



Oregon

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Department of Land Conservation and Development

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April 16, 2008



TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 12, May 1-2, 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 February 28 and April 9, 2008, the Department received notice of 14 appeals filed with LUBA. The department did not file any notices.

2) LUBA opinions

Between February 28 and April 9, 2008, the Department received copies of 29 recently issued LUBA opinions. Of these, LUBA dismissed 7, remanded 13, reversed 1, affirmed 7, invalidated 1, and transferred 0 petitions to circuit court.

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

- **OAR 660-012-0065:** *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2006-178, filed March 13, 2008. LUBA remanded approval of partition and road dedication for two non-farm dwellings and access on a 44-acre parcel zoned EFU and Surface Mining.

- **OAR 660-004-0018, -0025, & -0028:** *Landwatch Lane County v. Lane County*, LUBA No. 2006-235, filed April 1, 2008. LUBA affirmed County plan and zone map changes for 19 parcels and Goal 3 & 4 exceptions for 2 parcels in the Coast Fork Willamette watershed.

Neither of these decisions requires goal or rule amendments.

3) Appellate court opinions

Between February 28 and April 9, 2008, the Department received copies of 12 recently issued opinions from the Court of Appeals. The Court affirmed 6, dismissed 3, and remanded and reversed 3 of LUBA's decisions.

4) Cases of interest

Measure 37

- *DLCD v. Jefferson County*, LUBA No. 2007-177, filed January 24, 2008. The County approved a 60-lot residential subdivision after the death of the owner of a Measure 37 waiver (William H. Burk). LUBA **reversed**. This decision has been appealed to the Oregon Court of Appeals.
- *Eager v. Crook County*, LUBA No. 2007-237, filed January 2, 2008. LUBA granted petitioner's motion to dismiss.
- *Reeves v. Yamhill County*, LUBA No. 2007-122, filed December 26, 2007. LUBA remanded the County's approval of a 16-lot subdivision and conditional use permit for residential development of a 41.9-acre EFU parcel, based on a Measure 37 waiver.
- *Hines v. Marion County*, LUBA No. 2007-185, filed March 19, 2008. LUBA remanded County approval of application to divide 217.43-acre EFU parcel into 43 lots, based on a Measure 37 waiver.

5) Appeal notices of interest

Measure 37

- *Central Oregon Landwatch v. Deschutes County*, LUBA No. 2008-011, filed January 10, 2008, challenges approval of a minor partition of a 40-acre parcel in the F-2 (Forest) zone for residential development.
- *Hoff v. Clackamas County*, LUBA No. 2008-014, filed January 23, 2008, challenges denial of an application for a 40-lot subdivision of a 53-acre EFU parcel based on a Measure 37 waiver.
- *Confederated Tribes of Warm Springs v. Jefferson County*, LUBA No. 2008-015, filed January 24, 2008, challenges approval of a 39-lot subdivision of land on Lake Billy Chinook in the Three Rivers Recreation Area Waterfront and Metolius Deer Winter Range Area Overlay zones, based on a Measure 37 waiver. This case likely will be settled.
- *Schipporeit v. Marion County*, LUBA No. 2008-018, filed January 25, 2008, challenges denial of an application to divide a 23.25-acre EFU parcel into 21 lots for residential development, based on a Measure 37 waiver.

- *McKillip v. Marion County*, LUBA No. 2008-048, filed April 1, 2008, challenges denial of an application to divide a 79.44-acre EFU parcel into a 47-lot PUD based on a Measure 37 waiver.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The department has approved 24 Technical Assistance grants and approximately 70 Planning Assistance grants for the 2007-2009 biennium. Jurisdictions continue to apply for general fund grants and some grant funds remain available for the 2007-2009 biennium. The department continues to reserve a portion of the general fund grant budget for jurisdictions that develop periodic review work plans in 2007-2009. Periodic Review grant applications are anticipated to arrive within the next two to six weeks, following local governments' completion of individual work plans (see Periodic Review below). Once the department knows the demand on PR grant funds, staff will determine how many, if any, funds remain available for additional Technical Assistance projects.

Federal Fund Coastal Management Grants

On April 10 the Department submitted the application for the FY08 Coastal Zone Management Grant of \$2,225,000 to NOAA Office of Ocean and Coastal Resources Management (see also agenda item 7). The amount of this grant is set by OCRM based on a formula applied to the overall amount appropriated by the Congress for FY08. Oregon's grant period is from July 1, 2008, to June 30, 2009. \$340,000 is allocated for local government planning assistance grants and \$72,000 in technical assistance or priority project grants.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

The department has not received or approved any recent Periodic Review task submittals.

In October 2007 the Commission scheduled five cities to commence Periodic Review (Forest Grove, Keizer, Portland, Hermiston, and The Dalles). The City of Portland and the City of Forest Grove have since requested 90-day extensions of the deadline for work plan submittal. The other cities are expected to submit draft work plans to the department by mid-May 2008; all five cities will likely seek grant funding for specific work tasks during the 2007-2009 biennium.

The department is also prepared to send letters this month to four additional cities notifying those cities to commence Periodic Review (Lake Oswego, Roseburg, Tigard and Troutdale). The City of Pendleton, initially scheduled to begin Periodic Review in April 2009, has now requested to begin Periodic Review in May 2008 (see Item 4 on Commission Agenda). This second round of cities will then have 6 months, until November 2008, to complete and submit their plan evaluations and draft work plans.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

Coastal Management Program

The OCMP Federal Affairs Coordinator, the Director, and the Coastal Division Manager have been meeting concerning issues related to the application by Bradwood Landing/Northern Star for a federal license from the Federal Energy Regulatory Commission (FERC) to site and operate an LNG terminal at Bradwood Landing on the Columbia River. The applicant and the Department agreed on April 10 to a 150 extension of the federal consistency review period to allow enough time for the applicant to submit certain information. In addition, this additional time will allow the DLCD decision date under the Coastal Zone Management Act to align more closely to the DEQ decision date under the Clean Water Act. The county's decision to approve a plan amendment for the facility has been appealed to the Oregon Land Use Board of Appeals.

The Governor issued an Executive Order (08-07) on March 26 related to marine reserves and ocean wave energy projects. Item 5 and 6 in the EO direct the Department to lead an effort to plan for the siting of wave energy facilities and for the Commission to consider amending the Territorial Sea Plan with provisions for wave energy siting.

OCMP staff have begun to schedule out the work necessary to accomplish this directive and vetted this schedule with the Governor's Office and Marine Cabinet. Staff have also begun to meet with affected stakeholders, agencies, and other interests such as the Oregon Coastal Zone Management Association, Southern Oregon Ocean Resources Committee, and Director of the Dungeness Crab Commission.

Accomplishing this task without additional staff resources will require a realignment of duties of existing staff in the Coastal Program. That re-alignment has begun. A Program Option Package has been prepared (see Agenda Item 9) to support additional FTE in the Coastal Division to support Ocean Planning, but these new positions would not be implemented until the wave energy planning process is further along.

The OCMP held its North Coast Planners meeting in Rockaway Beach on April 4 and the South Coast Planners meeting in Bandon on April 18. These meetings are well attended by local planners and by state agency staff with coastal planning or management responsibilities.

Economic Development Planning Team/Policy Development

The Planning Services Division has contained a unit commonly referred to as the Economic Development Planning Team. It consisted of three positions, all devoted to planning for industrial and other employment uses. Two of the positions became vacant, providing the

opportunity to appraise agency priorities and direction. After discussions with stakeholders inside and outside state government, the decision was made to realign staffing.

One of the positions devoted to economic development is being reassigned to be a policy analyst in the director's office, increasing the department's capacity to undertake and complete rule and legislative work. One of the other positions is being reassigned to be an urban planner -- providing assistance to regional representatives and other specialists. This position will continue to have responsibilities with regards to economic development and Goal 9, but will also assist in projects and plan reviews related to housing, urbanization, and public facilities. The department is retaining an economic development specialist position, and has incorporated economic development planning work into the duties of regional representatives.

Measure 49 Development Services

The division reached a milestone at the end of March by completing the mailing of Measure 49 election packets to over 10,000 claimants and agents. About 1,800 elections have been returned as of May 21. Staff have begun the processing of these elections by checking for complete information and communicating with counties for additional information, such as identification of contiguous property and lists of neighbors for notice purposes.

The staffing-up process has begun with the posting for several positions. Additional space is being retained at the Department of State Lands for the new staff. When fully staffed, the division will consist of 30 positions. The Ombudsman position, which will complement the division but report to the department Director, is being actively recruited, and progress in hiring could be reported at the May Commission meeting.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

The department and the Operations Services Manager, Teddy Leland, would like to take this brief opportunity to introduce you to our Operations Services Division team. This team provides department-wide administrative support. There continue to be a few vacancies in the unit while it undergoes a review. The team and their general duties are as follows:

Gail Churchill, Procurement Specialist. Gail has been with the department since 2003. She is our central contracts and purchasing coordinator. She also works with the Landowner Notification Program.

Jon Dunsmore, Network Administrator. Jon has been with the department since 2007. He provides information technology strategic planning and infrastructure for the department.

Tammy Palmer, Human Resource Asst. Tammy has been with the department since 2007. She works with Human Resources and temporarily assisted the department in accounts payables during the Accounting Technician 2 recruitment.

Linda Smith, Accountant. Linda has been with the department since 2006. She is our primary contact for payroll. She also prepares accounts payables and receivables for the department.

Aaron Ward, Information Specialist. Aaron has been with the department since 2008. He provides front end user support for the department.

Thank you team for your dedication to the department's administrative operation!

Will Davis was hired into the Office Specialist 1 position in M49. Will has worked as a temporary employee in that office so he has a good understanding of the operations and will be a valuable asset.

Ryan Miller was promoted into the limited duration NRS-4 position vacated by Mark Darienzo. Ryan had previously been working with Mark as the NRS-2. We look forward to having Ryan in this role.

Steve Oulman has transferred into the Planner 3 (Willamette Valley Rep) position vacated by Jason Locke. Steve is a welcome addition to the Community Services Division and the department's team of regional representatives.

Bryan Gonzalez was hired into the Administrative Specialist 2 position (Rules/Records Coordinator). Bryan was previously the Copy Editor in M37. Welcome Bryan!

B. DEPARTING EMPLOYEES

After beginning with DLCD as a student intern in July 1975, and as a permanent employee in February 1976, Ron Eber will retire from DLCD beginning June 1. Ron has held a wide variety of positions over the years, including field representative, plan reviewer, legal policy coordinator, and (for the last nine years) as the department's Farm/Forest Lands Specialist. Ron has played a significant role in the formulation and implementation of land-use policy in Oregon for many years. He has penned statutes and rules, advice, and agency interpretations on a wide variety of issues related to resource land protection. Ron served as president of the union local and as a member of other committees to assist the proper functioning of the agency. At this time, the recruitment for Ron's successor is in process. Ron will take with him a significant part of DLCD's oral history about how and why things are the way they are. Please join me in giving Ron an enormous "thank you" from the State of Oregon.

Shawn Range, Fiscal Analyst 2, transferred effective April 17, 2008, to the Oregon State Library. He accepted this promotional opportunity and will be their Fiscal Analyst 3/Business Manager. Shawn has been with the department for approximately eight months. He has been an asset to the Operations Services team and will be missed.

C. RECRUITMENTS

Recruitment activities continue for the Accounting Technician 2 in the Operations Services Division.

Recruitment for a Farm/Forest Lands Specialist (Planner 4) is in progress. At the time of the Commission meeting, the recruitment will have closed and application review commenced.

Recruitment for the Fiscal Analyst 2 position is in progress. At the time of the Commission meeting, the recruitment will have closed and application review commenced.

A recruitment is underway for the M49 Administrative Operations Supervisor (PEM-A). This recruitment is scheduled to close on April 25.

Recruitment also is underway for the M49 Ombudsman position. There are several good applicants for this position, and we expect to have made an offer by the time of the Commission meeting.

Recruitment also is underway for the two additional Big Look Task Force positions. Interviews have been scheduled for the professional staff position, and should be completed by early May.

By the time the Commission meeting occurs, recruitments will also be open for the following other positions:

- Measure 49 Planner 3's (regional team leads);
- Measure 49 Administrative staff lead; and
- Policy Analyst for Director's office.

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:

- Ongoing participation in the Economic Revitalization Team (ERT), including 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
- Friends of Polk County (March 27, Monmouth)
- Big Look Task Force (March 31 and April 28, Salem)
- Meeting with Klamath County, City of Klamath Falls, ODOT and OECDD Staff, and local Economic Development Professionals (April 4, Klamath Falls)
- Planners Network Meeting (April 17, Monmouth)
- Association of Oregon Counties Planning Directors (April 18, Salem)
- Westside Economic Alliance (April 24, Beaverton)
- Transportation and Land Use Subcommittee of the Oregon Global Warming Commission (April 24, Portland)
- League of Oregon Cities Board Meeting (April 25, Salem)

4. **LEGISLATIVE UPDATE**

Senate Interim Committee Appointed: On April 3 Senate President Courtney announced interim committee assignments (the House interim committees are the same as during the regular session committees). Of interest to the department, the newly appointed Senate Interim Committee on Environment and Natural Resources includes the following members: Senator Alan Bates, Chair; Senator Fred Girod, Vice Chair; Senator Dave; Nelson; Senator Floyd Prozanski; Senator Vicki Walker. In general, these interim appointments may predict the makeup of this committee in the next regular legislature. (Note: the E&NR committee has been – and probably will continue to be – the Senate committee that deals with land use legislation. The former Senate E&NR Chair, Brad Avakian, was appointed as Labor Commissioner and will not be returning. The new chair, Alan Bates, is from Ashland).

DLCD Legislative Concepts: The department filed seven legislative concepts with DAS on April 4, as outlined in the department's March report to LCDC (that report had suggested the department was considering eight concepts – in response to LCDC discussion and internal considerations, the concept regarding schools was not filed; the department has concluded the proposal in that concept could be dealt with through rulemaking). The DLCD legislative concepts filed with DAS for approval include the following:

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. Measure 49 Housekeeping (Placeholder.)
6. Big Look Task Force Implementation (Placeholder for the Task Force Recommendations.)
7. 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.)

Placeholder concepts must be completed by June 27 unless the agency receives specific approval from DAS to continue beyond that date. The department reported that these concepts would have fiscal impacts. Fiscal impacts must be accounted for in the Agency Request Budget (see Item 9 on the May 1-2 LCDC agenda).

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

1. At its March meeting, the Commission revised its 2007-09 Policy and Rulemaking Agenda. Attachment A to this report is a new summary of the Policy Agenda reflecting the changes made by the Commission in March.

2. At its March meeting, the Commission appointed an advisory workgroup for the Affordable Housing rulemaking. The Commission did not appoint representatives from cities – the department indicated it would be suggesting appointees after considering which cities were most interested in participating in this “pilot project.” After discussion with several cities, the department is recommending that the Commission appoint the following city representatives as members of the Affordable Housing Rulemaking Workgroup:

Greg Mott, City of Springfield
Nick Lelach, City of Redmond

Both Greg and Nick indicated they were interested in the appointment and that their cities were interested in the pilot project. While the department will be discussing with other cities the possibility of participating in this pilot, at this time the department recommends that two city representatives are sufficient to represent all city interests in this rulemaking.

3. The department formally filed amended rules and goals with the Secretary of State Office regarding the “housekeeping” amendments approved by LCDC in March. All these amended rules and goals took affect upon filing on April 18. The amended rules are posted on the DLCD website at the following link:

http://www.lcd.state.or.us/LCD/rulemaking.shtml#2007_09_Rulemaking_Projects

B. OTHER POLICY ACTIVITIES

The department is continuing to participate in Metro’s process for designating Urban and Rural Reserves. The Metro Reserves Steering Committee has met three times and anticipates designation of “Reserve Study Areas” by August 2008.

The Director and other members of the department met with the Association of Oregon Counties on April 15 in order to discuss legislative concepts, state agency coordination issues, and measure 49.

6. TASK FORCE ON LAND USE PLANNING UPDATE (SB 82)

The Task Force met on March 31st and will meet again on April 28th. At its March meeting, the Task Force worked on a preliminary set of proposed actions to take to stakeholders in June of this year. It is expected that the Task Force will further refine these actions at its meeting on April 28th.



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ATTACHMENT A

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LCDC Policy Agenda for 2007-2009



The Land Conservation and Development Commission (LCDC) is required by statute to adopt "statewide land use policies" including statewide goals and administrative rules "necessary to carry out ORS chapters 195, 196 and 197," (Oregon's statewide land use planning program). LCDC approves its biennial "policy agenda" – a list of planned policy and rulemaking initiatives – at the beginning of each biennium. In August and October 2007 LCDC considered a list of suggestions to amend, update, streamline and improve state land use policies and rules, and approved a 2007-09 Policy Agenda. LCDC received a progress report and adopted amendments to its Policy Agenda at its meeting in March 2008. The amended Policy and Rulemaking Agenda for the 2007-2009 biennium is as follows:

1. Adopt Metro Urban and Rural Reserves rules required by SB 1011 (2007). (*NOTE: this project was completed in January 2008.*)
2. With the UGB advisory workgroup appointed in 2004, pursue "Phase 2" of the ongoing rulemaking project to clarify and streamline the UGB amendment process. This phase will consider additional "safe harbors" for UGB expansion rules (OAR 660, div. 24). In addition, this rulemaking will consider rules addressing UGB expansions for purposes of adding future school sites.
3. Combine several legislatively mandated rule (and Goal) amendments and other minor and technical rule amendments into a "Housekeeping rulemaking project," including the following (*Note: this rulemaking was completed in March, 2008*):
 - Amend agricultural lands rules (OAR 660, div 33) as required by HB 2210 (2007) to allow on-farm processing of farm crops into biofuel. Also amend these rules to respond to Supreme Court decision in *Wetherall v Douglas County*, 342 Or 666 (2007);
 - Amend forest lands rules (OAR 660, div 6) as per HB 2992 (2007) to allow land divisions less than the minimum lot size if one of the parcels is sold to a provider of public parks or open space;
 - Amend Goal 8 destination resort standards, required by SB 1044 (2007), to clarify the ratio of "units for residential sale to units of overnight lodging" in "Eastern Oregon" destination resorts;
 - Repeal Metro Subregional rules under OAR 660, division 26, in response to Court of Appeals decision invalidating these rules;
 - Amend the current "Post-acknowledgement Plan Amendment Rules" under division 18 to update, clarify, and to conform the rules to statutes enacted or amended since adoption of these rules. Also amend these rules to respond to *Medford Neighbors v Medford* (LUBA 2006-132);
 - Amend division 11, Goal 11 rural sewer and water rules, and related division 4 exception rules, to address a 2006 interpretation by LUBA (*Todd v Florence*; LUBA 2006-068) as to whether goal exceptions are allowed for extension of sewer systems;
 - Examine and report back to LCDC regarding the need to update and clarify OAR 660, division 3, rules for acknowledgement of comprehensive plans for newly incorporated cities.
4. In response to HB 2096 (2007) work with key interest groups to explore ways to encourage local governments to provide sites "dedicated to affordable housing and manufactured dwelling parks," including new or amended LCDC rules for this purpose as a "pilot project" applicable to a few cities. (*Note: LCDC initiated this rulemaking and appointed a work group in March, 2008*). Also, prepare a report to the 2009 legislature as required by HB 2096 regarding the provision of sites for affordable housing development and manufactured dwelling parks in the state.

ATTACHMENT A

5. Energy Facilities in Rural Areas: Amend rules as necessary to streamline land use criteria for siting of wind and solar energy facilities on resource lands, in coordination with the Oregon Department of Energy. Review the acreage limitations in the current rules and determine if different sizes or criteria should be considered in the evaluation of wind and solar power generation facilities. This review should also determine whether any statutory changes are needed as well.
6. Adopt the current Measure 49 “temporary rules” as “permanent rules” prior to the expiration of the temporary rules in June 2008. In addition, the department may propose additional rules or rule amendments to help interpret Measure 49 (*Note: this rulemaking is scheduled for May 1, 2008*).
7. Continue work with the Joint Oregon Transportation Commission’s Subcommittee and LCDC's Transportation Subcommittee to assess implementation of the TPR amendments and consider related issues, including:
 - Possible LCDC review of the Metro Regional Transportation Plan (RTP);
 - Implementation of portions of the TPR that apply to plan amendments and zone changes; and
 - Review status of projects involving goal exceptions.
8. Continue ongoing discussions with agencies, the Governor’s Office, and other stakeholders regarding:
 - Guidance to state and federal agencies and private entities with respect to the Territorial Sea Plan and
 - Goal 19 guidance on new uses such as wave energy generation facilities or ocean aquaculture.
9. Work with the Governor’s office in its inter-agency effort to develop strategic state policies for the long-term management of aggregate resources in Oregon in order to effectively respond to changing resource protection requirements, address public and stakeholder interests, and to ensure a stable long-term supply of affordable aggregate for roads, buildings, and other infrastructure.
10. Revise agency procedures, as necessary, to implement new Environmental Justice requirements in SB 420 (2007). Plan a joint meeting with the bill sponsors, the new Environmental Justice Task Force, and the Commission’s Citizen Involvement Advisory Committee. The bill requirements include:
 - Consider the effects of agency actions on environmental justice issues;
 - Engage in public outreach activities in communities affected by agency decisions;
 - Hold hearings at times and in locations convenient for people in communities affected by agency decisions; and
 - Create a “citizen advocate” position responsible for encouraging public participation and to ensure the agency considers environmental justice issues.
11. Schedule an informational LCDC hearing from the Department of Aviation (ODA) on airport planning issues. (*Note: this hearing was completed in March 2008, and the Department was instructed to assist ODA in its 2009 legislative concept regarding airport planning*).

For questions or additional information about LCDC’s 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext 229, or email at: bob.rindy@state.or.us