



# Oregon

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August 4, 2011

TO: Land Conservation and Development Commission  
FROM: Jim Rue, Acting Director  
SUBJECT: **Agenda Item 10, August 17-19, 2011, 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 of the Department of Land Conservation and Development (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 May 25, 2011 and July 27, 2011, the department received notice of 16 appeals filed with LUBA. The department filed none of these.

##### **2. LUBA opinions**

Between May 25, 2011 and July 27, 2011, the department received copies of 19 recently-issued LUBA opinions. Of these, LUBA dismissed 10, remanded 5, reversed 0, affirmed 4, invalidated no local decisions, and transferred no petition(s) to circuit court.

One decision concerns the application or interpretation of a statewide planning goal or LCDC administrative rule:

- OAR 660-034-0035 & OAR 660-034-0040: *Linn County Farm Bureau, et al v. Linn County*, LUBA Nos. 2011-001; issued May 25, 2011. LUBA affirmed a county decision

on remand which would approve a conditional use application to establish a new county park, including a recreation vehicle (RV) campground on a 175-acre tract zoned for EFU.

- LUBA concluded that since the county does not have a parks master plan a Goal 3 exception is not needed. The park planning rule is silent as to which park uses require an exception in the absence of a master parks plan.

### 3. Appellate court opinions

Between May 25, 2011 and July 27, 2011, the department received copies of 2 recently issued opinions from the Court of Appeals. The Court affirmed one decision without opinion and reversed in part and remanded the second one.

- Willamette Greenway Plan Goal 15, ORS 390.314(1), OAR 660-015-005: Gunderson LLC, et al. v City of Portland Court of Appeals decision LUBA No. 2010-039, 040, and 041. Issued June 22, 2011. The decision at issue in this case is the adoption of the North Reach River Plan which has three major components; it creates a new “River Environmental” zoning overlay, the imposition of vegetation enhancement standards on all “river” overlay properties, and the modification of the Greenway boundary in the North Reach. Petitioners claimed that generally the plan did not adequately protect the industrial interests of the harbor and it failed to comply with Goal 2 (Land Use Planning), Goal 9 (Economic Development), and Goal 15 (Willamette River Greenway).
  - **Goal 2 Issues:** Petitioners contended that the city re-overlay zone lacked an adequate factual basis. COA concluded that the city had substantial evidence and an adequate factual basis and therefore is not required to further justify its methodology. This issue was rejected.
  - **Goal 9 Issues:** The city had not adequately considered the effects of the mitigation review and the vegetation enhancement standards on the city’s land inventory for purposes of Goal 9. COA concluded that petitioners invented an issue where there was none, the NRRP was remanded on evidentiary grounds, because neither the city’s 2009 EOA nor its 1989 EOA was sufficient to support the city’s conclusion that it would continue to have an adequate supply of industrial land after the NRRP took effect. This issue was rejected.
  - **Goal 15 Issues:** Adequacy of the city’s inventory: COA concluded that LUBA erred in not addressing their arguments with respect to the Goal 15 inventory and was remanded in order for LUBA to address them.

### 4. Decisions of interest

- Wind Energy Facility; ORS 197.015(10): David M. Mingo v Morrow County, LUBA No. 2011-014, issued June 1, 2011. LUBA remanded the county’s decision regarding noise complaints that were filed by owners of the four properties located in the vicinity of a wind energy facility.
  - Since 1991 DEQ has not administered or enforced OAR chapter 340, division 35. Morrow County has adopted OAR chapter 340, division 35 as its noise regulation

and administration and enforcement of it has fallen to them. Therefore LUBA has jurisdiction over this appeal since ORS 197.015 states that a land use decision is a decision that concerns the application of a comprehensive plan, land use regulation or specific land use laws. Since this is a code enforcement ordinance it qualifies as a land use regulation.

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

**B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS**

As reported in the Director's Report for June 22, 2011, the department's annual federal Coastal Zone Management Grant from NOAA has been reduced and delayed due to Congressional action...or inaction...on the FY11 federal budget. The department was notified in early June that the FY11 grant would be reduced by \$133,000 from FY10 levels and likely would not start until late July or August. However, the department has been notified by NOAA that because the Alaska Coastal Program has been dissolved because of the Alaska legislature, Oregon will receive \$53,000 from what would have been the grant to that state. Oregon will have retroactive spending authority to July, the beginning of the state's fiscal year. Coastal staff have added that \$53,000 back to the FY11 grant application to enhance contract support for three tasks described in the grant.

Diana Evans, Coastal Grants Coordinator, has been receiving and processing applications from coastal jurisdictions for planning assistance grants. She also sent notices to coastal community organizations announcing the availability of coastal "mini-grants" of up to \$1,000 each to support the work of a coastal organization that aligns with the mission of the Coastal Program.

General Fund Planning Grants

The Community Services Division is currently seeking applications for 2011-13 planning grants available through the department's general fund grants program. The overall grant fund is significantly reduced from previous budgets, but the department is pleased to continue to offer funds for strategic projects in Oregon communities.

While the department's ability to fund consultant teams for technical planning projects is significantly diminished, we still welcome any and all innovative projects and ideas for consideration. And, for proposals that do not receive grant awards in 2011-13, the department is also prepared to work directly with communities that are willing to partner in hands-on planning projects.

**C. PERIODIC REVIEW WORK TASKS/PROGRAMS**

The City of Prineville successfully completed its long-standing periodic review work program for review and approval by the department. Department staff reviewed the final task submittal and the director approved the submittal in July. The department extends sincere congratulations to Prineville for its efforts to complete the community's comprehensive planning.

Several additional Oregon communities continue to make progress on periodic review plan updates. Department staff will provide the commission with a detailed update of the current periodic review program, including the status of individual communities' efforts, at the commission's October meeting in Grants Pass.

## **II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

### **A. COASTAL MANAGEMENT PROGRAM**

Coastal staff are working with the Department of Justice to file a brief in response to a second appeal to LUBA in the case of *Rudell v. City of Bandon* (LUBA 2010-037) (see Director's Report for March 2011). LUBA had previously remanded the city's decision to resolve factual issues related to the location of the foredune. The city, with assistance from DLCD coastal staff and the Department of Justice, took action to resolve those issues. Attorneys for Rudell have subsequently filed an appeal of that decision. Because this case involves a significant Goal 18 issue about development on foredunes, the department continues to be directly involved.

Ocean alternative energy planning continues to be a major focus for coastal staff and the program manager.

- Paul Klarin, Marine Affairs Coordinator, led preparations for a meeting of the Ocean Policy Advisory Council Territorial Sea Plan Working Group on July 26 to review public comments received at a round of public meetings in May and June, review the status of fisheries and ecological data to be used in the plan development, and review criteria that will guide the plan decision process (see <http://www.oregonocean.info/>).
- Paul also set the stage for the commission to take action at the August 2011 meeting to appoint members to a Territorial Sea Plan Advisory Committee that will review recommendations from the Ocean Policy Advisory Council (OPAC) on amendments to the Territorial Sea Plan and make its "rule-making" recommendations to the commission sometime after the beginning of 2012.
- Bob Bailey, Coastal Program Manager, traveled to Washington, DC in mid-July to speak about Oregon's ocean energy planning process as an invited panelist at a day-long workshop on marine spatial planning held by the World Ocean Council.
- Bob and Paul worked with staff from the Pacific OCS Region of the US Bureau of Ocean Energy Management (BOEM) to develop the agenda for the second meeting of the State-Federal Ocean Energy Task Force held in Portland on August 1; this task force is intended to coordinate state and federal responses and planning for ocean alternative energy in federal waters off the coast of Oregon.
- Bob and Paul, along with Andy Lanier, Coastal Resources Specialist, were presenters on marine spatial planning in early August at the annual conference in Portland on renewable ocean energy held by the Oregon Wave Energy Trust.

The Coastal Program, in conjunction with the Institute for Natural Resources at Oregon State University and the US Department of the Interior Bureau of Ocean Energy Management, hosted

a two-day workshop in Salem in early June to develop the elements and mechanisms of an Oregon Coastal and Marine Data Network. About 40 invited participants attended from Oregon state agencies, academia, federal agencies, non-profit foundations, and the state of Washington. Thanks go to coastal staffer Tanya Haddad for her leadership in preparing for this workshop and to Andy Lanier, Paul Klarin, and Lorinda DeHaan as well. Tanya will be an invited participant in a week-long workshop of the International Coastal Atlas Network to be held in Belgium in late August, 2011.

Marine Affairs Coordinator, Paul Klarin, traveled to Washington, DC in late June to participate in a three-day workshop on Coastal and Marine Spatial Planning convened by the National Ocean Council. Also attending were Ed Bowles, Fish Division Chief for the Oregon Department of Fish and Wildlife, and Todd Hallenbeck, a Sea Grant Fellow working in the department on behalf of the Governor's office to support the work of the West Coast Governors Agreement on Ocean Health.

Diana Evans led work among coastal staff to prepare and submit the required performance reports to NOAA for federal coastal grants. These reports are crucial to maintaining funding from NOAA. She continues to monitor all expenditures of grant funds and works closely with the department's accounting staff to make sure that cash flow of grant funds is correct and timely. She has also begun to post the grant work programs and performance reports on the Coastal Program's homepage <http://www.oregon.gov/LCD/OCMP/index.shtml>.

Dave Perry, South Coast Field Representative (and technically in the Community Services Division), has been working closely with Curry County to assist in resolving a remand by LUBA to the county of its decision to approve a destination resort at Crook Point. The likely result is that the Coastal Program GIS Services Coordinator, Randy Dana, will work directly with Dave and county staff to use LiDAR imagery/data and other data to identify a detailed Coastal Shoreland Boundary that the county can adopt in response to the LUBA remand. Randy also spent a day in Myrtle Point, giving direct GIS training and assistance to city staff to support an update of the city's plan and ordinances.

Laren Woolley continued to work closely with Tillamook County to develop a plan for responding to chronic and catastrophic ocean-front erosion at Neskowin. The Coastal Program is also providing a technical assistance grant to Tillamook County to support a consultant to work with a community committee to prepare this plan.

Matt Spangler, North Coast Field Representative, has been assisting Tillamook County planning staff during a period in which the county is recruiting for a Planning Director. He has also been advising the City of Warrenton during a period in which it has no planning staff.

Andy Lanier successfully led a project with the Oregon Department of Fish and Wildlife to acquire first-ever Shorezone Imagery of the entire length of Oregon's ocean shore and shorelines of virtually all estuaries. The weather cooperated and the contractor was able to complete the entire project. Data products have begun to arrive at DLCD and work has begun to make these

available to the public on the Oregon Coastal Atlas website. See the Director's Report for June 22, 2011.

Jeff Weber, Coastal Conservation Coordinator, was notified in mid June that action by Congress on the FY11 NOAA budget resulted in two projects being funded under the Coastal and Estuarine Lands Conservation Program (CELCP) that he had worked on as the state's CELCP coordinator. One, at South Slough National Estuarine Research Reserve at Coos Bay, would use federal money to match private funding to acquire a key piece of property in the watershed of the estuary. The other, at Big Creek in Lane County north of Heceta Head, will enable the Oregon Parks and Recreation Department to acquire a significant ocean-front habitat area for Silver-spot butterfly. These two projects both ranked in the top five, nationally, for funding.

Dale Blanton, Senior Coastal Policy Specialist, continued work with Cogan Owen Cogan and a team of coastal staff to review drafts of curriculum content for an on-line training program that will be aimed at local planning commissioners, elected officials, advisory groups members, and others who need basic training in Oregon's land use program and, in particular, the requirements of that program as they apply in the Coastal Zone. Dale also continued to participate in the work of the Lower Columbia Solutions Group to develop a Regional Sediment Management Plan for the mouth of the Columbia River.

Juna Hickner, Coastal Federal Relations Coordinator, met with staff from NOAA to develop guidelines and a process for submitting to NOAA an enormous backlog of changes in the policies and regulations that underpin Oregon's federally-approved Coastal Management Program. These changes include revisions and amendments to local comprehensive plans and ordinances, changes in state laws, and revisions to statewide planning goals and administrative rules. Juna has also been monitoring the evolving requirements of NOAA for the National Coastal Management Performance Measurement System and has been working with other state agencies to identify data needed to report to NOAA under the NCMPS.

Lorinda DeHaan, Coastal Administrative Specialist, devoted a significant amount of time and effort to arranging travel for various coastal staff and the program manager, providing logistical and administrative support to the OPAC TSPWG public meetings, and other key administrative tasks. Her work is crucial to maximizing the effectiveness of other coastal staff and presenting a professional operation in the public arena.

## **B. COMMUNITY SERVICES**

The Community Services Division is gearing up for a new round of grant-funded projects and continues to work on active periodic review work programs. Regional representatives and the division's administrative staff have done an outstanding job of wrapping up successful grant projects for the 2009-11 biennium and preparing for a new round of successful projects in 2011-13. Regional representatives have maintained good relationships and completed successful projects, in spite of a nearly 50% reduction in travel budgets and working with communities that have lost significant numbers of planning staff.

While the budget reductions and cut backs have been daunting, DLCD is pleased to continue to provide a team of highly qualified and passionately dedicated professionals to work with Oregon communities around the state and help Oregonians secure the future.

### **C. DIRECTOR'S OFFICE**

**Key Performance Measures:** Department staff are beginning the annual review of Key Performance Measures with the guidance of Michael Morrissey and Teddy Leland. A report will be issued to the Department of Administrative Services (DAS) and the legislature this fall, with an opportunity for review by the commission.

In addition to the various policy matters addressed in other sections of this report, activities in the director's office during June and July included:

Week of June 13 – DLCD Management Team; LCDC Legislative Subcommittee; Greg Wolf, Governor's Intergovernmental/Regional Solutions Director; ODOT/DLCD staff work planning team; CIAC meeting; Community Transformation Grant discussion.

Week of June 20 – Visit with Walt McCallum, former DLCD staff member; OSTI Management Steering Committee; agency communications brainstorming session; LCDC meeting; ODOT/DCLD/OBDD joint senior staff meeting; Governor's Office and ODOT staff regarding OSTI and TGM.

Week of June 27 - DLCD Management Team; Transportation Planning Rule Rulemaking Advisory Committee; southern Oregon regional representative interviews; ACYF state agency panel discussion.

Week of July 4 – Governor's Office regarding legislation; DLCD Rural Team; Governor's Office and AOC regarding population forecasting workgroup/Urban Forum.

Week of July 11 - DLCD Management Team; TPR-OHP coordination meeting; Governor's Natural Resources Cabinet; DLCD Policy Team; DLCD 2 division and all staff meetings; Governor's Office regarding urban policy issues.

Week of July 18 – TPR-OPH coordination meeting; Governor's Enterprise Leadership Team work session; DLCD Rural Team; DLCD Policy Team; Regional Solutions meeting; Senate Bill 766 Implementation.

Week of July 25 – DLCD Management Team; TPR Rulemaking Advisory Committee; Governor's Natural Resources Cabinet; DLCD Policy Team; SB 766 Implementation.

### **D. OPERATIONS SERVICES**

The Operations Services Division is working with department management and staff in the implementation of the Regional Solutions Centers.

The fiscal team is working on its calendar and biennium year-end activities which roll into the state's Comprehensive Annual Financial Report (CAFR) and the Schedule of Expenditures of Federal Awards (SEFA) report. Several collaborative efforts are occurring between the fiscal unit and program coordinators to ensure financial reporting processes run smoothly. Government Accounting Standards Board (GASB) 54 has occurred with assistance from the Department of Administrative Services.

The budget officer is working with the director's office and the operations services manager in continuing to ensure financial reporting accountability. Division managers are finalizing efforts toward the 2009-11 budget. The budget officer is constructing the 2011-13 Legislatively Adopted Budget financial models. This budget consists of several legislative measures. House Bill 5032 is the department's main budget bill providing General Fund appropriation and Other Fund/Federal Fund expenditure limitations for the department's land use program. House Bill 5008 is the end of session bill and includes adjustments for DAS assessments. Senate Bill 766 provides approximately \$94,000 in Other Fund limitation for a joint program with the Economic Recovery Review Council of Business Oregon.

The information technology unit continues working with department management in evaluating and determining current and future technological needs for the department. Roll-out of Windows 7 is almost complete. Office 2010 will be rolled out in the near future as a training plan is developed.

### **III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION**

#### **A. NEW STAFF AND PROMOTIONS**

Josh LeBombard accepted the Southern Oregon Regional Representative position and will start on November 1, 2011. In the meantime, Josh will continue to fill his role as a key part of the Bear Creek Valley's Regional Problem Solving effort as that project nears its successful completion.

Josh joins DLCD from the Jackson County Department of Development Services where he currently works as a senior planner. His prior planning experience includes work with the City of Medford; San Luis Obispo County, CA; Shasta County, CA; Town of South Kingstown, RI; and the La Crosse County Department of Land Conservation in Wisconsin. Josh's background includes a Bachelor's Degree in Geography from the University of Wisconsin- La Crosse and a Master's Degree in City and Regional Planning from California Polytechnic State University- San Luis Obispo, CA. In addition to his background in planning, Josh brings tremendous relationship-building skills and a passion for the successful future of Southern Oregon communities

Lisa Pepper was hired as a summer intern in the Planning Services Division. Lisa will be working with Chris Shirley in the Natural Hazards Program.

## **B. DEPARTING EMPLOYEES**

Mary Weber left the department on June 30, 2011 when her limited duration appointment ended. Mary had been working as the Climate Change Outreach Specialist for SB1059 in the Planning Services Division.

Jerry Lidz left the department on June 30, 2011 ending his role as the Acting Director. Jim Rue will serve in that role until Richard Whitman returns to the department.

## **C. RECRUITMENTS**

The recruitment continues for the Ocean & Coastal Services Division Manager position. This is a nationwide recruitment that closed on July 5. The recruitment did not generate a sufficient applicant pool, so the department will re-open the recruitment. We hope to have this position filled by October 1, which will allow a month overlap with Bob Bailey.

The Measure 49 Landowner Compensation Specialist recruitment closed on July 15, 2011. The department intends to have this position permanently filled by mid-August.

The Planner 4 (Urban Specialist) position recruitment closed on July 28, 2011. We hope to hold interviews in mid-August.

The Operations & Policy Analyst recruitment closed on July 31, 2011. This position will be the project manager to lead the department in their information management efforts. Applications are currently being reviewed to determine if there is a sufficient applicant pool. If not, the recruitment will be re-opened.

## **IV. LCDC POLICY AND RULEMAKING UPDATES**

### **A. CURRENT RULEMAKING**

1. **TPR:** LCDC initiated amendments to the TPR in April. Recent legislation, Senate Bill 795, requires LCDC to adopt revisions to the Transportation Planning Rules by December 2011. A rules advisory committee (RAC) has been appointed and is underway. The group met on July 25<sup>th</sup>.
2. **Irrigation Reservoirs on Farmland:** See Agenda Item 9. The proposed rule amendments would clarify the siting of irrigation reservoirs on farmland. If House Bill 3408 becomes law, the commission may decide that no rule amendments are necessary, or it may direct staff to make minimum amendments necessary to reflect the legislation. Public testimony was taken at the commission's June 22 meeting.
3. **Soils:** Develop rules for the department's facilitation of soils assessments on farmland. This rulemaking is a result of House Bill 3647 (2010). LCDC appointed a RAC on June 22 and will conduct a formal review of the committee's

recommendations at its October 2011 meeting. The 1<sup>st</sup> meeting of the Soils Assessment RAC will be August 10 in Salem. Information is on the DLCD website at [http://www.oregon.gov/LCD/Rulemaking\\_Soils\\_Assessment.shtml](http://www.oregon.gov/LCD/Rulemaking_Soils_Assessment.shtml).

4. **Federal Consistency:** Amended rules in OAR 660, division 35 have been drafted and are waiting for DOJ and NOAA review. The draft rules address “consistency requirements” of the Federal Coastal Zone Management Act. After review is complete the department will begin rulemaking.
5. **Solar Rulemaking:** This rulemaking was initiated by LCDC in September 2010. Legislation was introduced in 2011 which put the rulemaking on hold temporarily. The legislation was unsuccessful, but legislators and the governor’s office have given direction for the revived rulemaking. LCDC will consider this rulemaking at its October 2011 meeting.

## **B. OTHER POLICY ACTIVITIES**

1. **Urban Forum on Population Forecasts:** Study and consider current and potential new methods for population forecasts for UGB and other planning uses. The department worked in 2010 and early 2011 with PSU and other university planning departments studying this issue and recommending ideas for resolution. In June, LOC and AOC agreed to co-sponsor this project, and a steering committee was established. Working with PSU, the group is considering current and potential new methods for population forecasts used for UGB evaluation and other planning.
2. **GHG Scenario Planning:** The 2009 Jobs and Transportation Act directed the commission to adopt rules to guide development and adoption of land use and transportation scenarios for greenhouse gas emission reduction in the Portland Metropolitan area. In May 2011 the Portland area VMT target reductions were adopted by the commission. Next step is rulemaking guiding development and selection of a regional scenario and implementation by local jurisdictions, by 2013.
3. **Territorial Sea Plan:** See Agenda Item 2 for August LCDC meeting. Also, see discussion under section II of this report.