

January 10, 2007

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 11, January 25-26,2006 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 November 9, 2006 and January 5, 2007, the Department received notice of 51 appeals filed with LUBA. On December 11, 2006, the department filed a Notice of Appeal regarding Klamath County's approval of a plan and zone change from resource to rural residential for 36.5 acres subject to a Measure 37 claim (LUBA No. 2006-227). On December 18, 2006, the department filed a Notice of Appeal regarding Jackson County's approval of a four-lot subdivision application for 23.15 acres subject to a Measure 37 claim (LUBA No. 2006-233).

2) LUBA opinions

Between November 9, 2006 and January 5, 2007, the Department received copies of 49 recently issued LUBA opinions. Of these, LUBA dismissed 27, remanded 11, reversed 3, affirmed 6, and transferred 2 petitions to circuit court.

In one of these opinions, LUBA granted a motion to transfer an appeal of Bend's 2006 mobile home park closure ordinance to Deschutes County Circuit Court, because it is not a land use decision.

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

- *Cotter v. Clackamas County*, LUBA No. 2006-127, 11-16-06: Goal 4, OAR 660-004-0025, 660-004-028.
- *Rickreall Community Water Assoc., et al v. Polk County*, LUBA Nos. 2006-028, 2006-029, 2006-031, 2006-032, 12-8-06: Goal 5, Goal 12, OAR 660-016-0005, 660-016-0010, OAR 660-012-0060(1) & (2).
- *Oregon Transfer Company, et al v. City of Milwaukie*, LUBA No. 2006-106, 12-12-06: OAR 660-012-0060(1).
- *Rice, et al v. City of Monmouth*, LUBA No. 2006-137, 12-5-06: Goal 12, OAR 660-012-0060(1).
- *Columbia Empire Farms v. City of Dundee*, LUBA No. 2006-141, 11-29-06: Goal 10 (another Newberg-Dundee Bypass case).

On November 30, 2006, LUBA dismissed a department appeal of the City of Jefferson's Transportation System Plan (LUBA No. 2002-004).

None of these decisions requires a goal or administrative rule amendment.

3) Appellate court opinions

Between November 9, 2006 and January 5, 2007, the Department received copies of 6 recently issued opinions from the **Court of Appeals**. The Court affirmed 5 of LUBA's decisions, dismissed 1, and reversed and remanded 0.

On September 27, 2006, the Court of Appeals dismissed Friends of Bull Mountain's appeal of LUBA's remand of a Tigard annexation approval (LUBA No. 2006-005; CA No. A132631).

Between November 9, 2006 and January 5, 2007, the Department received a copy of 1 recently issued opinion from the **Supreme Court**.

On September 28, 2006, the Supreme Court affirmed the Court of Appeals' dismissal of Wal-Mart Stores' appeal of LUBA's affirmation of Central Point's denial of Wal-Mart's site plan and minor partition applications (LUBA No. 2004-075; CA No. A129094; SC No. S52736).

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

Available funds are nearly exhausted. A portion of the grant fund was reserved for good projects identified late in the biennium. These projects have been identified, and grant managers are currently in the process of working with the applicants to craft viable scopes of work to achieve useful products by the end of the biennium.

Federal Fund Coastal Management Grants

The status of FY07 funding for federal Coastal Zone Management Program within the National Oceanic and Atmospheric Administration (NOAA) continues to be in limbo

because the Congress has not yet approved a FY07 budget for the Department of Commerce within which NOAA is housed. Commerce and many other federal agencies continue to operate on a continuing resolution. It appears likely that Congress will approve these budgets at the FY06 level, neither cutting nor increasing. This budget will provide the funds for the Department's FY07 federal CZM grant that will begin July 1, 2007. It appears that the amount of the FY07 grants for coastal states (including Oregon's) will be reduced by about 5% from FY06 levels because NOAA has no "de-obligated" funds for FY07 as there were in FY06.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Periodic review will be addressed through a briefing in agenda item 7.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. PLANNERS' NETWORK MEETINGS

A network meeting is planned for La Grande on January 30, 2007.

B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)

Preapplications for TGM Grants

December 15 was the deadline for local governments to submit preapplications for TGM grants for the 2007-2009 Biennium. The program has received 111 preapplications totaling almost \$14 million for local planning projects. \$4.9 million is expected to be available for grant awards. TGM staff use the preapplication process to gauge local needs and to target technical assistance to help local governments prepare competitive grant applications.

TGM grant applications will be distributed later this month, with applications due in early March. Grant awards will be announced in May. (Awards will be conditional pending Legislative approval of the ODOT and DLCD budgets.) The schedule for applications and awards has been moved up from previous biennia to allow local governments to get an earlier start so that they will have more time to complete grant projects. TGM staff have also simplified the application forms to reduce paperwork associated with submitting a grant application. Criteria for grant awards remain essentially the same as in previous years. The only change has been to add three new "focus areas" – urban growth area planning, transportation finance program planning, and safe routes - to encourage local planning projects that address these issues.

TGM Outreach Workshops

A TGM outreach workshop was held in Newport (on December 15th). The workshop attracted over 70 citizens to discuss issues and opportunities for redevelopment and revitalization of the uptown district, which straddles Highway 101. The workshop

presented a series of land use, urban design, and transportation planning concepts that enhance transportation choices and bolster downtown revitalization efforts.

In February the TGM Outreach program will be cosponsoring presentations by Donald Shoup in Salem and Eugene to discuss parking management. Shoup is an urban planning professor from UCLA and a leading advocate for more efficient management of parking in urban areas. He has been instrumental in adoption of changes to federal and state tax codes to encourage “cash out” of employee parking. Professor Shoup’s book “The High Cost of Free Parking” outlines ways that cities and states can better manage parking to support more efficient use of urban land and a more efficient transportation system. Communities interested in having an TGM outreach workshop—at no charge to the local government—can contact Constance Beaumont at (503) 373.0050, ext. 277 or constance.beaumont@state.or.us.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

We are very pleased to welcome Tammy Palmer to the department. Tammy started on January 1, 2007, as an Administrative Specialist 1 (AS1) in the Operations Services Division. Tammy has current state administrative specialist experience from the Department of Human Services, Oregon State Hospital.

B. RECRUITMENTS

The department is finalizing its recruitment for an Information Specialist 7 (ISS 7) with an anticipated hire date the beginning of February. To ease the transition in the departure of DLCD’s current ISS7 (Jeremy Gingell), this new employee will work the month of February with Jeremy to ensure transition in knowledge occurs.

C. DEPARTING EMPLOYEES

Christine Valentine, Natural Hazards Planner, resigned effective January 10, 2007, to pursue an opportunity at the Oregon Economic and Community Development Department.

Jeremy Gingell, ISS7, will be leaving our department the end of February to pursue work in the private sector.

D. DIRECTOR ACTIVITIES

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

- Ongoing participation in the Governor’s Economic Revitalization Team.

- 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.
- Washington County Public Affairs Forum (Beaverton, December 11)
- Tribal-State Government-to-Government Summit (Canyonville, December 13)
- Oregon Task Force on Land Use Planning (Salem, December 15)
- Meeting with Martha Pagel & Roy Elikor regarding Destination Resort Planning (Medford, January 3)
- Oregon Leadership Summit (Portland, January 4)
- Oregon Economic and Community Development Department Meeting (Portland, January 5)
- Oregon Task Force on Land Use Planning (Salem, January 11 & 12)
- Shape of the Region Symposium (Hillsboro, January 19)

4. LEGISLATIVE INTERIM UPDATE

A. LEGISLATIVE BROWN BAG FORUMS

5. LCDC POLICY AND RULEMAKING UPDATES

A. UGB RULEMAKING

The department filed new UGB rules with the Secretary of State on October 19th. The adopted rules will take effect on April 5, 2007, but local governments may choose to apply the rules to UGB related plan amendments on or after October 19th. The new rules are posted on the DLCD website at the following link:

http://www.oregon.gov/LCD/docs/rulemaking/div_660-024_100506.pdf

B. MINERAL AND AGGREGATE CONSENSUS GROUP

This group was appointed by the Governor to identify issues and obtain data about mining on farmland, and to explore consensus regarding future legislation and/or amended statewide land use rules to reduce aggregate and farmland conflicts. The full group has not met since last summer, but a sub-committee of the group has met several times since July. However, no meetings are scheduled at the time of this report, and the department does not anticipate that the group will reach agreement on changes to the current approval process.

C. WATER RELATED PERMIT PROCESS IMPROVEMENT TEAM (WRPPIT)

The department has been participating in a multi-agency effort to improve the efficiency and coordination of water related permits (i.e. removal fill permits processed by the Department of State Lands (DSL)). This multi-agency effort includes the Department of State Lands (DSL), the Department of Environmental Quality (DEQ), the Oregon Department of Fish and Wildlife (ODFW), the Department of Geology and Mineral Industries (DOGAMI), the Department of Land Conservation and Development (DLCDC), the Oregon Parks and Recreation Department (OPRD) and the Water Resources Department (WRD). The work is being coordinated through the Office of Regulatory Streamlining and responds to a legislatively adopted budget note attached to each agency's budget.

The recommendations of a working group have led to the development of a pilot program to be initiated in January of 2008 and continue through December 31, 2009 that will implement some of the group's recommendations. The pilot program is outlined in a Memorandum of Agreement (MOA) that commits agencies to participate in the pilot. The primary commitment for DLCDC is to provide guidance about DLCDC program requirements to the applicant and DSL as needed and to identify projects that will require Coastal Zone Management Act federal consistency certification.

A subcommittee of the working group has continued to meet to respond to a related budget note regarding aggregate mining. Bob Rindy is attending the subcommittee meetings for the department. The sub-committee meets every two weeks. The group has reached conceptual agreement on a Memorandum of Understanding (MOU) among agencies that review mining proposals. The MOU will assure a coordinated agency response to pre-applications and/or to local government plan amendment requests involving gravel mining. The MOU establishes a "pilot project" to test the process to coordinate and combine agency comments for proposed aggregate sites.

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

ATTACHMENTS

- A.
- B.