Oregon
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January 10, 2008

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 9, January 23-25, 2008, 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 November 9, 2007 and January 4, 2008, the Department received notice of 44 appeals filed with LUBA. None were filed by the department.

2) LUBA opinions

Between November 9, 2007 and January 4, 2008, the Department received copies of 36 recently issued LUBA opinions. Of these, LUBA dismissed 12, remanded 13, reversed 0, affirmed 11, invalidated 0, and transferred 0 petitions to circuit court.

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

- OAR 660-004-0020(2) & 660-004-0022(1): On remand from the Court of Appeals (Court held LUBA erred in combining Goal 3 and 14 exceptions), *VinCEP, et al; v. Yamhill County*, LUBA No. 2006-157, remanded 12-21-07 (luxury hotel in EFU zone).

- Goal 14 and OAR 660, division 024: *Sommer v. City of Grants Pass*, et al, LUBA No. 2007-121, affirmed 12-10-07 (1.2-acre UGB expansion).
- OAR 660-012-0060 (TPR): *ODOT v. City of Madras*, LUBA No. 2007-149, remanded 12-05-07 (annexation and rezone to commercial on US 97).
- OAR 66-033-0100(1): *Friends of Umatilla County, et al v. Umatilla County*, LUBA Nos. 2007-150, 2007-151, 2007-152, 2007-153, remanded 11-28-07 (partitions of EFU land into 80-acre parcels).
- OAR 660-006-0010: *Herring, et al v. Lane County*, LUBA No. 2006-203, Court of Appeals No. A136155, reversed and remanded 11-7-07 (plan designation change from agriculture to marginal).

None of these decisions requires goal or rule amendments.

3) Appellate court opinions

Between November 9, 2007 and January 4, 2008, the Department received copies of 8 recently issued opinions from the Court of Appeals. The Court affirmed 4, remanded 0, and reversed 4 of LUBA's decisions.

4) Cases of interest

Measure 37:

- At the department's request, LUBA dismissed our appeal of the exercise of Douglas County waiver by personal representatives of a deceased claimant, *DLCD v. Douglas County*, LUBA No. 2007-176, dismissed 11-28-07.
- Notice of Appeal for county approval of partition of 5 acres on NE Parrett Mountain Road into 2 parcels and conditional use permit for a single family dwelling on each parcel (Marla Robison, claimant), *Gordon v. Yamhill County*, LUBA No. 2007-234, filed 11-15-07.
- Notice of Appeal for "the Oregon DLCD appeal of the Crook County Planning Commission approval of a tentative subdivision plan under Measure 37," *Keith Eager v. Crook County*, LUBA No. 2007-237, filed 11-28-07.
- Clackamas County approval of 41-lot subdivision on Pete's Mountain in Agriculture/Forest Zone (Bowerman & Campbell, claimants), *Petes Mountain Homeowners Assoc., et al v. Clackamas County,* LUBA No. 2007-124, remanded 11-15-07.
- Notice of Appeal for county approval of 33-lot subdivision/PUD in EFU zone, *Gardener and Parsons v. Marion County*, LUBA No. 2007-226, filed 10-31-07 (Lena Page Living Trust, claimant).

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

General Fund Grants

The department has received 36 grant applications and expects to receive several more as cities and counties work with regional representatives to complete applications.

Department staff is reviewing applications and will award the first round of funding by the end of January. Grant applications received to date include one application from the Oregon Consensus Program (dispute resolution), two applications for Periodic Review grants, three applications for Gorge grants, and 30 applications for technical assistance. In addition, the department has mailed Planning Assistance grant applications to 147 small cities and counties.

Jurisdictions entering periodic review are expected to complete plan evaluations within the next one to two months. Those jurisdictions will then submit work plans and applications for grant funding shortly thereafter. The department has reserved a significant amount of general fund grant dollars specifically for those jurisdictions entering periodic review during the 2007-2009 biennium.

Federal Fund Coastal Management Grants

Local governments just completed the first six months of work under the FY07 Coastal Management Grants. Progress reports will be due by the end of January and interim grant payments will then be made.

Although final numbers have not yet been received, it appears that the Department's federal Coastal Management Grant for FY08 (beginning July 1, 2008) will be somewhat less than the amount in FY07, which was level funded from FY06. The exact amount of the decrease has not been specified.

The Coastal Program Manager continues to work with the Coastal States Organization on reauthorization of the Coastal Zone Management Act.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

The department approved Albany Task 1 – Buildable Lands Inventory (Goal 10 Housing). The department continues to work with other jurisdictions on work plans and related activities as appropriate.

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIATIVES

Coastal Management Program

Coastal program staff continue to work on the following:

- Liquefied Natural Gas Import projects at Bradwood Landing (Clatsop County), Skipanon River (City of Warrenton), and Jordan Cove Energy (Coos County)
- Oregon Gateway Project in Coos Bay that would require a major dredging of the lower Coos Bay channel to accommodate large container vessels
- Marine Reserves planning through the Ocean Policy Advisory Council
- Wave energy facility planning and coordination among state agencies and the Federal Energy Regulatory Commission

- Impacts of Climate Change on the Oregon Coast, with South Slough National Estuarine Research Reserve and Oregon Sea Grant
- Upgrade of the Coastal Atlas and assistance to the OPAC on a website to support marine reserves planning

Natural Hazards Program

Disaster Response. The Federal Emergency Management Agency (FEMA) provides funding to DLCD under the Federal Community Assistance Program to administer the National Flood Insurance Program (NFIP) at the local level. One of the tasks specified in the grant agreement is to work with FEMA during flood response and recovery operations. State participation during federal disaster response and recovery is necessary to ensure that state interests are upheld. Furthermore, during federally declared disasters, FEMA brings resources to the state that supplement those provided by the Community Assistance Program grant.

The Governor declared an emergency on December 3, 2007, due to prolonged power outage, flooding and the need for shelter in many areas of the state. A federal declaration for five counties (Clatsop, Lincoln, Tillamook, Washington, and Yamhill) was made on December 8, 2007. DLCD activities using FEMA resources during this disaster include technical assistance to affected communities and training to local government staff on requirements of the NFIP. DLCD's NFIP coordinator, Chris Shirley, has spent, and continues to spend, a considerable number of hours in affected communities, and at FEMA's Joint Field Office in Salem, carrying out these activities.

In addition, FEMA will provide funds for a new study of hydrologic and hydraulic conditions in the City of Vernonia, as current flood insurance rate maps in the area are now believed to be incorrect. DLCD's role has been, and continues to be, to direct and monitor these activities to ensure that outcomes satisfy state and local needs.

Flood Map Modernization. FEMA's Flood Map Modernization Initiative is a five-year program to digitize and update Flood Insurance Rate Maps (Digital FIRMs or DFIRMs). The initiative is heading into its final year (Federal FY08). The focus of the program changed in 2006. In what FEMA called the "Mid-Course Adjustment," more emphasis was placed on producing better quality maps in communities with high population and risk rather than providing all communities with digital maps. Therefore, in the last year of the program, funds in Region X (including Oregon) will be shifted to those communities that (1) already have DFIRMs, (2) have the highest population and risk, and (3) have acquired better topographic information subsequent to initial DFIRM production. Consequently, 15 counties (and associated cities) in Eastern Oregon will not begin the map modernization process under the five-year initiative.

The future of the program is uncertain. FEMA has developed a draft concept paper, "Preparing for FY09 and Beyond: Integrated Flood Data Update, Risk Assessment, and Mitigation Planning," but no decision has been made by Congress to fund the program past FY08. Providing DFIRMs for those fifteen counties and associated cities, as well as

determining how to maintain DFIRMs in the future, are major issues for FEMA as well as Oregon.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF

Jon Dunsmore has accepted the department's offer of a promotional opportunity within the Operations Services Division and is now employed as our Information Support Specialist 7 (ISS 7). Jon has been with the department for over six months as our Information Support Specialist 4 (ISS4). He brings current knowledge of department information technology systems, and broad private sector experience.

B. RECRUITMENTS

Recruitment is underway for the department's Information Specialist 4 position.

Measure 37/49 Division is recruiting for an Office Specialist 1 to perform clerical support functions related to claims processing. This recruitment closed on November 8, 2007. It is further anticipated that the division will need to recruit for several additional positions to implement Measure 49.

Recruitment is also underway for a Portland Metro area regional representative to replace Marguerite Nabeta following her acceptance of a job with the Governor's office as part of the state's Economic Revitalization Team. The Metro area regional representative will represent the Commission and the department to cities and counties in and around the Metro boundary in Washington, Multnomah and Clackamas Counties.

C. DEPARTING EMPLOYEES

Marguerite Nabeta will be leaving the department on January 18. She has accepted a position with the Governor's office economic revitalization team. She will continue to work with DLCD in her new position, so this is only a provisional goodbye.

D. DIRECTOR ACTIVITIES

During the period of this report the director and acting director have been involved in several activities in support of the work of the department, both within the department and internally. Highlights of the director and acting 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

- Economic Revitalization Team Field Trip (December 4-5, 2007, Yamhill and Marion Counties)

- Task Force on Land Use Planning (January 7, 2008, Metro)

- SB 1011 Work Group Meeting (January 7, 2008, Metro)

- Planners Network Meeting (January 10, 2008, Springfield)

- AOC Planning Directors Conference (January 11, 2008, Salem)

- 120 Day Club (January 16, 2008, Portland)

4. LEGISLATIVE UPDATE

The Oregon State Legislative Assembly Supplemental Session commences February 4, 2008. The department will be tracking legislation that concerns land use and the department. At this point, so far as we know, the most significant issues affecting DLCD will likely be the refunding request for the Big Look and the department's request for funding related to implementation of Ballot Measure 49.

The department (Ron Eber) is also working with AOC and others on a legislative proposal to address issues raised in the Court of Appeals case concerning lot line adjustments in farm and forest zones. At this point, LC is drafting a bill to be introduced January 23rd in the Interim Committee on Agriculture and Natural Resources. This is based on a similar bill, HB 3549, that died in the final days of the 2007 session.

We also note that the deadline for agencies to submit legislative concepts for the 2009 legislation is April 4, 2008. As such, the department has begun an internal discussion of potential DLCD legislative concepts for the 2009 session (see item 9 on the agenda).

5. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

The Commission approved a 2007-2009 Policy and Rulemaking agenda at its October

meeting. The department will wait until the Metro Reserve rulemaking is complete in January before beginning other rulemaking tasks listed in the Policy Agenda. In October, the Commission also suggested that the Policy Agenda be revisited, possibly in March, since that would be after the Measure 49 election and the February session, providing a better view of staff availability for any additional policy activities. At this point, the department expects to schedule an item to re-review the Policy Agenda at the March meeting.

The department has not yet begun the work of combining legislatively mandated and other rule updates into a single "housekeeping rulemaking," but that work will begin in January. This rulemaking would not require a workgroup (because the rule updates are legislatively mandated or are "minor and technical" in nature). It is unclear at this point whether this project will be ready for LCDC review in March. It was also anticipated that the Commission will consider launching "phase 2" of the UGB rulemaking after completion of the Metro reserves rulemaking. The department will be discussing the timing for that at the Manager's retreat that is to occur after the mailing of this report; we will provide an update at the Commission meeting.

As reported last month, the department previously met with the Oregon Housing Council Chair, as well as the director and staff of the Oregon Housing and Community Development Department (OHCDD) to discuss ideas for rulemaking to encourage affordable housing. It was agreed that additional meetings with OHCDD and stakeholders should be scheduled to continue this discussion. However, no meetings have occurred since the last report, although planning for a next meeting is underway. OHCDD requested that the department, OHCDD and stakeholders also discuss whether there will be a need for legislation on this topic, along the lines of SB 87 from the 2007 session. If so, OHCDD indicated it would like to partner with DLCD on such legislation for the 2009 Legislative session. However, at this point DLCD is not prepared to propose legislative ideas on this topic, since it is likely much of the SB 87 proposal could be accomplished through rulemaking. The department is continuing to aim for formal initiation of a rule project at the March meeting, but at this point that timing is uncertain.

B. Other Policy Activities

We reported last month that the Department of Administrative Services (DAS) had proposed a major revision and update of its State Agency Coordination Agreement. Such an agreement for the Department of General Services (now DAS) was "certified" by LCDC in 1989, in accordance with state laws and LCDC rules for such agreements (OAR 660, div, 30). The Capitol Planning Commission was subsumed by DAS a few years ago, and as such, the revised draft SAC agreement for DAS updates the previously certified SAC agreement regarding the functions previously performed by the Capitol Planning Commission (CPC).

Since the November director's report, the department has reviewed the draft amended agreement and provided comments to DAS. However, DAS has indicated the submitted draft was a preliminary draft, and it is anticipated another round of comments will occur.

Under OAR 660-030-0075, the Commission is not required to review or take action on amended SAC agreements, but the department is required to review the amended agreement and provide comments as to whether it meets Goal and rule requirements. At this point, the department is interpreting this as an amended agreement for DAS and CPC, rather than a new agreement, but will be seeking further advice from DOJ on this interpretation. If the agreement is instead interpreted as a new SAC agreement for DAS (which technically has no previous agreement under that agency name), LCDC would need to review the agreement. We are also aware that the City of Salem has expressed interest in this update, and it is likely other Salem area local governments will participate since the CPC prepared detailed "area plans" for the Capitol and other areas.

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

The Task Force met on January 7, 2008, to discuss and approve a recommended work plan to carry out the remainder of its work under Senate Bill 82. The work plan, and related budget request, will be presented to the Join Interim Committee on Ways and Means at its January 17-18, 2008, meeting. Assuming a favorable recommendation from that committee, the budget request will be considered by the Legislature during its February 2008 session. Under the terms of its work plan, the Task Force would begin meeting again in February 2008 with an aim towards completing recommendations by November/December 2008. A copy of the proposed work plan, which includes a large scale public outreach effort, is available upon request.