

February 22, 2007

TO: Land Conservation and Development Commission  
FROM: Lane Shetterly, Director  
SUBJECT: **Agenda Item 10, March 8, 2007 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 January 6 and February 16, 2007, the Department received notice of 33 appeals filed with LUBA. *The department filed a notice of appeal* regarding Klamath County's approval of a plan and zoning map change for an 80-acre parcel from forest land to suburban residential based on a *Measure 37* claim (*DLCD V. Klamath County*, LUBA No. 2007-009, filed January 8, 2007).

##### **2) LUBA opinions**

Between January 6 and February 16, 2007, the Department received copies of 24 recently issued LUBA opinions. Of these, LUBA dismissed 10, remanded 9, reversed 3, affirmed 2, 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:

- *Phillips v. Polk County*, LUBA Nos. 2006-133, 2006-134 & 2006-135, issued 1-2-07, **OAR 660-033-0135(1)** (lot line adjustment and farm dwelling on 160-acre EFU parcel);

- *Thompson, et al v. Jackson County*, LUBA Nos. 2006-183 & 2006-185, issued 2-5-07, **Goal 2: Land Use Planning** (County did not satisfy its Goal 2 requirement to coordinate with the City of Ashland regarding the city's objection to adoption of a new Rural Use zone with a 10-acre minimum parcel size).

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

### **3) Appellate court opinions**

Between January 6 and February 16, 2007, the Department received copies of 5 recently issued opinions from the *Court of Appeals*. The Court affirmed all of LUBA's decisions.

### **4) Other filings and opinions of interest**

- One new appeal challenges Tangent's approval of a quasi-judicial urban growth boundary amendment application by a City Councilor following two previous LUBA remands (*Lengkeek v. City of Tangent*, LUBA No. 2007-007, filed January 5, 2007).
- 16 new appeals challenge several Jefferson County legislative actions: destination resort plan, plan map, and zoning ordinance amendments; new zoning and subdivision ordinances; and Camp Sherman Area Local Plan amendments.
- LUBA dismissed an appeal of Medford's site design approval for a 206,533-square foot Wal-Mart store in the Regional Commercial and General Industrial Districts (*South Gateway Partners v. City of Medford*, LUBA Nos. 2006-112 & 2006-113).

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

### **General Fund Grants**

There is no change in the status of this program. Grantees are engaged in completing the funded projects, so the pace of payment requests has quickened.

### **Federal Fund Coastal Management Grants**

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

Periodic review task activity has remained very slow (Attachment A). Periodic review will be addressed through a briefing in agenda item 7.

## **2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

### **A. OUTREACH & EDUCATION**

The department sponsored two events in La Grande during January. On the 30<sup>th</sup>, the department held a Planners' Network Meeting for city, county and tribal planners at the Union County Planning Department Office. The event was attended by approximately 60 people, including city and county planners, planning commissioners, and elected officials

in Baker, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa counties.

On the 31<sup>st</sup>, the department and the Union County Realtors Association co-sponsored a workshop on land use planning for realtors in the same seven counties. The workshop drew about 70 individuals from throughout the region. Workshop topics included a history of Oregon's Land Use Planning program, an overview of planning and the economy, smart growth principles, and Big Look and Measure 37 updates.

## **B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)**

### **Applications for TGM Grants**

In January, the TGM program distributed applications to local governments for TGM grants for the 2007-2009 Biennium. \$4.9 million is expected to be available for grant awards. Applications are due on March 9<sup>th</sup> and preliminary grant awards are expected to be announced in May. (Awards will be conditional pending Legislative approval of the ODOT and DLCD budgets.) As we advised in January, the program has received 111 preapplications totaling almost \$14 million for local planning projects.

Of note, the schedule for applications and awards has been moved up from previous biennia to allow local governments to get an earlier start and 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 program has added 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 Biennial Report**

The TGM program is just now completing its biennial report summarizing program activities over the 2005-2007 biennium. The report outlines program services and includes examples of completed projects around the state that illustrate accomplishment of TGM program objectives. The completed report will be available as a handout at the Commission meeting and will also be made available electronically on the department's website.

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

### **A. NEW STAFF**

Daniel (Dan) Sproule has accepted the department's offer of a promotional opportunity within the Operations Services Division and is now employed as our Information Support Specialist 7 (ISS 7). Dan has been with the department for a year as our Information Support Specialist 4 (ISS4). He brings current knowledge of department information technology systems, and broad background and training from: Weber State University (Utah); private sector experience in network administration; and public sector experience at the Secretary of State.

Cyndi Smith has joined the department on a job rotation to lead its Human Resources efforts. Cyndi has worked for the State of Oregon in various positions over the last 29 years. Her past experience included positions at ODOT, including 10 years in Human Resources. She comes to us most recently from DAS where she is the Operations Manager for the Statewide Training Unit. Cyndi is also very involved in project management. She was the coordinator of the Oregon Project Management Certification Program and is president of the local PMI (Project Management Institute) Chapter.

Tracy Nelson joined the Director's Office as an Administrative Support Specialist to assist with the Oregon Task Force on Land Use Planning. Tracy has several years prior experience with the state. Most recently she has assisted the department's Operations Divisions with a number of fiscal and recordkeeping tasks.

Tyler Smith...

## **B. RECRUITMENTS**

The department is actively engaged in the recruitment process to fill the Natural Hazards Planner, Measure 37 Office Specialist 1, and Measure 37 claims writer positions.

The department plans to recruit for several other vacancies in the coming months, including the Information Support Specialist, Human Resources Officer, and Economic Development Planning specialist.

## **C. DEPARTING EMPLOYEES**

Jeremy Gingell's official resignation has been submitted to the department. His last date with the department is April 27, 2007. The department wishes him well on his endeavors in the private sector.

After nearly twenty three years with the DLCD, Shelia Preston will leave the department at the end of February. Shelia worked in various functional areas over the years, from accounting and personnel to TGM and the Coastal Division. She joined the Directors' Office in 2003 and, most recently, provided executive support to the Deputy Director. Throughout her tenure Shelia has been a dedicated public servant. We wish her the best.

## **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
- Ongoing Joint Special Committee on Land Use Fairness
- Planners Network Meeting (January 31, LaGrande)
- Meeting with Sen. Bates (February 1, Salem)
- Meeting with Sen. Prozanski and Rep. Macpherson (February 1, Salem)
- Corvallis Town Hall with Rep. Gelser (February 1, Corvallis)
- Meeting with Bob Repine and Stephanie Hallock regarding Medford timber products (February 2, Salem)
- Meeting with Nancy Craven and Linda Swearinger (February 2, Salem)
- Senate Environment and Natural Resources Committee regarding SB 186 & 187 (February 6, Salem)
- Oregon Land Use Forum (February 9, Medford)
- Meeting with Mike Carrier and Washington County Commissioners (February 12, Salem)
- Meeting with Rep. Roblan (February 13, Salem)
- Salem Mediation Meeting (February 16, Salem)
- Meeting with Governor Kulongoski, Sen. Prozanski and Rep. Macpherson (February 19, Salem)
- Oregon Task Force on Land Use Planning (February 20, Salem)
- Conference call with Martha Pagel and Peter Livingston (February 20)
- Beaverton Rotary (February 21, Beaverton)
- Meeting with Rep. Clem (February 21, Salem)

- Meeting with David Bragdon & John VanLandingham regarding the Regional Transportation Plan (February 26, Salem)
- Meeting with Mayor Taylor and Randall Tosh (February 26, Salem)
- Hillsboro Economic Trend Workshop (February 26, Hillsboro)
- Ronelle Shankle and Rep. Macpherson regarding HB 2123 (February 27, Salem)

#### 4. LEGISLATIVE UPDATE

The department is tracking bills related to land use and the department, the director and staff are engaged in ongoing contacts with legislators and legislative staff. So far, the department is tracking 29 bills that directly relate to the department (“priority 1 or 2”), and an additional 32 bills that relate to land use planning in some manner but do not directly affect the department or the program (“priority 3”). These numbers are significantly lower than the numbers of tracked bills last session, although it is still early and new bills are being published every day.

As we reported last month, the department’s legislative concepts are SB 186 (Industrial reserves), SB 187 (Affordable housing) and SB 140 (Administrative rule review). SB 186 and 187 were the subject of a hearing in the Senate Environment and Natural Resources committee on February 6. There was significant opposition to both bills, including opposing testimony from the Oregon Farm Bureau, 1000 Friends of Oregon, the Oregon Chapter of the American Planning Association, the League of Oregon Cities, the Association of Oregon Counties, the City of Salem, and the League of Women Voters. However, testimony in support of these concepts was presented by the LCDC Chair, the Oregon Economic and Community Development Department (OECDD), the Oregon Housing and Community Services Department (OHCD), the State Homebuilders Association, The Association of Oregon Realtors, and the Manufactured Housing Dealers Association. The Oregon Housing Coalition announced it was neutral on SB 187 because it does not support legislation unless all its members do, and at least one of its members (1000 Friends) did not support the concept.

Following this hearing, VanLandingham had some additional discussion with the chair of the Senate committee, who indicated he does not anticipate passing these bills – not because of interest group opposition, but rather because he believes we should wait for the Big Look with regard to these and some other UGB concepts that have been proposed through legislation.

The department’s legislative concept on judicial review of rules (SB 140) is very similar, but more narrow, than a bill proposed by the Department of Justice, HB 2123. The department therefore asked the chair of the Senate Judiciary Committee to hold off on hearing this bill until we see what happens to HB 2123. That bill had a hearing on February 20 in the House Judiciary Committee, and ...

The department has provided testimony on a few other bills that affect the program, including:

- SB 335, which would allow UGBs to include a land supply less than 20 years
- HB 2051, which would allow the Metro UGB to be reevaluated on a seven year cycle, rather than a five year cycle
- HB 2465, which would allow a school to be sited on high value farmland within three miles of the Hood River UGB, and allow the extension of sewer to the site

The Joint Special Committee on Land Use Fairness has been appointed as a joint Senate-House Committee, co-chaired by Sen. Floyd Prozanski, D-Eugene and Rep. Greg MacPherson, D-Lake Oswego. It is anticipated the committee will only address Ballot Measure 37, and has begun taking testimony on SB 505, discussed below. The director testified before the committee on two occasions: January 23, along with AOC and DOJ, in order to provide the committee with a background on the first two years of the Measure, and February 8, in order to provide the committee with information regarding the recent Court of Appeals case *Corey v. DLCD*.

Two members of the Commission's Legislative Subcommittee (Chair VanLandingham and Commissioner Worrix) met on February 8 to provide advice to the department regarding land use legislation. The subcommittee is scheduled to meet again at noon on February 22 in the Capitol.

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

### **A. RULEMAKING**

On February 5, 2007, the department formally filed (with the Secretary of State) the new permanent rules adopted by LCDC in January regarding Measure 37, but the effective date of the rules is February 9. (The rules specify information required after December 4, 2006, for a "claim" under the measure concerning pre-existing state land use regulations or concerning new regulations adopted or enacted after that date. The rules also clarify requirements for claims based on statewide regulations.) The permanent rules also include requirements for local notice to the department regarding local claims and local permits based on state or local claims; however, these provisions take effect February 20.

### **B. MINERAL AND AGGREGATE CONSENSUS GROUP**

On January 12, Greg Wolf and Elaine Hallmark of the Oregon Consensus Program, mediators for the Aggregate Consensus Group, announced to the participants that they "have terminated the consensus process, as in our judgment continuing the process will no longer be productive."

### **C. WATER RELATED PERMIT PROCESS IMPROVEMENT TEAM (WRPPIT)**

This multi-agency effort to improve the efficiency and coordination of water related

permits was coordinated through the Office of Regulatory Streamlining and responds to a legislatively adopted budget note attached to each agency's budget. The department has reported on the recommendations of a working group in previous director's reports. The primary commitment for DLCD is to provide guidance about DLCD program requirements to the applicant and DSL as needed and to identify projects that will require Coastal Zone Management Act federal consistency certification. Legislation recommended by this group (HB 2251) has been introduced and has moved out of committee to the House floor at the time of this report.

A separate but related subcommittee is continuing to meet to respond to a related budget note regarding aggregate mining. The group has reached conceptual agreement on a Memorandum of Understanding (MOA) among agencies that review mining proposals. However, the final wording of the MOA is still under discussion. The MOA will assure a coordinated agency response to pre-applications and/or to local government plan amendment requests involving gravel mining. The MOA establishes a "pilot project" to test the process to coordinate and combine agency comments for proposed aggregate sites. There is no legislation associated with this recommendation.

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

The Oregon Task Force on Land Use Planning (the task force) met once in Salem since the last LCDC meeting: February 20, 2007.

At the February meeting, the Task Force worked with consultants led by Civic Results, from Denver, Colorado; Robert Grow Consulting, from Salt Lake City, Utah; and Fregonese and Associates from Portland, Oregon. In addition, the Task Force heard about environmental issues related to land use. Speakers were Nan Evans, The Nature Conservancy; Sarah Vickerman, Defenders of Wildlife; and Bob Salinger, Portland Audubon Society.

The task force continues to work on understanding the six issue areas identified in July 2006. The information they are collecting now will help frame the information and provide information about various policy options that can then be vetted to Oregonians as part of the public involvement phase of the task force's work program, scheduled to begin in July 2007.

The next task force meeting is scheduled for March 15-16, 2007 in Hood River, Oregon.