# A G E N D A

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METRO

Meeting: **FUTURE VISION COMMISSION**

Date: December 6, 1993

Day: Monday

Time: 4:00 p.m. - 6:30 p.m.

Place: Metro, Room 370

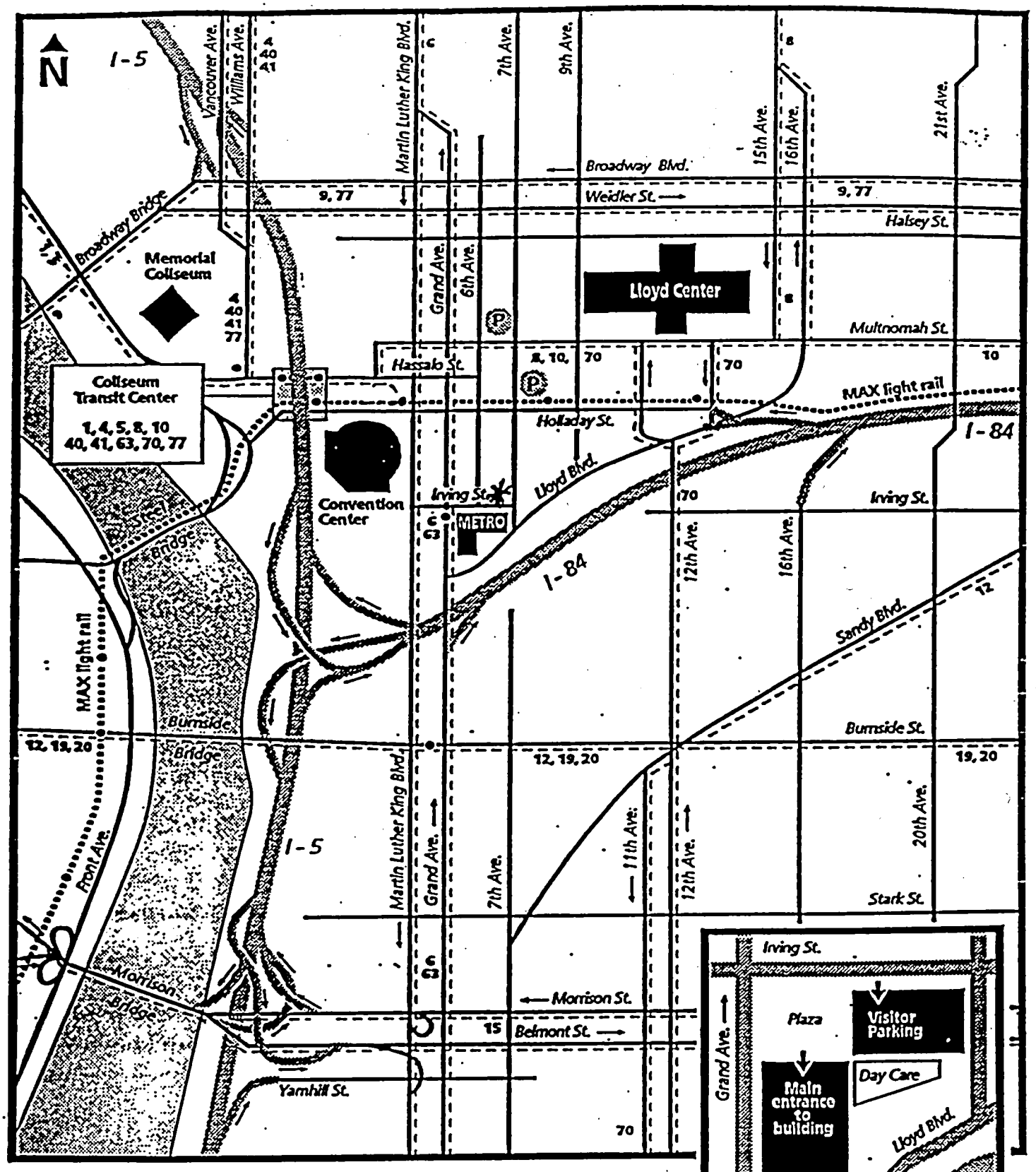
| | Approximate Time |
|---|---|
| 1. CALL TO ORDER | 5 minutes |
| 2. ROLL CALL | |
| 3. PUBLIC COMMENT (*two minute limit, please*) | |
| 4. MINUTES<br>Approval of November 22, 1993 Minutes | |
| 5. CITIZEN INVOLVEMENT PLAN | 60 minutes |
| 6. DRAFTING SUBCOMMITTEES DISCUSSION<br>• Presentation of written drafts* | 60 minutes |
| 7. OTHER BUSINESS<br>• Technical reports update from Ethan Seltzer | 20 minutes |
| 8. PUBLIC COMMENT on Items not on the Agenda | 5 minutes |

Other materials in packet:
Article on environmental zones and memo on flood insurance provided by Wayne Lei

*Materials to be distributed at the meeting

**Please R.S.V.P. to Barbara Duncan at 797-1750 by December 3rd if you are unable to attend**

*printed on recycled paper, please recycle*




**Legend**

- = bus route
- = freeway
- 70 = bus number
- = max
- = street
- = bus/max stop
- (P) = public parking; $2 half day, $4 full day

METRO

*Enter Metro visitor parking from Irving Street (time limit 4 hours per visit). Enter Metro Regional Headquarters from the plaza.*

# FUTURE VISION COMMISSION

**Meeting Summary, November 22, 1993**

Members in attendance: Len Freiser, Chair; Judy Davis, Mike Gates, Mike Houck, Wayne Lei, Robert Liberty, Peggy Lynch, Peter McDonald, Susan McLain, John Magnano, Rod Stevens and Robert Textor.

Others in attendance included: Karen Buehrig, Andy Cotugno, Barbara Duncan, John Fregonese, Ken Gervais, Ethan Seltzer, Larry Shaw and Kurt Survance.

**I. Call to Order and Roll Call**

The meeting was called to order at 4:15 by Chair Freiser and a quorum was declared.

**II. Public Comment** - none

**III. Minutes**

Review of the minutes of the November 8 meeting was waived.

**IV. Other**

Robert Textor introduced Kurt Survance who was very interested in the Commission's work.

Judy Davis brought work done by her Urban Planning students on impressions or symbols of the region and distributed a summary sheet of their work.

**V. Land Use Planning in Oregon**

Robert Liberty gave an overview of land use planning in Oregon. In 1973 Senate Bill 100 that required coordinated comprehensive plans to be adopted by jurisdictions throughout the state that are consistent with statewide goals. Robert Liberty stated that SB 100 was unusual in that the state reasserted its authority over local government planning, set statewide goals and set out to review local government plans for compliance with those goals. In many states today a comprehensive plan is not regulatory, but is an advisory document. In Oregon, comprehensive plans are binding and are implemented by the zoning.

Robert Liberty stated that the Department of Land Conservation and Development (DLCD), appointed by the Governor, adopts the statewide planning goals which are the basis for the comprehensive plans, which in turn are the basis for the zoning ordinances which local land use decisions are based on.

Robert Liberty stated that exceptions to the land use rules (some 50,000 acres outside the Urban Growth Boundary) include rural residences. The UGB has only grown 1.2 percent in the last ten years. Some of the issues addressed by the statewide goals include:

- preservation of farm and agricultural land
- forest preservation
- economic opportunity
- air pollution reduction and preservation of clean water supply
- affordable housing

Robert Liberty stated that the Charter intended that the Future Vision would not be reviewed by the

state. The Regional Framework Plan will be reviewed by the LCDC for compliance with the statewide planning goals.

Rod Stevens asked what authority does Metro have to review or change city or county plans?

Robert Liberty stated that opinion varies on this issue, he believes Metro has complete authority to review local comprehensive plans per ORS 268, 380 and 390. A quote from the statute states that:

> "... a district council shall review the comprehensive plans.... adopted by the cities and counties within the district and recommend or require....changes...to assure the plan conforms to the district's ...goals and objectives and the statewide goals."

Larry Shaw of Metro's Office of the General Counsel stated that the state laws come first and are above local laws. Larry Shaw stated that Robert Liberty left out words in his reading of the above statute which reads:

> "...recommend or require cities and counties, as it considers necessary, to make changes.."

Larry Shaw stated that Metro's Regional Urban Growth Goals and Objectives (RUGGO) are addressed in ORS 268.380 which stated that a district council (Metro in our case) "shall adopt land use planning goals". Larry Shaw stated that currently Metro's Regional Transportation Plan (RTP) serves as both a functional plan under state law and as the region's transportation plan under by federal law. In order for federal transportation funds to be received, a project must be included in the RTP. In effect, local governments must comply with the RTP which becomes a de facto comprehensive plan for the region. Larry Shaw stated that in ORS 268.390, subsection 4 regarding the regional agency's review of comprehensive plans also includes the statement "as it considers necessary".

Larry Shaw stated that the Metro Charter passed by voters in 1992 required the Future Vision (1995) and Regional Framework Plan (1997). The Future Vision is to be written to "have no effect that would allow court or agency review". The Regional Framework Plan is intended to be reviewed by LCDC and be a regulatory document, addressing transportation, growth management, parks and open spaces, housing, water, urban design and coordination with Clark County.

Robert Liberty stated that the FV recommends a relationship to the Regional Framework Plan.

Larry Shaw disagreed and stated that the Regional Framework Plan recommends a relationship to FV.

Chair Freiser asked what the main difference is between Larry and Robert's positions.

Larry Shaw stated that Robert Liberty would like Metro to require review and compliance of all local plans, whereas Larry feels Metro should continue to apply the ordinance as written ("as it considers necessary").

Robert Liberty stated that the citizens who testified at the RUGGO hearing were in favor of those goals and objectives being mandatory, local governments agreed to have the objectives advisory. He stated that if future planning is only advisory, it is not worth our time.

Andy Cotugno stated that Metro is also directed by LCDC rules and other requirements such as reduction of per capita Vehicle Miles Traveled (VMTs), urban growth management, etc.

Rod Stevens asked why, if Metro received authority in the 70's, did it take so long for Metro to get involved in land use planning?

Ethan Seltzer stated that in the 80's the area went through a recession and there was not a great deal of development pressure on the region, there was a lot of vacant land within the boundary. Some issues that pushed regional land use planning forward was the need for a UGB review (required by LCDC), and the Western Bypass project and a proposal for a third bridge across the Columbia that sparked discussion of the long range growth directions the region should take.

Andy Cotugno stated that funding was also a reason for the late blooming land use planning. Federal funding cuts in the early 80's took funds from everything except transportation planning.

Ken Gervais stated that until the RUGGOs were adopted, it was believed that if Metro pursued land use actions local governments would have sought legislative changes to take the authority away.

Mike Houck recommended a 1971 Open Space publication in the library by Columbia Region Association of Governments (predecessor to Metro).

**VI. Region 2040**

John Fregonese gave the Commission an overview of the Region 2040 program. He stated that the Charter gave Metro a mandate to take a comprehensive look at growth at the regional level. Region 2040 is unique in its process (organized along planning lines rather than political lines) and in the breadth of its scope. He encouraged Commissioners to suggest groups that would be interested in a 2040 presentation.

John Fregonese talked about the modeling processes and what data has come out of that process so far. The modeling will help us take a detailed, in depth look at how the region would be affected under each of the three growth concepts and the base case.

Discussion followed on the modeling process, the growth concepts and the ability to model future travel patterns and mode splits. Mike Gates stated that West Linn estimates that 45% of the residents work out of their homes at least part of the week. He stated that this has not eliminated traffic problems but may just be spreading them throughout the day as those people are not limited to early morning, noontime and late afternoon driving.

John Fregonese stated that the land use patterns of recent decades segregated uses. Some of the concepts are looking at the neighborhoods as the main units and mixing uses so that transit and pedestrian modes are better accommodated. Neighborhoods will be linked by "Main Streets", (shopping streets like Hawthorne) and 10 Minute Corridors (more common multi modal arterial streets, with transit service every ten minutes during peak hours). Mixed use centers will be planned around light rail stations.

Discussion continued on allocation of employment and changes in density under each of the concepts. John Fregonese stated that he will come back to the FVC again as the Region 2040 modeling and public involvement proceeds.

## VII. Public Involvement Plan

Commissioners agreed to have this discussion at the next meeting (December 6).

The meeting was adjourned at 6:40 p.m.

Respectfully submitted by Barbara Duncan.

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ROBERT B. TEXTOR
3435 N.W. Luray Terrace
Portland OR 97210

Tel: 503/223-6370 Fax: 503/223-2521

Dec 5/93

To: Members and Staff, Future Vision Commission

From: Bob Textor

Re: Suggested Partial List of Criteria for Choosing a Name for Our Area and Community

Dear Colleagues:

If we decide to hold a public contest for a name for our area and community, we will need to announce, for the benefit of our contestants, a list of the criteria that the new name must fulfill. Here are some preliminary thoughts on what that list might look like.

1. The new term should be **unique**. One objection to using terms based on the word "Metro" is that there are probably a hundred "metro" or "metropolitan" areas in North America.

2. The new term should be **exciting**, not humdrum or ho-hum. Its purpose is not merely to describe, but to **inspire**.

3. The new term might well suggest selected values from the **past** -- openness, freedom, opportunity, friendliness, independence -- suggesting that these values are still with us, and guiding us into a great Pacific Northwest future, Pacific Century future, etc.

4. The new term should **uniting** and not dividing. A difficulty with using terms based on the word "Metro" is that they probably would raise unrealistic fears on the part of many suburban residents that the pointy-headed bureaucrats on Grand Avenue are trying to dominate them politically.

5. For similar reasons, the new term should not involve direct reference to **Portland**. Vital though Portland is to the functioning of the entire area, we must bear in mind that Portlanders constitute only a minority of our total Metro population. We need a name that will inspire the loyalty of **all** the people who live, or will live, in our area -- to the **entirety** of our area.

6. The new term should **ignore arbitrary boundaries**, for at least the following reasons:

- The new term should denote or connote **multiple** boundaries, since, for example, the watershed is not identical with the air-shed, the job-shed, the transportation-shed, etc.
- These sheds themselves will change through time.
- Existing municipal or county boundaries might or might not persist over 50 years.
- Parts of southwestern Washington are within our various "sheds," but not subject to the same governmental authority.

7. The new term should have a **"natural"** ring and feel to it. It might well be an invented new word (though not necessarily), but, whether new or old, is should seem and feel natural. "Cutesy" concoctions should be avoided.[1]

8. The new name should be grammatically **flexible**, and usable as both noun and adjective (and perhaps also adverb). Below are some illustrative examples using "Metro"-based terms.[2]

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[1]One colleague mentioned that in the Eugene area there is a section called "Willakenzie," which he found offensive. "Willumbia" might have the same disadvantage. And "Colamette" would have the additional disadvantage that it sounds too much like "calamity."

[2]These terms are used for **convenience** only. I am **not** here suggesting that we should end up using "Metro"-based terms. Indeed, at the moment I would be opposed to that.

♦ "Metro Community," and "Metro Culture," are usable nouns. However, a single-word term might be better.

♦ These two nouns can also be used as modifiers, as in "Metro Community values," or "Metro Cultural patterns."

♦ "Metronian" can be used as a noun, to mean "a member of the Metro Community," or "a member of the Metro Culture."

♦ "Metronian" can also be used as an **adjective**, as in: "That's not the Metronian way of doing things."

♦ "Metronial" can also be used adjectivally. Example: "The Metronial way of doing things."

♦ "Metronial" can also be used adverbially. Example: "That policy would not be Metronially advisable."

However inadequate the above examples might be, my point is that this kind of grammatical flexibility is important, because it will help people weave a new set of terms right into their ordinary conversations. Whatever set of terms we end up with, they should of the kind that just naturally roll off people's tongues.

Cheers,

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FROM: 62952029
OREGONIAN
TO: 5036466286

Shorew / Future Vision

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THE OREGONIAN, PORTLAND, OREGON

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TO: Peggy Lynch
FROM: Janet Goetze
AT: 503-640-9364
SUBJ: story you requested

or93 DEVELOPER, NEIGHBORHOOD'S VISION OF PROPOSAL DIFFERS
11/18/93

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Article in MetroWest Section


Thursday, November 18, 1993

TAG: 9311180470
EDITION: FOURTH
SECTION: WEST ZONER
PAGE: D02
LENGTH: Medium: 77 lines
HEADLINE: DEVELOPER, NEIGHBORHOOD'S VISION OF PROPOSAL DIFFERS
BYLINE: JANET GOETZE - of the Oregonian Staff
DATELINE: BETHANY
TEXT:

Summary: Roy Kim's plan for 110 acres along Bethany Boulevard raises questions by residents of nearby subdivisions

Roy Kim looks at the 110 acres he owns in the Bethany area north of Sunset Highway and foresees a new-style village that relieves suburbia's traffic woes.

Houses would be clustered in grassy, landscaped areas near the grocery store, the pharmacy and the dry cleaners. Bike paths and straight streets would run in a grid that would be handy for buses, encouraging residents to keep their cars in the garage.

Kim, owner of Central Bethany Development, says his vision fits the Bethany community plan that Washington County approved a decade ago.

The plan was conceived as a departure from suburban developments where houses are built on cul-de-sacs. When homes and businesses are separated on curving streets, residents are forced to drive cars for virtually every errand or trip to work or school.

Today, many planners favor using land in ways that will help residents get along without cars that clog roads and increasingly contribute to air pollution. The state, in fact, has set rules for reducing the number of vehicle miles traveled over the next 20 years to clear the air and decrease traffic.

However, some residents of subdivisions near Kim's 110-undeveloped-acres along Northwest Bethany Boulevard, north of West Union Road and west of Kaiser Road, fear the new plan could add more commercial development and traffic than the Bethany community can handle.

They plan to testify against Kim's plan at 1 p.m. Thursday, when Dale Hermann, Washington County's land-use hearings officer, will open a hearing on the proposal in the Public Service Building, 155 N. First Ave., Hillsboro.

''We're not prepared to see a regional shopping area thrown into an area that's residential,'' said Ken Evans, who lives in the Claremont development

south of Kim's property.

Evans is among residents who believe that Kim has expanded plans for commercial development beyond the 15 acres specified in the Bethany Community Plan, which guides the area's development.

He's also worried that surrounding houses won't be separated enough from the commercial and multifamily housing Kim plans.

A group called Bethany Neighbors has hired a lawyer to argue against Kim's plan, Evans said. Developers of surrounding houses also are expected to testify against the proposal.

Jeff Bachrach, Kim's lawyer, says the proposal reflects the community plan's effort to provide beauty shops, dry cleaners and other service businesses near homes, he said. It also has space for doctors' or dentists' offices and a day-care center. Kim plans to build 860 residences in two-story buildings. He could have
built up to 1,060 units and still stayed within the Bethany plan. He would have had to put them in three-story buildings, Kim said, and he decided against packing people in that densely because he felt the grassy areas between buildings wouldn't be large enough.

Kim already has built some single-family homes in his neighboring Parc Bethany subdivision.

If the hearings officer approves Kim's proposal for a planned development, Washington County planners will require him to separate his multifamily residential clusters from houses near one part of his property.

In another area, the 90-foot right of way for Bethany Boulevard, formerly known as Northwest 158th Avenue, will separate houses from Kim's residential clusters.

Kim and Bachrach believe neighbors who oppose the Bethany proposal may misunderstand it.

''I think this project is a watershed in Washington County,'' Bachrach said. ''This is what a lot of progressive planners say needs to happen.''

''If this gets defeated because of emotionalism,'' Bachrach continued, ''it will be a setback for what may be required for future development in the metropolitan area.''

## PREAMBLE

**WE, THE MEMBERS OF THE METRO FUTURE VISION COMMISSION,** having been chartered by vote of the people, and appointed by the Metro Council, herewith submit to the Council and to our fellow citizens our Vision Statement for the fifty-year future of our Metro Community. We state here our broad design for a future Metro Culture that will preserve and enhance the good life for all Metronians, including those who move here from elsewhere, and especially those as yet unborn.

As we approach the Third Millennium, we envision a Metro Culture that **integrates** our basic political, economic, social, legal, aesthetic, and ecological values into a harmonious whole that will inspire the love and loyalty of all Metronians toward their Community. Among these values are the following.

♦ Our Metro Culture[1] will emphasize our pride not only in the values that all Americans cherish, but also in our **special** Metro cultural identity and sense of place -- while also encouraging our awareness and knowledge of **other** cultures and languages worldwide, with whose peoples we will be in increasingly close relationships as the global economy emerges.

♦ Our Metro Culture will encourage flexibility, so that our people will be free to **change** as they adapt to new challenges and create new opportunities -- while also preserving our opportunity to **continue** observing the best traditions of our great Pacific Northwest past.

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[1]The terms "Metro Culture" and "Metronian" are here used as temporary mock-up terms, pending the Commission's decision as to what terms to use. It has been suggested that there be a contest open to all citizens of our area, in which they would submit possible names, from among which the Commission would choose the most appropriate one (with a prize to the winner.)

For ideas about how to conduct such a contest, please see attached memo.

♦ Our Metro Culture will assign the highest priority to the preservation and enhancement of our deeply valued **livability** -- while also making plans and provisions for the orderly **accommodation** of newcomers who move here attracted by that very livability.

♦ Our Metro Culture will allow the greatest possible **individual** liberty in politics, economics, ethnicity, lifestyle, belief, and conscience -- while also instilling **social** responsibility toward the Metro Community as a whole.

♦ Our Metro Culture will encourage the widest possible citizens' initiative and **participation** in governmental affairs -- while also requiring conscientious **respect** for the law.

♦ Our Metro Culture will provide maximum economic **opportunity** for all our people -- while also offering suitable social mechanisms to insure **equity** for all, and **compassion** for those in need.

♦ Our Metro Culture will encourage the preservation and enhancement of the best possible **built** environment -- while also conscientiously protecting and preserving our **natural** environment.

♦ Our Metro Culture will allow and support **individual** choice in housing arrangements -- while also encouraging a settlement pattern creatively designed to confer maximum environmental, aesthetic, recreational, and other social benefits upon our entire **Community.**

♦ Our Metro Culture will enable all our people to live an **abundant** life -- while also systematically **protecting** our people's right to an unpolluted workplace and environment, and unimpaired sustainable natural ecosystems.

♦ Our Metro Culture will **maximize** convenience and efficiency in transportation of persons and goods -- while also **minimizing** congestion, pollution, and environmental degradation.

♦ Our Metro Culture will embody the most creative uses of the new information **technology** for the economic, political,

and personal benefit of all Metronians -- while also supporting the unique values of direct **personal** contact.

♦ Our Metro Culture will encourage maximum intellectual and artistic **stimulation** and innovation -- while also encouraging a **reflective** life that takes into account the wisdom of the past.

♦ Above all, our Metro Culture will, through education and all other means, affirmatively seek to insure that every Metronian child -- regardless of gender, race, ethnicity, religion, family, wealth, or residence -- will enjoy the fullest possible opportunity to fulfill her or his **potential** in life. While most of the undersigned will be gone in fifty years, we regard it as sacred that we bequeath to our children, and to their children, a humane, satisfying, and sustainable Metro Culture.

**[SECTION ON CHILDREN]**

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ECONOMIC VITALITY - Draft 3

**In 2040, Portland metropolitan region will be:**

- A place where people want to live and can afford to live
- A leader in supporting small businesses and entrepeneurship
- Home for both leading-edge industries and the core industries of Oregon
- Recognized for its well-educated, productive workforce and its programs to improve its workforce
- A place that emphasizes the sustainable use of its natural resources
- Known for its balance of housing, jobs, and services within each subcenter of the region
- A regional hub for a interconnected system of thriving Oregon and Southwest Washington communities
- A major international trade center on the Pacific Rim

**The key to economic vitality is communities that are attractive to people. The region must retain its spectacular natural environment and human scale communities.**

**In addition, economic vitality requires:**

- Public policies that support businesses' needs for information, profitability, revitalization, expansion, access to products and markets, productive workers, safety, livability, and a sense of place
- Partnerships between government and business that enhance and support economic development
- Recognition that businesses are an integral part of the social contract with responsibilities for building healthy communities and enhancing civility
- Policies that recognize the interrelationships of housing, jobs, and transportation and foster communities where people can live and work in close proximity
- A graduate research university
- A strong educational system that prepares children to be responsible and productive members of society and provides life-long learning opportunities for all
- Efficient intermodal transportation and communication systems serving both businesses and individuals
- Strong local and international business services
- Diverse economic opportunities
- An efficient, equitable, and responsive system for financing and providing infrastructure and other government services

Some areas that we think need comment, but we're not sure what to say:

- low skill workers (not part of information age)--How do we assure the region addresses their needs and doesn't just focus on high skill workers?
- urban-rural--How can people in both parts of Oregon better understand and appreciate our economic and social connectedness? (Oregon Benchmarks calls for a gradual increase in the % of Oregonians employed outside the Portland tri-count area (49% now, 52% in 2010)
- well educated, but underemployed persons--Regional currently attracts. Will this continue? How do we use it as an advantage?
- Small businesses--What can we do to support them?
- Changing demographics--How will the economy and other aspects of life be affected by the fact that we will have massive numbers of 80 and 90 year olds (the babyboomers) in 2040?

To: Future Vision Commission
Region 2040 staff
From: Mike Houck

Attached is my cut at a vision statement (this is my third draft after comments from Wayne, Len and Ken). Also attached are Wayne Lei's suggested signatures and specific comments from Len. I presume there might be an interest in melding Wayne's writings and Len's comments into the overall piece, but Wayne and I were not able to talk directly in time for Monday's meeting. It probably makes more sense to get your collective input before doing a mind meld anyway.

Wayne said to go with the second draft, but as usual not only did I change, but I added words. Both nature and I abhor vacuums...it's a terrible thing to waste a page. So, here's the new, "improved" version.

**DRAFT**
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## FUTURE VISION COMMISSION ENVIRONMENT COMMITTEE VISION STATEMENT

**"And in time there's no more telling which is which between them, no sharp distinction, no clear edge of difference where it can be said that here the land ends and here the man begins."**

**Don Berry,**
***Trask***

Viewed as a model for urban north America, the built, working and natural environments of the Portland-Vancouver metropolitan region has been integrated along principles of sustainable ecosystem and landscape ecology. This landscape ecology approach, which was adopted regionally in the early 1990's, has been codified into enforceable regulatory and creative non-regulatory incentive programs throughout the region. This approach views the region as a unique ecosystem and recognizes that humans and the built environment are an integral part of that ecosystem.

For the past two decades development patterns have reflected and preserved the region's distinctive landscape features: forested volcanic buttes and ridgetops, broad riparian plains and low, oak and fir clad hills. Mixed office-commercial, residential and transit-oriented developments are clustered among the still-forested knolls and wildlife-rich floodplains, according to region-wide adopted essentials of landscape design that has allowed the region to house the increased population while retaining the region's distinctive landforms. Still-productive agricultural lands

border the sinuous Tualatin River floodplain where a series of national wildlife refuges are managed for their agricultural, wildlife, water quality and amenity values. Riparian stewardship and water quality-oriented land use incentives have created added economic value to the agricultural landscape and have promoted the maintenance of farmland throughout the Tualatin River and Willamette River basins.

Elsewhere, the Sandy, Clackamas and Willamette Rivers are being managed for their multiple values to the growing metropolitan region. While re-development and reclamation of downtown Portland's riverfront has accommodated much of that city's population growth---close in to the increasingly vibrant downtown core---river corridors have been managed and restored to enhance their fish and wildlife, water quantity, water quality and flood control values. From the air one can see that the majority of these Columbia River tributaries have retained substantially intact watersheds, with residential, agricultural and forest practices evident in a scattered pattern of development. The Lewis River to the north still harbors a large Bald Eagle winter roost that has grown to 150 birds as the broad, protected riparian forest has matured.

It is commonplace for families and schools to put their canoes or kayaks into the Willamette River, at multiple publicly owned access points on both the east and west banks of the Willamette, from Kelley Point Park and Smith and Bybee Lakes to downstream sites at Wilsonville. It's possible to tour the Willamette, Columbia, Tualatin and Clackamas Rivers. Water conservation has ensured, despite increased population, an exciting, rapid-filled raft and whitewater kayak trip through the expanded Wild and Scenic stretches of the Clackamas and Sandy Rivers.

All the region's urban streams and sloughs have been managed for their multiple values including water quality, water quantity, aesthetics, educational, recreational, fish and wildlife habitat, enhanced economic values of adjacent properties and open space. Unlike most metropolitan centers, which have ditched, cemented and culverted their urban streams, our waterways have been retained and restored as part of the urban infrastructure---Greenfrastructure. Many formerly buried streams have been daylighted to provide ribbons of green and urban water features in areas of the region that were once devoid of Greenspaces.

Every resident lives within walking distance of an active recreation, neighborhood park and public gathering site as well as a natural or restored natural area or Greenspace that is part of an interconnected regional natural areas system. Everyone has the option to walk, bicycle or hike via an interconnected regional trail system, which follows natural and restored greenways which have been deemed appropriate for transportation corridors. Other stream corridors, too ecologically sensitive for any intrusion, have been retained for their fish and wildlife and water quality functions.

This interconnected trail system makes it possible not only to travel among neighborhood cores, but also to gain access to feeder trails which link to the

Pacific Crest Trail via the expanded Springwater-Estacada corridor, to the Pacific Ocean via Forest Park's Greenway to the Pacific Trail; to the Lower Columbia Gorge Trail via the Sandy River Delta trail network; to the northern Columbia River trail system via Clark County's Chinook Trail System and to Wilsonville via the now-completed Willamette River Greenway. The remainder of the Willamette River Greenway is a "blue trail"---a canoe route that stretches from Eugene to Portland along the newly restored riparian forests of the still agricultural Willamette Valley Ecosystem.

Corporate parks, private residences and all public spaces have been xeriscaped, planted with drought-tolerant native and, where appropriate nonnative, vegetation that also provides wildlife habitat and a naturalistic landscape. Through public education and economic benefit analyses it has been demonstrated that both water and energy intensive landscaping, especially large rolling lawns, are inappropriate for the growing population of high tech industries which have relocated in the region. Native and xeriscaped backyard habitats contribute to a sense of "nature nearby" throughout the metropolitan region as well as contribute to energy savings, a cooler urban environment within the urban cores, cleaner air and enhanced property values.

A visitor flying in to the Portland International Airport sees a region that is laced with networks of green, represented by urban rivers and streams which have naturally functioning riparian zones and wetlands. They will see forests of green, mixed native deciduous and coniferous forests that have been retained on the regions volcanic buttes and prominent ridgelines---Tualatin Mountains, Parrett, Cooper and Chehalem Mountains and the foothills of the Cascade and Coast mountain ranges.

Some Signature Examples Wayne Lei

Clean Water, Swimmable Rivers

Acceptance of ecosystem-based ideas have returned much to nature's hands. Bogs and marshy lowlands engage meandering bends in the slower parts of streams-- they are now visible in what had been drain and culvert. The flush of native vegetation is aided by volunteer re-planters stopping sometimes to look contentedly at the visits of eagles and beaver and the occasional otter. Some of these visitors haven't been seen in decades-- you won't have to look hard. . . they are there.

Proper poplars and alder shade anchoring grasses and ferns; - over-arching a glistening liquid. Roots mingle with the small spaces in the dirt - filtering the rainwater that still drains through home-filled neighborhoods. Over the years, houses have retreated from the stream banks. With the increase in bank widths, water reaching the gravelly beds receives more cleansing

time and is purer. Even streams surrounded by farmland run cleaner as pesticides and herbicides have been much replaced by biological and genetic methods of control. It's not quite "better farming through smarter genes" because yields are lower per acre -- but that's what the local farmers had to do because there is a wariness of chemically contaminated foods.

You can go swimming, but not during certain times of the year. Those times are reserved for returning spawners. If you disturbed them-- there would be trouble since the children who had helped plant the trees to create the natural temperature control and ensured that decaying logs or other detritus were placed just right to hide the resulting smolts-- they would see and tell someone. By then, the occasion would have a sacred quality about it. Many feel they have some part of it. At least, they watch and welcome. Oh, you'll probably see some litter along the river bank trails and streambeds, but not styrofoam. Some things won't change but what has -- will have been for the better.

Working Landscapes

It's surprising to see how it is taken for granted that what was in the valley is the best for the valley. There is a general acceptance that this really isn't New England. So White Oaks-- growing slow and big are pushing in, on the low knolls and plain, from Yamhill. Douglas Firs tower after 40 years of forethought in city parks. Alders are respected and stabilize the streams Corporate parks indulge in. Combined, they shade; lay down a brown, acidic humus and the wet fragrance is unmistakable. When the casual gardener calls the agency-- there is the advice that it's not just recommended - it's the best for all concerned. Elk crossing signs are one result and closer in too while more hawks set up shop to feast on inattentive meadowlarks.

Concrete and asphalt arterials flowing drivers into the core are shaded by the enlightened idea that there really is no reason why a little bit of the Coast Range roadside shouldn't exist here too. Scotch Broom and firs with complaining song birds edge in a serenity that eases the traffic tensions. It's a nice diversion as electric vehicles are considerably quieter so there is more to hear and appreciate. Anyway, travel is very much technologically assisted and just isn't as complicated as it used to be. When there is a failure of the system-- even head-on collisions pose less danger-- light-weight, high impact materials turn cars into rubber balls that bounce rather than crumple. And you bounce into thick Salal, planted there for that purpose. You are annoyed and startled but usually not dead.

There is a lot less need to travel long distances to get to work. Neighborhoods thrive on the small and medium size businesses that churn out quality products that typically are components of

larger devices. Families live closer to their neighbors and complain little-- the parks and ballfields continue to be plentiful. Wilshire, Westmoreland, Columbia, Washington parks really don't look that much different. We've taken advantage of the fact that native things grow well in the valley and neighborhoods pride themselves on the attractions provided by nature's offerings. Johnson Creek, the Slough, Forest Park are amenities that receive affection. Families enjoy backpacking without ever getting into a vehicle. They start from the neighborhood entrance to a trailhead and then, it's Estacada or the Coast or just about anywhere.

Hollywood, Hawthorne, Sellwood, Multnomah seem more and more like village centers. Lots of small towns making up the bigger one. You still think of Sandy Boulevard, antiques. If it pleases you to walk from nature and into downtown-- you'd see a couple of new fountains supplementing what flowed before. The high-rises invite your attention with street-level shops. It's still a walking town and you can rest in the shade of the park blocks and feel very urbane about the whole experience.

Future Vision should include: Len Freiser

**Keeping, restoring, cleaning, maintaining, enhancing and possibly, increasing the area's natural systems.**

What follows from this? Specifics and implcations; usage, acess, criteria; impact on economy, education, family life, area government, urban and rural form.

ICONS (Sept. 27)

**Built and natural never separated**

In the urban areas -- neighborhoods, downtown business streets and industrail sites have a vitality and sometimes gritty beauty that is charateristic of a healthy city. This urban ambience -- the vitality of social, business and intellectual intercourse -- although enhanced by the natural areas within and adjacent to the city, must also be nurtured.

**Neighborhood Parks**

Neighborhood gardens should be encouraged.

**Diversity urban and suburban forms**

Both should ahve library/museum/cultural centers for children within walking and biking distance of their homes. Downtown Portland and any satellite cities should be safely available to young people.

**Walk to nature** Urban area should be readily and safely available to rural and suburban youth.

December 6, 1993

Mayor Vera Katz
City of Portland
1220 Fifth Avenue
Portland, Oregon 97204

Dear Mayor Katz,

I am writing with regard to the proposed University of Portland expansion plan. I was approached last weekend by a neighbor who made several compelling arguments for limiting the University to its current geographic boundaries.

While I did not necessarily agree that a future boundary expansion for the University is unwarranted, I agree with my neighbor's assessment that the existing campus could be used more efficiently. Specifically, I feel that parking on campus should be consolidated in a parking structure. This would free many of the existing surface lots for redevelopment as student housing or classroom space.

I also feel that Willamette Boulevard is an excellent boundary for the northeast edge of the campus, since it not only provides access to the site, but also acts as a natural transition between the University and adjacent neighborhoods. Currently, Portsmouth Avenue provides a similar boundary along the northwest edge of the campus. Should the City be compelled to approve an expansion past Portsmouth, another possibility for "transition" in the expansion area would be to focus relatively low density student housing there (i.e., multi-plexes at a density of 8-12 units per acre). However, I feel that Willamette should be a fixed boundary for the campus, and the University should get out of the business of buying homes along the opposing frontage!

Having lived on both Willamette and Portsmouth (and in both cases within four blocks of the University) I am somewhat puzzled about the neighborhood reaction to traffic. I am a transportation planner by trade, and thus am more impressed by the volume of foot traffic on Willamette than the number of automobiles! While I share their concern about the traffic speed, the volume resulting from special events at the University has only caused extreme congestion on a few occasions during the past several years. Clearly, managing the timing of special events is the simplest way to reduce that specific impact, but mitigation measures are probably needed to slow traffic along Willamette. This is especially the cast near the main entrance, where I have personally witnessed many near-accidents involving pedestrians. If the City moves forward with a mitigation project, I recommend a few "true" traffic circles, rather than the "nausea" bumps that were recently installed on nearby Macrum Street.

Finally, I am intrigued by the University's apparent interest in the Riedel property located below the bluff. I recently wrote to you regarding a unique redevelopment opportunity along the river that includes this parcel, and I am thrilled to learn the University is considering an expansion there. This could provide room for expansion that would have much less impact (and controversy) on the surrounding neighborhood.

Thank you for considering my comments!

Sincerely,

Tom Kloster
5932 North Willamette Boulevard
Portland, Oregon 97203

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Sincerely,

Tom Kloster
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Portland, Oregon 97203

The foundation of Future Vision is what we plan for children -- a plan that will affect their lives, their play and learning, their work and livelihood, their families, their homes and communities, their health and environment, their sense of place, their government. Should we fail here, there is no vision. Children born today will be middle-aged by the end of the fifty-year plan, today's eighteen year-olds will be senior citizens. It is their future we are planning, and the future of those yet to be born.

We will begin then with children, and follow with the community as a whole.

## A. CHILDREN

We Envision for All Infants:

*Love and proper care

*Stable and safe home environment

*Clean air, clean water, safe food and good diet

*Effective health care

*Play, songs

*Language, storytelling

We Envision for All Pre-Schoolers -- ALL OF THE ABOVE AND:

*Safe streets, neighborhoods and shopping places

*Access to direct, not passive, participation in language,

art, craft, nature, number, music, science, theater, rural, urban, and physical activities

*Free play -- time free from scheduled activities

*Protection from commercial exploitation

We Envision for All School Age Children -- THE ABOVE AND:

*The right to be a child

*Freedom from becoming homeless

*Disciplined social and educational environment

*Freedom from threatening and violent environments

*Access to adults who can teach, and to facilities where they can learn

*Convenient access to community activity centers (art, craft, music, dance, theater, computer, video and film), libraries and museums -- in separate or in combined facilities

B. COMMUNITY AS A WHOLE --

Individuals, Families, Neighborhoods, Groups

We Envision That:

*Successful implementation of the agenda for children will be the strongest foundation for a healthy region

*We maintain safe communities and neighborhoods; located within a four-minute ambulance, fire, and police response time.

*We live in a beautiful and relatively harmonious place -- a mix of vital liveable city, rural and suburban communities, scenic wonder, and agricultural area. We have a good level of mutual respect, good public transportation, and public participation in government. Our communities and neighborhoods each have individual flair and active communal life; a number of main streets are busy with theaters, galleries, restaurants, music clubs, small businesses, residences -- people of all ages; and there is an increasing number of volunteer organizations working to solve community problems. The area is very strong in the arts and there is a great variety of public programs, festivals and celebrations. Houses of worship of many faiths reach residents throughout the area.

*We have one of the strongest records in the country for citizen involvement. Our differences can be further harnessed to broaden this base of citizen involvement in solving community and regional problems. People who come together to talk about common concerns can get a better understanding of the aspirations, pain, and experience that have led others to points of view that are different than their own. Otherwise, good solutions are frequently overlooked, or seem out of reach, because of a lack of empathy between the parties and the perpetuation of stereotypes. Our institutions are accessible and responsive.

*The world of work must be re-examined. How we feel about

our jobs affects our health, our families and eventually our communities and economy. We should encourage appropriate public agencies as well as employer and employee groups to provide two-way educational opportunities that could lead to mutual understanding and respect in the workplace. Economic health and the health of individuals and families must become synonymous -- as well as the well-being of communities, the environment, and the sense of place.

*Timely, accurate, accessible, and free information is a pre-requisite for a democratic society. New technologies give us greater access to articles, books, videos, databases, and to people around the world. In the past, all new technologies led to unexpected social changes. We will be better prepared to meet these challenges by building a strong educational foundation for all, and by recognizing that public library reader and information services are an essential part of that foundation.

*Lifelong education. Training, and retraining -- with special attention to those who can not reach high-paying jobs, who do not choose or are unable to respond to further training.

*Employment and volunteer opportunities, as well as dignified health and social services for an aging population.

*All individuals, communities, public institutions, private organizations and businesses are part of the social contract.

*The area will respond in times of need to other areas in the Northwest and in the country.

# COMMITTEE DRAFT

*December 6, 1993*

## OUR SENSE OF PLACE

For many of us, our sense of place is defined by our place in nature; the snow draped cones of Mt. Hood and Mt. St. Helens shimmering above sailboats on the Columbia, a silver-bright salmon pulled from the waters of the Willamette in the shadow of office towers, clouds catching in the firs of the West Hills, the rich green patchwork of farms and forest lands of Sauvie Island and the Willamette Valley.

Our communities have grown on nature's foundation, developing the identity of our area. At the heart of the region is the bustle of people filling the brick sidewalks of downtown Portland, ringed by the older, vibrant, neighborhoods, tree-shadowed and close-knit. Today the urbanized center of the region reaches out to include older farm towns like Beaverton, Forest Grove, Sandy, Hillsboro, Newberg, lively with new industry and hard-working new residents as well as the historic cities of Vancouver and Oregon City.

But the metropolitan region now extends beyond this central urban network. Already evident is an interlinked economic region stretching from Longview/Kelso on the north to Salem on the south, from the crest of the Coast Range on the west to the Cascade watershed on the east. (Our region is part of the urbanized Northwest stretching from Eugene to Vancouver, British Columbia, and most broadly of all, the Pacific Rim.) Many citizens within this region still feel far removed from the urban center; their life and work is tied to the land or small farming or timber communities. Yet their neighbors may work in Vancouver or Wilsonville or Hillsboro.

Growth has brought new opportunities and prosperity to many citizens in the region. Growth also brings serious challenges. What we have today we may lose tomorrow. While

our region is special today, the forces of growth acting upon it are the same as those which have destroyed the quality of life in other parts of the West. Mt. Hood could disappear behind a pall of smog, the Willamette could run with pollution instead of salmon, the hills and buttes be identified by their rooflines instead of their trees. Fewer and fewer of us may be able to walk to the neighborhood store instead of driving to the nearest strip mall.

As suburbs creep north to Longview, south to Salem and cover the foothills of the Coast and Cascade Ranges, our dreams of an active city life or the peace and quiet of rural life, will give way to the reality of traffic jams, social and economic segregation and the impersonal ugliness of sprawl. The centers of our cities will decay and the countryside will recede over the horizon, a place reserved for special holidays. Playing with our children in a park, dinner at a sidewalk cafe or worshipping in a gracious building from another century, could become things we associate with another country or the past. We will have neither the stimulation of urbanity nor the perceived benefits of the country.

We can plan a better a future, a future in which we will talk to each other on the sidewalk instead of fume at each other in gridlock. We will enjoy the countryside and nature in our daily lives. Driving to work or to the store will be a choice not a necessity and we will live in neighborhoods instead of residential zones.

That future is possible if we choose to make the best use of what we have, by growing up instead of out. We can maintain and redevelop in our cities instead of sprawling onto the farm and forestlands on the edge of the metropolis. And we can do this with only modest changes in the ways we grow and invest the public's resources: There is no need for us to abandon our cars or our dreams of having our own home and yard.

We can build our future the way we built the best of our past, supplementing the supply of large-lot single family residences with a mixture of homes on traditional sized lots,

townhomes and garden apartments that serve the needs of the households of the future.

Our neighborhoods, like the cities within the region, can maintain or acquire an identity, through mixing commercial and residential uses along important transportation corridors. This form of growth can reduce our dependence on the automobile. We can encourage the development of community centers where all ages and types of people can create and recreate. By keeping our streets and sidewalks lively we can increase public safety.

Knitting our urban life together will be light-rail, streetcars and a completed framework of arterials and street with sidewalks to accommodate our buses, cars, bicycles and our own two feet. Our children will have the luxury of choosing how to travel from their compact yet green neighborhoods, to jobs, to the store, to school or to visit friends.

A generous supply of parks and open spaces, which we share with our neighbors, will keep the outdoors and nature close to our daily life. And the urban part of the region will have the identity created by a boundary, an edge, beyond which the country begins, continuing its contribution to our economy and quality of life.

In 2040, our region can still have a distinctive sense of place, a place we are proud to call home, if we are willing to change our direction today.

# NEWS & ANALYSIS

# ARTICLES

## Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States

by Robert L. Liberty

*Editors' Summary: 1993 will mark the 20th anniversary of Oregon's experiment in managing growth and land use through a statewide planning program. As a pioneering effort, Oregon's program has evolved and weathered implementation battles in court, as well as repeal initiatives at the ballot box. Yet, the original proponents of Oregon's program knew that wresting control over local land use decisions from local governments in order to achieve statewide growth management policies would not be easy. The author strongly believes that a new balance must be struck between conservation and development, which will require a political shift of power from local to state governments. Today, more states are contemplating their own statewide growth and land use programs, as the collision between growing populations and diminishing natural resources reveals the shortcomings of local growth controls. This Article explores Oregon's growth management program, its implementation, and the frustrations, successes, and experiences learned along the way. The Article begins with an overview of the program's legal and administrative structure, with emphasis on the process by which Oregon's local governments and state agencies implement state land use policies. Next, the Article reviews these policies and Oregon's performance in achieving policy objectives. Finally, the Article recommends how interested states might improve on Oregon's growth management model.*

**Table of Contents**



Mr. Liberty is a Portland attorney specializing in Oregon land use law. He has argued many cases before the Oregon appellate courts and Land Use Board of Appeals, including precedent-setting cases interpreting the statewide planning Goals relating to urbanization, the preservation of farm land, the conservation of forest land, and coordinating state agencies' activities with the state planning program. He has been a speaker and consultant across the United States and overseas on the subject of growth management programs. For nine years he was a staff attorney for 1000 Friends of Oregon, a nonprofit land use advocacy organization. The author would like to thank the many people who helped him with this Article, including Darr Durham, Peter Frost, Ruth Froust, Kevin Kasowski, Paul Ketcham, Tony Lawrence, Kim Marsh, Terry Moore, Henry Richmond, Mitch Rohse, Ethan Seltzer, Scott Siegel, and Dave Wallenberg.

In 1973 Oregon enacted Senate Bill 100, which established a comprehensive statewide growth management program (the program).[1] The program dramatically reduced local governmental autonomy over land use decisions in order to achieve statewide growth management policies. Nearly two decades later, Oregon's implementation of the program continues and provides a glimpse of one state's movement away from the local control of growth.

Since 1985, a growing number of states have either adopted new statewide land use planning programs or fundamentally revised existing programs.[2] Today, Oregon's experiment is relevant to states that are considering whether to adopt statewide growth management programs,[3] and continues to provide lessons for states that implemented growth management programs in the 1980s.[4]

## The Oregon Land Use Planning Program: Legal and Administrative Structure

### *Establishing the Program Agency and Statewide Planning Goals*

The Oregon program[5] was adopted in 1973 and has evolved continuously ever since.[6] The Oregon legislature created a new citizen commission to oversee the planning program, the Land Conservation and Development Commission (LCDC).[7] The program also created the Department of Land Conservation and Development (the Department)[8] as LCDC's staff for implementing the pro-

1. 1973 Or. Laws ch. 80 (codified as amended at OR. REV. STAT. §§197.005-.860 (1991)). The law, unnamed by the Oregon legislature, is referred to as Senate Bill 100. For purposes of this Article, the law will hereinafter be referred to as the program. For a detailed explanation of the law, see 2 LAND USE (Oregon CLE 1988). For a brief history of the program and glossary of terms, see M. ROHSE, LAND-USE PLANNING IN OREGON: A NO-NONSENSE HANDBOOK IN PLAIN ENGLISH (1987).

2. In 1984, Maryland enacted the Critical Areas Act, a special land use statute to protect shorelands around the Chesapeake Bay estuary from the effects of unplanned development and farming activities. MD. CODE ANN. NAT. RES. §§8-1801 to -1816 (1989 & Supp. 1990). In 1990, H.B. 214, the Maryland Growth and Chesapeake Bay Protection Act, was introduced to extend elements of this program to the entire state. Although the bill died in committee, the subject matter was referred to the Joint Committee on Growth Management. Many states have already enacted coastal regulatory programs in response to the federal Coastal Zone Management Reauthorization Act of 1972, 16 U.S.C. §§1451-1464, ELR STAT. CZMA 1-15 (1988) *See, e.g.*, California Coastal Act of 1976, CAL. PUB. RES. CODE §§30000-30900 (West 1986).

   The Florida Environmental Land and Water Management Act of 1972, FLA. STAT. §§380.012-.12 (1989 & Supp. 1991) (providing for permit-by-permit review of major development projects), was extensively revised and supplemented in 1984 and 1985 to establish statewide planning goals under the State Comprehensive Plan, *Id.* §§187.101-.201; provide for the development of regional plans consistent with the state plan and goals, *Id.* §§186.001-.911; and mandate state review and approval of municipal and county plans implementing the state's planning goals, *Id.* §§163.3161-.3243.

   New Jersey adopted its State Planning Act in 1985. N.J. REV. STAT. §§52.18A-196 to -207 (Supp. 1990).

   Maine adopted its Comprehensive Planning and Land Use Regulation Act in 1987. ME. REV. STAT. ANN. tit. 30-A, §§4311-4344 (1989 & Supp. 1990).

   Rhode Island enacted its Comprehensive Planning and Land Use Act in 1988. R.I. GEN. LAWS §§45-22.2-3 to -6 (Supp. 1990).

   Vermont's State Land Use and Development Plans (Act 250), passed in 1970, VT. STAT. ANN. tit. 10, §§6001-6092 (1975 & Supp. 1990), was significantly strengthened by amendments in 1988. *Id.* tit. 24, §§4303-4495. The amendments came after Governor Kunin's report entitled "Governor's Commission on Vermont's Future: Guidelines for Growth." Exec. Order No. 50, VT. STAT. ANN. tit. 3, ch. 7 app., at 66-67 (1990).

   Virginia adopted the Chesapeake Bay Preservation Act of 1988, a special land use program for its part of the Chesapeake Bay. VA. CODE ANN. §§10.1-2100 to -2115 (Supp. 1990).

   Georgia enacted House Bill 215 in 1988, extensively amending and replacing the Planned Growth and Development Act, which had first been adopted in 1974. Amendments were made in 1989. GA. CODE ANN. §§40-2901 to -29119 (1989).

   Washington adopted its Growth Management Act in 1990. WASH. REV. CODE ANN. §§36.70A.010-.901 (West Supp. 1991). Governor Gardner vetoed part of the bill and one initiative, which would have enacted a far more stringent program.

   For a discussion of the renewed interest in states' roles in local land use planning, see Fulton, *Land-Use Planning: A Second Revolution Shifts Control to the States*, GOVERNING, Mar. 1989, at 40; Popper, *Understanding American Land Use Regulation Since 1970: A Revisionist Interpretation*, 54 AM. PLAN. ASS'N J. 291 (1988). For a review of the first phase of states enacting comprehensive planning legislation, see J. DEGROVE, LAND GROWTH & POLITICS (1984). *See also* Chinitz, *Growth Management: Good for the Town, Bad for the Nation?*, 56 AM. PLAN. ASS'N J. 3 (1990).

3. For example, California has shown an increasing interest in comprehensive planning legislation. SENATE OFFICE OF RESEARCH, CALIFORNIA STATE LEGISLATURE, DOES CALIFORNIA NEED A POLICY TO MANAGE URBAN GROWTH? (1989) (the report was issued pursuant to Senate Resolution 39 in the 1988 session by State Senator Robert Presley (D-Riverside), chairman of the California Senate Committee on Appropriations). *See also* E. DEAKIN, STATE PROGRAMS FOR MANAGING LAND USE, GROWTH, AND FISCAL IMPACT: A REPORT TO THE SENATE OFFICE OF RESEARCH (1990); Oppenheimer, *Solutions to Sprawl*, INDEPENDENT (Durham, N.C.), Oct. 22, 1987, at 6.

4. The Oregon experience was the subject of press coverage and legislative discussion prior to Maine's adoption of its planning legislation. Turkel, *Oregon: A Model for Maine?*, ME. SUNDAY TELEGRAPH (Portland, Me.), Nov. 8, 1987, at 1A. *See also* Monegain, *Other States Face Growth*, TIMES REC. (Brunswick, Me.), Mar. 11, 1988, at 1.

5. For descriptions of the program's political origin, see DEGROVE, *supra* note 2, at 235-89 and H. LEONARD, MANAGING OREGON'S GROWTH: THE POLITICS OF DEVELOPMENT PLANNING (1983). Both books provide useful chronologies of the program's development and a sampling of important actors' attitudes in the continuing public debate.

6. Important statutory components of the program are codified outside the program core, which is located in OR. REV. STAT. ch. 197 (1991). These include OR. REV. STAT. chs. 92 (regulation of subdivisions); 196 (Columbia River Gorge protection, ocean resources planning, wetlands protection); 215 (county land use planning and exclusive farm use zoning); 227 (city land use planning); 268 (planning by metropolitan service districts); 280 (economic development); 308 (preferential assessment of farmland); 321 (preferential assessment of forest land); and 390 (Willamette River Greenway).

7. *Id.* §197.030(1). The LCDC is composed of seven private citizens appointed by the governor, subject to state senate confirmation, to serve staggered four-year terms without pay. *Id.* §197.030(1), (3).

8. *Id.* §197.075.

gram.[9] The LCDC appoints the director of the Department and directs Department staff in performing their duties.[10]

The program required all Oregon cities and counties to adopt new comprehensive land use plans[11] that were consistent with statewide planning goals (Goals).[12] The plans are implemented by land use regulations, which are promulgated in compliance with the Goals.[13] Thus, land use planning in Oregon is not advisory, but an integrated hierarchy of legally binding Goals, plans, and regulations.

Responsibility for drafting the text of the Goals was delegated to the LCDC, but the legislature provided the LCDC with a list of topics to be considered.[14] The program also directed the LCDC to conduct hearings around the state[15] and take into account the recommendations of citizens, local officials, and legislators in adopting the planning Goals.[16] Between 1974 and 1976 the LCDC adopted 19 planning Goals, 14 of which applied statewide, with the rest applicable to the Willamette River or the Oregon coast.[17] These Goals were the framework for the adoption and revisions of comprehensive plans for all cities and counties.

Although the program did not specify any particular format for plans,[18] the plans submitted by cities and counties typically contained policies reflecting, and often incorporating, the statewide planning Goals. Plans also include plan maps with generalized land use designations, zoning maps, factual information to form the basis of the plan, and implementing regulations, such as zoning ordinances.[19] Public hearings were required prior to the adoption of initial versions of county plans.[20] Between 1975 and 1985, Oregon and the federal government provided $24 million in planning grants to local governments to offset the cost of new planning responsibilities, representing nearly 63 percent of the budget for the planning program during that period.[21]

### *Adopting and Reviewing Local Land Use Plans*

Once local governments adopted new comprehensive land use plans, or modified existing plans to comply with the Goals, the LCDC began reviewing each proposed city and county plan to determine whether it properly implemented the Goals.[22]

The review process began with the submission of a plan to the Department.[23] Submission of a plan commenced a period during which individuals, state agencies, businesses, and nonprofit organizations were allowed to object to parts of plans that they believed did not comply with the Goals.[24] Next, the

9. The Department's organization and its director's duties are set out at *id.* §§197.075-.090.

10. *Id.* §§197.040(1)(a), .085(1).

11. *Id.* §197.175(2)(a)-(b). "Comprehensive plan" is defined as a "generalized, coordinated land use map and policy statement ... that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs." *Id.* §197.015(5). "Land use regulation" includes zoning ordinances and other ordinances containing the standards for implementing a plan. *Id.* §197.015(11).

12. *Id.* §§197.175(1), .250 require that city and county plans and implementing regulations comply with the planning Goals. See *infra* note 17 for the titles of the 19 Goals. As used in this Article, the capitalized term "Goal" denotes one of Oregon's 19 statewide planning goals, which have legally binding effect.

13. *Id.* §§197.175, .175(2)(b).

14. *Id.* §197.230(1)(b).

15. *Id.* §197.235(1).

16. *Id.* §197.235(3).

17. Goals 1 through 14 were adopted on December 24, 1974, Goal 15 was adopted on December 6, 1975, and Goals 16 through 19 were adopted on December 18, 1976. LCDC, OREGON'S STATEWIDE PLANNING GOALS 2 (1990) [hereinafter GOALS TABLOID].

While a summary of each Goal's content is not practical here, the Goals' titles give a good impression of the breadth of Oregon's land use objectives: Goal 1—Citizen Involvement; Goal 2—Land Use Planning; Goal 3—Agricultural Lands; Goal 4—Forest Lands; Goal 5—Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 6—Air, Water, and Land Resources Quality; Goal 7—Areas Subject to Natural Disasters and Hazards; Goal 8—Recreational Needs; Goal 9—Economy of the State; Goal 10—Housing; Goal 11—Public Facilities and Services; Goal 12—Transportation; Goal 13—Energy Conservation; Goal 14—Urbanization; Goal 15—Willamette River Greenway; Goal 16—Estuarine Resources; Goal 17—Coastal Shorelands; Goal 18—Beaches and Dunes; Goal 19—Ocean Resources. *Id.*

Unfortunately, the text of the statewide planning Goals is printed by the Department in tabloid form, but not in Oregon's Administrative Rules. Only the titles of the Goals are listed in OR. ADMIN. R. 660-15-000 to -010 (1984). Other administrative rules contain the LCDC's rules interpreting the Goals. The Oregon Supreme Court has expressed its frustration because the text of these core provisions of the planning program are generally unavailable. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 452 n.4, 724 P.2d 268, 274 n.4 (1986). Copies of the *Goals Tabloid* may be requested from the LCDC at 1175 Court St. NE, Salem, OR 97310, or by telephoning (503) 373-0050.

18. "Comprehensive plan" is defined as "a generalized coordinated land use and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands ..." OR. REV. STAT. §197.015(5) (1991). Goal 2, entitled "Land Use Planning," requires that plans contain "inventories and other factual information" that is to form the basis for the plans' policy choices. GOALS TABLOID, *supra* note 17, at 4.

19. For example, Umatilla County's plan and implementing regulations consist of the following documents: (1) one volume entitled "Comprehensive Plan" containing the plan policies and "findings" on which the policies are based, plus the "built" and "committed" exception area analysis (*see infra* notes 293-98 and accompanying text); (2) a volume entitled "Technical Report" containing the factual base and explanation justifying particular plan policies and regulatory devices, such as minimum lot sizes; (3) the county's "Development Ordinance" containing all of its land use regulations; and (4) the plan and zone maps. UMATILLA COUNTY PLANNING DEP'T, UMATILLA COUNTY COMPREHENSIVE PLAN (Sept. 1984).

20. OR. REV. STAT. §215.060 (1991). Similar hearings were presumably not required for cities because they had already adopted plans and zoning for all of the land within their boundaries.

21. M. ROHSE, *supra* note 1, at 9. The federal government contributed about one-third of the total planning grants. *Id.* at 10. Between 1973 and 1989, the Department distributed $32 million in grants to cities and counties, 56 percent of the agency's budget for that period. DEPARTMENT OF LAND CONSERVATION & DEV., A SUMMARY OF DLCD'S PROPOSED BUDGET FOR 1991-1993, REPORT TO THE HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY 2 (1991) [hereinafter HOUSE COMMITTEE REPORT].

22. OR. REV. STAT. §§197.040(2)(d), .251(1)-(2), .251(4)-(6) (1991).

23. *Id.* §197.251(1); OR. ADMIN. R. 660-03-010(1) (1985).

24. OR. REV. STAT. §197.251(2)(a) (1991); OR. ADMIN. R. 660-03-015, -020 (1978). Comments and objections may include new evidence not presented to the local government, as well as legal argument. OR. REV. STAT. §197.251(4); OR. ADMIN. R. 660-03-020(1)(4) (1985). Since 1983, participation in the local government adoption proceedings has been a prerequisite to filing objections and comments. OR. REV. STAT. §197.253. Objections can be quite lengthy. For example, 1000 Friends of Oregon's objections to the Lane County plan were 65 single-spaced pages, with over 30 documents or exhibits attached in support of its objections. Letter from Paul Ketcham and Robert Liberty, 1000 Friends of Oregon, to James F. Ross (May 25, 1984) (containing objections to the Lane County plan) (on file with 1000 Friends of Oregon and the Department).

Department prepared reports analyzing whether the comprehensive plans and regulations complied with the Goals.[25] The reports also responded to submitted objections,[26] and recommended actions that the LCDC should take. The reports were then distributed to all persons, organizations, and agencies that submitted objections and comments.[27]

Although neither the Oregon program nor its rules so required,[28] the LCDC held a public hearing after each staff report was issued to address the comprehensive plans and regulations. At the hearings the local government, Department staff, objectors, and other interested parties could comment on whether the proposed plan and regulations complied with the Goals. Based on these comments and the staff report, the LCDC could "acknowledge" that the entire comprehensive plan complied with the Goals (i.e., approve the plan), acknowledge certain provisions or geographic areas while continuing the review of the remaining provisions or areas, or reject the plan in its entirety.[29] The LCDC's decision, which became a final agency order complete with findings of fact and legal analysis, was appealable to the Oregon Court of Appeals.[30]

The process of reviewing and revising city and county comprehensive plans was more arduous than program advocates had anticipated. Many counties had to revise and resubmit their plan to the LCDC three or four times.[31] The last comprehensive plans were not approved until 1986,[32] more than 12 years after the first 14 Goals were adopted. The legislature originally contemplated that the plan approval process would take only one or two years.[33]

Several factors contributed to this delay. First, the LCDC often improperly approved plans or portions of plans that violated the Goals, which resulted in appeals. The Oregon courts overturned LCDC acknowledgment orders for 12 of the 36 counties.[34] Some of these decisions affirmed most of a plan,[35] but several reversed provisions regulating uses on thousands of acres.[36] Some of the remands were the consequence of improper acknowledgments made in response to political pressures.[37] At times the appellate courts

25. Or. Rev. Stat. §197.251(2) (1991); Or. Admin. R. 660-03-025(1) (1985).

26. Or. Rev. Stat. §197.251(2)(b) (1991); Or. Admin. R. 660-03-025(1) (1985).

27. Or. Rev. Stat. §197.251(3) (1991); Or. Admin. R. 660-03-025(2), -025(3) (1985).

28. The statute provides that the LCDC "may entertain oral argument." Or. Rev. Stat. §197.251(4) (1991); Or. Admin. R. 660-03-025(5), (6) (1985).

29. Or. Rev. Stat. §197.015(1) (defining "acknowledgment"), (5)-(8), (10), (13) (1991).

30. *Id.* §§197.251(5), .650(1)(a). When the LCDC adopts the Department's reports to support its orders, they become "officially stated agency positions," binding on the Department under the state's Administrative Procedure Act, absent some explanation for deviating. *See id.* §183.482(8); *see also* 1000 Friends of Oregon v. Washington County, 72 Or. App. 449, 453, 696 P.2d 554, 556 (1985). *But see* 1000 Friends of Oregon v. LCDC (Benton County), 72 Or. App. 443, 448, 696 P.2d 550, 553 (1985).

31. Coastal Coos County, with a 1980 population of 64,000, first submitted the noncoastal part of its plan on January 14, 1983. After the LCDC review identified the defective portions, the county revised and resubmitted the plan to the LCDC on June 29, 1984. More revisions were required so the county resubmitted the revised portions of its plan on April 8, 1985. Prior to the LCDC's hearing, the county amended parts of the plan and submitted these to the LCDC on August 29, 1985, after which the noncoastal part of the plan was finally acknowledged on October 8, 1985. In re Acknowledgement of the Coos County Comprehensive Plan Except for Coos Bay Estuary & Shorelands, LCDC No. 85-ACK-147 (Oct. 8, 1985). Portions of the plan approved in 1984 were overturned by the Oregon Court of Appeals in 1986, 1000 Friends v. LCDC (Coos County), 79 Or. App. 369, 719 P.2d 66 (1986), requiring revisions and resubmittal of portions of the plan on July 30, 1987, and again on July 18, 1988. Reacknowledgment for all of the remanded portions was not completed until January 31, 1990. In re Coos County's Comprehensive Plan & Land Use Regulations, LCDC No. 90-ACK-620 (Jan. 31, 1990).

32. Compliance Acknowledgment, LCDC No. 86-ACK-056 (Dec. 17, 1986). Grant County's compliance was secured only after the LCDC applied the maximum sanctions of prohibiting the county from approving most developments outside urban growth boundaries (UGBs) and directing the state treasurer to cut off the county's revenues from cigarette and liquor taxes. In re Enforcement Order for Grant County Pursuant to ORS 197.320 & Order Withholding State Shared Revenues, LCDC (Nov. 25, 1985).

33. Or. Rev. Stat. §197.250 (1991).

34. Audubon Society of Portland v. LCDC, 92 Or. App. 496, 760 P.2d 271 (1988); 1000 Friends of Oregon v. LCDC (Hood River County), 91 Or. App. 138, 754 P.2d 22 (1988) (Goal 5, aquifer recharge area); Friends of the Columbia Gorge v. LCDC, 85 Or. App. 249, 736 P.2d 575 (1987) (Goal 5, wildlife habitat); 1000 Friends of Oregon v. LCDC (Lane County), 83 Or. App. 278, 731 P.2d 457 (1987), *aff'd on reh'g*, 85 Or. App. 619, 737 P.2d 975, *aff'd in part, rev'd in part*, 305 Or. 384, 752 P.2d 271 (1988) (Goals 2, 3, and 4); 1000 Friends of Oregon v. LCDC (Linn County II), 85 Or. App. 18, 735 P.2d 645, *reh'g denied*, 304 Or. 93, 742 P.2d 48 (1987) (Goals 2, 3, 4, and 14); 1000 Friends of Oregon v. LCDC (Morrow County), 88 Or. App. 517, 746 P.2d 238 (1987); 1000 Friends of Oregon v. LCDC (Umatilla County), 85 Or. App. 88, 735 P.2d 1295, *modified*, 86 Or. App. 364, 738 P.2d 1392 (1987) (Goal 2 exceptions and Goal 14); 1000 Friends of Oregon v. LCDC (Coos County), 79 Or. App. 369, 719 P.2d 65 (1986), *rev'd*, 303 Or. 446, 737 P.2d 614 (1987) (a review of the case shows that only that portion relating to Goal 5 was reversed, in order to be consistent with the Oregon Supreme Court's decision on Goal 5 in 1000 Friends of Oregon v. LCDC (Tillamook County), 303 Or. 430, 737 P.2d 607 (1987)); 1000 Friends of Oregon v. LCDC (Linn County I), 78 Or. App. 270, 717 P.2d 149 (1986); 1000 Friends of Oregon v. Polk County, 77 Or. App. 590, 714 P.2d 252 (1986) (Goals 2 and 3); Collins v. LCDC, 75 Or. App. 517, 707 P.2d 599 (1985); Lord v. LCDC, 73 Or. App. 359, 698 P.2d 1026 (1985) (Goal 2 exception and Goal 5); 1000 Friends of Oregon v. LCDC (Coos Bay Estuary), 75 Or. App. 199, 706 P.2d 987 (1985); 1000 Friends of Oregon v. LCDC (Curry County), 73 Or. App. 350, 698 P.2d 1027 (1985), *aff'd in part, rev'd in part*, 301 Or. App. 447, 724 P.2d 268 (1986) (the lower court discussed Goal 2 exceptions and Goals 3, 4, and 14; the Oregon Supreme Court discussed Goals 2, 3, 4, 11, and 14); 1000 Friends of Oregon v. LCDC (Washington County), 76 Or. App. 577, 711 P.2d 134 (1985), *rev'd*, 303 Or. 444, 737 P.2d 614 (1987) (Goal 2 exceptions and Goal 5); 1000 Friends of Oregon v. Union County, 76 Or. App. 33, 708 P.2d 370 (1985); Panner v. Deschutes County, 76 Or. App. 59, 708 P.2d 612 (1985) (Goal 5, gravel deposits); 1000 Friends of Oregon v. LCDC (Jefferson County), 69 Or. App. 717, 688 P.2d 103 (1984), *modified*, 86 Or. App. 364, 738 P.2d 1392 (1987) (Goals 2 and 3); Prentice v. LCDC, 71 Or. App. 394, 692 P.2d 642 (1984) (Goal 2 exception); Sommer v. Douglas County, 70 Or. App. 465, 689 P.2d 1000 (1984) (Goal 2); Marion County v. Federation for Sound Planning, 64 Or. App. 226, 668 P.2d 406 (1983); 1000 Friends of Oregon v. Marion County, 64 Or. App. 218, 668 P.2d 412 (1983) (Goal 2).

35. *E.g.*, 1000 Friends of Oregon v. LCDC (Umatilla County), 85 Or. App. 88, 735 P.2d 1295 (1987); 1000 Friends of Oregon v. LCDC (Linn County I), 78 Or. App. 270, 717 P.2d 149 (1986).

36. *E.g.*, 1000 Friends of Oregon v. LCDC (Lane County), 83 Or. App. 278, 731 P.2d 457 (1987), *aff'd on reh'g*, 85 Or. App. 619, 737 P.2d 975, *aff'd in part, rev'd in part*, 305 Or. 384, 752 P.2d 271 (1988); 1000 Friends of Oregon v. LCDC (Curry County), 73 Or. App. 350, 698 P.2d 1027 (1985), *aff'd in part, rev'd in part*, 301 Or. 447, 724 P.2d 268 (1986).

37. On May 19, 1983, Governor Victor Atiyeh convened a special meeting with the entire LCDC staff, chastised them for making "nitpicking" criticisms of plans, and urged them to approve plans that were "close" to compliance with the law. The next day the LCDC approved Marion County's and the city of Salem's comprehensive plans by a vote of four to three. 1000 Friends of Oregon, Court Enforces Land Use Laws: Rejects L.C.D.C. Political Tradeoffs

lost patience with the LCDC, if not the entire acknowledgment review process.[38] Remands from the appellate courts further lengthened the acknowledgment process, which has continued into 1991.[39]

Given the amount of time it took to bring plans into compliance with the Goals, it was fortunate the program required that virtually all individual land use decisions made by local governments had to comply with the Goals until a final, LCDC-acknowledged plan was in effect.[40] The LCDC was also empowered to impose measures to protect the state's policy interests in the interim period and to force recalcitrant local governments and state agencies to proceed with their planning responsibilities and comply with the Goals. If the LCDC had "good cause to believe" that a local government was not "making satisfactory progress" toward completing its comprehensive plan, the LCDC was required to identify corrective action to be taken and was authorized to suspend a local government's authority to issue building permits or approve subdivisions in areas likely to be preserved for farm or forest uses in approved plans.[41] The LCDC could also force a local government to issue building permits and allow subdivisions in urban areas where local governments were opposed to development at the higher densities that the program required.[42] Further, the LCDC could block distribution of certain state tax revenues to a local government, up to the amount the local government had previously received under planning grants.[43] The LCDC has used all of these sanctions at various times.[44]

(Aug. 10, 1983) (press release). The Oregon Court of Appeals overturned both LCDC approvals. Marion County v. Federation for Sound Planning, 64 Or. App. 226, 668 P.2d 406 (1983); 1000 Friends of Oregon v. Marion County, 64 Or. App. 218, 668 P.2d 412 (1983). After reviewing the LCDC's order, the court stated that "[w]e think that this language demonstrates that the Commission [LCDC] made a conscious decision to acknowledge a plan containing goal violations." Marion County v. Federation for Sound Planning, 64 Or. App. at 231, 668 P.2d at 408.

38. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 449, 724 P.2d 268, 269 (1986).

39. As of June 1991, parts of five county plans and two city plans were still proceeding through reacknowledgment after remand from the appellate courts. Memorandum from Craig Greenleaf, DLCD [the Department] Acting Dir., to LCDC 2 (June 14, 1991) (Agenda Item 4.0, LCDC Meeting; Jurisdiction Status Summary) [hereinafter 1991 Jurisdiction Status Report].

40. OR. REV. STAT. §§197.175(2)(c), .835(3) (1991). A wide spectrum of local government actions were considered land use decisions to which the Goals applied during the preacknowledgment period, including constructing a neighborhood street, City of Pendleton v. Kerns, 294 Or. 126, 653 P.2d 992 (1982), and partitioning a single parcel of land, Alexanderson v. Polk County, 289 Or. 427, 616 P.2d 459 (1980). "Land use decision" is defined at OR. REV. STAT. §197.015(10).

41. OR. REV. STAT. §§197.320(1), (3), (5), .335(3)(a) (1991).

42. *Id.* §197.335(3)(a). This provision was added in 1983 in response to events in Happy Valley. 1983 Or. Laws ch. 827, §58. *See* City of Happy Valley v. LCDC, 66 Or. App. 803, 808-09, 677 P.2d 47, 50-51 (1984). See also *infra* notes 164-89 and accompanying text regarding Goal 10.

43. OR. REV. STAT. §197.335(4) (1991).

44. Enforcement orders were issued for 13 of Oregon's 36 counties (twice for one of the 13 counties) and four of the state's 235 incorporated cities. Memorandum from James F. Ross, DLCD [the Department] Dir., to LCDC (Jan. 16, 1986) (chronological summary of enforcement actions). The shortest lived order was five days (Umatilla County); the longest was 44 months (Happy Valley). *Id.* There were three revenue withholding orders: two for counties and one for a small coastal city. Enforcement orders were upheld on appeal to the appellate courts. Schoonover v. LCDC, 104 Or. App. 155, 799 P.2d 679 (1990); City of Happy Valley v. LCDC, 66 Or. App. 803, 677 P.2d 47 (1984); Mayea v. LCDC, 54 Or. App. 510, 635 P.2d 400 (1981); Columbia County v. LCDC, 44 Or. App. 749, 606 P.2d 1184 (1980).

45. OR. REV. STAT. §§197.175(2)(c)-(d), .835(6) (1991). *See* Byrd v. Stringer, 295 Or. 311, 666 P.2d 1332 (1983); Ochoco Constr. v. LCDC, 295 Or. 422, 667 P.2d 499 (1983).

46. OR. REV. STAT. §§197.175(2)(a), .835(4), (5) (1991). *See Byrd*, 295 Or. at 311, 666 P.2d at 1332. See also OR. REV. STAT. §197.625 and 1000 Friends of Oregon v. Jackson County, 79 Or. App. 93, 718 P.2d 753 (1986), for an example of the complexity that arises when the LCDC's acknowledgement reviews are treated as authority to guide courts in interpreting the Goals applicable to plan amendments. If amendments to approved plans did not have to comply with the Goals, then gradually the plans, as they were amended, would deviate more and more from state policies.

47. OR. REV. STAT. §§197.610-.625 (1991) set out the post-acknowledgment amendment process.

48. *Id.* §§197.610(1), (3), .620(2); OR. ADMIN. R. 660-18-020 to -055 (1981). An elaborate system of notification to the Department and interested persons assures broad participation in the amendment process. OR. REV. STAT. §§197.610(1), (3), .615; OR. ADMIN. R. 660-18-020 to -055. Any participant in the amendment process has standing to appeal an amendment to LUBA. OR. REV. STAT. §197.620; OR. ADMIN. R. 660-18-060 (1990). See also *infra* notes 75-102 and accompanying text for further discussion of LUBA.

49. HOUSE COMMITTEE REPORT, *supra* note 21, at 4.

50. *Id.* During 1990, local governments proposed 3,451 separate plan amendments that were gathered into 735 amendment "packages" (i.e., groups of related changes to a plan or regulations). 1991 Jurisdiction Status Report, *supra* note 39, at 4. During 1989, there were 3,430 amendments collected in 708 packages. Memorandum from Susan Brody, DLCD [the Department] Dir., to LCDC, at C-1 (Jan. 16, 1990) (Jurisdiction Status Report) [hereinafter 1990 Jurisdiction Status Report].

51. During 1990, the Department participated in local proceedings in 298 packages and alleged that 97 of the packages (33 percent) violated the Goals. In 1989, the Department participated in 241 (34 percent) of the packages, alleging Goal violations in 73 (30 percent). 1990 Jurisdiction Status Report, *supra* note 50.

52. *Id.*

*Amending and Updating Approved Local Plans*

After all local plans were approved by the LCDC, individual land use decisions were tested against the local plans and regulations, rather than against the statewide planning Goals.[45] However, the LCDC and the Goals continue to play an important, if diminished, role. For example, all amendments to acknowledged comprehensive plans must be tested against the Goals, with some very narrow exceptions.[46] In addition, plan amendments are not subject to the formal procedures associated with acknowledgment review, but rather to a separate post-acknowledgment amendment process.[47] In the case of plan amendments, the only avenue for assuring that the amendments comply with the Goals is for the Department to participate in the local plan amendment proceedings and, if necessary, appeal the local government's decision to the Land Use Board of Appeals (LUBA).[48]

The Department estimated that between 1987 and 1990, local governments proposed more than 14,000 separate changes to the text or maps of acknowledged local plans and land use regulations.[49] This translates into about 12 amendments per year for each of the 277 local plans.[50] In 1989 and 1990, the Department participated in over one-third of the amendment proposals of which it was notified.[51] The Department alleged that about one-third of the amendments, chiefly dealing with conservation and urban growth containment, would violate the Goals.[52] The Department

estimated it would appeal only 17 of these amendments during the 1989-91 biennium.[53] No agency analysis exists on the statewide cumulative effect of these amendments.[54] A report by a nonprofit land use watchdog organization suggests the net result of these changes is the gradual rezoning of farm, forest, and residential land into commercial and industrial zones.[55]

In addition to permitting plans to be amended piecemeal, the program also requires a comprehensive updating of local plans. Under the supervision of the Department and the LCDC, local governments conduct a "periodic review" of their comprehensive plans and regulations. The purpose of this review is to determine the degree of the plans' and regulations' success in implementing the Goals and to make any changes needed to correct identified failures in order to achieve the Goals.[56] The plans and regulations must be reconsidered in light of several factors, including changes in circumstances and in the factual assumptions on which the plan is based, to take into account the cumulative effect of prior implementation decisions and to respond to new governmental agreements or state agency programs affecting land use.[57]

Cities and counties were to undergo the first periodic review of their plan and land use regulations within two to five years of initial acknowledgement, and every four to ten years thereafter as scheduled by the LCDC and the local government.[58] Like acknowledgment review, periodic review has taken far longer than scheduled. It took five years rather than the six months originally contemplated in the statute[59] to complete periodic review.[60]

These delays and concerns, involving lack of clarity in the periodic review process, led to extensive amending of the periodic review statutes in 1991,[61] including the adoption of new enforcement tools for "foot-dragging" local governments.[62]

During the period after a plan is first approved by the LCDC (the post-acknowledgment period), the LCDC retains the power to take enforcement action against local governments that engage in a "pattern or practice" of violating acknowledged comprehensive plans,[63] or that fail to make progress in their periodic review process.[64] As in the pre-acknowledgment period, the LCDC can prohibit or require the issuance of permits as part of its enforcement effort during the post-acknowledgment period.[65] Alternatively, the LCDC can supervise a local government's permitting process.[66] By October 1991, the LCDC adopted post-acknowledgment enforcement orders for three counties and one city. These actions, with one exception, have been modest in geographic extent or significance.[67]

Given the program's comprehensive statewide scope, the Department's budget hardly matches the scale of its responsibilities. During the 1989-91 biennium, the Department had 42 authorized staff positions and an expense budget of $7 million.[68] By comparison, Oregon's Department of Environmental Quality had 435 authorized positions and a budget of $175 million,[69] the Economic Development Department had a budget of $228 million,[70] and the 1989-91 biennial budget for the Oregon Depart-

53. DEPARTMENT OF LAND CONSERVATION & DEV., 1990 DLCD BUDGET REPORT: 1991-1993 REVISED FORECAST AND WORKLOAD MEASURES 74 (1990).

54. Each county must analyze the cumulative impact of these rezonings as part of the periodic review of its plan. OR. ADMIN. R. 660-19-057(1)(b) (1987). *See infra* notes 57-60 and accompanying text.

55. 1000 Friends of Oregon reviewed over 1,000 packages of plan amendments proposed between January 11, 1985, and July 22, 1988, about one-half of the total that the Department was notified about during that period. 1000 Friends of Oregon also analyzed all of the plan amendments finally adopted during 1987. Its draft report concluded that almost two-thirds of all proposed rezonings were from one urban zone to another, but that proposed rezonings of land out of farm and forest zones accounted for the largest share of acres that would have been affected by the proposed amendments. Industrial and commercial zones would have been net gainers. Of all the amendments proposed in the sample year of 1987, 86 percent of the plan amendment packages were approved. Of the acres proposed for rezoning, 92 percent were in fact rezoned. N. TORGELSON, P. MORNINGSTAR, & R. LIBERTY, THE CHANGING SHAPE OF ACKNOWLEDGED PLANS: A STATISTICAL ANALYSIS OF TRENDS IN PROPOSED POST-ACKNOWLEDGEMENT ZONE CHANGES FROM JANUARY 11, 1985 THROUGH JULY 22, 1988 AND ANALYSIS OF ADOPTED PLAN AMENDMENTS FOR 1987, at 3, 4 (1988).

56. "The purpose of periodic review is to assure that comprehensive plans and land use regulations are achieving the statewide planning goals adopted pursuant to ORS 197.230." OR. REV. STAT. §197.628 (1991). See also *id.* §197.633(1)(a), (3)(c), which emphasizes Goal compliance as the touchstone for all revisions to the plan.

57. *Id.* §197.628(1)-(3).

58. OR. REV. STAT. §197.640(1)(c), (d) (1989), *amended by* OR. REV. STAT. §197.633(2) (1991).

59. OR. REV. STAT. §§197.640(5)-(8), .641-.647 (1987), *amended by* OR. REV. STAT. §197.633(3) (1991). Under the 1991 amendments to the statutes, the legislature granted the LCDC and the Department discretion to adopt a work program and schedule for each jurisdiction.

60. Wallowa County began the periodic review process when the Department mailed the county notice initiating periodic review on November 27, 1985. OR. REV. STAT. §197.640(4) (1987) (amended). *See* Memorandum from the Department to Local Jurisdictions, State Agencies, and Other Interested Parties 1 (Jan. 21, 1986) (periodic review schedule). Periodic review was terminated on December 21, 1990, although the final plan and ordinances had not been submitted to the Department as of November 1, 1991. Memorandum from the Department to Local Jurisdictions, State Agencies, and Other Interested Parties 1 (Jan. 2, 1991) (plan/ordinance status of terminated jurisdictions). Cities fared no better. For example, Portland began periodic review in August 1987 and was not scheduled to complete its local hearings on the necessary amendments to the plan and regulations until July 1991. *Id.* at 6.

61. 1991 Or. Laws ch. 612.

62. OR. REV. STAT. §§197.628-.639 (1991). If a local government misses deadlines for the completion of tasks in its periodic review work schedule, the Department director or an interested person can initiate a contested case hearing before the LCDC. *Id.* §197.636(1), (2). The LCDC can use all the powers and sanctions available to it under the enforcement order statutes. *Id.* §§197.636(1)(a)-(c), .636(2)(a)-(c).

63. *Id.* §197.320(6).

64. *Id.* §197.320(7), (8).

65. *Id.* §197.335(3), (4).

66. *Id.* §197.335(3)(a).

67. One enforcement order was adopted to prevent improper dwellings on an 80-acre parcel in Klamath County's Forest Zone, and two enforcement orders were adopted regarding nonfarm dwelling and mineral and aggregate planning in Crook County. 1990 Jurisdiction Status Report, *supra* note 50, at 4, 5. An enforcement order was adopted for suburban Washington County based on the LCDC's finding of 17 patterns or practices of violation of the county's plan. The order specified that the Department was to supervise the county's decisions for a year to ensure that the violations did not reoccur. In re An Enforcement Order for Washington County, No. 88-EO-392, DLCD [the Department] (Jan. 10, 1989).

68. HOUSE COMMITTEE REPORT, *supra* note 21.

69. *Id.*

70. *Id.*

ment of Transportation's Highway Division was $1.2 billion.[71]

*Land Use Decision-making Procedures and Appeals*

Development of the Oregon program occurred at the same time that the Oregon courts were reforming local quasi-judicial land use decision-making procedures. The Oregon Supreme Court laid the foundation for the reform in two seminal cases decided in 1973 and 1976.[72] In those decisions, the court established minimum notice standards, the right to participate, and the requirement that land use decisions must be based on written findings of fact and legal analysis by an impartial tribunal.[73] Spurred by these decisions, procedural protections for participants in the land use decision-making process were incorporated into the program.[74]

Just as local land use decision-making procedures have been substantially changed, the process for appealing city and county land use decisions has been dramatically altered. The result is that Oregon's system of appellate review for local land use decisions is one of the most distinctive and adaptable features of its planning program.

*The Oregon Land Use Board of Appeals*

LUBA is made up of three full-time lawyer "referees," appointed by the governor and confirmed by the state senate.[75] LUBA's jurisdiction includes all appeals from quasi-judicial and legislative land use decisions made by cities, counties, and regional governments.[76] LUBA also has jurisdiction to review the decisions of special districts and those decisions of state agencies not appealable to the court of appeals under the Oregon Administrative Procedure Act.[77] LUBA functions as an appellate review tribunal rather than a trial court, and in most cases makes decisions based solely on the findings and record compiled by local governments.[78]

LUBA's mandate is to reverse and remand city, county, and regional land use decisions that violate the comprehensive plan, or the Goals, when applicable.[79] LUBA must also reverse or remand government decisions that are unconstitutional, lack an adequate evidentiary basis, or are based on an error in law.[80] However, LUBA may only reverse or remand a decision for procedural errors if the error prejudiced the "substantial rights" of the appellant.[81] Moreover, LUBA may stay either quasi-judicial or legislative decisions pending its decision on the merits.[82] Oregon's circuit courts retain the authority to grant declaratory, injunctive, or mandatory relief and enforcement orders to secure compliance with the comprehensive plan or LUBA's orders.[83]

Originally, standing to appeal a decision to LUBA was limited to those persons who were "adversely affected" or "aggrieved" by the government decision.[84] But gradually the appellate courts and LUBA interpreted the statutory tests for standing to appeal a local land use decision to require little more than participation in the local proceeding and an adverse decision by the local government. Thus, appellants had standing to appeal local land use decisions to LUBA even though they had no geographic proximity to the area affected by the decision, had suffered no economic or non-economic harm, and their opposition was purely philosophical.[85] In 1989, the legislature eliminated the requirement that an appellant must be "adversely affected" or "aggrieved."[86] Except for some very narrow circumstances, all that is required to file an appeal with LUBA is participation in local hearings.[87] Despite this ju-

71. 1991-1992 OREGON BLUE BOOK 256 (1992). The cost of a single freeway interchange in Portland was double the LCDC's entire biennial budget. HIGHWAY DIV., OREGON DEP'T OF TRANSP., 1991-1996 SIX-YEAR HIGHWAY IMPROVEMENT PROGRAM 17 (1990) (Water Ave. ramps on Interstate 5).

72. Green v. Hayward, 275 Or. 693, 552 P.2d 815 (1976); Fasano v. Washington County Comm., 264 Or. 574, 507 P.2d 23 (1973).

73. The Oregon Supreme Court has effectively eviscerated the "impartial tribunal" requirement in *Fasano*, with respect to financial conflicts of interest. *See* 1000 Friends of Oregon v. Wasco County Court, 304 Or. 76, 742 P.2d 39 (1987).

74. Many of the procedural protections articulated in *Fasano, Green,* and subsequent decisions have been codified for quasi-judicial proceedings. Procedural protections apply to applications for county "permits" involving "contested cases" and "hearings," defined respectively at OR. REV. STAT. §215.402(1), (2), and (4) (1991). Cities use the same definition of "permit." *Id.* §227.160(2). The substantive statutes regulating the occasion, conduct, notice provided for county hearings, requirements for written findings supporting the decision, and provisions for appeals are found at *id.* §§215.406, .416, and .422. Similar, if not identical, provisions are applicable to the quasi-judicial decisions made by cities. *Id.* §§227.160-.175, and .180. These provisions were amplified in certain important respects relating to the waiver of arguments, the provision of better notice, and assuring opportunities for rebuttal by 1989 legislation applicable to all local governments. *Id.* §197.763.

75. *Id.* §197.810. LUBA is not a court under the state constitution, which requires all judges to be elected. OR. CONST. art. VII, §1. For a description of the creation of LUBA, see Hickam, *The Land Use Board of Appeals,* 16 WILLAMETTE L. REV. 323 (1979) and Muzzall, *The Future of Oregon's Land Use Appeals Process: Sunset on LUBA,* 19 WILLAMETTE L. REV. 109 (1983).

76. OR. REV. STAT. §§197.015(10)(a)(A), .825(1), (2), 215.422(2), .180(2). LUBA does not have jurisdiction over decisions that do not require the exercise of discretion, which are excluded from the definition of "land use decision." *Id.* §197.015(10)(b)(A), (C). Planners often have very different ideas about what decisions do or do not require the exercise of discretion. *See* Flowers v. Klamath County, 98 Or. App. 384, 780 P.2d 227 (1989); Doughton v. Douglas County, 82 Or. App. 444, 728 P.2d 887 (1986), *reh'g denied,* 303 Or. 74, 734 P.2d 354 (1987). For a case illustrating the hazards of poorly worded jurisdictional statutes, see Southwood Homeowners v. City Council, 106 Or. App. 23, 806 P.2d 162 (1991).

77. OR. REV. STAT. §§197.015(10)(a)(B), .825(1), (2)(d) (1991).

78. *Id.* §197.830(13)(a). LUBA can conduct a hearing and receive evidence when there are "disputed allegations of unconstitutionality of the decision, standing, ex parte contacts, or other procedural irregularities not shown in the record." *Id.* §197.830(13)(b).

79. *Id.* §197.835(3)-(6). In 1991, a category of "limited land use decisions" was created subject to a narrower scope of review. *Id.* §§197.015(12), .195, .828.

80. *Id.* §197.835(7)(a)(B).

81. *Id.* §197.835(7)(a).

82. *Id.* §197.845.

83. *Id.* §197.825(3).

84. 1979 Or. Laws ch. 772, §4(2), (3) (uncodified) (later codified at OR. REV. STAT. §197.830(3)(c)(B) (1987) (amended)).

85. For three cases that touch on the high points of this progression, *see* Jefferson Landfill Comm. v. Marion County, 297 Or. 280, 686 P.2d 310 (1984); League of Women Voters v. Coos County, 76 Or. App. 705, 712 P.2d 111 (1985), *reh'g denied,* 301 Or. 76, 717 P.2d 632 (1986); League of Women Voters v. Coos County, 15 Or. L.U.B.A. 447 (1987) (on remand from the Oregon Court of Appeals).

86. 1989 Or. Laws ch. 761, §12.

87. OR. REV. STAT. §197.830(2) (1991). When the local government fails to provide notice of its decision, the appellant must be "adversely affected." *Id.* §197.830(3). It seems perverse that the opportunity to appeal should be narrower when the local government provides no notice of its decision.

dicial liberalization of standing, LUBA's docket remained relatively stable through the mid-1980s, and then rose, apparently in tandem with the state's recovery from a prolonged recession.[88] Probably less than 1 percent of all appealable decisions, and possibly much less, have been appealed.[89] The number of land use appeals to LUBA is tiny compared to the total number of suits filed in trial courts or appeals made to the court of appeals.[90]

Most appeals to LUBA during the mid-1980s involved individual permits. A majority of the appeals from government decisions were made by counties, many concerning permits for uses inside urban growth boundaries (UGBs).[91] Neighbors filed a majority of the appeals.[92] On appeal, government decisions were reversed or remanded in slightly more than half of the decisions, with the rest affirmed or the appeal dismissed.[93]

A distinctive procedural feature of LUBA is the short statutory time limit in which appeals must be received. From the date of the final land use decision, petitioners have 21 days to file an appeal.[94] The record must be submitted, the case briefed, and LUBA's opinion and order issued within 77 days of the transmittal of the record.[95] Extensions are allowed only in limited circumstances.[96] Thus, LUBA is able to make land use decisions considerably faster than the circuit courts, and is less likely to be reversed on appeal.[97]

Appeals from LUBA decisions are to the Oregon Court of Appeals.[98] About 20 percent of LUBA's decisions are appealed.[99] Like LUBA, the court of appeals operates under strict deadlines in land use appeals. The appeal must be filed within three weeks of the date LUBA mails its decision,[100] and all briefs must be filed, and oral argument heard, no later than seven weeks after the date of LUBA's decision.[101] The court of appeals has 91 days from the date of oral argument to issue a final order, absent extenuating circumstances.[102]

88. The table below suggests that the number of appeals filed in the first 10 years of LUBA's operation corresponds with the overall level of development activity, with a lag between the time a permit is sought and appealed. Statewide housing starts and Portland development permits are used as a rough indicator of statewide trends. (Portland contains roughly 14 percent of Oregon's population.)

| Year | Unemp. rate (%) | Statewide housing starts | Portland permits | LUBA appeals |
|---|---|---|---|---|
| 1980 | 8.3 | 19,700 | 915 | 175 |
| 1981 | 9.9 | 13,320 | 849 | 139 |
| 1982 | 11.5 | 6,920 | 589 | 115 |
| 1983 | 10.8 | 8,158 | 714 | 126 |
| 1984 | 9.4 | 8,140 | 632 | 105 |
| 1985 | 8.8 | 10,300 | 752 | 101 |
| 1986 | 8.5 | 9,820 | 987 | 102 |
| 1987 | 6.2 | 10,970 | 1,013 | 120 |
| 1988 | 5.8 | 12,940 | 1,032 | 124 |
| 1989 | 5.7 | 20,460 | 1,387 | 194 |
| 1990 | NA | 20,660 | 1,301 | 203 |

Sources: Unemployment Rate: EMPLOYMENT DIV., OREGON DEP'T OF HUMAN RESOURCES, 1990 BENCHMARK RESEARCH AND STATISTICS, at tbl. (The Oregon Resident Labor Force, Unemployment, and Employment: Annual Averages 1972 Through 1990) (Mar. 1991). Oregon Housing Starts: Personal Communication from Lorin Abarr, Office of Economic Analysis, Executive Department (Mar. 22, 1991). Portland Permits: The numbers represent the discretionary permits that underwent review by staff in the Portland Bureau of Planning. BUREAU OF PLANNING, CITY OF PORTLAND, ANNUAL CASE STATISTICS (Jan. 22, 1991). LUBA Appeals: Interview with Corinne Sherton, LUBA Referee (Jan. 30, 1991).

These numbers do not correlate well with changes in standing requirements, which were assumed to be strict in the first two years, when appeals were numerous, and were virtually eliminated by case law during the mid 1980s, when appeals were low. The legislature's abolition of the "adversely affected" and "aggrieved" tests for the vast majority of appeals took effect at the end of October 1989. In the author's opinion, the real barriers to appeals are financial and psychological and are not the various artificial constraints on appeals created by standing requirements.

89. Memorandum from M. Rohse, DLCD [the Department] Information Officer, to LCDC 1-2 (May 26, 1988) (statistics on appeals to LUBA) [hereinafter Rohse Memorandum].

90. In 1987, there were 576,980 cases filed in Oregon District and Circuit Courts, and 4,355 appeals filed in the Oregon Court of Appeals. 1989-1990 OREGON BLUE BOOK (1990). During the same year, there were 120 appeals filed with LUBA. *See supra* note 88.

91. UGBs are explained *infra* notes 123-32 and accompanying text. Based on a statistical review of the first 598 opinions published by LUBA between March 17, 1980, and June 30, 1987, counties made 62 percent of the appealed decisions and cities made 33 percent, with the remainder being made by special districts or state agencies. N. TORGELSON, P. MORNINGSTAR & R. LIBERTY, THE OREGON LAND USE BOARD OF APPEALS: PARTIES, SUBJECT MATTER AND OUTCOME OF APPEALS 6, tbl. 1 (1000 Friends of Oregon 1989). Of the appealed decisions reported, nearly 61 percent concerned individual developers' permits, while 26 percent concerned zone changes. *Id.* at 10, tbl. 5. The subject of appeals varied, but the largest category involved permits for residential, commercial, or industrial uses inside UGBs, which accounted for nearly 26 percent of all published appeals.

92. *Id.* at 7, tbl. 2. Neighbors filed appeals in 57 percent of the cases, while applicants filed appeals in about 19 percent of the cases. All other appellants, including environmental groups, local governments, and non-applicant businesses, filed appeals in 5 to 10 percent of the cases.

93. *Id.* at 9, tbl. 4. LUBA reversed the government's decision in almost 12 percent of the cases, remanded nearly 38 percent, reversed and remanded 4 percent, affirmed 28 percent, dismissed in nearly 18 percent, and reversed in part, affirmed in part in less than 1 percent.

94. OR. REV. STAT. §197.830(8) (1991). The Oregon Court of Appeals has interpreted the program to measure the 21-day period from the date of service on the parties rather than the date of the order. League of Women Voters v. Coos County, 82 Or. App. 673, 729 P.2d 588 (1986). *See also* Ludwick v. Yamhill County, 72 Or. App. 224, 696 P.2d 536 (1985).

95. OR. REV. STAT. §197.830(14) (1991).

96. *Id.* §197.840.

97. Before 1979, land use cases comparable to those within LUBA's jurisdiction took an average of 243 days from the filing of a writ of review to the issuance of a final order by the circuit court. Memorandum from K. Gaetjens to LUBA 3 (undated) (Report: LUBA and Pre-LUBA Review System) (Memorandum was attached to a Memorandum from Larry Kressel, LUBA Referee, to John DuBay, Chief Referee (Feb. 12, 1987) (comparative data on performance of LUBA)) [hereinafter Gaetjens Memorandum]. By comparison, the first 50 cases filed with LUBA during 1985 took an average of 139 days to resolve. Research Memorandum from Richard Meyer to Robert Liberty (Aug. 19, 1987) (LUBA findings) (on file with author). In addition, LUBA has secured the respect of the appellate courts. A broad sample of decisions made by the circuit courts in appeals from local government land use decisions between 1975 and 1979 showed that the court of appeals fully affirmed 39 percent, affirmed and modified 2 percent, and reversed and remanded 44 percent. Gaetjens Memorandum, *supra* at 3. Four percent of LUBA's decisions were affirmed in part and reversed in part and 26 percent were reversed. *Id.* By contrast, the court of appeals affirmed 70 percent of the 53 LUBA decisions that it reviewed over a comparable period. *Id.*

98. OR. REV. STAT. §197.850(3)(a) (1991).

99. Rohse Memorandum, *supra* note 89, at 2.

100. OR. REV. STAT. §197.850(3)(a) (1991).

101. *Id.* §197.850(5), (7).

102. *Id.* §197.855(1)-(2).

*Compliance With the Goals*

Unless expressly exempted by statute, state agencies must conduct planning duties, exercise powers, or take other kinds of action "with respect to programs affecting land use in compliance with the Goals," [103] and "in a manner compatible with" the acknowledged comprehensive plans of cities and counties. [104] However, state agency actions that are inconsistent with a local plan are permitted if the agency's program is mandatory, is consistent with the Goals, and any inconsistency with the plan is unavoidable. [105]

In a fashion similar to its review of local plans, the LCDC reviews each state agency's rules and land use programs for compliance with the Goals and for compatibility with local plans. [106] Necessary revisions are then made by the state agency under review. After a state agency reviews and revises its programs and rules, the LCDC may "certify" (the analog to acknowledgment) the agency rules and land use programs as being in compliance and compatible. [107] Thereafter, the state agency is not required to make findings that demonstrate compliance with the Goals and local plans when taking actions or amending its programs. [108]

In 1977, the LCDC adopted a state agency coordination rule that required certification of state agency rules and land use planning programs, but by 1986 only five agency programs had been certified. [109] A new administrative rule [110] was adopted in 1987 and the LCDC began the coordination process in earnest. By the end of 1990, nearly two decades after passage of Senate Bill 100, the LCDC had certified 20 out of 27 state agencies' land use programs. [111]

The results of the state agency coordination process to date have been meager, due in part to some appellate court decisions. [112] These cases have been interpreted by the attorney general to effectively shelter agencies from the coordination statute. For example, the attorney general found that Oregon's preferential farm use assessment programs were not programs "affecting land use" as a matter of law, [113] even though the LCDC believes these programs affect land uses as a matter of fact [114] and the programs themselves cross reference the land use laws. [115]

Special districts, including sewer, water, irrigation, regional air pollution control, mass transit, and port districts, [116] must also conform their actions to the Goals. [117] However, despite the importance of these districts' decisions on shaping development patterns, the consistency of their actions with the Goals has not received much attention. [118]

**Program Policy Objectives**

The Oregon program was enacted to achieve specific policy objectives, not simply to encourage planning as a process. Objectives established by the Goals and by statute, which include a wide range of development and conservation objectives, are the heart of the Oregon planning program. [119] The following sections examine some of the most important program objectives and the degree to which they have been achieved.

*Planning Goal 14: Containing Urban Sprawl*

Planning Goal 14, [120] entitled "Urbanization," provides Oregon's urban containment policy. [121] The object of Goal 14 is to "provide for an orderly and efficient transition from rural to urban land use." [122] To effect this objective, Goal 14 requires every city (an incorporated community) to es-

103. *Id.* §197.180(1)(a). The statute exempts forestry operations (such as logging, road building, and spraying herbicides) regulated under the Oregon Forest Practices Act. *Id.* §§197.180(12), 527.610-.730, .990(1).

104. *Id.* §§197.180(1)(b), .640(3)(c).

105. *Id.* §197.180(2)-(4).

106. *Id.* §197.180(5).

107. *Id.* §197.015(5).

108. *Id.* §197.180(8)

109. OR. ADMIN. R. 660-30 (1977); Memorandum from James F. Ross, DLCD [the Department] Dir., to LCDC 2 (Oct. 30, 1986) (Item 6.1: State Agency Coordination (SAC) Administrative Rule).

110. OR. ADMIN. R. 660-30-000 to -095 (1987).

111. HOUSE COMMITTEE REPORT, *supra* note 21, at 16.

112. West Side Sanitary Dist. v. LCDC, 289 Or. 393, 614 P.2d 1141 (1980); West Side Sanitary Dist. v. LCDC, 289 Or. 409, 614 P.2d 1148 (1980); City of Ashland v. Bear Creek Valley Sanitary Auth., 59 Or. App. 199, 650 P.2d 975 (1982); Westside Neighborhood Quality Project v. School Dist. 4J Bd. of Dir., 58 Or. App. 154, 647 P.2d 962, *reh'g denied*, 294 Or. 78, 653 P.2d 999 (1982); State Hous. Council v. City of Lake Oswego, 48 Or. App. 525, 617 P.2d 655 (1980), *appeal dismissed*, 291 Or. 878, 635 P.2d 647 (1981); United Citizens v. Environmental Quality Comm'n, 15 Or. L.U.B.A. 500 (1987).

113. In re State Agency Coordination Program of the Department of Revenue, LCDC No. 91-CERT-707, at 3, 4, 7 (Jan. 10, 1991) (citing Attorney General Letter of Advice, No. OP-6390 (Oct. 11, 1990)).

114. *Id.* at 6-7.

115. Applicants for farm use deferral under OR. REV. STAT. §§308.345-.406 (1991) must demonstrate that the use of their land meets the definition of "farm use" in *id.* §215.203(2)(a), a part of the exclusive farm use statute. That definition is incorporated by reference as a standard for a wide range of structures, activities, and actions, including different kinds of farm dwellings, *id.* §§215.213(1)(e), (g), .213(2)(a), .283(1)(e)-(f), other farm structures, *id.* §§215.213(1)(f), .283(1)(f), commercial activities, *id.* §§215.213(2)(c), .283(2)(a), and land divisions, *id.* §215.263(2). Prior attorney general opinions and other commentaries support the LCDC's position that these programs share the objective of protecting land for farming. Letter from Donald C. Arnold to Tony VanVliet 2 (Dec. 24, 1987) (Letter Opinion Request OP-6144). *See also* Roberts, *The Taxation of Farm Land in Oregon*, 4 WILLAMETTE L. REV. 431 (1967); Sullivan, *The Greening of the Taxpayer: The Relationship of Farm Zone Taxation in Oregon to Land Use*, 9 WILLAMETTE L. REV. 1, 6 (1973).

116. OR. REV. STAT. §197.015(15) (1991).

117. *Id.* §197.185(1).

118. One important appellate case overturned a local sewer district's decision to extend sewers without regard to the land use plan's provision that these lands were to be preserved for farm use. In so doing, the court narrowed an earlier exemption for sewer district annexations needed to alleviate a health hazard. City of Ashland v. Bear Creek Valley Sanitary Auth., 59 Or. App. 199, 650 P.2d 975 (1982).

119. *See supra* note 17.

120. For a discussion of the urban growth containment program, see Gordon, *Urban Growth Management Oregon Style*, 70 PUB. MGMT. 9 (1988).

121. GOALS TABLOID, *supra* note 17, at 12 (Goal 14—Urbanization). The text of Goal 14 is quoted extensively, and the definitions of "rural," "urbanizable," and "urban land" are quoted in full in 1000 Friends of Oregon v. Wasco County Court, 299 Or. 344, 350-52, 703 P.2d 207, 214-15 (1985).

122. GOALS TABLOID, *supra* note 17, at 12.

tablish a UGB, which contains the urban core and sufficient undeveloped land[123] to accommodate growth during the planning period.[124] Urban uses such as residential subdivisions, shopping malls, and factories are generally outside UGBs, on rural land protected for farming and forestry,[125] and even on rural land no longer suitable for farm or forest uses due to prior scattered development[126] or the land's inherent unproductivity.[127]

UGBs are drawn and amended based on the following seven factors in Goal 14:

> (1) the demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
> (2) the need for housing, employment opportunities, and livability;
> (3) the orderly and economic provision for public facilities and services;
> (4) the maximum efficiency of land uses within and on the fringe of the existing urban area;
> (5) the environmental, energy, economic, and social consequences;
> (6) the retention of agricultural land as defined, with Class I the highest priority for retention and Class VI the lowest priority; and
> (7) the compatibility of the proposed urban uses with nearby agricultural activities.[128]

The amount of land that a city claims it needs to accommodate growth is typically based on population projections, from which extrapolations are made based on established or projected ratios of persons per acre for residential, commercial, industrial, or other uses.[129] Land within preexisting city limits is not automatically included within the UGB if there is no demonstrated need for it,[130] although UGBs typically extend far beyond city limits.[131] Once land is included within a UGB, there is a presumption that it will be developed, although development may be deferred until the land is needed according to a local plan's development policies.[132]

Another important aspect of the effort to control sprawl is contained in Goal 10, entitled "Housing," which is discussed below.[133]

*Evaluating Oregon's Implementation of Goal 14*

The effectiveness of Oregon's implementation of its urban containment/compact growth Goal is revealed using four different measures.

☐ *The relationship between the amount of land inside UGBs and the amount of land actually needed, based on population growth.* Oregon's population declined during the early 1980s, then rose rapidly in the latter part of the decade.[134] Some small cities adopted plans with large UGBs based on population projections that have not materialized.[135] Larger cities have amended UGBs by adding land even though population growth patterns have not changed. For example, the original Portland metropolitan UGB encompassed about 221,000 acres when it was approved in 1984.[136] Over the next six years small amendments added

123. Technically, UGBs define and separate "urban" and "urbanizable" land from "rural" land. *Id.* "Urbanizable land" is the undeveloped land within the UGB "needed for the expansion of an urban area" and that "[c]an be served by urban services and facilities." *Id.* "Rural lands" are the lands outside UGBs, which are designated for agricultural and forest uses, open space or "sparse settlement, small farms or acreage homesites with no or hardly any public services." *Id.* Most rural land is in farm or forest zoning.

124. The 20-year planning period may have been derived from the Goal 14 guidelines, which state that "plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion taking into account ... (2) population needs [by the year 2000]." *Id.* Most jurisdictions adopted their first plans between 1978 and 1982. A 20-year planning period is now incorporated into the administrative rule for Goal 9. OR. ADMIN. R. 660-09-025(2), (3) (1987).

125. This is a logical derivative of other aspects of the planning program that prohibit development on farm and forest lands. *See infra* notes 201-304 and accompanying text.

126. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 502, 505 nn.34 & 35, 508 n.37, 724 P.2d 268, 303-04, 306, 307 (1986). *See also* Hammack & Assoc. v. Washington County, 89 Or. App. 40, 42-43, 747 P.2d 373, 373-74 (1987); 1000 Friends of Oregon v. LCDC (Umatilla County), 85 Or. App. 88, 92, 735 P.2d 1295, 1297 (1987).

127. 1000 Friends of Oregon v. LCDC (Umatilla County), 85 Or. App. 88, 91-92, 735 P.2d 1295, 1296-97 (1987).

128. GOALS TABLOID, *supra*, note 17, at 12 (Goal 14—Urbanization).

129. *See, e.g.*, DEPARTMENT OF LAND CONSERVATION & DEV., STAFF REPORT ON EUGENE/SPRINGFIELD METROPOLITAN AREA PLAN OF JUNE 12, 1981, at 52-56, 68-82, 117-26 (Nov. 6, 1981). For an appellate court discussion of the analysis undertaken in establishing a UGB, see Perkins v. City of Rajneeshpuram, 68 Or. App. 726, 686 P.2d 369 (1984), *aff'd as modified*, 300 Or. 1, 706 P.2d 949 (1985).

130. Both the Oregon Supreme Court and the Oregon Court of Appeals held that the LCDC was improperly amending Goal 14 by adopting an administrative rule that allowed cities to presume that all the land within the city limits could be included in their UGBs. Goal 14 required UGBs to be based solely on a determination of the city's land requirements for growth, not irrelevant political boundaries. *See* 1000 Friends of Oregon v. LCDC, 292 Or. 735, 642 P.2d 1158 (1982); Willamette University v. LCDC, 45 Or. App. 355, 608 P.2d 1178 (1980). For example, in the small farming community of Tangent, most of the land in the city limits was placed outside the UGB, leaving 2523 acres inside the city limits but only 692 acres inside its UGB. Most of the city was zoned for exclusive farm use. CITY OF TANGENT, AMENDMENTS TO THE TANGENT COMPREHENSIVE PLAN 15, 21 (Mar. 1985).

131. For example, the area within Hood River's city limits is 845 acres, while the area within the UGB is 2087 acres. DEPARTMENT OF LAND CONSERVATION & DEV., STAFF REPORT FOR HOOD RIVER 25-25a (Jan. 16, 1984) (as amended and adopted by the LCDC). *See* In re Acknowledgment Order, LCDC No. 84-ACK-028 (Feb. 27, 1984). The Portland metropolitan UGB includes 18 cities. *See* OR. ADMIN. R. 660-07-035(1) to (3) (1987) (Metropolitan Housing Rule).

132. Phillippi v. City of Sublimity, 294 Or. 730, 739, 662 P.2d 325, 330 (1983).

133. GOALS TABLOID, *supra* note 17, at 10 (Goal 10—Housing). Goal 10 is quoted in part in Fujimoto v. City of Happy Valley, 55 Or. App. 905, 910 n.4, 640 P.2d 656, 659 n.4 (1982). For a discussion of the remainder of the Goal's elements, see *infra* notes 164-73 and accompanying text.

134. CENTER FOR POPULATION RESEARCH & CENSUS, SCHOOL OF URBAN & PUB. AFFAIRS, PORTLAND STATE UNIVERSITY, POPULATION ESTIMATES FOR OREGON: 1980-1990 (Mar. 1991).

135. For example, the UGB for the city of Hermiston was based on a projected population growth from 9600 in 1983 to 32,800 in 2003, a population increase in excess of 200 percent. HERMISTON PLANNING DEP'T, AMENDMENTS TO HERMISTON COMPREHENSIVE PLAN II-5 to II-27 (Feb. 1984). As of the 1990 Census, Hermiston's population was 10,040, an increase of only 7 percent. *Oregon 1990 Census Results*, OREGONIAN, Jan. 25, 1991, at A24, col. 2.

136. CARSON, LEE & SELTZER, RESOLUTION NO. 1050: FOR THE PURPOSE OF TRANSMITTING THE DRAFT PERIODIC REVIEW ORDER FOR METRO'S URBAN GROWTH BOUNDARY TO THE OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT 7 (1989) (adopted by Metropolitan Serv. Dist. Resolution No. 89-1050 (June 20, 1989)) [hereinafter METRO STAFF REPORT].

another 2,515 acres.[137] In 1989, the Portland Metropolitan Service District (Metro)[138] determined that there was still enough land within the existing Portland UGB to accommodate projected growth until the year 2010,[139] even though 1990 census figures showed that growth in the Portland metropolitan area was close to Metro's 1979 predictions.[140]

☐ *UGB effects on real estate markets.* An indirect measure of the success of the urban containment objective of Goal 14 is the effect UGBs have on the price of land inside and outside the boundary. In theory, if UGBs are perceived as effective in regulating land uses, there should be a sharp difference in price between land inside the UGB and land outside the UGB. Research on prices across the Salem UGB showed a sharp price break where land zoned for urban uses inside the UGB abutted land outside the UGB zoned for farm use.[141] However, a more continuous price gradient, characteristic of sprawling development, occurred where land adjoining the Portland metropolitan UGB was zoned for low-density residential development.[142]

☐ *Exceptions to farm and forest land conservation.* As the price gradient statistics illustrate, UGBs are less meaningful than they might be because of the abundant opportunities for low-density residential, as well as commercial and industrial, development on thousands of acres of "exceptions" to the farm and forest land conservation Goals.[143] There are 710,000 acres of land zoned for rural residential development outside UGBs, although more than 760,000 acres are actually available for this use.[144] In addition, there are almost 50,000 acres zoned for rural industrial uses and almost 40,000 acres zoned for rural commercial development or designated as "rural service centers."[145] While much of this acreage is already developed, there is substantial capacity for additional development.[146] The location of many of these exception areas immediately adjacent to UGBs is disturbing given the program's goal of urban containment.[147]

Despite judicial prompting in 1986,[148] the LCDC has not addressed what limits on development are needed in rural exception areas zoned for residential, commercial, and industrial uses to prevent legalized sprawl. Moreover, the LCDC is only beginning to address the related issue of how UGBs can remain viable when bordered by extensive areas of zoned exceptions.[149]

☐ *Allocation of growth between UGBs and rural areas.* The allocation of growth between areas inside UGBs and rural areas (all areas outside UGBs) has been the subject of several studies, based on information supplied voluntarily by counties.[150] One study revealed that during an 18 month period, 35 percent of all housing permits in 16 of Oregon's 36 counties were issued for areas outside UGBs.[151] By contrast, between 1984 and 1988 in rapidly growing Washington County, which contains many of Portland's suburbs, nearly 96 percent of the residential permits approved were for sites inside the

137. *Id.* at 7.

138. Metro, which administers the Portland metropolitan UGB, is a regional service district with an elected council that is assigned a range of regional facility and service responsibilities, including regional planning for land use, transportation, solid waste disposal, and air and water quality. OR. REV. STAT. ch. 268 (1991).

139. METRO STAFF REPORT, *supra* note 136, at 1.

140. In November 1979, Metro projected an increase in population of 480,000 between 1977 and 2000 in the four-county Portland, Oregon/Washington area, to a total of 1.61 million. METROPOLITAN SERV. DIST., URBAN GROWTH BOUNDARY FINDINGS (1979). According to 1990 census information, actual growth in the four-county region was running slightly ahead of the 1979 straight-line projections. *Oregon 1990 Census Results*, *supra* note 135, at A24, col. 2; *see also* Interview with Staff from Portland State University Center for Population Research (Feb. 15, 1991). Estimates of the 1990 population inside Metro's jurisdictional boundary, which approximates the UGB, were running at 89 percent of straight-line projected growth. Interview with Bob Knight, Assoc. Regional Planner, Metro (Feb. 15, 1991). See also *infra* note 178 regarding residential land supply need projections compared to actual consumption.

141. A. NELSON, EVALUATING URBAN CONTAINMENT PROGRAMS 77-81 (1984). For an explanation of the price gradient concept, see *id.* at 91-94, 99-100. For Mr. Nelson's outline of his evaluation system, see Nelson, *An Empirical Note on How Regional Urban Containment Policy Influences an Interaction Between Greenbelt and Exurban Land Markets*, 54 AM. PLAN. ASS'N J. 178-84 (1988).

142. A. NELSON, *supra* note 141, at 84-85, 97. *See also* Knaap, *The Price Effects of Urban Growth Boundaries in Metropolitan Portland, Oregon*, 61 LAND ECON. 26, 32-33 (1985). Knaap's study postulated that "nonurban" land (e.g., land not zoned for urban types of uses) inside the UGB and inside Washington County's Interim Growth Boundary (a phased growth device used inside the UGB) should be much more valuable than land outside the UGB. The study compared actual land values with the mathematical model that calculated land values as reflecting net present value of urban rents.

Both the Knaap and Nelson studies suffer from a misunderstanding of the structure and objectives of the Oregon program. Farm land is projected from sprawl because it is an economic asset. Both Knaap and Nelson appear to assume that farm land is being preserved through "conservancy zoning" only for its value as an "amenity" for urbanites.

143. Department of Land Conservation & Dev., *New Figures Show How State's Rural Lands Zoned*, OR. PLAN. NEWS, July 1986, at tbl. (Preliminary Estimates: Rural Zoning in Oregon) [hereinafter Rural Land Figures].

144. The total of 710,699 acres of land formally zoned rural residential is supplemented with the 41,380 acres in Klamath County designated as "nonresource," and the 12,120 acres in Josephine County designated as "Serpentine." *Id.*

145. *Id.*

146. For example, in Deschutes County, with a 1989 population of 70,600, there were 12,000 vacant lots in the county's rural residential areas, assuming all of the lots were buildable and none of the lots were partitioned. ECO NORTHWEST & D. NEWTON & ASSOC., BEND CASE STUDY: URBAN GROWTH MANAGEMENT STUDY 3, 5 (1990) [hereinafter BEND CASE STUDY].

147. DEPARTMENT OF LAND CONSERVATION & DEV., URBAN GROWTH MANAGEMENT STUDY: SUMMARY REPORT 7, 13 (July 1991); Liberty, *Mapping a Flood of Development*, LANDMARK, Summer 1986, at 24-25.

148. In August 1986, the Oregon Supreme Court decided that the LCDC violated Goal 14 when it approved residential and commercial zoning for several thousand acres outside UGBs, *see infra* text accompanying notes 293-96, without respect to whether this potential new development was urban in character. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 724 P.2d 268 (1986). If and when the LCDC addresses these two issues, it may require counties to rezone hundreds of thousands of acres in order to lower residential densities.

149. Memorandum from Craig Greenleaf, Acting Director of the Department, to LCDC (Nov. 8, 1991) (LCDC Meeting Agenda Item 4.0: Public Hearing on Draft Urban Reserve Rule).

150. J. MIKALONIS, URBAN GROWTH BOUNDARY STUDY 9 (1988). Although the study discusses commercial and industrial permits, the information is not particularly useful because it includes only permits issued for sites within UGBs but outside city limits, which excludes the category of permits issued within both UGBs and city limits.

151. *Id.* at 4. The permits issued by 13 of these 16 counties over a 30-month period showed a nearly identical distribution.

UGB, while only 4 percent were for sites outside the UGB.[152] This result is significant since less than 16 percent of the county's land area was inside the UGB.[153]

In 1990, the Department commissioned four case studies of the allocation of growth between areas inside and outside UGBs during the late 1980s.[154] As the earlier reports indicated, the case studies revealed striking differences in performance between the study areas.

One of the case studies was devoted to Bend, a city making the transition from a logging and ranching economy to a retirement and resort economy.[155] Deschutes County, encompassing 3,060 square miles with a population of 70,600, was the geographic region studied.[156] During the 1985-89 study period, 59 percent of all new residential units were built outside Deschutes County's three UGBs, virtually all of which were single family residential units.[157] During the same time, approximately 81 percent of the approved permits for new commercial and industrial development permits were for sites inside UGBs.[158] Of all the lots in approved new subdivisions, 83 percent were inside UGBs.[159]

Another study involved the Portland metropolitan area, which consisted of three counties with a combined population of 1.1 million and an area of 3,026 miles.[160] In the Portland metropolitan study area, 95 percent of all residential units (single and multifamily) were built inside the metropolitan UGB during the five year study period.[161] Nearly 99 percent of the new subdivision lots were created inside the metropolitan UGB.[162] Results from the two other case studies revealed performances between these two extremes.[163]

152. WASHINGTON COUNTY DEP'T OF LAND USE & TRANSP., JOINT LEGISLATIVE COMM. ON LAND USE, BRIEFING ON WASHINGTON COUNTY LAND USE AND TRANSP. ISSUES (Oct. 31, 1989).

153. Memorandum from Bruce Warner, Dep't of Land Use & Transp. Dir., to the Board of County Commissioners 1 (Aug. 22, 1989).

154. BEND CASE STUDY *supra* note 146; ECO NORTHWEST & D. NEWTON & ASSOC., BROOKINGS CASE STUDY: URBAN GROWTH MANAGEMENT STUDY (1990) [hereinafter BROOKINGS CASE STUDY]; ECO NORTHWEST & D. NEWTON & ASSOC., MEDFORD CASE STUDY: URBAN GROWTH MANAGEMENT STUDY (1990) [hereinafter MEDFORD CASE STUDY]; ECO NORTHWEST & D. NEWTON & ASSOC., PORTLAND CASE STUDY: URBAN GROWTH MANAGEMENT STUDY (1990) [hereinafter PORTLAND CASE STUDY].

155. BEND CASE STUDY, *supra* note 146, at 3.

156. *Id.*

157. *Id.* at 6, tbl. 3-1.

158. *Id.*

159. *Id.*

160. PORTLAND CASE STUDY, *supra* note 154, at 5.

161. *Id.* at 7.

162. *Id.* at 12, tbl. 3-1 (the study did not address commercial and industrial development).

163. In the Medford case study area, nearly 24 percent of all residential units were built outside UGBs. MEDFORD CASE STUDY, *supra* note 154, at 6, tbl. 3-1. But 87 percent of the new lots and 96 percent of commercial and industrial development occurred inside UGBs. *Id.* Single family residential lots created during the study period averaged 4.9 units per gross acre, 87 percent of the allowable density, while multifamily developments achieved nearly 72 percent of allowable densities. *Id.* at 9. In the Brookings case study, 37 percent of new residential units were located outside UGBs, and the average size of lots in new subdivisions inside UGBs was 2.7 lots per net acre, 62 percent of allowable densities. BROOKINGS CASE STUDY, *supra* note 154, at 5, 8. About 65 percent of the new subdivision lots and 80 percent of industrial and commercial developments were located inside UGBs. *Id.* at 6, tbl. 3-1.

*Planning Goal 10: Planning and Zoning for Affordable Housing*

Goal 10, entitled "Housing," is another important element in Oregon's program for controlling urban sprawl. The objective of Goal 10 is to "provide for the housing needs of citizens of the state."[164] Local comprehensive plans must "encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location type and density."[165]

Although written in broad strokes, this general directive has been implemented through detailed statutes and regulations. For example, in order to remove potential legal obstacles to the construction of multifamily or low-income housing, statutes and LCDC program rules require that "[l]ocal approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect either themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."[166] "Needed housing" has been defined to include multifamily and manufactured housing located in either mobile home parks or subdivisions.[167]

Cities and counties cannot amend their charter to prohibit multifamily, manufactured, renter occupied, or government-assisted housing, or impose special standards for government-assisted housing not applicable to similar housing.[168] Regulatory discrimination is also prohibited against housing needed for seasonal or year-round farmworkers.[169] Significantly, when a need has been shown for housing in particular price ranges within a UGB, cities must permit such housing, including manufactured housing and housing for seasonal farm workers, in one or more zones and in volumes adequate to meet that need.[170] Thus, the provisions of Goal 10 complement the provisions of Goal 14 by eliminating barriers to higher density housing. Higher density residential development means lower cost

164. GOALS TABLOID, *supra* note 17, at 10 (Goal 10—Housing).

165. *Id.*

166. OR. REV. STAT. §197.307(6) (1991); OR. ADMIN. R. 660-08-015 (1981); OR. ADMIN. R. 660-07-015 (rule for Portland metropolitan area).

167. OR. REV. STAT. §197.303 (1991).

168. *Id.* §197.312(1). The Oregon Court of Appeals and LUBA referred to Goal 10 when they reversed a city's interpretation of its zoning ordinance as not including a 90-unit housing project for migrant farm workers among uses permitted outright in the city's multifamily zone. The court stated:

> If the City is allowed to "refine" or interpret its definition of "multi-family dwelling" on an ad hoc basis, all certainty would be lost. The City would have the power to say, "Yes, your project fits within our definition of 'multi-family dwelling,' but it's really not what we had in mind so you'll have to go through our conditional use process." Such an approach is inconsistent with the housing portions of the statewide land use planning system.

City of Hillsboro v. Housing Dev. Corp., 61 Or. App. 484, 489 n.3, 657 P.2d 726, 729 n.3 (1983). The city's attempt to block the federal housing project through its charter led to the enactment of the statute cited above.

169. OR. REV. STAT. §197.312(2) (1991).

170. *Id.* §197.307(3).

housing but also serves other urban development objectives of the program.[171]

The LCDC adopted an administrative rule for the Portland metropolitan area, which encompasses several cities and portions of three counties, to supplement Goal 10, which assigned overall density objectives of 6, 8, or 10 units per acre to each city and county.[172] In addition, the rule required most of the cities in the region to allow "at least 50 percent of new residential units to be attached single family housing or multiple family housing."[173]

*Evaluating Oregon's Implementation of Goal 10*

The impact of the planning program on the maximum housing density within residential zones in the Portland metropolitan area was dramatic. According to a 1982 study by 1000 Friends of Oregon, the average vacant residential lot size was 12,800 square feet in 1978, but was reduced to an average of 8,280 square feet by 1982.[174] This shrinkage in average lot size effectively reduced the cost of buying a residential lot by $7,000 to $10,000,[175] while the amount of land zoned for residential use increased by only 10 percent between 1977 and 1982. However, land available for multifamily residential development almost quadrupled from nearly 8 percent to 27 percent of net buildable acreage.[176] Overall, the maximum number of buildable units increased from 129,000 to over 301,000.[177]

Research into single family residential subdivisions and multifamily projects that were approved between 1985 and 1989 reveals that overall, the cities and counties inside the Portland metropolitan UGB are meeting their assigned housing density objectives, even though actual housing density is occurring at only 79 percent of the authorized maximums.[178] Specifically, the six cities and one county in the study[179] that were assigned a target minimum density of 10 units per net buildable acre (units/acre) achieved a density of 9.58 units/acre, or nearly 81 percent of the average maximum allowable density of 11.78 units/acre.[180] The six study cities and two counties[181] that were assigned a minimum target density of 8 units/acre reached a density of 8.42 units/acre, or about 77 percent of the allowable density of 11 units/acre.[182] The one small city in the study assigned a target density of 6 units/acre fell far short of the goal at 3.09 units/acre actually built.[183]

Performance in other cities did not measure up to the Portland metropolitan area's success. For example, the Department's Bend Case Study showed that single family residential subdivisions inside the Bend UGB averaged two lots per gross acre, or only 40 percent of allowable density.[184]

Some observers have speculated that creating UGBs would increase land values and thus decrease the supply of affordable housing.[185] However, while housing price increases were outpacing the average Oregonian's income during the period of rapid growth in the late 1980s,[186] the price of homes and rental units in Oregon remained modest and affordable by national standards in the late 1980s and 1990.[187] Providing adequate

171. Higher density residential development conserves farm and forest lands (Goals 3 and 4), decreases the cost per household of providing public services (Goal 11), and reduces dependence on the automobile for transportation (Goal 12). For coverage of the relationship between density and service costs, see AMERICAN FARMLAND TRUST, DENSITY-RELATED PUBLIC COSTS (1986). For coverage of the connection between the density and concentration of urban uses and the choice by citizens to use modes of transportation other than the automobile, see B. PUSHKAREV & J. ZUPAN, PUBLIC TRANSPORTATION AND LAND USE POLICY (Indiana Univ. 1977), and Pucher, *Urban Travel Behavior as the Outcome of Public Policy: The Example of Modal-Split in Western Europe and North America*, 54 AM. PLAN. ASS'N J. 509 (1988).

172. The five smallest cities in the metropolitan area had to zone land to provide for an overall density of six or more dwellings. OR. ADMIN. R. 660-07-035(1) (1981) (amended 1987). The unincorporated portions of two suburban counties and eight small cities in the metropolitan area were required to provide for an overall density of eight dwelling units per acre. *Id.* 660-07-035(2). The largest cities and the central county had to provide for an overall density of 10 or more dwelling units per acre. *Id.* 660-07-035(3).

173. *Id.* 660-07-030.

174. M. GREENFIELD, THE IMPACT OF OREGON'S LAND USE PLANNING PROGRAM ON HOUSING OPPORTUNITIES IN THE PORTLAND METROPOLITAN REGION 4, 17-18 (Sept. 1982).

175. *Id.* at 23.

176. *Id.* at 6-7.

177. *Id.* at 7.

178. 1000 FRIENDS OF OREGON & THE HOMEBUILDERS ASS'N OF METRO. PORTLAND, MANAGING GROWTH TO PROMOTE AFFORDABLE HOUSING: REVISITING OREGON'S GOAL 10—TECHNICAL REPORT 30, 32 (Nov. 1991) (draft) [hereinafter REVISITING OREGON'S GOAL 10]. These results validated the density assumptions used by Metro in 1980 in determining the amount of land to be included inside the regional UGB. *Id.* at 65-66.

179. The cities are Beaverton, Gresham, Hillsboro, Lake Oswego, Portland, and Tigard, and the unincorporated portions of Multnomah County within the UGB.

180. REVISITING OREGON'S GOAL 10, *supra* note 178, at app. F-1, tbl. 3. The suburban communities of Beaverton and Tigard accounted for over half of the 19,296 approved lots or units within this density category and achieved densities of 11.03 and 9.96 per net buildable acre, respectively. *Id.*

181. The cities are Forest Grove, Milwaukee, Oregon City, West Linn, Wilsonville, and Tualatin, and the unincorporated portions of Clackamas and Washington Counties within the regional UGB.

182. REVISITING OREGON'S GOAL 10, *supra* note 178, app. F-1, tbl. 3.

183. *Id.* at 32.

184. BEND CASE STUDY, *supra* note 146, at 9.

185. URBAN LAND INST., UNDERSTANDING GROWTH MANAGEMENT: CRITICAL ISSUES AND A RESEARCH AGENDA 17 (1989).

186. The following chart shows the relationship between housing costs and household income during the late 1980s.

| Region | Avg. Price/Rent 1989/1988 | Changes (Period) | Change In Avg. Cost | Changes In Income** |
|---|---|---|---|---|
| *Bend* | | | | |
| Home | $ 67,583 | 1985-1989 | +48& | +18% |
| Mo. Rent | $ 325 | 1986-1988 | +31% | +8% |
| *Brookings* | | | | |
| Home | $107,000 | 1988-1989 | +20% | +5-6% |
| *Medford* | | | | |
| Home | $ 69,637 | 1985-1989 | +25% | +28% |
| Mo. Rent | $ 390 | 1986-1988 | +22% | +16% |
| *Portland Metro* | | | | |
| Home | $ 85,546 | 1985-1988 | +30% | +18% |
| Mo. Rent | $ 458 | 1985-1988 | +31% | +8% |

Sources: BEND CASE STUDY, *supra* note 146, at A-28 to A-29; BROOKINGS CASE STUDY, *supra* note 154, at A-30 to A-31; MEDFORD CASE STUDY, *supra* note 154, at A-35 to A-36; PORTLAND CASE STUDY, *supra* note 154, at A-57 to A-59.

187. For example, the cost of the median price single family home in Portland was $78,000 as of December 1990, compared to $85,800 in Phoenix, $108,400 in Baltimore, $87,800 in Denver, $75,800 in Indianapolis, $88,200 in Minneapolis/St. Paul, and $261,600 in the San Francisco Bay area. REVISITING GOAL 10, *supra* note 178, app. A-39, tbl. D-8. The purchase of this median priced house required a minimum household income of $26,837 (assuming a 30-year mortgage, 20 percent down payment, and up to 25 percent of household income spent on the mortgage), well below the median household income in Portland of $32,422. *Id.*

supplies of land for a range of housing types is essential but not sufficient to assure affordable housing.[188] But at least Oregon, primarily through its planning program, has addressed the issue of land supplies for affordable housing without experiencing the frustrations and turmoil that have accompanied judicial efforts to combat localized "snob zoning."[189]

*Planning Goal 9: Promoting Economic Development*

Goal 9, entitled "Economy of the State," is designed to strengthen and diversify Oregon's economy. An additional objective is to encourage economic growth and activity "in areas that have underutilized human and natural resource capabilities and want increased growth and activity."[190] In 1987, the legislature supplemented Goal 9 by directing the LCDC to establish new requirements to assure adequate supplies of land of suitable sizes, types, locations, and service levels for industrial and commercial uses in cities' and counties' comprehensive plans,[191] with regulations that will insure the compatibility of nearby uses.[192] As supplemented, Goal 9 requires a public facilities improvement plan for every UGB containing more than 2,500 people.[193] The plan must include cost estimates for facilities such as sewers, roads, airports, and estimated timetables for their construction.[194] The legislation also directs local governments to provide reasonable opportunities "to satisfy local and rural needs for residential and industrial development" outside UGBs "in a manner consistent with conservation of the state's agricultural and forest land base."[195] In addition, the legislation allows local governments to change UGBs to provide for urban, commercial, and industrial needs over time.[196]

*Evaluating Oregon's Implementation of Goal 9*

Vacant industrial land within UGBs has significantly increased during the process of plan development and adoption. Between 1975 and 1982 there was a 79 percent increase in the acreage of vacant land zoned for industrial uses in Oregon's 10 largest urban jurisdictions, from about 16,000 acres to over 28,000 acres.[197] A 1987 study by the Portland Metropolitan Service District found that while there may be some problems concerning the provision of services to these parcels, the raw acreage of vacant land zoned industrial is more than triple the projected amount needed.[198] In turn, the price of prime industrial land in Portland was lower than the price for industrial land in other Western cities of similar size.[199]

Unfortunately, no systematic data is available on whether the quality of industrial development planning and zoning has improved by reducing permit processing time, by prohibiting uses incompatible with industrial uses, and by reducing the uncertainties over what uses are permitted.[200]

*Planning Goal 3: Preserving Farm Land*

Like other states, Oregon seeks to conserve its farm lands. Given the important and stable role agriculture plays in Oregon's economy,[201] it is not surprising that the statutory policy reflects both economic common sense and the desire to maintain open space for its aesthetic value.[202]

188. The relative importance of land zoned for a variety of housing types and the relationship between lot size and affordability is discussed in REVISITING GOAL 10, *supra* note 178, at 41-46, 64-67, app. D (Metropolitan Portland Housing Affordability).

189. *See* Southern Burlington City NAACP v. Mt. Laurel, 92 N.J. 158, 456 A.2d 390 (1983) (Mt. Laurel II); Southern Burlington County NAACP v. Mt. Laurel, 67 N.J. 151, 336 A.2d 713, *cert. denied*, 423 U.S. 808 (1975) (Mt. Laurel I). The court's exasperation with the city's slow response is evident in its 1983 decision:

> After all this time, ten years after the trial court's initial order invalidating its zoning ordinance, Mount Laurel remains afflicted with a blatantly exclusionary ordinance. Papered over with studies, rationalized by hired experts, the ordinance at its core is true to nothing but Mount Laurel's determination to exclude the poor. Mount Laurel is not alone; we believe that there is widespread non-compliance with the constitutional mandate of our original opinion in this case.

*Mt. Laurel II*, 92 N.J. at 198-99, 456 A.2d at 410. *See also* Allan-Deane Corp. v. Bedminster, 205 N.J. Super. 87, 500 A.2d 49 (1985).

190. GOALS TABLOID, *supra* note 17, at 10 (Goal 9—Economic Development). The LCDC has adopted an administrative rule interpreting the statute and Goal 9 to guide cities in making program plans for economic development. OR. ADMIN. R. 660-09-000 to -025 (1986).

191. OR. REV. STAT. §§197.707-.717 (1991).

192. *Id.* §197.712(2)(d).

193. *Id.* §197.712(2)(e).

194. *Id.* These responsibilities overlap with Goal 11. *See* GOALS TABLOID, *supra* note 17, at 10 (Goal 11—Public Facilities and Services).

195. OR. REV. STAT. §197.712(2)(g)(A) (1991). This provision seems to conflict with Goal 14, as interpreted by the Oregon Supreme Court. 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 724 P.2d 268 (1986).

196. OR. REV. STAT. §197.712(2)(g)(A) (1991). However, the Oregon Court of Appeals held that this statute and Goal 9 do not require local governments to expand their UGBs to accommodate every land use with potential economic benefits. Benjfran Dev. v. Metropolitan Serv. Dist., 95 Or. App. 22, 767 P.2d 467 (1989).

197. Richmond, *Does Oregon's Land Use Program Provide Enough Desirable Land to Attract Needed Industry to Oregon?* 14 ENVTL. L. 693-95 (1984).

198. METROPOLITAN SERV. DIST., VACANT INDUSTRIES, LAND INVENTORY AND MARKET ASSESSMENT, at summary (Sept. 1986) (unpaginated). To date, neither the statute nor Goal 9 has been the subject of much litigation. One of the few Goal 9 appeals concerned a small city's rezoning to commercial use of a parcel that accounted for a large proportion of the land identified in its comprehensive plan for industrial development. The city's rezoning was overturned by LUBA as a violation of Goal 9. Hummel v. Brookings, 13 Or. L.U.B.A. 25 (1984).

199. Richmond, *supra* note 197, at 703; Letter from Peter M.K. Frost to the editor of *The Oregonian* (Feb. 14, 1987) (noting that "[l]ocal Coldwell Banker sources list land with services in place in Clackamas County or large parcels in Washington county at or below $2.75 per [square] foot, compared to $3 per foot in Phoenix and an average of $7 per foot in San Diego's north county.").

200. Richmond, *supra* note 197, at 696-702.

201. In 1989, Oregon's agricultural industry produced nearly $2.5 billion in gross farm sales and employed 37,000 people. 1991-1992 OREGON BLUE BOOK, *supra* note 71, at 228, 231. There were 87 different agricultural commodities each with sales of $1 million or more. *Id.* at 228.

202. The program's farm land preservation policy provides:

> The Legislative Assembly finds and declares that: (1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state. (2) The preservation of a maximum amount of the limited supply of agricultural lands is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation. (3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community

The preservation of farm land is accomplished through Goal 3, statutes, and administrative rules. These define the land to be protected by exclusive farm use (EFU) zoning and specify what uses, structures, and activities are permitted in EFU zones. For example, Goal 3 defines "agricultural land" and mandates EFU zoning for all land meeting that definition.[203] In addition, they regulate how farm land may be partitioned and confer property tax benefits on lands protected for farm use.[204] The relevant portion of Goal 3 provides:

> GOAL
> To preserve and maintain agricultural lands.
> Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area.[205]

Two aspects of Oregon's definition of protected agricultural lands are worth noting. First, the definition relies on an objective standard for defining the farm land to be protected. Second, it protects all farm land, not just "prime" farm land.[206] Photomaps of soils, developed by the U.S. Soil Conservation Service, are an important basis for drawing boundaries for the EFU zones.[207]

The thrust of EFU zoning[208] is to limit the uses and structures allowed in the zone to farming and closely related activities and structures.[209] For example, the program authorizes "dwellings and other buildings customarily provided in conjunction with farm use" in EFU zones.[210] In addition, "commercial activities that are in conjunction with farm use,"[211] such as stands for the sale of farm produce to passing motorists, are allowed.

While many nonfarm uses are permitted in EFU zones,[212] it is assumed that there will be relatively few of these uses approved (compared to houses) and the acreage they consume will be relatively modest. Conspicuously absent from the list of permitted uses is any general authorization of houses, whether in subdivisions or individual residences on preexisting parcels.[213]

There are two general reasons for strict limits on the construction of new houses in EFU zones. First, while the homesites of persons seeking a home in the country may blend in with the rural landscape because they are located on large lots and may contain a cow or two or a few fruit trees, in fact these uses represent the loss of commercial farm land to noncommercial "hobby farms," which contribute little or nothing to the state's econ-

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services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

OR. REV. STAT. §215.243(1991).

For another description of Oregon's farm land preservation program and an interim assessment of its effectiveness, see Gustafson, Daniels & Shirak, *The Oregon Land Use Act: Implications for Farmland and Open Space Protection*, 48 AM. PLAN. ASS'N J. 365 (1982).

203. Goal 3 defines "agricultural land" according to a standardized measure of soil suitability for cultivation used by the U.S. Department of Agriculture's Soil Conservation Service (SCS). The full definition of agricultural land in Goal 3 is:

> Agricultural Land—in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, V, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

GOALS TABLOID, *supra* note 17, at 5 (Goal 3—Agricultural Lands).

204. The farm land preservation statutes together authorize, but do not in themselves mandate, the adoption of EFU zoning. OR. REV. STAT. §215.203(1) (1991).

205. GOALS TABLOID, *supra* note 17, at 6 (Goal 3—Agricultural Lands).

206. The Oregon Court of Appeals has noted that Goal 3's purpose is to protect more than just "prime" land. Jurgenson v. Union County Court, 42 Or. App. 505, 600 P.2d 1241 (1979). "Prime farm lands" is a technical definition based on lands with soils meeting certain properties. OFFICE OF THE SECRETARY, U.S. DEP'T OF AGRIC., No. 9500-2, SECRETARY'S MEMORANDUM, apps. A-1 to A-3 (Mar. 10, 1982). *But see infra* notes 297-304 for citations to the opportunity for "marginal lands" designations and a discussion of the proposal to identify "secondary lands."

207. OR. ADMIN. R. 660-05-010(6) to (7) (1986). For an illustration of the importance of the SCS classification in planning for a single property, see 1000 Friends of Oregon v. LCDC (Linn County II), 85 Or. App. 18, 735 P.2d 645, *reh'g denied*, 304 Or. 93, 742 P.2d 48 (1987).

208. The statutory framework can be confusing to those unfamiliar with its evolution. For example, after 1983 there were two alternate lists of nonfarm and farm-related uses that can be permitted in EFU zones. OR. REV. STAT. §§215.213, .283 (1991). Counties choosing to designate "marginal lands" pursuant to OR. REV. STAT. §197.247 must use the list of uses and conditions in OR. REV. STAT. §215.213(1)-(3). *Id.* §215.288(2). To date only two counties, Lane and Washington, have chosen to designate marginal lands. Other options balance stricter standards for some use with the allowance of certain kinds of nonfarm dwellings. *See* OR. REV. STAT. §215.213(1)-(8). Since most counties have zoning ordinances based on OR. REV. STAT. §215.283 (formerly OR. REV. STAT. §215.213(1)-(3)), this Article usually references those provisions. Researchers are warned that the renumbering of identical sections in the statute may cause confusion when reading appellate cases.

209. OR. REV. STAT. §§215.203, .213, .283 (1991). The overall policy is expressed in *id.* §215.243(4).

210. The EFU statutes define "farm use" as

> the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honey bees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

*Id.* §215.203(2)(a). "Farm dwellings" are authorized by *id.* §§215.283(1)(f), .213(1)(g).

211. *Id.* §§215.283(2)(a), .213(2)(c).

212. *See, e.g., Id.* §§215.283(1)(a), .213(1)(a) (schools); *id.* §§215.283(1)(b), .213(1)(b) (churches); *id.* §§215.283(2)(e), .213(2)(f) (golf courses); *id.* §§215.283(2)(c), .213(2)(e) (campgrounds); *id.* §§215.283(1)(h),(2)(k), .213(1)(i),(k) (landfills).

213. *Id.* §§215.213, .283. However, a narrow category of properties may qualify for a dwelling on statutorily defined "lots of record" of less than three acres. *Id.* §215.213(4)-(7). Only a handful of such dwellings are approved each year. Memorandum, from Stafford Hansell, Chairman, LCDC, to the Joint Legislative Committee on Land Use 2, (Reporting Requirements of HB 2295: Land Use Actions in EFU Zones and Marginal Lands) (Nov. 19, 1984) [hereinafter 1984 EFU REPORT].

omy.[214] The second reason for restricting houses in farm zones is the inherent incompatibility of residential and farm uses, a problem noted in the state's agricultural policy.[215] Many studies have shown that urbanites seeking homes in the country often object to, or try to prevent, the very agricultural practices, such as spraying, plowing, or grazing livestock, that create the landscape that drew them to the country.[216] In addition to objecting to their neighbor's farming methods, ex-urbanites' activities create problems for farmers. For example, marauding pet dogs have killed livestock worth thousands of dollars in a single night,[217] irrigation gates can be left open, careless July 4th celebrations can burn crops and hay, and ranchers can spend thousands of dollars fencing their cattle out of a subdivision.[218]

For these reasons, the opportunity to build dwellings unrelated to farming (nonfarm dwellings) in EFU zones is allowed only in certain narrowly defined circumstances. Under the standards applicable in most counties,[219] the building of nonfarm dwellings in EFU zones requires compatibility and noninterference with nearby farming practices,[220] maintenance of the "stability of the overall land use pattern in the area,"[221] and location "upon generally unsuitable land for the production of farm crops and livestock."[222] The land must be very poor indeed before it cannot support some kind of crop or seasonal livestock grazing,[223] especially since the small size of the parcel alone cannot justify a conclusion that the land is unsuitable for farming.[224] Moreover, dividing land to create homesites for nonfarm dwellings must meet the same test as the future dwelling itself would have to meet.[225]

The division of farm land is subject to especially detailed and strict regulation. Since World War II, farms in Oregon have grown larger, and farmers have acquired scattered parcels by purchase or lease to achieve necessary economies of scale.[226] The economic imperative for farmers to expand their land base by acquiring parcels separated from the original home properties by as much as several miles brings them into competition with ex-urbanites interested in acquiring the smaller parcels as rural homesites and hobby farms.[227] However, purchasers of rural homesites are able to pay a much higher price per acre for the small parcels than would be economically feasible if they were acquired by farmers for farm use.[228] The difference in price can be quite significant; parcels of an acre or less can cost 5 or 10 times as much per acre as large parcels.[229] By keeping parcels larger, prices are more likely to be maintained at acceptable levels for farmers, as well as being more susceptible to efficient farming practices.

To address these problems, the program requires all proposed divisions of land within EFU zones to be reviewed and approved by the county governing body or its designates.[230] Land divisions may be subject to either a minimum lot size acknowledged by the LCDC or an acknowledged set of review standards in the zoning or-

214. Brooks, *Minifarms: Farm Business or Rural Residence?* 1985 U.S. DEP'T AGRIC. AGRICULTURAL INFO. BULL. 480. This subject is covered more fully *infra* notes 241-52 and accompanying text.

215. OR. REV. STAT. §215.243(3) (1991). *See also id.* §215.293 (authorizing counties to require residents of nonfarm dwellings to sign statements waiving complaints about accepted farming practices).

216. E. THOMPSON, FARMING IN THE SHADOW OF SUBURBIA: CASE STUDIES IN AGRICULTURAL LAND USE CONFLICT (1981); Bryant & Russwurm, *The Impact of Non-Farm Development on Agriculture: A Synthesis*, 1979 PLAN CANADA 122, 122-39; Dunphy, *The Pastoral Paradox: People Like the Idea of a Farming Landscape, But Complain About the Farm Next Door*, 15 HARROWSMITH 41-47 (1988); M. McDonough, A Study of Nonfarm Dwellings in an Exclusive Farm Use Zone (July 20, 1982) (Masters thesis, Oregon State University). An attempt to classify and quantify the nature and costs of these conflicts in Oregon was the subject of research commissioned by the Oregon legislature and administered by the Department, although a disproportionate share of the sample was taken from counties with small agricultural industries. E. SCHMISSEUR, D. CLEAVES & H. BERG, FARM AND FOREST LAND RESEARCH PROJECT: TASK THREE—SURVEY OF FARM AND FOREST OPERATORS ON CONFLICTS AND COMPLAINTS (Apr. 1991) (prepared for the Department) [hereinafter FARM AND FOREST LAND RESEARCH PROJECT: TASK THREE].

217. A dog killed 39 lambs on one day and 50 more a few days later. The owner and friends spent 299 hours guarding the lambs. *Owner of Lamb-Killing Dog Sought*, OREGONIAN, Apr. 22, 1983, at C3, cols. 2-5.

218. A rancher spent $24,000 and 90 hours installing a fence in the middle of winter to keep the ranch's cattle from wandering into the yards of an illegal subdivision. Holliday, *Hobby Farms Hurt*, OREGONIAN, May 28, 1983, at B6, col. 2.

219. *See supra* note 208.

220. OR. REV. STAT. §215.283(3)(a)-(b) (1991).

221. *Id.* §215.283(3)(c).

222. *Id.* §215.283(3)(d).

223. *See, e.g.*, Miles v. Board of Clackamas County; 48 Or. App. 951, 618 P.2d 986 (1980); Rutherford v. Armstrong, 31 Or. App. 1319, 572 P.2d 1331 (1977); Hearne v. Baker County, 14 Or. L.U.B.A. 743 (1986), *aff'd*, 81 Or. App. 105 (1986); Stefansky v. Grant County, 12 Or. L.U.B.A. 91 (1984).

224. *Rutherford*, 31 Or. App. at 1319, 572 P.2d at 1331; *see* OR. REV. STAT. §215.213(3)(b) (1991). See also *supra* note 208 concerning alternative standards.

225. OR. REV. STAT. §215.263(4),(8) (1991); OR. ADMIN. R. 660-05-040(2) (1986). *See* 1000 Friends of Oregon v. LCDC (Jefferson County), 69 Or. App. 717, 733-35, 688 P.2d 103, 113-14 (1984).

226. Van Otten, *Changing Spatial Characteristics of Willamette Valley Farms*, 32 PROF. GEOGRAPHER 69 (1980). For example, in Clackamas County (southeast of Portland), among farms with gross sales of $2,500 or more in 1978, 78 percent of the total farm acreage was adjacent to the home parcel. J. PEASE, PROFILES OF COMMERCIAL AGRICULTURE FOR THE NORTHERN WILLAMETTE VALLEY: DISTRICT I—CLACKAMAS COUNTY 4 (1983) (available from Oregon State University Extension Service & Dep't of Geography). In parts of Umatilla County (in Northeast Oregon), only 27 percent of the farm acreage was adjacent to the home parcel, and many farmers' fields were over five miles away from the home parcel. J. PEASE, PROFILES OF COMMERCIAL AGRICULTURE FOR NORTH CENTRAL OREGON: DISTRICT V—UMATILLA COUNTY 5 (1983) (available from Oregon State University Extension Service & Dep't of Geography).

227. Van Otten, *supra* note 226, at 69.

228. *Id.* at 69-70.

229. Price per acre tables for unirrigated land used for grazing and wheat and pea propagation in Umatilla County showed prices declining from $6,225/acre for one-quarter acre parcels to $2,775/acre for 5-acre parcels and then stabilizing at $1,200/acre for parcels of 92 acres or larger. UMATILLA COUNTY PLANNING DEP'T, UMATILLA COUNTY COMPREHENSIVE PLAN B-4 (June, 1985) (Appraisal Area #4: Athena, Weston, Helix). In another part of the county, the aesthetic attractions of apple orchards and proximity to the college town of Walla Walla appear to have resulted in greater demands for rural residential development. One-quarter acre parcels sell at a rate of $32,000/acre, 2-acre parcels cost $9,000/acre and 10-acre parcels cost $3,400/acre. *Id.* (Appraisal Area #3: Milton, Freewater). In this case, rural residents are bidding against orchardists for land that in 1976 and 1977 yielded an average of $2,320/acre in annual gross farm sales. *Id.* at B-81. The price per acre of a 40-acre parcel in Benton County, in the central Willamette Valley, was 28 to 37 percent higher than for an 80-acre parcel. Goracke v. Benton County, 12 Or. L.U.B.A. 128, 135 (1984).

230. OR. REV. STAT. §215.263(1) (1991).

dinance.[231] In either case, the resulting parcels must be "appropriate" for the continuation of the existing commercial agricultural enterprise within the area.[232] Appropriate parcels are ones that are not too small to allow farmers to use modern farming techniques involving economies of scale if the parcel is separately farmed.[233] New parcels do not need to be as large as entire farms,[234] since farms are generally made up of several management units, often separated by some distance from other parts of the farm.[235] On the other hand, new parcels often need to be much larger than the size of tax lots, because tax lots are created for tax assessment purposes and necessarily bear no relationship to the requirements of commercial farming.[236]

*Evaluating Oregon's Implementation of Goal 3*

The acreage of land zoned in EFU or forest zones under the Oregon planning program is impressive. As of 1986, there were 16,035,830 acres (over 25,000 square miles) in EFU zones.[237] This figure compares favorably with the modest acreages protected in other states through programs to purchase development rights or agricultural districting.[238]

However, the geographic extent of farm and forest zoning is meaningless if the zones are drafted or administered in ways that undermine their integrity. Since 1983, Oregon counties have been required to report their decisions on applications for dwellings and land divisions in EFU zones to the Department, which compiles and analyzes the information in reports to the Joint Legislative Committee on Land Use.[239] These reports show that the actual number of new dwellings approved in EFU zones each year ranges from 700 to 1,100. Further, county approval ratings for applications for "farm dwellings" have never dropped below 93 percent, below 86 percent for farm use land divisions, and below 85 percent for applications for nonfarm dwellings or the creation of nonfarm homesite parcels.[240]

Like the number of acres in EFU zoning, the approval rates mean little in themselves. Whether the approved "farm" dwellings and divisions were made to further commercial farming is the important question. A comparison of the number of approved farm dwellings with information collected by the U.S. Census suggests the answer is no. Based on the Department's first four reports on county EFU decisions to the legislature, more than 1,300 new "farm dwellings" and 400 new "farm help" dwellings were approved by counties between 1982 and 1987.[241] According to the 1987 Census of Agriculture,[242] during this same period the number of farms with gross annual sales of $10,000 or more, which is a good benchmark for distinguishing genuine

231. *Id.* §215.263(2); OR. ADMIN. R. 660-05-015(3) (1989).

232. *Id.*

233. Goracke v. Benton County, 13 Or. L.U.B.A. 146, 74 Or. App. 453, 703 P.2d 1000, *reh'g denied*, 300 Or. 332 (1985). *Goracke* is incompletely and inaccurately codified in OR. ADMIN. R. 660-05-020(3), because the rule fails to explain what the key term "farm unit" means or define "appropriateness."

When there are different kinds of agriculture occurring on different size units in the same area, the local government must balance the advantages and disadvantages of using one minimum lot size over another for these different kinds of agriculture. OR. ADMIN. R. 660-05-020(4) to (6) (1986). This section of the rule was based on LUBA decisions in Stephens v. Josephine County, 11 Or. L.U.B.A. 154, (1984), and Stephens v. Josephine County, 14 Or. L.U.B.A. 133 (1985).

234. Kenagy v. Benton County, 6 Or. L.U.B.A. 94 (1982); Krahmer v. Washington County, 7 Or. L.U.B.A. 36 (1982). The agency's rule is confusing on this point. *See* OR. ADMIN. R. 660-05-015(7) (1986).

235. *See generally supra* note 226.

236. Thede v. Polk County, 3 Or. L.U.B.A. 335, 340-41 (1981); 1000 Friends of Oregon v. Benton County, 2 Or. L.U.B.A. 324 (1980). The holdings in these cases are codified at OR. ADMIN. R. 660-05-015(7) (1986).

237. Rural Land Figures, *supra* note 143.

238. For example, eight states in the Northeast and Maryland protected a total 77,114 acres through the purchase of development rights as of the end of 1990, at a cost of over $272 million. AMERICAN FARMLAND TRUST, PURCHASE OF DEVELOPMENT: STATUS CURRENT STATE PROGRAMS IN THE NORTHEAST (Dec. 31, 1990). In Wisconsin, by 1981, 2,118,280 acres of farmland were protected by agricultural preservation plans or exclusive agricultural zoning districts under Wisconsin's Farmland Preservation Program. R. COUGHLIN & J. KEENE, THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS 216 (1981).

239. OR. REV. STAT. §197.065 (1991).

240. 1984 EFU REPORT, *supra* note 213. This first report describes decisions made in 30 of the state's 36 counties over 9.5 months from October 15, 1983, to August 1, 1984. *Id.* at 1-2; DEPARTMENT OF LAND CONSERVATION & DEV., LAND CONSERVATION AND DEVELOPMENT COMMISSION'S REPORT ON COUNTY EFU DECISIONS (SECTION 9, CHAPTER 811, OREGON LAWS 1985) TO THE JOINT LEGISLATIVE COMMITTEE ON LAND USE (Jan. 1987) [hereinafter 1987 EFU REPORT]. The 1987 report analyzed decisions made by 35 of the 36 counties for the year July 1, 1985, to June 30, 1986. *Id.* at 3; DEPARTMENT OF LAND CONSERVATION & DEV., LAND CONSERVATION AND DEVELOPMENT COMMISSION'S REPORT ON COUNTY EFU DECISIONS (ORS 197.065) TO THE JOINT LEGISLATIVE COMMITTEE ON LAND USE (July 1989) [hereinafter 1989 EFU REPORT]. The 1989 report analyzed decisions made in all 36 counties between September 1, 1987, and August 31, 1988. *Id.* at 1-2; LCDC, EXCLUSIVE FARM USE REPORT: 1987-1989 (Jan. 1991) [hereinafter 1987-1989 EFU REPORT]; 1989-1990 EXCLUSIVE FARM USE (EFU) REPORTS [hereinafter 1990 EFU REPORT]. The 1987-1989 EFU REPORT covered decisions made between September 1, 1988, and August 31, 1989, and also corrected errors made in the preceding two reports. *Id.* at 3. See *infra* note 241 for a report on decisions made between 1987 and 1989 using the 1987-89 EFU REPORT.

241. Below is a table that displays the numbers of new dwellings and parcels and rates of approval by reporting period for new and replacement farm dwellings (both principal farm dwellings and farm help dwellings), land divisions purportedly for farm use, and nonfarm dwellings (including approvals of nonfarm homesites, which constitute an approval for the nonfarm dwelling itself).

**Numbers of Approvals and Rates of Approvals for Dwellings and Divisions in EFU Zones for Reporting Periods Commencing October 15, 1983, and Ending August 31, 1989**

| | *Farm Dwellings* | | *Farm Div's* | | *Nonfarm Dwell. & Div.* | |
|---|---|---|---|---|---|---|
| Period | # | % | # | % | # | % |
| 1983-84 | 349 | 98.3 | 179 | 86.5 | 379 | 88.3 |
| 1985-86 | 427 | 96.0 | 247 | 96.0 | 513 | 91.5 |
| 1987-88 | 416 | 95.6 | 233 | 94.6 | 5555 | 87.5 |
| 1988-89 | 418 | 92.9 | 295 | 93.7 | 720 | 83.5 |
| 1989-90 | 533 | 94.3 | 295 | 92.6 | 776 | 92.5 |

Sources: 1984 EFU REPORT, *supra* note 213, at 2; 1987 EFU REPORT, *supra* note 240, at 14-16; 1987-1989 EFU REPORT, *supra* note 240, at A-1, A-2, A-3, B-1, B-2, B-3; 1990 EFU REPORT, *supra* note 240, at A-1, A-2, A-4, A-5.

242. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1987 CENSUS OF AGRICULTURE, PART 37 OREGON: STATE AND COUNTY DATA (Apr. 1987) [hereinafter 1987 CENSUS OF AGRICULTURE: OREGON].

farms from hobby farms,[243] declined by 57 and the number of persons listing "farming" as their "principal occupation" declined by 183.[244] These figures reflect the continuing trend toward the proliferation of noneconomic hobby farms nationally, and in Oregon specifically.[245]

Research commissioned by the Oregon legislature definitively established the failure of local governments to screen out hobby farms while reviewing applications for "farm dwellings" in EFU zones.[246] During 1990 a sample of farm and forest dwellings and partitions approved during the mid-1980s was examined by interviewing residents, reviewing public information regarding participation in farm and forest assistance programs, aerial photographs, and field inspections.[247] The research showed that 37 percent of the residents of the approved "farm dwellings" reported no gross income from farming, and 75 percent grossed less than $10,000 per year.[248] Seventy percent of the households earned less than 25 percent of their household income from farming.[249] A significant minority of the "farms" leased out all their land to someone else to manage,[250] even though the farm dwelling or land division was approved on the basis of residents' representations that they were going to be personally engaged in farming.[251]

The continuing approval of hobby farm dwellings after local plans have been adopted and approved by the Department indicates serious problems with either the content of local plans, the administration of plans by counties, or the LCDC's enforcement and oversight. The issue of how or whether to screen out hobby farm dwellings from EFU zones remains to be addressed. With respect to nonfarm dwellings, available research suggests that these dwellings are being approved on productive farm land despite the statutory limitation of these dwellings to lands generally unsuitable "for the production of crops and livestock."[252]

Another measure of the appropriateness of both the dwellings and land divisions being approved in EFU zones by counties is provided by the degree to which these approvals comply with the law. A study of the published LUBA opinions issued between 1980 and 1987 reveals that county-approved permits for dwellings or land divisions in farm and forest zones were affirmed in only 9 percent of appeals, whereas county denials of permits were affirmed on appeal 67 percent of the time.[253] The appeals of improper decisions have not prevented abuses in how counties administer their EFU zones, presumably because appeals of county EFU decisions are so rare.[254]

243. Farms with sales over $10,000 per year accounted for only 37 percent of the total number of farms identified by the Census of Agriculture, but accounted for 97 percent of gross farm sales and had an average net return from farm sales of $31,608.13 per farm. *See id.* at 102-03, 108-09 (tbl. 52), 248 (tbl. 16). By contrast, farms with gross annual sales of less than $10,000 represented 63 percent of all farms but accounted for only 3 percent of the state's gross farm sales and averaged a net annual loss from farm sales of $2,913.57 per farm. *Id.*

244. *Id.* at 233 (tbl. 16), 195 (tbl. 10).

245. Research by the U.S. Department of Agriculture found that minifarms constituted 40 percent of all farms in Oregon. This was the highest proportion of minifarms of all the states studied, yet the minifarms contributed only 1 percent of the state's gross farm sales. Although the minifarms averaged 83 acres, on the average only 8 acres were in harvested cropland, of which 6.3 acres were in hay. Overall, operating expenses were 50 percent greater than sales income. Brooks, *supra* note 214, at 12-13. A study recently published in the *American Planning Association Journal* confirmed the existence of a problem in the proliferation of ostensible "farm houses" on small acreages in Oregon's EFU zones.

> The empirical evidence reviewed in this Article supports two important but conflicting observations about Oregon's farmland preservation program. On the one hand, Oregon's program appears to have been successful in keeping the state's farmland from being converted to nonfarm uses. On the other hand, the proliferation of small hobby farms raises concerns about the future viability of commercial farming operations, which must compete for the same farmland.

Daniels & Nelson, *Is Oregon's Farmland Preservation Program Working?* 52 AM. PLAN. ASS'N J. 30-31 (1986). Their conclusion is echoed in a 1988 masters thesis. L. Bernhardt, The Growth of Non-Commercial Farming in Oregon's Willamette Valley: Assessing Impact on Commercial Agriculture (1988) (Masters thesis, Oregon State University).

246. PACIFIC MERIDIAN RESOURCES, FARM AND FOREST LAND RESEARCH PROJECT—TASK TWO: AN ANALYSIS OF THE RELATIONSHIP OF RESOURCE DWELLING AND PARTITION APPEALS BETWEEN 1985-1987 AND RESOURCE MANAGEMENT IN 1990 (May 24, 1991) (preliminary draft prepared for the Department) [hereinafter FARM AND FOREST LAND STUDY: TASK TWO]. The results of all tasks in the farm and forest study are summarized in DEPARTMENT OF LAND CONSERVATION & DEV., DLCD ANALYSIS AND RECOMMENDATIONS OF THE RESULTS AND CONCLUSIONS OF THE FARM AND FOREST RESEARCH PROJECT (May 31, 1991) [hereinafter FARM AND FOREST LAND RESEARCH SUMMARY].

247. FARM AND FOREST LAND STUDY: TASK TWO, *supra* note 246, at 1-8.

248. FARM AND FOREST LAND RESEARCH SUMMARY, *supra* note 246, at 5.

249. FARM AND FOREST LAND STUDY: TASK TWO, *supra* note 246, at tbls. B2-B4.

250. *Id.* at 13, tbls. B1, B5. Twenty-seven percent of the farms for which partitions were granted, and 11 percent of the farms for which dwellings were approved, were managed by someone else. Despite these indices, which suggest that a high proportion of approved farm dwellings are not related to commercial farming, the survey found that more than half of the residents of approved "farm dwellings" worked 20 hours or more per week in farming. *Id.* tbls. B2-B3.

251. The standard for farm dwellings is discussed at *supra* note 210.

252. The legal standard for nonfarm dwellings and the creation of nonfarm homesites is discussed at *supra* notes 219-25 and accompanying text. In the reported cases, about 27 percent of the new parcels were created to serve as homesites for nonfarm dwellings between September 1, 1987, and August 31, 1989. These were wholly made up of SCS Classes I to III soils, and another 16 percent contained some soils in those classes. 1987-1989 EFU REPORT, *supra* note 240, at B-8. Two studies of approved nonfarm dwellings and partitions for nonfarm dwellings in Jackson County showed a disproportionate share of these dwellings were located on or near the relatively small proportion of farm lands that were prime agricultural soils, as defined by the SCS, or on high value crop land as inventoried by the Jackson County Planning Department. Memorandum from Catherine Morrow to Dick Benner (Sept. 11, 1987) (Re: Jackson County farm and nonfarm dwellings) (prepared for 1000 Friends of Oregon, plotting farm and nonfarm dwellings approved over 33.5 months by Jackson County within the period between September 1, 1981, and June 1986). *See also* M. BINNS, THE NARRATIVE FOR THE JACKSON COUNTY MAPPING PROJECT: NUMBERS AND LOCATION OF APPROVED DWELLINGS AND LAND DIVISIONS IN FARM AND FOREST ZONES 1983-1988, at 8 (1990).

253. N. TORGELSON, P. MORNINGSTAR & R. LIBERTY, *supra* note 91, at 4, 14-19.

254. For example, between July 1, 1985, and June 30, 1986, there were more than 1,064 applications for farm and nonfarm dwellings and divisions in EFU zones, of which 999 were approved. 1987 EFU REPORT, *supra* note 240, at 18, 20, 22, 24. Between July 19, 1985, and August 8, 1986, which roughly corresponds to the appeal period, only three decisions concerning these categories of decision were the subject of published LUBA opinions. N. TORGELSON, P. MORNINGSTAR & R. LIBERTY, *supra* note 91, at 22.

Oregon's farm land preservation program has succeeded in establishing an overall policy framework to protect farm land. But the tools and enforcement efforts need to be strengthened if Oregon's goal of protecting the economic value of its farm land, as well as the aesthetic values of open space, is to succeed.[255]

*Planning Goal 4: Conserving Forest Land*

Oregon lost forest lands during the rapid population growth of the 1960s and 1970s,[256] a trend that has continued to the present. Goal 4, entitled "Forest Lands," reflects Oregon's policy to conserve its forest lands.[257] The forest lands subject to Goal 4 are "existing and potential forest lands which are suitable for commercial forest uses," and forest areas needed to prevent erosion and protect watersheds, fish and wildlife habitat, and forested grazing areas.[258]

Goal 4 mandates conservation of forest land first and foremost for its commercial value and only secondarily for other values, such as wildlife and other environmental values.[259] Placing timber production under Goal 4 reflects the continuing importance of wood products to Oregon's economy.[260] The regulatory program to conserve forest lands is executed only by Goal and administrative rules, since it lacks the statutory EFU zoning framework applicable to farm lands.[261] Even so, it has evolved to resemble Goal 3 due to the many similarities between farming and forestry practices.

Commercial forestry, like commercial farming, is often incompatible with residential uses.[262] Residents of forested areas often object to common industrial forestry practices such as the aerial application of pesticides; road building that can contaminate a rural resident's drinking water; the burning of slash, which produces large quantities of smoke; and clearcutting as a harvest method.[263] Perhaps the most serious conflict involves forest fires. Rural residents cause many fires, and while timber worth millions of dollars is left to burn, fire-fighting resources are often diverted to protect homes and their residents.[264]

As with farming, the division of land into small parcels may render the parcels too small to manage economically for wood fiber.[265] In keeping with their aesthetic concerns, owners of small parcels, who are classified as members of the "nonindustrial private forest land" ownership class, often pursue recreational or residential development objectives that are inconsistent with industrial forestry techniques, since the beauty and tranquillity of the forest is one of the chief reasons they purchased the property.[266] Moreover, owners of these smaller properties generally have a record of poor or no forest management.[267]

255. Recommendations for these improvements were made by the Department in response to the FARM AND FOREST LAND STUDY: TASK TWO, *supra* note 246, and the FARM AND FOREST LAND RESEARCH SUMMARY, *supra* note 246.

256. GEDNEY & HISEROTE, CHANGES IN LAND USE IN WESTERN OREGON BETWEEN 1971-1974 AND 1982, 1989 U.S. DEP'T AGRIC. AGRICULTURAL INFO. BULL. 8.

257. Goal 4 provides the following:

> Goal: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.

GOALS TABLOID, *supra* note 17, at 6 (Goal 4—Forest Lands).

258. This was the definition of "forest lands" used in the original version of Goal 4, adopted in 1974. *See supra* note 17. As amended in 1990, "forest lands" are "those lands acknowledged as forest lands as of the date of adoption of this goal amendment." GOALS TABLOID, *supra* note 17, at 6 (Goal 4—Forest Lands). Portions of the earlier version of Goal 4, including the list of authorized forest uses, is quoted in 1000 Friends of Oregon v. LCDC (Lane County III), 305 Or. 384, 386 n.1, 752 P.2d 271, 273 (1988).

259. GOALS TABLOID, *supra* note 17, at 6 (Goal 4—Forest Lands).

260. In 1987, 8 billion board feet of timber were harvested in the state and the wood products industry retained its position as the state's largest manufacturing industry, employing more than 80,000 people. 1989-1990 OREGON BLUE BOOK, *supra* note 90, at 258.

261. In the 1980s, the legislature statutorily authorized certain nonforest uses in forest zones, for example home occupations, OR. REV. STAT. §215.448 (1991), and required counties to begin reporting their decisions on forest lands. *Id.* §§197.065(1), (3). However, there has yet to be any legislative expression of an overall policy to protect forest lands.

262. *See generally* FARM AND FOREST LAND RESEARCH PROJECT: TASK THREE, *supra* note 216; Miller, *Strategies to Achieve Public and Private Land Use and Forest Resource Goals, in* LAND USE AND FOREST RESOURCES IN A CHANGING ENVIRONMENT: THE URBAN/FOREST INTERFACE (G. Bradley ed. 1984) [hereinafter THE URBAN/FOREST INTERFACE]; D. Miller & R. Rose, Changes in the Urban Land Base and the Consequences for the Future of Forestry (Jan. 17-18, 1983) (paper prepared for the CSU-RFF Symposium "Investing in Forestry's Future" in Denver, Colorado).

263. Atkinson, *Managing the Urban/Forest Interface: A View From Forest Industry, in* THE URBAN/FOREST INTERFACE, *supra* note 262, at 193-94.

264. STATE OF OREGON, WILDFIRE PLANNING TASK FORCE, AN ACTION PLAN FOR PROTECTING RURAL/FOREST LANDS FROM WILDFIRE 3, 7-8 (1988).

265. Healy, *Forests in an Urban Civilization: Land Use, Land Markets, Ownership, and Recent Trends, in* THE URBAN/FOREST INTERFACE, *supra* note 262, at 29-30; Row, *Indirect Impacts and Inequities in Urban/Forest Interface Economics, in* THE URBAN/FOREST INTERFACE, *supra* note 262, at 96; Clark, *Economies of Tract Size in Timber Growing*, 1978 J. FORESTRY 576-82; Memorandum from Doug McClelland to the North Umpqua Plan. Advisory Comm. 1 (May 15, 1979) (impacts on timber production by rural residences).

266. Hammond, *NIPF Opinion Leaders: What Do They Want?* 1985 J. FORESTRY 30-35; D. Miller & R. Rose, *supra* note 262, at 31, 41-42, 48; Oregon Dep't of Forestry, *Nonindustrial Woodland Survey Results*, 55 FOREST LOG No. 4, at 3 (Nov. 1985) (reporting survey results of nonindustrial woodland owners taken in central western Oregon); D. Martin, Objectives and Attitudes of Nonindustrial Small-Forest Owners in Lane County, Oregon (1982) (Masters thesis, Oregon State University).

267. Oregon Dep't of Forestry, *supra* note 266, provides that:

> 1) Forest landowners with large acreages tended to manage their forest resource more than small landowners. Although some smaller landowners managed their land, more emphasis was placed on peace and solitude. While 42 percent of the "less-than-20-acre" group noted peace and solitude as their primary purpose for owning forest land, only two percent chose this category in the "over 120-acre" class.
> 2) Landowners with larger acreages harvested their timber more frequently than those with smaller holding. Of those people surveyed in the over 120-acre group, 32 percent had harvested trees. Only 17 percent had harvested in the less than 20-acre ownership.

*Id.* This pattern is typical. Healy, *supra* note 265, at 27-28; Stoltenberg & Webster, *What Ownership Characteristics Are Useful in Predicting Response to Forestry Programs?*, 35 LAND ECON. 292-95 (1959); Thompson & Jones, *Classifying Nonindustrial Private Forestland by Tract Size*, 1981 J. FORESTRY 288-91; Martin, *supra* note 266.

Until Goal 4 was thoroughly amended in 1990, the LCDC provided virtually no regulatory guidance concerning land divisions, dwellings, or other kinds of uses.[268] However, LUBA and appellate court decisions, as well as individual LCDC orders, resulted in controls not unlike those applied to EFU zones.[269] In 1990, many of these appellate decisions were codified in a new Goal and a simultaneously adopted administrative rule. Under the new rule,[270] forest management activities and accessory structures, along with uses related to the conservation of wildlife, fisheries, and air and water resources, are allowed without government review.[271] "Forest dwellings" will be permitted in forest zones only if no other dwelling is available on the property and the dwelling will be "accessory to" and "necessary for" forestry operations.[272] Applicants must complete a form describing their management program.[273] Permanent dwellings are not permitted until trees have been planted and have survived as specified by the standards in the Oregon Forest Practice Act.[274] Temporary dwellings are allowed for only so long as necessary brush clearing and replanting activities are required.[275]

Dwellings that are not related to forestry are allowed on smaller preexisting lots with less productive forest soils until the LCDC authorizes the designation of "secondary lands."[276] A long list of other "nonforest" uses, such as microwave towers, reservoirs, and campgrounds, are also permitted,[277] subject to extensive conditions and standards intended to minimize the conflicts these nonforest uses might create with forest management.[278]

At the time of periodic review[279] existing minimum lot sizes of less than 80 acres, or land division standards, will be reviewed to determine whether they have worked to assure economically efficient forestry.[280] If not, counties will be obliged to either adopt an 80 acre minimum lot size in their forest zones, or justify a different minimum based on an analysis of what will be required to assure efficient and continued timber production.[281] Parcels smaller than these minimums may be created only as sites for one of the permitted nonforest uses.[282]

The administrative rule adopted pursuant to new Goal 4 contains two notable departures from the pattern established under Oregon's farm land preservation program. First, the Department of Forestry is given a role in reviewing the management plans submitted with applications for new forest dwellings.[283] Second, counties must provide notice of all applications for dwellings and land divisions to the Department and the Department of Forestry 10 days prior to the local government's action on the application.[284]

### *Evaluating Oregon's Implementation of Goal 4*

The effectiveness of Oregon's forest land conservation program is hard to evaluate.[285] A full evaluation is premature until the amended versions of Goal 4 and the administrative rule have a chance to replace the prior chaotic and weak interpretations of their predecessors. However, some information about performance under the former Goal 4 may be enlightening. Nearly 8.7 million acres of private land have been zoned for forest uses, an area of more than 13,500 square miles.[286] Research and surveys through the 1980s showed that despite the implementation of Goal 4, nonindustrial private forest land owners provided little or no management[287] and continued to hold their private forest land primarily for aesthetic and recreational reasons.[288] Moreover, the first reports on

268. Although the LCDC adopted an administrative rule for Goal 4 in 1983, it provided no guidance as to allowable uses on forest lands, under what circumstances were the uses allowed, and how land divisions were to be regulated. OR. ADMIN. R. 660-06-000 (1982). This rule was in sharp contrast to the rule the LCDC adopted for Goal 3 at about the same time. *Id.* 660-05-000 to 040 (effective July 21, 1982, *amended in* 1986).

269. As originally written, Goal 4 did not list any dwellings as permitted uses. However, LUBA and the appellate courts concluded that dwellings that were "accessory to" and "necessary for" commercial forestry were part of commercial forestry and thus could be permitted forest uses. 1000 Friends of Oregon v. LCDC (Lane County III), 305 Or. 384, 392-96, 752 P.2d 271, 276-79 (1988); 1000 Friends of Oregon v. LCDC (Lane County II), 85 Or. App. 619, 621-22, 737 P.2d 975, 975-76 (1988); 1000 Friends of Oregon v. LCDC (Lane County I), 83 Or. App. 278, 282 n.4, 731 P.2d 457, 460 n.4 (1987). The "accessory" and "necessary" standard for forest dwellings was first articulated in Lamb v. Lane County, 7 Or. L.U.B.A. 142, 146 (1983). Divisions of forest lands were to be permitted only if they would not be harmful to efficient commercial forest management. *See Lane County I*, 83 Or. App. at 288, 731 P.2d 457, 464; Lamb v. Lane County, 6 Or. L.U.B.A. 195, 202 (1982). Nonforest dwellings are only permitted on land "generally unsuitable" for commercial forest production and if the proposed dwelling would be compatible with forest uses. *Lane County I*, 83 Or. App. at 284-85, 731 P.2d 457, 461-62. However, the Oregon Supreme Court's decision cast some doubt on whether any nonforest dwellings may be allowed on forestland consistent with Goal 4 as originally adopted. *Lane County III*, 305 Or. at 397, 752 P.2d at 279-80.

This summary applies more consistency in both the court's rulings and the LCDC's interpretation than actually existed. *See* Shurts, *Goal 4 and Nonforest Uses on Forest Lands*, 19 ENVTL. L. 59 (1988). See also Sullivan, *Escape From the Forest Goal Funhouse*, LANDMARK, Spring 1989, at 20, for a more colorful presentation of the twists and turns in the LCDC's interpretation of Goal 4.

270. The new goal and rule go into effect gradually between 1990 and 1993 through periodic review and as plans are amended. OR. ADMIN. R. 660-06-003 (1990).

271. *Id.* 660-06-025(2)-(3).

272. This applies when the principal purpose for the dwelling is "to enable the resident to conduct efficient and effective forest management." *Id.* 660-06-027(1),(3).

273. *Id.* 660-06-027(2), app. A.

274. *Id.* 660-06-027(7).

275. *Id.* The rule provides for the posting of performance bonds or other securities to assure a dwelling's removal in the event the forest activities are not carried out, and imposes a positive duty on the local government to remove such dwellings. *Id.* 660-06-027(7)(b)-(d).

276. *Id.* 660-06-028. "Secondary lands" are discussed *infra* notes 299-304 and accompanying text.

277. *Id.* 660-06-025(3), (4).

278. *Id.* 660-06-025(4)(o), -029, -035, -040.

279. Periodic review was previously discussed *supra* notes 56-62 and accompanying text.

280. *Id.* 660-06-026(1).

281. *Id.* 660-06-026(2).

282. *Id.* 660-06-026(3).

283. *Id.* 660-06-027(2)(a)-(c).

284. *Id.* 660-06-004.

285. The reasons include the absence, prior to 1989, of a requirement to report decisions in forest zones, the lack of a statistical benchmark comparable to the Census of Agriculture, or a legal benchmark comparable to the EFU statutes.

286. Rural Land Figures, *supra* note 143.

287. Oregon Dep't of Forestry, *supra* note 266.

288. *Id.*

county decisions on applications for dwellings and land decisions show the same large numbers and high rates of approvals for dwellings and land decisions that characterize county administration of EFU zones.[289]

Recent research into the amount of forest management undertaken by recipients of permits for forest dwellings and forest management partitions shows a problem with hobby forestry comparable to the problems identified with hobby farming. On lands for which a dwelling was approved for the purpose of forest management, 33 percent have not received any management by their owner since approval.[290] Overall, an "approval" for a forest dwelling appears to have essentially no effect on encouraging forest management.[291] The research further reveals that forestry did not contribute to household income in over 60 percent of a sampling of the households receiving permit approvals.[292]

*Rural Lands Available for Additional Development*

The LCDC and the legislature recognized that many lands that were unlikely to be included in UGBs were no longer available for farming or forestry because they were already developed as rural residential homesites or for commercial or industrial uses. Thus, they authorized "built" or "developed" exceptions to Goals 3 and 4 for these lands.[293] Another category of rural lands excepted from Goals 3 and 4 is "commitment" exception areas.[294] These areas are excepted because parcelization, installation of services, and surrounding development make farming and forestry impracticable. Together, there are nearly 800,000 acres of land in built and committed exceptions, most of which are zoned for rural residential development with minimum lot sizes of one to 20 acres.[295] The LCDC's failure to apply the urban containment policy in Goal 14 to these areas was the subject of extensive judicial discussion, but to date no policy has been adopted.[296] In addition, a debate continues over whether some rural lands, which do not or did not qualify for "built" or "committed" exceptions to Goals 3 and 4, are worth protecting for farm and forest use. In 1983, the legislature defined certain lands with poor soils or that were partially affected by development as "marginal" and authorized additional development on these lands.[297] However, less than 1,000 acres have been designated marginal.[298]

Unsatisfied with the results of its marginal lands statute, the legislature directed the LCDC to describe a category of less productive "secondary lands" where low density rural residential development and hobby farming would be permitted.[299] The difficulties of such a project are obvious given the absence of a scientific, economic, or geographic standard for determining what is "less productive."[300] This project has been underway since 1985 and was expected to culminate in legislative action in 1991.[301] However, the legislature reached a stalemate on the issue,[302] and the LCDC has not yet taken action on its own proposed definition of "secondary lands," which it forwarded to the legislature in March 1991.[303] Many observers anticipate that more than one million acres of land now in farm and forest zones will be rezoned as "secondary," and possibly with new restrictions on houses and partitions in lands that remain in exclusive farm and forest zoning.[304]

289. DEPARTMENT OF LAND CONSERVATION & DEV., 1990 FOREST REPORT (Apr. 1991).

290. FARM AND FOREST LAND RESEARCH SUMMARY, *supra* note 246, at 10.

291. *Id.*

292. FARM AND FOREST LAND STUDY: TASK TWO, *supra* note 246, at 18. This percentage excludes the sampled operations where no management is taking place. *Id.*

293. OR. REV. STAT. §197.732(1)(a) (1991). GOALS TABLOID *supra* note 17, at 4 (Goal 2—Land Use Planning).

294. OR. REV. STAT. §197.732(1)(b) (1991); GOALS TABLOID *supra* note 17, at 4. (Goal 2). See 1000 Friends of Oregon v. LCDC (Curry County), 301 Or. 447, 457-61, 478-87, 515-20, 724 P.2d 268, 277-80, 289-95, 311-14 (1986), for a detailed discussion of the genesis, mechanics, and application of the "built" and "committed" lands tests as applied to farm and forest lands and what kinds or intensities of uses can be allowed in these areas.

A third and very different kind of exception, called a "reasons" or "need" exception, is available to permit particular uses or types of uses under very limited circumstances. OR. REV. STAT. §197.732(1)(c). GOALS TABLOID *supra* note 17, at 4. (Goal 2); OR. ADMIN. R. 660-04-020, -022 (1988). For two judicial discussions of this type of exception that display contrasting tones, compare 1000 Friends of Oregon v. LCDC (Coos Bay Estuary), 75 Or. App. 199, 201-10, 706 P.2d 987, 988-94 (1985) with 1000 Friends v. LCDC (Umatilla County), 85 Or. App. 88, 90-91, 735 P.2d 1295, 1296 (1987).

295. DEPARTMENT OF LAND CONSERVATION & DEV., RURAL LANDS FORUM 3-4 (Nov. 1990).

296. 1000 Friends of Oregon v. LCDC (Curry County), 73 Or. App. 350, 698 P.2d 1027 (1985), *aff'd in part, rev'd in part*, 301 Or. 447, 724 P.2d 268 (1986).

297. OR. REV. STAT. §197.247 (1991).

298. 1984 EFU REPORT, *supra* note 213 at 2; 1987 EFU REPORT, *supra* note 240, at 8, 26; 1987-1989 EFU REPORT, *supra* note 240, at 14.

299. The legislature passed bills in 1985 and 1987 that gave the LCDC vague directions for defining "secondary lands" and for identifying the uses to be allowed on such lands. 1985 Or. Laws ch. 811, §11; 1987 Or. Laws ch. 886, §11. In 1989 the legislature added money and directions to the LCDC's budget to carry out a pilot project to test definitions of secondary lands, again without any elaboration. 1989 Or. Laws. ch. 710, §3.

300. There is no scientific answer to what is less productive because it is a political question. The problem with trying to interpret the phrase becomes obvious when formulating questions to ask. For example, what is less productive? Less productive than what? Less productive than the most productive land in the entire state? The region? The rest of the county? And less productive for what? Crops? Which crops? Cattle? Timber? And less productive in what sense? Inherent soil productivity? Less productive due to prior residential encroachment?

301. Mapes, *Roberts to Maintain Livability in Oregon*, OREGONIAN, Feb. 24, 1991, at E3, col. 5.

302. *Lawmakers Kill Most Bills Along the Way*, SALEM STATESMAN J., July 2, 1991, at 4C, cols. 1-4.

303. Memorandum from Craig Greenleaf, Deputy Director of the Department, to LCDC, entitled *Report to the Legislature on Secondary Lands* (Feb. 26, 1991) (adopted by the LCDC on Mar. 7, 1991).

304. Draft definitions of "secondary lands" were tested during the summer of 1990 by being applied to parts of six counties in six different regions of the state to determine the types and amounts of land that would qualify as "secondary" under draft definitional criteria. The criteria for this "pilot project" consisted of separate tests for cropland, forest land, and range land. Lands were tested against one, two, or three of the criteria depending on the landform involved. The criteria factored in both soil productivity and residential encroachment. The percentages of tested lands that qualified as potential "secondary" were 5 percent in Jackson County, almost 7 percent in Deschutes County (66 percent of the rangeland under an alternate test), 8 percent in Union County, nearly 22 percent in Coos County, and 5.9 percent in Clackamas County. DEPARTMENT OF LAND CONSERVATION & DEV., ATTACHMENT III: DRAFT SECONDARY LANDS PILOT PROGRAM EVALUATION REPORT, at tbls. 1-5 (Jan. 16, 1991). In Lane County where the test criteria were applied over the widest area (327,622 acres), 33 percent qualified as potential secondary land. OREGON DEP'T OF FORESTRY, EVALUATION OF SECONDARY LANDS PILOT TEST PROGRAM FORESTLAND RESULTS 18 (Jan. 18, 1991) (prepared by Ted Lorensen, Resources Planning Program). If these percentages were extrapolated to the 25 million

## Recommendations for Other States

### *Pace of the Planning Process*

The protracted process of plan development and review is an unattractive feature of Oregon's experience. This feature was in large part the result of the LCDC's slow pace in interpreting the Goals and promulgating regulations. Local governments that were philosophically opposed to the state's role and the program's policies were able to argue for years over the proper meaning of the Goals.

The time to clarify and resolve debates over fundamental land use policy objectives is during the legislative phase, not in the course of interpreting the legislation. And the time to clarify the meaning of the language in the adopted policy is at the beginning of the implementation phase, not in an appeal decided 10 years after the objectives are adopted.[305]

Legislative committees should be forced to deal with particulars, not just noble generalities. For example, when considering draft language to mandate farm land preservation, legislators must determine whether a permit for a new house should or could be approved or denied in a range of representative situations around their state. This must be done prior to adopting legislation or policies, so that all parties know what is expected as the law is implemented.

After the state policies are adopted by statute or otherwise, additional refinement of regulations will probably be required. States should test proposed regulations through simulated local hearings in which the meaning of the proposed language is applied to particular facts. The opposing parties should be represented by skilled lawyers or planners. This procedure should reveal the strengths, weaknesses, and ambiguities of the particular regulatory language under consideration.

As a result of these techniques, legislators and administrators may discover that while they agreed on the words of the Goals or policies, they have a sharp disagreement as to what those words should mean in practice. The effect of these techniques will be to sharpen the debate during the period prior to adoption and implementation, while providing for less argument and a greater degree of compliance afterwards.[306]

### *Interim Protection Measures*

Because the implementation process can be lengthy, it is important to provide measures to prevent the kinds of development during the implementation period that are inconsistent with the state policies being proposed. Like Oregon, other states and local governments should apply state policies directly to particular development projects during the phase when land use plans are being crafted. In addition, states and local governments should carefully consider which projects should be allowed to proceed under a claim of "vested rights." In Oregon, the issuance of a permit without an actual substantial investment is not sufficient to confer a vested right to complete a project that is subsequently made nonconforming by a land use regulation.[307]

More Draconian measures will be needed to bring recalcitrant jurisdictions into conformity with a new growth management program. As originally adopted, Oregon's planning program provided for the state planning agency to draft and impose a local plan in the event of a default by the local government, but this provision was later repealed.[308] By contrast, Maryland's law retained this feature and the state made use of this power.[309] This seems preferable to Oregon's system of withholding state revenues.

### *Land Use Courts and Local Appeals Tribunal*

All states should consider creating a land use court or administrative tribunal modeled after LUBA for reviewing local government land use decisions and appeals. This tribunal will assure speedy and consistent land use decisions and will be much less costly for participants, provided it functions as an appellate review body. It can be designed to accommodate citizens representing themselves without an attorney in order to partially offset the inequality of legal and technical resources between development and conservation interests.[310] Moreover, private enforcement may be the only effective way to enforce land use laws. For that reason, archaic and artificial standing requirements should be omitted. But there should be provision for the award of attorneys fees against the appellants if the appeal lacks any substantial merit. Similarly, attorneys fees should be awarded to the appellants if the local government decision does not address all relevant criteria or is unsupported by substantial evidence in the whole record.

The creation of the tribunal should coincide with the establishment of minimum standards for the contents and distribution of written notices of hearings and for the conduct of local government land use proceedings. Local governments should be required to issue written decisions based

acres of private land now in EFU or forest zoning, Rural Land Figures, *supra* note 143, the results would yield approximately 1 to 8 million acres of potential secondary lands. The March 1991 LCDC criteria are similar to the criteria tested in 1990. *See* Memorandum from Craig Greenleaf to LCDC, *supra* note 303.

305. See 1000 Friends of Oregon v. LCDC (Lane County), 83 Or. App. 278, 280, 731 P.2d 457, 458 (1987), for an illustration of a local government that adopted land use regulations translating the standards governing "forest dwellings" into more vague and weaker standards. See 1000 Friends of Oregon v. LCDC (Lane County), 305 Or. 384, 395-97, 752 P.2d 271, 278-79 (1988), for an illustration of how the entire meaning of that Goal was not settled until 13 years after its adoption. *See* Shurts, *supra* note 269; Sullivan, *supra* note 269.

306. An alternative is to select a sampling of local government and state agencies to implement the program as originally adopted, and then decide what corrections are in order.

307. Polk County v. Martin, 292 Or. 69, 636 P.2d 952 (1981); Mason v. Mountain Rivers Estates, Inc., 73 Or. App. 334, 698 P.2d 529 (1985). *But see* OR. REV. STAT. §215.428(3) (1991).

308. Prior to repeal, the law provided:

> Notwithstanding any other provision of law, after the expiration of one year after the date of the approval of the initial state-wide planning goals and guidelines under ORS 197.240 ... the commission shall prescribe and may amend and administer comprehensive plans and zoning, subdivision or other ordinances and regulations necessary to develop and implement a comprehensive plan within the boundaries of a county, whether or not within the boundaries of a city, that do not comply with the state-wide planning goals .... and any subsequent revisions or amendments thereof.

OR. REV. STAT. §197.325(1) (1973), *repealed by* 1977 Or. Laws ch. 664, §42.

309. MD. CODE ANN. NAT. RES. §8-1809(b) (1989 & 1990 Supp.); *see* Taylor, *The Status of the Critical Area Program, in* BUREAU OF GOVERNMENTAL RESEARCH SCHOOL OF PUB. AFFAIRS, UNIVERSITY OF MARYLAND, 1 MARYLAND POLICY STUDIES: CHESAPEAKE BAY POLICY 7 (Aug. 1988) [hereinafter CHESAPEAKE BAY POLICY].

310. *See infra* notes 311-14 and accompanying text.

on the criteria in the local plan or zoning ordinance and any applicable state law. In addition, local decisions should be based on a careful weighing of all supporting and detracting evidence addressing relevant criteria.

Creating a land use tribunal and adopting procedural safeguards can be done independently of any substantive land use objectives. However, the assurance of speedy decisions and procedural fairness for citizens may attract additional support from individuals or interest groups that may otherwise have doubts about a growth management program.

*Implementation of Conservation Objectives*

☐ *Special Institutional Pressures Working Against Local Implementation of State Conservation Objectives.* Oregon appears to have succeeded in implementing its development objectives even when there was local resistance, such as in the case of Goal 10. The development objectives had strong, economically motivated, interest group advocates. But reliance on local governments to implement state conservation policies is one of the fundamental flaws in the Oregon program.

The fact remains that most counties in Oregon remain steadfastly opposed to all of the conservation features of the planning program. This may be a reflection of the major role development interests play in funding campaigns for local governments.[311]

More fundamentally, it reflects local government dynamics; someone seeking a permit for a house or other use has a strong and focused interest. It may be worth $5,000 or $50,000 in lawyer and consultant fees to secure approval of a permit.[312] In contrast, opponents of development, at least in rural areas, cannot be expected to have the same level of interest or be able to muster the same financial resources.[313] They also will find it difficult to attend every hearing in order to oppose permits that may violate state law. Citizens begin to express their opinions forcefully on development only when the cumulative impacts of development begin to threaten their livelihood or quality of life. However, by that time most of the damage has been done. This is why a state role was necessary in the first place: to balance individual interests in particular projects against public interests in the overall development pattern of land.

Elected officials and planners are often forced to choose between equally unattractive alternatives. They can make a constituent happy by granting a permit in violation of the plan and regulations, or they can obey the regulations and plan, deny the permit, and make the constituent angry. In the first case, the public benefits and in the second it is harmed; but in both cases the public interest is unvoiced.[314] And decisions to issue permits in violation of the law can be defended as an expression of democratic local control, even if the reality is that only applicants and vested interests are the beneficiaries of this "local control."[315]

☐ *Remedies to Political Dynamics Hostile to the Conservation Objectives.* There are remedies for this local political dynamic. The most straightforward remedy is to recognize that the former system of "local control" and permit-by-permit decisionmaking created the problems that now necessitate reform. Since the state articulated the conservation policies on behalf of a statewide public, the state should assume responsibility for their administration. The state, not local governments, should control development permits in conservation areas, just as states now administer clean air and clean water laws. Centralized control is no panacea and its bureaucratic features may be distasteful. But citizens must decide which is more important: local control or planned growth. Still, other measures can assist in implementing state policies that face resistance at the local level.

In order to separate the politics of choosing policies from the quasi-judicial task of policy implementation, local governments should be encouraged to use hearings officers to decide appeals.[316] Politicians are elected to make policy and they often give in to the temptation to remake policy at every contested case hearing. Appeal hearings by elected officials tend to reinstitute ad hoc land use planning. They also consume large amounts of time. By delegating their quasi-judicial land use role to hearing officers, elected officials insulate themselves and these decisions from improper political influences.

Success in achieving conservation and development objectives has been greatest when the applicable statute, Goal, or administrative rule is implemented by clear and objective standards, preferably numeric, or by reference to standards

311. Here is an example reported by an Oregon newspaper: "County Board Chairman Bonnie Hays has persuaded the board to reopen a land use case on behalf of a company which made sizable cash contributions to her 1986 election campaign." *County Reopens Quarry Case*, HILLSBORO ARGUS, July 12, 1988, at 1, col 1. But this phenomenon is hardly unique to Oregon. *See Study Reveals Local Politics Is Flush With Money That Still Remains Largely Unregulated*, CAMPAIGN PRACTICES REP., Oct. 16, 1989, at 2-5.

312. This may be so especially if these costs are deductible business expenses, which they may be for the applicant but not for an opponent.

313. "A dead giveaway of the county's view of land use planning was the director's statement: 'There aren't [sic] enough money and lawyers to challenge all these decisions—just the big ones.' ... Local control in Coos County has resulted in ... the restriction of citizen participation." Watkins, *What "Local Control" Means to Me: The Perspective of Citizens With Personal Experience*, LANDMARK, Spring 1989, at 23. Rancher Roy Hearne said "[t]he state cannot expect private citizens to pay taxes to a county that approves illegal developments and then use their own money to protect the resource land against the county decisions. County governments must become more responsible in their decisionmaking or be put out of the decisionmaking process." *Id.* at 24.

314. Furthermore, experience in Oregon suggests that farmers, tree farmers, and other rural residents dislike the conflict associated with opposing land use requests. They know that if they oppose a project and lose, they have created a hostile neighbor. Many of them have no familiarity with the quasi-judicial hearing process and feel very uncomfortable in that setting. It is easier on their pocket book, schedule, and blood pressure to assume that the law itself is protecting their interests. In general, they do not attend meetings and do not file appeals. The difficulties facing citizens opposing permits at the local level are discussed in Liberty, *The Oregon Planning Experience: Repeating the Success and Avoiding the Mistakes*, *in* CHESAPEAKE BAY POLICY, *supra* note 309, at 45.

315. "Actions of the planning commission seem designed, first, to circumvent the law and second, to intimidate those who oppose illegal development so they drop their opposition." Robert C. Mason, Testimony Before the Oregon House Environment and Energy Committee 2 (Apr. 24, 1989). For a revealing look at how the "old boy" system manipulates the land use laws, see Cockle, *The Education of a Former Union County Commissioner*, OREGONIAN, Apr. 27, 1988, at B11, col. 1.

316. Several local governments in Oregon already use hearings officers for all appeals, or all appeals not raising important precedential issues. These include the city of Portland and Clackamas, Jackson, and Lane counties.

or data outside the influence of politics. The same is true with respect to the local comprehensive plans implementing the state planning objectives. Other states should make it a requirement that all regulations be clear and objective and that plan provisions be written in clear language according to a standard format or formats.

Much of the opposition to implementing conservation objectives is created by individual applicants who have purchased property in ignorance of state laws that limit development opportunities, even when those laws have been in effect for many years. States should adopt zoning disclosure requirements to protect would-be purchasers of property. By requiring purchasers to sign statements indicating their understanding of the restrictions limiting their opportunity to develop their property, the state will avoid creating incentives for bending or ignoring the law to respond to the plight of innocent purchasers.[317]

Local government planning and legal staffs need to be held to a new standard of professionalism. All too often permit applicants are treated as clients to be served by the planning staff and opponents are regarded as selfish intruders.[318] Appeals are regarded as unpleasant disruptions of the smooth process of permit issuance rather than as an essential part of citizen participation and public review. A new code of ethics is needed for local government planning staffs that forbids favoritism and requires allegiance first and only to the impartial execution of local and state planning laws and objectives.[319]

*Monitoring by Nongovernmental Organizations*

Two years after Senate Bill 100 was passed, Oregon Governor Tom McCall founded 1000 Friends of Oregon as a private, nonprofit organization dedicated exclusively to monitoring implementation of the new program. 1000 Friends provided special emphasis on elements of the program that particularly needed an advocate, such as the implementation of the Goals for preserving farm land and requiring inclusionary zoning for multifamily housing.[320] The organization initiated a great deal of the early litigation over the Goals and the statutory elements of the program for the express purposes of establishing precedents.[321] It also participated extensively in the review and appeal of comprehensive plans during the acknowledgment process,[322] and continues to play a large and often controversial role in shaping the evolution of the program in the legislature, before the LCDC, in the courts, and at the state and local levels.[323] It has become the model for similar organizations, or new projects by existing environmental organizations, in many states including Florida, Hawaii, Maine, Massachusetts, Rhode Island, Vermont, and Washington.[324]

*Maintaining Political Support*

A comprehensive growth management program will never be adopted or succeed if it cannot attract and retain sufficient political support. The objectives of the program can determine its political viability. Several of the features described in the preceding section can be used to create constituencies in favor of growth management legislation. Two additional elements may broaden the base of support for reform.

☐ *Balanced Objectives.* A comprehensive growth management program that integrates both conservation and development objectives can rally support from a spectrum of powerful, and otherwise often adversarial, political groups. The balance of objectives in Oregon's program bears this out.

Oregon's program was the subject of three initiatives to repeal all or essential elements of the land use planning laws during the first decade after it was enacted. The first two repeal initiatives were defeated by wide margins.[325] During the 1982 repeal campaign, a surprisingly wide array of interests spoke out against repeal, including Oregon's largest Chamber of Commerce,[326] the Oregon AFL-CIO,[327] the League of Oregon Cities,[328] well-known industrial-

317. In 1989, the Oregon legislature adopted the following disclosure requirement:

> (2) In all owner's sale agreements and earnest money receipts, there shall be included in the body of the instrument the following statement: .... THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM AND FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITTLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES ....

OR. REV. STAT. §93.040 (1991).

318. *See supra* note 315.

319. The current version of the Code of Ethics of the American Planning Association simply does not address the special responsibilities of local government planners as administrators of state and local land use regulations. AMERICAN INST. OF CERTIFIED PLANNERS, AICP CODE OF ETHICS AND PROFESSIONAL CONDUCT (Sept. 1981).

320. 1000 FRIENDS OF OREGON, FOUR YEAR REPORT: 1975-1979 (1979); 1000 FRIENDS OF OREGON, REPORT FOR THE SEVENTH YEAR: 1975-1982 (1982); 1000 FRIENDS OF OREGON, LANDMARK: TENTH ANNIVERSARY ISSUE (1985).

321. *Id.* "1000 Friends' batting average has been nothing less than sensational.... Their work has been done so well ... that 1000 Friends has bee responsible for nearly all of the major land-use rulings issued from the courts or from LCDC in the past two years." OREGON J., Mar. 26, 1978, at D1, col. 4.

322. 1000 Friends of Oregon was the petitioner or provided the counsel for the petitioners in all but two of the 22 acknowledgment order appeals listed *supra* note 34.

323. One of 1000 Friends of Oregon's projects is its Cooperating Attorney Program, which refers citizens to attorneys for representation without fees for clients whose cases will help enforce the land use laws and advance the objectives of the program. Between 1982 and 1989, 110 cases were handled by Cooperating Attorneys, of which 78 percent were resolved favorably. 1000 FRIENDS OF OREGON, 1000 FRIENDS OF OREGON'S COOPERATING ATTORNEYS PROGRAM: 1982-1989 (1989); DOCKET CASE NUMBERS 1-110 (undated). For a description of subsequent activities of the group, see 1000 Friends of Oregon's periodicals, the *Newsletter* (1975 to 1991) and *Landmark* (1985 to present).

324. 1000 Friends of Oregon, DEVELOPMENTS, Winter 1990, at 2.

325. The first repeal initiative in 1976 was defeated by a margin of 14 percent. 1983-1984 OREGON BLUE BOOK 363 (1984). The 1978 repeal initiative was defeated by a 20 percent margin. 1989-1990 OREGON BLUE BOOK, *supra* note 90, at 406. Despite attempts to gather enough signatures, a repeal measure has not made it to the ballot since 1982. *Id.*

326. The board of the Portland Chamber of Commerce voted 30-1 to oppose the repeal measure. Gray, *Threat to State's Recovery*, OREGONIAN, Oct. 29, 1982, at C9, col 3.

327. *Id.* at C9, col 4. The Board of Directors of the Oregon AFL-CIO voted 23-3 to oppose the repeal measure.

328. *Id.* The League of Oregon Cities' board voted 26-3 to oppose repeal.

ists,[329] affordable housing advocates,[330] the state's largest association of homebuilders,[331] and past and present governors and gubernatorial candidates from both parties.[332] Opponents included the Association of Oregon Counties, the Associated General Contractors, timber corporations, and some farm organizations.[333] In addition, votes against repeal were cast by citizens from across the economic spectrum.[334] The 1982 repeal was defeated by a decisive 10 percent margin.[335]

☐ *Use of Transferable Development Rights to Reduce Perceived Inequities.* A balanced program can also be used to soften the economic and political effect of a program's conservation elements, even when no compensation is due for the regulation of land uses.[336] Persons who bought land later zoned for farm and forest uses whose development expectations are disappointed could be partially compensated by allowing them to share in the windfall accruing to owners of lands where more intense development was to be encouraged. For example, the owners of lands whose development expectations are highest could be compensated with transferable development rights,[337] to be used to authorize higher residential densities in the urban land that is designated for rezoning to allow for more uses with higher economic value ("upzoning").

## Conclusion

Land use planning in America has involved deference to the free market, private property rights, and local control. Purely advisory comprehensive plans adopted by local governments that do not reflect state perspectives have failed. The degradation of the environment and the social quality of urban life, the senseless destruction of land resources, and the financial costs of sprawl are the prices we have paid for blind adherence to this ideology. Citizens and elected officials are recognizing that perpetuating historical patterns of development is not progress, and that the quality of life depends as much on conservation and government regulation as on development and private enterprise. As one state after another experiments with balancing conservation and development, they will find much to learn from Oregon's experience.

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329. *Id.* at C9, col 3. Executives from Nike, Tektronix, Omark Industries (a chain saw manufacturer), and the plant siting executive for Hewlett-Packard all spoke against Measure 6, which was particularly important in the context of the state's economic recession. Supporters of repeal held the planning program responsible in part.

330. The state housing council, an advocate for housing equity, opposed repeal. State Housing Council, Oregon State Housing Council Opposes Ballot Measure #6 (Oct. 18, 1982) (press release).

331. The Board of Directors of the Metropolitan Homebuilders Association of Portland voted unanimously against supporting repeal, while the State Homebuilders Association was too divided to take a position. *Same Arguments Used for and Against 6,* OREGONIAN, Oct. 31, 1982, at D7, cols. 3-5. The Metropolitan Home Builders Association continues to support the planning program. *See also* Hales, *LCDC Is Not a Four-Letter Word,* VI BUILDING INDUSTRY J., Feb. 1991, at 3, cols. 1-2.

332. Former Republican Governor Tom McCall, former Democratic Governor Bob Straub, incumbent Republican Governor Vic Atiyeh, and Democratic gubernatorial candidate Ted Kulongoski were all opposed to the repeal initiative. *Measure 6: Oregon's Land-Use Planning on the Line,* OREGONIAN, Oct. 10, 1982, at D8, cols. 1-5.

333. *Id.* at col. 3. Favoring repeal were the Oregon Cattlemen's Association and the Oregon Grange. The Oregon Farm Bureau Federation remained neutral, although it had adopted a policy for continued strong planning to protect farm land from nonfarm development. *Same Arguments Used for and Against 6, supra* note 331, at col. 3.

The largest contributors to the repeal efforts were the following timber corporations: Georgia-Pacific ($10,000), Weyerhaeuser County ($4,000), Seneca Timber Co., ($3,500), Longview Fibre County, Davidson Industries, and Stimson Lumber Co., ($1,000 to $2,000). *Ballot Measure Gifts Listed,* OREGONIAN, Oct. 15, 1982, at C8, col. 3.

334. Critics of environmental regulation have often alleged these programs reflect the selfish interests of the social and economic elite. *See* W. TUCKER, PROGRESS AND PRIVILEGE: AMERICA IN THE AGE OF ENVIRONMENTALISM (1982). This theory does not hold up to an analysis of the voting results from the 1982 repeal campaign, which showed that there was either no correlation or a slight negative correlation between opposition to repeal and the planning laws. Knaap, *Self-Interest and Voter Support for Oregon's Land Use Controls,* 53 AM. PLANNING ASS'N J. 92, 96 (1987). Some of the poorest and wealthiest precincts in Portland had almost identically wide margins against repeal in 1982. *Staff Attorney Shares Panel 1 With Former EPA Head,* LANDMARK, Spring 1984, at 30-31.

These results have been confirmed by other studies from other states.

> Taken together, these studies suggest that support for growth management is a complex phenomenon strongly related to perceived environmental quality problems and, to a lesser extent, to concerns about taxes and government spending. Little confirmation has been found for the argument that growth management support is limited to members of the upper and middle classes, or that it is motivated primarily by desires for exclusivity.

URBAN LAND INST., *supra* note 185, at 11 (summarizing research into growth management attitudes).

335. 1989-1990 OREGON BLUE BOOK, *supra* note 90, at 407.

336. The U.S. Constitution, as currently interpreted, gives wide latitude to the regulation and restrictions on the use of land. For a review of some recent notable decisions and their implications, see Michelman, *Takings, 1987,* 88 COLUM. L. REV. 1600 (1988).

337. For a discussion of the concept of transferable development rights and their application to a farm land preservation program, see R. COUGHLIN & J. KEENE, *supra* note 238, at 174-79.

# The Pollution Prevention Act of 1990: Emergence of a New Environmental Policy

by E. Lynn Grayson

*Editors' Summary: EPA's toxics release inventory (TRI), compiled under §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), is the most comprehensive national database on toxic chemical emissions. TRI data have helped direct national, state, and local efforts to evaluate patterns in industrial toxic pollution, and have been instrumental in attempts to encourage industrial source reduction, such as EPA's 33/50 initiative, which aims for a 33 percent voluntary reduction of releases and transfers of 17 high-priority TRI chemicals by 1992 and 50 percent by 1995. EPA estimates that in 1989, manufacturing facilities required to report under EPCRA §313 released into the environment or transferred off site 5.7 billion pounds of chemicals. EPA derived these 1989 estimates from data in 81,891 forms that 22,569 facilities submitted to comply with EPCRA §313. Although the TRI fills an information gap on industrial chemical pollution, it covers only the tip of the toxic iceberg. More than 95 percent of all chemical emissions—about 400 billion pounds—goes unreported each year. The TRI's role in promoting and assessing pollution prevention efforts has been accordingly limited.*

*The Pollution Prevention Act of 1990 broadens the TRI's role in reducing chemical source pollution. The Act makes pollution prevention reporting mandatory by requiring each TRI-regulated facility to file, beginning July 1, 1992, a source reduction and recycling report with its TRI reporting form. This source reduction and recycling report will detail the amount of source reduction achieved for each TRI chemical, as well as the pollution prevention methods employed. This Article examines the Act's new reporting obligations for TRI-regulated industries. The author discusses the reasons behind industry's cautious response to the Act, ranging from implementation costs to mandated process changes and potential enforcement ramifications. Observing that the Act imposes costly, increased reporting burdens on the very businesses from whom EPA hopes to receive support for its pollution prevention objectives, the author concludes that industry's cooperation with the Pollution Prevention Act may depend on obtaining assurances that prevention costs expended today will not result in higher costs from new regulatory mandates tomorrow.*

A new environmental policy aimed at preventing toxic chemical pollution was initiated by the Pollution Prevention Act of 1990 (the Act).[1] The new Act's goal is pollution prevention, or in more practical terms, pollution source reduction. Traditional waste management methods are cast aside in favor of a more proactive recycling and waste generation avoidance strategy.

The new law, in theory, addresses an admirable goal: Pollution should be prevented or reduced at the source. Any pollution that cannot be prevented should be recycled in an environmentally safe manner. Disposal or release of waste into the environment is a last resort that should also be conducted in a safe manner.

The reality of complying with the new policy calls into question the prudency of the Act. The new law imposes costly, increased reporting responsibilities on the very businesses from whom the U.S. Environmental Protection Agency (EPA) hopes to receive support for the accomplishment of its pollution prevention objectives. Specifically, the Act requires that regulated entities provide source reduction and recycling information for every toxic chemical reported on the annual toxic chemical release form.[2] EPA's economic analysis estimates that a maximum of 28,000 facilities are expected to submit a maximum of 112,000 reports on toxic chemical releases in 1992.[3] This new compliance cost to industry of reporting pollution prevention information is estimated to be $49.5 million the first year and more than $36 million in all subsequent years.[4]

This Article examines the Act and explains pollution prevention through source reduction. It further discusses and evaluates the new reporting obligations for businesses.

Ms. Grayson is a member of the environmental practice group of the Chicago law firm of Coffield Ungaretti & Harris. Ms. Grayson is the former Chief Legal Counsel for the Illinois Emergency Services and Disaster Agency, and in the past served as an Assistant Attorney General for the state of Illinois in the Environmental Control Division. The author gratefully acknowledges the editorial assistance of colleague Elizabeth S. Kucera.

1. Pub. L. No. 101-508, §§6601-6610, 104 Stat. 1388, 1388-321 to 1388-327 (codified at 42 U.S.C.A. §§13101-13109 (West Supp. 1991)).

2. 42 U.S.C.A. §13106. *See also* Emergency Planning and Community Right-to-Know Act (EPCRA) §313, 42 U.S.C. §11023, ELR STAT. EPCRA 006 (toxic chemical release inventory reporting requirements).

3. 56 Fed. Reg. 48475, 48500 (1991).

4. *Id.*

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# Environmental zones leave developers dazed, confused

## *Home Builders Association goes head-to-head with city over E-zones*

*By Jeff Manning*

FOR PORTLAND DEVELOPER Gerry Engler, his Streamside subdivision has been a headache from day one.

First his paving subcontractor didn't complete the Southwest Portland development's roads before the winter rains hit, which made the job much more expensive. Worse, the influx of wealthy out-of-staters slowed, softening the market for Streamside's upscale homes.

But the subdivision really came a cropper in February 1992, after Engler sold one of the development's 21 lots. The buyer was horrified to learn her parcel had essentially been placed off-limits by city planners the year before. The Portland Planning Bureau had placed most of the lot in an environmental preservation zone, part of a citywide effort to save natural areas.

Engler claims he knew nothing of the zoning change. The land was zoned for single-family residential use when he obtained city approval for the subdivision in 1987.

Nevertheless, the buyer slapped him with a lawsuit alleging fraud. She asked for her $60,000 back plus $1 million in damages.

"They went into the city to get their permit and the city basically laughed in their face," an embittered Engler says. "That's when I got a crash course in this environmental protection crap."

The suit is still pending. But Engler says he will probably have to buy the property back. "What this means to me is that an agreement with the city is not an agreement at all," he says. "They can approve a subdivision and, boom, turn around and change the rules."

### *Bad equation?*

Engler is one of many developers and homeowners frustrated by the city's environmental zones, which it began implementing in 1989. Developers say the regulations are confusing, overly restrictive and expensive. Even owners of existing houses in the environmental zones have been forced to hire architects, engineers, even wetlands and wildlife experts to justify simple additions to their homes.

After hearing complaints about the restrictions for three years, the Home Builders Association of Metro Portland and a related pro-development group, Common Ground, have taken the city on. In April, the powerful lobbying groups appealed the city's environmental zone regulations to the state Land Use Board of Appeals.

"Our primary legal thrust is that these regulations add cost, delay and confusion with very little environmental benefit," says Portland attorney Jeff Bachrach, who is representing the homebuilders. "That's a bad equation for the homebuilders. That's a bad equation for the public."

Some powerful players at city hall appear to be increasingly sympathetic with the developers. Mayor Vera Katz has often criticized the city planning bureau for its inflexible ways. City Commissioner Charlie Hales has assembled a citizens' advisory committee that will study ways to make the environmental zones less onerous to property owners.

Also in September, Hales ousted popular Portland Planning Director Bob Stacey. Both Hales and Stacey say the firing was more a matter of style and goals than of any particular incident. Yet few insiders felt it a coincidence that Hales ousted Stacey, one of the primary supporters of environmental zones, and then set about streamlining the environmental zone regulations.

Hales, who incidentally worked for the Home Builders Association before winning election to the City Council, oversees the city's planning bureau.

Hales was unavailable for comment.

### *The cost of livability*

The flap over the environmental zones is likely a harbinger of things to come in the Portland area. The conflict between environmental protection and what are perceived as sacred landowners' rights will only get more intense as the region's population swells.

The environmental zones are intended to help preserve the region's vaunted "livability." Environmentalists argue that as the city's population density increases, the presence of natural areas and green spaces becomes all the more crucial.

The homebuilders have said repeatedly that they aren't against environmental protection. But they do object to what they call the city's rigid, complicated and time-consuming way of implementing the policy.

City planners say sound environmental reasons lay behind all the zone changes. The approximately 2,200 acres set aside in the Balch and Fanno creek watersheds, for example, are seen as key portions of the heavily wooded West Hills ecosystem. Balch Creek is also considered an important link in the Coast Range-Forest Park wildlife corridor.

Supporters add that the new zoning is not locking up prime development property. "Mainly it's the areas with trees and creeks left," says Al Burns of the Portland Planning Bureau. "It's the high, steep stuff and the low, wet stuff," adds Burns.

Gerry Engler's peaceful Streamside subdivision has been disturbed by disputes over how the property may be used. Portions of the subdivision have been placed in a protected environmental zone.

Julie Keefe

### *Putting it in perspective*

A little history makes the current controversy a little easier to understand.

The Oregon Land Conservation and Development Commission (LCDC) approved the city of Portland's comprehensive land-use plan way back in 1981. Like every other municipality in the state, Portland had to prepare a mammoth document establishing land-use zones and an urban growth boundary.

For political reasons, the LCDC had to show that it was making some progress. So it approved Portland's plan despite several shortcomings. Recognizing this, the LCDC added several conditions to its approval—one of them being that the city in the future fine-tune its plan to comply with Goal 5 of the state's land-use law—environmental protection within urban growth boundaries.

As required by statute, Portland's comprehensive plan was subject to an LCDC "periodic review" in 1986. Burns says the city's plan received a favorable review except for the fact that it still had done nothing to comply with Goal 5.

The state ordered the city to deal with the shortcomings.

Since then, city planners have considered about 20 percent of the city's land mass as worthy of some sort of protection. The Columbia River South Shore,

CONTINUED ON PAGE 9A



# About 20 percent of city land eyed for environmental preservation

CONTINUED FROM PAGE 3A

stretching from Kelly Point to Oresham, was the first to receive the new zoning overlay in 1989. Balch Creek, near the summit of West Burnside, came next in 1991.

Johnson Creek, the Southwest Hills, the East Buttes and Terraces, and most recently Fanno Creek in Southwest Portland have received similar scrutiny. The Portland City Council approved the Fanno Creek zoning in April, putting nearly 23 percent of the Fanno watershed (nearly 1,100 acres) under some kind of environmental restriction.

Interestingly, the two most vocal critics of the environmental zones on the City Council, Katz and Hales, both voted in favor of the Fanno Creek designation.

Portland's regulations establish two levels of environmental protection—preservation zones and conservation zones. Building on a preservation zone is all but impossible. Building on a conservation-zoned parcel is more realistic, but it takes patience and flexibility to abide by the city's requirements.

*Vera Katz and Charlie Hales both voted in favor of the Fanno Creek designation.*

Deep pockets help, too.

George Crandall is a prominent Portland architect and an avid supporter of land-use planning. But he became part of the environmental zone controversy last summer when he sought permission to build a 600-square-foot addition to his Northwest Portland house, located smack in the middle of the Balch Creek environmental zone.

Despite the relatively modest size of the project, the planning bureau required Crandall's project to undergo a full-blown design review. At one point, the bureau objected to the placement of a silt fence, intended to lessen erosion, because the fence crossed from an environmental conservation zone into a more restrictive preservation zone.

"There's that kind of separation from site-reality," Crandall says. "They're very nit-picky."

Crandall kept a detailed log of the time he spent working with the planning department. By the time building started this summer, 12 months after Crandall began the process, he reckons he spent two weeks, or 80 hours, on the process.

His experience has not turned Crandall against land-use planning. In fact, Crandall is hopeful that Hales and his committee can take some of the sting out of the environmental zone process, in large part to preserve public support.

"It's really not necessary to put people through this," he says. "My concern was that we not turn people off to planning. Multnomah County has always been the bastion for land-use planning. If we lose it, we could lose the rest of the state." □

*9 FLOOD INSURANCE: BILL EXCLUDES EROSION-PRONE PROPERTIES

Legislation intended to strengthen the federal flood insurance program passed the House Banking Committee on 11/4 by a vote of 40-10. The bill, sponsored by Rep. Joseph Kennedy (D-MA), aims to tie premiums to risk and to minimize repeat claims filed by property owners who are flooded out over and over again. The bill's "most controversial" provision would stop sales of federal flood insurance for new construction on coastal properties that geologists believe will erode away over the next 30 to 60 years. More than 32% of losses to the flood insurance fund result from only 3% of claims against it -- many from houses that "erode into the ocean as part of natural beach shifts." The bill would also limit coverage on renovations, forbidding them if the improvements made a house more difficult to move. The National Flood Insurance Program was created in the mid-1970s to provide disaster coverage for flood-prone areas where private insurers hesitate to underwrite policies (Laura Michaelis/ CONGRESSIONAL QUARTERLY, Little Rock ARK. DEM-GAZETTE, 11/5).



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