



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

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October 4, 2007

TO: Land Conservation and Development Commission

FROM: Cora Parker, Acting Director  
Mark Radabaugh, Central Oregon Regional Representative

SUBJECT: **Agenda Item 6.b October 17-19, 2007, LCDC Meeting**

**APPEAL OF DLCD'S REMAND OF  
CITY OF BEND'S PERIODIC REVIEW TASK 3  
DEVELOPMENT CODE UPDATE**

**I. AGENDA ITEM SUMMARY**

The City of Bend periodic review Task 3, "Development Code Updates," was remanded by the department on January 19, 2007. The Central Oregon Homebuilders Association and Palmer Homes (COBA-Palmer) appealed the remand, which the department received on February 9, 2007. The city, appellants and the department have agreed to pursue mediation of the issues involved in this matter. A first mediation meeting was conducted on April 9, 2007. Since April, parties have met formally on five occasions and drafted a proposed settlement. The proposed settlement has been reviewed by the Bend City Council during workshops on August 13 and October 1, 2007. The City Council will hold a public hearing on the proposed settlement on October 3, 2007, and final approval is expected at the City Council's November 7<sup>th</sup> meeting. After the November approval, it is expected that the final settlement will be forwarded to the Commission and COBA-Palmer will withdraw their appeal.

If you have questions about this agenda item, please contact Mark Radabaugh, Central Oregon Regional Representative, at (541) 318-2899, or [mark.radabaugh@state.or.us](mailto:mark.radabaugh@state.or.us).

**II. REVIEW CRITERIA AND PROCEDURES**

**A. Criteria**

ORS 197.633 provides:

(5) Except as provided in this subsection, the commission shall take action on the appeal or referral within 90 days of the appeal or referral. Action by the commission in response to an appeal from a decision of the director is a final order subject to judicial review in

the manner provided in ORS 197.650. The commission may extend the time for taking action on the appeal or referral if the commission finds that:

- (a) The appeal or referral is appropriate for mediation;
- (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or
- (c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

The 90-day requirement in this statute mandates a hearing before the Commission at the May 2006 meeting. Under ORS 197.633(5)(a), the Commission may extend the time to allow for mediation.

### **B. Procedures**

If the Commission chooses to extend the period to address these tasks in mediation, the Commission must adopt a motion to continue the hearing to a date certain.

### **III. COMMISSION OPTIONS**

The Commission may:

1. Conduct the hearing on the appeal, or
2. Find that the matter is appropriate for mediation and extend the time for taking action on the appeal.

### **IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTION**

The department recommends that the Commission adopt a motion extending the time for taking action on Bend's periodic review Task 3 to the November 28-30 meeting in Corvallis.

If the Commission agrees, the recommended motion is:

I move that the Commission continue the hearing on the matter of the appeal of the department remand of Bend periodic review Task 3 to the November 28-30, 2007 meeting, based on the finding that the matter is appropriate for mediation.

If the Commission disagrees with the staff recommendation, no motion is required, and the hearing should be opened.

### **ATTACHMENT:**

DLCD Remand Order 001718