

March 7, 2006

TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director
SUBJECT: **Agenda Item 15, March 22-24, 2006 LCDC Meeting**

DIRECTOR'S REPORT

1. INFORMATION UPDATES

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

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.

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.

Department participation in appeals

Between January 10 and February 21, 2006, the Department received notice of 18 appeals filed with LUBA.

LUBA opinions

Between January 10 and February 21, 2006, the Department received copies of 33 recently issued LUBA opinions. Of these, LUBA dismissed 14, affirmed 8, remanded 11, reversed 0, and transferred 0 petitions to circuit court.

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

- *Ploeg v. Tillamook County*, LUBA No. 2005-079: OAR 660-033-0130(4)(a)(C), (4)(a)(D) & (4)(c)(B);
- *Grahn v. City of Newberg*, LUBA No. 2005-080: Goal 9 and OAR 660-0009-0010(4);
- *Lovinger and Just v. Lane County*, LUBA No. 2005-98: OAR 660-006-0027(1);

- *Griffiths v. City of Corvallis*, LUBA No. 2005-122: OAR 660-012-0060(1) & (2)(d)
- *Sullivan v. Polk County*, LUBA No. 2005-137: OAR 660-004-0018(4);

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

Appellate court opinions

Between January 10 and February 21, 2006, the Department received copies of two recently issued opinions from the Court of Appeals. The Court affirmed one of these cases and dismissed the other case.

Of note:

- *Morsman v. City of Madras*, No. A129627 (LUBA No. 2003-170): ORS 222.170(1) “Triple-majority” annexation method is constitutional under both Oregon and federal law.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

As of March 6, 2006, nearly \$1.9 million out of a total \$2.1 million budget has been approved. Outstanding applications for about \$550,000 have not yet been approved or denied. Awarded funds have gone to the following grant classifications:

Columbia River Gorge	\$ 240,000
Dispute Resolution	\$ 20,000
Periodic Review	\$ 179,800
Technical Assistance	\$1,292,000

Intergovernmental Agreements

The department is working on an intergovernmental agreement with Oregon Progress Board to address customer service key performance measure requirements.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

The department has not worked on a large number of task submittals, but staff has spent a considerable number of hours in recent weeks on submittals from Salem and Polk County (see Attachment A).

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

A. PLANNERS' NETWORK MEETINGS

The department held a Planners' Network Meeting (Coastal Zone Management 101) for planners, planning commissioners, consultants and interested persons from the private

sector from the north coast (Tillamook and Clatsop Counties, including several cities) in Astoria on February 24. The event was attended by approximately 50 guests, as well as staff from the Coastal Program and Director Lane Shetterly. The program focused on coastal planning issues and roles and responsibilities of local governments and the state in planning.

DLCD hosted a Planners' Network meeting in Roseburg on March 2. Approximately thirty people (generally planners) from Rogue River, Eagle Point, Roseburg, Jacksonville, Medford, North Bend, Phoenix, Talent, Sutherlin and Douglas and Jackson Counties attended, as did planning commissioners from Roseburg. Jeff Griffin, the regional coordinator for the Economic Revitalization Team also attended. Director Shetterly, John Renz, Steven Santos, Gloria Gardiner, Constance Beaumont, Christine Valentine, Cliff Voliva, Rob Hallyburton and Ann Beier attended on behalf of the department.

Department staff provided an update on the Senate Bill 82 land use review effort, Measure 37 and the Commission's policy agenda for the 2005-07 biennium. City and county representatives then discussed the issues that they are faced with. Main issues related to growth pressures in the region and the process for amending urban growth boundaries, affordable housing, and making information on the planning program available to citizens, new staff and planning commissioners. The afternoon was spent in a roundtable discussion with the city and county representatives to get an overview of the planning issues they are dealing with and to provide an opportunity for them to share their successes with each other.

Planners' Network meetings are intended to provide local planners an opportunity to meet with department staff, to share ideas with each others and to discuss issues of mutual interest and concern. The department hopes to host additional meetings this spring.

B. TRANSPORTATION AND GROWTH MANAGEMENT

In collaboration with the City of Eugene's Public Works and Planning Departments, the Oregon Transportation and Growth Management (TGM) Program co-sponsored a public lecture on transportation and land use issues in Eugene on Feb. 8. Before a local audience of about 250 people, Gordon Price, director of The City Program at the University of British Columbia, discussed techniques used by Vancouver, B.C., to make transportation alternatives - especially walking, bicycling, and using transit - easier and more convenient. DLCD Director Lane Shetterly and Eugene Mayor Kitty Piercy co-emceed the event.

On Nov. 14 and 15, TGM co-sponsored public forums in Bend and Salem at which Tom Hylton, a Pulitzer Prize winning journalist and author of *Save Our Land, Save Our Towns*, spoke. Hylton discussed school siting issues, emphasizing the importance of building (or keeping) schools in the center of neighborhoods so students can bike or walk to school. He also described techniques for making towns more pedestrian-friendly. ODOT's Sustainability Program partnered with TGM on this event. DVDs of both the Gordon Price and Tom Hylton presentations are available on loan upon request (contact constancebeaumont@state.or.us).

TGM Outreach, Quick Response, and Code Assistance services continue to be available upon request to local governments (at no charge to the locality) for eligible projects. Through Outreach, TGM offers educational workshops introducing “best practices” in transportation and growth management to Oregon communities. Workshops recently took place in Lincoln City, Silverton, and Molalla. Through Quick Response, TGM makes urban design and transportation experts available on-site to address specific development challenges and improve access to local destinations. And through Code Assistance, TGM helps Oregon cities identify and remove barriers to smart growth in local zoning and development codes. For more information on these TGM services and for contact information, visit <http://www.oregon.gov/LCD/TGM/index.shtml> (see TGM Services on the Home Page). TGM is a partnership between DLCD and ODOT.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Theresa Kaminski has accepted the position of Office Specialist 2 with the department’s Operations Services Division and arrived on March 13, 2006. This position is a limited duration position through June 2007. Theresa brings excellent customer service skills to the position and the department.

Interviews for a new Willamette Valley Regional Representative took place March 8. A top candidate was identified. Reference checks have commenced at the time of this report. It is unlikely the position will be filled before the Commission meeting in March, but the department hopes there will be more to report at the Commission meeting.

B. DEPARTING STAFF

Emily Eng, a Measure 37 Compensation Planner left the department on March 17. Emily took a planning position with the City of Tigard.

C. RECRUITMENTS

The department has opened recruitment for its Mineral Aggregate position Natural Resources Specialist, and will soon open recruitments for an Administrative Specialist 2 position to support the Senate Bill 82 land use task force and a Measure 37 Compensation Planner to replace Emily Eng.

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 DLCDC and ODOT.
- Ongoing Legislator Brown Bag Lunch Forums
- Meetings with Bear Creek Valley RPS Policy Advisory Committees, Rogue Manor staff and Josephine County Planning Staff (Medford and Grants Pass, Feb. 7)
- Co-Emceed Gordon Price Lessons in Transportation and Land Use (Eugene, February 8)
- Spoke at 120-Day Club regarding Measure 37 (Portland, February 15)
- Portland City Club (Portland, February 16)
- Association of Oregon City Planning Directors (Salem, February 17)
- North Coast Planners' Network Meeting (Astoria, February 24)
- Planners Network Meeting (Roseburg, March 2)
- Korean Delegation (Salem, March 7)
- Tigard Rotary Club (March 9)
- Oregon Realtors Presentation (March 15)
- Ocean Policy Advisory Council (Newport, March 17)

E. TRAINING

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

Gail Churchill, Operations Services Division, is attending BA161 at Chemeketa Community College. This DAS sponsored class will provide Gail an opportunity to receive procurement certification and will assist the department in its continued efforts toward ensuring fiscal accountability.

Victoria Falconer, Randy Nelson, and Janet Silver continue their memberships in respective associations tied to their fields of expertise and assisting department efforts toward accountability.

4. LEGISLATIVE INTERIM UPDATE

The House Interim Committee on Land Use met on January 26th. The agenda included discussions and invited speakers regarding Measure 37 and The Task Force on Land Use Planning. Lane Shetterly testified for the department. The committee also engaged local government (LOC and AOC) representatives regarding the recent US Supreme Court Decision on eminent domain (the *Kelo* decision). Discussion included general condemnation decisions (for right of way, etc.) and condemnations that are reconveyed to private ownership or are for economic development purposes. Apparently legislative ideas are already circulating on these topics, and there was some discussion of such legislation.

There is no Interim Senate Committee exclusively designated for land use. However, the Interim Senate Committee on Natural Resources and Alternative Energy would likely be assigned interim land use issues. That committee has not met and no meetings are scheduled at this time.

5. LCDC POLICY AND RULEMAKING UPDATES

Only two policy workgroups are active at this time. All other policy projects on the Commission's Policy Agenda have been completed or are underway without the assistance of a formal workgroup. The Commission's current Policy Agenda for the 2005 – 07 Biennium is summarized at the following link:

http://www.oregon.gov/LCD/docs/lcdc/2005-07_lcdc_policy_agenda.pdf

Updates regarding ongoing policy work groups are provided below:

A. MINERAL AND AGGREGATE CONSENSUS GROUP

The Governor's Mineral and Aggregate/Farmland Consensus Group last met on December 15, 2005. That meeting was described in the January Director's Report. No meetings of this group have occurred since that meeting, and none are scheduled at this time. However, a subcommittee of the group is continuing to work toward consensus on aggregate and farmland issues.

B. UGB AMENDMENT PROCESS WORK GROUP

At its February meeting LCDC decided the department should continue working on the UGB process streamlining project to the extent allowed considering department staff constraints due to Measure 37, the Task Force, and other priorities. Commissioners expressed strong support for this rulemaking project, and directed the department to consider whether it could be divided into smaller bites to be pursued incrementally.

The UGB workgroup met March 9 to decide whether portions of the UGB rulemaking proposals previously discussed might be divided into two or more separate rulemaking projects so that some portion of the overall project might be brought forward for LCDC consideration in the near term. The workgroup meeting was chaired by Commissioner Worrix. The workgroup briefly discussed all the safe harbors previously explored by the group and/or included in the October 2004 draft UGB rules. The chair then polled workgroup members as to which of these might be less controversial, and therefore included in a “Phase 1” near-term rulemaking, and which were more controversial and thus would need longer-term consideration (Phase 2). The workgroup identified a number of proposed safe harbors that are anticipated to generate a low level of controversy but nevertheless would be important to local governments considering UGB amendments. The group agreed to consider placing these in a rule similar to the one proposed in 2004, but as a shorter, more abbreviated version that only includes the safe harbors and underlying “structure” of the UGB process.

The workgroup will meet again on April 13th to discuss these ideas further and to propose a rulemaking schedule.

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

The Task Force on Land Use Planning met for the first time on March 3, 2006. An update on this meeting is provided under Item 7 on the agenda. The agenda included welcoming remarks by Governor Ted Kulongoski, Senate President Peter Courtney and Troy Nichols, Chief of Staff for House Speaker Karen Minnis; self-introductions by task force members; the election of Mike Thorne as Chair and Coos County Commissioner Nikki Whitty as Vice-Chair; an overview of the history of the land use program presented by Director Lane Shetterly, Bob Rindy, Commissioner Hanley Jenkins and Steve Bryant, acting executive director for the League of Oregon Cities; an overview of the state’s economy by Dae Beck, Deputy State Economist; adoption of rules; and discussion among the task force members of future meetings and a work plan.

The Task Force has scheduled its second meeting for Monday, March 20, at 11:30 a.m., in Hearing Room 50 at the Oregon Capitol building.

Prior to the first meeting of the task force, the department created a webpage [http://www.oregon.gov/LCD/30_year_review.shtml] and e-mail list serve [http://listsmart.osl.state.or.us/mailman/listinfo/sb82_task_force] to promote public involvement in the task force process. The webpage currently provides a brief overview of SB 82, which created the Task Force, comments from the Governor (including his direction to the task force), names of the task force members, text of the Bill, and statements in support of the Bill. The list serve – which anyone can self-subscribe to free of charge – will send e-mail alerts about meeting dates, agendas and other pertinent updates.

ATTACHMENTS

A. Periodic Review Tasks Under Review