



Oregon

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TO: Land Conservation and Development Commission

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 9, April 26, 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 February 17 and April 5, 2007, the Department received notice of 49 appeals filed with LUBA, including DLCD's notice filed on February 16, 2007 regarding Yamhill County's approval of a 12-lot subdivision on 58.14 acres zoned Agriculture/Forestry Large Holding (AF-40) despite the death of the property owner who received the Measure 37 waiver (*DLCD v. Yamhill County*, LUBA No. 2007-046 (Youngman Family Trust)). The department withdrew its appeal in this case based on action by the Commission at its February meeting.

2) LUBA opinions

Between February 17 and April 5, 2007, the Department received copies of 46 recently issued LUBA opinions. Of these, LUBA dismissed 12, remanded 13, reversed 3, affirmed 18, and transferred 0 petitions to circuit court.

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

- OAR 660-004-0040: *Oregon Shores Conservation Coalition, et al v. Curry County*, LUBA Nos. 2006-218 & 2006-219, filed March 20, 2007 (Affirmed Curry County's creation of a new rural residential zone with a 2-acre minimum lot size).

- Goal 2 (Land Use Planning), Goal 3 (Agricultural Lands), Goal 4 (Forest Lands) and Goal 14 (Urbanization); OAR 660-004-0018, -0020 & -0022; OAR 660-014-0040: *VinCEP, et al v. Yamhill County*, LUBA No. 2006-157, filed March 21, 2007 (Remanded county approval of exceptions to allow a 50-room luxury hotel on 12 acres of a 65-acre parcel zoned EFU in the Red Hills of Dundee).
- Goal 2, Goal 3, OAR 660-004-0020 & -0022: *Rinhart v. Umatilla County*, LUBA No. 2006-128, filed February 20, 2007.
- Goal 3, Goal 4, Goal 11 (Public Facilities and Services), OAR 660-004-0018, -0020 & -0028: *Friends of Linn County v. Linn County*, LUBA No. 2006-202, filed March 6, 2007.

None of these decisions requires goal or administrative rule amendments.

3) Appellate court opinions

Between February 17 and April 5, 2007, the Department received copies of 13 recently issued opinions from the *Court of Appeals*. The Court affirmed 8 of LUBA's decisions and remanded 5.

- Of note: The Court of Appeals affirmed LUBA's decision upholding of Washington County's approval of a church and day care facility and denial of a day school on land zoned Agriculture-Forest, 5-acre minimum lot size (AF-5). The Court agreed with LUBA that the county did not violate the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) because its decision did not "impose a substantial burden on religious exercise."

4) Other filings and opinions of interest

- LUBA reversed Jackson County's approval of a 4-lot subdivision on a 23.15-acre parcel based on a county Measure 37 waiver, agreeing with DLCD that a state Measure 37 waiver was also required (*DLCD v. Jackson County*, LUBA No. 2006-233, filed March 27, 2007).
- Several individuals appealed Jackson County's approval of an application for aggregate extraction on 102 acres of EFU land based on a Measure 37 waiver (*Linda S. Ford, et al v. Jackson County*, LUBA No. 2007-048, filed February 20, 2007).
- Individuals appealed the Youngman Family Trust Yamhill County land use decision based on a Measure 37 waiver (*Katherine and Martyn Dunn v. Yamhill County*, LUBA No. 2007-050, filed February 20, 2007). (See Item 1.A.1), above.)
- Several individuals appealed Umatilla County's approval to partition EFU land in the North-South County Agriculture Plan Area into 40-acre parcels for vineyards and wine production ("go below"), based on an LCDC decision (*Thompson, et al v. Umatilla County*, LUBA No. 2007-052, filed February 28, 2007).
- Island and contiguous/consent annexations by The Dalles were appealed: *Hattenhauer Distributing Co. v. City of The Dalles*, LUBA No. 2007-056, filed March 6, 2007.

- ❑ Creswell's new development code based on the TGM Development Code for Small Cities was appealed (*Sorenson v. Creswell*, LUBA No. 2007-057, filed March 6, 2007).
- ❑ Eugene's FY 2008-2013 Capital Improvement Program was appealed (*Home Builders Association of Lane County, et al v. City of Eugene*, LUBA No. 2007-064, filed March 21, 2007).
- ❑ LUBA affirmed the City of Warrenton's approval of a zone change from R-10 to C-1 for a Home Depot Store and parking lot on land located on Highway

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The Grants Advisory Committee met during March. The primary topic was preparing a draft *2007-2009 Grants Allocation Plan*. No final decisions were reached, but a good discussion regarding use of funds has pointed the group in a direction not very different than the former allocation plan.

Federal Fund Coastal Management Grants

FY07 Federal Coastal Grant Allocation:

In early April the Department received notification of funding levels for the FY07 Coastal Zone Management Grant from the Office of Ocean and Coastal Resources Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA). Coastal staff are preparing a grant application based on a 5.5% reduction in Section 306/309 funds (\$116,000) and elimination of Section 310 funds (\$67,000). The total grant award to the Department is \$2,183,000, a decrease of \$183,000 from FY06. This reduction, coupled with a projected increase in costs (personnel, supplies and services, etc) of about \$131,000 results in a total "impact" to the grant budget of \$324,000. Coastal staff propose a grant budget to maintain planning assistance grants to local governments and all coastal staff functions but suspend the construction/acquisition grant program for local governments for FY07, reduce technical assistance grants, and reduce other internal Department costs.

Notification of the funding levels was delayed because Congress did not approve a budget for FY07 and instead passed a "continuing resolution" (CR) that allowed agencies to spend at FY06 authorized levels. Under the CR, OCRM and NOAA were required to develop a "spend plan" for approval by the Office of Management and Budget. That "spend plan" has been the subject of much discussion between the Administration, OMB, and the Coastal States Organization.

The 5.5% decrease in 306/309 funds reflects that fact that FY06 grants to coastal states (the "baseline" for the determining FY07 levels under the CR) were boosted by de-obligated funds returned to NOAA by states from FY05. Thus, the FY06 grant to Oregon (and all states) was about 5.5% higher than the actual level appropriate by Congress. Similar de-obligated funds were retained by OMB and are not available in FY07. The elimination of the 310 Coastal Nonpoint Pollution Control Program funds is a result of a determination by

the OMB that this program is an “earmark” and therefore cannot be funded under the CR. Coastal states, including Oregon, strongly disagree with this determination, and have communicated this disagreement with the Congress and NOAA, but there is little recourse for this fiscal year.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Periodic review task activity has continued to be very light. The current tasks under review include:

JURISDICTION	TASK NO.	DESCRIPTION	DATE RECEIVED
Lane Co	5 & 7	Metro Goal 5	12/20/06
Newberg		UGB expansion (not PR)	3/22/07

Recent department decisions include the following. All were approved.

JURISDICTION	TASK NO.	DESCRIPTION	DECISION DATE
Canby	3.1	Public facilities plan	3/14/07
Coburg	6	Housekeeping	3/26/07
Coburg	7	Land Division and Development Code Update	3/26/07
Warrenton	5	Goal 5 riparian	4/11/07

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIAIVES

A. OUTREACH & EDUCATION

E-Mail List Serves

Four years ago the department offered two free e-mail list serves (LCDC Agenda and Land Use News), which had a total of about 250 subscribers. As of April 10, the department offered five free e-mail list serves for 2,982 subscribers. Here is the breakdown:

<u>E-Mail List Serve</u>	<u>Subscribers</u>	<u>Administrator</u>
LCDC Agenda	784	Cliff Voliva
Natural Hazards News	637	Mark Darienzo
Land Use News	635	Cliff Voliva
The Big Look	590	Cliff Voliva
DLCD Newsletter	336	Cliff Voliva
TOTAL	2,982	

In 2007 alone, 114 subscribers have been added to these list serves.

CUTTING COSTS: Three years ago, the department mailed more than 600 LCDC agendas at a cost of about \$200 per meeting. The department now mails about 30 paper agendas at a cost of about \$10 per meeting.

Coastal Local Planners Meetings

The Coastal Services Division held its annual spring regional meetings with coastal planners. About 20 city and county planners, state agency staff, and Extension Sea Grant staff met with DLCD coastal staff in Pacific City on April 6. About 25 local, state, and Sea Grant staff are scheduled to meet in Bandon on April 13.

B. TRANSPORTATION AND GROWTH MANAGEMENT (TGM)

Applications for TGM Grants

On March 9, the TGM program received 67 applications from local governments for grants for the 2007-2009 Biennium. The grants are used for a variety of planning projects, including preparation of transportation system plans, local street planning, pedestrian-friendly streetscapes, bike and pedestrian plans, main street and downtown plans, safe routes to schools, and other projects that promote compact mixed use, pedestrian friendly development to increase transportation options and reduce reliance on state highways for local travel needs. A summary of the applications received is included (**Attachment A**).

The amount requested totals \$6.5 million. \$4.9 million is expected to be available for grant awards. ODOT and DLCD TGM staff are currently reviewing and scoring the applications. Grant award decisions are scheduled to be announced in early May. All awards are tentative, pending legislative approval of the ODOT and DLCD budgets. Grant award recommendations will be reviewed by ODOT and DLCD management. TGM staff will also review proposed award recommendations with the TGM Advisory Committee at their April 27 meeting.

As noted in the March director's report, the schedule for review and approval of TGM grants 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 Technical Services

Besides making grants, TGM provides technical services to local governments at no charge to the localities. Such services include Outreach, Quick Response, and Code Assistance:

- *Outreach:* TGM Outreach workshops are scheduled for April 23 in Florence, May 15 in Roseburg, and May 29 in Garibaldi. Each of these workshops will address transportation, urban design, and land use concepts aimed at improving local mobility while strengthening the economic vitality of the town centers. Workshops in Union

and Monmouth are also under consideration. In addition, TGM recently sponsored lectures by UCLA Professor Donald Shoup, author of *The High Cost of Free Parking*, in Eugene and Salem. DVDs on the Shoup presentation are available (call 503.373.0050, ext. 277).

- *Quick Response*: TGM Quick Response planning projects are currently taking place in La Grande-Island City (neighborhood plans for an area recently brought into the UGB); Eugene (redevelopment plans for an area near Bus Rapid Transit); Salem (redevelopment near the State Fairgrounds); Tillamook (circulation around the log mill); and Ontario (school siting issues).
- *Code Assistance*: TGM Code Assistance projects are wrapping up in these cities: Sisters, Lincoln City, Happy Valley, Mill City, Newberg, Irrigon, Madras, Merrill, Veneta, Sandy and Coquille. Through Code Assistance, TGM helps local governments revise their local codes so that they support more livable and transportation-efficient development.

TGM Biennial Report

The 2005-07 Biennial Report for TGM was recently completed. A copy of this report has been included (**Attachment B**). To learn more about the TGM services, visit www.oregon.gov/LCD/TGM.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Rob Hallyburton has accepted the position of the department's Planning Services Division Manager of which he had been serving as the interim manager of since September 2006.

Christine Shirley, a limited duration GIS specialist in the floodplain/hazard program, has accepted an offer to become the new team leader for the unit, replacing Christine Valentine. Her appointment will begin April 16, 2007. The department will initiate a recruitment to fill the GIS position.

Marc Zillmer has joined our Measure 37 team as an OS1 assisting with obtaining signature and mailings. Marc joins us from DAS where he worked assisting in their Measure 37 division.

B. RECRUITMENTS

The department is finalizing its recruitment for an Information Specialist 4 (ISS 4) with an anticipated hire date in early May 2007.

The department is in the process for recruiting for the Community Services Division Manager, which has been temporarily filled by Darren Nichols since October 2006.

C. DEPARTING EMPLOYEES

Barbara Bull, a Measure 37 claims writer, has left to work for Benton County Planning Department.

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
- The director and Coastal Program manager met in Eugene with David Kennedy, the director of the Office of Ocean and Coastal Resources Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA), and Mike Graybill, manager of the South Slough National Estuarine Research Reserve on Coos Bay. As new OCRM director, Kennedy was on a personal listening tour to familiarize himself with state coastal management programs.
- Oregon Municipal Financial Officers Conference (March 14, Eugene)
- Task Force on Land Use Planning (March 15 & 16, Hood River)
- Princeton University Woodrow Wilson School of Land Use Planning Class (March 20, Salem)
- Meeting with National Oceanic & Atmosphere Administration (March 21, Eugene)
- Willamette University (April 5, Salem)
- Salem Audubon Society (April 5, Salem)

4. LEGISLATIVE UPDATE

The department is tracking about 135 bills related to land use or to department programs (see **Attachment C** for a detailed report on these bills). The director and staff are engaged in ongoing contacts with legislators and legislative staff. The department has provided fiscal impact estimates for about 100 additional bills that do not relate to land use or department activities related to the land use program (i.e., priority 4 or 5).

As reported last month, the department's legislative concepts on industrial reserves (SB 186) and affordable housing (SB 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, but also support by various interests and agencies. However, the chair of the committee (Sen. Avakian) has indicated that he does not intend to schedule further legislative action on these bills.

The department's legislative concept on judicial review of rules (SB 140) has not had a hearing, at the request of the department. Rather, the department supported a similar bill proposed by the Department of Justice, HB 2123. That bill had a hearing in the House Judiciary committee, and also received considerable opposition. The chair of the committee has informed the department he does not intend to take further action on this bill. The department may be able to pass its own bill in the senate, but very likely it would end up in the House Judiciary committee and would be blocked in the same manner as HB 2123. As such, DLCD does not intend to pursue SB 140.

The department has worked with legislators and the governor's office on a number of bills, either in support or to express concerns, even though the department has not provided public testimony on these bills. The department is a member of a work group to consider and reach consensus on twelve bills involving annexation. The department has provided oral and written testimony on several bills that affect the program, including:

- SB 335, which would allow UGBs to include a land supply less than 20 years – DLCD expressed concerns with this bill and it has not moved.
- HB 2051, which would allow the Metro UGB to be reevaluated on a seven year cycle, rather than a five year cycle – DCD supported this bill and it is expected to pass out of committee in the near future.
- 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. DLCD opposed this. The director and other staff subsequently met with parties in Hood River to provide alternatives, and reported to the chair of the house committee. At this point, the chair plans to take no further action on this bill.
- HB 2723, regarding illegal lots previously created without knowledge of current owner. Department supported amended bill, which has passed to House floor.
- HB 2960, which requires LCDC to determine whether Forest Park is an area of Critical State Concern. The department indicated it is neutral on the proposal, which has a substantial fiscal impact on DLCD, if passed.

- HB 2992A, which allows property owners to retain farm dwelling rights when transferring substantial portion of EFU property for open space protection by not-for-profit land conservation organization. Department supported amended bill, which passed to House floor.
- HB 3337, which will separate the Eugene and Springfield combined UGB, and will require these cities to evaluate buildable land supply within two years. Department supported two-year evaluation as a joint exercise, but urged the boundary not be divided into two boundaries.
- HB 3436, which will codify LCDC's recent UGB population forecast safe harbors, but will allow city to use its own forecast if the county does not agree within six months. Department opposed due to technical problems with bill, and has worked with sponsors on amendments. Work session scheduled.
- SB 1011, which is Metro's bill authorizing counties and metropolitan service districts to create process to designate rural reserves, and modifies process for designating urban reserves. The department supported the general bill concepts, but indicated concern with the required LCDC rulemaking timelines.

The director has been involved in legislative discussions on legislation amending Measure 37, and has testified on several occasions before the Joint Land Use Fairness Committee.

Three members of the Commission's Legislative Subcommittee (Chair VanLandingham, Commissioner Worrix, and Commissioner Derby) met on April 11 to provide advice to the department regarding land use legislation.

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

No rulemaking has occurred since the last Director's report. Some legislation under consideration and that is moving will require rulemaking. Specifically, SB 1011, Metro's proposal regarding urban and rural reserves, would require the Commission to adopt new rules to implement the bill by January 2008.

B. 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 responded to a legislatively adopted budget note attached to each agency's budget. Legislation recommended by this group (HB 2251) has passed the House 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 agreement on a Memorandum of Understanding (MOA) among agencies that review mining proposals. However, the final wording of the MOA is still under review by legal counsel (Jas Adams). 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 Hood River on March 15-16, 2007, since the last LCDC meeting.

At the March meeting, the consultant team (Civic Results, from Denver, Colorado; Robert Grow Consulting, from Salt Lake City, Utah; and Fregonese and Associates from Portland, Oregon) led the task force through a discussion about whether the existing goals were goals, strategies, or actions. They also discussed a comparison of Oregon’s planning program with Colorado, Maryland, and Washington. Additional topics included a roundtable discussion with local elected officials, staff, and citizens, and, a discussion of the basic elements of an outreach strategy for the task force. In addition, the Task Force heard about industrial land studies and activities from Margaret Kirkpatrick, LCDC, Larry Kszionzyk, DLCD staff, and Eric Anderson, Regional Coordinator Willamette Valley Mid Coast Region, Economic Revitalization Team.

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 April 20 – 21, 2007 in Salem, Oregon.

ATTACHMENTS

- A. TGM Grant Applications Summary
- B. TGM 2005-2007 Biennial Report
- C. Legislative Tracking List April 13, 2007