and zoning to provide for destination resorts were adopted in December 2007. Those amendments were appealed to the LUBA by both resort interests and those opposed to the amendments. Two properties, one north of Suttle Lake and the other near Camp Sherman, were designated in the comprehensive plan as eligible for destination resorts. No other properties in the county were mapped as being eligible for destination resorts. On February 11, 2008, LUBA remanded the county's resort provisions. Both the applicant and parties opposed to the amendments have appealed the LUBA decision to the Oregon Court of Appeals. On July -, 2008, the Court of Appeal upheld the LUBA decision. As such, although the county's mapping is remanded for further work, it is anticipated that the remand issues are not difficult to address. The department intends to participate in the local process to amend the maps in response to the LUBA and Court of appeals decisions.

Klamath County: Program adopted in 1994. There is one resort in the county (Running Y Ranch) which was approved in 1996. On July 3, 2008, Cascade Timberlands, LLC, submitted an application to the county for approval of a preliminary development plan for a resort, Crescent Creek Ranch, near Crescent and Gilchrist. A hearing on the preliminary development plan will be held in late summer or early spring.

Josephine County: Program adopted in 1986. One resort, Paradise Ranch near Merlin, was approved in 1993, appealed by the department, and by stipulated remand later approved as a destination resort in 1994. The site obtained tentative approval in 2007 for a planned unit development destination resort. The resort golf course is currently being developed.

Jackson County: Program adopted in 1986, and updated in 2007. One resort project, Table Rock, is in the planning stages but has been put on hold due to current market conditions and additional ordinance work the county needs to complete.

Tillamook County: Program was adopted in 1989. One resort project near Sand Lake (Belts Farm) was zoned for a coastal destination resort, but that opportunity expired after a five year sunset provision included in that zone. No other resorts have been approved or proposed.

Douglas County: Program adopted in 1986. Heaven's Gate Destination Resort is the only active application. It currently has tentative approval, granted in 2003, with many conditions. The applicant has not met any of the conditions of approval. The tentative approval has been extended.