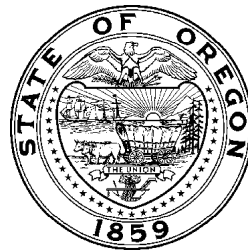

Positioning Oregon for Prosperity

REPORT OF THE GOVERNOR'S INDUSTRIAL LANDS TASK FORCE

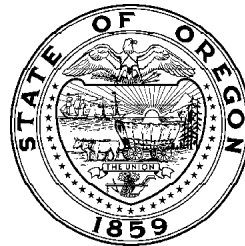


Report to Governor Kulongoski

Prepared by the
Industrial Lands Task Force

October 2003

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Executive Summary

Oregon's economy outpaced that of the nation in the 1990s. For the last several years, however, the economy has stalled. The reasons are many, and all are the subject of discussion. One potential problem, however, has been a recurring topic of discussion for the last three years: the adequacy of the supply of land for industrial users.

In February 2003 Governor Kulongoski established the Industrial Lands Task Force to address a widely held perception that many of the fastest-growing and economically critical areas of the state have not maintained an adequate supply of industrial lands to meet the needs of a growing and prosperous state. After five public hearings where over 250 citizens testified and hours of deliberations, the Task Force has concluded that our land use and infrastructure financing systems, as applied, have not consistently met this need.

The industrial lands issue is intertwined with many other issues. Merely providing a supply of industrial lands will not ensure that the Oregon economy recovers or that industry will expand or move here.

The testimony received by the Task Force repeatedly emphasized that the industrial lands issue is intertwined with many other issues. Thus, merely providing a supply of industrial lands will not ensure that the Oregon economy recovers or that industry will expand or move here. Such factors as adequate housing, schools, water, sewers, transportation, and many other quality-of-life issues may have at least as great an impact on how successful Oregon will be in revitalizing its economy.

While fully recognizing this reality, the Task Force concluded that it would best serve the purposes of the Executive Order by narrowing its focus to these key questions:

- What is "industrial land"?
- Is there a shortage of industrial land?
- What should be done to ensure an adequate supply of industrial land?

The Task Force focused on these key issues:

- *What is "industrial land"?*
- *Is there a shortage of industrial land?*
- *What should be done to ensure an adequate supply of industrial land?*

What Is Industrial Land?

The Task Force determined that a lack of consistent and agreed-upon definitions of basic terms will hamper any debate and agreement about policy changes.

Everyone has an intuitive sense of what "industrial" is, but the Task Force found that there was no universal definition that all agreed on. The current behavior of the market reflects a melding or blurring of the boundaries between commercial/office and industrial uses. This means that many of the traditional definitions of "industrial" embodied in zoning ordinances are obsolete. The Task Force developed a working definition of "industrial" sufficient for Task Force purposes, but more work will be

needed to develop an adequate definition for land use planners to use in rewriting zoning ordinances.

The Task Force also found that "industrial land" is not a homogeneous commodity and it must be analyzed with market needs clearly in mind. One implication is that industrial land inventories and projections of need should not be based solely on a simple ratio of jobs to acres, which is the traditional method used by many land use planners. Rather, the inventory must be defined in terms of what types of industry a city, county, or region can realistically attract and what kinds of land they need by location, size, price, physical characteristics, and services.

The Task Force heard considerable testimony that the inventories of industrial land that local governments rely on are flawed because much of the identified land is not really "available." "Available" to the Task Force means land that is on the market at competitive prices. But this is not the way comprehensive plans define "buildable," which many industrial siters and developers assume to be the same as "available." For example, most local plan inventories will show the undeveloped part of a large site in the inventory of "buildable" land based on the assumption that in the next 20 years the owner will build on it. That is appropriate in the context of Oregon land use laws, but hypothetical availability is of no use to industries seeking sites today or tomorrow. If the state is going to base land use plans on inventories of these lands, it needs to provide guidance on how to handle this difficult issue.

The Task Force recommends that all of the above definitional issues be resolved by the Land Conservation and Development Commission (LCDC) in the next six to 12 months. Pursuant to ORS 197.638, LCDC should obtain the assistance of the Oregon Economic and Community Development Department (OECD) to assist it to clarify and resolve these issues.

Many of the traditional definitions of "industrial" embodied in zoning ordinances are obsolete. "Industrial land" is not a homogeneous commodity and it must be analyzed with market needs clearly in mind.

The Task Force recommends the definitional issues be resolved by LCDC in the next six to 12 months.

Is There a Shortage of Industrial Land?

The Task Force concluded that there is a significant lack of certain types of project-ready industrial land¹ in certain parts of the state. This conclusion is supported by the findings of the Portland-area Regional Industrial Lands Study (RILS), the HB3557 committee report, testimony received at Task Force hearings, and the direct experience of Task Force members. The Task Force also concluded that many jurisdictions lack a 20-year supply of industrial land.

However, the Task Force also concluded that the short- and long-term shortage issue is not universal around the state. Some areas, such as Klamath Falls and Medford, seem to have the short-term and long-term supply issue under control. Other areas, however, such as Portland metro, Salem-Keizer, Eugene-Springfield, Bend, and Pendleton, appear to have short- and in many cases long-term (20-year) supply shortages. And they have shortages of parcels of the right size, configuration, or location suited to certain uses.

The Task Force concludes that there is a critical shortage of industrial land in key parts of Oregon, to meet both immediate needs and long-term needs.

¹ "Project-ready" means land that can be made ready for construction to begin within six months, which means that some basic infrastructure must already be to the site, and that planning, zoning, and most environmental, infrastructure, and public comment issues must already be resolved so that all building permits can reasonably be obtained within six months. This is the term that most closely meets what the Task Force means by providing a short-term supply of industrial land.

What Should Be Done to Ensure an Adequate Supply of Industrial Land?

The Task Force believes it must be the state's highest priority to utilize existing state land use laws to ensure that local government provides a 20-year supply of industrial land.

The Task Force has concluded that there are several causes of these problems and that some of the causes are more important in some locations than others. After reviewing all the issues identified during testimony and in other reports, the Task Force divided the issues into two groups²:

Critical Issues

1. State Land Use Program
2. Attitudes of State and Local Officials and General State Reputation
3. Responsibility of the Public and Private Entities in Maintaining an Inventory of Industrial Land
4. Infrastructure Financing

Secondary Issues

1. Conversion of Industrial Land to Other Uses
2. Old Mill Sites
3. Brownfields
4. Wetlands

The Task Force believe, that a first step local jurisdictions can take with respect to industrial land supply is to do what state law allows and requires them to do: have a 20-year supply of buildable lands inside their Urban Growth Boundaries (UGBs). The entire state's economy suffers when certain communities fail to meet their obligations to provide a full inventory of such lands. While this will not necessarily solve the need for project-ready sites, the Task Force believes it must nonetheless be the state's highest priority to (a) identify the key communities critical to the state's economic recovery where a 20-year supply is not available and then (b) take one or more of the following actions to resolve the problem.

The Task Force identified one problem that is not subject to easy resolution and that cuts across all the issues identified: attitude. The Task Force heard much testimony that Oregon has a reputation nationally of not being "open for business." Oregon is "out of the game" on industrial development, according to some. This is partly because there is inadequate project-ready land available in the right places at the right prices. Many of those testifying believe that many local and state governments are not very helpful to applicants in getting through the permitting process. To much industry today, "slow" is the same as "no" when it comes to permitting. The Task Force makes specific recommendations for overcoming this perception, but clearly resolving it is a key to the success of all the recommendations that follow.

² This Executive Summary does not provide a summary of each of the specific findings for each of these categories; details are in the full report.

Virtually all of the recommendations that follow involve the Department of Land Conservation and Development (DLCD) and the Governor's Economic Revitalization Team (GERT).³ The Task Force recommends that the directors of these two agencies review the Task Force's recommended lead agency and then determine the best overall strategy for dividing up the work, especially the work defined for the next six to 12 months. The agency that the Task Force recommends should take responsibility for each action is noted. Where more than one agency is listed, a lead agency is recommended.

What to Do Immediately

a. Verify Industrial Land Inventories in Key Communities

The inventories are the foundation on which local comprehensive plans are based. OECD, GERT, and DLCD (lead), together with the team recommended in (c) below, should **quickly** evaluate the adequacy of these inventories in key locations and then take appropriate action to correct them if they are in error.

b. Create an Agricultural Lands Team

A team of experts, led by the Department of Agriculture, should assist local governments in identifying which agricultural lands could be added to the UGB in key communities without significantly harming the agricultural industry or that are not part of what is considered by agriculture to be the "commercial agricultural base."

c. Create an Urban Lands Team

The state should make available a small team of experts drawn from state agencies (and perhaps some outside consultants), managed through DLCD and GERT (lead), to provide direct assistance to solve the industrial lands problem in a limited number of communities or regions that OECD identifies as being critical to the overall economic health of the state. If the issue blocking provision of land is lack of an adequate inventory of industrial land and the need is to write or process a UGB amendment or to update a zoning ordinance, the state team should provide this assistance directly to willing local governments.

d. Create Local and State Permitting Teams

Even if land is available for industrial use, there may be complex permitting issues. Local governments should create "one-stop" permitting teams to manage all local permitting, similar to what Klamath Falls and Hillsboro have done. The state, through GERT, should provide similar assistance where state and federal issues exist. The Task Force concluded that unless such help is available, many prospective industrial developments will go elsewhere.

e. Complete the Metro UGB Expansion

Metro recently added 1,900 acres of industrial land into the UGB, but estimates a need for about 2,700 additional acres. Metro should complete this process within nine months and DLCD/LCDC should conduct an expedited review process for it.

What to Do Immediately

- a. Verify Industrial Land Inventories in Key Communities*
- b. Create an Agricultural Lands Team*
- c. Create an Urban Lands Team*
- d. Create Local and State Permitting Teams*
- e. Complete the Metro UGB Expansion*
- f. GERT Funding*
- g. Site Certification*
- h. Immediate Opportunity Funds*
- i. Virtual Permitting*

³ GERT used to be known as the Community Solutions Office. The name was changed by the 2003 Legislature.

f. GERT Funding

The Task Force highly recommends that the Legislature fully fund GERT and make it a permanent part of the way the state addresses intergovernmental development issues.

g. Site Certification

As provided for in the Governor's Executive Order establishing the Task Force, OECDL should expedite the creation of its certified project-ready lands inventory. This will help overcome the perception that there is no project-ready land available in the state.

h. Immediate Opportunity Funds

The Legislature, the Oregon Department of Transportation (ODOT), and OECDL should do everything possible to increase allocations to these funds, and the agencies should put a high-level official in charge of administering them. These funds would be used to solve infrastructure problems for identified "bird in the hand" industrial development opportunities that will create jobs in the near-term.

i. Virtual Permitting

GERT (lead), DLCD, and the Department of Consumer and Business Services (DCBS) should continue to support and spread the word about the "virtual permitting" process being implemented in Jackson and Josephine counties. This process allows a landowner or developer to obtain all the conditional use permits, siting permits, and actual building permits needed to construct a hypothetical building on the site

What to Do over the Next Year

a. Consider "Time-out" Rule Making

If the fast-track efforts described above do not quickly resolve the 20-year land supply issue, LCDC should consider adopting an emergency rule to allow amendments to UGBs to increase the supply of industrial land. This provision should apply only to a few identified jurisdictions and only for a very short period of time. The goal would be to resolve the major supply issues quickly while avoiding issues that arise from "super-siting."

b. Regulatory Streamlining

The Governor's regulatory streamlining Executive Order, being managed by DCBS, can handle many of the issues related to shortening the time needed to get through the regulatory processes at the state level. Similar programs may be needed in local jurisdictions, for the Task Force heard from developers that most roadblocks are experienced at the local level, not the state level.

c. Alternative Financing

OECDL should examine alternative financing vehicles that can resolve the issue of requiring immediate payback on infrastructure loans. If this requires legislation, then appropriate proposals should be prepared for the next legislative session.

What to Do over the Next Year:

- a. Consider "Time-out" Rule Making*
- b. Regulatory Streamlining*
- c. Alternative Financing*
- d. Division of State Lands (DSL) Industrial Fund*

d. Division of State Lands (DSL) Industrial Fund

The State Lands Board and DSL (lead) should examine their Asset Management Plan to determine whether greater investment in industrial lands projects would provide an adequate return to the Common School Fund to meet its constitutional obligations. If so, then the State Lands Board should make funds available for industrial lands projects.

What to Do During the 2003-2005 Biennium

a. Update Industrial Land Inventories More Often

LCDC should require all jurisdictions over a certain size, not just Metro, to update their industrial land inventory and make appropriate adjustments every five to seven years so that the chance of again facing a severe shortage of industrial land is minimized.

b. Resolve Issues Related to Updating Comprehensive Plans

A significant reason for the lack of short- and long-term supplies of industrial lands is local governments not keeping their plans up to date. The reasons for this are complex, and blame can be placed at the state as well as the local level. The net result is that some jurisdictions have an inadequate supply of project-ready industrial land to meet the varying needs of potential users, and some have an inadequate long-term supply as defined by state law. Goal 9 is a very powerful vehicle to resolve the industrial lands issue, but it appears that it is neglected, both by local governments and the state. LCDC (lead) and local governments need to examine what is causing this failure and either recommend legislation, create incentives, or make appropriate rule changes to resolve it.

c. Reexamine the State's Role in Providing Industrial Lands

An issue of great importance is for the state to decide whether providing an adequate supply of industrial lands is something to leave to the private market to resolve or is something government has a major role in resolving. In much of the rest of the country and the world, government plays a larger role than in Oregon through direct development of sites and funding infrastructure. In principle, port districts and other public entities in Oregon should be able to fill in where the private market is not able to do the job. In the past, the private market has provided most of the project-ready industrial land in the state, but high carrying costs and difficulties with acquiring sites appear to have diminished its role, especially in the Portland metro area. Compounding the problem, public resources are less available to acquire, develop, and hold industrial sites. The Task Force recommends that the Legislature seriously consider expanding the role of the public sector in providing project-ready and long-term supplies of lands, and providing well-funded financial and other mechanisms for the state to assist private industry in providing such lands where needed. To determine the needs of the private industrial developers, OECD (lead), GERT, and DLCD should consult with these developers to determine what is needed to enable them to participate in solving the shortage of project-ready lands. This recommendation is not intended to put the state in competition with private developers but rather to deal with the realities of the market.

*What to Do During the
2003-2005 Biennium:*

- a. Update Industrial Land Inventories More Often*
- b. Resolve Issues Related to Updating Comprehensive Plans*
- c. Reexamine the State's Role in Providing Industrial Lands*

Industrial Lands Task Force Report

Background

On February 20, 2003, Governor Kulongoski issued Executive Order 03-02, which found that

“Oregon’s economy is in distress. To meet this challenge, my highest priority over the next four years is to facilitate the growth of jobs and stimulate the economy. The private sector is the engine of growth for the economy. Accordingly, my economic development agenda seeks to create a stable climate for investment and a secure environment for business. I intend to position this state for a quick recovery from the downturn by actively promoting and aggressively working to retain, expand and recruit business to Oregon.”

Many people who monitor Oregon’s economy believe that one of the contributors to its distress is that many of the fastest-growing areas of the state have not maintained an adequate supply of industrial lands to meet the needs of a growing and prosperous state. The Governor created the Industrial Lands Task Force to address this issue.

The Task Force consists of individuals knowledgeable about the issues faced by cities, counties, economic development organizations, and businesses in providing an adequate supply of industrial lands. The Task Force was charged with investigating what is working and what is not working with respect to developing, identifying, and protecting our industrial land supply, both short- and long-term. The Task Force was chaired by Ms. Margaret Kirkpatrick, held five hearings around the state,⁴ and solicited mail and e-mail comments from Oregon communities, economic development and land use experts, and business people.

As a basis for preparing this report, the Task Force received testimony from over 250 citizens and experts in the field of industrial development and reviewed previous work done on the subject in Oregon. In particular, it has benefited from the work done under HB3557 on industrial and commercial lands, and the studies done in the Portland metropolitan area on industrial lands. The Task Force itself is composed of individuals with broad experience in land use and industrial development, which experience also has been instrumental in developing this report.

This report contains the Task Force’s conclusions and recommendations.

⁴ Medford, Albany, Bend, Pendleton, and Beaverton in March-June 2003.

The Focus of this Report

The testimony received by the Task Force repeatedly emphasized that the industrial lands issue is intertwined with many other issues. Thus, merely providing a supply of industrial lands will not ensure that the Oregon economy recovers or that industry will expand or move here. Such factors as adequate housing, schools, water, sewers, transportation, and many other quality-of-life issues may have at least as great an impact on how successful Oregon will be in revitalizing its economy.

While fully recognizing this reality, the Task Force concluded that it would best serve the purposes of the Executive Order by narrowing its focus to the key question: do we have enough industrial land today and for the future? This means the Task Force looked mainly at a subpart (industrial land supply) of the total industrial land issue. Thus, issues like how much land do we need, the marketing of it, labor supply, the educational system, and the like are not examined in detail. The Task Force principally probed these questions:

- What is “industrial land”?
- Is there a shortage of industrial land?
- What should be done to ensure an adequate supply of industrial land?

The following sections are each subdivided into two parts: (1) a discussion of the information the Task Force received and (2) its recommendations for resolving the issues identified.

What Is “Industrial Land”?

DISCUSSION

The Task Force received much testimony advising that current definitions of many terms related to industrial lands and used by planners are not adequate for today’s needs. The Task Force asked the presenters to provide good working definitions of terms, but the answers lacked detail, which indicates the complexity of the issue. The terms needing definition are: industrial, industrial land, available industrial land, and project-ready industrial land.

Industrial

When one examines a typical zoning ordinance, the definitional problem for “industrial” becomes clear. Zoning ordinances usually have different industrial zones that provide for a range of uses from “light” (quasi-commercial/office; business park) to “heavy” (manufacturing). Ordinances attempt to group uses with similar characteristics and impacts. Many ordinances complicate the definitional problem by allowing many commercial or residential uses in “industrial” zones by conditional use permit. In the Portland ordinance, for example, of the 30 uses listed for the employment and industrial zones, only five are not permitted at all in the industrial

zones, and in the employment zones (i.e., office/commercial), only three uses are not permitted. Hence, there is inherent vagueness in what planners mean when they say "industrial." This definitional issue contributes directly to the "conversion" issue discussed separately below.

A recent study in the Portland area confirms that the current behavior of the market reflects a melding or blurring of the boundaries between commercial/office and industrial uses.

*"Not all 'industrial jobs' go on industrial designated land. According to the **Regional Industrial Land Study (RILS) for the Portland-Vancouver Metropolitan Area**, the 'traditional' industrial job sectors (including construction, manufacturing, transportation, communication, and public utilities) accounts for between 17% and 91% of the jobs in employment districts.*

*"The **Regional Industrial Land Study** also documented the fact that non-traditional industrial job sectors (including retail, service and government sectors) also utilize industrial land. The range of non-industrial jobs as a proportion of total jobs, was 15% for heavy industrial districts; 23% for general industrial districts; and 32% for mixed-use and light industrial districts."⁵*

Industrial Land

Any fuzziness in the definition of "industrial activity" transfers directly to the definition of "industrial land" to accommodate that activity. If there is a problem with the supply of industrial land, it must stem from the fact that there is not enough land of the right type, in the right location, at the right price for industries.

The Task Force heard considerable testimony that land suited to warehousing may be considerably different from what is suitable for a high-tech chip plant, a pulp mill, or a small machine shop. Each type of industry desires certain site characteristics, among which are slope, size, clustering with like industries, access to transportation (rail, air, transit, water, highway, bicycle, pedestrian), land cost, power, gas, water, telecommunications, and sewer. And it is not sufficient, for example, merely to say "yes, water is available," because individual industries have varying needs for quantity, pressure, reliability, cost, and quality.

The Task Force staff reviewed the report prepared by the HB3557 committee, *Methods for Evaluating Commercial and Industrial Lands Sufficiency*, and found that this report provides excellent guidance on defining "industrial land" in the context of each jurisdiction. However, the Task Force received much testimony that indicated that local land use planners are unaware of this document and are still working under the assumption that industrial land supply needs can be determined simply by making a population projection and applying a ratio of jobs to land needed. This approach is clearly not adequate to ensure a local government provides adequate land for today's and tomorrow's industrial needs.

If there is a problem with the supply of industrial land, it must stem from the fact that there is not enough land of the right type, in the right location, and at the right price for industries.

⁵ *Methods for Evaluating Commercial and Industrial Lands Sufficiency*, Otak and ECONorthwest, December 9, 2002, pages 13-14.

Available Industrial Land

The Task Force defined “available” as land that is on the market at competitive prices. It heard anecdotal information that convinced it that there is a shortage of available industrial land in most jurisdictions that are the major economic centers of the state. Gauging how much is available is complicated by the fact that the industrial inventories of buildable industrial land in land use plans often give an unrealistic picture of what land is truly “available” for industrial development. For example, a single user that is using only part of the site may own a site in a large parcel. Most inventories will show the undeveloped part of the site in the inventory of “buildable” land, based on the assumption that in the next 20 years it is likely to be used. That is appropriate in the context of Oregon land use laws, but it ignores the short-run problem: the land is not available **now** for businesses seeking new sites.

The Task Force defined “available” as land that is on the market at competitive prices. There is a shortage of available industrial land in most jurisdictions that are the major economic centers of the state.

There may also be vacant and buildable land in brownfield sites, such as the hundreds of acres along the Portland waterfront. Some of this acreage may not be cleaned up for many years. However, some acreage has been cleaned up and is now available. There are also lands where, for a variety of reasons, owners do not wish to sell or have unrealistic expectations of what they are worth. In both cases, the lands look available, but the definition of “available” or “buildable” does not include considerations that affect the timing of when these lands will be available for purchase at competitive prices. Hypothetically, all these lands are available and are likely to be developed within the 20-year planning horizon of the comprehensive plan. However, this theoretical availability is of no use to new industries seeking sites today or tomorrow.

Project-Ready Industrial Land

There seems to be less ambiguity about the definition of this term, and some use it interchangeably with the terms “shovel-ready” and “market-ready.” The Task Force concluded that the term “project-ready” is the best one to use for the purposes of this report. The Task Force’s recommended definition is provided below.

RECOMMENDATIONS

Defining “Industrial”

The Task Force has been unable to develop a clear definition of “industrial” that would resolve the various issues noted in the discussion above. However, the Task Force has developed a definition of “industrial” that is sufficient for the purposes of this report, but the definition leaves unresolved where the line is between industrial and commercial/office. The working definition of “industrial” developed by the Task Force has these parts:

The Task Force developed a definition of “industrial” that is sufficient for the purposes of this report, but the definition leaves unresolved where the line is between industrial and commercial/office.

- **What is included in the definition of “industrial”?**

Traded-sector businesses whose products are sold in national and international markets, including manufacturing and production, corporate headquarters; research and development facilities; warehousing and freight movement; wholesale sales; industrial service; ports, railroads, and other transshipment yards; solid waste reclamation; and services for the industrial uses that occupy a small

percentage of the industrial lands in a given area (e.g., medical clinics, daycare, vehicle repair). In other words, for the purposes of state policy and investment, the concern is less about what “industrial” businesses do on the land they occupy and more about whether what they do brings export income into the state and employs people in family-wage jobs.

- **What is not included in the definition of “industrial”?**

Lands for non-traded-sector financial, insurance, real estate, and other professional office uses, unless they are accessory to an industrial use; retail businesses that sell to the general public and membership groups, and retail services that do not serve the industrial uses and that exceed a small percentage of the total industrial lands acreage in a given area (5%-10% of net acreage); schools and colleges; medical centers; religious institutions; and housing.

- **The gray area:**

The two-part definition above leaves a large gray area of uses that needs to be sorted out before a complete definition of “industrial” can be developed. The Task Force was only able to define the bookends of the definition. Further work is clearly needed (see recommendations below).

Projections of need for industrial land require more detailed analysis than is provided by a simple ratio of, say, jobs to acres.

Defining “Industrial Land”

The Task Force believes that industrial land must be land that meets the needs of current and future industrial users of all types and sizes. This obvious conclusion means that projections of need for industrial land need more detailed analysis than is provided by a simple ratio of, say, jobs to acres. The issue must be analyzed in terms of what types of industry a city, county, or region can realistically attract and what kinds of land they need by location, size, and services. In other words, “industrial land” is not a homogeneous commodity and must be analyzed with market needs clearly in mind.

The Task Force highly recommends that DLCD (lead) and OECD provide training to local planners in using the *Methods for Evaluating Commercial and Industrial Lands Sufficiency* developed by the HB3557 committee. The methodologies many jurisdictions are using to develop their industrial land needs appear to be inadequate. The Task Force also recommends that these agencies examine whether the methodology can be simplified for smaller jurisdictions into a set of templates or a “cookbook” that can be completed by the staff available to most jurisdictions.

DLCD and OECD should clarify and resolve the issues involved with the designation and inventorying of “industrial” lands in local land use plans.

Defining “Available” Industrial Land

The Task Force recommends that this issue, **and the definitional issues with the previous two terms**, be resolved, pursuant to ORS 197.638, by having DLCD request OECD to assist it in clarifying and resolving the issues raised by the designation and inventorying of “industrial” lands in local land use plans. The Task Force is not suggesting that these departments develop a rigid definition of these terms, as they need to be adaptable to the wide variety of communities in the state. However, greater specificity would be helpful to all communities when doing their planning.

The question of availability will be a particularly difficult one, for it involves guessing at the intentions of private (and in some cases public) landowners. But, if the state is going to base land use plans on inventories of these lands, it needs to provide guidance on how to handle this difficult issue. Goal 9 already requires that jurisdictions provide a short- as well as long-term supply of land, so resolving this issue may be more a matter of education and, possibly, enforcement than one of developing new rules. The LCDC should adopt the definitions into rule, if necessary.

Defining ‘Project-Ready’ Industrial Land

“**Project-ready**” means land that can be made ready for construction to begin within six months, meaning that some basic infrastructure needs to be provided before construction starts and/or that all building permits can reasonably be obtained within six months. This is the term that most closely meets what the Task Force means by providing a short-term supply of industrial land.

Other terms are also in use, but can be differentiated from "project-ready" as follows:

“**Shovel-ready**” is land on which construction can begin immediately after obtaining building permits. This means all needed infrastructure is in place, or can be provided during the time it takes to construct the buildings.

“**Market-ready**” is land that is shovel-ready, fits what the market is demanding, and is priced right. This term is very hard to define in practice, so it is not used in this report.

“Project-ready” means land that can be made ready for construction to begin within six months.

Is There a Shortage of Industrial Land?

The Task Force heard persuasive testimony that there is a significant lack of certain types of project-ready industrial land in certain parts of the state. The findings of the Portland-area RILS, the HB3557 committee report, and the direct experience of Task Force members support this conclusion. The Task Force also heard persuasive testimony that many jurisdictions lack a 20-year supply of industrial land.

However, the Task Force also heard persuasive testimony that the short- and long-term shortage issue is not universal around the state. Some areas, such as Klamath Falls and Medford, seem to have the short- and long-term supply issue under control. Other areas, however, such as Portland metro, Salem-Keizer, Eugene-Springfield, Bend, and Pendleton, appear to have short- term and in many cases long-term (20-year) supply shortages. And they have shortages of parcels of the right size, configuration, or location suited to certain uses.

The Task Force heard persuasive testimony that there is a significant lack of certain types of project-ready industrial land in certain parts of the state.

What Should Be Done to Ensure an Adequate Supply of Industrial Land?

The Task Force has concluded that there are several causes for these problems and that some of the causes are more important in some locations than others. The Task Force is persuaded that there are some issues where the state has major responsibility for crafting a solution and others where the lead needs to be taken by local or federal agencies or by the private market.

The Task Force's diagnosis of "the problem" is discussed below, divided into two topic areas:

Critical Issues

1. State Land Use Program
2. Attitudes of State and Local Officials and General State Reputation
3. Responsibility of the Public and Private Entities in Maintaining an Inventory of Industrial Land
4. Infrastructure Financing

Secondary Issues

1. Conversion of Industrial Land to Other Uses
2. Old Mill Sites
3. Brownfields
4. Wetlands

Critical Issues

State Land Use Program

DISCUSSION

This year marks the thirtieth anniversary of Senate Bill 100, the legislation that created Oregon's statewide land use system. Despite significant controversy and conflict, that land use system remains broadly popular with the majority of Oregonians. Initially, the establishment of UGBs throughout Oregon provided both certainty and adequacy for potential developers of industrial, commercial, and residential lands. By clearly delineating what lands were available for each type of development, as well as what lands were preserved for farm or forest use or as open space, Oregon's land use system was a positive contributor to the state's economic boom in the 1990s.

Local plans can and should be an integral part of an economic development strategy because they should provide a short- and long-term supply of needed lands and a plan

Local plans can and should be an integral part of an economic development strategy, but the system is not operating as intended.

for providing needed infrastructure. However, the testimony received indicates the system is not operating as intended, and that a number of large communities have fallen considerably behind in providing needed lands, especially project-ready lands. The Task Force heard persuasive testimony that the Salem-Keizer, Eugene-Springfield, Bend, and Portland metro areas have failed to maintain a 20-year supply of industrial land and that project-ready land is in particularly short supply for some types of uses. Jurisdictions that fail to provide needed lands face no apparent penalty for this failure, other than being out of the industrial lands market. The Task Force finds that this is a significant problem and needs to be addressed.

The Task Force heard testimony that a weakness of the state land use program is that it focuses on providing an adequate supply of land for long-term (20-year) needs, but does not have adequate mechanisms to ensure provision of project-ready lands for the short term. For industrial lands, OAR 660-009-0025(3)(c) requires that most local governments, during periodic review, “review and, if necessary, amend the comprehensive plan and the short-term element of the public facilities plan so that a three-year supply of serviceable sites is scheduled for each year, including the final year, of the short-term element of the public facilities plan.” This requirement clearly is not being met.

There is a logic to why some local governments have not updated their inventories: the contentious nature of many land use decisions leads many elected officials to avoid offending or inflaming vocal constituencies over policies that won't have any practical payoff for 10, 15, or 20 years. They would prefer to wait until a large prospective employer is considering locating in their community, then find a way to expedite the planning process to accommodate the employer.

Although the state program provides for a periodic review of land use plans, testimony supports the view that this has been one of the least successful parts of the law. Some communities have engaged in reviews that failed to update the plans to meet changing needs, while others have become so disputatious that the process dragged on for more than a decade, leading some to conclude that “periodic review” had become “perpetual review.” Recently, steps have been taken to expedite the review process, but the root issues of lack of adequate funding at the local level and how to handle the potential contentiousness of the process have yet to be resolved.

The Task Force also heard testimony on the issue of UGB expansions. Several people testified that the process for expanding UGBs is too complicated, takes too long, and gives too much precedence to preservation of farmlands. Although, the testimony that the state needs to make immediate changes to the statutes and rules governing UGB expansions was unpersuasive, it suggests that this is a worthy subject for examination under future legislation.

The Task Force finds, in addition, that successfully amending a UGB can be a very complicated matter under existing rules and that, as an interim solution, the state needs to provide additional support to certain communities to successfully complete such expansions where they are justified. The recent acceleration of processing of the Metro UGB amendment by LCDC is an example of where extra help was provided successfully. The current work by the Department of Agriculture to define critical agricultural lands in the Portland metro area is another.

A weakness of the state land use program is that it focuses on providing an adequate supply of land for long-term (20-year) needs, but does not have adequate mechanisms to ensure provision of project-ready lands for the short term.

Testimony that the state needs to make immediate changes to the statutes and rules governing UGB expansions, was unpersuasive. However, successfully amending a UGB can be a very complicated matter under existing rules, and, as an interim solution, the state needs to provide additional support to certain communities to successfully complete such expansions where they are justified.

The issue of whether, how much, and where agricultural land should be converted to urban uses is complex. The Task Force defers to the Legislature or LCDC on this issue.

The Task Force heard testimony that the state is over protecting agricultural lands. It also heard testimony that agriculture is an industry just like any other and deserves to have its land base protected, just as some are asking for the industrial land base to be protected. The issue of whether, how much, and where agricultural industrial land should be converted to urban uses is complex and goes to the core of the debate about the values embodied in the state land use program. The state land use program clearly has procedures for converting agricultural land to urban uses (the UGB amendment process). Further, the program clearly has not made agricultural land “sacrosanct,” given the many UGB amendments on agricultural land that have occurred since the program was established 30 years ago.

However, the Task Force concluded that many jurisdictions are clearly having difficulties successfully amending their UGB to accommodate industrial uses (and perhaps other uses). Their failures hurt the economy of the entire state in some cases, so there is a state interest in determining how to improve the process to make them more successful. The Task Force feels it does not have the expertise to determine what changes would improve the UGB amendment process. It defers to a special commission that the Legislature or LCDC may establish to determine the appropriate changes.

Several of the recommendations below involve new studies by state and local governments. A valid criticism of these is that they may end up adding another layer of government administration that delays solving the problem. This is not the intent. Rather, the intent is to provide technical assistance quickly to local governments to enable them to resolve issues that have stymied development of adequate inventories of industrial lands.

RECOMMENDATIONS

a. Inventory Verification

Based on the testimony received, the Task Force believes there is much reason to doubt the validity of the buildable industrial lands inventories in many jurisdictions, in particular jurisdictions that are major economic centers of the state. This is a serious issue, for it is the foundation on which local comprehensive plans are based. OECD, GERT, and DLCD (lead), together with the team recommended in (d) below, should **quickly** evaluate the adequacy of these inventories in key locations and then take appropriate action to correct them if they are found to be in error. The recent experience of the RILS study and Metro in developing such inventories can provide useful information for this activity.

b. Inventory Updates

LCDC should require all jurisdictions over a certain size, not just Metro, to update their industrial land inventory and make appropriate adjustments every five years so that the chance of again facing a severe shortage of industrial land is minimized.

c. Agricultural Lands Team

Create a team of experts, led by the Department of Agriculture, to assist local governments in identifying which agricultural lands could be added to the UGB without significantly harming the agricultural industry or are not part of what is

The state should quickly evaluate the adequacy of industrial land inventories in key locations and then take appropriate action to correct them if they are found to be in error.

considered by agriculture to be the “commercial agricultural base.” This approach has been used in the Rogue Valley Regional Problem Solving project and is being used currently by Metro. This approach shows promise as a means of resolving the land hierarchy issue in statute. However, the approach also has the potential of becoming politicized by individual landowners lobbying for inclusion or exclusion from the UGB. The process has not been completed in either the Rogue Valley or the Metro area, so how successful it will be is not known. This approach may lead LCDC to adopt rules about “agricultural sanctuaries” similar to the “industrial sanctuary” ordinances used in some cities and regions to protect significant industrial lands from encroachment and conversion.

Some local governments need assistance to identify which agricultural lands could be added to the UGB without significantly harming the agricultural industry or are not part of what is considered by agriculture to be the “commercial agricultural base.”

d. Urban Lands Team

The state should make available a small team of experts drawn from state agencies (and perhaps some outside consultants), managed through DLCDC and GERT (lead), to provide direct assistance to solve the industrial lands problem in a limited number of communities or regions that OECD identifies as being critical to the overall economic health of the state. If the issue blocking provision of land is lack of an adequate inventory of industrial lands, the Task Force believes that this team could resolve much of the issue within a few months by utilizing the methodology developed under HB3557. If the problem is a need to write or process a UGB amendment, update a zoning ordinance, or revise parts of a Transportation Systems Plan, the state team should provide this assistance directly to willing local governments. The Task Force heard that many UGB amendments are hung up at the local level or in court, so this team could be extremely helpful in breaking through this logjam. House Bill 2011 added more resources to DLCDC and could aid in expediting amendments.

The state should make available a small team of experts to provide direct assistance to solve the industrial lands problem in communities or regions critical to the overall economic health of the state.

e. Permitting Teams

Even if land is available for industrial use, there are likely to be complex permitting issues. Local governments should create such teams to handle all local permitting. GERT should provide assistance where state and federal issues exist. The Task Force concluded that unless such help is available, many prospective industrial developments will go elsewhere, especially since Oregon has a reputation of being a difficult place to permit projects.

f. Plan Update Failure

The Task Force concluded that a significant reason for the lack of short- and long-term supplies of industrial lands is due to local governments not keeping their plans up to date. The reasons for this are complex, and blame can be placed at the state as well as the local level, but the net result is that the state does not have adequate lands in its inventories. LCDC (lead) and local governments need to examine what has caused this failure and either recommend legislation (perhaps to provide more funding), create incentives, or make appropriate rule changes to resolve it. In particular, LCDC should investigate which key communities are failing to meet their industrial inventory requirements and meet with them to determine the source of the problem. Changes to the periodic review statute also have the potential to ameliorate the issue, but many believe periodic review needs a major overhaul and/or much greater levels of funding so that local governments can do the required work.

LCDC should improve implementation of Goal 9, Goal 11, and Goal 14.

g. Goal Implementation

LCDC should reexamine the land use program to improve implementation of Goal 9 (economic development), Goal 11 (public facilities and services), and Goal 14 (urbanization and UGB amendments). This examination would need to focus on the issue of what is the right balance of agricultural lands protection versus needs for urban expansion. Goal 9 and the accompanying rules are a very powerful vehicle to resolve the industrial lands issue, but it appears that they are neglected, both by local governments and the state. LCDC may, at some point, need to use its enforcement powers to encourage some local governments to update their plans. The Task Force also recommends that the state (together with advisors from the private sector) closely examine the needs of the market, in particular the question discussed in a later section of whether the private market can adequately provide certain types of project-ready industrial land.

h. Exclusive Farm Use (EFU) Tax Exemption Inside UGBs

The EFU tax exemption creates an incentive to hold the land inside UGBs rather than making it available to the market immediately. There exists a mechanism in ORS 197.756 to slowly remove these exemptions. However, this is not a “one size fits all” issue, and valid reasons exist to preserve agricultural tax exemptions on some lands for an interim period. The Task Force was cautioned that the state should not punish landowners inside UGBs who continue to farm but whose land the market may not need for 20 years. Nonetheless, state policy should not encourage landowners to hold land off the market when it is needed. The Legislature should consider whether existing statutes fairly balance these policy interests.

i. “Time-out” Rule Making

If the efforts in (a) and (d) above document a significant problem with an inadequate industrial land supply in key industrial market areas, LCDC should consider adopting an emergency rule to allow amendments to UGBs to increase the supply of industrial land. This provision should only apply to a few identified jurisdictions and only for a very short period of time (opt in or out of the program in, say, 90 days, and commit local resources necessary to do the work). The goal would be to resolve the major supply issues quickly while avoiding issues that arise from “super-siting” or shortcutting citizen participation. Such a process could involve such provisions as fast-tracked review process by LCDC/DLCD limited appeals/litigation, enhanced access to bond financing through OECD (sewer/water) or ODOT (roads), and special priority for coordination of agencies by GERT to speed the process on difficult properties.

j. Virtual Permitting

GERT (lead), DLCD, and DCBS should continue to support further development of the “virtual permitting” process being implemented in Jackson and Josephine counties. This process allows a landowner or developer to obtain all the conditional use permits, siting permits, and actual building permits needed to construct a hypothetical building on the site. GERT and DLCD should develop and distribute a guidance document for local governments and economic development officers statewide. If the technique is suited to adoption by rule, LCDC and/or DCBS should consider doing so.

k. Permitting Acceleration

OECD (lead) and DLCD should examine the accelerated permitting processes developed in New York state and other parts of the country for ideas on how the overall industrial lands permitting process can be simplified and accelerated.

l. Completing the Metro UGB Expansion

Metro recently completed taking 1,900 acres of industrial land into the UGB, but there remains about 2,700 acres to take in. Metro should complete this process within nine months, and DLCD/LCDC should conduct an expedited review process for it. Metro should use as a criterion land that can be made project-ready quickly.

Attitudes of State and Local Officials and General State Reputation

DISCUSSION

The Task Force heard testimony, supported by the experience of some Task Force members, that some key state agencies and local governments involved in providing various types of permits or approvals for industrial lands seem too ready to say “you can’t do that” rather than “let’s figure out how you can accomplish it within the framework of the law.”

This is an attitude issue that is difficult to solve through adoption of laws or regulations. A little-understood aspect of state land use law is that while individual jurisdictions may unilaterally adopt a “no growth” policy, state law prevents them from implementing it. The law requires them to provide for growth insofar as growth is allocated to them by the counties, a regional government, or, in some cases, LCDC. Since the land use program also strongly limits growth that can occur outside UGB, growth, if it is to occur, needs to occur within cities for all practical purposes. Within a county or region, the program permits allocating growth to some communities and not to others, but this decision is made jointly by the jurisdictions affected, not by individual jurisdictions alone. The Task Force did not attempt to reach a conclusion on whether this is a good policy.

The Task Force heard testimony that Oregon in general has a reputation nationally of not being “open for business.” Oregon is “out of the game” on industrial development, according to some testimony. This is partly because there is a perception that there is virtually no project-ready land available, and what is available is in the wrong place or is too expensive. The perception is also partly due to the belief that many government permitting entities are not very helpful to applicants in getting through the permitting process. One individual who had sited a large plant testified that it was a critical part of his decision process to have a government entity say that it would coordinate all the local permitting processes to make sure they were completed on an agreed-on time schedule. He found very few agencies in any state that offered this “one-stop shopping” service. Many businesses supported this comment by saying that “time is money; anything government can do to help cut the time to get through the processes is important in the location decision process.” The

The Task Force heard testimony that Oregon in general has a reputation nationally of not being “open for business.” This is partly because there is a perception that there is virtually no project-ready land available, and what is available is in the wrong place or is too expensive. The perception is also partly due to the belief that many government permitting entities are not very helpful to applicants in getting through the permitting process.

Task Force heard that Klamath Falls and Hillsboro routinely provide this type of service, but few major cities do.

The Task Force also concluded that the lack of government responsiveness to applicants is more critical now than in the past. In the past, a business planned a one-to three-year project development timeline. But today the timelines have been compressed and they need to be able to go from ground breaking to built building in less than a year in many cases. Thus, following “normal” government processing times and procedures for permits contributes to a perception that a state or community is not “open for business.”

In all parts of the state, the Task Force heard praise for the GERT approach to resolving issues. GERT has been able to overcome many of the attitudinal issues presented in testimony. The GERT approach is a fast, cost-effective way to solve problems involving the state and local (and sometimes federal) governments.

RECOMMENDATIONS

a. GERT Funding

The Task Force highly recommends that the Legislature fully fund the GERT and make it a permanent part of the way the state addresses intergovernmental development issues. House Bill 2011 would make GERT a permanent department within the state. The Task Force also believes that a stable source of funding for this program should be secured in future legislative sessions.

b. Management Reform

The Task Force finds that the attitude issue needs to be dealt with internally by state agencies and local governments at a management level. Solving it may necessitate more clearly separating the regulatory function of some agencies from the technical support and promotional functions.

c. Streamlining

The Task Force believes that the Governor’s regulatory streamlining Executive Order, managed by DCBS (lead), can handle many of the issues related to shortening the time needed to get through the regulatory processes at the state and local levels. OECDD has a “Streamlined Permitting Process” service, which has some notable successes, but the comments received by the Task Force indicate that this program needs to be expanded considerably or improved. Similar programs may be needed in local jurisdictions, for the Task Force heard that most developmental roadblocks are experienced at the local level, not at the state level.

d. Site Certification

As provided for in the Governor’s Executive Order establishing the Task Force, and in HB 2011, OECDD should expedite the creation of its certified project-ready lands inventory. This will help overcome the perception that there is no project-ready land available in the state. Rural areas cautioned that the certification program should not be limited to large sites, as the demand in rural areas is often for smaller ones. Sites of all sizes should be able to be certified, even if state resources are not used to do the certification.

OECDD should expedite the creation of its certified project-ready lands inventory.

Responsibility of Public and Private Entities in Maintaining an Inventory of Industrial Land

DISCUSSION

The Task Force heard testimony regarding the proper role of the public and private sectors in maintaining an inventory of industrial land. In Medford, for example, the private sector appears to be providing a large supply of project-ready sites, including large sites of over 100 acres. However, the Task Force also heard testimony that the private sector is, of necessity, driven to look for relatively quick turnover in its lands, especially if investment in infrastructure has been made. Also, it is more likely to divide larger parcels into smaller ones to meet the larger demand for small sites rather than maintain an inventory of large sites (over 100 acres) for a few possible large industries that may (or may not) emerge over many years. Finally, since the values of commercial and residential land are so much higher than industrial land, the private sector has strong financial incentives to seek land use changes that permit those high-value uses.

The Task Force also heard testimony about how governments are handling this issue in other parts of the United States and overseas. In Asia, which is the latest industrial boom area, industrial lands are almost exclusively developed by government entities, or with large government subsidies. This is also true in many parts of the United States where public ownership of strategic industrial lands is routine. Of course, public ownership does not guarantee that conversion to other uses will never occur, but the economic pressure for such conversion is considerably less since there is a clear public purpose to preserve the lands for the intended industrial uses. From its tours and direct testimony, the Task Force also concluded that public ownership is not a panacea. There are highly capable public entities, such as port districts, and there are others that are far less capable.

RECOMMENDATION

a. Determine the State's Role in Providing Industrial Lands

This is an issue of great importance. The Task Force recommends that the Legislature take an overall look at what is needed in today's industrial environment to ensure a supply of project-ready industrial land over the long term. The Task Force has concluded from the testimony provided that existing mechanisms are not working. In principle, port districts and other public entities should be able to fill in where the private market is not able to do the job. While this has happened in the past, the public resources are no longer there to acquire land suitable to develop industrial sites in the longer term, let alone achieve project-ready status in the immediate future.

The Task Force recommends that the state seriously consider expanding the role of the public sector in providing project-ready and long-term supplies of lands, or providing well-funded financial mechanisms for the state to assist private industry in providing such lands where market economics require it. This recommendation is not intended to put the state in competition with private developers, but rather to deal with the market economics issues facing the private sector.

The Task Force recommends that the state seriously consider expanding the role of the public sector in providing project-ready and long-term supplies of lands, or providing well-funded financial mechanisms for the state to assist private industry in providing such lands where market economics require it.

Infrastructure Financing

DISCUSSION

The Task Force repeatedly heard testimony from public and private entities that the state will not successfully develop a supply of project-ready industrial lands without considerably more public investment in infrastructure. The discussion on infrastructure divided into two groupings: ODOT transportation infrastructure and all other infrastructure.

The state will not successfully develop a supply of project-ready industrial lands without considerably more public investment in infrastructure. The impacts of Measure 5 and other initiatives have materially eroded the capability of local government to finance infrastructure.

The plight of the state's transportation infrastructure is well documented and is the subject of considerable legislative focus during the current session. Since ODOT's roads carry over 80% of the vehicle miles traveled in the state, it is critical that these facilities be maintained and expanded as needed. Had the gas tax kept up with inflation since 1991 (when the last general gas tax increase occurred), ODOT would have received an estimated \$15 billion more than it did, which would have made a considerable difference in its ability to fund state and local transportation improvements. At the local level, testimony was presented that the money from the gas tax available per auto for some jurisdictions is half what it was 10 years ago. This makes it difficult or impossible for them to finance needed local road infrastructure improvements from traditional funding sources.

Smaller communities and rural areas almost unanimously testified that they would be unable to develop industrial sites without public grant and loan programs for other types of infrastructure: sewer, water, drainage, wetlands mitigation sites, railroad sidings and over crossings, airports, ports, etc. Some appear to have been successful in charging various types of fees to finance much of this infrastructure, but they too noted needs for state financing to supplement local and private efforts. Overall, however, the testimony was persuasive that the impacts of Measure 5 and other initiatives have materially eroded the capability of local government to finance infrastructure.

Not surprisingly, local governments would prefer that the state fund this infrastructure (by either building it or giving local governments grants to do so). But a number of entities testified that they also need new financing techniques to help them finance infrastructure on their own. Measure 5 has severely restricted their ability to finance infrastructure. One problem they noted was that the state loan programs require loans to begin being paid off almost immediately, whereas the land may not be sold for a number of years. They suggested creation of a new loan program where by payments could be delayed for several years, or until the lands are sold. OECDD indicates that it has the ability to delay principal repayments, but state law prevents it from extending overall payback longer than 20 years, which may be necessary for maintaining a long-term supply of sites.

RECOMMENDATIONS

a. ODOT Funding

The Task Force recommends that the Legislature begin work during the interim on a transportation funding package for the next session. The recently passed

transportation package helps make up for past disinvestment in the transportation system and borrows against future revenues, but it is only a down payment on much-needed improvements. Similar legislation will also be needed next session.

b. OECD Funding

The Task Force recommends that the Legislature provide as much funding as possible for needed infrastructure development. This funding should be provided in two parts: part of the total budget should be available for grants and loans to all jurisdictions, regardless of location or size; another part should be placed in a strategic reserve and used, much like the ODOT Immediate Opportunity Fund, to respond to **actual opportunities** when extra state funds are critical to closing a deal.

c. Immediate Opportunity Funds

Both ODOT and OECD should do everything possible to increase allocations to these funds and should put a high-level official in charge of administering them. These funds would be used to solve infrastructure problems for identified “bird in the hand” industrial development opportunities and will create jobs in the near term. The processes for committing these funds needs to meet the time schedules of the businesses involved, which may be much faster than some agencies are used to moving.

d. Alternative Financing

The Task Force recommends that OECD examine alternative financing vehicles that can resolve the immediate-payback issue noted above.

e. DSL Industrial Fund

The Task Force recommends that the State Land Board (lead) and DSL examine their Asset Management Plan to determine whether greater investment in industrial lands projects would provide an adequate return to the Common School Fund to meet its constitutional obligations. If so, the State Land Board should provide funds for industrial projects in the state.

Both ODOT and OECD should do everything possible to increase allocations to their Immediate Opportunity Funds and should put a high-level official in charge of administering them.

Secondary Issues

Conversion of Industrial Land to Other Uses

DISCUSSION

The Task Force heard much testimony on the issue of how to control or manage the process of converting industrial land to nonindustrial uses. There was testimony that there has been considerable loss of industrial lands to nonindustrial uses, which contributes to today’s shortage of industrial land. However, after analyzing the issue, the Task Force concluded that this is more an issue of perception than reality, and thus the issue is not a major one with respect to the overall industrial land issue. However, the issue may be very significant in certain jurisdictions, and it is a significant problem for ODOT, which faces tremendous traffic problems when land uses change unexpectedly.

The Task Force concluded that the conversion issue is more an issue of perception than reality, and thus it is not a major one with respect to the overall industrial land issue. However, a change from industrial to commercial or residential use usually entails considerably higher volumes of traffic or a shift in traffic from off-hours to peak hours. This can materially harm state and local highway capacity.

Metro recently investigated the conversion issue in the Portland metropolitan area. Its conclusions are very insightful on the nature of the issue (emphasis added):

“Based on the information that has been gathered through zoning code review, interviews and site visits, it is unclear to what extent commercial encroachment on industrial lands is occurring if at all. Through the research process it became clear that in order to determine if encroachment is occurring, one would have to be certain about what encroachment is. The interviews revealed that people view this subject differently and that much of what they think is based more on perception and anecdotal evidence than hard data. For example, some stated that encroachment is a problem around the region, but few could identify a location where it had specifically occurred. Also, some identified locations that appear to have encroachment, but upon further investigation turned out to be zones that allow for a high mix of commercial and industrial uses.

“The fact that all industrial zones permit some level of commercial uses also complicates the identification of encroachment regardless of the definition one assumes. If industrial zones only allowed industrial activities, it would be possible to identify encroaching uses, however the region has not determined that completely segregated land uses are an appropriate land use system and it is unlikely that this will become the norm. Certainly if we had a completely segregated land use system, a notion such as encroachment would be easily measured, however because zoning regulations have moved away from the Euclidean orientation, it is still unclear what the true picture of encroachment is.

“One conclusion that can be made from this analysis is that we as a region do not have a fully formed notion of what this issue really means. Some people feel that commercial encroachment is a problem and others don’t. The issues that have come out of the interview process show that there is little consensus about how industrial areas should be used and what they should look like. There is some acknowledgement that industry has changed and that the line between commercial and industrial has become increasingly blurred, but how these changes should be incorporated into the land use system has yet to be fully determined. There is also a lack of agreement about what should be done with underutilized industrial land and whether it should be converted to commercial use or preserved for future industrial uses. Finally, there is no consensus on what the mix of uses should be and if there is a threshold of too much commercial or too little commercial activity appropriate for industrial areas.

The main conclusion that can be drawn from this analysis is that commercial encroachment is a problem based on perception and should not be used as an argument for or against additional actions regarding the industrial land supply until a definition is agreed upon and a policy objective for the amount of commercial use that is acceptable in an industrial zone is articulated.”⁶

The Task Force understands that it is innate to the land market that owners want to get the greatest return for their land. Since residential and commercial land sells for two to 20 times the cost of industrial land (especially large-tract industrial land) and there is a cost to holding land, there is a great incentive for private owners to (1) sell

⁶ METRO, *Examination of Commercial Encroachment on Industrial Land*, April 2003, page 13.

their land for a "higher" use and (2) subdivide larger parcels to meet the demand of purchasers that want smaller parcels, thus eroding the supply of large parcels.

The Task Force also understands that there is a need for an orderly process to convert some industrial lands to other uses, as has occurred in some old industrial areas in Portland, in marine industrial uses along the coast, and old mill sites in Salem, Bend, Klamath Falls, and other cities. The Task Force further acknowledges that there may be a financial imperative to allow conversion in order to recoup the cost of restoration of brownfield sites.

One important aspect of the conversion issue is that a change from industrial to commercial or residential use usually entails considerably higher volumes of traffic and/or a shift in traffic from off-hours to peak hours. Roadway infrastructure is designed based on certain assumptions about future land use. Uses that generate more trips per acre of development, such as office and retail uses, will cause the transportation system to fail faster.

The Task Force visited a site in Medford where government had recently invested millions in improving the road system based on the assumption that adjacent uses would be industrial, but the City of Medford is now under considerable pressure from the landowners to allow commercial uses. ODOT predicts that the new investment will become obsolete immediately if this occurs. The Task Force also heard testimony about the rezoning by the City of Woodburn of land along I-5 to commercial, which has had a significant impact on I-5 and has overloaded the interchange with I-5. The Task Force heard numerous other examples of conversion issues, including those at Keizer (near I-5), the Gateway area of Springfield, and the Sunnyside area in Clackamas County. The Metro study also commented on this issue:

“Commercial uses generate a lot of auto trips and can interfere with the movement of freight in these areas. This was the main impact of encroachment noted by jurisdictions. Still others indicated that industrial areas that do not have adequate quantities of commercial uses also experience strains on the transportation system because employees must drive outside of the industrial area to access services.”⁷

RECOMMENDATIONS

a. Possible LCDC Rule Making

The Task Force concluded that LCDC has the statutory authority to adopt rules to manage this problem, if, indeed, there is a problem. The Metro report cited above describes the difficulty in determining whether there is a problem at all. If a problem is identified, possible LCDC rules could include: (1) Require that any conversion from industrial to another use be accompanied by an offsetting increase in industrial land (or substantiation that there is at least a 20-year supply of industrial land in the community); this would be a “no net loss” provision. (2) Require that Transportation System Plans must be updated for the area affected by the use, plan, or zone change before the change occurs. Further, LCDC should consider amending the rule requirements on when road improvements are provided to handle the new traffic to avoid assigning the new traffic to “paper” roads that are not on state or local construction plans. (3)

⁷ METRO, *Examination of Commercial Encroachment on Industrial Land*, April 2003, page 9.

Require jurisdictions to adopt clearer definitions of industrial and commercial uses, similar to what Metro has done in Title 4.

b. Infrastructure Repayment

ODOT (lead) and LCDC could also consider proposing legislation that provides that when the state invests in infrastructure based on land uses in a comprehensive plan, and local government permits changes to those uses, reimbursement of the state's investment would be made to the state by the local government or the benefited landowners. This idea needs to be carefully analyzed for unintended consequences, such as paralyzing the rezoning process by creating great uncertainty about whether a payback might be required at a later date.

Old Mill Sites

DISCUSSION

The Task Force heard some testimony about the need to provide for the reuse of abandoned mill sites. From the testimony presented, it appears there are thousands of these sites in the state. In Jackson County alone, the Task Force was told, there are over 200 such sites. Most of the testimony supported the conclusion that opening all these sites up to industrial development would likely not solve the industrial lands shortage issue or create much new industrial development. This is mainly because the sites are remote or are adjacent to conflicting uses (residences, recreational areas, etc.) and would, therefore, not be desirable for many industries. Also, the cost of providing infrastructure to many of these sites is prohibitive.

RECOMMENDATION

a. Implement Legislation

The Task Force concluded that this issue was handled by the legislation passed by the 2003 Legislature and that no further action by the Task Force was needed.

Brownfields

DISCUSSION

"Brownfields" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination (ORS 285A.185.) The Task Force recognizes that industrial redevelopment of brownfield properties may be more challenging than comparable development of uncontaminated lands. Depending upon the specific site, remediation of contamination may be costly, although lands identified for industrial uses generally do not require cleanup to the same standards as comparable residential properties. In addition, many industrial properties have only minor or moderate levels of contamination and, therefore, may be cleaned up and redeveloped without extraordinary costs.

Managing actual and potential environmental liabilities requires careful attention to state and, in certain limited areas such as Portland Harbor, federal laws. Although both federal and Oregon law impose liability for contamination, both also provide

ways to avoid or limit such liability. Amendments in 2002 to federal law provide a statutory exemption to liability for prospective purchasers of contaminated properties and Oregon's cleanup law allows the DEQ to administratively limit the liability of a prospective purchaser. Beginning in 1995, DEQ has used that authority to enter into more than 60 Prospective Purchaser Agreements statewide that have limited liability and assisted redevelopment of contaminated properties.

Notwithstanding the 2002 federal liability amendments to the Comprehensive Environmental Response, Compensation, and Liability Act that exempt purchasers from liability, Environmental Protection Agency (EPA) has indicated that it may provide additional liability protection by entering into Prospective Purchaser Agreements to further limit a purchaser's liability in certain circumstances. DEQ feels that liability law should not be a limiting factor on the redevelopment of the Portland Harbor and is willing to work with landowners, the EPA, and the City to resolve liability and cleanup issues that may be blocking reuse of these properties.

Cleanup costs may pose a significant obstacle to industrial redevelopment of some very highly contaminated properties when the cost to clean up the property to a level that is safe for the proposed use exceeds the clean-site fair market value of the property. The Task Force heard convincing testimony that unless the public is willing to invest significant sums in rehabilitating the sites without requiring a direct financial return, it appears unlikely that some sites can be made marketable at competitive industrial land prices. However, if the sites are converted to residential or commercial uses,⁸ the private market may be able to pay the costs for rehabilitating many of them. This poses significant policy issues for the state and the regions where this would occur, because there would be a significant loss of industrial lands from the inventory. The loss may be ameliorated by the fact that many of the sites are abandoned or semi-abandoned and will remain idle unless they are rehabilitated.

RECOMMENDATIONS

a. Reexamine Inclusion in Inventories

Metro and other jurisdictions with significant brownfields in their inventories should examine how these lands should be treated in the industrial lands inventory (i.e., is it "buildable"), taking into account the environmental investigation and cleanup that have been performed at each property, any investigation and cleanup that remain to be performed, the impact on development of complicating factors such as potential Superfund liability and the fact that cleanup costs may require conversion to nonindustrial uses.

b. Liability Protection Education

The Task Force heard testimony that a significant obstacle to redeveloping sites was a liability issue about future lawsuits. The Task Force observes that DEQ and EPA have tools to limit the liability of prospective purchasers of contaminated property and, therefore, that the liability issue should not be an obstacle to redeveloping these properties. However, the development community may be unaware of these liability limitation mechanisms. The Task Force therefore

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⁸ Examples of where this has occurred include the redevelopment of the railroad yard in the Portland Pearl District and the Old Mill area in Bend.

DEQ and EPA should better inform the development community about opportunities for liability protection, and work together to resolve liability issues for prospective purchasers in the Portland Harbor and other sites.

The Task Force recommends that DSL continue to implement the habitat conservation plan for the White City area and complete its regulatory streamlining processes for wetlands permitting.

strongly recommends that DEQ (lead) and EPA better inform the development community about opportunities for liability protection, and work together to resolve liability issues for prospective purchasers in the Portland Harbor and other sites.

c. OECCD Funding

Although some sites may require significant sums for remediation, many sites have only minor or moderate levels of contamination and, therefore, may be cleaned up and redeveloped without extraordinary costs. The Brownfields Redevelopment Fund managed by OECCD is a direct loan and grant program to assess and clean up brownfields. The Brownfields Redevelopment Fund should be capitalized sufficiently by the Legislature, and grant funding priority should be given to projects that help with business recruitment and increase available supplies of industrial lands in areas with high demand.

Wetlands

DISCUSSION

The Task Force expected to hear considerable testimony about how the difficulty of obtaining permits in wetlands was a significant obstacle to developing industrial land, but it did not. Even in Medford, where wetlands are rumored to be a major problem in the White City area, the issue was either resolved for many properties, or on the way to being resolved through actions being taken by DSL. The Task Force saw some property where private landowners had not resolved their wetlands issues, but this was not due to a regulatory issue; rather, it was because they didn't want to spend the money before having a buyer. Unfortunately, not resolving the wetlands issue up front makes the property difficult to sell. The DSL-proposed virtual permitting of wetlands may help resolve this type of problem.

RECOMMENDATION

- a. The Task Force recommends that DSL continue to implement the habitat conservation plan for the White City area and complete its regulatory streamlining processes for wetlands permitting.

