

Jan. 18, 2005

TO: Land Conservation and Development Commission  
Feb. 2-4, 2005, LCDC Meeting

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 12, Director's Report**

## **1. INFORMATION UPDATES**

### **A. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS**

#### **1. General Fund Grants**

The department has continued to offer new Technical Assistance grants with remaining funds. Previously approved projects from time to time discover a need for additional assistance, and two grants (to Hood River County and the city of Creswell through the Lane Council of Governments) have recently been amended to add dollars to the award. Department staff is currently in discussion with the Oregon Consensus Center and the Grants Advisory Committee to determine the appropriate level of funding for alternative dispute resolution for the remainder of the biennium.

#### **2. Intergovernmental Agreements**

The Department pursued the following intergovernmental agreements (IGAs) to respond to Federal Emergency Management Agency (FEMA) map modernization funding received this fall. Through these partnerships, DLCD can best ensure completion of map modernization support work and accountability to FEMA under the Map Modernization Management Support grant agreement. Absent these partnerships, the ability of the natural hazards program to accomplish these tasks would be very limited given staffing constraints.

#### DLCD – Department of Administrative Services-Geospatial Enterprise Office.

\$60,000 from FEMA Map Modernization Management Support to DAS, matched with to \$60,000 in kind services (although FEMA does not require match for these funds). Services and products include: digital data inventory and data gap analysis with respect to flood hazard mapping, local mapping needs assessment conducted and results summarized on jurisdiction-by-jurisdiction basis, detailed guidance provided to DLCD regarding potential role as floodplain data steward and operations within state GIS utility. The agreement extends through June 2005.

DLCD – University of Oregon-Community Services Center.

\$25,000 from FEMA Map Modernization Management Support to University Services and products including analysis of local government GIS capabilities and needs with respect to hazard mapping, assistance provided with development/implementation of outreach efforts for map modernization. This agreement extends through September 2005.

Christine Valentine, Floodplain/Natural Hazards Coordinator, will manage these IGAs for the Department. For more information about the IGAs or FEMA flood map modernization, you may contact Ms. Valentine at 503-373-0050 ext. 250.

**B. PARTICIPATION IN LUBA APPEALS AND RECENT LUBA AND COURT OPINIONS**

ORS Chapter 197 requires a report to the Land Conservation and Development Commission regarding the department's participation in petitions to the Land Use Board of Appeals (LUBA) and about those LUBA opinions that involve the application of the statewide goals and rules.

**1. Participation [ORS 197.090(2)]**

Between November 24, 2004 and January 14, 2005, the Department received notice of 51 appeals filed with LUBA.

The Department filed a motion to intervene in *Regan v. Lincoln County*. For the Department's position in that case, see Paul Klarin's request for permission to intervene, item #2 on the Commission's December 2004 meeting agenda.

**2. LUBA and Court Opinions [ORS 197.040(1)(c)(C)].**

**LUBA Opinions**

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

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

**a. Department participation in appeals**

Between November 24, 2004 and January 14, 2005, the Department received notice of 51 appeals filed with LUBA.

The Department filed a motion to intervene in *Regan v. Lincoln County*. For the Department's position in that case, see Paul Klarin's request for permission to intervene, item #2 on the Commission's December 2004 meeting agenda.

**b. LUBA opinions**

Between November 24, 2004 and January 14, 2005, the Department received copies of 19 recently issued LUBA opinions. Of these, LUBA dismissed 10, affirmed 4, remanded 4, reversed one, and transferred no petitions to circuit court.

None of these decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule; none require a goal or administrative rule amendment.

**c. Appellate court opinions**

Between November 24, 2004 and January 14, 2005, the Department received no copies of recently issued opinions from the Court of Appeals and Supreme Court; it received no decisions concerned a statewide planning goal or LCDC administrative rule.

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

A summary of recent periodic review activity in the department is provided in Attachment A. Although there was a slight increase in department decisions during December, activity since the last Commission update has continued to be fairly slow.

**2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES**

**A. WEBSITE**

In 2001, an Executive Order (01-25) directed the Department of Administrative Services (DAS) to establish a unified state Web site, which would be centrally hosted. The Order required all state agencies to migrate web content into the new system, now known as "Oregon.gov." With the exception of DLCD's federal programs (Coastal, TGM and Natural Hazards), all of the pertinent Web content was migrated into Oregon.gov between June and October of 2004. The new "site" was launched on Oct. 26, 2004. The TGM content was migrated in November and launched on Nov. 29, 2004. The Coastal and Natural Hazards sections will be migrated in the next few months.

At the department's request, the DLCD website has been listed under the Oregon.gov home website under the "Economic Development" link, as well as the "Natural Resources" link, where it has been traditionally located.

**B. FLOODPLAIN MANAGEMENT PROGRAM**

The Department submitted its annual application to the Federal Emergency Management Agency (FEMA) under the Community Assistance Program-State Support Services Element (CAP-SSSE) program in September 2004. FEMA's CAP-SSSE program provides the base grant that sustains the Department's natural hazards program and specifically funds DLCD's role as state coordinating agency for the National Flood Insurance Program. FEMA Region 10 notified the Department in late fall that the application was accepted.

The overall annual budget for the CAP-SSSE program is \$120,667, essentially level funded from federal fiscal year 2004. The federal share of the budget is \$90,500 (75%), and this requires a state match of \$30,167 (25%). The tasks contained in the Department's FY2005 CAP-SSSE work program are similar to those from last year's application and include tasks such as technical assistance to local governments, public outreach, and coordination with other state hazard mitigation efforts. A copy of the CAP-SSSE work program can be obtained from either Ann Beier, Planning Services Manager at 503-373-0050 ext. 255 or Christine Valentine, Floodplain/Natural Hazards Coordinator at 503-373-0050 ext. 250. (For more information on FEMA and DLCD, see item 1.A.(2), above.)

### **C. DEPARTMENT COASTAL TSUNAMI PLANNING AND RESPONSE ACTIVITIES**

The recent tsunami event in the Indian Ocean and its tragic consequences have triggered a wide-ranging effort in Oregon to assess the level of planning for and response to such an event along the Oregon coast. The Ocean/Coastal Management Program (OCMP) has long collaborated with the Oregon Department of Geology and Mineral Industries (DOGAMI), the Oregon Parks and Recreation Department, and others on a variety of coastal shore hazards assessment and planning, and is currently discussing how best to assess and improve Oregon's preparation for tsunami and associated subduction zone earthquake events. Paul Klarin, Bob Bailey, and Steve Williams have been working closely with the Oregon Coastal Zone Management Association and the DOGAMI to convene a related set of technical workshops and a "Tsunami Summit" for coastal local officials. These meetings will likely be held in March in Florence and Newport. Because coastal hazards planning has been a program enhancement strategy for the OCMP for the past ten years, the OCMP has used special federal funds to support a number of important coastal hazards planning projects, including mapping of tsunami inundation areas. The OCMP is pleased to be a major sponsor of these critical planning activities.

### **D. MEASURE 37 IMPLEMENTATION**

Department staff have met regularly to respond to requirements related to implementation of Ballot Measure 37. Staff have developed a process to track claims received by the department to ensure a timely response and have created a template for a staff report that would be developed in response to each claim. Ron Eber continues to work with the Department of Administrative Services (DAS) on their administrative rule relating to claims submitted to the state.

As of January 20, 2005, ninety Measure 37 claims had been filed with DAS. Of the ninety total claims, two relate to Department of Forestry regulations and the remainder relate to land use regulations. DAS has determined that thirty-one of those appear to be "compete" claims, and has sent them to the department. Most, if not all, of the claims coming to the department appear to involve farm/forest issues, according to DAS. (For more information on Measure 37 implementation see item 4.A., below.)

## **E. LOCAL OFFICIALS ADVISORY COMMITTEE**

ORS 197.165 provides for the establishment of a Local Officials Advisory Committee (LOAC) to “advise and assist” LCDC:

“For the purpose of promoting mutual understanding and cooperation between the Land Conservation and Development Commission and local government in the implementation of ORS chapters 195, 196 and 197 and the goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments.”

The LOAC has not been active during the current biennium. The reestablishment of the LOAC is one of the elements of the department's assigned work plan. (Action Item B5: “Engage Local Officials Advisory Committee (LOAC) in Review of Agency Performance and Program Function.”)

When it was last active, the membership of the LOAC was as follows:

Judge Benjamin Boswell – Wallowa County

Commissioner Dan Ericksen – Wasco County

Councilor Tony Howell – Corvallis City Council

Michael Jordan – Clackamas County

Mayor Richard Kidd – City of Forest Grove

Commissioner John Lindsey – Linn County

Councilor Bill Moore – Medford City Council

Councilor Doyle Slater – LaGrande City Council

Historically the membership of the committee has been made up of an even number of city and county elected officials.

Since the committee was last active, Tony Howell, Bill Moore and Doyle Slater have either resigned from the committee or become ineligible on account of having left their elective positions by virtue of which they were serving. Michael Jordan was previously a county member, but has since left that position and is currently serving as Executive Director of Metro.

The remaining members of LOAC were provided with a briefing on the Commission's current Goal 11 and Goal 14 amendment proposals, as required by ORS 197.235(3), but the committee has not yet been otherwise activated. In order to fully reactivate the committee it will be necessary for the Commission to appoint new members to fill the current vacancies in the committee. It is recommended that the Commission also reappoint the continuing members who wish to remain on the committee. The department has requested the names of nominees to fill the vacant positions on the LOAC from the Association of Oregon Counties and the League of Oregon Cities. Names have been provided and will be presented to the Commission for appointment at the March LCDC meeting.

In addition to the LOAC, the Commission has previously appointed an informal, "ex-officio" committee of local government planning professionals to work with the committee in advising the Commission. Names for that ex-officio committee will also be presented for approval by the Commission at the March LCDC meeting.

At the March LCDC meeting, the department will also invite discussion and direction from the Commission on the role that the Commission desires that LOAC play, and how it should interact with the Commission.

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

#### **A. RECRUITMENTS**

The department is in process recruiting for the Fiscal Analyst 2/Budget Officer position in the Operations Services Division. The department anticipates interviews occurring early February with an approximate hire date occurring late February/early March.

The department is recruiting for the Administrative Support 2 (0.5 FTE) to support the Economic Development Planning Team. Interviews will be conducted in late January.

The department is beginning its second attempt to recruit for the Transportation Growth Management Program's code assistance position. Interviews will be conducted in mid-February.

The department is recruiting to fill two limited duration positions to assist with implementing the requirements of Ballot Measure 37 – a Planner 3 and an Office Specialist 2. These positions will help track, and evaluate claims for compensation filed with the department. Positions extend through June 30, 2005. The department plans to conduct interviews in early February.

The Northeast Oregon Regional Representative position has also recently been reopened.

#### **B. DEPARTURES**

Jim Shelton, Fiscal Analyst 2/Budget Officer, has left our department to pursue other endeavors. We wish him well on his new endeavors.

### **C. NEW STAFF**

George Naughton has joined the department as acting Deputy Director, beginning January 10, 2005. George earned a law degree from University of Puget Sound, and for the past nine years has served as a budget analyst with the Department of Administrative Services, Budget and Management. George is with the department “on loan” from DAS, and brings a wealth of budget experience and knowledge of state processes.

Heather Awlasewicz has been selected as Office Specialist 2 in the Operations Services Division. She joined our department on December 9, 2004. Heather has extensive experience in customer service and will serve our department well in the capacity of reception and mail production operations.

Tom Hogue will join the department on February 1, 2005 as the Economic Development Planning Team’s policy analyst. He joins us from Colorado where he has experience as an executive director for Historic Boulder, a City councilor for Lafayette, Colorado and as a consultant.

Steve Williams began January 18 as the department’s new Coastal Shores Specialist replacing Paul Klarin who assumed new coastal policy duties during the summer of 2004. Steve will work out of the department’s recently relocated field office in Waldport and will work closely with DLCD field staff in assisting coastal local governments and state agencies on a variety of coastal shore issues including geologic and shoreland hazards, littoral cell planning, development standards, hazards response planning, and regulatory modernization. Steve has extensive coastal experience and will be a familiar face to local planners. He spent the past ten years as the coastal land use coordinator for the Oregon parks and recreation department on development issues affecting Oregon’s beaches and coastal shorelands. Prior to that, he worked as a planner for the Lincoln County planning department for six years.

### **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.
- Bend Rotary Club (Bend, Jan. 4)

- Measure 37 Summit sponsored by Miller Nash (Portland, Jan. 5)
- Salem City Club (Salem, Jan. 14).
- City Club of Portland (Portland, Jan. 21)
- Portland Garden Club (Portland, Jan. 24).
- Oregon ITE's Technical Workgroup – Measure 37 (Portland, Jan. 27).
- Lane Council of Governments, Keynote Speaker (Eugene, Jan. 27).
- Ocean Coastal Zone Management Association (Salem, Jan. 28).

#### **E. TRAINING**

The department continues to evaluate affirmative action training opportunities to meet Affirmative Action Reporting requirements.

### **4. LEGISLATIVE UPDATES**

#### **A. EMERGENCY BOARD**

The Emergency Board approved \$325,000 of the department's original \$500,000 General Fund request to enable the department's implementation of Measure 37 in 2003-05. A \$140,000 amount is immediately allocated to allow the agency to hire two limited duration positions (0.21 FTE Planner 3 and 0.21 FTE Office Specialist 2), \$75,000 for Attorney General costs and \$15,000 for office expenses. The remaining \$185,000 for additional positions and Attorney General services is unscheduled until the need for additional resources is determined by: Department of Administrative Services' Budget and Management Division, Legislative Fiscal Office and our department. If any of the \$185,000 unscheduled amount is not needed by the department, the unused portion will revert to the General Fund at the end of the 2003-05 biennium.

#### **B. SESSION ACTIVITIES**

Director Shetterly appeared before both the House and Senate Land Use Committees during the first six days for the legislative session. He testified before the House committee on Jan. 14, presenting an overview of the department's activities and policy objectives during the past year. On January 17, he testified before a joint meeting of the House and Senate Land Use Committees on an overview of ballot Measure 37. He and staff have also begun meetings with individual legislators. The department has instituted its session bill tracking system to identify and follow bills of interest to the department. The department is on schedule for a first appearance before the Joint Ways and Means Natural Resources subcommittee on February 24; to begin work on the department's 2005-'07 budget.



**5. WORK GROUP UPDATES**

**A. PERIODIC REVIEW REFORM COMMITTEE**

This committee has continued to meet monthly, discussing and refining what will become its report to the legislature. The report and any recommendations should be ready for Commission review at the March meeting.

**B. GOAL 11 WORK GROUP**

The Goal 11 work group has completed work on the amendments for now, pending a decision by the Commission in Feb to undertake additional rulemaking in the future.

**C. RURAL COMMERCIAL AND INDUSTRIAL LANDS WORK GROUP**

The work group on rural commercial and rural industrial lands policy project has started meeting and plans to have a report to the Commission for its April '05 meeting on whether or not rulemaking (and possibly goal amendment) should be undertaken sometime this summer.

**ATTACHMENTS**

- A. Periodic Review Work Task History