

March 2, 2005

TO: Land Conservation and Development Commission  
March 16-18, 2005, LCDC Meeting

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 14, March 16-18, 2005 Commission Meeting**

## **DIRECTOR'S REPORT**

### **1. INFORMATION UPDATES**

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

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

The Commission approved a Grants Allocation Plan for the first time for the 2003-2005 biennium. The plan was required by a budget note, and sets policy for allocation of general fund grants. DLCDC staff recently met with the Grants Advisory Committee to discuss updating the plan for the 2005-2007 biennium, and the outcome was that the committee will develop a revised plan for Commission consideration regardless of whether a budget note requires it again.

The Emergency Board approved release of an additional \$43,000 in grant funds from the Special Purpose Appropriation in November, 2004. The department has awarded this new funding to the Oregon Consensus Center at Portland State University for land use dispute resolution services. The Consensus Center already had a small grant for this purpose, and the additional funds were accommodated through an amended grant agreement.

Since the 2003-2005 biennium is drawing to a close, all available funds have been awarded or offered.

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

- a.** The Department Coastal Management Program has signed an Intergovernmental Cooperative Agreement with Tillamook County to assist the county in reviewing existing sites for dredged material disposal (DMD) and prepare and adopt needed revisions to the county's DMD plan, comprehensive plan and ordinances. Because this is a coastal-resources project, the agreement will be funded by \$20,000 federal Coastal Management dollars and will free-up state General Fund

dollars previously allocated to this task to be used in another non-coastal jurisdiction.

- b. The Coastal Management Program has begun a project to assess of the effect of the Statewide Planning Goals on land and resource uses in the coastal zone. The OCMP has selected Cogan Owens Cogan to assist OCMP staff in designing the elements of a systematic effort to identify appropriate metrics or indicators; select baseline data; and design and test methodologies to measure the effects of planning goals 3, 14, 16, and 17 on coastal land and resource uses. The OCMP recognizes the challenges of linking observed landscape changes to specific land use or resource management policies. As such, the challenge of this project will be to isolate the effects of the land use planning goals from the effects many other factors that may influence land use patterns and trends. The project will result in basic system elements, including possible indicators that can be revised or further developed in consultation with the broad range of program stakeholders.
- c. The department has renewed its Central Point and Eugene leases for its remote field offices with Rogue Valley Council of Governments and Lane Council of Governments, respectively.

## **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 January 15, 2005 and February 23, 2005, the Department received notice of 17 appeals filed with LUBA.

The Department filed a motion to intervene in *Scott Young and Robin James v. Jackson County*, LUBA No. 2005-001, pursuant to the Commission's direction on February 2, 2005. The Department's position is that the Jackson County Hearings Officer correctly denied the appellants' application for change of use from residential to church or religious retreat center on land zoned for exclusive farm use within three miles of the City of Ashland's urban growth boundary.

### **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**

The Department filed an appeal February 25, 2005, to the Coos County Board of Commissioners against a decision by the Planning Commission to approve a forest “template” dwelling. The Department asserts to the Board that the Planning Commission incorrectly overturned staff’s denial of the forest template dwelling that conclusively demonstrated that the proposed dwelling could not meet the specific requirements of the county’s ordinance for such dwellings.

#### **b. LUBA opinions**

Between January 15, 2005 and February 23, 2005, the Department received copies of 22 recently issued LUBA opinions. Of these, LUBA dismissed nine, affirmed two, remanded nine, reversed two, and transferred no petitions to circuit court.

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

#### **c. Appellate court opinions**

Between January 15, 2005 and February 23, 2005, the Department received a copy of one recently issued opinion from the Court of Appeals. This decision did not concern 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. Activity has been very low in submittals and therefore in department decisions.

### **D. ENFORCEMENT ORDERS**

The department has several outstanding citizen-initiated requests for enforcement orders. The status of these is as follows:

- Citizen petition for enforcement against the City of Bandon regarding alleged arbitrary and inconsistent decision-making on a wide range of planning and zoning issues. Received on February 8, 2005. The department will review for completeness and prepare a letter of acceptance (or denial) prior to analysis of the merits.
- Citizen petition for enforcement against the City of Cottage Grove regarding alleged failure to enforce zoning ordinance as it relates to a non-conforming use (drag strip). Received on December 23, 2004. The department is currently holding this case without action while the parties work to resolve the dispute. There is also a question regarding whether the petitioner has followed procedural requirements.
- West Side Rural Fire District petition for enforcement against the City of Hood River regarding alleged failure to satisfy the city's responsibilities to complete urban services agreements. Received on September 24, 2004. A negotiated settlement has been reached and is the final stages of being approved by the parties. The attorney for West Side has verbally requested that the department place the petition on hold pending approval of the settlement.
- Citizen petition for enforcement against the Port of Bandon regarding use and development of the port's waterfront properties (especially the "High Dock"). Received on July 22, 2002. The department sent a letter to the petitioner on Sept. 17, 2002 indicating that the petition was complete and that the matter would be heard at the December 5, 2002 LCDC hearing. On October 24, 2002, petitioner's attorney asked that the matter be removed from the agenda, indicating that the petitioner would be meeting with city and port representatives to try and resolve the matter outside of the EO process. The department is currently considering options.

## 2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

### A. TRANSPORTATION AND GROWTH MANAGEMENT (TGM) PROGRAM – OUTREACH ACTIVITIES

#### Current Projects

- *TGM Biennial Report*: The TGM Biennial Report is now complete and is available from the Department.
- *Get Centered Project at Metro*: TGM cosponsored Metro's *Get Centered* project, which was launched in Portland on February 3, 2005. The project is aimed at exploring successful mixed-use projects and development opportunity sites in five regional and town centers. Several hundred people attended the kick-off event, which was held in Portland's Pearl District. Additional forums are scheduled for March 31 in Gresham, June 2 in Lake Oswego, July 26 in Beaverton, October 27 in the Hollywood District of Portland.
- *Articles for Oregon League of Cities Publication*: TGM Outreach is now submitting regular articles on transportation-related growth management issues to the League for

publication in *Local Focus*, a journal sent to city officials throughout the state. The second of these articles, which focuses on incentives available for mixed-use development, should appear the week of February 22.

- *Main Street Road Show*: Letters have gone out to small towns inviting their participation in the *Road Show*. Communities were asked to notify TGM if they wish to participate in the *Road Show* by March 4, 2005. The goal of this program is to help local governments address transportation and land use issues related to State highways, particularly in those communities where the State highway is the community's Main Street.
- *Mixed Use (and other "Smart") Development in Eugene*: Cogan Owens Cogan has completed drafts of a new PowerPoint Presentation on Mixed-Use Development and an educational brochure on Infill and Redevelopment.
- *New Work Order Contracts*: A new work order contract for an educational workshop in Stayton has been submitted to ODOT and awaits final approval.
- *NWACT*: A presentation on TGM grant opportunities was given in Seaside to the Northwest Area Commission on Transportation on February 3.

#### **B. NATURAL RESOURCES AND MINERAL AND AGGREGATE PROGRAM**

Mark Darienzo, the department's natural resources specialist, attended a Josephine County planning commission hearing February 17th concerning an aggregate mining plan amendment. The planning commission recommended that the County Commission approve the application. The department provided technical assistance in the review of this amendment. Mark continues to participate in the Oregon Department of Transportation's Aggregate Committee.

Mark is also working with Marguerite Nabeta to review the City of Covallis periodic review work tasks related to natural resources.

#### **C. OREGON COASTAL ATLAS: YEAR 2 STATISTICS SUMMARY**

See Attachment B for full report.

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

#### **A. RECRUITMENTS**

The Department is recruiting for a Coastal Grants Coordinator to replace Sandra Larsen who has accepted a new position in another agency and is leaving the Department in mid-March. A nationwide recruitment is being conducted. The target for filling the position is April 15, 2005.

The Department has closed recruitment for the Transportation Growth Management Planner position. Interviews will be scheduled for the week of March 7.

The Department has conducted interviews for the Measure 37 – Office Specialist position and has extended an offer to Tracy Edwards. Tracy will start in this new position on March 7.

The fourth recruitment for the Northeast Oregon Regional Representative is closed. The department received six applications, but at this writing has not yet had the opportunity to review them to see how many are qualified.

### **C. NEW STAFF**

Jan DeVito has accepted the position of Economic Development Planning Team Support Specialist. Jan is a graduate of Linfield College, who has pursued her personal interest in natural resources through employment at the Oregon departments of Water Resources, Agriculture, and Parks and Recreation. Her background also includes work for the Oregon Legislature and City of Lincoln City, as well as management support for private sector business.

Michael Morrissey and Darren Nichols are the Department's new Measure 37 planners. They will assist us in reviewing Measure 37 claims and in writing staff reports. Michael served for eight years as Senior Council Staff for the Metro Council in the areas of land use, transportation and regional parks. He has completed work in Portland State's PhD urban Studies program, and recently administered a year-long seminar on the regional economy for PSU's Institute for Portland Metropolitan Studies. Darren comes to DLCD from the City of Canby Planning Department where he has worked as Associate Planner for the past two years. Darren is completing his Master's Degree at PSU in June with specializations in Land Use and Real Estate Development. Prior to working as a planner, Darren worked as a general contractor in residential construction and remodeling.

### **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.
- Measure 37 Summit sponsored by First American Title (Medford, Feb. 11)
- Medford Rotary Club (Medford, Feb. 11)
- Shady Cove Local Officials (Medford, Feb. 11)

- Sen. Jason Atkinson and constituent (Jacksonville, Feb. 11)
- Salem Sunrise Rotary Club (Salem, Feb. 16).
- 120 Day Club (Portland, Feb, 16)
- Citizen Involvement Advisory Committee (Salem, Feb, 18).
- Rogue Valley Council of Governments (Medford, Feb. 23).
- Housing Symposium (Bend, March 7)

#### **E. TRAINING**

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

### **4. LEGISLATIVE UPDATES**

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

No further emergency board actions will occur in the 2003-05 biennia.

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

The department has been involved in activities related to the legislative session, including meetings with individual legislators, testimony to legislative committees, and meetings with legislative work groups.

The director meets regularly on legislative issues with state Agency Heads and the Natural Resources Cabinet. Bob Rindy meets regularly with legislative policy analysts from other Natural Resources Agencies. The director and Bob Rindy also meet regularly with the Commission's Legislative Subcommittee to review legislation and legislative strategies.

On February 24 and 28 the department had its Phase One budget hearings before the Natural Resources Subcommittee of the Joint Ways and Means Committee. The director presented testimony on the new direction and charge of the department and the Commission, and presented the department's progress report on its performance measures, and its budget priorities and 10 percent budget reduction lists. The department's budget presentation was well received by the subcommittee. As of the date of this report, no date has been set for Phase Two or any further budget hearings.

As of March 4, 2004, the department is tracking 170 bills and has prepared 116 fiscal impact statements.

**5. WORK GROUP UPDATES**

**A. PERIODIC REVIEW REFORM COMMITTEE**

This committee's work is covered under Agenda Item 7.

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

The work group has not met since the February Commission meeting.

**ATTACHMENTS**

- A. Periodic Review Activity
- B. Oregon Coastal Atlas: Year 2 Statistics Summary