

**DIVISION 42
SPECIAL PUBLIC WORKS FUND PROGRAM**

123-042-0020

Definitions

As used in this division of administrative rules, all capitalized terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Award" means the department's determination that the project is eligible for funding and that the department has identified the specified funding type and amount for the activities described in the staff recommendation.

(2) "Award ~~D~~ate" means the date of the final department management signature approving the award.

~~(3) "Brownfield" has the meaning given in ORS 285A.185.~~

(~~3~~4) "Department" means the Oregon Economic and Community Development Department.

~~(5) "Designated Disaster Area" means any county, city or special district in the state identified with emergency or major disaster affected areas that has been determined eligible for federal assistance.~~

(~~4~~6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including planning project activities that are necessary or useful as determined by the Economic and Community Development Department.

(~~5~~7) "Direct ~~P~~roject ~~m~~Management ~~c~~osts" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. "Direct ~~P~~roject ~~M~~anagement ~~C~~osts" does not include routine or ongoing expenses of the municipality.

(~~6~~8) "Distressed ~~A~~rea" has the meaning given that term by ORS 285A.010(5).

(~~7~~9) "Eligible ~~C~~ommercial ~~J~~obs" means jobs that are created or retained by businesses selling goods or services in markets for which national or international competition exists.

(~~8~~10) "Eligible ~~C~~ommercial ~~J~~obs ~~P~~roject" means a project that creates or retains eligible commercial jobs.

(~~9~~11) "Eligible ~~C~~ommercial ~~U~~ses" means non-industrial activities by businesses selling goods or services in markets for which national or international competition exist or the promotion of downtown revitalization through improvements to municipally owned property that clearly serve to render a downtown area or main street more competitive or improve its economic vitality.

(~~10~~12) "Emergency ~~P~~roject" means a development project resulting from an emergency as defined in ORS 401.025 to which federal disaster relief has been committed.

(~~11~~13) "Essential ~~C~~ommunity ~~F~~acilities" means only the following: city halls; city and county courts; county courthouses; community centers, including senior centers, youth centers, boys and girls club facilities, head start facilities and day care centers; domestic violence centers; emergency services buildings, including 911 facilities, ambulance facilities and fire stations; emergency shelters, including homeless shelters and shelters for people with disabilities; facilities for abused children; facilities for migrant farm workers;

food banks; police stations; jails; juvenile justice centers; libraries; medical facilities, including public health clinics, drug and alcohol treatment facilities, mental health treatment facilities, and transitional housing for mentally ill persons.

(1214) "Facility" means something that is built or installed to perform some particular function.

(1315) "Firm **B**usiness **C**ommitment" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project shall support industrial development and be consistent with local comprehensive plans and implementing ordinances.

(1416) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(1517) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(1618) "Industrial **L**and" means a site of suitable size, type, location, and service level for a variety of industrial uses consistent with local comprehensive planning and zoning.

(1719) "Industrial **L**and **D**evelopment" means an activity undertaken for properly zoned parcels of land to prepare the sites for development or to make the land ready for use.

(1820) "Industrial **S**ite **C**ertification" means an activity necessary or useful, as determined by the department, to the process of establishing and documenting the status of a site's readiness for industrial development.

(1921) "Loan" means debt financing offered to a municipality.

(2022) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(2123) "Planning **P**roject" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the department determines to be necessary or useful in planning for a potential development project.

(2224) "Project" means a development, planning or emergency project as defined by this section. When there is otherwise no specific reference to development, planning or emergency project, the reference shall include all project types.

(2325) "Renewable **E**nergy **F**easibility **S**tudy" means an activity necessary or useful, as determined by the department, to determine the viability of a new development project that uses a renewable energy resource as defined in ORS 469.185(9)(a) for the purpose of generating electricity, heat or manufacturing a fuel.

(2426) "Rural **A**rea" has the meaning given that term in ORS 285A.010(7).

(2527) "State **R**evenue **B**onds" means revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

(26~~28~~) "State Revenue Bond Loan" means a loan funded in whole or part through the sale of state revenue bonds.

(27) "Temporary project financing" means non-permanent financing, including short term and bridge financing used to finance eligible acquisition, pre-construction, and construction costs.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.~~464~~482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0026

Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants shall be given only when loans are not feasible due to the financial need of the municipality or special circumstances of the project. ~~The department is authorized to determine t~~The level of loan or grant funding, if any, may be determined on a case-by-case basis. The department ~~shall makes determine~~ awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund according to the following criteria; ~~it shall determine the~~

(a) aAmount requested

(b) ,tType

(c) ,iInterest rate

(d) ,tTerms and conditions of an award

~~;~~itThe department may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project.

(2) Grants:

(a) If the department determines that the project meets the minimum criteria, the department will make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the department's adopted policy.

(b) If the grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(c) The department shall receive in accordance with OAR chapter 123 division 70 a copy of the First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

(3) Loans:

(a) ~~Not more than 100 percent of the total cost of any project, including capitalized interest, shall be financed from the fund.~~ Maximum loan amount for a project will be based on the

department's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the fund, and prudent fund management. Projects that the department determines are not financially feasible, or loans that cannot be adequately secured, will not be funded.

(b2) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(c3) The department may not expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(d) When the department makes a loan to finance temporary project financing, all of the following apply:

(A) The municipality must receive a loan before project construction begins;

(B) The municipality must be able to document to the department's satisfaction that it followed all applicable governing laws and regulations, including prevailing wage, procurement, or similar other requirements that would apply to the contracted project when using the Special Public Works Fund.

(C) The award will consist of loan only, and will not exceed the cost of the project;

(D) The term of the loan cannot exceed 2.5 years (30 months) from the date the contract is executed.

(E) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.

(e) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.

(f) A development project may receive loan funding as follows:

(A) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(B) The interest rate on a loan is based on market conditions for similar debt, and is set at the time of the award.

(C) The interest rate on a state revenue bond loan is equal to the coupon rates on the bonds. Until bonds are sold, the municipality will pay interest on loan funds drawn down at the rate established by the department.

(g) The maximum loan amount per project is \$9,000,000, of which not more than \$3,000,000 will be in the form of a direct loan. A direct loan is a loan that will not be placed in the Oregon Bond Bank. Awards for loan funding of \$3,000,000 and above must be approved by Oregon Economic and Community Development Commission.

(h) The loan shall be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:

(A) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(B) If repayment of the loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the department will assess the financial capacity of the payer, the adequacy of the security, the financial instrument(s) requiring such payment to the municipality, and any other liens, pledge(s), or assignments of collateral from the payer to the municipality. The

department may require an assignment of such revenue and collateral from the municipality.

(C) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the department's financial analysis will extend to the financial feasibility of the projected revenues themselves and the financial and legal adequacy of the proposed pledge of tax increment revenue.

(i) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the department shall apply the following minimum criteria for grants:

(A) The department's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(B) Jobs will be created or retained as a result of the grant being awarded; and

(C) The department has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0030

Criteria for Project Funding

Specific types of development projects must meet the following criteria. If the project consists:

(1) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use, and a loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(2) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(3) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(4) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This subsection does not apply when the energy system project will be located within the recognized service territory of the municipality.

123-042-0036

Development Project Priorities, Eligibility, Criteria and Funding

~~(1) A development project, as defined in ORS 285B.410(32), can include the acquisition, improvement, construction, demolition or redevelopment of any of the following municipally owned and operated facilities:~~

~~(a) Transportation system projects, including roads, marine facilities, railroads, and airports;~~

~~(b) Utility system projects, including solid waste disposal sites; water, sewage, storm water drainage, energy, or telecommunications systems; or~~

~~(c) Buildings, land or other facility projects that assist the economic and community development of the municipality and can include planning project activities and financing costs associated with the development project.~~

~~(2) The department will apply consider the following priorities ~~and criteria~~ when determining development project eligibility:~~

~~(a) The department will give priority to pProjects which that it determines will help create or retain permanent jobs.~~

~~(b) The municipality must document the economic and community development benefits of the project and the department must determine, that at a minimum, the pProjects which have ~~has~~ a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development, these benefits must be documented by the municipality.;~~

~~(c) Projects where ~~T~~the municipality musthas documented substantial local commitment to the project's success; ~~and~~~~

~~(d) Projects where ~~T~~the municipality musthas documented how the benefits of the project will be preserved over the project life.~~

~~(3) In addition to the requirements in OAR 123-042-0036(2), the following specific types of development projects have additional criteria. If the project consists:~~

~~(a) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use, and a loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.~~

~~(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.~~

~~(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.~~

~~(d) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This subsection does not apply when the energy system project will be located within the recognized service territory of the municipality.~~

~~(e) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.~~

~~(2) The department will apply the prioritization process as approved by Oregon Economic and Community Development Commission when determining whether to make an award for an eligible development project:~~

(a) The department will review project concepts and/or project information contained in the Project Intake Form.

(b) Proposed projects that it determines to be eligible, address the goals of the program and are determined to be a high priority, will be advanced to the next step. Proposed projects that are not advanced will be referred to other possible funding sources or for further project development.

(c) High priority projects will be funded on a funds available basis.

~~(54) A development project may receive loan funding as follows:~~

~~(a) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.~~

~~(b) The interest rate on a loan is based on market conditions for similar debt, and is set at the time of the award.~~

~~(c) The interest rate on a state revenue bond loan is equal to the coupon rates on the bonds. Until bonds are sold, the municipality will pay interest on loan funds drawn down at the rate established by the department.~~

~~(65) The maximum loan amount per project is \$9,000,000, of which not more than \$3,000,000 will be in the form of a direct loan. A direct loan is a loan that will not be placed in the Oregon Bond Bank. Awards for loan funding of \$3,000,000 and above must be approved by Oregon Economic and Community Development Commission. Maximum loan amount for a project will be determined on the basis of the department's financial analysis of the municipality's borrowing capacity, the availability of moneys in the fund and prudent fund management as described in the department's adopted policy.~~

~~(76) The loan shall be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:~~

~~(a) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.~~

~~(b) If repayment of the loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the department will assess the financial capacity of the payer, the adequacy of the security, the financial instrument(s) requiring such payment to the municipality, and any other liens, pledge(s), or assignments of collateral from the payer to the municipality. The department may require an assignment of such revenue and collateral from the municipality.~~

~~(c) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the department's financial analysis will extend to the financial feasibility of the projected revenues themselves and the financial and legal adequacy of the proposed pledge of tax increment revenue.~~

~~(8) The department may award temporary project financing. When making an award of temporary project financing, all of the following apply:~~

~~(a) The activity must be an eligible activity under these Division 42 rules;~~

~~(b) The award will consist of loan only, and will not exceed the cost of the project;~~

~~(c) The term of the loan cannot exceed 2.5 years (30 months) from the date the contract is executed; and~~

~~(d) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.~~

~~The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Specific revenues of the municipality may also be required to be pledged, including revenues of the project, special assessment revenues and other collateral.~~

~~(97) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the department shall apply the following minimum criteria for grants:~~

~~(a) The department's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;~~
~~(b) Jobs will be created or retained as a result of the grant being awarded; and~~
~~(c) The department has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.~~

~~(108) If the department determines that the project meets the minimum criteria, the department will make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the department's adopted policy.~~

~~(119) If the grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.~~

~~(1210) The department shall receive in accordance with OAR chapter 123 division 70 a copy of the First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.~~

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06