

September 17, 2004

TO: Land Conservation and Development Commission
Sept. 29- Oct. 1, 2004, LCDC Meeting

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 14, Director's Report**

1. INFORMATION UPDATES

A. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

a. General Fund Grants

DLCD has offered over \$1.6 million in the categories of Technical Assistance, Periodic Review, Planning Assistance, and Columbia River Gorge grants during the 2003-05 biennium. Most have been accepted and work commenced. About \$150,000 remains in the grant fund, and negotiations continue with several jurisdictions on the use of these remaining dollars.

b. Intergovernmental Agreements

The Transportation Growth Management Program's Outreach entered into an Intergovernmental Agreement with the University of Oregon's Community Planning Workshop (CPW) last spring. The project is evaluating school siting issues in fast-growing communities with a view to identifying "best practices" and recommendations for state and local policies that will increase transportation choices for school children and parents. A *Forum on School Siting in Oregon* will be held on November 5, 2004, in Eugene to discuss the school siting issue and to showcase the results of this project.

c. Requests for Proposals

Transportation Growth Management (TGM) Program – Outreach RFP

The department works in partnership with ODOT to expand transportation choices for people through the Transportation Growth Management (TGM) Program. The goal is to make it easier – and safer – for people to walk, bike, take transit *or* drive wherever they wish to go. TGM promotes this expansion of choices through various land use and transportation strategies, especially:

- planning for better-connected streets and roads;
- making communities more pedestrian-, bicycle-, and transit-friendly;
- promoting mixed (but compatible) land uses to reduce distances between destinations; and
- coordinating land-use planning with transportation planning.

The TGM program includes a subprogram to provide public outreach services for local governments. The outreach received proposals in response to a new Request for Proposals (RFP) for a *Main Street Road Show*. The “Road Show” is intended to help small towns in Oregon address transportation-related growth management issues. Such issues include parking strategies, highway segment designations, road design standards, barriers to mixed-use and pedestrian-friendly development, and the benefits of expanded transportation choices. A consulting firm capable of conducting the Road Show will be selected in September.

Under a separate RFP, another firm (or firms) will be selected to conduct other TGM outreach activities, such as public forums, education and training, peer-to-peer exchanges, information sheets, research, and visual simulations for alternative development scenarios. In all cases, these activities and products will focus on transportation-related growth management issues.

Economic Development Guidebook RFP

HB 2011 requires the department to develop a guidebook for local governments on how to calculate commercial and industrial land needs for their community.

The department issued an RFP for this work in July, 2004. In August, the department executed a contract with Cogan Owens Cogan to complete this work by the end of the year. The guidebook will contain basic and advanced approaches and utilize the methodologies published by the Advisory Committee on Commercial Land Development in December 2002. Cogan has subcontracted with Otak to handle the technical portions of the guidebook. Otak was the lead contractor involved in the original December 2002 report.

Economic Development Planning Team staff along with Cogan have formed a small workgroup to assist with the project. The workgroup is made up of local planners from Klamath Falls, Corvallis, Tualatin, Sherwood, Hillsboro, and a representative from Oregon APA. The workgroup will assist with two phases of the guidebook's development. First, in a kick-off meeting scheduled for late September, the workgroup will provide input to Cogan on the design and format of the guidebook for readability and accessibility. Second, once a draft guidebook is ready in late October, the workgroup will edit and review the guidebook for functionality and effectiveness. The department believes that rigorous review and beta-testing of the guidebook is essential to create the useful resource intended. The ultimate goal is to incorporate the guidebook by reference into the Goal 9 administrative rule as a safe harbor for compliance.

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 July 1, 2004 and September 10, 2004, the department received notice of forty-one (41) 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 July 1, 2004 and September 10, 2004, the department received twenty (20) LUBA decisions. Of these, LUBA dismissed six (6), affirmed five (5), remanded five (5), and reversed none 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 these opinions do not require an amendment to a goal or an administrative rule.

Court Opinions

The department received nine (9) decisions from the Oregon Court of Appeals during this time period. The court dismissed one (1), affirmed eight (8) cases. On July 19, the court dismissed *1000 Friends of Oregon v. Clackamas County*, 194 Or App 212, 94 P3d 160 (2004), a case involving the siting of Molalla Christian Church on high value farm land within three miles of the Molalla urban growth boundary. The Commission authorized the Department to intervene and file a state agency brief at its March meeting in Hood River.

The court dismissed this case because it does not present a justiciable controversy under its holding in *Utsey v. Coos County*, 176 Or App 524, rev dismissed, 335 Or 217 (2003). The Molalla Christian Church had not applied for a permit or request an exception but requested only an interpretation that the Religious Land Use and Institutionalized Persons Act (RLUIPA) precluded the application of local ordinances.

Important to the Department is the court's determination that it would not necessarily find that the court's decision in *DLCD v. Yamhill County* 183 Or App 556, 53 P3d 462 (2002) rev dismissed, 336 Or 126 (2003) precludes the church from obtaining an exception. In that case, the court held only that, when a land use law provides that a particular use "is permitted" under specified circumstances, the rule establishing the

exceptions process is not available to obtain a permit for that use. The court then concluded that ORS 215.283(1)(b) as implemented by OAR 660-033-0120(2) and 660-033-0130(2), prohibit the siting of a church within three miles of a UGB unless an exception is approved and also prohibit churches on high-value farmland regardless of proximity to the UGB. Without prejudging an issue not before it, the court then concluded only that *DLCD v. Yamhill County* arguably would not apply and the church could seek an exception. Until they do so, there is no justiciable issue that can come before the court.

Related to UGB's, the Court of Appeals recently issued an opinion in *Milne v. City of Canby* on September 1. This case concerns a 30-acre property in Canby that is completely surrounded by land inside the UGB. The city has added the property to its UGB, arguing that it was committed to urban development, and as such, the "need" factors for UGB amendment should not be applied (the city likely could not show a need for additional residential land at this time). In remanding the decision, the court held that Goal 14 does not authorize adding property to a UGB due to commitment alone. The court indicated that an exception to Goal 14 would be necessary to include this property in the urban area. This case is notable because, during the acknowledgement process in the early 1980's, the commission allowed land to be added to UGBs based on commitment alone. Also, the notion of taking an exception to Goal 14 in order to approve a UGB amendment is new territory. The commission will likely have the opportunity to address these issue as it considers new UGB rules in November and December (see update on UGB rules in section 5B of this report).

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.

D. STATUS OF PLAN AMENDMENTS RECEIVED

A quarterly summary of Post-Acknowledgment Plan Amendments (PAPAs) received by the department is set forth in Attachment B. PAPAs are changes to an acknowledged comprehensive plan or implementing ordinance, or a plan or zoning map, completed by local governments outside of the periodic review process. DLCD may provide technical assistance to local governments in the development of PAPAs and the department may review and/or comment on a PAPA. Any appeal of a PAPA goes to LUBA.

The first page of Attachment B summarizes submittals for the first two quarters of 2004. A submittal may include multiple amendments. The reported adoptions include submittals that may have been submitted in a prior or the current quarter.

The second page shows activity over the last several years by quarter and annually. The third page displays DLCD participation for the last 5.5 years. "Y=Participated" and "YA=Advisory Participation" on the last page mean that the proposal was reviewed by

department staff, not that the department submitted comments. Those that received comments are shown under the three middle columns, categorized by the medium of the response.

Taken together, the three types of participation yield the following results (comments/no comments):

1999 – 115/419
2000 – 137/339
2001 – 184/322
2002 – 82/338
2003 – 149/209
2004 – 41/29 (first two quarters)

2. DEPARTMENT PROGRAM ACTIVITIES AND INTITIATIVES

A. ECONOMIC DEVELOPMENT PLANNING TEAM

The Goal 9 Subcommittee of the Economic Development Planning Advisory Committee met on August 26. Though there was some agreement that some modernization and clarification of terms is needed, among other things, the subcommittee came to the same conclusion as the Governor's Industrial Lands Task Force in its October 2003 report. That conclusion is that the Goal 9 rule still provides sound, basic guidance but there is an implementation issue with regard to local comprehensive plans. Therefore, the subcommittee requested that the department discuss the limitations of the Goal 9 administrative rule and implementation issues with local governments and report back to the subcommittee.

Staff are currently identifying local planners with experience implementing Goal 9 to survey and possibly to meet with in a one-half day "summit" to determine the nature and extent of the implementation issues and possible modifications to the administrative rule

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. RECRUITMENTS

The department is recruiting for several positions:

- Metro-area Regional Representative – Kevin Cronin resigned effective in August; the recruitment for his replacement closes September 27.
- Northeast Oregon Regional Representative – This HB 2011-funded position has been re-opened after an unsuccessful recruitment earlier this year. It closes on September 27.

- TGM Code Assistance Planner – Gloria Gardiner has moved to the Urban Specialist position. The department is currently recruiting for her replacement. The recruitment closes on September 27.
- Coastal Hazards Specialist is currently vacant and will be filled through an open recruitment that will open soon.

B. NEW STAFF

Jeremy Gingell has been selected as our Information Specialist 6 for the Operations Services Division. He joined our department on August 9, 2004. Jeremy has extensive technical expertise in the following: database servers; file and print servers; firewall servers; website maintenance and coding; remote access maintenance; and the purchase, configuration, installation and maintenance of network hardware, software and operating systems.

Jane Bacchieri began as the Coastal Permit Reviewer in early July. She will work closely with Dale Blanton to review state and federal permits for compliance with the Coastal Management Program. Jane has a Master's degree from Duke University and comes to DLCD from South Slough National Estuarine Research Reserve on Coos Bay where she was responsible for developing the Reserve's long-range management plan. Jane has also worked as a planner for the National Park Service in Alaska and served in the Peace Corps.

Lorinda DeHaan recently joined the Department as the Coastal Program Administrative Assistant. Lorinda has many years of experience in state government, most recently as Administrative Assistant in the Commission on Children and Families. She also worked two sessions in the Oregon Legislature as committee assistance.

After an open recruitment, DLCD staffer Paul Klarin was selected in July to replace Don Oswalt as Coastal Policy Specialist. In addition to responsibilities as overall coastal policy specialist, Paul will also work on legislative assessment and response during the 2005 session, and on strategic planning for the Coastal Program.

C. IN MEMORIUM

The department mourns the death of Bonnie Haynes. Bonnie passed away on or about Sept. 11, 2004. Bonnie had been with the department for approximately two years, and was employed at the time of her death as a Grants Administrative Specialist. The department made crisis counseling available to staff through its Employee Assistance Program.

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.
- Continuation of monthly lunch open forums for legislators (and their constituents). Three legislators and 13 legislative candidates attended the forum on September 7.
- Ongoing senior staff meetings with the Department of Transportation, to help improve coordination and communication between DLCD and ODOT.
- Speaking engagements included - July 21, Washington County Town Hall meeting (Portland); August 10, Salem Realtors Association (Salem); September 13, Oregon Planning Institute Conference (Eugene); September 22, Dallas Kiwanis Club (Dallas); September 24, Central Oregon Independent Realtors Association (Bend)
- Attendance at CIAC meeting (August 20).
- The director was presented with the Tom McCall Award by the Oregon Chapter of the Sierra Club at its awards luncheon in Portland on Sept. 18.

E. TRAINING

The department is evaluating all-staff training opportunities relating to collaborative problem solving.

Department staff have been active in a number of land use and planning professional outreach events of late.

Gloria Gardiner, Dale Blanton and Eric Jacobson were all on panels at the 1000 Friends conference September 11 & 12.

The annual state Oregon Planning Institute (OPI) conference sponsored by the Oregon Chapter of the American Planning Association (OAPA) and LCOG was held in Eugene on September 13th and 14th. The conference includes public and private sector planners from around the state, as well as planning commissioners and other citizens. Ron Eber was a lead member of the Oregon Planning Institute Program Committee and arranged for several DLCD staff members to serve as program presenters. Staff participated in panels on a variety of topics, including Gloria Gardiner session on RLUIPA), Constance Beaumont (session on school siting), Bob Cortright (session regarding transportation), Bob Rindy and Commissioner Worrix (session regarding UGB rulemaking), Mark Darienzo (session regarding aggregate), Doug White, (session on Rural Industrial Development), Ron Eber (session on Agri-tourism) and Steven Santos (session on Economic Development). Director

Shetterly and Chair VanLandingham opened the conference with a report on the department's and commission's accomplishments and policy agenda.

The department will also have several staff members involved in the Cascadia Convergence, a joint conference between the Washington and Oregon American Planning Association chapters to be held October 4-6, 2004.

4. LEGISLATIVE UPDATES

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

This committee met on July 22nd, but did not discuss land use issues.

As reported in June, one of the major topics of the June interim committee meeting was the potential implications of the recent *Jaqua* decision related to the Transportation Planning Rule. In early August, the Department received an inquiry concerning temporary rulemaking to amend the Transportation Planning Rule (TPR) to respond to the *Jaqua* decision for adoption by the Commission at its September 30 - October 1 meeting. This recommendation came from the Transportation Infrastructure subcommittee of the Advisory Committee on Regulatory Permitting (ACRP). The ACRP and subcommittees were convened by the Governor's Economic Revitalization Team (GERT) (pursuant to HB 2011) to make recommendations for streamlining regulatory processes to support economic development efforts.

The Transportation Infrastructure subcommittee proposed a specific recommendation that the Department initiate "emergency" rulemaking to amend Section 0060 of the Transportation Planning Rule to respond to the Court of Appeals ruling in the *Jaqua v. City of Springfield* case. Committee members shared concerns, expressed by development and other interests, that the court's decision could cause the rule to be interpreted in some situations as a "concurrency" requirement - where transportation facilities must be funded or in place for development approvals to be issued. The Committee recommended that the Commission pursue amendments to the rule to return to the "pre-*Jaqua* status quo".

In response to the proposal, the department indicated a willingness to pursue at least temporary rulemaking if the rulemaking was narrowly focused, and if there was broad consensus regarding the proposed changes.

Following the ACRP meeting on August 4, the department moved forward to evaluate rulemaking in anticipation of presenting a proposed rule amendment to the Commission at the September 30 - October 1 meeting. The department took the following steps:

- Met with key members of the ACRP Transportation Infrastructure Subcommittee, including its Chair Mark Whitlow and member Steve Pfeiffer to discuss the committee's recommendation and possible follow up actions.

- Staff contacted key stakeholders - including ODOT, local governments, and parties to the Jaqua appeal - to discuss the proposal and to prepare to convene an ad hoc work group to draft rule language.
- Staff drafted required notices and findings to initiate rulemaking with the Secretary of State's office for the September 30 - October 1 meeting.

After careful consideration, the department determined that the hoped-for consensus was not achievable in the limited time available and that the department should not proceed further with an immediate rulemaking effort. The department was concerned that staff and stakeholders could not develop a workable rule amendment that would have broad support from the interested parties in the time available before the Commission's September 29 - October 1 meeting. The department concluded that it would make more sense to focus discussions about changes to the rule within the broader TPR evaluation effort that is now underway.

B. HOUSE INTERIM COMMITTEE ON LAND USE REVIEW

This committee has not met since August 11, 2004. Staff did not attend the meeting.

C. EMERGENCY BOARD

The department submitted and received approval for a retroactive grant application authorization request to the September 16-17 Emergency Board meeting. This request allows the department to receive additional grant funds from the Federal Emergency Management Administration (FEMA).

The Emergency Board retroactive authorization was required due to the short notice and timing for submitting proposals. The department became aware of the availability of this FEMA grant opportunity on June 9, 2004 in a phone call from Mark Carey, FEMA Region Ten Flood Insurance Program Manager. This notice 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.

The department also requested the Emergency Board approve an expenditure limitation increase of \$120,000 in federal funds to allow the state to begin work on a Flood Map Modernization program. The FEMA federal funding will be available to the state through a new Cooperative agreement and requires no state or local funding match. The department will have 2 years to use the funds to increase local involvement in the flood mapping process and 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 UPCOMING EFFORTS AND ACTIONS BEFORE THE COMMISSION

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:

- A. Metro Periodic Review, pursuant to ORS 197.628 to 197.644 and OAR 660, Division 25; Referral of Periodic Review Task 2, an Urban Growth Boundary Expansion to Include Land for Industrial Uses.
- B. City of Newberg Urban Growth Boundary Expansion. Appeal of a department remand of an expansion of the urban growth boundary. Consideration of matters relating to the expansion of urban growth boundaries is conducted in the manner of periodic review.

B. RULEMAKING AND OTHER POLICY EFFORTS

UGB Amendment Rules

The UGB Rulemaking Work Group has met four times, and is scheduled to meet two more times: September 23 and October 14. The summaries of these meetings, and other information about the progress of the group, are posted on the department website at http://www.lcd.state.or.us/ugb_amendment_process.htm

The workgroup is on schedule to complete a draft rule and related Goal 14 amendments for mail out to the commission and the public about October 15th. This schedule presumes that LCDC will hold 10 public hearings to receive testimony regarding the draft rule and goal amendments, as follows:

- First public hearing at the November 4-5 LCDC meeting, in Portland.
- Eight hearings conducted by hearings officers on November 8, 9, and 10. Tentatively, these would be in Grants Pass, Corvallis, Gresham, Hillsboro, Bend, Florence/Reedsport, Astoria area, Eastern Oregon (times and exact dates are being arranged). DLCD staff will conduct these hearings and prepare summaries for commissioners.
- Final public hearing during LCDC meeting December 9-10, in Salem. The commission may adopt the rules and goal amendments at this time.

The workgroup has also appointed three subcommittees to discuss some issues that will need to be addressed by the proposed rules. The subcommittees will provide a list of

suggestions or ideas to be discussed by the full work group. The three topics that will receive special attention by subcommittees include:

- Coordinated population and employment projections that are used as a basis for UGB amendments.
- Optional “safe harbors” intended as short cuts for certain steps in the UGB amendment process. These provisions would be intended to streamline the UGB process and to reduce litigation.
- Legal issues, in particular past decisions by LUBA and the courts, which need to be considered in drafting a UGB amendment.

6. PROGRESS ON THE COMMISSION’S POLICY AGENDA

On November 10, 2003, the Commission directed the department to pursue a series of policy projects throughout the biennium, including several projects that involved amending or adopting administrative rules. The Commission suggested this agenda was “very ambitious,” and instructed the department to periodically report regarding progress. For reference, the department’s policy agenda and a recent memo summarizing the various committees and workgroups, many appointed by the commission in order to advise the department on land use policy issues this biennium, are set forth as Attachments C & D.

The work plan approved by LCDC last November included several rulemaking projects. These rules have either been adopted or are in progress, as follows.

- *Amend LCDC rules (under Goal 9) as necessary to improve land use planning for industrial sites, especially "shovel-ready" industrial sites.*

Status: This work is in progress; a subcommittee of the Economic Development Policy Advisory Committee has been discussing the potential for rulemaking to address Goal 9 issues. However, at this point that group does not anticipate proposing major rule amendments in the near future although some amendments to streamline the Goal 9 process may be forwarded by the December Commission meeting. If the Commission does not act on new rules by December, it is likely this rulemaking would need to be postponed till next biennium due to the legislative session beginning in January. It is noteworthy that in March of this year LCDC adopted new provisions of OAR 660, Division 018, in order to specify review, notice, and appeal times for shovel ready industrial sites. This meets one of the rulemaking requirements of HB 2011. At that time, the Commission also adopted some amendments to OAR 660, Division 004, to address industrial uses allowed by HB 2614 on abandoned or underutilized mill sites.

- *Streamline the UGB amendment process by adopting an administrative rule that codifies UGB policy and case law, eliminates unnecessary steps, and provides “safe-harbors” to save time and costs and to reduce litigation.*

Status: The commission appointed a work group in June, which has met four times and has targeted its efforts toward completing draft rules by October 15th, with adoption anticipated for December (see additional information in section 5B, above). The department has begun scheduling 10 hearings around the state to consider these rules and related amendments to Goal 14.

- *Re-establish a streamlined "Conditional Use Process" (CUP) for local approval of smaller, non-controversial aggregate mines on farmland.*

Status: This project is complete; the Commission approved these rules in June. The department is also preparing to conduct a series of meetings with counties around the state to provide information about the new rules.

- *Streamline the approval process for sewer service to existing uses within sewer districts outside UGBs. Appoint a work group to propose Goal 11 amendments supported by all interests. (Conditioned on committee support from SDAO).*

Status: This project has begun. The appointment of a workgroup to advise the department on this project is discussed in the staff report under Item 10 on this LCDC agenda. SDAO has agreed to support this rulemaking, and the department is aiming for adoption of Goal 11 amendments in December.

- *Streamline the process for farm product "processing" and "preparation". Define approval processes for these two actions, and pursue in conjunction with "housekeeping" rulemaking for farm and forest administrative rules, and in conjunction with rulemaking to permit small accessory food service facilities on golf courses allowed on EFU land.*

Status: This project has been completed; the Commission adopted all of these rules in March.

- *Evaluate implementation of the Transportation Planning Rule (TPR). Conduct a "mini-evaluation" of the rule; if that evaluation recommends rule changes, combine with housekeeping amendments clarifying the exception process under the TPR rule.*

Status: The Commission will hear a report under Item 7 regarding the TPR and possible amendment proposals.

- *Assure LCDC rules are up-to-date, streamlined, and consistent with state law. Initiate "Housekeeping" Rulemaking regarding several policy neutral technical corrections to existing administrative rules, including: Update/Clean-up of the Periodic Review rules, revise rules for "temporary rulemaking" to allow shorter notice in emergencies, revise rules on incorporation of new cities to be consistent with Supreme Court decision, adopt technical cleanup of farm and forest rules.*

Status: this project has been completed. The Commission adopted housekeeping rule amendments for all of these items in January and March of this year.

The department's November 4 report also described several "policy and program" initiatives that did not involve rulemaking. These included:

- *Make sure land use planning is part of Oregon's Economic Development approach. Establish an Economic Development Planning program and team within the department (guided by an advisory committee), refocus staff and grant assistance' prioritize planning grant funds to improve plans for industrial sites statewide; target education/outreach and technical assistance efforts to local governments in order to increase the supply of shovel-ready industrial sites.*

Status: These proposals have been implemented. The Economic Development Planning Team has been in place since early this year, and staff and grant assistance has been refocused toward local industrial land planning efforts. Working with GERT agencies, the department has helped in identifying market ready (or "certified") industrial sites statewide.

- *Examine the conversion of industrial land to other uses and make recommendations to the Governor.*

Status: A committee appointed to study this issue is continuing to meet and has drafted a report. The draft report is provided to the Commission under Item 9 on this agenda.

- *Increase citizen involvement in land use planning: Approve the commission's Public Involvement Policy, focus education and outreach efforts to improve local government compliance with Goal 1, establish a "Citizen Involvement Education and Training Program.*

Status: The Commission approved the Citizen Involvement Policy in April of this year. However, the CIAC appeared to have an overly ambitious work plan for 2003-04 and therefore did not progress in the areas of education and outreach efforts to improve local government compliance with Goal 1 or establishing a "Citizen Involvement Education and Training Program."

- *Examine the Periodic Review process and consider streamlining and other reforms to the process. Work with Metro on possible rules to streamline the process of goal compliance within the Metro region (conditioned on support from Metro to help conduct this rulemaking effort).*

Status: The department has been working with a committee to examine and streamline the Periodic Review process (see below). The second part of this concerns a proposal to draft some specific rules regarding Metro's periodic review process. This work has not begun at this point, but may be an item of discussion for the periodic review committee (see report below regarding that committee's progress).

- *Continue working with the OTC and ODOT to assess the effectiveness of tools to manage development around freeway interchanges. Consider rulemaking only if available ODOT tools are determined to be inadequate.*

Status: ODOT has hired a consultant (David Evans and Associates) to assist with preparation of written guidance on planning for interchange areas and preparation of interchange area management plans. Department staff will participate in this effort. In addition, management of interchange areas has been identified as an issue for possible consideration as part of the Transportation Planning Rule Evaluation (see report under Agenda Item 7.)

- *Respond to requests for assistance by the Port of Newport: Work with affected cities and ports in evaluating the problem, and if necessary, in amending current zoning for water-dependent industrial property.*

Status: The Department has worked with the City of Newport and the Port of Newport and has entered into an Intergovernmental Cooperative Agreement with the City to provide federal Coastal Zone Management funds for a comprehensive Economic Needs and Opportunities Assessment for the entire Yaquina Bay region. This assessment is being conducted by a consultant and will become the basis for developing recommendations for planning and zoning designations of various parcels, including consideration of water-related/water-dependent needs. The city and port are pleased with this comprehensive approach.

- *Study state land use policies regulating the size, type, and intensity of commercial uses outside UGB's; Schedule LCDC "listening" meetings to assess this issue throughout the state.*

Status: The commission has received information at several meetings this year, primarily as part of the round-table discussions. At its July meeting in La Grande, the commission received considerable testimony on this issue and agreed to establish a formal workgroup to further study the issue, and to possibly recommend new rules (see agenda item 11).

- *Monitor ongoing litigation in Oregon and other states on issues related to the federal Religious Land Use and Institutional Persons Act (RLUIPA) and return to the Commission for further direction if necessary.*

Status: This monitoring has been ongoing. The department received commission permission to intervene in the *1000 Friends v. Clackamas County/Molalla CC* case (see information above in this report). A recent Oregon Court of Appeals decision regarding a church in West Linn has been appealed to the Oregon Supreme Court, which has accepted review. The issues in that case do not directly deal with how RLUIPA affects land use goals or rules, and thus DLCD decided not to seek permission from the Commission to intervene or participate.

- *Assist the Governor's office in establishing a Governor's work group to examine and discuss problems with statewide land use processes for approving aggregate mining on farmland. The work group would initially focus on data and information needs.*

Status: This committee was appointed by the Governor last June and is underway; see summary below.

- *Explore methods to improve compliance with certain statewide goal and rule requirements that are currently triggered only by periodic review (Periodic review is no longer a required process for many local governments and for certain land use issues).*

Status: To date the department has not begun this project, except as part of the discussion by the Periodic Review Committee, discussed before.

- *Monitor legislative and Governor's office efforts to explore a process and a committee to review of the statewide land use system.*

Status: The department has met with the Governor's office several times on this matter, and has received DAS approval for a legislative concept to implement the 30-year review over the next two biennia. The department has also proposed a budget for this work next biennium.

- *Continue work with interested parties regarding options for a statewide policy on non-resource lands and for a major cleanup and reorganization of EFU statutes.*

Status: The department has not begun this work, due to staff and budget constraints.

- *Work on Ocean Resource Policy development issues with the Governor's Office (and provide support to OPAC).*

Status: The Coastal Program Manager provided lead staff support to the Governor's Office to develop the Governor's letter of response to the draft recommendations of the US Commission on Ocean Policy. The Governor's thirteen-page response was based on a scientific and technical review by a team of scientists at Oregon State University and policy review and comment by staff from many state agencies, including ODFW, DSL, DLCD, DEQ, DOGMI, and OPRD.

Aggregate Mining on Farmland Consensus Group

This discussion is continuing under the direction of the Oregon Consensus Program at PSU. The consensus group includes representatives from cities and counties, the Governor's office, OCAPA, Farm Bureau, 1000 Friends of Oregon, League of Women Voters, and some state agencies (DLCD, DOGAMI, Farm Bureau). The group has met three times: on June 21 (see July 7th director's report), August 4th, and September 2nd. Members of the group also attended an all-day field trip to aggregate sites on August 5th. An additional meeting is scheduled for October 21st, and the group will continue to meet after that but has not yet scheduled meeting

times. Also, two subcommittees have been appointed to discuss particular issues, including a subcommittee on aggregate data and information, and a subcommittee looking at streamlining the permit process.

The purpose of the aggregate/farmland consensus group is to consider statutes, rules, policies and procedures with respect to the permitting and regulating of aggregate mines on farmlands. The group is attempting to reach a consensus regarding potential changes to the state's aggregate/farmland policy, with consideration of the long-term demand for aggregate, availability of other aggregate resources, and the need to protect farmland. Group decisions on policy recommendations will be reached by consensus, and will likely be forwarded to the legislature. Consensus means that all members of the 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 is also working 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 are providing these services under an interagency agreement funded by ODOT. They will recruit other university scientists to address specific data and information issues, as needed.

Interim Periodic Review Reform Committee

This committee has met monthly since April. The group has addressed periodic review in the historical context and is anticipated to begin discussion in earnest regarding the content of the report to the legislature on needed reforms at its September 23 meeting.

- End -