

July 7, 2004

TO: Land Conservation and Development Commission
July 15-16, 2004 LCDC Meeting

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 7, Director's Report**

1. INFORMATION UPDATES

A. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

a. General Fund Grants

Technical Assistance and Periodic Review Grants

The department has continued to work with local jurisdictions to determine final scopes of work for second round grants and to prepare agreements. Agreements have been offered to Hood River County and Lebanon for periodic review grants and several more agreements will be mailed in the coming days and weeks.

b. Intergovernmental Agreements

The department has entered into two new Intergovernmental Agreements. The department will provide \$1,000 to the Lane Council of Governments to support the Oregon Planning Institute, an annual conference for Oregon planners, planning commissioners and others. The department has historically supported this effort to educate the planning community and is pleased to continue this partnership. Several staff will participate on panels at the conference, which will be held September 13-14 in Eugene.

The department has also entered into an agreement with the Natural Hazards Workshop at the University of Oregon to produce a guidebook for local governments on the relationship between floodplain management and protection of riparian areas. The department is providing \$10,000 for this guide using funds from the Federal Emergency Management Agency. The project is expected to be completed in Spring 2005.

c. Requests for Proposals

The Transportation Growth Management program is completing a request for proposals for contractors to support the Code Assistance Program. This program is managed by Gloria

Gardiner and provides direct assistance to local governments to help them update their land use codes.

The Economic Development Planning Team is completing a request for proposals for a contractor to develop a guide for local governments to help them identify industrial, commercial and other employment lands. Funds for this project were provided by 2003 House Bill 2011.

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.

a. Participation [ORS 197.090(2)]

Between May 25, 2004 and June 30, 2004, the department received notice of eleven (11) appeals that were filed with LUBA. The department did not file any petitions.

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

LUBA Opinions

Between May 25, 2004 and June 30, 2004, the department received twenty-four (24) LUBA opinions. Of these, LUBA dismissed seven (7), affirmed seven (7), remanded nine (9), and reversed one (1) and did not transfer any petitions to circuit court. Four (4) decisions involved the application or interpretation of a statewide planning goal or rule provision and this opinion does not require an amendment to a goal or an administrative rule.

One of the LUBA decisions that involved the application of a statewide planning goal was in *Concerned Citizens of Malheur County v. Malheur County*, LUBA No. 2004-008, decided June 30, 2004, in which LUBA affirmed Malheur County's approval of an exception to statewide goal 3 to allow a bio-refinery and agricultural processing plant on land zoned for exclusive farm use (EFU). As approved by the Commission, the Department filed a state agency brief in support of Malheur County's approval.

The Director will provide a summary and explanation of the significance of this decision to the Commission at its July meeting.

Court Opinions

The department received four (4) opinions from the Oregon Court of Appeals during this time period. The Court dismissed one (1), affirmed two (2) without opinion and reversed and remanded one (1).

Of particular interest, the Court of Appeals issued its decision in the case *Jaqua v. City of Springfield*, 193 Or App (Advance Sheet # 14 A123624), decided June 9, 2004 regarding the application of the Transportation Planning Rule

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

A summary of recent periodic review activity in the department is provided in Attachment A. Activity since the last Commission update has continued to be slow, both in terms of submittals and approvals.

An important milestone occurred on June 30, 2004. Senate Bill 920 gave local jurisdictions until that date to submit tasks that became optional under the bill. This included all tasks for cities smaller than 10,000 population and tasks unrelated to economic development, housing, public facilities and services, transportation, or urbanization for counties and larger cities. Comprehensive plans can still be amended as specified in the work program, but they will now be submitted as post-acknowledgment plan amendments rather than periodic review tasks.

Certain jurisdictions were required by the Commission to submit one or more otherwise optional tasks, either on their own motion (Hood River, Gold Beach and Hood River County) or at the request of a petitioner (Tillamook County, Eugene/Springfield Metro, and Josephine County). Additionally, a few jurisdictions requested permission from the Commission to submit optional tasks after June 30, which the Commission granted; these included Coburg, Wasco County, and Prineville.

Update on Portland Metro Periodic Review Task:

On June 24, Metro councilors made a final determination on which lands to bring inside the urban growth boundary (UGB) for industrial uses to complete the agency's 2002 periodic review. In December 2002 Metro completed the majority of its final task, Task 2, when 18,638 acres were added to the Urban Growth Boundary for future residential and non-residential purposes. The Commission in July 2003 acknowledged this action.

The 2002 decision brought in more than 2,300 acres for industrial purposes, but fell short of a projected additional need of roughly 2,700 gross acres. This shortfall was the subject of a partial remand from the Commission, also last July.

This year's decision added a total of 1,940 gross acres. The difference is due to a recalculation of projected need by including land already inside the UGB but not yet zoned as industrial, and by recalculating the efficiency with which land within the boundary is

redeveloped for industrial use. Of 1,940 gross acres, 1,047 net acres are considered suitable for development. The remaining 893 acres contain existing development, natural resources or street right-of-way.

The department will schedule Metro's final submittal of Task 2 with the Commission for a hearing later this year.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. PLANNERS NETWORK MEETINGS

The department held the third planners network meeting this biennium on June 17, in Lebanon with city and county planners from Benton, Linn and Lane counties. Although the turnout was relatively small, there was very lively discussion with planners from throughout the region including representatives of large cities, small towns and Linn County. The planners welcomed the opportunity to talk to Salem-based staff. We hope to schedule additional network meetings this fall.

B. INTERIM PERIODIC REVIEW REFORM COMMITTEE

This committee met for fourth time in June. The meeting agenda included discussion of what other states require and the positives and negatives in Oregon's periodic review (including summaries of surveys from cities and counties). The committee will continue to meet monthly throughout the year.

C. AGGREGATE MINING/FARMLAND CONSENSUS GROUP

The group had its first meeting on June 21, convened by the Governor's office and organized by Greg Wolf and Elaine Hallmark of the Oregon Consensus Program at PSU. The purpose of this Consensus Process is to develop a recommended policy for the state in regard to siting and regulating aggregate mines on farmlands, within the context of the long-term demand for aggregate and the availability of other aggregate resources. Decisions on policy recommendations will be reached by consensus, and will likely be forwarded to the legislature. Consensus means that all members of the Consensus Group are willing to go along with the recommendation or not oppose the implementation of the recommendation. The mediation will terminate when the members and mediation team agree that consensus has been reached or when they agree that further efforts would not be productive.

The Institute for Natural Resources at Oregon State University will work with the mediation team to gather, prepare and present data and technical analysis to inform and support the Consensus Process. Gail Achterman, Dr. Kenneth Williamson and Todd Jarvis will provide these services under an interagency agreement funded by ODOT. They will recruit other university scientists to address specific issues, as needed.

The consensus group includes:

OCAPA: Rich Angstrom
OCAPA: Jim Records
Farm Bureau: Dave Dillon/Don Schellenberg
Farm Bureau: Bruce Chapin/Barry Bushue
Dept. of Agriculture: Katy Coba/Jim Johnson
DOGAMI: Vicki McConnell/Gary Lynch
DLCD: Lane Shetterly/Bob Rindy
ODOT: Bruce Warner/Douglas Tindall
1000 Friends of Oregon: Bob Stacey/Caroline MacLaren
AOC: Actg. Exec. Dir./Arthur Schlack
League of Oregon Cities: Ken Strobeck/Linda Ludwig
League of Women Voters: Marjorie Easley/Liz Frenkel
Convener: Governor's Office, Jim Brown

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. RECRUITMENTS

The department is recruiting for several positions:

- Coastal Program Administrative Assistant (AS-2) closes Monday June 14. This position will assist the Division Manager in a variety of duties but will concentrate on assistance in tracking state agency permit reviews, federal consistency reviews, and submittal of program changes to the federal Office of Ocean and Coastal Resources Management.
- Coastal Program Policy Analyst NRS-4 closes June 29 and is a major program recruitment occasioned by the retirement of Don Oswald.
- The department is finalizing recruitment for the IS 6 position in the Operations Services Division. Anticipated hire date in the near future.
- The department will be holding interviews for the NRS-4, urban specialist position in early July.

The Economic Development Team Leader and Northeast Oregon Regional representative positions remain unfilled. The department continues to explore strategies to fill these important positions.

As reported to the commission at its last meeting, the Governor's office has elected not to continue to pursue funding for a deputy director position for the remainder of this interim. As such, no request for funding or authorization will be presented to the Emergency Board for this interim. The Governor's office has indicated the Governor's continued support for

a proposal in the next legislative session to establish and fund a permanent deputy director position for the department.

B. NEW STAFF

Randall Nelson has been selected as Accountant I for the Operations Services Division. Randall has extensive background in Oregon governmental accounting, our Statewide Financial Management System (SFMS), report writing (BRIO), accounts payable, receivables and deposits.

Diana Foster has been selected as Fiscal Analyst 2 for the Operations Services Division. Diana has extensive state budget experience including budget development and budget execution functions such as Personnel Inventory Control System (PICS) preparation and input, essential and policy package preparation, budget document preparation, forecasting and tracking expenditures, and quarter allotment execution.

Geoffrey Crook has accepted a position as a Planner 3 – Willamette Valley Regional Representative in the Community Services Division. Geoff has worked as a planner for the Lane Council of Governments and is leaving a position at the Tahoe Regional Planning Agency to become the department's representative for urban jurisdictions in the mid-Willamette Valley.

C. 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.
- Continuation of monthly lunch open forums for legislators (and their constituents). The lunch forum on June 7 was attended by 3 legislators, and the forum on July 6 was also attended by 3 legislators.
- Ongoing senior staff meetings with the Department of Transportation, to help improve coordination and communication between DLCD and ODOT.
- Speaking engagement, Western Oregon University Commencement (June 12).
- Media visits including the *Oregonian* (Portland) editorial board; the *Klamath Falls Herald and Tribune* (Klamath Falls), the *Coos Bay World* and the *Curry County Coastal Pilot* (Brookings/ Gold Beach).

- Attendance at Planners Network meeting in Lebanon (June 17).
- Attendance at CIAC meeting (June 18).
- Presentation of awards at Philomath Classic Car Show (June 19).
- Attendance of the Governor's Aggregate Mining/Farmland Consensus Group (June 23).
- Meetings, including listening tours with field staff to various regions of the state: Central Coast (June 16) with Laren Woolley and Dave Perry: city officials and planners in Yachats (with a walking tour of the oceanfront), Waldport, Newport, Depoe Bay, Lincoln City, and county commissioners of Lincoln County. Sutherlin City staff (June 22). South Coast (July 1-2), with Dave Perry: Round-table forum with Coos County Commissioners and officials from cities of Coos Bay, North Bend, Coquille, Bandon and ports of Coos Bay and Bandon; meeting with Harbor Bench Group in Brookings. City officials in Brookings and Gold Beach (including Port Orford City Administrator), and Curry County Commissioners (including Rep. Wayne Krieger). North Coast (July 8-9) with Laren Woolley: Clatsop County officials, CREST (Columbia River Estuary Study Team) at the Astor Column, city officials from Astoria and Warrenton over lunch, cities of Seaside and Gearhart, and City of Cannon Beach, with appropriate site visits to various beaches along the way, officials from City of Rockaway Beach, joint meeting of cities of Garibaldi, Nehalem, Wheeler, Manzanita, Bay City, lunch with the City of Tillamook, Tillamook County Commissioners, and a side trip to Netarts and Oceanside, Pacific City and Neskowin.

D. TRAINING

The department is evaluating additional all-staff training opportunities.

4. LEGISLATIVE UPDATES

A. JOINT INTERIM COMMITTEE ON TRANSPORTATION, TRADE AND ECONOMIC DEVELOPMENT

A workgroup of the Joint Interim Committee on Transportation, Trade and Economic Development met at the State Capitol on June 29, 2004. The department was represented at the meeting by Lane Shetterly, Ann Beier and Eric Jacobson. Also in attendance from the department was Steve Oulman. Eric Jacobson presented an overview of the Transportation Planning Rule (TPR). Discussion in the workgroup included general and specific concerns about the TPR and the impact of the recent *Jaqua* decision from the Court of Appeals. Sen. Metsger, co-chair of the committee, indicated the committee's interest in pursuing a review of the TPR. Bruce Warner, ODOT director, and Director Shetterly informed the workgroup that ODOT and DLCD were beginning their own review of the TPR, and discussed the

outline of the review. Sen. Metsger indicated he would be interested in seeing the results of the joint department review before initiating direct legislative intervention.

B. HOUSE INTERIM COMMITTEE ON LAND USE REVIEW

The House Interim Committee on Land Use Review met in Hermiston on June 14. The department was represented at the meeting by Jon Jinings. The committee received testimony on the issues of industrial and commercial development on rural exception lands under the *Curry County* case, particularly as those issues relate to Hermiston and Umatilla County. Mr. Jinings testified and presented a letter to committee chair, Rep. Bill Garrard from Director Shetterly. See Attachment B.

C. EMERGENCY BOARD

The department has submitted a letter to House and Senate leadership requesting retroactive authorization at the September Emergency Board meeting for the department to receive additional grant funds from the Federal Emergency Management Administration (FEMA). The request will be made retroactive to the grant application submittal due to the short notice and timing for submitting proposals. The department became aware of the availability of this grant opportunity on June 9, 2004 in a phone call from Mark Carey, FEMA Region Ten Flood Insurance Program Manager. This was well after the May 28th due date for June 2004 Emergency Board requests. The department received the actual grant application on June 23, 2004 with an application deadline of July 9, 2004.

FEMA has requested the department submit a proposal for \$120,000 in federal funds to allow the state to begin work on a Flood Map Modernization program. This federal funding will be available to the state through a new Cooperative agreement and requires no state or local funding match. The department has 2 years to use the funds. Federal funds will be used to increase local involvement in the flood mapping process. These funds will also support technical work needed to put the maps into a more user friendly, digital format. The department will work with local governments and other state agencies to implement this program.

5. BACKGROUND INFORMATION FOR UPCOMING EFFORTS AND ACTIONS BEFORE THE COMMISSION

A. REVIEW WORK TASK STATUS FOR SPECIFIC JURISDICTIONS LIKELY TO BE ON THE JULY LCDC AGENDA

Although the situation may change as DLCD staff continues to work with the staffs of local jurisdictions, the following jurisdiction is likely to come before the Commission in September/October 2004:

City of Bandon. Continuation of appeal of a department approval of a task relating to Goal 5 scenic resources.

City of Warrenton. Appeal of a department approval of a task relating to Goal 5 wetland resources.

Hood River County. Appeal of a department approval of a task relating to Goal 5 riparian corridors.

City of Newberg. Appeal of a department remand of an expansion of the urban growth boundary.

Tillamook County. Consideration of sanctions for an overdue task: Task 10, relating to Goal 5 (riparian corridors).

City of Hood River. Consideration of sanctions for an overdue task: Task 2, relating to Goal 5 (wetlands and riparian corridors).

B. RULEMAKING

Goal 11

The Commission's Policy Initiatives include updating Goal 11 to address sewer service in rural areas. The effort has not yet begun, pending background work to be completed by the Oregon Special Districts Association.

Interim Periodic Review Reform Committee

See discussion of Interim Periodic Review Reform Committee, Item 2C, above.

UGB Amendment Rules

The department has continued to move forward with this project. Staff and the Director met with the Chair of the workgroup, Marilyn Worrix, and completed the process of appointing workgroup members. The list of workgroup members is provided below. The first workgroup meeting is scheduled for July 8th, from 1:00 to 5:00 in the Local Government Center, in Salem. Additional workgroup meetings will be scheduled at that time. The workgroup members are:

1. LCDC (Chair of workgroup): Marilyn Worrix
2. Cities: Damian Syrnyk, City of Bend
3. Cities: Jim Huber, City of Grants Pass
4. Small Cities: Anita Yap, City of Coburg
5. Counties: Art Schlack, AOC
6. Counties: Brent Curtis, Washington County
7. Metro: Dick Benner
8. Special Districts Association: Burton Weast
9. Oregon Chapter of the American Planning Association: Chris Crean
10. Oregon Farm Bureau Federation: Don Schellenberg

11. 1000 Friends of Oregon: Mary Kyle McCurdy/Bob Stacey
12. Oregon Homebuilders Association: Jon Chandler
13. Land Use Consultant: Greg Winterowd
14. Economic Consultant: Terry Moore
15. Smart Growth Advocate: Glen Bolen/Paul Morris
16. Commercial Realtors: Mark Whitlow/Bob LeFeber
17. Industrial Developers: Dick Sheehy
18. Oregon Association of Realtors: Harlan Levy
19. CIAC: Pat Zimmerman

State Agencies:

20. OHCD: Richard Bjelland
21. ODOT: Craig Greenleaf
22. ODA: Jim Johnson
23. OECDD: Phil Johnson

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