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Legislative Committee Services  
State Capitol Building  
Salem, Oregon 97301  
(503) 986-1813

Background Brief on ...

# Land Use

Oregon's rapid population growth and development during the 1960s and 1970s prompted concern about what effect 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 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 and Land Use Regulations

Senate Bill 100 did not mandate the adoption of a state plan. Instead, the state's 242 cities and 36 counties were responsible for adopting local comprehensive plans, zoning land, administering land use regulations, and handling land use permits for Oregon's non-federal land. City and county comprehensive plans include statements of issues and problems to be addressed, various inventories and other technical information, the goals and policies for addressing the issues and problems, and implementation measures. Plans must be done in accordance with state standards outlined in statute, statewide planning goals, and administrative rules.

Comprehensive plans were initially approved by LCDC in a process referred to as “acknowledgment of compliance.” Some changes to acknowledged plans and land use regulations can be completed through *plan amendments*, whereas significant updates are done during *periodic reviews*. Cities with a population greater than 10,000, and cities with a population greater than 2,500 located within Metro or a Metropolitan Planning Organization, are required to undergo a periodic review every seven and ten years, respectively. Smaller cities and counties are not required to complete a periodic review, but can update their comprehensive plans on their own schedule.

Comprehensive plans are implemented through local land use regulations. These regulations include the zoning code and map, subdivision regulations, and any other ordinances the local government deems necessary to enact plan policies such as those for noise, signs, or tree removal. Any land use regulations must flow from and be consistent with the comprehensive plan.

## Statewide Planning Goals

After extensive review and public input, LCDC initially adopted 14 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 conservation, economic development, affordable housing, urban growth, coastal protection, natural hazards, and citizen involvement.

|                |  |
|----------------|--|
| <i>Goal 1</i>  | Citizen Involvement  |
| <i>Goal 2</i>  | Land Use Planning  |
| <i>Goal 3</i>  | Agricultural Lands   |
| <i>Goal 4</i>  | Forest Lands   |
| <i>Goal 5</i>  | Open Spaces, Scenic & Historical Areas and Natural Resources |
| <i>Goal 6</i>  | Air, Water & Land Resources Quality                          |
| <i>Goal 7</i>  | Areas Subject to Natural Disasters & Hazards                 |
| <i>Goal 8</i>  | Recreational Needs   |
| <i>Goal 9</i>  | Economic Development   |
| <i>Goal 10</i> | Housing  |

|                |                              |
|----------------|------------------------------|
| <i>Goal 11</i> | Public Facilities & Services |
| <i>Goal 12</i> | Transportation               |
| <i>Goal 13</i> | Energy Conservation          |
| <i>Goal 14</i> | Urbanization                 |
| <i>Goal 15</i> | Willamette Greenway          |
| <i>Goal 16</i> | Estuarine Resources          |
| <i>Goal 17</i> | Coastal Shorelands           |
| <i>Goal 18</i> | Beaches & Dunes              |
| <i>Goal 19</i> | 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 Senate Bill 101 that significantly strengthened protection of Oregon’s farmland by requiring counties to adopt exclusive farm use (EFU) zones. For more information about EFU zones see the Background Brief on Agricultural and Forest Lands.

If a city or county believes that special circumstances exist such that a goal cannot or should not apply to a particular site, they have an opportunity to take an “exception” to the goal. Statute and rule provide the factors for a local government to consider when deciding whether an exception is justified. An exception does not allow a local government to ignore the goals, but it is an opportunity for flexibility in the program to address unique opportunities and problems.

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. For example, prior to issuing a permit, state agencies require a *Land Use Compatibility Statement* signed by a local planner signifying the project is in compliance with the comprehensive plan and land use regulations. Additionally, state activities on

state-owned lands, such as in parks and rights of way, must conform to local land use regulations.

### **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. The commission must include one sitting county commissioner and one current or former city elected official. 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 some urban growth boundary amendments 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 LCDC and administers all land use planning statutes and commission policies that affect land use. The department provides technical and financial assistance to local governments and reviews proposed plan amendments. 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 made by local governments. Appeals of LUBA decisions go 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.

Local governments (cities, counties, and Metro) carry out land use planning. Local comprehensive plans must conform with the statewide planning goals, but they are not limited to goal compliance. Comprehensive plans are the vehicle for defining land use issues and problems and establishing solutions through goals and policies. Plans across the state address many similar issues, but there are many

problems unique to a locality and there is wide variation in how issues get addressed. The goals provide a framework and obligations for local government planning, but no two plans are alike.

### **Urban Growth Boundaries**

All of Oregon’s cities are 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. Often UGBs 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. For more information on land use policy for farm and forest lands, see the Background Brief on Agricultural and Forest Lands.

A UGB is adopted or expanded through a joint effort among the city and 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 three counties. Annexation of lands within a UGB 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. Senate Bill 1011 (2007) authorized Metro and metro-area counties to designate *urban and rural reserves* by identifying lands that might be urbanized in the future and lands that are likely to be left in a rural setting.

### **Ballot Measures and Legislation**

Several attempts have been 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.

*Ballot Measure 37*– 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. 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 questions involved whether claims or waivers remained applicable when a property was 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. 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 in an effort to clarify and revise the claims process under Ballot Measure 37. The measure was approved by 62 percent of voters during a special election

in November 2007. 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 provide proof that their property was devalued by land use regulations by an amount equal to or greater than the number of home sites sought, and the property must not be high-value farm or forest land. Ballot Measure 49 also created a process for handling claims against future regulations, designating DLCD as the entity to process all claims.

*Legislation for Measure 49 Claims* – In 2009, House Bill 3225 enabled approximately 400 Measure 49 claims to proceed that would otherwise, for a variety of reasons, have been precluded from going forward. In 2010, Senate Bill 1049 provided relief for more than 1,300 additional claimants. DLCD anticipates meeting its June 30, 2011 deadline for processing the last of the qualifying claims.

*The “Big Look” 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” Task Force). The Task Force was charged with performing a broad review of the state’s land use planning program and making recommendations for any needed changes to land use policy.

The Task Force 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 made its final report and recommendations to the 2009 Legislative Assembly. It concluded that, despite its flaws, Oregon's land use planning program had largely achieved its goals of protecting farm and forest lands and containing urban sprawl. Several of the Task Force's recommendations were embodied in House Bill 2229 (2009), which established a process that counties could undertake, in conjunction with DLCD and LCDC, to correct comprehensive plan mapping errors to identify non-resource land and correspondingly amend their land use regulations. House Bill 2229 also allows for policy-neutral review and audit of provisions of

the land use system at the discretion of DLCD as resources are available.

### **Staff and Agency Contacts**

Beth Patrino / Beth Herzog  
[Legislative Committee Services](#)  
503-986-1751 / 503-986-1755

Jim Rue  
[Department of Land Conservation and Development](#)  
Acting Director  
503-373-0050

Bob Rindy  
[Department of Land Conservation and Development](#)  
Policy Analyst  
503-373-0050 ext. 229

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