



Oregon

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TO: Land Conservation and Development Commission
FROM: Jim Rue, Director
SUBJECT: **Agenda Item 15 September 24-25, 2015, 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(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 29 and August 12, 2015, the department received 22 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 May 31 and July 31, 2015, the department received copies of 15 recently issued LUBA opinions. Of these, LUBA dismissed ten, remanded three, and affirmed two.

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

3. Appellate Court Opinions

Between May 31 and August 12, 2015, the department received copies of four Oregon Court of Appeals opinions involving land use matters that had been before LUBA. The court reversed and remanded two decisions, affirmed one decision, and affirmed one decision without opinion. None of the opinions concern the application or interpretation of a statewide planning goal or LCDC administrative rule.

4. Other Opinions of Interest

None.

5. Appeal Notices of Interest

River Restoration Project in Tillamook County: *Hathaway v. Tillamook County*, LUBA 2015-041, filed May 29, 2015. Appeal of a decision by Tillamook County approving a Nature Conservancy restoration project along the Kilchis River.

Medical Marijuana Licensing in Ontario: *Matthews v. City of Ontario*, LUBA 2015-042, and LUBA 2015-043, filed June 8, 2015. Appeal of a decision by the City of Ontario establishing zoning restrictions and a business license program for medical marijuana facilities.

Rural Aviation Community Zone in Crook County: *Oregon Dept. of Fish & Wildlife v. Crook County*, LUBA 2015-44 filed June 9, 2015. Appeal of a decision by Crook County establishing a rural aviation community zoning district and rezoning 640 acres from Exclusive Farm Use to the new zoning district.

Events Venue on Forest Land in Lane County: *Head v. Lane County*, LUBA 2015-045, filed June 18, 2015. Appeal of a decision by Lane County denying a request for a home occupation special use permit in the Impacted Forest Lands zoning district.

Mixed Use Development in Portland: *Preserve the Pearl v. City of Portland*, LUBA 2015-046, filed June 19, 2015. Appeal of a decision by the City of Portland approving a mixed use development consisting of a five-story commercial building and 208 dwelling units in a 12-story building on the block bounded by 13th Avenue and Johnson Street (former location of the Pacific Northwest College of Art).

Mineral and Aggregate Site in Baker County: *Dion v. Baker County*, LUBA 2015-052, filed July 21, 2015. Appeal of a decision on remand from LUBA by Baker County approving intensification of mining activities on an existing aggregate site.

Residential Treatment Facility on Agricultural Land in Jackson County: *Kandu Ranch v. Jackson County* and *Paden v. Jackson County*, LUBA 2015-058, filed August 5, 2015, and LUBA 2015-060, filed August 7, 2015. Appeal of a decision by Jackson County approving a residential treatment facility in an existing residence in the Exclusive Farm Use zoning district.

Mineral & Aggregate Site in Josephine County: *Rogue Advocates v. Josephine County*, LUBA 2015-059, filed August 7, 2015. Appeal of a decision by Josephine County approving a plan amendment and rezone for a 197-acre site from residential to mineral and aggregate resources. Farm Stand in Multnomah County: *Greenfield v. Multnomah County*, LUBA 2015-061, filed August 12, 2015. Appeal of a decision modifying, on remand from LUBA and the Court of Appeals, an application for modification of conditions of approval of a farm stand permit in the Exclusive Farm Use zone.

I. ACTIVITIES AND INITIATIVES

A. OREGON COASTAL MANAGEMENT PROGRAM (OCMP)

CZARA Update: As reported previously, the Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA) disapproved Oregon's Coastal Nonpoint Source Pollution Program earlier this year. As a result NOAA is withholding 30 percent of DLCD's 306 coastal grant. Due to the reduction in funding, the coastal program has not been able to fill the vacant position formally held by Jeff Weber and has also not been able to offer the yearly coastal planning assistance grants to all coastal cities and counties. The department e have also canceled our fall Coastal Planners Meeting for the first time in over twenty years. The department is working with the Governor's Office to seek General Fund money to replace the lost revenue.

Marine Issues: The Governor's Office is coordinating a workgroup consisting of state agency managers and experts from the science community to formulate a response to the potential impacts to state resources and the economy attributable to ocean acidification and hypoxia (OAH). There was an initial meeting of the group in April. The impacts of OAH have already caused losses to the shellfish industry, to which the hatcheries have responded by changing their facility operations to mitigate the damage. There is ongoing research into the impacts of OAH on other marine organisms due to the potential it may have for impacting the organisms upon which the marine food chain is most dependent at the most basic levels.

The OCMP marine affairs coordinator will participate in the rulemaking advisory committee established by the Department of State Lands to amend OAR 141-140 for authorizations of marine renewable energy facilities in the territorial sea. These amendments will incorporate changes enacted by the legislature over the past several sessions including HB 2469 (2013) which requires developers to share any seafloor data collected with the Oregon territorial sea mapping project at Oregon State University. SB 606 (2013) amended the financial assurance and civil penalty statutes for ocean renewable energy projects. SB 319 (2015) refined Department of State Land's regulatory and proprietary roles in the siting of ocean renewable energy projects in a manner consistent with the Territorial Sea Plan.

The Ocean Policy Advisory Council has not yet scheduled its next meeting, which is anticipated to be in the first week of October, an agenda is not available at this time.

Coastal Hazards: El Nino: There is a greater than 90 percent chance that El Niño will continue through Northern Hemisphere winter 2015-16, and approximately an 85 percent chance it will last into early spring 2016. Associated factors reflect a significant and strengthening El Niño. What this could mean, among other things, is heavy rains in California and significant storms and associated erosion along our coast.

NOAA Coastal Resilience Grant: OCMP staff worked in collaboration with the Department of Geology and Mineral Industries and others to apply for a NOAA Coastal Resilience Grant. This grant would provide substantial resources related to tsunami resilience and will include 1) important time and distance modeling for a number of high risk Oregon coast communities to help them plan for adequate evacuation facilities; and 2) implementation of tsunami resilience strategies, options, and requirements within a number of high risk communities utilizing the DLCD guidance “Preparing for a Cascadia Subduction Zone Tsunami: A Land Use Guide for Oregon Coastal Communities”. The department should learn whether the grant application was successful by the end of September.

Neskowin Coastal Erosion Adaptation Plan and Associated Tillamook County Land Use Amendments: LCDC approved supporting Tillamook County in the LUBA appeal on this issue at its January 2015 meeting. Ultimately, with DLCD’s assistance, Tillamook County prevailed and the amendments are final and in place. This is a huge success for not only Tillamook County (and Neskowin) but also for other communities along our coast. The department continues to believe that the amendments will be an important model to assist other coastal communities address increasing coastal erosion.

Major Federal Consistency Reviews: Oregon LNG originally submitted a consistency certification and associated materials in July 2013. DLCD has signed seven stay agreements with the applicant, the most recent resulting in a new decision deadline of October 23, 2015. The Federal Energy Regulatory Commission has issued a schedule for the Environmental Impact Statement, issued the draft Environmental Impact Statement on August 3, 2015, and plans to issue the final EIS in February 2016. The project continues to generate controversy and interest from local citizens, statewide conservation groups, trade and union organizations, and the media. Clatsop County’s land use permit denial was upheld by the Oregon Court of Appeals and the decision was not appealed by the applicant. The OCMP has reviewed the enforceable policies of the OCMP that were used as a partial basis for that decision. The OCMP will review provisions used by the City of Warrenton to review their land use applications once those are available. The OCMP continues to get pressure from outside organizations to issue a consistency determination on the project. More recently, the OCMP was contacted by the applicant requesting information on any reasons the project may not be given concurrence from the department and how they could address those issues of inconsistency.

The Jordan Cove Energy project has also submitted their consistency certification and associated materials to DLCD. The department executed another stay agreement with the applicant, providing a decision deadline of January 25, 2016. The project also continues to generate controversy and interest from local citizens, statewide conservation groups, trade and union organizations, and the media. The Jordan Cove project seems to have more local and state support and is a regional solutions team project for the south coast.

B. DIRECTOR'S OFFICE

An oral report will be provided at the meeting.

C. ADMINISTRATIVE SERVICES

Fiscal (Budget, Accounting, and Procurement): The fiscal team is working on modifications to the 2015-17 financial reports improving functionality and efficiency. The Comprehensive Annual Financial Report and the Schedule of Federal Expenditures was submitted to the Department of Administrative Services on August 19, 2015.

Information Technology: The Information Support Specialist 4 (David Michael) has been with the department for two months and is working with the network administrator in addressing business needs including lifecycle replacement of monitors and implementation of Microsoft Surfaces for managers and commissioners.

D. PLANNING SERVICES

Natural Hazards: The Governor has adopted the Oregon Natural Hazards Mitigation Plan. The department is reviewing and will send the entire package to the Federal Emergency Management Agency (FEMA) shortly to receive their final approval.

Transportation: The Transportation and Growth Management Plan recently awarded 17 grants, with a total value of approximately \$2.6 million. This was a particularly competitive year, with 57 applicants requesting nearly \$7 million.

News release: <http://www.oregon.gov/ODOT/COMM/Pages/nr15082801.aspx>

Complete list: <http://www.oregon.gov/LCD/TGM/docs/Grants/TGM-15%20Awards.pdf>

E. COMMUNITY SERVICES

General Fund Grants Program: 2013-2015 grants have been completed. The program failed to spend about \$30,000 of the approximately \$1.5 million grant budget. Most of the shortfall came from two Technical Assistance grant-funded projects. Both of the projects were innovative uses of grant funds, so the budget was difficult to estimate before the work began. One used a RARE participant to help two cities update the housing and economic development elements of their comprehensive plans. The other was the multi county code update project (described in May director's report).

Eighty-two small cities received Planning Assistance grants for 2013-2015. Cities with a population smaller than 2,500 and counties smaller than 15,000 are eligible for the grant (\$1,000 for cities and \$3,500 for counties). The primary uses of these grants, as reported on the jurisdictions' grant closeout forms include:

- Defraying staff salary, including legal assistance (38 jurisdictions reported this use)
- Paying a contract planner for current planning/zoning enforcement services (29)
- Planning supplies and expenses (e.g., notices, copies, travel) (28)
- Paying a consultant to complete a long-range planning project (19)
- Defraying staff salary for a special planning project (12)

The numbers add up to more than the 82 grantees because many jurisdictions used their grant for multiple purposes.

Technical Assistance grant applications for 2015-2017 were available on August 6, with a deadline of September 30 for submittal. Community Services Division staff will review the applications and make award decisions as quickly as possible. The division's goal is to have grant agreements executed by the end of the calendar year.

One grant agreement has been offered already this biennium. Portland State University Population Research Center will receive \$570,000 for continuation of the Coordinated Population Forecast project.

Periodic Review and Urban Growth Boundaries: Lake Oswego submitted all of its work tasks together on July 24. The department received no objections to the submittal. The department reviewed the submittal and will likely approve it shortly.

No urban growth boundary submittals have been received or reviewed since the May director's report.

F. RETIREMENTS, NEW STAFF AND PROMOTIONS

Rachel Smith has joined the department as the Information Management Project Coordinator. Rachel replaces Gail Ewart, whose departure was announced at the commission's July meeting. Rachel holds a Bachelor's degree from Florida State University in Geography with a minor in Urban and Regional Planning and is currently enrolled in Portland State's Executive Master of Public Administration program. Since November 2014, Rachel has worked for the Washington State Department of Transportation as an IT/GIS Project Manager. Prior to that, Rachel worked with a number of DLCD staff in her former role as Project Operations Manager for Department of Geology and Minerals Industries. Rachel also spent a number of years as a Project Manager and GIS Analyst with URS Corporation in both Florida and Tennessee. The department is excited to have Rachel re-join the State of Oregon in this role and are confident she will be a valuable asset to the department.

Interviews were held and an offer is imminent for our Urban Policy Analyst position (formerly held by Bob Rindy). The department hopes to have a new person onboard on or before November 1.

The selection status for the Coastal Conservation Coordinator remains unchanged pending additional information regarding CZARA.

II. LCDC POLICY AND RULEMAKING UPDATES

See agenda item three for the policy agenda and agenda item eight for the UGB rulemaking staff reports and related materials.

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