

# Oregon Planning News

A quarterly publication of the Oregon Department of Land Conservation and Development — Fall 2006 — Vol. 5

## New year brings new, old challenges

Lane Shetterly  
Director

A new year.

A new legislative session.

And plenty of new and exciting challenges for the department and the state planning program.

That's what we see at the department as we look ahead to 2007. This newsletter will highlight some of the main issues for us in the year to come: Measure 37, our legislative agenda, and our continuing support of the Big Look. While it's always hard to predict the future, I think it is safe to say we are in for interesting times ahead.

— Measure 37. The article in this newsletter by Michael Morrissey highlights the “flood of claims” the state received in the weeks before the December 4 changes in the filing requirements. More than half of the total of all state claims during the first two-year period under the measure were filed after November 1, 2006. This presents significant administrative challenges for the state to review and process these claims within the 180-day timeline provided for under the measure. (We are aware many counties and cities face the same challenges, as they received a similar number of late-filed claims.)

### Director's Message

The number and nature of claims under the measure has gotten the attention of the legislature. The Senate, in particular, has appointed a special “Committee on Land Use Fairness,” chaired by Sen. Floyd Prozanski, D-Eugene, with the principal charge of addressing the measure. The Governor has weighed in as well, directing his staff and this department to work with



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the legislature on issues around the measure. What will come of that remains to be seen, but it is clearly on the radar screen.

This newsletter also has information about temporary rules adopted by the Land Conservation and Development Commission in November regarding the filing of Measure 37 claims after December 4, 2006. Those temporary rules will be presented to the Commission for adoption as permanent rules on January 26, 2007. The proposed permanent rules will also address notice to DLCD of land use actions and permits that implement Measure 37 claims, and the need for claimants to obtain state waivers if state regulations are implicated in a claim. For up-to-date information on the rulemaking, please see our website at: <http://www.oregon.gov/LCD/rulemaking.shtml>.

In the meantime, litigation under the measure continues (we are up to approximately 150 cases) as well as our efforts to comment and provide guidance on local land use actions that

implement Measure 37 waivers.

The “Big Look.” The Big Look Task Force, appointed pursuant to SB 82 (2005) to undertake a comprehensive review of Oregon's land use planning program, is moving forward. The article by Becky Steckler in this newsletter details the status of the task force's work, and provides information about how to connect with the task force. In addition, the task force is on track to engage a consultant or consultant team in the coming weeks to provide additional staff and resources to support the work of the task force. Those additional resources will be a welcome addition to the task force's effort.

The task force will present a report early in the legislative session (as required by SB 82) detailing their progress to date and the direction in which they are heading for the coming biennium, in preparation for presenting their final report and recommendations to the 2009 Legislature.

Legislative agenda. The department has a short but focused legislative agenda as we move into the 2007 legislative session. For a report on the legislative agenda see Bob Rindy's article in this newsletter. Our agenda will focus on ways we can better focus the land use planning program on economic development and affordable housing, two issues that are critical to the state's economic health and livability.

These are just a few of the things going on at the department. Please check out some of our other major activities in this newsletter and on line. We value your input and look forward to ways we can better serve our partners in state and local government and in the private sector.

Best wishes for the new year!

## Oregon Planning News

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To get free email alerts of the latest *Oregon Planning News*, please go to the website and click on 'News & Events' on the left-navigation bar. On that page, you can self-subscribe to the newsletter alerts and other free email services.

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### Land Conservation and Development Commission (LCDC)

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*LCDC members may be contacted through Sarah Watson at: 503-373-0050 x271, or at: [sarah.watson@state.or.us](mailto:sarah.watson@state.or.us)*



### Planners Network Meeting

DLCD Director Lane Shetterly (standing) talks to Metro-area planners at a Planners Network Meeting on Nov. 1 in Gresham. In the past 18 months, DLCD has hosted 11 meetings across the state in La Grande, Seaside, Roseburg, Newport, Keizer, Tillamook, Bandon, Bend, Florence, Gresham and Charleston. If you think a network meeting in your area would be a good idea, please contact Darren Nichols at 541-663-1393, or via email at: [darren.nichols@state.or.us](mailto:darren.nichols@state.or.us).

## LCDC adopts new temporary rules for Measure 37 claims

On November 30, the Land Conservation and Development Commission (LCDC) adopted temporary rules for Measure 37 claims filed after Dec. 4, 2006.

The temporary rules are in effect for six months, but the Commission will consider adopting these as permanent rules at its January 25-26 meeting.

Measure 37 specifies different requirements for claims filed after Dec. 4, 2006, but there has been increasing public confusion about the requirements.

The Oregon Department of Justice drafted the temporary rules for LCDC to adopt in order to clarify the post-Dec. 4, 2006 claim filing requirements.

Under Measure 37, property owners may file a claim for compensation due to a land use regulation that reduces the fair market value of their property, and the state may choose to waive the regulation rather than compensate (so far, waivers rather than compensation have been issued for all valid state claims). Measure 37 requires that a claim based on any land use regulation enacted *before* the measure was approved (Dec. 2, 2004) must be filed either:

- ◆ Within two years of the effective date of Measure 37 (i.e., by Dec. 4, 2006), or
- ◆ Within two years from the date a city, county, Metro, or state government “applied” the regulation to a particular property (“applied” means the government used the regulation as an approval criterion for a land use requested by the property owner).

Thus, Measure 37 claims based on a land use regulation enacted before Dec. 2, 2004, may still be filed after Dec. 4, 2006. However, under the temporary rules, such claims must include evidence that:

- ◆ The owner filed a land use application with a state or local government, and
- ◆ The local government “applied” a DLCD regulation as an approval criterion in deciding to deny or condition the use.

In summary, after December 4, property owners cannot file a Measure 37 claim with the state unless the claim includes evidence that, within the two years preceding the filing, a state land use regulation was the basis for a local or state government decision to deny or condition a land use requested by the property owner.

# DLCD to bring forward trio of legislative concepts

**Bob Rindy**  
Policy Analyst  
and Legislative Coordinator

DLCD is proposing three legislative concepts for the upcoming 2007 session

Authorization to propose the concepts was granted by the Land Conservation and Development Commission (LCDC) and the Governor's office.

If the bills are enacted into law by the legislature, they would take effect Jan. 1, 2008.

DLCD's concepts are:

## **Concept 1 Industrial Reserves**

This concept is intended to help attract new industry to Oregon and retain or expand existing industry.

There is a continuing need for local governments to identify and designate "prime industrial" sites for future industrial development, especially sites that could be certified as "ready for development" in the near-term (six months to two years). It is also increasingly important to maintain the supply of prime industrial sites, which may be lost by rezoning or encroachment of incompatible land uses.

This bill would amend statewide land use planning requirements to encourage local governments to identify "Industrial Reserves" outside of – but adjacent to – urban growth boundaries (UGBs).

The proposed legislation would direct LCDC to adopt statewide land use rules for such reserves, and to streamline the process to bring the sites into UGBs in the future as "prime industrial" land. Industrial reserves and prime industrial sites could not be rezoned or developed for other uses.

Land eligible for industrial reserves must consist of large sites adjacent to UGBs in areas where public facilities and transportation access could be provided in the near term.

## **Concept 2 Affordable Housing**

This concept would direct LCDC to encourage local governments to plan new sites dedicated for the development of new "affordable" housing.

Affordable housing advocates agree there is a shortage of land available for affordable housing statewide, in part due to land use requirements and land costs.

The concept would amend statutes and direct LCDC to amend statewide rules, including UGB requirements, in order to encourage such sites. The legislation would also relax state laws that currently prevent "inclusionary zoning" measures under which local governments could maintain the affordability of housing built as a result of this concept.

Designating new "affordable housing sites" would be voluntary for local governments, but would be encouraged by the amended UGB rules. Sites designated under this process could not be rezoned or developed for uses other than affordable housing.

## **Concept 3 Standard of Review for DLCD Rules**

This concept would resolve the Department of Justice's concerns about the "standard of review" used by the Court of Appeals in a recent decision invalidating LCDC administrative rules (OAR 660, Division 26).

In that decision, *City of West Linn v LCDC*, the Court of Appeals declared LCDC's rule to be invalid because of the mere possibility that the rule "could" be applied contrary to one or more of the statewide goals, even though the rule had never been applied in such a manner.

This legislative concept would specify that the mere possibility of application of a rule in a manner that conflicts with a goal is not sufficient to invalidate the rule.

For more information about these concepts, please contact Bob Rindy at 503-373-0050 x229, or via email at: [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us)

## **Calendar of Events**

January 11-12, 2007  
Big Look meeting  
Agriculture Building  
Salem

January 25-26, 2007  
LCDC meeting  
Agriculture Building  
Salem

February 15, 2007  
CIAC meeting  
Agriculture Building  
Salem

February 20, 2007  
Big Look meeting  
Agriculture Building  
Salem

March 8-9, 2007  
LCDC meeting  
Agriculture Building  
Salem

March 15-16, 2007  
Big Look meeting  
TBA  
Hood River

April 19, 2007  
CIAC meeting  
Agriculture Building  
Salem

April 20-21, 2007  
Big Look meeting  
TBA  
Coos County

April 26-27, 2007  
LCDC meeting  
Agriculture Building  
Salem

## **DLCD Contact info**

Contact information for every staff member in the department can be found on the DLCD website at:

[http://www.oregon.gov/LCD/contact\\_us\\_directory.shtml](http://www.oregon.gov/LCD/contact_us_directory.shtml)

# Task Force takes its questions to the road

**Becky Steckler**  
Statewide Land Use Review  
Project Manager

The Oregon Task Force on Land Use Planning has made progress in defining key issues to help guide its evaluation of Oregon's land use program.

Should Oregon adopt a regional system of land use? Should Oregon change the qualifications for standing? These are just a few of the questions that members of the task force are asking as part of the Big Look this fall.

The task force traveled around the state the past three months asking local and statewide experts a wide range of issues about land use planning.

At a September meeting in Pendleton, the task force heard from the Department of Land Conservation and Development Commission (DLCD), Umatilla County planners, the Oregon Wheat League, and local property owners about a recent decision by the Land Conservation and Development Commission (LCDC) to approve a minimum lot size (known as a "go-below") less than 80 acres for a 1,600 acre property in Umatilla County.

At an October meeting in Medford, the task force learned about the Bear Creek Valley Regional Problem Solving project.

The task force then went to Gresham in November and learned about infrastructure financing and development challenges for both new development and infill areas.

The task force is talking to experts statewide and conducting research to better understand the six key issues that it identified in July:

- ◆ What are the appropriate roles of state and local governments in land use in Oregon?
- ◆ What is the appropriate role of citizen involvement in land use?
- ◆ What role should land use planning play in enhancing Oregon's economy now and in the future?
- ◆ What are the most effective tools to manage population growth to achieve community goals?

- ◆ How should Oregon's system of infrastructure, finance and governance influence land use?
- ◆ How can the land use process appropriately address the benefits and burdens that fall on individual land owners and the general public?

The task force plans on conducting research through June 2007 about the issues and tradeoffs of different policy options. That information will be taken out to Oregonians in July 2007 through the end of the year (and maybe into Spring 2008).

The task force will consider the feedback from Oregonians as it creates recommendations for the 2009 Legislature, the Governor, and the Land Conservation and Development Commission.

The task force was established under Senate Bill 82 (2005). The purpose of the task force is to study and make recommendations on:

- ◆ The effectiveness of Oregon's land use planning program in meeting current and future needs of Oregonians in all parts of the state;
- ◆ The respective roles of state and local governments in land use planning; and
- ◆ Land use issues inside and outside urban growth boundaries, and at the interface between areas inside and outside urban growth boundaries.

Persons who wish to comment on the identified issues and provide information are encouraged to contact the task force in writing at:

**Big Look**  
635 Capitol Street NE  
Suite 150  
Salem, OR 97301-2540

**Or by email at: [big.look@state.or.us](mailto:big.look@state.or.us)**

For more information, please contact Becky Stecker at 503-373-0050 x286, or via email at: [becky.steckler@state.or.us](mailto:becky.steckler@state.or.us).

## DLCD's Website

### Most Popular Pages

- \* Measure 37 home page:  
<http://www.oregon.gov/LCD/MEASURE37/index.shtml>
  - \* Big Look Meeting Information:  
[http://www.oregon.gov/LCD/BIGLOOK/meeting\\_information.shtml](http://www.oregon.gov/LCD/BIGLOOK/meeting_information.shtml)
  - \* Measure 37 Summaries of Claims:  
[http://www.oregon.gov/LCD/MEASURE37/summaries\\_of\\_claims.shtml](http://www.oregon.gov/LCD/MEASURE37/summaries_of_claims.shtml)
  - \* Goals home page:  
<http://www.oregon.gov/LCD/goals.shtml>
  - \* Public Meetings home page:  
<http://www.oregon.gov/LCD/meetings.shtml>
  - \* The Big Look home page:  
<http://www.oregon.gov/LCD/BIGLOOK/index.shtml>
  - \* About Us home page:  
[http://www.oregon.gov/LCD/about\\_us.shtml](http://www.oregon.gov/LCD/about_us.shtml)
  - \* Contact Us home page:  
[http://www.oregon.gov/LCD/contact\\_us.shtml](http://www.oregon.gov/LCD/contact_us.shtml)
- ### New DLCD Mini-sites
- \* The Big Look home page:  
<http://www.oregon.gov/LCD/BIGLOOK/index.shtml>
  - \* Measure 37 home page:  
<http://www.oregon.gov/LCD/MEASURE37/index.shtml>
  - \* Economic Development home page:  
<http://www.oregon.gov/LCD/ECODEV/index.shtml>
  - \* Ocean Policy Advisory Council (OPAC) home page:  
<http://www.oregon.gov/LCD/OPAC/index.shtml>

# 2-year Measure 37 deadline marked by flood of claims

Michael Morrissey  
Measure 37 Division Manager

Measure 37 reached a milestone on December 5. That was the effective date that processing of claims changed, which caused an avalanche of claims to be filed at the eleventh hour.

The change was part of the measure: After two years since its inception (Dec. 2, 2004), the measure called for claims to be filed only after claimants had been turned down by local jurisdictions (or the state, in limited cases) for a land use action or permit. Prior to December 5, 2006 claims could be filed at the state and local level with no requirement to first file for a permit or land use action.

In order to avoid the extra step now required, hundreds of claimants waited until the days prior to December 5 to file more than 3,300 claims. The total number of claims filed with the state through Dec. 4 was unofficially 6,525.

Due to the late surge of claims filed with the state, DLCD's Measure 37 division is continuing to add staff. The division now consists of 12 staff members and expects to add three more in the coming weeks.

However, DLCD, and our partners at the Department of Administrative

Services and Department of Justice (not to mention our local government partners who face a similar challenge), will be hard pressed to handle the magnitude of claims that came in just prior to the deadline due to the 180-day timeline the measure requires.

In addition, important Measure 37 litigation is working its way through the court system. For example, the department's position that statewide planning goals apply to claimant's property if they acquired it after 1973 but before county plans were acknowledged, was upheld in two Marion County circuit court decisions.

Other court cases still in progress include:

- ◆ Whether state waivers are required, or only county waivers, in order for counties to process land use permits for claimants; and
- ◆ Whether the department (or only the legislature) can waive state regulations, and whether calculation of fair market value is being analyzed sufficiently by DLCD in the processing of claims.

For more information on Measure 37, please contact Michael Morrissey at 503-373-0050 x324, or via email at: [michael.morrissey@state.or.us](mailto:michael.morrissey@state.or.us).

## DLCD offers 5 free email services

The Department of Land Conservation and Development continues to offer five email services, free of charge. The five services include:

### Oregon Task Force on Land Use Planning

Subscribers to this list will receive an email alert of public meetings, agendas and updates for the Oregon Task Force on Land Use Planning (SB 82, 2005).

### Oregon Planning News

Subscribers to this list will receive an email alert of the most recent issue of *Oregon Planning News*, DLCD's quarterly newsletter.

### Land Use News

Subscribers to this list will receive, via email, a weekly digest of news coverage and commentary on land use in Oregon and other states.

### Natural Hazards News

Subscribers to this list will receive an email alert of the most recent issue of *Natural Hazards News*, which shares information related to natural hazards management with local governments, state agencies, and other interested parties.

### LCDC, CIAC and LOAC Agendas

Subscribers to this list will receive an email alert of public meetings and agendas for the Land Conservation and Development Commission (LCDC), as well as its two advisory committees: the Citizen Involvement Advisory Committee (CIAC) and the Local Officials Advisory Committee (LOAC).

To subscribe to any or all of these services, please visit:

[http://www.oregon.gov/LCD/newsevents.shtml#Free\\_E-Mail\\_Services](http://www.oregon.gov/LCD/newsevents.shtml#Free_E-Mail_Services)

## Update on staff changes at DLCD

In the past six months, there have been a number of changes in staff at DLCD.

Rob Hallyburton move from Community Services Division Manager to Interim Planning Services Division Manager.

Darren Nichols has become Interim Community Services Division Manager, while continuing in his role as Northeast Regional Representative. His office is in La Grande.

Additions to staff include:

- ◆ Tawni Bean, Compensation Claims Review Processor (M37);
- ◆ Carmel Bender, Compensation Claims Review Processor (M37);
- ◆ Dixie Bryant, Compensation Claims Review Processor (M37);
- ◆ Barbara Bull, Compensation Claims Planning Specialist (M37);
- ◆ Elizabeth Carey, Compensation Claims Planning Specialist (M37);
- ◆ Jay Charland, Coastal Permit Specialist;
- ◆ Bryan Gonzalez, Copy Editor (M37);
- ◆ Sarah Marvin, Compensation Claims Planning Specialist (M37);
- ◆ Jennine Rustad, Compensation Claims Planning Specialist (M37);
- ◆ Christine Shirley, Map Modernization GIS Specialist; and
- ◆ Linda Smith, Accounting Services/ Payroll.

For a complete list of DLCD employees, their titles and contact information, please visit our website at: [http://www.oregon.gov/LCD/contact\\_us\\_directory.shtml](http://www.oregon.gov/LCD/contact_us_directory.shtml).

## DLCD recruiting for four positions

DLCD began recruiting for four openings on December 15. The deadline for applications is January 5.

For a complete list of those job titles and job descriptions, please go to our website at:

<http://www.oregon.gov/LCD/index.shtml>.

Once you get to the home page, click on "DLCD Employment."