

March 1, 2004

TO: Land Conservation and Development Commission

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 14 – Director’s Report**

A. INFORMATION UPDATES

1. GRANTS

a. General Fund Grants

A budget note in DLCD’s 2003-2005 budget required DLCD to submit a Grants Allocation Plan to the Legislative Emergency Board. Prior to Emergency Board review (now scheduled for April), DLCD can only provide funding for “continuing projects” and the total amount may not exceed 25 percent of the total funds appropriated for General Fund grants to local governments.

The department has approved several General Fund grants to local jurisdictions since the January director’s report. A summary is given in Attachment A. The grants approved include two that help ready jurisdictions for economic development (Amity and Elkton) and three that help complete periodic reviews (Lane and Wasco Counties and LCOG). Two requests were denied (North Plains and Banks) because the cities were not ready to complete the projects.

The Commission appointed a Grants Advisory Committee in January, and they have met twice since then. The committee has provided direction to the department on the allocation of Planning Assistance (small city/county) and Columbia River Gorge grants as well as advice on criteria for awarding Technical Assistance grants. Applications for second round grants (i.e., those not constrained by the budget note to “continuing projects”) have not been sent to local jurisdictions at the time of this report, but we expect to have them out prior to the Commission meeting.

The department received \$200,000 for the 2003-2005 biennium to provide grants to help implement the state’s economic development strategy. The strategy is currently underway so the department is allocating these funds to sites identified as “opportunity sites” by the Industrial Lands Advisory Committee and to other high priority economic development

activities. To date, the department has made the following economic development strategy grants:

- 1) \$73,000 to the City of Bend to support master planning for a 500-acre site (Juniper Ridge) that will be used predominately for industrial and other economic activities.
- 2) \$10,000 to Malheur County to support efforts to uphold the County's decision to site a bio-refinery plant.
- 3) \$5,000 to support the Greater Metropolitan Employment Lands study, a project supported by private and public sector partners to assess lands needed for all types of economic activity (e.g., commercial, retail, industrial, institutional and others).

2. 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 January 6, 2004 and February 13, 2004, the department received notice of twenty-six (26) appeals that were filed with LUBA. The department did not file any petitions in these appeals.

b. LUBA and Court Opinions [ORS 197.040(1)(c)(C)].

Between January 6, 2004 and February 13, 2004, the department received twenty-four (24) LUBA opinions. Of these, LUBA dismissed seven (7), affirmed seven (7), remanded six (6) and did not reverse or transfer any petitions to circuit court. Three (3) decisions involved the application or interpretation of a statewide planning goal or rule provision and none of these appear to require an amendment to a goal or an administrative rule. These LUBA opinions are under review by the department and if, on further review, it appears that they may require an amendment to a goal or an administrative rule the department will bring any such recommendations to the Commission.

Court Opinions

The department received four (4) opinions from the Oregon Court of Appeals during this time period. The Court affirmed three (3) of the prior LUBA decisions and remanded the other one. Two involved the application or interpretation of a statewide planning goal or an administrative rule but neither requires an amendment to a goal or an administrative rule.

3. PERIODIC REVIEW WORK TASKS/PROGRAMS

A summary of recent periodic review activity in the department is provided in Attachment B.

The number of new submittals has stayed at a fairly low level during the early part of 2004. This is probably due to a variety of factors, most particularly the impact of SB 920, which made many tasks optional, and the late start for the grant program this biennium. One exception is Gresham, which submitted 16 tasks (most of their work program) on January 14, 2004. Otherwise, only three tasks have been submitted since the January update, while ten reviews have been completed by the department.

It should be noted that SB 920 included a suspension of new work programs and tasks, so much of the department's work on periodic review besides review of submitted tasks has reduced.

B. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

1. New Partners for Smart Growth Conference (January 19-21)

The department, in combination with ODOT, through the Transportation and Growth Management (TGM) participated in and assisted in sponsoring the "New Partners for Smart Growth Conference" in Portland in January. The conference brought together approximately 900 elected officials, planners, and developers from around the country to discuss the issues, obstacles and success stories related to implementation of Smart Growth. Smart growth is development that uses land and resources efficiently by promoting compact, mixed use and encourages transportation choices.

Department staff had a display booth at the conference and distributed information about DLCD and the TGM programs and shared examples of successful models and planning publications with interested colleagues from around the country. Several hundred publications were distributed. Staff also attended a number of panel discussions that allowed us to gather information on successful Smart Growth programs in other states that will assist us in carrying out the TGM program.

2. Metropolitan Transportation Planning Status Report

The department is continuing its work with four larger metropolitan areas – Portland Metropolitan area, Salem-Keizer, Eugene-Springfield and Medford to evaluate the status of planning efforts to reduce reliance on the automobile as required by the Transportation Planning Rule (TPR). Department staff conducted a workshop with the communities to have an open discussion on land use and transportation issues in the four communities and to discuss the status of efforts to implement the TPR. An objective of the meeting was to allow the jurisdictions to share their experiences and to learn from each other.

3. Sustainability Plan

The department, in response to the Governor's Executive Order on Sustainability (EO-03-03) submitted its Sustainability Action Plan to the Oregon Sustainability Board. The plan is tied to the department's strategic plan, economic development action plan and the policy initiatives agreed to by the Commission at the November 10, 2003 meeting.

4. Planners Network Meetings

The department will be hosting two Planners Network meetings this spring – one in the Bend area and one in the central Willamette Valley. These meetings provide an opportunity for city and county planners and regional government organizations to discuss planning issues with department staff. The Planners Network meetings are part of the commitment the department made to the 2003 Legislature in the Action Plan submitted to the Ways and Means Committee.

5. Wetlands Guide

The department, in partnership with the Division of State Lands has just released "The Oregon Wetland Planning Guide" and cd-rom. The guide is designed for local planners and planning commissions to help them through the wetland planning process established by Goal 5 and Oregon Administrative Rule (OAR) 660-023.

6. Economic Development Planning Team visit to Central Oregon

Larry Ksionzyk, Community Development Specialist and Ann Beier, Planning Services Division Manager met with a several groups to discuss economic development issues and opportunities in Central Oregon. Mark Radabaugh and Jon Jinings, Central/Eastern Oregon Regional Representatives organized the visit.

Staff attended a meeting with the region's Governor's Economic Development Revitalization Team. Staff discussed planning issues related to industrial "opportunity sites" in Bend, Redmond and Prineville. The department has awarded a grant to do master planning for the Bend site (Juniper Ridge, see Item A.1.a., above) and discussed planning needs for Redmond as well. Staff also met with Roger Lee, Executive Director of Economic Development for Central Oregon. Staff discussed the Juniper Ridge opportunity site and issues relating to access, and also discussed broader issues including the balance between jobs and affordable housing, regional commuting patterns and the need to begin addressing these topics in a regional forum.

Staff met with Kate Kimball, 1000 Friends of Oregon's Central Oregon representative. She raised concerns about the need to better educate planning commissioners about the state land use planning program and their responsibilities in making local land use decisions. She also suggested the need to collect information regarding the real cost of rural residential development and the costs to communities of providing services for this type of

development. Ms. Kimball suggested that, while 1000 Friends supports Bend's expansion of the Urban Growth Boundary to include Juniper Ridge for industrial uses, they are concerned about future development of the area for other uses. Ms. Kimball also supports a regional approach to addressing issues in the Bend-Redmond area.

Staff visited with Burlington Northern-Santa Fe Railroad's sales representative, Susan Walsh-Enloe to discuss the locational needs of rail customers who generally deal with large, bulky products. Staff briefly discussed the issue of industrial conversion and the loss of opportunity to use rail. We talked about specific issues in Klamath Falls and opportunities in Redmond. According to Ms. Walsh-Enloe, the company is looking for over 400 acres in Oregon or Washington to create a multi-modal development (e.g., train to truck; train to rail; or train to barge).

We also met with Redmond's Mayor Alan Unger and Senior Planner Chuck McGraw. Redmond is experiencing incredible growth. The city provide affordable housing for a number of people who work in Bend. They have a good stock of industrial land. ODOT is working on a reroute of Highway 97 and there is a desire to keep the downtown area viable.

In summary, there are a number of opportunities for DLCD's economic development team to provide technical assistance and grant funds to support the regional representatives in helping communities with planning activities that will support long-term economic viability.

7. Ongoing Interchange Management discussion with Oregon Department of Transportation

Two efforts are underway with ODOT. These involve (1) assessing the extent of existing legal authorities of ODOT, LCDC and local governments to plan and manage lands in vicinity of interchanges; and (2) assessing the extent of land use issues affecting interchanges around the state. Progress has been made on both of these issues.

In late January, the department received a draft memorandum from the Department of Justice outlining answers to questions about extent of legal authorities related to interchanges. The department's assessment is that while the information is helpful, additional analysis and discussion is necessary to more fully explore the extent of existing authorities. This is important to reaching clear conclusions about whether some form of policy changes are needed.

Also, in late January the department received the first draft of ODOT's work to catalog interchanges that face significant land use issues. Ratings prepared by ODOT regional staff assess whether individual interchanges face a "high", "medium" or "low" threat from traffic growth or from nearby land development. ODOT and DLCD staff plan to work with the regions to refine the ratings to more specifically identify the type and nature of

problems at interchanges and better assess the nature of problems that may require additional planning guidance.

The department expects to report additional details on this work to the Commission at its April meeting.

8. Newport Water-Dependent Shorelands/Goal 17 Situation Report

For background see Item 7, Policy and Program Choices for the 2003-2005 Biennium, 11/10/03.

On February 12, 2004, a team of DLCD professionals met with officials and staff from the City of Newport and Port of Newport to discuss options for resolving issues associated with the city's desire to rezone estuarine shorelands under the Goal 17 rule related to Water Dependent Industrial Shorelands. The DLCD team consisted of Laren Woolley, Field Representative, Steven Santoss, Economic Development Specialist, Don Oswalt, Coastal Policy Specialist, and Bob Bailey, Coastal Division Manager. Newport officials included Mark Jones, Mayor, Sam Sasaki, City Manager, James Bassingthwaite, Community Development Director, and Don Mann, Manager, Port of Newport.

The DLCD team presented a list of action options that had been developed by the team and urged the city to undertake the approach that appeared to the team to be the most practical, timely, and useful for the city. That approach would be for the DLCD to provide technical and financial assistance to the city to complete planning work necessary to support an Exception to the Goal 17 rule. The team felt that this would yield a variety of planning benefits to the city and would avoid the costs, time, and uncertainties of re-opening the Goal 17 rule, which the Commission had amended as recently as August 1999. DLCD staff felt strongly that, regardless of the issue at hand, the city would benefit from an area-wide economic opportunities analysis and plan, completion of the shorelands site inventory and assessment required under Goal 17, and other planning work to strengthen the city's economic development components of its comprehensive plan, particularly in the South Beach area. DLCD offered both technical and financial assistance to the city to complete this work. The city participants agreed that this was the best approach to meeting the city's particular situation.

DLCD staff and city staff are currently working closely to develop a scope of work that will be the basis for Intergovernmental Agreements and contracts to complete the necessary planning and inventory work. Funds will come from state economic development funds under HB 2011 and from federal Coastal Zone Management funds that come to DLCD to support the Oregon Coastal Management Program.

9. Ocean Shore Master Planning: A DLCD Coastal Program Partner Update

One of the Department's Coastal Program partners is nearing completion of a very important planning process that will affect both DLCD and local governments. The

Oregon Parks and Recreation Department (OPRD) is preparing the first-ever coast-wide Ocean Shore Master Plan http://www.prd.state.or.us/osmp_hcp.php. Under Oregon's famous 1967 "Beach Bill," OPRD has jurisdiction over the "Ocean Shore" of the state, including both dry sands and wet sands along the entire coast. DLCD Coastal Division staff are working closely with OPRD staff in this effort.

The OPRD is undertaking this extensive and important planning work in order to.

- Take a "big picture" view of OPRD's beach jurisdiction over 200 miles of sandy beach in seven counties, superceding the traditional park-by-park view;
- Strike a balance between resource protection, such as the western snowy plover, and allowance for human uses;
- Open a dialogue with beach neighbors, visitors and governmental partners about beach management issues;
- Be proactive in addressing a variety of challenging issues for Oregon's coastal beaches;
- Provide a basis for future partnership efforts to care for Oregon's beaches; and
- Lay the basis for future OPRD decision-making about beach management.

In a related development, DLCD Coastal Division and OPRD teamed up to successfully apply for a NOAA Coastal Fellow, a nationally recruited post-graduate Fellow who, beginning in October 2004, will work for two years at OPRD to review and revise the Rocky Shores Management Strategy in the state Territorial Sea Plan. This review and update will ensure that management and protection of tide pools, cliffs, and rocks along the Oregon coast fits with the Ocean Shore Master Plan, which is aimed more at the sandy shores.

C. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

1. Recruitments

The Planning Services Division is filling four positions. Interviews have been conducted for the Economic Development Planning Team leader position. A final selection has not yet been made.

Interviews for the Transportation Growth Management Outreach position will be held in late February. Interviews will be conducted for a part time Administrative Support position to assist the economic development planning team in early March. The department also hopes to conduct interviews for the Aggregate specialist position in early March.

We will provide an update on the outcome of these recruitments at the March meeting.

2. Land Use Review

The idea of a major review of the statewide land use system was of significant and sustained interest in the 2003 legislature. HB 2912 was the vehicle for addressing the

legislature's interest. It would have created the Oregon Commission on Land Use Reform to undertake a study of the land use system and develop a list of recommended changes. The bill was broadly supported, but was not enacted into law. (A copy of the bill is attached as Attachment C.)

Nevertheless, the political momentum and public expectations remain strong for such a review, especially with new Commission members, a new director, and the ongoing work of the House Interim Committee on Land Use Review.

Governor Kulongoski has likewise endorsed a review of the land use system as one of his four goals for the department:

"Senate Bill 100 has served us well for the past 30 years, but we need to evaluate the system and make appropriate changes to meet our needs for the 21st century."

Department management and other staff have met to begin to assess the possibilities, opportunities, constraints, and options for such a review. Generally, such an extensive and broad based review is seen as involving a phased approach, beginning with listening tours by the director, in partnership with key staff and Commission members, followed by a series of town hall meetings statewide.

The listening tours would focus on key stakeholders and other interested parties. They would be designed to identify issues and concerns, and to develop a more focused plan for the second phase of town hall meetings.

The second phase would involve open community forums, both for the purpose of providing information to the public about land use planning in Oregon, and to solicit broad public input.

Consideration has also been given to a comprehensive survey of Oregonians to further define public awareness of and attitudes toward the land use planning system, and possibilities for change.

Upon completion of the foregoing phases, the department would work with the Commission in evaluating the information obtained, and prepare a report to the Governor and legislature, with recommendations for changes.

Consideration has also been given to working with appropriate legislative committees, including the House Interim Committee on Land Use Review.

Throughout the process the department would work to involve a broad and representative cross-section of Oregonians appropriate to each phase. This would include working with the CIAC, the Governor's office, legislators, state agency partners, local government officials, public interest and business organizations, the media, and other public

constituencies in all parts of the state. Department staff and the Commission would be key leaders of and participants in the process as well.

Obviously, the proposed review process would be intensive, both in terms of staff and Commission time, and in terms of budget. Staff is working with the Governor's office to determine what resources will be needed and might be available to support the effort.

It is hoped that a more defined agenda, time line, and potential budget resources will be available for presentation to the Commission at the April Commission meeting. In the meantime, the department welcomes any input and suggestions from the Commission as the planning for the review moves forward.

D. BACKGROUND INFORMATION FOR UPCOMING EFFORTS AND ACTIONS BEFORE THE COMMISSION

1. Review work task status for specific jurisdictions likely to be on the April LCDC agenda.

Although the situation may change as DLCD staff continues to work with the staffs of local jurisdictions, the following jurisdictions are likely to be before the Commission in April, 2004:

McMinnville: Department referral to the Commission of the city's submittal of an expansion of the urban growth boundary and of a periodic review task relating to commercial land needs.

North Plains: Appeals of two remanded tasks, one regarding the transportation system plan and the other zoning code updates. We anticipate a request to meditate these issues, so there may be no hearings in April.

Metro: Status update of the industrial land supply study.

2. Legislative Concepts

State agency legislative concepts are due to the Department of Administrative Services (DAS) on April 15, 2003. DAS and the Governor's Office have the final say as to bills the department may ultimately file as our own. Usually they approve or reject proposed concepts by mid summer (we have not seen exact time lines at this point). The department intends to inform the Commission about possible concepts over the next couple of weeks via email (the concepts must be filed prior to the April LCDC meeting).

If any of our proposed legislative concepts have fiscal implications, the instructions from the DAS clearly indicate that the department's budget proposal should take this into account. Therefore, depending on the degree of fiscal impact, the department may need to consider submitting additional Policy Option Packages (POPs) as part of its budget request.

Since we have not yet decided which concepts to file, we have not proposed any POPs at this point. There may be some leeway with regard to the POP requirement, the department is also exploring whether projected budget impacts may be handled in some other way.

The department has a preliminary list of potential concepts suggested by staff and others. We have not attached the list to this report because it is still preliminary and staff was unable to refine the list in time to attach it to this report. The department intends to review several ideas over the next two weeks, and we will be sending a proposed list to the Commission as soon as it is ready for review.

Due to the volume of land use legislation proposed by others each session (DLCD tracked over 150 land use bills last session), the department generally does not have sufficient staff to pursue more than one or two legislative concepts, depending on their complexity and controversy. The department has succeeded in passing our bills in past sessions, but generally we have filed only one or two bills per session.

Some very important issues will likely be on our list of possible legislation. Two legislatively mandated committees have been established by LCDC to make recommendations to the Governor and the legislature: the Periodic Review Committee and the Industrial Land Conversion Committee. In addition, it is likely that LCDC will consider possible legislation in order to implement land use review (the "big look"). Also, the Governor's committee on aggregate will be considering possible legislative proposals. None of these concepts would be fleshed out by April, so the department may have to file "placeholders" for each issue. In addition to these four issues, DLCDC staff has collected a number of ideas for substantive land use legislation.