



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 24, 2007



TO: Land Conservation and Development Commission
FROM: Lane Shetterly, Director *LS*
SUBJECT: **Agenda Item 10, August 9, 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 May 25 and July 19, 2007, the Department received notice of 38 appeals filed with LUBA.

2) LUBA opinions

Between May 25 and July 19, 2007, the Department received copies of 31 recently issued LUBA opinions. Of these, LUBA dismissed 12, remanded nine, reversed four affirmed four, invalidated two, and transferred zero petitions to circuit court.

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

- *Gordon v. Polk County*, LUBA No. 2007-047, filed 6-5-07: OAR 660-004-0018 and 0028, Goal 5
- *J. T. Smith Companies, et al v. City of West Linn*, LUBA No. 2006-123, filed June 5, 2007: Goal 10 and OAR 660, Division 7 (Metropolitan Housing Rule)
- *Wetherell v. Douglas County*, LUBA No. 2006-242, filed July 3, 2007: OAR 660-004-0022
- *Mark Herring, et al v. Lane County*, LUBA No. 2006-203: OAR 660-006-0005, -0010, and -0027.

- *Sorenson v. City of Creswell*, LUBA No. 2007-057, filed June 21, 2007: Goal 9. LUBA remanded Creswell's new land development ordinance because of provisions inconsistent with its comprehensive plan.
- *Thompson, et al v. Umatilla County*, LUBA No. 2007-052, filed July 5, 2007: OAR 660-033-0100. In the Umatilla County "go below" case, LUBA affirmed the county's approval of a 40-acre minimum parcel size in the EFU zone under ORS 215.780(2).

None of these decisions requires goal or administrative rule amendments.

3) Appellate court opinions

Between May 25 and July 19, 2007, the Department received copies of eight recently issued opinions from the Court of Appeals. The Court affirmed seven and reversed one of LUBA's decisions.

Between May 25 and July 19, 2007, the Department received a copy of one recently issued opinion from the Supreme Court, in which it affirmed the Court of Appeals and remanded to LUBA.

4) Other notices and opinions of interest

- Columbia County's denial of a Measure 37 waiver was appealed: *Susan Wold, et al v. Columbia County*, LUBA No. 2007-108, filed June 7, 2007.
- LUBA reversed Jackson County's approval of a preliminary development plan for the Clear Springs Destination Resort. *Foland v. Jackson County*, LUBA Nos. 2006-206 and 2006-211, filed May 21, 2007.
- Island annexation: *Costco Wholesale Corporation, et al v. City of Beaverton*, LUBA Nos. 2005-044, 2005-046, 2005-050, 2005-052: LUBA affirmed the city's annexation of only a portion of an "island" under the ORS 222.750 annexation process that does not require owner consent (the city excluded the portion of the island that belonged to Nike). The Court of Appeals reversed because the territory annexed was not completely "surrounded by" the city, or the city and a water body. The Supreme Court affirmed the Court of Appeals and reversed LUBA.
- LUBA invalidated Portland's ordinance imposing a moratorium on new commercial and industrial development on Hayden Island. *Thunderbird Hotels, LLC v. City of Portland*, LUBA No. 3006-187, filed June 22, 2007.
- LUBA dismissed an appeal of a permit approval for an aggregate mine pursuant to a Measure 37 waiver. *Linda Ford, et al v. Jackson County*, LUBA No. 2007-048, filed June 14, 2007.
- Grants Pass's 1.2-acre UGB expansion was appealed. *Sommer v. City of Grants Pass*, LUBA No. 2007-171, filed July 6, 2007.
- Two appeals of annexations by Florence: *Citizens Against Annexation, et al v. City of Florence*, LUBA No. 2007-129, and *Todd, et al v. City of Florence*, LUBA No. 2007-130, both filed July 10, 2007.

- The Court of Appeals affirmed LUBA's decision that Medford was required to send 45-day notice to DLCDC for a proposed zoning map amendment. *Northeast Medford Neighborhood Coalition, et al v. City of Medford*, LUBA No. 2006-132, filed July 11, 2007.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The 2005-07 biennial grant cycle closed at the end of June, and all grant close-outs are required to be submitted to the department by the end of July. Grant managers and the grants administrative specialist are busy reviewing final grant products and payment requests.

Applications for the 2007-09 biennium are scheduled to be available around the end of August.

Federal Fund Coastal Management Grants

The department received a new year of funding which started with the beginning of the new fiscal year on July 1, 2007. The new grant from NOAA was \$2,183,000. Of that amount, the department is issuing new technical assistance grants as follows:

Curry County \$25,000

Phase 2 of the Comprehensive Development Plan for Harbor Hills and Harbor Bench Areas. Tasks include: developing growth assumptions for use in all public facility plans, updating the City of Brookings and Curry County Urban Growth Area Joint Management Agreement, and developing urban service agreements between the City, County and urban service providers.

City of Florence \$7,000

The City will contract with LCOG to complete a housing needs assessment using the state model as designed by Richard Bjelland.

City of Port Orford \$3,000

This support will allow the City's contract planner to be involved in the TGM code assessment and amendment process. The participation of the contract planner will provide for consistency and stability as modifications are proposed and implemented.

Astoria \$35,000

"Balancing Character, Access and Development in Astoria's Riverfront Land Use and Development Plan" – this will be phase one of a four phase plan to convene a community visioning process to guide future use, preservation and development of private and public lands adjacent and proximate to the Columbia River. The over arching goal of this process is to balance public and private benefit of access to the riverfront.

Additionally, the new funding has allowed us to continue planning assistance grants to 37 cities and counties on the coast. The total amount for these grants remains at \$340,000.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

There has been very little activity since the last director's report, with one task submitted, from Prineville, and no periodic review task decisions.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

Transportation and Growth Management (TGM)

With the close of the 2005-07 biennium, TGM is in the process of obtaining consultants to serve local governments through the program's Outreach, Code Assistance, and Quick Response services. A request for proposals (RFP) for Quick Response was issued in May with responses received in June. Quick Response will soon negotiate final contracts with the firms selected. RFP's for Code Assistance and Outreach are expected to go out by early August.

During the 05-07 biennium, TGM accomplished the following through the Outreach, Quick Response, and Code Assistance programs. Outreach supported 25 workshops and presentations in cities throughout the state. The outreach forums educate communities about innovative transportation, land use, and urban design concepts that expand transportation choices while boosting local economic vitality. In addition, Outreach worked with the Oregon School Boards Association on a publication on school siting practices with a view to encouraging practices that give more students the option of walking or biking to school. The overall Outreach budget was \$300,000. Code Assistance completed 14 projects in 16 communities to evaluate or update land use regulations consistent with smart development objectives. The assistance totaled \$414,000 or an average of \$25,000 per project. Quick Response completed projects for 12 local jurisdictions, and one project with another state agency (Oregon Parks and Recreation). Projects ranged from a one-day workshop focused on a single-family residential development to concept planning for urban growth areas that covered hundreds of acres. With a total of almost \$600,000, the average Quick Response project cost about \$45,000.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Brad Cantor joined the department on July 16, as a Compensation Claims Specialist (Planner 2) in the Measure 37 Services Division. He holds a Masters in Urban Planning from Hunter College in New York City as well as a B.A. double majoring in Urban Planning/Studies and Sociology from the State University of New York at Albany. Prior to joining the department, Brad was the Chief of Staff in State Representative Larry Galizio's

office. Brad has additional legislative experience, working last Congressional Session as the APA Fellow in Representative Earl Blumenauer's D.C. office. There, he specialized in planning, energy, and transportation issues.

Shelly Raber joined the department on July 18. She will be helping with administrative duties in the Measure 37 division. She comes to the department from James Brown Associates, where she worked for eight years. She has had experience with title reports, appraisal reports, and the "chaos of the office." She will fit in very well with the Measure 37 team.

Bill Holmstrom joined the department on Monday, July 23, as a TGM Planner in the Planning Services Division. Bill comes to the department most recently from the Tillamook County Planning Dept. where he was employed as an Associate Planner. Bill earned his undergraduate degree in Planning, Public Policy & Management at University of Oregon.

Greg Goodenough joined the department on Monday, July 23, as a Compensation Claims Planning Specialist (Planner 1) in the Measure 37 Services Division. Greg earned his undergraduate degree in Politics (with a minor in Economics), at Willamette University. Greg was last employed as a Research & Writing Assistant with land use consultant, John Brosy.

Shawn Range joins the department on Wednesday, July 25, as a Fiscal Analyst 2, (Budget Officer) in the Operations Services Division. Shawn's experience in small agency budget development, emergency board letter writing, and overall budget experience as provided through his experiences in the Department of Administrative Services Budget and Management trainee program will serve the department well.

Harriet Wegner joins the department on Monday, July 30, as a Compensation Claims Planning Specialist (Planner 3) in the Measure 37 Services Division. Harriet earned her degree in Geography. Harriet was last employed as a Hazard Mapping Analyst with Dewberry & Davis, LLC in Phoenix, AZ. Previously, she was employed as a Planner with the Linn County Planning Department, where she processed Linn County's Measure 37 claims and development applications.

B. RECRUITMENTS

Due to continual turnover, the department continues to recruit for limited duration positions (planning & clerical support) for our Measure 37 Division.

C. DEPARTING EMPLOYEES

Director Lane Shetterly has resigned effective August 31, 2007, to return to the legal practice that bears his family name.

Tracy Nelson, most recently an administrative specialist for the Senate Bill 82 Task Force

effort, is no longer with the department, effective July 20, 2007.

The recent months have seen somewhat significant turnover in the Measure 37 Services Division. In addition to those new employees outlined above, four employees have already left or will be departing shortly.

- Marc Zillmer, an office specialist, is no longer with the department, effective June 18, 2007.
- Elizabeth Carey and Shawna Mongillo, both experienced staff writers for the division, have resigned to pursue opportunities outside the department. Elizabeth left the department as of June 30, 2007. Shawna will leave the department as of August 3, 2007.
- Joo Ree Kim, primary copy editor for the division, will leave the department effective July 31, 2007.

The department thanks all these employees for the contributions they made to the department and wishes them all well in their future endeavors.

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
- Oregon Gateway (June 5, Salem)
- County College (June 22, Salem)
- Tour and meeting with the City of Damascus (June 25, Damascus)
- Oregon Wine Board (June 27, Salem)
- Meeting with Peter Shilton, Director Planning for the State of Queensland,

Australia (July 6, Salem)

- Interview with CBS radio (July 10, Salem)
- Task Force on Land Use Planning (July 16, Lake Oswego)
- Coastal Zone National Conference 2007 (July 23, Portland)

4. LEGISLATIVE UPDATE

Provided as Item 7 on the Commissions August meeting agenda.

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

No rulemaking has occurred since the last Director's report. A suggested list of rulemaking for the 2007-2009 biennium is included as Item 8 on the Commission's August meeting agenda.

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

In the closing days of the 2007 legislative session, the legislature substantially reduced funding for the Big Look task force, leaving only funding for two FTE (and related department costs). The legislative action specifically directed that funding not be provided for consulting services, and further directed that the two FTE provide "minimal staff support" to the task force. The department was authorized to apply those funded positions to other areas within the department.

In a letter from the Governor to the task force dated June 28, 2007 (**Attachment A**), the Governor interpreted this action as indicating an intention that the task force not continue with its work plan pending the Measure 49 election in November, and directed the task force to suspend its work until then and until funding can be restored in the February, 2008 special session. He has committed to seek a restoration of funding to allow the comprehensive review of the land use planning program envisioned by SB 82 to continue.

The task force met on July 16 to discuss the status of the task force's work plan with Mike Carrier, the Governor's Natural Resources Policy Advisor. At that meeting, Mr. Carrier said he would arrange a meeting for Mike Thorne and Nikki Whitty, the chair and vice-chair of the task force, with the Governor for further conversation and to receive further direction. The scheduling of that meeting is pending as of the date of this report. At the July 16 meeting the task force also received the work product of the consultants, consisting of a preliminary report and a "conclusions" document. After discussion with the consultants, it

was agreed that they would amend certain parts of the conclusions document (without charge, as their contract was terminated at the end of the biennium) and provide it to the department for posting on the task force web site and distribution to members of the legislature.

No further task force activities are scheduled at this time.

ATTACHMENTS

- A. Letter from Governor Ted Kulongoski to the Big Look Task Force



THEODORE R. KLINGBOSCH
GOVERNOR

June 28, 2007

Big Look Task Force
c/o Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Dear Task Force Members:

Shortly after my first election as Governor in 2002, I called for a comprehensive review of our land use system. I spoke of the need to reconnect our citizens with the vision of Senate Bill 100 as well as the importance of updating our land use laws to serve our citizens today and to meet the challenges of a diverse and highly competitive economy. I remain committed to this today just as firmly as I was in 2002. Passage of Senate Bill 82 in 2005, which authorized your task force, was an important first step.

I was disappointed to learn last weekend that the Legislature had modified the Department of Land Conservation and Development's (DLCD) budget to remove money that would have supported your work over the next two years. I was already concerned that the Legislature chose not to fully fund my request for the 2007-09 biennium and am now even more concerned that most of the remaining funds were removed. It will be one of my top priorities for the 2008 Special Session to seek full restoration of the funds needed for you to complete your work.

There are multiple explanations for why the Legislature removed most funding for the "Big Look." Some suggest it was a result of dissatisfaction with the direction that your task force was taking. Others express concern that your planned efforts and public discussion over the next several months would have been clouded or short-changed by what is expected to be a vigorous debate over the legislative referral of House Bill 3540 (Measure 49), to modify Ballot Measure 37. At this point, however, it is not worth second-guessing the Legislature's decision. I believe their decision will eventually be seen as a temporary, if not minor, setback of our efforts. As I stated above, restoration of funding is my top priority for next year and I will be asking you to assist me between now and the Special Session to build awareness and support with legislators for the need to complete the work you have started.

In this context, I think it is prudent to suspend the Task Force until funding is restored. I am asking you to do so because I believe that the important work before you cannot be done properly without adequate resources. Further, I believe that there is a risk that the public debate

Big Look Task Force
June 28, 2007
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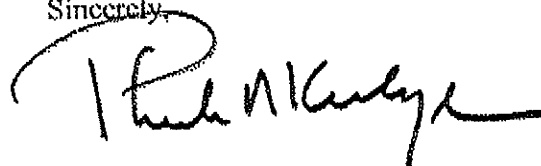
over Measure 37 reform will interfere with and distract from your efforts to focus on your primary goals.

Further, I am concerned that continued effort by the Task Force to forge ahead in light of what appears to be a clear legislative directive to suspend your work has the potential to offend the Legislature's intent. Along those lines, I will be talking to legislative leadership in the coming weeks about the decision to reduce your funding and I will work with those leaders and with you to address any concerns that precipitated the Legislature's recent actions. Therefore, I ask that you set aside the planned agenda for your meeting in July and allow DLCD staff to focus only on the tasks necessary to preserve the work you have accomplished to date and to prepare for a smooth restart of your work immediately following the 2008 Special Session.

Finally, I will meet with Chairman Mike Thorne and Vice Chairman Nikki Whitty in the coming months to discuss what has been accomplished, what remains to be done, what I have learned from legislators about the funding issue, and how we can still meet the timeframe established in Senate Bill 82 for you to deliver recommendations to the 2009 Legislature in light of this temporary suspension of your work.

Each of you has taken time out of your very busy lives to serve on the Task Force. Please know that I remain deeply grateful for your service and steadfast in my commitment and optimism over completing this very important review.

Sincerely,



THEODORE R. KULONGOSKI
Governor

TRK:mej