

May 28, 2004

TO: Land Conservation and Development Commission

FROM: Lane Shetterly, Director

SUBJECT: **Agenda Item 9 – Director’s Report**

1. INFORMATION UPDATES

A. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

a. General Fund Grants

Technical Assistance and Periodic Review Grants

The deadline for applications for new Periodic Review and Technical Assistance grants passed on April 23, 2004. The department received 15 applications for Periodic Review grants and 55 for Technical Assistance grants. Funds remaining after earlier awards amount to about \$1.27 million, while the department received requests for just over \$2.1 million.

Periodic review grants are available to complete mandatory periodic review tasks. They are the highest priority for use of general fund grant dollars. The department reviews the grant requests to ensure the amount is appropriate for the work proposed and that the work proposed can reasonably be accomplished within the time allowed.

Technical Assistance (TA) grants are competitive. In consultation with the Grants Advisory Committee, the department established a set of review criteria to assess TA grant applications, consistent with the Grants Allocation Plan. The criteria include priorities for use of the funds. Projects that help a community prepare for economic development, those that streamline local processes, and updates to comply with federal mandates received the highest scores. About half of the TA grant requests will be funded.

HB 2011 Economic Development Grants

The legislature, through HB 2011 (Ch. 800 OR Laws 2003), provided the department with \$200,000 to use for grants to local governments in the 2003-05 biennium to further economic development. The department has, or is in the process of, awarding the following HB 2001 grants:

Juniper Ridge, Bend – The department has provided a \$74,000 grant to the City of Bend to develop a master plan for the Juniper Ridge opportunity site.

Newport – The department has provided a \$30,000 grant to the City of Newport for the preparation of a local economic development strategy including an updated buildable lands inventory and land needs analysis for employment lands. This project also includes a land use plan/overlay for the south beach area of Newport as well as public facilities plan update.

Malheur County – The department will provide a \$12,5000 grant to Malheur County to determine the quantity and quality of available rail accessible industrial land along the Malheur County rail corridor. Specifically, this project will include a Goal 9 economic opportunities analysis, review of existing local industrial development policies and, if appropriate, development of new policies and designation of lands for industrial uses.

The department has also provided a \$10,000 grant to Malheur County to assist the county with a land use appeal of the Treasure Valley Renewable Resources (TVRR) economic development project. Malheur County and the State of Oregon have been actively recruiting TVRR to construct a \$66,000,000 bio-refinery plant and create approximately 60 family wage jobs. This project has been funded and includes a \$14,400 local contribution.

Metro – The department is helping to fund the Greater Metropolitan Employment Lands Study (GMELS) through a \$5,000 grant to Metro. This multi-phase project includes an assessment of the current regional economic environment, a definitional framework for employment lands, and policy recommendations. The definitions agreed to as part of this study will help contribute to the department’s work on the conversion of industrial land to non-industrial uses and the review of Goal 9 (Economic Development).

Other – The department is also reviewing grant proposals from Harney County and the City of Phoenix.

b. Personal Services Contract Natural Hazards Website Project

The department’s 2004 grant agreement with the Federal Emergency Management Agency (FEMA) grant includes a work task for “Newsletter Communications and Public Outreach.” Funds from the federal grant are being used to update the website.

In accordance with the grant, the department and D.L Cohen, Inc. have signed a personal services contract for under \$5000 to update and upgrade the natural hazards section of the department’s website (<http://www.lcd.state.or.us/hazards.html>). The department is committed to providing up-to-date and useful information for a wide variety of audiences. This is the second phase of the natural hazards website project. Cohen’s expertise will assist the department in the completion of this project and will provide new content and organization. The contract terminates August 31, 2004.

c. Personal Services Contract for Timesheets Online Corrections

The department and Netforest have entered into a direct-negotiated contract for less than \$5000 to update the department's timesheet online system. This contractor's assistance is needed to comply with the department's Action Plan approved by the Legislature in 2003.

The current timesheet online system was developed with the outside expertise initially provided by Netforest and was in successful operation until late 2003 when the Department of Administrative Services (DAS) modified the State payroll database. The DAS modification caused the department's system to fail because it no longer was able to correctly interact with the DAS systems. The execution of this contract will bring the department's timesheets online system back into working order, not only assisting in employee data entry, but also simplifying department input to the DAS payroll systems. The contract terminates August 31, 2004.

B. PARTICIPATION IN LUBA APPEALS AND RECENT LUBA AND COURT OPINIONS

ORS Chapter 197 requires a report to the 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 March 31, 2004 and May 24, 2004, the department received notice of twenty-eight (28) appeals that were filed with LUBA. The department did not file any petitions but joined with the Oregon Department of Agriculture to file a state agency brief in support of a decision by Jefferson County to approve a feedlot in an EFU zone (*Friends of Jefferson County v. Jefferson County* LUBA No. 2004-063). The filing of the state agency brief was authorized by the Commission at its April, 2004, meeting.

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

LUBA Opinions

Between March 31, 2004 and May 24 2004, the department received twenty (20) LUBA opinions. Of these, LUBA dismissed six (6), affirmed nine (9), remanded five (5), and did not reverse or transfer any petitions to circuit court. One (1) decision involved the application or interpretation of a statewide planning goal or rule provision and this opinion does not require an amendment to a goal or an administrative rule.

Court Opinions

The department received eleven (11) opinions from the Oregon Court of Appeals during the time period covered by this report. The Court affirmed all eleven (11) of the prior

LUBA decisions. These cases did not involve interpretation of a statewide planning goal or an administrative rule.

Of particular interest, the Court of Appeals issued its decision in the case *Francis Mazzara v. Hood River County*, (A118596), decided April 28, 2004. While the department was not a party to the case, and did not participate in it, it is of interest to the department in that it is one of the first cases to apply Oregon's "Right-to-Farm" law (ORS 30.930 to 30.935). In this case, the Court of Appeals reversed a Circuit Court decision convicting a local farmer of creating a public nuisance because the barking of her sheep dogs disturbed neighbors. The farmer argued that ORS 30.935 immunizes farm practices from the application of local government nuisance ordinances. The Court of Appeals determined that the trial court disregarded uncontested facts that the use of the guard dogs was a farming practice and established the defendant's immunity to prosecution. Although "Right-to-Farm" laws are not adequate by themselves to protect farmland from the pressures of urban development, they can complement that protection with immunizing farming practices in farm zones from local nuisance complaints. They provide added protection to the primary use within farm zones, which is commercial farm use.

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 been slow, both in terms of submittals and approvals. At the time of this report, thirteen (13) tasks await department action, one more than the last report. The average time these tasks have been under review is about five weeks, the same as the previous Commission report.

D. LEGAL ACTIONS

If the Oregon Supreme Court accepts review, the Department intends to join with other state agencies in resubmitting an Amicus brief to the Supreme Court in case of *Just v. City of Lebanon* (A122517) 193 Or App 132 (2004). The State's brief is not over the merits of the Court of Appeal's decision but rather to address a prior Court decision in *Utsey v. Coos County*, 176 Or App 524 (2001), *rev dismissed*, 335 Or 217 (2003). The prior decisions in *Utsey* deals with the standing of persons or groups to appeal decisions of the Land Use Board of Appeals (LUBA) to the Court of Appeals.

In *Utsey*, the Court of Appeals articulate a constitutional standard for when persons may obtain judicial review of a LUBA decision, distinct from the one established in ORS 197.850 by the Legislature. Under ORS 197.850 any party to a LUBA appeal may seek judicial review. In *Utsey*, the Court of Appeals held that under the Oregon Constitution, the decision being review must be shown to have a practical effect on the party seeking review. Thus, in *Utsey*, the court dismissed an appeal by the Oregon League of Conservation Voters even though the League met the statutory standing requirements by appearing before the local government and before LUBA.

The State's brief will address the jurisdictional issue about who has the authority to determine who can invoke the Court's review: the Judicial or Legislative branch of government. Because the prior *Utsey* case was dismissed for other reasons, the State's earlier brief was not considered by the Supreme Court. The current case simply presents another opportunity for the State to resubmit its brief regarding the Court of Appeals decision in *Utsey*. Costs for resubmitting the brief will be shared with several state agencies and any cost will be minimal since the brief has already been prepared and the only necessary work is to update it for submission to the Court and to participate in oral argument.

2. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. ECONOMIC DEVELOPMENT PLANNING TEAM

Since the April Commission meeting, the Economic Development Planning Team convened the first meetings of the Industrial Conversion Study Committee and the Economic Development Planning Advisory Committee. The current rosters of these committees are provided in Attachments B & C.

The Industrial Conversion Study Committee will implement Section 17 of HB 2011 (Ch. 800 OR Laws 2003), which requires the Land Conservation and Development Commission, in conjunction with the Economic Revitalization Team, to study and report to the Governor by the end of the year on the conversion of industrial land to non-industrial uses.

At the first Conversion Committee meeting, members received information about ongoing industrial lands efforts in the Metro area as well as a status report on the Greater Metropolitan Employment Lands Study (GMELS). Discussion included a desire to examine available data and a need to better define terms such as "conversion" and "industrial". Committee members stated their interests in meeting more often and for longer periods.

The Industrial Land Conversion Committee met again on May 26, in and continued its conversation on the conversion issue. Committee members received an update on the Oregon Economic and Community Development Department's industrial site Certification process and efforts to market prime industrial sites throughout the state. The Committee discussed the nature and extent of the conversion issue. Members provided examples of conversions that were market driven and beneficial and others that had negative impacts on existing or future industrial development. The Committee discussed the different issues that rural and coastal communities faced in competing needs for industrial and other uses. Data on conversion of industrial lands is scarce but department staff will work with the League of Cities to survey cities and get a better understanding of the conversion issue. This information will be presented to the committee at their June meeting. Meeting summaries for the Conversion Committee can be found on the department's website.

The Economic Development Planning Advisory Committee will provide subject matter expertise and guidance to the newly formed Economic Development Planning Team at the department regarding the economic development planning needs of local governments and the state. In particular, the Advisory Committee will be expected to assist the department with any policy work it may do in this regard, such as reviewing and possibly updating the Goal 9 (Economic Development) administrative rules.

At the first Advisory Committee meeting, members discussed both broad and narrow definitions of economic development to begin the evaluation Goal 9. The majority of the discussion fell within two categories. The first category was how the state can assist local governments more effectively. Topics included the possibility of more regional planning and providing more incentives and assistance. The second category was how the state can remove obstacles and provide more certainty to developers. Topics in this category included the appeals process and vesting. At the next Advisory Committee meeting, scheduled for June 4, the committee will select priority work-plan items and continue the examination of Goal 9 and associated administrative rules. Meeting summaries for the Advisory Committee can be found on the department's website.

In addition, the Economic Development Planning Team has begun to develop and provide information on the department's web site. Additional material will be added. Once the web content is fully developed, citizens and other stakeholders will be able to obtain meeting notices, agendas and summaries as well as fact sheets and other information regarding the department economic development activities.

For more information on the activities of the Economic Development Planning Team, please contact Larry Ksionzyk at 503-373-0050 ext. 278, or by email larry.ksionzyk@state.or.us, or Steven Santos at 503-373-0050 ext. 284, or by email steven.santos@state.or.us

B. PLANNERS NETWORK MEETINGS

The Coastal Services Division held two planners' network meetings: the North Coast meeting in Tillamook on April 9, drew about 25 city and county planners from Clatsop, Tillamook, and Lincoln counties; the South Coast meeting on April 16, in Charleston, drew about 22 city and county planners from Lane, Douglas, Coos, and Curry counties. A coastwide planners' network meeting is scheduled for October 21, 2004, in Florence, Oregon.

The department has scheduled the third planners network meeting this biennium on June 17, in Eugene with city and county planners from Benton, Linn and Lane counties. These network meetings provide planners an opportunity to talk to the department about key issues in their region and to allow them to share information with other planners. Representatives from other state agencies are also invited to share information with the local planners.

The department's 2003-05 budget action plan included two network meetings in winter 2003. Meetings were held in Hood River and Medford. The department will be scheduling additional meetings in other regions later this summer.

Commission members are invited to attend these sessions. For additional information, please contact Ann Beier at 503-373-0050 ext. 255, or by email ann.beier@state.or.us

C. INTERIM PERIODIC REVIEW REFORM COMMITTEE

This committee met for the second time in April and again May 28. The second meeting agenda included an historical overview, discussion of how periodic review has changed since its inception, and an airing of issues and potential solutions. The agenda for the third meeting included further discussion of issues and solutions.

D. LCDC TRANSPORTATION SUBCOMMITTEE MEETING

On May 20, the Commission's Transportation Subcommittee (composed of Commissioners Worrix, Jenkins and Henri) met in Salem. The subcommittee received a briefing from staff and representatives of each of the state's four larger metropolitan areas on the status of metropolitan transportation planning work. The meeting was well attended by interested stakeholders. Copies of briefing materials received by the subcommittee are available from the Department.

Staff is now preparing a draft status report on transportation planning in metropolitan areas. The report will be distributed to interested persons for review in June, with review by the subcommittee tentatively scheduled for July. A meeting date has not yet been set. For additional information, please contact Bob Cortright at 503-373-0050 ext. 241, or by email bob.cortright@state.or.us

E. TRANSPORTATION GROWTH MANAGEMENT (TGM) CODE ASSISTANCE TO THE CITY OF KLAMATH FALLS

Klamath Falls has worked with the department on a range of planning activities. For example, the City received TGM grants for a Land Use Alternatives Analysis and the development and adoption of a Transportation System Plan (TSP) during 1997-99. In April 2003, Planning Commissioners and City Councilors attended a University of Oregon Community Planning Workshop session on the land use-transportation connection and overcoming obstacles to transportation-efficient policies and regulations, which was funded by the TGM Outreach & Education Program. In June 2003, the City Council adopted a Public Facility Plan funded by a department Periodic Review grant.

The City is currently working with ODOT and Klamath County on an East Main Bypass, a project identified in the TSP. The City is applying to place a downtown historic district on the National Register of Historic Places. The City has a 2003-05 TGM grant to refine its TSP.

The City is currently working with the department on a TGM Code Assistance project.

A planning consultant team has been working with the City to:

- Review its comprehensive plan policies and CDO;
- Educate the project advisory committee and public officials on “Smart Development” concepts; and
- Prepare a comprehensive plan and code audit report.

The City’s stated objectives for this project are to:

- Prepare for and accommodate orderly growth within the existing City limits and UGB;
- Provide a safe, efficient, and convenient multi-modal transportation system;
- Identify State Transportation Planning Rule (“TPR”) and City TSP policy and implementation issues that relate to the comp plan and CDO;
- Complete some Periodic Review planning work;
- Prepare the City for development of a more user-friendly CDO based on the TGM *Model Development Code and User’s Guide for Small Cities*; and
- Educate public officials and citizens on how Smart Development can help them achieve the above objectives.

TGM Code Assistance is paying the full \$37,135.20 cost of this “Phase 1 audit.” No local money match is required; however, City staff has been providing excellent assistance to the consultant and the TGM project manager.

Between December 2003 and April 2004, an advisory committee consisting of a City Councilor, the Planning Commission Chair, and local developers, real estate agents, engineers, surveyors, lawyers, and other citizens discussed potential plan and code amendment concepts at 5 meetings facilitated by the TGM consultant. The committee’s recommendations were reported to a joint meeting of the City Council and Planning Commission on May 24. City officials approved the report, and TGM Code Assistance is prepared to fund a “Phase 2” project in which text amendments will be drafted, reviewed and approved by the advisory committee, and taken to public hearing for adoption. For more information, please contact Gloria Gardiner, Code Assistance Planner at 503-373-0050 ext 282, or by email gloria.gardner@state.or.us

F. PREPARATION OF GOVERNOR’S COMMENTS TO THE U.S. COMMISSION ON OCEAN POLICY

As briefed to the Commission in April by Bob Bailey, he has worked closely with the Governor’s Natural Resources Office, directors and staff in a half-dozen state agencies, and the Institute for Natural Resources at Oregon State University to prepare a letter of comments for the Governor in response to the report and recommendations of the U.S. Commission on Ocean Policy. A near-final draft of that letter is provided in Attachment D. As discussed by the Commission in April, working drafts of the letter were circulated to the Executive Director of the Oregon Coastal Zone Management Association.

3. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. RECRUITMENTS

The department continues to recruit for the Urban Specialist position. Interviews should occur in late June.

The department has been unsuccessful in three recruitments for the Economic Development Planning Team Leader position. The department is considering options for how to recruit for this position and is considering options for the positions' duties and responsibilities.

The department is finalizing recruitment for the Accountant I position in the Operations Services Division. The department has completed the interview process and anticipates filling the position in the near future.

The department is recruiting for several positions:

- Fiscal Analyst 2/Budget Officer position in the Operations Services Division closes June 14, 2004 with an anticipated hire date near July 1, 2004.
- Coastal Program Administrative Assistant (AS-2) closes Monday June 14. This position will assist the Division Manager in a variety of duties but will concentrate on assistance in tracking state agency permit reviews, federal consistency reviews, and submittal of program changes to the federal Office of Ocean and Coastal Resources Management.
- Coastal Program Policy Analyst NRS-4 closes June 29 and is a major program recruitment occasioned by the retirement of Don Oswald.
- Interviews for a Northeast Oregon Regional Representative took place on May 26. This is a new position, to be located in La Grande. No decision on how to fill this position has been made at the time of this report.
- Interviews for the vacant Information Specialist 6 will take place on June 1, 2004.
- Interviews for the vacant Willamette Valley Regional Representative will take place on June 2, 2004.

B. NEW STAFF

Teddy Leland has been selected as Manager of the Operations Services Division. Teddy previously served as Fiscal Analyst and has been instrumental in preparing the Department's biennial budgets.

Greg McMurray is the new DLCD Marine Affairs Coordinator, filling a vacancy that resulted from Bob Bailey's promotion to Coastal Services Division Manager in 2003. Greg

has a marine science background and brings substantial experience to DLCD from previous senior administrative positions in the Department of Geology and Mineral Industries and, most recently, the Department of Environmental Quality Water Quality Division.

C. RETIREMENTS

Nan Evans has retired from state service but not from the playing field. On June 1 she began her new position as Director of Governmental Affairs for the Nature Conservancy in Oregon. As we all know, her retirement is a loss for the department and program but a gain for a the Nature Conservancy. We wish her all the best.

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). The lunch forum on May 3 was attended by two legislators. The next regular lunch forum is scheduled for June 7.
- Testimony (with Chair VanLandingham) before the Oregon Housing Council on April 30 regarding the coordination of land use and housing issues.
- Ongoing senior staff meetings with the Department of Transportation, to help improve coordination and communication between DLCD and ODOT.
- Speaking engagements, including the Eugene Chamber of Commerce Legislative Advisory Committee (May 8); Central Oregon Area Commission on Transportation in Redmond (May 13); and the Oregon City Planners Association at McKenzie River Conference Center (May 14). A speaking engagement before the Salem Realtors Association is scheduled for June 4.
- Media visits including the *East Oregonian* (Pendleton) editorial board; the *Baker City Herald*; Bend.com; the *Roseburg News-Review*; Medford radio station; Polk County *Itemizer-Observer*; and the *Statesman-Journal* (Salem) editorial board.
- Attendance at the Regional Problem Solving summit in Roseburg on May 25.

- Attendance at the MPAC meeting at Metro on May 26.
- Meetings, including listening tours with field staff to various regions of the state: Southern Oregon (meetings with Douglas, Josephine and Jackson County Commissioners and planning staff; Douglas County planning commissioner; Rep. Susan Morgan; Grants Pass planning staff; Medford Mayor and planning director; Bear Creek Regional Problem Solving group; and a group of land use consultants, planners and Oregon Transportation Commission Chair Stuart Foster, hosted by Rep. Rob Patridge) April 27-29; Metro (meetings with Portland and Metro area planning staff; and a tour of proposed Metro UGB expansion areas) May 6 and 8; Southern Willamette Valley (meetings with Lebanon and Linn County officials and planners; Lane Council of Governments staff; Lane County Commissioner and planners; Eugene planning staff; Coburg officials and planning staff; Springfield officials and planning staff; and the Lane County 2050 Policy Advisory Committee) May 10 and 11; Central Oregon (meeting with Madras and Jefferson County officials and planning staff; lunch at Madras McDonalds with former Commissioner Gary Harris who introduced the director to a “Gary Mac.”) May 13; Eastern Oregon (meetings with Baker City and County officials; attendance at Baker City Economic Development Summit; meetings with LaGrande and Union County officials and Commissioner Jenkins; meetings with Pendleton and Union County officials and planner; meeting with Hermiston officials; meeting with Gary Neal, Port of Morrow) May 16-19.

Additional meetings are scheduled with the Hillsboro officials and Intel (June 3).

E. TRAINING

Most department staff had the opportunity to participate in Negotiation Skills training provided by David Landis, a Nebraska State Senator and widely recognized trainer. Staff from the Division of State Lands also attended. Case studies and group exercises focused on skills necessary to resolve complex land use and natural resource issues.

4. LEGISLATIVE UPDATES

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

The Joint Interim Committee on Transportation, Trade and Economic Development met in Boardman, Oregon on May 20, 2004. The department was not invited to testify and did not attend the meeting. At its meeting the committee received from other interested parties concerning the need to review the Transportation Planning Rule. A copy of the written testimony from Mark Whitlow is provided in Attachment E. The committee did not take any action, but further legislative consideration of the Transportation Planning Rule can be expected.

B. EMERGENCY BOARD

The Department of Land Conservation and Development (DLCD) submitted a placeholder to the June 2004 Emergency Board on May 28, 2004 for the purpose of requesting position authority and funding for a Principal Executive Manager F (PEM/F) Deputy Director and Executive Assistant. The placeholder was submitted because the department continues to work with the Department of Administrative Services and Governor's office in determining the funding source for these positions.

Establishing a permanent deputy director and a permanent executive assistant position in the department will assist the department's current director to focus on external activities such as working with legislators and legislative committees, the Governor's Office, local government officials, and the Commission's Citizen Involvement Advisory Committee. The establishment of these positions will also allow the director to focus energy on working with the Commission to conduct a broad-based review of Oregon's land use planning program and the subsequent leadership of the strategic planning necessary to move the program forward based on the outcome of this broad-based review.

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

A. REVIEW WORK TASK STATUS FOR SPECIFIC JURISDICTIONS LIKELY TO BE ON THE JULY LCDC AGENDA

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 July 2004:

Lane County: Possible appeal of county's co-adoption of Metro Goal 5 resource inventories.

B. RULEMAKING

Goal 11

The Commission's Policy Initiatives include updating Goal 11 to address sewer service in rural areas. The effort has not yet begun, pending background work to be completed by the Oregon Special Districts Association.

Interim Periodic Review Reform Committee

See discussion of Interim Periodic Review Reform Committee, Item 1C, above.