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Background Brief on ...

Land Use

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Background

Oregon's rapid population growth and development during the 1960s and 1970s prompted concern about what effect that growth might have on the environment, natural resources, and the livability of communities. In a state where agriculture and timber are two of the largest industries, there was a concern that conversion of farm and resource lands for development presented a threat to the state's economy. Sprawling development was also thought to present challenges in planning for and paying for public services, as planned cities require fewer streets, shorter sewers, and fewer police and fire fighters.

These concerns led to the passage of Senate Bill 100 in 1973. The legislation established the Land Conservation and Development Commission (**LCDC**), which was charged with adopting state land use goals, and the Department of Land Conservation and Development (**DLCD**), charged with assisting the commission and local governments in the implementation of those goals, and with coordinating state agencies in land use matters. SB 100 also directed that local governments adopt and implement comprehensive plans and to revise them periodically in accordance with statewide goals and with the needs and desires of the public. Previous legislation, Senate Bill 10 (1969), also required cities and counties to adopt comprehensive plans, but did not provide an adequate enforcement mechanism or system of technical assistance.

Comprehensive Plans

Senate Bill 100 did not mandate the adoption of a state plan; instead, the state's 241 cities and 36 counties are responsible for adopting local comprehensive plans, zoning land, administering land use regulations, and handling land use permits. Comprehensive plans must be done in accordance with state standards (outlined in statute, statewide planning goals, and administrative rules), and include various land inventories and technical information, plan policies, and implementation measures. The result is a mosaic of 277 locally adopted land use plans applied to 26 million acres of privately-owned land in Oregon. Comprehensive plans were initially approved by LCDC in a process referred to as "acknowledgment of compliance." Amendments to comprehensive plans do not require LCDC approval. Plans for larger cities must undergo "periodic review" every 10 to 15 years to evaluate their performance and bring them up to date in light of changing laws and circumstances.

Statewide Planning Goals

After extensive review and public input, LCDC adopted 14 initial statewide planning goals in 1974, and five additional goals over the next three years. Most of the goals have since been amended, but their basic principles remain intact. The goals establish state policies on urban and rural land uses, resource management, economic development, affordable housing, urban growth, coastal protection, natural hazards, and citizen involvement.

- Goal 1* Citizen Involvement
- Goal 2* Land Use Planning
- Goal 3* Agricultural Lands
- Goal 4* Forest Lands
- Goal 5* Open Spaces, Scenic & Historical Areas and Natural Resources
- Goal 6* Air, Water & Land Resources Quality
- Goal 7* Areas Subject to Natural Disasters & Hazards
- Goal 8* Recreational Needs
- Goal 9* Economic Development
- Goal 10* Housing
- Goal 11* Public Facilities & Services
- Goal 12* Transportation
- Goal 13* Energy Conservation
- Goal 14* Urbanization
- Goal 15* Willamette Greenway
- Goal 16* Estuarine Resources
- Goal 17* Coastal Shorelands
- Goal 18* Beaches & Dunes
- Goal 19* Ocean Resources

Most of the goals are accompanied by “guidelines” that suggest how they should be applied, though these guidelines are not mandatory. Administrative rules have been adopted to help interpret and implement many of the statewide goals.

In addition to directing LCDC to adopt goals, the 1973 Legislative Assembly also passed SB 101, which significantly strengthened protection of Oregon’s farmland by requiring counties to adopt exclusive farm use (EFU) zones.

Oregon’s planning goals apply not only to cities and counties but also to special districts and state

agencies. State law emphasizes coordination to keep plans and programs of various government agencies consistent with each other, with the goals, and with acknowledged local plans.

State Land Use Entities

The Land Conservation and Development Commission functions as the “board of directors” for the state’s land use planning agency. It is comprised of seven members from different regions of the state, appointed by the Governor and confirmed by the Senate. Members serve four-year terms, and are limited to two full terms of service. The commission is the acknowledging body for local plans, and also approves amendments of urban growth boundaries and certain plan amendments under Periodic Review. LCDC adopts and amends the statewide planning goals and related administrative rules.

The Department of Land Conservation and Development serves as the administrative arm of LCDC, and administers all land use planning statutes and commission policies that affect land use. The department is organized around rural, coastal and urban sectors, and provides technical assistance to local governments. It also proposes legislation, and develops new policy alternatives and administrative rules in response to changes in land use laws and trends.

The Land Use Board of Appeals (**LUBA**), created by the Legislature in 1979, is an independent special “court” that rules on matters involving land use and planning. It rules on appeals of land use decisions and plan amendments made by local governments. Appeals from LUBA go directly to the Court of Appeals. LUBA consists of three members appointed by the Governor and confirmed by the Senate; members serve four-year terms and are eligible for reappointment.

Urban Growth Boundaries

Each of Oregon’s 241 cities is surrounded by an “urban growth boundary” (**UGB**), a line drawn on planning and zoning maps to designate where a city expects to grow residentially, industrially and commercially over a 20-year period. UGBs often include farm, forest, or low-density residential areas in unincorporated areas outside city limits,

but unlike farm and forest land outside UGBs, areas inside UGBs are planned for development. Zoning restrictions in areas outside of UGBs protect farm and forest resource land and prohibit “urban levels” of development in other areas.

A UGB is adopted or expanded through a joint effort among the city, adjoining counties in coordination with special districts that provide important services in the urbanizable area, and with participation of citizens and other interested parties. Metro adopts and amends the UGB for the Portland metropolitan area, which includes 25 cities and the urban portion of three counties. Annexation of lands within UGBs is not regulated by LCDC. Annexations are typically subject to a public vote of the residents of the territory to be annexed and sometimes a vote of residents of the city to which the territory is being annexed. A UGB can be modified in compliance with statewide planning goals and state laws.

Ballot Measure 37

Several attempts were made by initiative to overturn Oregon’s land use system, with initiatives to repeal Senate Bill 100 being defeated in 1976, 1978, and 1982. In 2000, voters approved Ballot Measure 7 by a margin of 54 percent to 46 percent. That measure was an amendment to the Oregon Constitution designed to waive state and local land use requirements or compensate property owners when a government land use regulation causes a devaluation of private property. However, it was overturned by the Oregon Supreme Court because it changed more than one part of the Constitution.

During the 2004 general election, 61 percent of voters approved Ballot Measure 37, which was similar to Ballot Measure 7 but was a statutory change rather than a constitutional amendment. Ballot Measure 37 requires that a property owner be paid compensation for reduced property value resulting from a state or local land use regulation that took effect after the claimant took ownership of the property. The measure provides the option of waiving the regulations that reduced the value of the property. Since no funding has been

provided for compensation, valid claims under Measure 37 have been resolved by waiving land use laws and ordinances.

In October 2005 the Marion County Circuit Court declared Ballot Measure 37 to be unconstitutional. Following the decision, many local governments ceased accepting and processing Ballot Measure 37 claims while awaiting appeal of the decision. The Oregon Supreme Court overturned the circuit court decision and reinstated Ballot Measure 37 in February 2006.

However, substantial legal questions remain regarding a number of significant issues related to Ballot Measure 37, and more than 100 court cases are pending. Two closely-watched issues include whether claims or waivers remain applicable when a property is sold or transferred and whether state agencies have the authority to waive land use regulations without legislative action.

As of October 2006, 2,724 Ballot Measure 37 claims have been filed; 1,264 were filed prior to the circuit court decision to invalidate the measure, and 1,460 have been filed since Ballot Measure 37’s reinstatement. Of those claims, 2,084 have been referred to agencies, primarily DLCD, and at least 1,548 orders waiving land use requirements have been issued. The total combined value of all compensation claims exceeds \$6 billion; however, in choosing to waive land use regulations rather than pay compensation, the state has not verified the actual value of any compensation claim.

Senate Bill 82 Task Force

The 2005 Legislative Assembly passed Senate Bill 82, creating the Oregon Task Force on Land Use Planning. Commonly referred to as the “Big Look,” the task force is charged with performing a broad review of the state’s land use planning program and with making recommendations for any needed changes to land use policy. The ten members of the task force were jointly appointed by the Governor, Senate President, and Speaker of the House. The task force is staffed and supported by DLCD, and is chaired by former State Senator Mike Thorne.

The task force has identified six key issues for consideration:

- What are the appropriate roles of state and local governments ?
- What is the appropriate role of citizen involvement?
- What role should land use play in enhancing Oregon's economy now and in the future?
- What are the most effective tools to manage population growth and achieve community goals?
- How should Oregon's system of infrastructure, finance, and governance influence land use?
- How can the land use process appropriately address the benefits and burdens that fall on individual land owners and the general public?

The task force is required to provide a status report to the Legislature and Governor by 2007, and to make its final report and recommendations no later than February 1, 2009.

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