



# Oregon

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October 23, 2009

TO: Land Conservation and Development Commission  
FROM: Richard Whitman, Director  
SUBJECT: **Agenda Item 10, November 5-6, 2009, LCDC Meeting**

## DIRECTOR'S REPORT

### I. INFORMATION UPDATES

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

ORS 197.090(2) requires the Director to report to the commission on each appellate case in which the Department participates, and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires the Land Conservation and Development Commission to determine whether recent Land Use Board of Appeals (LUBA) and appellate court decisions require goal or rule amendments.

#### 1. Department participation in appeals

Between August 19, 2009 and October 8, 2009, the department received notice of 21 appeals filed with LUBA. The department filed one of these notices:

- **Goal 14 Exception** – Department of Land Conservation and Development v. Jefferson County, LUBA No 2009-106 filed September 21: An amendment to the Jefferson County zoning map which involves approximately 39 acres from Rural Residential RR-10 to Rural Residential RR-2 and an exception to Statewide Planning Goal 14.

#### 2. LUBA opinions

Between August 19, 2009 and October 8, 2009, the department received copies of 16 recently issued LUBA opinions. Of these, LUBA dismissed 9, remanded 5, reversed 0, affirmed 2, and invalidated 0 local decisions, and transferred 0 petitions to circuit court.

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

- **Goal 5, OAR 660-023-0180 (5)** – Tammera Walker and Clay Walker v. Deschutes County, LUBA No 2008-189 filed on September 22: LUBA remanded a county decision approving a comprehensive plan amendment and zone change to allow surface mining on a 385-acre parcel zoned exclusive farm use with Antelope Winter Range Wildlife Area and Landscape Management overlays. OAR 660-023-0180(5) sets out procedures and standards for determining whether to allow mining of significant mineral resources. LUBA concluded that for purposes of determining size of impact area under OAR 660-023-0180(5)(a) and whether “factual information indicates significant potential conflicts beyond” the initial 1,500-foot impact area provided under the administrative rule, the county must sometimes evaluate evidence regarding land that is located outside that initial 1,500-foot impact area, and potentially some distance from the mining site. County findings do not adequately address conflict with agricultural uses within the impact area under OAR 660-023-0180(5)(b)(E).
- **Goal 12, OAR 660-012-0045(3)(b)(D)** – Dennis Konrady and City View Development, LLC v. City of Eugene, LUBA No 2009-028 filed on September 18: LUBA affirmed the city’s land use hearings official decision that denies petitioners’ application for approval of a cluster subdivision on a 1.46 acre parcel zoned Low Density Residential. The Eugene development code requires that a proposed subdivision include “street connections in the direction of all existing or planned streets within the ¼ mile of the development site” and “street connections” with adjoining and abutting streets. Petitioners contended that OAR 660-012-0045(3)(b)(D) requires cities to adopt “standards for spacing of streets or access ways; and standards for excessive out-of-direction travel,” and the city has not done so. LUBA agreed that although OAR 660-012-0045(3)(b)(D) authorizes the city to adopt standards regarding excessive out-of-direction travel, the rule does not require the city to do so.
- **Goal 12, OAR 660-012-0060** – Citizens for Responsible Development in The Dalles, et al v. City of The Dalles, LUBA No 2009-048 filed on October 8: LUBA remanded a city decision to approve a site plan for a Wal-Mart store on approximately 18.08 acres zoned Commercial Light Industrial (CLI). The OAR 660-012-0060 conclusions in the city’s Traffic Impact Analysis were not supported by substantial evidence.

None of these decisions requires a goal or rule amendment.

### 3. Appellate court opinions

Between August 19, 2009 and October 8, 2009, the department received 3 copies of recently issued opinions from the Court of Appeals. The Court dismissed 0, and affirmed all 3 of LUBA’s decisions.

### 4. Other decisions of interest

Department appeals: None.

Measure 37/49: None.

Others

- **Destination Resorts & Goal 5–** Annunziata Gould v. Deschutes County, LUBA No 2008-203 filed on September 9: LUBA remanded county approval of final master plan for the Thornburgh Resort. The Final Master Plan findings on fish and wildlife mitigation criteria were not supported by substantial evidence that there will be no net loss or net degradation of the resources.

**5. Appeal notices of interest**

Measure 37/49: None.

Others: None.

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

The department's general fund grants program successfully closed out all but one of its contracts for the 2007-2009 biennium. Local governments are now submitting applications in advance of a November 1 application deadline for the 2009-2011 biennium. At the time of the commission meeting, staff expects to have a summary of applications and the overall total demand for grant funds to date.

On November 9, 2009, the commission's Grants Advisory Committee will meet to review a summary of grant applications for the 2009-2011 funding cycle. The committee may advise the commission, if necessary, whether or not to revise the grants allocation plan for the remainder of the biennium. Committee members and others continue to advertise the grants program and encourage local governments to participate in the grant program; those efforts are greatly appreciated.

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

The department received no work task submittals. The department received a final draft work program from the City of Tigard and approved a work program for the City of Portland. The general fund grants program also continues to receive applications from cities requesting funding to complete periodic review work tasks.

**II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

**A. COASTAL MANAGEMENT PROGRAM**

The Coastal Division held its annual All-Coast Planners Conference October 7 and 8 in Florence at the Performing Arts Center. Approximately 35 local government planners attended

as well as staff from the Department of State Lands, Department of Transportation, Parks and Recreation, Fish and Wildlife, Oregon Sea Grant, and the Oregon Climate Change Research Institute. The meeting focused on climate change and related hazards on Wednesday afternoon, including a briefing on the commission's action at its Brookings meeting to develop a broad state-wide climate change strategy and a presentation by the department's FEMA staff on activities related to FEMA mapping updates. The Thursday session featured updates by DLCD coastal staff and a planners' roundtable that provided an opportunity to share items of mutual interest.

Three coastal staff, Tanya Haddad, Paul Klarin, and Andy Lanier participated in a multi-day workshop in Seattle sponsored by NOAA and The Nature Conservancy on Marine Spatial Planning, a term used to describe the mapping, analysis and display of information about the ocean using computer-aided methods. Oregon is considered a leader in so-called MSP by virtue of the Oregon Coastal Atlas and work to support marine reserves designation and wave energy planning.

Paul Klarin participated in a workshop in Washington, DC, on adaptive management of ocean resources. The workshop was co-sponsored by the Coastal States Organization and NOAA.

Jeff Weber, coordinator for the Coastal and Estuarine Lands Conservation Program (CELCP) grants program, hosted a field visit by NOAA officials to several sites on the central coast that are candidates for acquisition by Oregon Parks and Recreation Department using CELCP funds.

Coastal Division Manager, Bob Bailey, attended the annual fall membership meeting of the Coastal States Organization in Charleston, South Carolina on October 18-23.

Laren Woolley, Coastal Shorelands Specialist, and Dave Perry, South Coast Field Representative, worked very closely with the City of Gold Beach as the City Council adopted an ocean flooding hazard set-back line.

## **B. COMMUNITY SERVICES**

The Community Services Division continues to assist with the department's general fund grants program, working closely with local governments to identify local needs and to request funding for eligible planning projects. Regional representatives, with support from Goal specialists and other department staff, will review and recommend projects to be funded. Following grant awards, regional representatives and others will initiate and manage a series of grant projects around the state.

The department relies heavily on regional staff to assist in coordinating meeting locations, presentations, and regional tours. Jennifer Donnelly and Gary Fish assisted with the coordination and production of the commission's meeting in Hillsboro. Ed Moore worked closely with Lisa Howard to coordinate the commission's meeting in Springfield.

The Community Services Division is currently working closely with staff from the Planning Services Division to review a number of local government proposals, including an urban growth boundary expansion and public facilities plan from the City of Bend. The director will use staff analysis to support a formal decision in December.

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

The department led an effort by nine state agencies participating in the Metro urban and rural reserves process (MURR) to develop coordinated comments on reserves for Metro and the three Metro area counties. Based on several agency meetings and on written input from each of the participating agencies, the agencies reached consensus on virtually all major issues (with only a few differences in recommendations concerning the various reserve areas under consideration). The director gave several verbal presentations to the reserves steering committee, including giving an overview of the state agency comments.

The director also participated in the Metro Policy Advisory Committee (MPAC) retreat on October 23<sup>rd</sup> to discuss the Regional Transportation Plan and Metro's Urban Growth Report (identifying the baseline amount of housing and employment capacity within the existing Metro UGB in preparation for next year's evaluation of how to provide additional capacity). The Metro area discussions provide an important context for work next year in beginning a broad review of the state's urban growth management systems.

On October 6<sup>th</sup>, the director led a multi-agency meeting with Governor Kulongoski to discuss an interim effort by state agencies to develop a state-level climate change adaptation plan. That effort is a key part of the commission's interim climate change strategy, adopted at the July meeting in Brookings.

Other activities in the director's office during October include:

- Director's recurring meetings with state agency heads, natural resources cabinet, Metro Reserves Steering Committee, Metro Policy Advisory Committee, climate change workgroup, Measure 49 implementation group, and senior staff from the Oregon Department of Transportation (ODOT) and the Oregon Business Development Department (OBDD).
- Met with Gary Oxley, Oxley and Associates and Joe Gilliam, NW Grocers Association, to discuss the Oregon Bottle Bill and siting of redemption centers (October 5).
- Interviewed by Peter Walker for a book he's writing about Oregon land use planning (October 5).
- Visited (with Mike Carrier) the three major pear growers in Medford to discuss capitalization problems they face, and potential land use actions to help the long-term stability of that industry (October 7).
- Participated in the ERT tour of Southern Oregon (October 7-8).
- Discussed possible legislative changes to Measure 49 with Senator Prozanski and others (October 12).

- Attended the STIP Stakeholder Committee meeting (October 13).
- Attended the Oregon Transportation Commission’s Annual Workshop and participated in a panel discussion with John VanLandingham and others (Commissioner Worrix also attended) titled “Integration of Transportation, Land Use in support of Economic Development” (October 20).
- Met with the new Budget and Management (BAM) analyst for the agency and with Legislative Fiscal Office (LFO) staff to discuss the agency’s budget and budget notes.
- Will meet with Karen Quigley, Legislative Commission on Indian Services, and the department’s Government to Government Team (October 27).
- Attending an Oregon State Bar seminar titled “Real Estate and Land Use 2009: Looking Forward to New Opportunities” (October 30).

#### **D. OPERATIONS SERVICES**

The Operations Services team has concluded its biennium year end activities. Revised financial reports to division managers and the LCDC BAM Subcommittee have been received.

Continued efforts toward financial accountability and improved documentation occur within the division.

#### **E. PLANNING SERVICES**

The Oregon Geographic Information Council, Framework Implementation Team, delegated to DLCD the update and stewardship of the urban growth boundary (UGB) coverage for the state. This is a digital representation of all the boundaries in the state, for use in geographic information systems. DLCD was given this responsibility in September 2008, and since that time Angela Lazarean, an urban planner in the Planning Services Division, has spent about 40 percent of her time obtaining and digitizing UGB data. Angela completed the project in September.

Angela coordinated every UGB with county and city officials to eliminate discrepancies; she corrected errors, increased data accuracy, and precisely recorded the location of all acknowledged UGB amendments. The new data set for 2009 will be used in the Census Bureau’s redistricting process to delineate the boundaries, as well as be available for download on the state’s data library website. Maintenance of the data will occur as UGB gets amended.

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

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

- Sandee Robinson, M49 Publications Specialist
- Kris Ostrin, promoted to M49 Program Analyst 2
- Ed Worcester, M49 Program Analyst 1

## **B. DEPARTING EMPLOYEES**

None.

## **C. RECRUITMENTS**

The Community Services Division is currently conducting interviews to select a Regional Representative to serve the Metro Region from DLCD's Portland office. The position generated strong interest from a wide variety of applicants; the department is pleased with the level of interest and with the quality of applicants. Interviews will conclude near the end of October and the Community Services Division hopes to announce its selection of a candidate soon.

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

A summary of the LCDC Policy Agenda is attached. The commission approved a policy agenda for the 2009-2011 biennium at its July 2009 meeting in Brookings.

### **A. RULEMAKING**

Revisions to Oregon Territorial Sea Plan. See Agenda Item 5. The proposed rulemaking would amend the Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order, and will be considered by the commission at its meeting in Springfield.

Metolius ACSC Management Plan: A public hearing is scheduled December 3, 2009, in Camp Sherman regarding proposed rules adopting the Metolius Area of Critical State Concern (ACSC), as directed by the Oregon legislature in House Bill 3298.

Amendments to farmland rules under OAR 660, division 33. See Item 6, November 5, 2009 LCDC meeting. A public hearing is scheduled for the commission to consider conforming amendments to farmland rules in response to statutory changes enacted by House Bill 3099. This minor "housekeeping" rulemaking will be considered by the commission at its meeting in Springfield.

RLUIPA rulemaking workgroup. The department has scheduled an initial meeting of LCDC's appointed workgroup to consider amendments to LCDC farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people. This rulemaking is in response to recent court decisions regarding these rules with respect to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

DLCD Transfer of Development Rights (TDR) Pilot Program. The department is requesting that the commission initiate rulemaking on this subject at the November 5-6 meeting (see Item 12), and intends to propose rules for LCDC adoption in January, 2010. These rules are required by HB 2228 and will provide a process for LCDC selection of up to three TDR pilot projects. The department has begun work to publicize the project in hopes of attracting three or more candidate

“TDR Pilot Projects” authorized by HB 2228. The pilot projects must involve preservation of forestland (i.e., lands for “development rights sending areas”) of up to 10,000 acres, and generally must consider “receiving areas” in a UGB, exception areas adjacent to a UGB, or within an unincorporated community. Some interest has been expressed and at least one candidate project is under discussion.

## **B. OTHER POLICY ACTIVITIES**

### Climate Change

On October 6, Governor Kulongoski convened a meeting of several agency directors to begin the process of developing a statewide Climate Change Adaptation Framework. The meeting was convened at Director Whitman’s request and with the assistance of the Governor’s Natural Resources Office. Governor Kulongoski indicated his desire to have DLCD take the lead in developing the statewide framework. The governor recognized both the lack of new agency resources for new initiatives, and the need for interagency collaboration and coordination in addressing the effects of a changing climate. In particular, the governor was clear that he wanted state agencies to create the template and establish the priorities for future work to address the effects of climate change. The department has been working since then with a handful of sister agencies to organize a follow-up meeting with the original participants and additional state agencies. The follow-up meeting, which should occur before the end of the year, is likely to involve discussions of 1) the scope and broad objectives of the adaptation framework; and 2) the mechanism to be established for agency coordination and collaboration.

### Metropolitan Area Planning Organizations, Greenhouse Gas Reduction Task Force (HB 2186)

HB 2001 established a process for Metro to develop at least two land use scenarios that demonstrate what land use changes may be necessary to meet existing legislative goals for the reduction of greenhouse gases. HB 2186 created a task force to evaluate how to have other larger metropolitan areas in Oregon do the same type of planning work. Commission Chair Van Landingham is participating along with his counterpart from the Oregon Transportation Commission as vice-chair of this task force to develop recommendations for the supplemental (2010) session of the Oregon legislature.

### LCDC rulemaking re HB 2001

Department staff have met with their counterparts from ODOT, DEQ, and ODOE to begin planning for the rulemaking required by HB 2001, which will occur in 2011. In this rulemaking, LCDC will be asked to translate the broad legislative goals for greenhouse gas emissions reduction in 2040 to a specific target for Metro in 2030, for Metro to use in developing land use scenarios (see above).

## **C. LEGISLATIVE**

The department is not seeking any particular substantive legislation in the planned supplemental session scheduled for February 2010. The department has been contacted by several legislators

who are interested in advancing land use legislation in certain subject areas, and the director and staff are providing assistance to legislators on these issues. State legislators convened in Salem on September 29 – October 1 for three "legislative days," including interim committee meetings, and are scheduled to meet again on November 17 – 19 (after the next economic forecast is released) and again in January. Interim committees are discussing possible legislation for the coming one-month February session, including the following interim committees that generally consider land use legislation:

- Senate Committee on Environment and Water
- House Committee on Agriculture, Natural Resources & Rural Communities
- House Environment and Water Committee
- House Sustainability and Economic Development Committee

Interim committee discussions so far concerning potential legislation for the 2010 session include the following topics of interest to the department:

- Destination resorts
- Metro reserves
- Process for determining agriculture soil capability
- Measure 49

## **ATTACHMENTS**

Policy Agenda Summary



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### LCDC Policy Agenda for 2009-11



In August 2009, the Land Conservation and Development Commission (LCDC) approved a list of policy projects it intends to pursue in the 2009-11 biennium. LCDC also indicated its intent to revisit its policy agenda in the spring of 2010. LCDC's policy agenda is a list of projects to improve and update statewide land use policies and rules, including changes necessary to respond to recent legislation, executive orders, and litigation. State law (ORS 197.040) requires LCDC to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission's 2009-11 policy agenda includes:

#### A. Projects Required by the Legislature, the Governor or the Courts

1. In response to recent court decisions applying the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), work with an appointed workgroup to consider amendments to LCDC's farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people. (Scheduled for fall/winter of 2009).
2. Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments scheduled for October 2009; map amendments will be scheduled in 2010).
3. With the Oregon Department of Transportation, staff the Metropolitan Planning Organization (MPO) Greenhouse Gas Emissions Task Force to prepare legislative recommendations as required by House Bill 2186. (Task Force report due Jan. 2010; may continue through 2010).
4. Adopt state greenhouse gas emissions reduction "goals" for purposes of the Portland Metro Area "scenario planning" land use patterns to meet the reduction goals, as required by House Bill 2001 (administrative rules by June 2011; other work 2011-14).
5. Adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments, as required by House Bill 3286 (hearings Dec. 2009).
6. Adopt procedural amendments to LCDC's Measure 49 implementing rules to carry out adjustments to the claims process enacted by House Bill 3225 (temp. rules done, permanent rules in late 2009 or early 2010).
7. Adopt "housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in House Bill 3099 regarding farm uses (scheduled for Nov. 2009).
8. Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act to address changes to NOAA's federal consistency rules and other changes since the last update (1988) of division 35 (expected mid 2010)
9. Adopt procedural rules for DLCD's Transfer of Development Rights Pilot Project authorized under House Bill 2228 (early to mid 2010)

**B. High Priority Policy and Rulemaking Projects (scheduling is dependent on resources; expectation is that some, but not all, of these will be done in 2009-11 biennium)**

1. Begin to assist communities in preparing for the effects of climate change, in coordination with other state agencies and other stakeholders. This will include work on a state-level climate change *adaptation* plan, in coordination with state agencies through a state agency workgroup. It also includes statewide climate change *mitigation* planning, as described above; HB 2001 and HB 2186. (initial coordination meeting held Oct. 2009).
2. Conduct a public “policy forum” (or a series), including stakeholders and legislators, to consider the following topics and determine consensus and future direction:
  - Consider public facility finance and planning issues facing local governments, including those raised by the Big Look Task Force and the Revenue Restructuring Task Force, as well as by local governments, and consider land use strategies and policy amendments to address these concerns.
  - Explore changes to streamline and update statewide policy regarding urban growth management, including the priority of lands statutes, urban reserve requirements, population forecasting, Goals 9 and 10, governance and related topics (biennium).
3. Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including OTC work on alternative mobility standards, STIP criteria and the requirements of House Bill 3379. (beginning Oct. 2009)

**C. Projects to be Pursued only if DLCD Resources are Available (expectation is that few, if any, of these items will be undertaken in the 2009-11 biennium)**

1. Continue consideration of potential policy actions suggested by LCDC’s 2008 Affordable Housing Work Group, including possible rulemaking and/or legislation.
2. Consider and, if necessary, adopt rules regarding “nonresource land,” especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under House Bill 2229. Study and, if necessary, clarify the “forest lands” definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition.
3. As authorized by House Bill 2230, amend rules under OAR 660, divisions 30 and 31, and take other actions necessary to update and streamline state agency coordination.
4. Reconvene a “farm stands work group” to consider concerns about farm stand sales of wine products.
5. Analyze criteria for zoning of farmland.
6. Revise agency procedures as necessary, to implement Environmental Justice Task Force requirements in 2007 (Senate Bill 420).

For questions or additional information about LCDC’s 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext. 229, or e-mail at: [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us), or Michael Morrissey at 503-373-0050 Ext. 320 or e-mail [michael.morrissey@state.or.us](mailto:michael.morrissey@state.or.us).