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Background Brief on ...

Land Use

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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 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 for 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**) that 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. Senate Bill 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 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 were 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 was 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 the 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, the LCDC adopted 14 initial statewide planning goals in 1974 and 5 additional goals over the next 3 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 the LCDC to adopt goals, the 1973 Legislative Assembly also passed Senate Bill 101 that 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 LCDC 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. The LCDC adopts and amends the statewide planning goals and related administrative rules.

The DLCD serves as the administrative arm of the 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 Legislative Assembly 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 the LUBA go directly to the Court of Appeals. The 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 242 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 that includes 25 cities and the urban portion of 3 counties. Annexation of lands within UGBs is not regulated by the 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. Measure 7 amended the Oregon Constitution 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 that was similar to Ballot Measure 7 but was a statutory change rather than a constitutional amendment. Ballot Measure 37 required 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 provided the option

of waiving the regulations that reduced the value of the property. Since no funding was provided for compensation, valid claims under Measure 37 were generally resolved by waiving land use laws and ordinances.

In October 2005, the Marion County Circuit Court declared Ballot Measure 37 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 remained regarding a number of significant issues related to Ballot Measure 37 and more than 100 court cases were pending. Two closely-watched issues included whether claims or waivers remained applicable when a property is sold or transferred and whether state agencies have the authority to waive land use regulations without legislative action.

By December 4, 2006, approximately 6,500 Ballot Measure 37 claims had been filed with the state and over 7,000 filed with counties (many claimants filed with both the state and the county where the property was located). Of those claims, more than half were received in the last two weeks of filing. The total combined value of all compensation claims exceeded \$6 billion.

Ballot Measure 49

The 2007 Legislative Assembly referred House Bill 3546, later to become Ballot Measure 49, to voters as an effort to clarify and revise the claims process under Ballot Measure 37. The measure was approved by voters during a special election in November 2007 by 62 percent of voters. The measure stipulated that all compensation under Ballot Measure 37 would be in the form of buildable home sites (no commercial or industrial claims would be approved) and limited claims made under Ballot Measure 37 to no more than 10 home sites. Persons who had already filed claims were given three options for how to proceed with carrying out their claim: an “express lane” process that allowed for up to

three home sites on properties outside of a UGB; a conditional process where the property owner could be approved for up to ten home sites outside a UGB; or a vested rights process where the claimant could choose to continue pursuing the existing claim.

Claimants approved under the express lane or conditional processes would be allowed to transfer the development rights to another owner, which was not allowed under Ballot Measure 37. To qualify for the larger number of home sites under the conditional process, a property owner must not only prove ownership but also provide proof that their property was devalued by the land use regulation by an amount equal to or greater than the number of home sites sought.

Ballot Measure 49 also provided restrictions on certain types of land (primarily high-value farmland) that could only qualify for the express lane process for up to three home sites. The measure created a process for how claims against future regulations will operate and designated the DLCD as the entity to process all claims under Ballot Measure 37. An ombudsman position was created within the DLCD to assist claimants with filing and processing their claims.

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 are jointly appointed by the Governor, the Senate President, and the Speaker of the House. The task force is staffed and supported by the DLCD and 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 make its final report and recommendations no later than February 1, 2009.

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