

LAND USE PLANNING INFORMATION FOR THE CITIZENS OF OREGON



Governor Tom McCall signed Oregon's Statewide Land Use Planning System into law in 1973.
Photo courtesy of the Oregon State Archives.

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Introduction

Oregon’s statewide land use planning system, one of the country’s first, passed in 1973. In the more than thirty years since Oregonians created the land use planning system, the state has changed economically, demographically, and politically, raising questions about whether the system is relevant and how it can mature to address new challenges.¹ The November 2004 passage of Ballot Measure 37, which created a new statute requiring state and local governments to either waive land use regulations or compensate landowners when a regulation reduces a property’s fair market value, crystallized many of the challenges confronting the system.²

Katie Shriver and I have worked together for about eight months to gather information relative to land use planning from many sources. Our goal has been to make it useful, accurate, and non-biased so that people who were not here in 1975 can gain a sound background on this large issue and also refresh the memories of those who were here back then. I am a lifelong Oregonian, proud of the state, and wish to see Oregon prosper in the future and still be a pleasant environment to live in as we absorb several million more people – this is a big assignment for any state.

This white paper seeks to provide facts about the history of land use planning in Oregon while also identifying some of the key challenges facing planning in the future. It also includes useful information about the work of the Oregon Task Force on Land Use Planning (the “Big Look” task force) and about some of the key research projects that should help provide some answers to current problems. The paper includes the following 7 sections:

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I. Brief History of Oregon's Land Use Planning Program and the Challenges To It

Prior to 1970, local governments in Oregon either did not zone rural land or zoned it for residential development. In 1970, experts projected that the population in the Willamette Valley would grow by an additional 1,000,000 people by year 2000. Governor Tom McCall and key legislative leaders worried that the combination of “anything goes” zoning of rural land and rapid growth would result in new random development that would threaten future farm and forest income. Specifically, these leaders expressed concerns that new rural development would interfere with essential farm and forest practices and raise taxes on farm and forest lands. As a result, the 1967, 1969, 1971, and 1973 Oregon Legislatures made productive use of farm and forest land a basic state policy. No legislature since 1973 has altered this basic goal.^{3, 4}

Oregon's statewide planning goals grew out of Senate Bill 10, which passed in 1969 and established a basic program for statewide planning. Senate Bill 10 required local governments to draw up comprehensive plans and established ten goals to guide cities and counties in their planning. Senate Bill 10 created controversy based on objections relative to property rights and local control. Measure 11 on the November 1970 ballot sought to repeal Senate Bill 10. Voters defeated this repeal effort by a vote of 56 percent to 44 percent.⁵

In 1973, the legislature replaced Senate Bill 10 with Senate Bill 100, which regulated land use far more extensively. With Senate Bill 100, the 1973 legislature created the Land Conservation and Development Commission (LCDC) and directed it to establish new statewide planning goals and guidelines by January 1, 1975. The legislation listed eleven “areas and activities” for priority consideration as LCDC developed its goals.⁶

After extensive public review and dozens of public hearings and workshops, LCDC adopted fourteen statewide planning goals in December, which took effect on January 25, 1975.⁷ In 1975, LCDC adopted Goal 15, which affected the Willamette Valley Greenway. In 1976, LCDC adopted Goals 16 through 19, which address coastal resources. (See Exhibit A for a brief description of these 19 goals.) Over time there have been 33 amendments to these 19 goals.

At about the same time as the 1973 legislature passed Senate Bill 100, it also passed Senate Bill 101, a property tax relief bill that awarded tax reductions to owners of farm and forest lands. In practice, this reduced the assessed value of farm and forest land by 77 and 89 percent respectively.⁸ The legislature required county assessors to levy taxes on lower “special valuations” instead of real market valuations. This, in effect, indirectly compensated farmers and owners of timber lands for land use restrictions and lowered their annual fixed operating costs. From 1974 to 2004, farmers received a total of over \$3.8 billion in tax relief. Non-industrial forest land owners, as opposed to industrial forest land owners, reaped the majority of the forest land benefits. From 1976 through 2004, owners of tax-deferred timber land received about \$1 billion in tax relief. In total, urban Oregonians have invested about \$4.8 billion in farm and timber lands for the period 1974-2004 by supporting these subsidies and foregoing other public benefits.

A draft study scheduled to be released late fall 2006 by the American Land Institute details in depth this tax relief program, which gave indirect compensation to farmers and forest owners. Excerpted quotations from pages 63 and 68 are interesting:

Critics of Senate Bill 100 have argued farm and forest zoning is unfair because a few rural land owners bear the regulatory burdens of zoning while a much larger number of urbanites and suburbanites reap the benefits of rural zoning. In fairness, the argument goes, urban and suburban landowners should either compensate rural landowners who bear the burden, or zoning restrictions on farm and forest land should be waived. Measure 37 advocates prominently made this argument.⁹

Unknown to most Oregonians, since 1974, tax laws for farm and forest land have caused the “many” urbanites and suburbanites who benefit from farm and forest land zoning to compensate for the “few” rural landowners who are supposedly burdened by farm and forest zoning. This has been done, year by year, by tax reductions worth \$4.8 billion.¹⁰

These tax reductions did not come from Heaven. Rather, Oregon taxpayers who do not own farm and forest land have financed this \$4.8 billion in compensatory tax reduction in the form of higher urban and suburban property taxes and service cuts.¹¹

This example makes this compensatory tax shift clear: In tax year 2003-04, in the 9 counties of the Willamette Valley, each of the 32,848 people living on special assessment value (SAV) farm areas received the equivalent of \$1,541 per capita property tax reduction. At the same time, each of the 2.4 million urbanites and suburbanites not living on SAV farm areas paid \$21 on a per capita basis, either through additional property taxes or by receiving fewer services. For forest land, the corresponding numbers are \$1,105 and \$15 per capita. These \$21 and \$15 per capita payments by non farm and non forest dwellers likely would be considered by most a small cost for paying for the preservation of farm and forest land and to enjoy the visual open space thus provided.¹²

For more detail about the history and the emotional impact of Governor Tom McCall on land use laws, please read Exhibit B, “The Place We Call Home,” an essay by William G. Robbins, Emeritus Distinguished Professor of History at Oregon State University. This essay tells an interesting story of how Oregon’s land use laws came into being, the conflicts then, the efforts of property rights advocates to repeal or change the laws, and the ongoing tension between property rights, the free market, and the greater public good. The start of one paragraph reads, “And that brings me to the critical issues engaged in this essay – land use, property rights, and privatization issues and their relation to the larger community’s welfare. Are there obligations to the greater common good in owing property? Should our political institutions preserve and protect public open spaces for the recreational and aesthetic enjoyment of all citizens?”

Since the inception of land use laws and regulations, “just compensation” has been an ongoing concern due to alleged lost value caused by regulations. To learn about Oregon’s recent history on this general topic, please read Exhibit C, “Reconstructing the Land Use Policy Debate: ‘Windfalls and Wipeouts’ in the Implementation of Statewide Land use Planning Oregon, 1973-2004,” a research paper by John Hall, a doctoral student and graduate research assistant at the Center for Urban Studies at Portland State University. This paper is a good discussion of the labors various governors and legislatures have gone through in an effort to establish policy regarding “just compensation” and designating sources of funding. It starts with Governor Tom McCall and ends about 1996 with no resolution of the problem after about 20 years of effort. It also contains some discussion of “windfall profits” and “wipeouts” and how, hopefully and if used together, these two factors could offset costs.

Exhibit D is a paper titled, “Property Rights: Contested Compensation.” The paper is by Ellie Fiore and published in Summer 2004 by the Oregon Chapter of the American Planning Association (OAPA). This white paper provides more useful information on the conflict of property rights and compensation. It comments on the growth of the property rights movement, “conservative populism,” and discusses the possible effects and probable excessive uncertainties facing us with the passage of Measure 37.

In regard to “just compensation,” the excerpts of two other publications are well worth reading to gain more insight and understanding of this issue. Both were written after a 57 percent favorable passage of Measure 7 in year 2000, which required that just compensation be paid equal to the reduction in the fair market value of the property – the Oregon Supreme Court declared Measure 7 unconstitutional on procedural grounds on October 9, 2002. Undoubtedly there are many more published articles on this topic, but the two here are:

- Exhibit E is the Executive Summary of a 2002 City Club of Portland report, “Measure 7 and Compensation for the Impacts of Government Regulation.” This is a 68 page report. Just the Executive Summary is reproduced here for your review; the body of the report contains much more background data on “takings” and pro and con arguments.
- Exhibit F is “A Quiet Counterrevolution in Land Use Regulation: The Origins and Impact of Oregon’s Measure 7,” an article by Carl Abbott, Sy Adler, and Deborah Howe, professors at Portland State University and published in 2003 by *Housing Policy Debate*. This is a 42-page analysis – just the abstract and the conclusion are reproduced here for your review. The body of this article contains very interesting details about the pros and cons of planning and the turbulent political history of discontent that resulted in the passage of Measure 7 in 2000.

Opponents of land use planning and advocates of property rights have launched eight efforts, beginning in 1970, to either change or repeal the state’s land use planning system or bolster property rights. The list below details these efforts.¹³ These ballot measures highlight concerns about the land use planning system held by many in the state.

- In **1970**, 56 percent of voters rejected Measure 11, which would have added a constitutional amendment permitting local areas to vote on proposed rural zoning regulations.
- In **1976**, 57 percent of voters rejected Measure 10, which would have repealed Senate Bill 100 completely.
- In **1978**, 61 percent of voters rejected Measure 10, which would have repealed the land use planning goals established by LCDC and required the legislature to establish new goals.
- In **1982**, 55 percent of voters rejected Measure 6, which would have devolved much of the authority for the program from the state to the local governments.
- In **1998**, 80 percent of voters supported Measure 56, which required notice to be sent to property owners when the Oregon Legislature, LCDC, or cities or counties rezone property. Rezoning is an action that limit or prohibit uses of property that are currently allowed.
- In **2000**, 56 percent of voters rejected Measure 2, which Oregonians in Action sponsored. The measure would have added a constitutional amendment that created a process for requiring the state legislature to review administrative rules.
- In **2000**, 57 percent of voters supported Measure 7, which created a constitutional amendment requiring the state to compensate landowners when regulations reduced the value of their property. The Oregon Supreme Court declared Measure 7 unconstitutional on procedural grounds on October 9, 2002.
- In **2004**, 61 percent of voters supported Measure 37, which requires state and local governments to either waive land use regulations or compensate landowners when a regulation reduces a property's fair market value. The Oregon Supreme Court upheld the measure on February 21, 2006 and its impact is now being interpreted in a number of court cases.

II. THEN AND NOW: WHAT CHANGED BETWEEN 1975 AND 2006?

It is a changing world. Since 1975, there have been substantial changes in many elements of Oregon's business and people settings. Some of the key changes are discussed in this section.

Population:

- Oregon's population grew by more than 1.5 million people between 1970 and 2005, an increase of 71 percent. Today, more than 3.6 million call Oregon home.¹⁴
- The nine counties of the Willamette Valley (Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, and Washington) gained about 1 million people and now account for about 70 percent of Oregon's population.¹⁵
- Almost 50 percent of Oregonians here today either were not born or had not moved into the state when Senate Bill 100 became law.^{16, 17} These people might not understand the history or reasons why we have these planning guidelines. Those who migrated in may have come because they liked what they saw – but maybe they did not understand that the state's land use planning system was part of what made Oregon great.¹⁸
- The Hispanic population in Oregon has grown substantially since 1970, when the Census Bureau estimated through sample data that between 22,000 and 34,000 Hispanics lived in Oregon. The number of Hispanics in Oregon grew to more than 65,000 in 1980 and 353,000 in 2005. Moreover, growth in the Hispanic population has been rapid in recent years. Between 1990 and 2004, the Hispanic population in Oregon nearly tripled. Today 9.6 percent of Oregonians are Latino.^{19, 20}

Freeway Infrastructure:

- Much of Oregon's transportation network, like that of many states around the country, was complete by the mid-1980s.^{21, 22}
- The last major addition to Oregon's network of Interstate highways occurred with the construction of the Glenn Jackson Memorial Bridge over the Columbia River in 1982 as part of I-205.
- Since the 1980s, transportation investments have primarily focused on replacing, repairing, and expanding existing systems. This older system has seen the addition of almost 1.5 million more people plus the new traffic generated by the growth in the economy and requirements for materials and product movement.

Farms:

- There are more farms in Oregon today than there were in 1970. Today, over 40,000 Oregon farms cultivate over 17,000,000 acres of land compared to about 27,000 farms and about 18,000,000 acres in 1974.²³

- There are fewer commercial farms in Oregon today than there were in 1970.²⁴
- Oregon's total agriculture output grew from \$428 million in 1964 to \$3.8 billion in 2004.²⁵
- Approximately 40 percent of Oregon's farm and ranch acreage is owned by non-farmers who are renting or leasing the land back to farmers. The arrangement has helped keep nearly six million of Oregon's 15 million acres of agricultural land in production.²⁶
- The nursery business in Oregon has grown significantly. Data about the industry was first collected in 1992, when gross nursery and greenhouse sales totaled \$345 million. By 2004, gross sales totaled \$844 million, up 8 percent from the previous year.^{27 28}
- Oregon's wine industry is booming. The industry started in the 1960s with the establishment of a few pioneering vineyards. In 1970 there were just 5 bonded wineries and 35 recorded acres of vineyards. By 1980, this grew to 34 wineries and 1,100 acres. Between 1994 and 2004, the number of wineries in Oregon increased 60 percent to 247. Over the same period (1994 to 2004) the price per ton of Oregon wine grapes about doubled from just over \$800 per ton to just over \$1,600 per ton. The value of the wine crop in Oregon was \$36 million in 2004 and \$32 million in 2005 (decreased value due to a smaller crop).²⁹

Industry:

- Oregon manufacturing as a whole has remained fairly stable, but the mix of products has changed.³⁰
- Lumber and wood products manufacturing contributed 11.7 percent of Oregon's GSP in 1977, but dropped to just 2.9 percent of the state's GSP by 1997.^{31 32}
- Increases in electronics manufacturing more than made up for the drop in lumber processing. In 1977, electronics equipment manufacturing contributed about 0.5 percent of Oregon's GSP, but that figure jumped to 12.1 percent by 1997.³³ The electronics industry has struggled since 1997, but data suggests that Oregon is maintaining a strong electronics industry compared to the rest of the country. While electronics manufacturing employment in Oregon declined 15 percent between 2000 and 2003, national electronics employment declined 25 percent over the same period.³⁴
- The athletic and sportswear businesses have emerged as important Oregon employers.³⁵

Tourism:

- In 1987, the earliest year for which data are available, visitors spent about \$1.8 billion in Oregon and travel industries employed about 40,000 people.³⁶

- In 2005, researchers estimated that tourism generated about \$7.4 billion in the state. The travel industry in Oregon today employs just fewer than 89,000 people.³⁷

Housing:

- The average price for a home in the Portland metro area increased from about \$60,000 in 1980 to more than \$283,000 by the second quarter of 2006.³⁸
- Employment in the home building industry grew from 6,700 in 1990 to about 14,200 in 2005.³⁹
- Urban growth boundaries around the state have expanded.⁴⁰
- Urban areas are encouraging more housing infill on empty lots.⁴¹

III. Shortcomings of the Current Land Use System and Changes that Have Been Made

Many stakeholder groups and individuals cite problems they have with the state's land use planning regulations. These range from very specific complaints, perceived and real, about individual provisions to overarching and theoretical arguments about the use of government regulations. The list below includes many of these common complaints and perceptions.

- The land in a particular area is too poor to farm, ranch, or grow timber.
- The farm economy is too weak for a farmer to make a living.
- Farmers want to be able to sell off parcel(s) to retire or reinvest in farming operations.
- Farmers want to build dwellings for children.
- The "farm dwelling" standard (\$40,000 and \$80,000 income tests) are unreasonable.
- A landowner cannot build on his or her property although the surrounding properties have houses.
- The land use regulations changed and a person cannot do what he or she could have done before.
- The development permitting process is too complex, slow, and/or uncertain.
- The urban growth boundary is arbitrary and inflexible.
- The urban growth boundary increases the cost of housing.
- The attitude of government permitting staff is inflexible, hostile, and/or punitive.
- Non-voluntary streamside regulation in Metro areas is too invasive and it is a concern.
- Isolated tracts of land zoned for forest use are hard to manage because of conflicts.
- Aside from Metro and the Regional Problem Solving Process, there is no allowance for regional planning, defined as planning for more than the city and county levels. Regional planning should be an integral part of the process instead of an exception to the standard process.
- The system does not recognize regional differences.
- The planning system does not prioritize the goals.
- The system relies too much on regulation instead of incentives to achieve the goals.
- There should be more latitude for local jurisdictions to operate within the statewide framework.
- There should be more local control.
- Individuals want to be able to do whatever they want with their private property.

Changes in Land Use Planning Laws:

The legislature and DLCDC have made many changes to the state's land use regulations since 1973 in an effort to meet changing needs or resolve conflicts. Exhibit G lists changes to the statewide land use planning program's farm and forest rules since the beginning of the program – about 22 major changes have been made since 1975.

Although the statewide land use planning system primarily grew out of concern for limiting development in rural and forest areas, the system includes many provisions designed to encourage or support development. Many, but not all, of these pro-development rules apply to urban land. (See Exhibit H for this list.)

The original statewide planning system and changes to the system since 1975 include some provisions to allow local cities, counties, and regions to plan for their individual needs. The list in Exhibit I describes the existing tools counties can use to tailor the statewide planning system to their own needs.

As mentioned in Section I, since 1975 the number of statewide planning goals increased from 14 to 19. Over time these 19 goals have been amended 33 times.

Public Preferences:

Section I includes a recap of the eight past efforts via ballot measures to change or eliminate the statewide planning system or impact private property rights. Even with the many complaints listed in this section and the many changes to this system, there seems to exist amongst the majority of Oregon's citizens strong support for the concept of good land use planning. Recent polls in 2006 by the Big Look Task Force, Envision Oregon, and others seem to confirm this general opinion.

IV. FUTURE POPULATION GROWTH FORECAST

Oregon Population Growth:

Between 2004 and 2040, models predict the state's population to grow by 46 percent to 5.2 million, a gain of 1.7 million new people. The nine Willamette Valley counties will gain 54 percent more population or 1.3 million people. If this projection is accurate, 3.9 million people - about 73 percent of Oregon's total population - will live in the Willamette Valley in 2040. Projections identify the fastest growing counties as:

- Polk (109% growth),
- Washington (92% growth),
- Yamhill (87% growth), and
- Clackamas (74% growth).

Researchers expect over 82 percent of Oregon's population growth through 2025 to occur due to in-migration from other states and countries. Just 18 percent of the state's growth will occur due to births.⁴²

Oregon's Office of Economic Analysis also predicts that the state's population density (persons per square mile) will increase from 35.6 people per square mile in 2000 to 50.9 people per square mile in 2030.⁴³

Not mentioned elsewhere in this paper is the growth in the car population, so let's do it here as it is a big factor in any type of planning. In 1975, 1.6 million automobiles, buses, and trucks were registered in Oregon. By December 31, 2005, over 3.2 million automobiles, buses, and trucks were registered - a 100 percent increase.^{44 45} How many more will we have in 20 or 30 years? This is a point to consider.

More people and more vehicles should make us think about where they can live and be parked. What type of planning is needed? What types of employment will be available to our new citizens? What kind of economic growth is likely to happen? What new infrastructure in the way of schools, public buildings, highways, parks and open space, hospitals, airports, alternate transportation methods, and maybe even a new town or two will be needed?

A Perspective on the United State Population:

As news sources, including The Wall Street Journal, reported in October 2006, the United States population is 300,000,000 and growing.⁴⁶ (Oregon stands at 3,600,000, or 1.2 percent, of the U.S. total.) Additional reported data from The Wall Street Journal include:

- Population growth is projected to continue and reach 400,000,000 in 37 years. At current growth rates, the U.S. population will double in 70 years.
- The U.S. population hit 100,000,000 in 1915, 200,000,000 in 1967, and 300,000,000 in October 2006.

- Today about 50 percent of the total population live in suburbs or “exurbs” of metropolitan areas, up from 38 percent in 1970 according to the U.S. Census Bureau. Also, metropolitan areas are growing outward, which means more commuting and highways.
- Since the 1970s, people have been moving from the Northeast and the Midwest. Today, nearly 60 percent of the U.S. population lives in the South and the West, up from about 50 percent in 1970.
- Among immigrants, Hispanics are a large driving force behind population growth. They now account for 15 percent of the population, up from 4 percent in 1966. (Hispanics now account for about 9.6 percent of Oregon’s population.)

V. The Impact of Measure 37

In November 2004, Measure 37 passed with a vote of 61 percent. Measure 37 requires state and local governments to either waive land use regulations or compensate in cash land owners when a regulation reduces a property's fair market value. The Oregon Supreme Court ruled Measure 37 constitutional on February 21, 2006, but the court provided no guidelines for the fairness issue or transferability of rights to develop. Case study research suggests that if most claimants who receive approved waivers do proceed with development, the law will have a wide range of major impacts on neighbors, local governments, and local economies.⁴⁷ Its impact on all concerned is now being interpreted in a number of court cases.

Portland State University's Institute of Metropolitan Studies has developed a database of Measure 37 claims. The database is accessible online at <http://www.pdx.edu/ims/m37database.html>. Exhibit J, "Measure 37 Fast Facts – October 16, 2006," provides a snapshot of information about Measure 37 claims filed and action taken based on the database. The snapshot indicates that 3,383 claims have been filed, seeking compensation of about \$5.7 billion. To date about 53 percent of the claims have been decided. About 92 percent of those claims have been approved and waivers for development or use granted.

Because the counties and/or the LCDC do not have monies to pay compensation, they generally grant a full waiver exemption to the applicant who can then proceed with development after going through the local normal permitting process for any project. The amount of the claimed loss is seldom questioned because no funds are available; the applicant is generally claiming a high loss based often on current "monopoly" value – meaning he can develop and his neighbors cannot, which many feel is unrealistic.

Many informed people believe this is "extreme overcompensation" and the waiver should be just a partial waiver to enable the applicant to recoup his actual loss incurred when planning or zoning laws were adopted that limited or changed use of the property. For example, take the loss, if any, per acre, multiply by the number of acres, then compute interest on that loss compounded over 30 or so years, using a selected bond interest rate and arrive at a dollar amount. This is the real loss.

Oregonians in Action (OIA), in their December 5, 2005 brief to the Oregon Supreme Court, used the following hypothetical example to argue for a method of calculating compensation under Measure 37 to include earning opportunities lost, which is comparable to the above paragraph:

"If the state had confiscated \$1,000 from Smith's savings account for the purpose of providing a public benefit, and 32 years later it is decided by popular vote that this was unfair, presumably all would agree that repayment should include an amount to offset lost interest as well as principal. That is all that is required under Measure 37,"⁴⁸

Using OIA's argument and assuming that the real loss of an imposed regulation was determined to be \$10,000, that value today compounded for 30 years at 6 percent would be \$57,000; at 8 percent, the value would be \$100,060.

Some current and forthcoming studies and research seem to indicate that in many cases no loss happens when a governmental restriction goes into effect. In some cases, the value will go up and there is no loss to claim. Established law for compensation in eminent domain and takings cases calls for “just” compensation – no more, no less: too little is unfair to the owner while too much is unfair to the public.

The lack of clarity in the drafting of Measure 37 has presented an enormous challenge to state and local governments:

- Local and state governments are struggling to keep up with claims processing and have need for additional staff and funding.
- More claims are being filed.
- Many more lawsuits are pending and more will be filed.
- The state Attorney General’s office has defended over 60 lawsuits by claimants who believe the state has not provided all the relief Measure 37 affords them.
- This activity has caused ill-will among adjoining neighbors where one has filed and others haven’t.

As a recap, Measure 37 raises many specific questions for the state that must be answered. Some of these questions include:

- Should the state seek to amend or replace Measure 37? Should these changes happen at the legislature or through a ballot measure process?
- Should the legislature pass a law that provides more guidance to counties about how to process Measure 37 claims? For example, the state could develop and propose a "fairness measurement" that all levels of government could use when dealing with applications and compensation.
- Should the legislature establish a standard application form for Measure 37 claims across counties?
- The Oregon Attorney General ruled that land use waivers granted under Measure 37 are personal to the owner of the property. Therefore, the Measure 37 claimant cannot transfer the property and waiver to a new owner. Currently, four court cases have been filed relating to this transferability decision. Regardless of the outcome of these cases, the legislature could choose to resolve this issue. How should the state resolve this problem?
- Measure 37 does not clearly limit the amount of time property owners have to file claims. Should the legislature establish a deadline for filing claims?

- How should the state and counties determine and compute loss in value due to land use regulations? The statute is not clear on this issue: is compensation determined by a hypothetical value based on an exception from a regulation or by an actual past fair market value of the property before and after the regulation went into effect?

To date, the state and counties have not required claimants to prove how much value they actually lost. Many believe some claimants have requested excessive compensation amounts. For example, a claimant in Marion County requested \$17 million for a claim on a 217 acre parcel. A claimant in Clackamas County requested \$11 million for a claim on a 53 acre parcel. A claimant in Deschutes County requested \$203 million or a waiver to build a power plant on private land surrounded by a national monument. How can the state determine if the land has actually lost value and, if so, how much value?

- How can the state and counties provide waivers consistent with the value actually lost by a landowner? The waivers issued by the state and counties currently allow landowners to proceed with all development, regardless of how much value they lost. Could compensation be a *partial* exemption that creates value equal to the *proven* loss?

VI. Efforts to Find Answers: The Big Look Task Force and Other Activities

The Big Look Task Force:

On January 26, 2006, Governor Kulongoski announced the appointment of the ten-member Oregon Task Force on Land Use Planning. The mission of the task force is to chart the future of the state's 30 year old land use planning system.

Commonly referred to as the "Big Look," the task force is the result of Senate Bill 82, in which the legislature and the governor called for a broad review of the state land use planning program and recommendations for any needed changes to land use policy. The bill required members of the task force to be appointed jointly by the Governor, Senate President, and Speaker of the House. The bill also required task force members to be "knowledgeable about Oregon's land use system and... familiar with Oregon's economic and employment base." Recommendations are to be made to the 2009 Legislative Assembly.

Senate Bill 82 states that the task force must:

- Gather information to assess the effectiveness of Oregon's land use planning program in meeting current and future needs of Oregonians in all parts of the state.
- Provide information as needed to inform the public discussion regarding the current land use planning program.
- Study and make recommendations on the respective roles and responsibilities of state and local governments in land use planning.
- Study and make recommendations regarding land use issues specific to areas inside and outside urban growth boundaries, and the interface of these areas.

Exhibit K is a report dated July 14, 2006, to the Task Force summarizing the multitude of issues discussed at previous meetings and inputs from individuals and many organizations. It gives readers a good feel for the variety of topics under consideration and adds to the list of complaints mentioned in Section III.

Exhibit L is a report dated July 20, 2006, to the Task Force summarizing comments on the web survey. The survey was done between June 24 and July 10. Over 3,000 people responded. The results are somewhat additive to the data in Exhibit K.

Exhibit M is a distillation of issues to be studied by the Task Force and represents their current focus after deliberation on comments from Exhibits K and L, other sources, and their own common sense and judgment.

Other Activities:

As a supplemental effort to that of the Big Look Task Force, **Envision Oregon** is engaged in two programs to obtain input from Oregonians: (1) a website where comments can be made about Oregon's future and land planning issues and (2) regional public forums to do the same. The web site is www.envisionoregon.org. **Exhibit N** is the Envision Oregon report to the Task Force dated August 11, 2006. The report summarizes the results of their public forum held in Portland, attended by about 500 people, and sponsored by 17 different organizations. Other reports will follow as the group holds other meetings in other parts of the state.

The **Institute of Portland Metropolitan Studies (IMS)**, part of Portland State University, has built a database of all Measure 37 claims filed in the state at all levels of government. The database includes information about the name of the claimant, the location and size of the property, the current and proposed land uses, and the status of the claim. The database is available online at <http://www.pdx.edu/ims/m37database.html>. See also Exhibit J for information about the data IMS is collecting.

The **Georgetown Environmental Law and Policy Institute (GELPI)** is collaborating with Oregon State University (OSU) to conduct an economic assessment of the fairness of Oregon's land use laws with the goal of establishing sound methods and rules that the state could use to determine a property's fair market value. The researchers' hypothesis is that, in general, reasonable land use regulations that the government applies broadly across the community do not produce a significant net decrease in property values. Three major phases comprise the research on this hypothesis:

- First, GELPI and OSU will describe and analyze how regulations should theoretically affect property values.
- Second, GELPI and OSU will compile existing empirical national research about how land use regulations affect property values.
- Last, GELPI and OSU will conduct an original research investigation using data specific to Oregon to examine trends in real estate values in different part of the state over time. For example, the research will compare how much land has increased in value in a few Oregon counties compared with adjacent Washington or Idaho counties.

GELPI and OSU researchers have completed a national comprehensive literature review, will complete the original data collection and analysis by November 2006, and will produce a final report by December 2006.

In the same vein as the GELPI and OSU research, in early 2006 **1,000 Friends of Oregon** commissioned a historical property value appraisal of a 54 acre property located in unincorporated Washington County and zoned for farm use. The property's owner filed Measure 37 claims with the state and Washington County proposing a residential subdivision. PGP Valuation Inc., the real estate appraisal and consultant firm that completed the historical appraisal, found that the value of the property increased after Washington County passed land

use regulations zoning the property for General Farm Use and prohibiting residences except to support farming activity. An excerpt containing key information about PGP's analysis is included as Exhibit Q. Please see page 4 of the excerpt for conclusion information.

Back in 2001-02, the **Oregon Chapter of the American Planning Association** issued their COPE report (Committee on the Oregon Planning Experience) entitled, "An Evaluation of Planning in Oregon, 1973-2001." The report came up with seven recommendations for change; all seven of these are included in the many issues presented to the Big Look Task Force. The report is included as Exhibit P and gives readers a good background from a different viewpoint.

VII. Key Questions for the Future

Oregon is at a crossroads with respect to its land use planning system. Measure 37's passage and the appointment of the Big Look Task Force mean that the state could decide to radically change the system – or not. Questions for the future range from what the state should do about Measure 37 to considering whether to regionalize the statewide land use planning system in an effort to consider more carefully regional differences that have grown in part because of changes in the state's economy. The sections below highlight some of the questions.

Effects of Demographic and Economic Changes:

What has really changed since 1975 regarding the state's political, environmental, economic, and human resources issues? How will adding an estimated 1.6 million people by 2040 affect the state? Should the state keep, change, or eliminate the 19 statewide goals based on these population changes?

In the early 1970s, the legislature established as basic state policy the protection of the productive use of farm and forest land. As a result, the statewide planning system protected these resources from the threats created by random development and conflicts of interest. This concept of protecting these lands has not changed in over 30 years. Should the state alter this basic concept? Consider that these industries have been favored with substantial local property tax relief and, to a lesser degree, by federal government subsidies.

Related to the above point are questions about the current special valuation property tax program for farm and forest lands. Currently, owners of farm and forest land pay reduced property taxes. An owner of farm or forest land will lose the special valuation if:

- The landowner changes the use of the land to be incompatible with returning it to a farm use.
- Requests and receives a change to a zone that is not an exclusive farm or forest use zone.
- Receives approval for a nonfarm dwelling or parcel.

If farm or forest land loses its special assessment, the local counties will assess it at a higher rate. The owner will also be assessed an additional tax based on the difference between the tax the landowner paid and the tax he or she would have paid had the land not received the farm use assessment in the past. The tax difference is based on the number of years the land received farm use assessment, up to a maximum of ten years. If the land is located within an urban growth boundary, the maximum is five years.⁴⁹

Should the state continue to require property owners who have benefited from property tax relief to return a percentage of the funds to the government if Measure 37 or another law allows the landowner to change the use of a property zoned for exclusive forest or farm use?

Effects of Urban Growth Boundaries and Other Planning Tools:

Should property owners of undeveloped land included in urban growth boundaries share a portion of their “windfall” profits when they sell the property? Windfall profits could help fund required new infrastructure for development or help fund compensation to those who have suffered real loss.

Oregon has diverse regional economies and cultures. The statewide planning system includes provisions that allow some local control (see Exhibit I), but counties and cities must comply with state-mandated goals and rules. Should the state allow more regional or local control by applying certain goals only on a regional basis or otherwise changing or eliminating the rules?

Addressing the Agreed Upon Shortcomings of the Land Use System:

Should the state address some or all of the shortcomings of the land use planning system that some groups point to? If so, how should the state address each complaint? For example, should the state change or eliminate the \$40,000 and \$80,000 income tests on land zoned for exclusive farm use? How should the state establish criteria to decide which provisions are fair or unfair?

Measure 37:

The questions in the future to be resolved in connection with Measure 37 are listed in Section V and will not be repeated here. Please refer to page 17 of this document for that list.

However, there is a sense of urgency to resolve certain ambiguities in Measure 37. These are:

- Establish guidelines as to how the state and counties compute loss due to land use regulations and determine what is fair compensation for loss, if there is any.
- Determine if partial waivers can be granted in lieu of cash for compensation.
- Resolve the transferability issue.

These are actions that could be initiated by the governor, LCDC, or the 2007 Legislature and would avoid much confusion, lawsuits, and costs in the future; many headaches will be avoided if this is done soon and still maintain the basic thrust of Measure 37 as part of our land planning program.

Concluding Thoughts

Oregonians must work together to answer these questions and create a land use planning system that allows us to plan for future opportunities and challenges while respecting the needs and goals of diverse regions, local governments, and individuals. We all know there will probably always be some type of ongoing conflict regarding private property rights and the public common good, but over time we need to come to a good understanding regarding that issue as it affects land planning programs.

We know that sentiment is strong, as evidenced by the passage of Measure 7 in 2000 and the passage of Measure 37 in 2004, for “just compensation” when an owner suffers a bona fide loss in property value when regulations are imposed. A source of funding must be found to solve this unresolved issue. We have struggled with this since 1975 – over 30 years!

The forecasted U.S. and Oregon population growth means good planning is required if we want to accommodate that growth in tourism, people, and traffic, and still provide an outdoor environment that visitors and residents will enjoy. With the forecasted addition of another 100,000,000 people to the total U.S. population in 37 years (by 2043), we can expect many more travelers who will be attracted to the Pacific Northwest and Oregon – many to visit and some to stay. Let’s be prepared.

List of Exhibits

Exhibit

- A.....Oregon's Statewide Planning Goals and Guidelines (condensed).
- B..... "The Place We Call Home" by William G. Robbins, Ph.D. Originally published in *Oregon Humanities*, Spring/Summer 2006.
- C..... "Reconstructing the Land use Policy Debate: 'Windfalls and Wipeouts' in the Implementation of Statewide Land Use Planning in Oregon, 1973-2004." Paper by John L. Hall, doctoral student at Portland State University, Fall 2006. Draft subject to revision.
- D....."Property Rights: Contested Compensation" OAPA White Paper.
- E.....Executive Summary of "Measure 7 and Compensation for the Impacts of Government Regulation." City Club of Portland Report, April 2002.
- F.....Excerpt from "A Quiet Counterrevolution in Land Use Regulation: The Origins and Impact of Oregon's Measure 7." Article by Carl Abbott, Sy Adler, and Deborah Howe. Originally published in *Housing Policy Debate*, Volume 14.
- G.....Changes to Oregon's Land Use Laws
- H.....Oregon Land Use Laws Supporting Development
- I.....Existing Tools for Tailoring Planning to Regional and Local Conditions
- J..... Measure 37 Fast Facts
- K..... Big Look Task Force Review of Issues
- L.....Big Look Task Force Online Survey
- M.....Key Issues the Big Look Task Force Will Study
- N.....Envision Oregon Town Hall Forum
- O.....Historical Appraisal of Washington County Farmland
- P.....Oregon Chapter of the American Planning Association "COPE" Report

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- ¹ Howe, D., Abbott, C., & Adler S. (2004). What's on the horizon for Oregon planners? *Journal of the American Planning Association*, 70, 391-397.
- ² Shriver, K. (May 2005). Understanding the impacts of Measure 37. Retrieved May 24, 2006, from http://www.ocfl.org/publications_resources/documents/Measure%2037%20Report.doc.
- ³ Oregon Department of Land Conservation and Development. (n.d.). History of the program. Retrieved July 26, 2006, from <http://www.oregon.gov/LCD/history.shtml>.
- ⁴ Hunnicutt, D.J. (2006). Oregon land-use regulation and Ballot Measure 37: Newton's third law at work. *Environmental Law*, 36, 25-52.
- ⁵ Oregon Blue Book. (n.d.). List of Initiative, Referendum and Recall measures. Retrieved July 26, 2006, from <http://bluebook.state.or.us/state/elections/elections09.htm>.
- ⁶ Oregon Department of Land Conservation and Development. (n.d.). History of the program. Retrieved July 26, 2006, from <http://www.oregon.gov/LCD/history.shtml>.
- ⁷ Oregon Department of Land Conservation and Development. (October 2000). Evolution of Oregon's Statewide Planning Goals. Retrieved September 29, 2006, from <http://www.lcd.state.or.us/LCD/goals.shtml>.
- ⁸ Richmond, H. & Houchen T.G. (2006). "Reduced Taxation of Farm Land and Forest Land in Oregon 1974-2004: A Public Investment in Conservation, Prosperity and Fairness. Unpublished 9/29/06 Working Draft." While Oregon's special assessment valuation reduced valuations of farm and forest land by 77 to 89 percent respectively, with resulting tax reductions of \$4.8 billion, the tax reductions would have been reduced by \$614 million if all of the specially-assessed land in a given jurisdiction were assessed at real market value. This is because the local government would not be able to collect a windfall in tax revenue that would result if all the specially assessed land in a county was assessed at real market value.
- ⁹ Richmond, H. & Houchen T.G. (2006). Reduced Taxation of Farm Land and Forest Land in Oregon 1974-2004: A Public Investment in Conservation, Prosperity and Fairness. Page 63.
- ¹⁰ *Ibid.*
- ¹¹ *Ibid.*
- ¹² *Ibid.* Page 68.
- ¹³ Oregon Blue Book. (n.d.). List of Initiative, Referendum and Recall measures. Retrieved July 26, 2006, from <http://bluebook.state.or.us/state/elections/elections09.htm>.
- ¹⁴ Portland State University Population Research Center. Revised June 2006. 2005 Oregon Population Report. Retrieved October 24, 2006, from <http://www.pdx.edu/prc/annualorpopulation.html>.
- ¹⁵ Cai, Qian. March 2005. 2004 Oregon Population Report. Portland State University Population Research Center Report. Retrieved April 25, 2006, from <http://www.pdx.edu/prc/annualorpopulation.html>.
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⁴⁸ Brief of Intervener-Defendant Appellants English and Prete, p. 43.

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Exhibit A
Oregon's Statewide Planning Goals and Guidelines
Goals 1 -14 Effective January 25, 1975
Goals 15- 19 Effective as noted
Full text of goals available at
<http://www.lcd.state.or.us/LCD/goals.shtml>.

Source: Condensed from Summary of *Oregon's Statewide Planning Goals & Guidelines*. Department of Land Conservation and Development. Retrieved April 11, 2006, from www.lcd.state.or.us.

This appendix describes the goals established and amended by the Land Conservation and Development Commission (LCDC). The goals express the state's policies about land use and related topics, such as citizen involvement, housing, and natural resources. Guidelines, which are suggestions about how communities may implement a goal, accompany most of the goals. Goals are mandatory, but guidelines are not.

Goal 1: Citizen Involvement (Amended 1988) To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process.

Goal 2: Land Use Planning (Amended 1983 and 1988) To establish a land use planning process and policy framework as the basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions. City, county, state, an federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

All land use plans shall include identification of issues and problems, inventories, and other factual information for each applicable statewide planning goals, evaluation of alternative course of action and ultimate policy choices, taking into consideration social, economics, energy, and environmental needs.

Goal 3: Agricultural Lands (Amended 1983, 1988, 1993, 1994) 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. Counties may authorize farm use and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices.

Goal 4: Forest Lands (Amended 1983, 1990, 1993, 1994) To conserve forest lands by maintaining the forest land base. To protect the state's economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use of forest land consistent with sound management of soil, air, water, and fish and wildlife resources. To provide for recreational opportunities and agriculture.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces (Amended 1988 and 1996) To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

Goal 6: Air, Water, and Land Resources Quality (No Amended) To maintain and improve the quality of the air, water, and land resources of the state. All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules, and standards.

Goal 7: Areas Subject to Natural Hazards (Amended 2002) To protect people and property from natural hazards. Local governments shall adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards. Natural hazards for purposes of this goal are: floods (coast and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards.

Goal 8: Recreational Needs (Amended 1984, 1988, and 1994) To satisfy the recreational needs for the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including recreational resorts.

Goal 9: Economic Development (Amended 1988) To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 10: Housing (Amended 1988) To provide for the housing needs of citizens of the state. Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the capabilities of Oregon households and allow for flexibility of housing location, type, and density.

Goal 11: Public Facilities and Services (Amended 1988, 1994, and 1998) To plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 residents. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

Goal 12: Transportation (no amendments) to provide and encourage a safe, convenient, and economic transportation system. A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle, and pedestrian;

(2) be based upon an inventory of local, regional, and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic, and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by providing transportation services; (8) facilitate the flow of goods and services also as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Goal 13: Energy Conservation (No amendments) To conserve energy. Land and uses developed on the land shall be managed and controlled to maximize the conservation of all forms of energy, based upon sound economic principles.

Goal 14: Urbanization (Amended 1988, 1994, and 2000) To provide for an orderly and efficient transition from rural to urban land use. Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of seven factors listed in the original document.

Goal 15: Willamette River Greenway (Adopted 12/24/75; Amended 1980 and 1988) To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Goal 16: Estuarine Resources (Adopted 6/7/77; Amended 1984) To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore to long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries. Comprehensive management programs to achieve these objectives shall be developed by appropriate local, state, and federal agencies for all estuaries.

Goal 17: Coastal Shorelands (Adopted 6/7/77; Amended 1984 and 1999) To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits for all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands. Programs to achieve these objectives shall be developed by local, state, and federal agencies having jurisdiction over coastal shorelands.

Goal 18: Beaches and Dunes (Adopted 6/7/77; Amended 1984 and 1988) To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas. Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

Goal 19: Ocean Resources (Adopted 6/7/77; Amended 1984) To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

To carry out this goal, all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources – ie living marine organisms – than to the development of non-renewable ocean resources.

Exhibit B
"The Place We Call Home" Oregon Humanities Article

The Place We Call Home
by
William G. Robbins, Ph.D.
Emeritus Distinguished Professor of History at Oregon State University

Article originally appeared in *Oregon Humanities*, Spring/Summer 2006, pages 14-19.

The Place We Call Home

A history of land-use planning in Oregon

BY WILLIAM G. ROBBINS

The late playwright, Arthur Miller, had an amazing capacity for understanding the dark side of the human psyche. In addition to his striking insights into human frailty, Miller offered a penetrating moral critique of an American-style individualism that was eroding the larger community's welfare. His deep sense of social commitment, burnished in the theater during the Great Depression of the 1930s, preached against selfishness and in support of the common good. More recently historian William Leach argued, in *Country of Exiles: The Destruction of Place in American Life* (1999), that Americans have lost a sense of civic commitment, shared beliefs that value public ends and a sense of stewardship for each other and the places they call home.

My own reading of the recent past suggests that such social critiques are especially well suited to the early twenty-first century, with the current broad frontal attack on “commons values,” including the rich legacy of progressive New Deal accomplishments—Social Security, public education, and the enhancement of public lands and public places. The aggressive promotion of an ownership-based, individualized, atomized society—including combative assaults on public institutions and the forceful assertion of property rights in seemingly progressive states such as Oregon—appears to be corroding values that we inherit and share as a larger community. In a remarkable pastoral letter issued in 2001, twelve Catholic Bishops in the Columbia Basin reminded parishioners that they held land in trust for present and future generations and that the idea of the common good meant that communities' needs should “take priority over private wants.”

Since the Second World War, no other public figure in Oregon spoke more forcefully than the late governor Tom McCall about the “Oregon mystique”—the state's capacity to embrace imaginative ideas to protect its livability and the welfare of its citizens. Before he left office in early 2003, Governor John Kitzhaber echoed McCall's sentiments, referring to “an Oregon identity—and ethic” that distinguished the state from other places. Among those qualities were “a strong identity with the land, a need for healthy natural systems,” a dislike for litter and waste, and a sense of humility. Like McCall before him, Kitzhaber believed that citizens understood that quality of life, a healthy environment, and a prosperous economy

were one and the same. What McCall, who held office from 1967 to 1975, and Kitzhaber valued about Oregon was its commitment to a greater common good—a visionary belief that valued public ends and civic responsibility above personal self-indulgence and grasping for inordinate wealth.

Our present national *Zeitgeist*, with its overweening emphasis on privatization and the sanctity of private property as an immutable feature of the American landscape, stands in sharp contrast to that earlier progressive vision. Led by developers, real estate interests, extractive industries, and free-enterprise think tanks, property-rights conflicts have exploded across the United States during the last two decades. The State of Oregon, with its 2004 property-rights law, Measure 37, is at the center of this larger public debate, a kind of poster-child, with its progressive land-use laws and tradition of supporting open spaces in jeopardy. Because Oregon was once at the cutting edge of land-use and environmental legislation, Measure 37 appears to have energized the property rights movement across the nation, suggesting to its supporters that they can override regulatory laws everywhere. The more zealous property-rights arguments, however, are absent historical memory, at least if we are to believe the public pronouncements of some of its advocates. It is a huge departure from two centuries of case law to argue—as some have—that property rights are embedded in natural law, that they are part of the natural order of things and should not be subject to regulatory action.


Debates over property rights, takings initiatives, and the greater public good date from the very inception of the American republic. More than two hundred years of legal history clearly show that property rights have always been embedded in law and are not natural or God-given rights. An inquiry into property law in the United States reveals that differing legal interpretations have prevailed at different moments in American history. Legal scholar Eric Freyfogle argues that “to study the history of property law in America is to see reflections of major currents in the country’s culture and economy.” As such, property law has been organic, flexible, and dynamic, acknowledging that landowners have rights, but insisting that the public at large also has rights.

And that brings me to the critical issues engaged in this essay—land-use policy, property rights, and

privatization issues and their relation to the larger community’s welfare. Are there obligations to the greater common good in owning property? Should our political institutions preserve and protect public open spaces for the recreational and aesthetic enjoyment of all citizens? A closely related question concerns the viability of the free market as a mechanism for serving the public’s interests. The tension between these issues—property rights, the free market, and the greater public good—has always bedeviled the American legal system. This was especially true following the Second World War when an exploding population and runaway development overran weak and ineffective zoning efforts across the United States. These issues boiled to the surface in the Pacific coastal states, the epicenter of the most explosive growth in the nation. Although the postwar context differed from earlier property-rights debates, the new disputes still resonated with time-worn and conflicted references to the free market, individual liberty, and the common good. These tensions were equally apparent in Oregon where unregulated growth underscored the persisting questions about the right to the exclusive use of property and the public’s interest in a livable environment.

Oregon’s population more than doubled between 1950 and 2000, increasing from 1.5 million to 3.4 million, with the biggest gains taking place in the green valley of the Willamette, home to approximately 70 percent of state’s population. Those skyrocketing numbers increasingly posed problems with air and water quality, traffic congestion, urban sprawl, the rapid disappearance of agricultural and forest land, and the increasing privatization of public space. As a consequence, land-use issues, property rights, and questions about livability have been among the most contentious issues before the Oregon public in the last half-century.

By the mid-1960s, it was apparent that Oregon’s existing legislation permitting counties to adopt zoning guidelines was an abysmal failure in protecting the public’s interest. The state’s helter-skelter development was out of control, with non-existent or overworked sewer systems, hit-and-miss zoning regulations, and increasingly convoluted traffic patterns. Opportunistic developers were seemingly ascendant everywhere. When the Lincoln County Chamber of Commerce declared Highway 101 along the northern coast the “twenty miracle miles,” Republican Governor Mark

The background of the page is a light-colored topographic map with yellow and brown contour lines. The map shows a valley with winding paths and some small peaks. The title is centered at the top in a blue serif font.

The tension between property rights, the free market, and the greater public good has always bedeviled the American legal system.

Hatfield caustically referred to the chaotic string of beachfront towns as the “twenty miserable miles.” Hatfield’s successor, the more flamboyant Tom McCall, characterized newborn Lincoln City “a model of strip city grotesque.”

As the future of Oregon’s land-use and environmental practices would show, Tom McCall’s election to Oregon’s governorship in 1966 proved timely, linking place, a sense of vision and civic-minded purpose, and a singular cast of politicians at a remarkable moment in the state’s history. McCall made clear in his inaugural address that his administration’s overarching theme would be Oregon’s quality of life, the livability of his beloved state. Although Willamette Valley agricultural interests spearheaded support for land-use regulation, by the late 1960s the public was growing increasingly concerned about uncontrolled growth, the despoliation of landscapes, and protecting access to waterways and ocean beaches.

The ambitious and charismatic McCall was quick to adopt attractive ideas proposed by others and make them his own. The Willamette Greenway concept—first proposed by Robert Straub when he ran against McCall in the 1966 governor’s race—became part of McCall’s vision for remaking the Willamette River corridor into a publicly owned greenbelt running the length of the valley. Although Straub’s (and McCall’s) original conception was never fully developed, the initiative did lead to the establishment of several public parks, especially where the river passed through major urban centers such as Portland, Salem, Albany, Corvallis, and Eugene. The Greenway concept, however, was only one component among larger strategies to enhance Oregon’s livability and to protect open space during McCall’s governorship.

More than any other series of events, the Willamette Valley’s exploding population during the 1960s propelled efforts to curb further encroachments into highly productive farm and forest land. From Portland to Eugene, there was growing sentiment that the state legislature should take steps to prevent the state from becoming a replica of southern California—the favored object lesson for Oregon planners. “A siege

mentality,” according to one writer, a belief that Oregon’s population growth would turn the Willamette Valley into another Lakewood Park, California, drove the movement toward more stringent land-use regulation. The Oregon legislature passed Senate Bill 10, the state’s first move toward mandatory comprehensive land-use planning, and Governor McCall signed the measure into law in 1969. Although SB 10 was a significant step toward requiring local and county governments to adopt planning and zoning ordinances, Tom McCall’s reelection in 1970 further advanced the move to strengthen statewide land-use planning.

From the time he entered the governor’s office until his death in 1983, Tom McCall enjoyed great popularity with the press. Articulate, gifted at crafting the riveting metaphor—and with an oversized ego—the governor was more aggressive than any of his contemporaries in speaking out on important issues of the day. Midway through his first term, McCall told a group of Los Angeles industrialists that Oregon had been “wary of smokestacks and . . . wanted industry only when that industry was willing to want what Oregon is.” The governor’s most notorious remark, however, broadcast in a CBS television interview on January 12, 1971, would stay with him for the rest of his life: “Come visit us again and again. This is a state of excitement. But for heaven’s sake, don’t come here to live.” An interviewer remarked years later that McCall possessed an agile mind and enjoyed testing his ideas “in the verbal marketplace of spontaneous dialogue.” While his famous line was tongue-in-cheek, McCall paid dearly for the comment, especially among the business community and within his own Republican Party.

Although his legislative programs moved the state in bold, new directions in pollution control, land-use planning, and protecting the public’s access to special places, the governor always articulated a common-sense approach to economic growth. As McCall neared the end of his first term in office, the conservative Associated Oregon Industries named him Oregon’s “Livability Governor,” praising his “cooperation with business and industry, knowing that the health of one is the success of the other.”

Despite the passage of Senate Bill 10, the rapid development of farm and forest land in the Willamette Valley continued, with few local governments in compliance with the new law. This disturbed the already alarmed governor, and with the tide beginning to ebb on his second term, McCall began using the bully pulpit to spread the message about Oregon's land-use problems. Hector Macpherson, the author of Senate Bill 100—the body of law that would eventually govern the state's land-use practices—later praised McCall for bringing the public's attention to the issue: “Tom was a master with words. . . . He was not a nuts-and-bolts man. . . . But this is the kind of thing we needed.” According to Macpherson, McCall contributed mightily to building public support for the planning initiative.

The person of Republican Hector Macpherson, an important supporter of land-use regulation—and the governor's chief legislative ally—is a reminder that McCall did not stand alone in his tireless politicking for land-use legislation. Since the early 1960s, Macpherson, an Albany dairy farmer and former Linn County commissioner, had been concerned about protecting Oregon's agricultural land. In a talk at Oregon State University in 1967, he called for planning strategies to protect farmland, telling the audience, “Visualize the alternative: a valley where neighbor encroaches on neighbor, a land unproductive agriculturally, where hunger and want must surely follow. Let's bring order out of chaos.” In preparation for the state legislature's 1973 session, Macpherson worked with McCall's staff, taking Senate Bill 100 through several revisions. The heart of Macpherson's legislation was a planning hierarchy involving local and state governments, with power distributed to each of fourteen regional districts.

With his lanky frame draped over the House podium, Tom McCall addressed the opening session of the 1973 legislature, appealing for action to curb the “unfettered despoiling of the land,” the state's most precious finite resource. In one of his most famous speeches, the governor told lawmakers that only effective land-use controls would bring an end to run-away subdivisions, coastal blight, and sprawling sub-

urbs in the Willamette Valley. These “grasping wastrels of the land,” he told legislators, must be stopped from their relentless assault on Oregon's resource base and its open spaces. With Democrats in control of both the House and Senate, the Republican McCall relied on allies such as Portland Democrat and state senator, Ted Hallock, to push the land-use measure through the hearing and amendment process. When the Senate approved a slightly modified version of the land-use bill, Ted Hallock arranged with the House Democratic leadership to submit the legislation directly to the floor where it was approved. The new measure established the Land Conservation and Development Commission (LCDC) to oversee compliance with local and statewide land-use goals.

The new land-use law embellished Oregon's already progressive environmental reputation and put the state in the vanguard in terms of civic responsibility and in the effort to create a livable environment. Senate Bill 100 established a new state agency, the Department of Land Conservation and Development, to implement planning strategies originating with LCDC. The unique feature of the new legislation was its delegating of planning responsibility to the local level, where agencies were required to follow common statewide guidelines. The measure also engendered opposition from property-rights groups and lengthy debates over approaches to land-use planning that continue to the present day. Critics argued from the outset that land-use legislation would be used to “‘take’ or impair private property rights without compensation” and charged that environmental regulations were unconstitutional restrictions on the free market. As planning advocates pointed out, however, such arguments ignored the market's role as the primary contributor to the privatization of public space and the desecration of landscapes. The free-market approach also overlooks legal scholar Eric Freyfogle's voice of caution: “market mechanisms fail almost entirely” when the community's greater public good is at stake.

There is little question that Oregon's land-use program worsened tensions between rural and urban

The greatest threat to Oregon's planning system was a public unfamiliar with the struggles to draft the original comprehensive plans.

parts of the state. Three initiative challenges to the law—1976, 1978, and 1982—showed strong support for land-use planning in the urban corridor from Portland south to Eugene. Less populated ranching and timber-dependent counties generally opposed statewide planning. Of all the planning issues that came before LCDC, rural land-use policy has been the most contentious, the source of initiatives to overturn the system and court challenges objecting to specific land-use decisions. State and local interests have debated policies involving agricultural and forest lands and the public's interest in sensitive habitats such as wetlands. At the same time, visitors to the state frequently left positive, even glowing images of Oregon's environmental accomplishments. Peter James, a British planner who traveled the state in 1978, believed that Oregon could "lay some claim to being the most ecologically conscious area in the world." James praised the McCall administration and the state's innovative land-use planning system for restraining runaway growth and for protecting the public's interest in open spaces.

During its first decade of operation, the greatest challenge to Oregon's planning system occurred during the recession-wracked early 1980s when opponents succeeded in putting an initiative before the voters in the fall of 1982. Measure 6 asked the seemingly innocent question: "Shall the state's land-use authority and goals be advisory only?" It was obvious to all that if the initiative passed, it would deprive LCDC of its regulatory authority. Pollster Tim Hibbits's September opinion surveys showed solid backing for repealing Oregon's land-use laws, but the poll also hinted that the public would invest great trust to former Governor McCall's judgment.

Suffering from an advanced stage of prostate cancer, McCall took advantage of strategically timed speaking engagements (and his still notable rapport with the press) to speak in support of statewide planning, what he considered the keystone to Oregon's reputation for livability. In a discreetly arranged media event at the University Club of Portland on October 7, 1982, McCall delivered an impassioned speech calling upon Oregonians to defend the state's livability. In remarks that left few eyes dry, he concluded:

You all know I have terminal cancer—and I have a lot of it. But what you may not know is that stress induces its spread and induces its activity. Stress may even bring it on. Yet

stress is the fuel of the activist. This activist loves Oregon more than he loves life. I know I can't have both very long. The trade-offs are all right with me. But if the legacy we helped give Oregon and which made it twinkle from afar—if it goes, then I guess I wouldn't want to live in Oregon anyhow.

The dying McCall's address reversed the polling trends on Measure 6 and placed the former governor in the national spotlight in the month before the election. McCall appeared on *NBC Evening News* and the *Today* show, and CBS reporter Terry Drinkwater delivered two commentaries on the former governor. On Election Day, voters easily turned back the effort to repeal the state's planning system, piling up huge majorities in the greater-Portland area and in Marion and Lane Counties.

Through all the court challenges, initiative attacks, and legislative maneuvering, Oregon's land-use experiment remained largely intact into the 1990s. The planning system enjoyed powerful supporters, none more influential than 1,000 Friends of Oregon, the watchdog organization formed in 1975 by McCall, Macpherson, and others. Financed through private gifts and donations, foundation grants, and membership dues, the organization lobbied the state legislature and initiated judicial review of LCDC planning directives. But the state's land-use system faced a problematic future during the 1990s, with many of its difficulties related to Oregon's booming population growth. Renewed property-rights activism, especially legal challenges by the newly formed Oregonians in Action, further complicated the state's ability to deal with the pressures of development. Attracted by quality of life, magnificent outdoor public playgrounds, and relatively modest living costs, Oregon's population increased by more than 17 percent between 1990 and 2000; with Washington and Idaho, Oregon ranked among the fastest-growing states in the nation.

Oregon's livability, therefore, created a Catch-22: overcrowding, pollution, and increasing traffic problems all placed strains on the attractions that drew industries and people to the state in the first place. Planning supporters worried about incremental changes and a slow erosion of the original planning principles. Speaking for the anti-planners, Bill Moshofsky of Oregonians in Action, charged that the system was "rigid," "inflexible," and "unreasonable."

But the greatest threat to Oregon's planning system was a public unfamiliar with the struggles to draft the original comprehensive plans and the persistent efforts to undermine Senate Bill 100. Newcomers to the state—described in newspaper accounts as “white flight” refugees from California, retirees, affluent telecommuters, and professionals of various kinds—knew little about the generation of politicians who forged Oregon's progressive environmental laws, including its land-use system. Moreover, there was no longer anyone comparable to the charismatic Tom McCall to rally the public behind planning.

The most contentious land-use battle lines in the late 1990s centered on the issue of urban-growth boundaries, especially Portland's Metropolitan Service District. Despite critics who pointed to its hidden costs, Portland has served as a laboratory city for prudent urban growth. Planners point to striking comparisons with other cities. Between 1990 and 1996 the Kansas City metropolitan area extended its spatial reach 70 percent while its population increased only 5 percent. In contrast, metropolitan Portland's built landscape expanded 13 percent, the same percentage as its population growth. Beyond the city of Portland, there was still more evidence that planning protected open space. While neighboring Washington lost about 40,000 acres of timberland annually in the late 1990s, Oregon lost about 1,000 acres each year to development in its western valleys. Forester Jay McLoughlin, who is working to protect the timberlands adjacent to the small community of Glenwood, Washington, from development, observed, “Special places don't stay special by accident.”

Beginning with the 1995 legislature and continuing for the next several sessions, Oregon lawmakers were increasingly active in introducing legislation to overturn the state's land-use planning. Oregonians in Action, devoted to less-restrictive property rights, has been active in opposing land-use regulations, with Moshofsky charging that LCDC's restrictions were stifling “the rights of land owners.” The organization pushed a successful ballot measure in 2000 to amend the Oregon Constitution to require state and local governments to compensate landowners if land-use restrictions reduced

the value of their property. Ballot Measure 7, the smoking gun in the fight to kill Senate Bill 100, was approved by nearly 53 percent of the voters. Familiar persons from the past, Audrey McCall, the widow of Tom McCall, and Hector Macpherson, joined others in petitioning the court, arguing that Measure 7 violated the “single question” requirement for constitutional amendments. In October 2002 the Oregon Supreme Court issued a unanimous finding that Measure 7 included more than one constitutional change.

But the Oregon Supreme Court's decision did not end the attacks on the state's efforts to protect its open spaces through planning. In November 2004, voters approved Ballot Measure 37, an initiative that required compensation to landowners when land-use restrictions devalued their property. Approved 60 percent to 40 percent—with only Benton County opposed—the measure threatens to unravel Oregon's grand experiment to protect its livability, its open spaces, its highly productive agricultural and forest lands, and its reputation as an environmental pacesetter. Challenged in Marion County Circuit Court (in which Hector Macpherson was again a plaintiff), Judge Mary Mertens James, in late 2005, declared Measure 37 unconstitutional, because it intruded on the plenary power of the legislature and because development itself could reduce the value of adjacent property. In early 2006, the state supreme court upheld the constitutionality of the measure, overturning James's decision.

As Oregon moves forward into the twenty-first century, it might be wise for citizens to revisit the common values implicit in the Catholic Bishops' 2001 statement on the Columbia Basin. With its subtitle, “Caring for Creation and the Common Good,” the pastoral letter notes that allowing the unrestricted market to be the final arbiter in property-rights decisions violates the larger community's collective welfare and closes with a ringing declaration of the common good: “the right to own and use property is not ... an absolute individual right,” but a “right [that] must be exercised responsibly for the benefit of ... the community as a whole.” Lives centered in privacy, charter schools, gated communities, and huge houses were not part of the bishops' equation. ❁

Exhibit C
“Reconstructing the Land Use Policy Debate” Article

Reconstructing the Land Use Policy Debate: “Windfalls and Wipeouts” in the Implementation
of Statewide Land Use Planning in Oregon, 1973 to 2004

Fall 2006

by

John L. Hall, Portland State University Ph.D. Student

Article is a draft and subject to revision. The author submitted the article for presentation at the
Urban Affairs Association Conference, Spring 2007, in Seattle, Washington.

**RECONSTRUCTING THE LAND USE POLICY DEBATE: “WINDFALLS AND
WIPEOUTS” IN THE IMPLEMENTATION OF STATEWIDE LAND USE
PLANNING IN OREGON, 1973 TO 2004***

**John L. Hall
Portland State University
Fall 2006**

Abstract: In 2004, the voters of Oregon approved Ballot Measure 37. The measure entitles the owner of real property to receive just compensation when a local or state land use regulation, implemented subsequent to ownership, restricts the use of the property and reduces its fair market value. In lieu of compensation, governments must waive the regulation restricting use. With no mechanism to fund compensation, local governments have begun waiving certain land use restrictions. The compensation issue arose during the initial implementation of statewide land use planning beginning in 1973. This paper examines the historical record with respect to the original policy debate on compensation that occurred during, and subsequent to, 1973. Through both the examination of archival materials and interviews, I find that not only was it recognized that land use regulation would create “winners and losers,” but that a method for capturing the windfalls of the winners was necessary to compensate those suffering losses. Further, this concept was well enough understood that legislation was introduced offering a compensation funding scheme.

*Draft subject to revision. Abstract submitted for presentation at Urban Affairs Association Conference, Spring 2007, Seattle, Washington.

Introduction

“The Land Conservation and Development Commission is a Communist Plot.”
(Testimony before the Governor’s Task Force on Land Use in Oregon, September, 1982)

Few topics in Oregon history have generated as much sustained debate as the Oregon statewide land use planning system. Championed by a republican governor, the creation of the Land Conservation and Development Commission through Senate Bill 100 of the 1973 Oregon Legislature was borne out of controversy that continues today. As with any heated debate that occurs over a long period of time, the factual record can become obscured, the essence of intent blurred, and the nuances delimited into simple black and white propositions. In this environment not only is meaningful content lost, but the day-in and day-out efforts of hard-working individuals, who have sought to solve thorny public policy problems, can be overlooked.

One facet of the factual record that remains controversial is the specific nature of the original policy discussion regarding “compensation” for land use regulations, and related efforts over time to sort out the difficulties inherent in the original policy directive. In the debate over land use regulations, culminating with the passage of Measure 37 in 2004, much has been said about Governor McCall’s original thinking on compensation and efforts by the legislature to fully carry out their charge in this area. This paper seeks to clarify the record as it relates to compensation thinking, policy, and legislative efforts at the time of the passage of SB 100 in 1973, and in subsequent years. I will suggest that to the extent that “compensation,” loosely defined, implies payment for something lost, a discussion focused on compensation does not fully capture the content of original policy

discussions on “windfalls and wipeouts.” This paper is not intended to address specific compensation methods or their merits.

This work is seen as especially timely for at least three reasons:

1. Measure 37 requires state and local governments to either provide compensation for lost value, for which over 2,500 claims have already been made, or waive certain land use regulations. As a result, some jurisdictions are currently investigating compensation alternatives.
2. Future sessions of the Oregon legislature will need to clarify aspects of, or questions created by, Measure 37.
3. Senate Bill 82 was passed by the 2005 Oregon Legislature authorizing a comprehensive review of Oregon statewide land use planning system, commonly referred to as the “Big Look.” (Oregon Department of Land Conservation and Development website, 2006)

This paper is organized into six subsections including this introduction, a brief statement of methodology, an overview of key Oregon land use legislation, a summary of the legislative actions and discussions on compensation since 1973, documentation of how the discussion was reframed in the mid-nineties, and some concluding remarks. A list of references is also attached.

Methodology

Materials for this paper were collected from both archived secondary sources and through interviews with 22 individuals. Archival material comes from the Oregon State Library, the Oregon State Archives, the Oregon Department of Land Conservation and Development (DLCD), and from the personal files of individuals interviewed.

Interviewees were identified from archival materials and by referral. Their names have been withheld out of respect for their privacy and to emphasize that the interpretations contained herein, and conclusions drawn, are solely my own, not reflecting the position of any of the interviewees.

Key Oregon Land Use Legislation and the Origin of the Compensation Discussion

Our state is one of the few which regards protection of the environment as a priority. Land use regulation is one of the most important elements in maintaining livability in Oregon. (McCall, August 1974)

The Act can be made to be as strong or as weak as the commission wishes it to be. The strength of the bill lies not in its particular provisions but in the philosophical views of the commission members and the implementation of their view. (MacPherson and Paulus, 1974)

The existence and major features of Oregon's statewide land use planning system are the product of three closely related pieces of legislation:

1. Senate Bill 10 (1969) – Required cities and counties to adopt land use plans, but lacked an enforcement mechanism. (Shriver, 2006; DLCD, 2006)
2. Senate Bills 100 and 101 (1973) – Created the Land Conservation and Development Commission (LCDC), the Department of Land Conservation and

Development (DLCD), directed LCDC to adopt statewide planning goals, and required cities and counties to adopt local land use plans consistent with statewide goals. (DLCD, 2006)

In recognition of the potential impact on private land values resulting from Senate Bills 100 and 101, Governor McCall forwarded Senate Bill 849, a land value adjustment act, to the 1973 legislature; however, no action was taken on it during the 1973 session. The essential components of the SB 849 are summarized as follows:

First, corrective compensation may be granted where a zoning or similar ordinance places a significant economic loss upon the landowner. Two alternatives are offered, the interest acquisition or guarantee sale price. Second, temporary land reservation may be enacted to manage growth in an orderly and timely pattern. Again the land owner is given options: interest acquisition, the guarantee sale price or lease of an interest with the state retaining the option to buy. Third, permanent land preservation aims at obtaining interest of fee simple acquisition, the state may take a lease option or right of first refusal. (State of Oregon, Oregon Land Use Package, 1973)

Funding for compensation was articulated in Section 21 of SB 849 as State general obligation bonds "...not to exceed one percent of the full assessed value of the state..." (Oregon Legislative Assembly, 1973 Regular Session, SB 849, p. 8)

With the inability of the legislature to act on SB 849, Governor McCall in his testimony on SB 100 called on the Oregon Senate Committee on Environment and Land Use to "recommend creation of an interim committee to study remaining issues such as compensatory zoning, and 'downward zoning.'" (McCall, March 1973, p. 12). He goes on to comment that "An interim committee gave us SB 10, and an interim committee could well help improve upon this new process where improvement is found to be warranted." (McCall, March 1973, p. 12) This suggestion was translated into legislation

that can be found in Oregon Chapter law. Specifically, the Legislature created an interim committee on land use, known as the Joint Legislative Committee on Land Use (JLCLU), and gave the committee the following charge:

The committee shall... (4) Study and make recommendations to the Legislative Assembly on the implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision or other ordinance or regulation or restricting use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use;...(Oregon Laws, 1973, c.80, Section 24)

This language was eliminated by the Oregon Legislature in 1981 and replaced with the language shown below in bold:

The committee shall...(4) Study and make recommendations to the Legislative Assembly on the **political, economic and other effects of the state land use planning program on local government, public, and private landowners and the citizens of Oregon**;... (Oregon Laws, 1981, c.748, Section 24. Found later as ORS 197.135)

Until the 2005 legislative session, subsequent to the passage of Measure 37, it was in the interim JLCLU that serious study and evaluation of compensation mechanisms and funding took place.

Legislation has not, however, been the only force shaping Oregon's land use laws; several ballot measures related to land use planning have been forwarded to voters. The most significant measure to pass to date is Measure 37. These ballot measures can be generally grouped into two categories: those designed, in some form, to eliminate statewide land use planning, and those designed to restore property rights viewed as lost under statewide planning. These ballot measures are listed below by type and outcome.

<u>Program Elimination Measures</u>	<u>Outcome</u>	<u>Vote</u>
Measure 11 (1970)	Failed	44% to 56%
Measure 10 (1976)	Failed	39% to 61%
Measure 10 (1978)	Failed	39% to 61%
Measure 6 (1982)	Failed	45% to 55%

<u>Property Rights Measures</u>	<u>Outcome</u>	<u>Vote</u>
Measure 56 (1999)	Passed	80% to 20%
Measure 2 (2000)	Failed	47% to 53%
Measure 7 (2000)	Passed	(Deemed unconstitutional)
Measure 37 (2004)	Passed	61% to 39%

Source: DLCD, 2006.

“Compensation” Subsequent to the 1973 Legislative Session: “Windfalls and Wipeouts”

Two concepts should be included in any land value adjustment discussion. First, the landowner who suffers a monetary loss as a result of government action should be compensated to some degree for the forced change in his expectations. Second, it is equally important for the public to capture some of the benefit from government decisions which increase land values. Ideally, both sides of this proposition will balance. (McCall, 1974)

It was in 1974 that the difficulties of implementing a compensation scheme became apparent. Not only had the compelling need been identified to compensate landowners for losses, but the need to develop a mechanism for capturing benefit was also recognized as the funding source for compensation. According to an August 1974 report produced on behalf of Governor McCall, “Because of the time limitations in developing SB 849, some problems and issues were not addressed.” (McCall, 1974, p. 9) Specifically, “...public regulations creating a windfall effect were not discussed.” (McCall, 1974, p. 9) In this same report a land value increment tax was proposed to retire the debt on the general obligation bonds originally proposed to finance compensation in SB 849.

To further bolster the compensation discussion, the 1974 interim JLCLU asked the University of Oregon's Bureau of Governmental Research and Service to produce an analysis of eight compensation alternatives. It was in this report that the windfall and wipeout discussion was explicitly articulated and stated in more formal terms as a problem of social equity.

While there are several formulations of the concept of equity that might be applied, for purposes here it is assumed that the equity objectives of a compensatory land use regulation would be to redistribute wealth in such a way as to approximate the pre-regulation distribution. Accordingly, the more accurately the effects of a compensatory land use regulation approximate the pre-regulation allocation of societal wealth, the more equitable it will be. (Bureau of Governmental Research and Service, January 1975, p. 17)

And in a subsection that seems to anticipate the passage of Measure 37:

The adoption of a compensatory system without a concurrent method of recapturing "windfall" would not meet the concept of equity described above. First, those gaining from the regulation would remain untaxed; and second, those losing from the regulation would be compensated not by the "gainers" but, presumably, by the state's taxpayers in general without regard to property ownership. (Bureau of Governmental Research and Service, January 1975, p. 18)

Despite the work of the 1974 interim JLCLU, no action on compensation was taken during the 1975 regular legislative session. The topic was taken up again by the 1976 interim JLCLU only to make the recommendation that "...no present proposal be adopted. No existing compensation plans are known to be workable. Adopting one without adequate study could have severe fiscal consequences." (Joint Legislative Committee on Land Use, 1976, p. 25)

With no action on compensation in the 1977 or 1979 regular legislative sessions, State Representative Bill Rodgers (R- Lane County) asked the Oregon Attorney General in January of 1980 if the JLCLU had fulfilled its obligation under Oregon law “even though it made no recommendation regarding a compensation plan for landowners who incur a loss as a result of zoning restrictions?” In addition, he asked if the State must implement a plan for compensation. The response to the first question was yes. The response to the second question was no. (Opinions of the Attorney General, 1980, p.194) The AG’s analysis concluded that although the charge of the committee in the enabling legislation for creation of the JLCLU contained the imperative “shall” with respect to duties related to compensation, that “the character and context of the legislation are controlling.” As such, the legislative purpose was to study the issue and decide **if** a plan should be implemented. (Opinions of the Attorney General, 1980, p.196)

As a result, and under added political pressure, the 1980 interim JLCLU tried to develop a workable solution to developing a funding mechanism. Unfortunately, their discussions revealed more problems rather than a possible solution. Specifically, they investigated two possible sources of funding, general obligation bonds or general fund revenues. Enlisting the assistance of the Legislative Fiscal Office, they tried to develop an accurate fiscal impact estimate, but could not. After consulting with Standard & Poor regarding the possible rating for an open-ended funding program, and being told both that the rates would be low, and the state was reaching its limit for bonding capacity, the committee determined that general fund revenues would be the best source for compensation funding. (Joint Legislative Committee on Land Use, 1980, p. 32) However, in light of

the limited general fund revenues, the committee ended up introducing a bill (House Bill 2228) that had so many exclusions from compensation so as to not really address compensation at all. As a result, the bill did not move during the 1981 session.

By 1982, only 151 local comprehensive plans had been adopted out of 240 cities and 36 counties (Joint Legislative Committee on Land Use, 1982, p. 3), and Oregon was in the midst of its worst recession since World War II. The shift away from trying to solve the compensation question had been codified into law when the 1981 session of the legislature eliminated compensation specific language from the duties of the JLCLU. (See above, p. 6) Regular and interim legislative committee discussions that for years had tried to make progress on developing a funding mechanism to fund compensation, now shifted to the impacts of the land use system on state economic development. In particular, the impact on the State's ability to recruit new business became the subject of the 1982 interim JLCLU.

The barriers to economic growth must fall. The single-most mentioned barrier is Oregon's permit and land use process. Endless public hearings, often brought on at the request of a single disgruntled individual, can add years to an already difficult procedure. – John Elorriaga, Chairman, U.S. Bancorp (Joint Legislative Committee on Land Use, 1982, p. 6)

By contrast, and reflecting a lack of consensus around this issue, the Chairman of Omark Industries, John Gray, made the following statement regarding LCDC:

I personally believe that the great criticism of the land use planning system is being used (to make the Land Conservation and Development Commission) a scapegoat. I doubt there is any real, concrete evidence that the Commission in itself has discouraged anybody from coming into the state.” (Joint Legislative Committee on Land Use, 1982, p. 6, from Oregon Business Magazine, September 1982)

This shift in focus of the discussion did nothing to resolve the problems with developing a workable compensation mechanism, and the perception that LCDC was an impediment to economic growth only served to further galvanize opposing views regarding land use regulation.

The former first Chairman of LCDC, and by 1986 State Senator L.B. Day, would recognize and seek to address the deep divisions that had developed around the land use system, especially as they related to what was by now seen as “takings.”

It saddens me to no end to see people and organizations choosing up sides regarding these issues when Oregon Land Use Law was minted with the Ideal of Fairness, Resolve, and Good Will. I have been a part of the process in drafting the Oregon bill and becoming the First Chairman of LCDC (Day and Anderson, August 1986)

Day and State Representative Anderson provided draft language for the 1987 session relative to both compensation, and forest practices, as they related to land use planning that recognized, “Some actions may enhance the economic value of property and some actions may diminish its value.” (Day and Anderson, August 1986, p. 19, Section 2(a)) Once again, however, the next regular session of the legislature (1987) would fail to act.

Over the next twenty years, the compensation discussion would lead out of the legislature, into the newspaper, and ultimately to the ballot box.

Contemporary Views of the Policy Solution

In subsequent years, however, the committee was unable or unwilling to make a recommendation to the full legislative body on a plan for compensation of property owners impacted by land-use regulations. In 1981, the legislative assembly amended Oregon Revised Statutes section 197.135 to delete the requirement for the committee to propose a

compensation fund, and the legislature subsequently forgot the issue. (Hunnicuttt, 2006)

By 1996, the term “compensation” had effectively been decoupled from its windfalls and wipeouts historical context, and effectively related to only the “takings” side of the discussion. Excerpts from a series of letters to the editor, between the property rights group Oregonians in Action, and the former planning coordinator for Governor McCall, Arnold Cogan, who was also the first director of DLCD, were published in *The Oregonian* during 1996. The letters demonstrate how the discussion had been reframed.

Also, important, the 1973 Legislature intended to compensate landowners for losses they would suffer from land-use regulations, but this was never implemented and land owners all over the state have lost their property rights without receiving any compensation. (Taylor, Oregonians in Action, 1996)

Claims that McCall wanted a takings provision arise periodically and are without any factual foundation. (Cogan, 1996)

Cogan is wrong. A great deal of factual information reveals that almost everybody involved with the drafting and passage of SB100 understood the need to compensate landowners when laws or regulations intended for public benefit reduced property values...Furthermore, McCall introduced his own compensation bill to protect private rights in 1973, while still planning for Oregon's land-use future. (George, Oregonians in Action, 1996)

In 1973, McCall did introduce his own bill, SB849, to study the issue of compensation, but in the broad context of so-called ‘wipeouts’ when the property loses value and ‘windfalls,’ instances in which property values increase as the result of public regulation and expenditure. In fact, governor McCall proposed using a ‘windfall’ tax to assist the state in funding any remedial compensation that might be necessary. These issues were studied after the 1973 session by the Joint Legislative Committee on Land Use which made no recommendations. Governor McCall favored a discussion of compensation in all its aspects and this did occur. The legislature put the issue to rest more than 20 years ago. It is unfortunate that the intentions and nuances of this discussion continue to be misconstrued. (Cogan, 1996)

Although in his final response Cogan reasserted the windfalls and wipeouts language, he then suggests that the legislature had resolved the issue, implying no compensation plan was needed or desired.

By 1995, Republicans had gained control of both the Oregon House and Senate, for the first time since the passage of SB 100, and forwarded Senate Bill 600 to Democratic Governor Kitzhaber. SB 600 used a “takings” approach to compensation and was a precursor to Measure 7, which gave property owners a means to seek compensation for lost value. SB 600 was vetoed by Governor Kitzhaber. (Olson, 2005) Measure 7 was passed in 2000, but later deemed unconstitutional. Measure 37 was passed in 2004, and later upheld by the Oregon Supreme Court.

Conclusions

A review of the relevant documents related to the compensation discussion in the history of Oregon land use planning suggests a few clear, and basic, conclusions.

Then Governor Tom McCall, the most prominent Oregon political figure of his day, and the chief proponent of land use planning, supported the creation of a compensation mechanism for property owners whose rights were unduly restricted by new land use regulations. In addition, it is clear McCall favored funding compensation for those individuals through the capture of some portion of the windfalls, attributable to land use planning, realized by other property owners. Publicly, at least, he argued these two

concepts were connected, and ideally would be balanced. Senate Bill 849 also makes it clear that his intent was to find viable funding for compensation.

The inability of the legislature to develop a compensation funding mechanism extended over at least ten sessions, excluding the 1973 session, and may have fueled inequity in the distribution of societal wealth, as those wiped out had no recourse for their loss, and those reaping windfalls were not taxed for their gains.

The recession of the early eighties further polarized respective interest groups around statewide land use planning.

The passage of Measure 37, providing an unfunded compensation mechanism for property owners suffering a loss of value, has, at least for this period of time, successfully decoupled the potential for funding wipeouts through windfalls.

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Exhibit D
“Property Rights: Contested Compensation” OAPA White Paper

Property Rights: Contested Compensation
Oregon Chapter of the American Planning Association (OAPA) White Paper
Summer 2004
by
Ellie Fiore,
Oregon Chapter of the American Planning Association Research Intern and
Portland State University Master of Urban and Regional Planning Student

OAPA published a series of white papers about land use planning in Oregon. In addition to this paper about property rights, topics include urban growth boundaries, natural resource protection, housing, and farm and forestlands. All of these white papers are available online at:
http://www.oregonapa.org/component/option,com_docman/task,cat_view/gid,39/Itemid,33/.



Oregon's Land Use Planning Program Property Rights: Contested Compensation

**American Planning Association
Oregon Chapter (OAPA) White Paper
Ellie Fiore
Summer 2004**

Introduction

Property rights play a unique role in American culture, and an increasingly large role in American jurisprudence. The right to own and use property, and to make a profit from that land, is a dominant political theme in America. At the same time, most Americans consent to a wide range of restrictions on the use of private property. This balance of private interests and public welfare allows for broad regulations on land use while protecting private ownership. However, the restrictions are increasingly being called into question in the legislative and judicial arenas. The focal point of the debate is whether the burden of cost for regulations weighs too heavily on private landowners. The conflict over private property regulations has met with minimal success at the policy level, but has “succeeded in reshaping public perceptions about property rights and the balance between private and public rights in land” (Land Lines, p.1).

Oregon, long known for its well-established statewide land-use planning system, was at the center of this debate when voters passed Measure 7 in November of 2000. Though subsequently struck down in the Oregon Supreme Court, Measure 7 threatened to bankrupt local governments and roll back decades of regulations and restrictions on private land use. Proponents of Measure 7 and other property rights initiatives continue their campaign to pay landowners for restrictions in the use of their property that reduce the speculative value of that land. These initiatives are cloaked in careful language with broad popular appeal, necessitating a public education campaign to undermine the long-term goals of the property rights or “wise use” movement.

UPDATE Spring 2005: With the passing of the state initiative Measure 37 in the 2004 election, the debate over property rights compensation in Oregon has become much less theoretical. The initiative passed in a large part because of its populist appeal to agreeable concepts such as ‘just compensation’ and ‘fairness’.

The measure allows for government payment to property owners when property value has been reduced by government land use regulation. In lieu of payment, for which no sources of revenue are allocated, a waiver of the land use regulations may be instituted. The waiver would put into effect the regulations that were in place when the property was acquired by the current owner (Sullivan 2005).

Though certainly heralding a shift in the nature of land use planning in Oregon, the complexity and inconsistencies in the language of the regulation, and the practical difficulties of implementation, means that the results of initiative are far from clear (Sullivan 2005). There will be a brief commentary about the impact of Measure 37 at the conclusion of this paper.

Compensation for Regulatory Takings: Historical Justification

Compensation measures have their roots in the Takings Clause of the Fifth Amendment to the United States Constitution which states “...nor shall private property be taken for public use, without just compensation.” The drafters of the federal Constitution sought to protect against the arbitrary physical appropriation of land, not to prevent regulations or restrictions on that land (Sullivan and Cropp, p.39).

The advent of “regulatory takings” came in 1922 with the US Supreme Court case *Pennsylvania Coal Co. v. Mahon*. In this case, the court held that if a “regulation goes too far it will be recognized as a taking” (GAO, p.34). This was the first time land use regulations were linked with the Takings Clause. Justice Holmes concluded that generally, the burdens borne by landowners and the benefits conveyed to the public tend to balance each other out, a condition known as “reciprocity of advantage”. However, *Pennsylvania Coal* also established that it might

be possible that regulations could go so far as to be considered a taking under the Fifth Amendment (Inden, p.123). Since the inception of “regulatory takings” at this time, state and federal courts have established broad guidelines to determine when a taking has occurred and continue to evaluate takings claims on a case-by-case basis.

Growth of Property Rights Movement

In the 1980’s the property rights movement, which supports a broad definition of regulatory takings, grew significantly. A conservative trend in national politics and high-profile environmental regulations involving wetlands and endangered species garnered popular support for the cause. The US Supreme Court also shifted towards more expansive rights for property owners, which also added momentum to the movement (Meltz, Sec1B, second paragraph). Oregon, which has traditionally enjoyed broad and consistent support for land use planning, experienced rapid change which increased the attention paid to land use regulation. The booming economy of the 1990’s placed new pressure on the supply of developable land and “rising prices made the economic effects of regulation very noticeable” (Abbot, Adler and Howe, p.384).

The property rights movement got a surge of support in 1985, when Professor Richard Epstein published a high-profile libertarian interpretation of the takings clause, supporting an expanded definition of regulatory takings (See Epstein, *Takings: Private Property and the Power of Eminent Domain*). His analysis advocated a shift in focus from what had been *left* to property owners to what had been *taken*, an approach employed by property rights advocates and supporters of compensation measures.

Aims: The aim of the property rights movement is two-fold:

1. To allow property owners greater latitude in the use of land and;
2. To curb government regulation of private property.

The approach of certain property rights advocates has been to influence takings cases in the courts and to support legislation that restricts regulations on land (City Club, p.8).

Compensatable Regulatory Taking

In 1992, in *Lucas v. South Carolina Coastal Council*, the United States Supreme Court held that government action that completely eliminates all viable economic use can be a compensatable regulatory taking (GAO, p.31). The majority opinion in *Lucas* drew the distinction between total and partial regulatory takings. This decision ensured that government action that did not result in a total loss of value (the vast majority of regulation) would continue to be permitted. In doing so, it preempted many claims on land use regulations under the Takings Clause (Butler, pp.3-4). Property rights advocates maintain that the distinction between total and partial regulatory takings is arbitrary and illogical. They hold that any private landowner is necessarily bearing the burden of some public benefit and therefore should be compensated (Inden, pp.125-6). Since the courts have been reluctant to change their position on regulatory takings, citizen initiatives, proposed constitutional amendments, and statutory proposals have proliferated, most recently at the state and local level.

Land Use Planning Regulations in Oregon: Affects on Compensation

Oregon has offered statutory support for land use planning and regulation since the passage of Senate Bill 100 in 1973. The Bill affirmed the validity of land use planning and coordinated planning under Oregon's unique statewide planning system. The bill did not include any provisions for compensation for any type of loss incurred as a result of land use regulations (ODLCD). It did, however, call for a study of the issue by the Joint Legislative Committee on Land Use (JLCLU). In 1986, this committee stated that they had found "no evidence that land use regulations have resulted in a taking of private property." The JLCLU went further to say that the state's planning system protected property values over the long run (ODLCD). Property rights advocates, however, often distort the language used in SB 100 and claim that it did in fact call for compensation.

These advocates frequently use SB 100 to support their arguments for compensation for loss of value, such as proposed under Measure 7. SB 100, however, never mentions loss of value. It references only loss of *use*, which is the standard in determining takings cases. Property rights advocates frequently conflate these two concepts. The courts, however, have held that only regulatory takings that result in the total loss of economic value are protected by the takings

clause. Compensation legislation would be significantly more generous to property owners than takings jurisprudence is (Meltz, Sec4B, second paragraph).

“Conservative Populism”:

Property Rights Advocates, and Oregon

Property rights advocates and supporters of compensation measures make several claims that appeal to populist sentiment and appeal to critics of “big government.” A political trend known as “conservative populism,” which consists of grassroots efforts to limit government and rely on private market solutions, has become more predominant in Oregon. This approach is also skeptical of experts and expertise (Abbot, Adler and Howe, p.388).

These groups support the claim that government action that reduces the value of property should be paid to property owners. While this statement seems fair on its surface, it overlooks existing avenues for landowners to pursue compensation for measures they feel are unjust. Planners and public decision-makers have long recognized that in cases of undue hardship, some relief is justified.

Constitutional Protection

The Oregon State Constitution, like its federal counterpart, protects against the physical taking of land. Article 1, section 18 states that “private property shall not be taken for public use...without just compensation.” It is generally held that this language, and that of the Fifth Amendment, was intended to prevent the appropriation of land by public bodies, and not to prevent against restrictions on the use of land. While the US Supreme Court may have strayed significantly from the original conception of “taking” by its founders, by expanding the definition of takings to include regulatory takings and partial takings, the Oregon Supreme Court has been more careful in its interpretation of the state constitution (Sullivan and Cropp, p.40; Teaney, p.2). This implies that an expansion of takings to include land use regulations is not justified under the Oregon Constitution.

Aside from this constitutionally granted protection, landowners also have the right to challenge land use regulations or actions they believe are unjust or unlawful. In Oregon, local governments must comply with strict 120-day windows for appeals decisions, and both the Land Use Board of Appeals and Oregon Court of Appeals have similar (120-day or 150-day) time restrictions. Review may also be sought in the Court of Appeals and the Oregon Supreme Court. Land use law also includes the right to grant variances in cases where unusual circumstances make the application of standard regulations inappropriate or unfair. Oregon also allows exceptions, or variances of the statewide land use planning goals, as well as property tax abatements for farm and forestland (provisions sometimes known as “givings”. Takings law also protects landowners under both the state and federal constitutions. The American Planning Association believes that cases in which significant loss of value are not addressed through existing remedies are rare (APA Policy Guide; City Club, p.18).

Property Values

Another key point that advocates of compensation overlook is how land use regulations protect private property values. Land use regulations have been in place since colonial times, and zoning and other regulations were widely instituted in order to protect residents from noisy and noxious urban uses. Property values are bolstered by land regulations that protect and enhance the natural and built environment (Meltz, Sec4d, fourth paragraph). They do so by preventing conflicting uses (e.g. residential and industrial), providing more cost-effective public services through growth management and establishing parks and protecting open spaces. The problem for supporters of compensation is that the effects of planning regulations are borne by individual property owners, while the benefits are realized by the public (Abbot, Adler and Howe, p.387).

Negative Impact of Compensation Measures

Paradoxically, compensation measures that endanger such regulations could actually threaten the property rights of most landowners. The weakening of land use regulations would mean that property owners would be subject to negative consequences of neighboring uses from which they were once protected. Under such a system, protections against unwanted uses (such as drive-through restaurants) would be weakened. Most compensation measures allow protections

awarded under nuisance law to stay in effect (Charles, p.10). However, protection under nuisance law is weaker than many planning regulations, because it requires proof of harm, as well as the prospect of expensive litigation. Planning and land use regulations, on the other hand, are intended to prevent conflicting land uses before they can become a nuisance.

Furthermore, compensation measures that weaken land use regulations would mean that landowners (either individual households or corporations) could make a claim against taxpayers for not being allowed to use their land in ways that have traditionally been viewed as undesirable or even dangerous. In this way, compensation measures would threaten to roll back regulations, which protect the public health and safety, as well as the environment. They could also endanger civil rights by invalidating laws that require access for disabled people or requirements for affordable housing.

Speculative Damages

Under such measures, landowners could make claims for compensations where the loss was purely speculative. That is, a landowner could make a claim that residential zoning on her property kept her from making a profit she would have reaped if the land were zoned commercial. This would be true even if she made a profit from the residential use alone and also if she never intended to use the land commercially. Likewise, the determination of this “loss of value” is not clear-cut or easy to calculate. It is dependent on time of purchase and sale, appreciation of property values over time and neighboring market values, among other factors. Claims for compensation are frequently not based on calculations of what occurred; rather they are based on speculations of hypothetical situations.

Compensation measures would likely create many new claims for damages for which there is currently no legal basis. Such claims would be costly to process and to remedy, and ultimately this cost would be borne by taxpayers. Supporters of restrictions on public regulations are not oblivious to this fact. They recognize that it would be prohibitively expensive for public agencies to pass regulations that would potentially reduce the value of private land. The result would be deregulation of land. This would have wide-reaching impacts on the way that all levels of government do business. In the words of Justice Oliver Wendell Holmes, “[g]overnment

hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law” (Meltz, Sec4D, third paragraph).

Retroactive Damages

Compensation measures that are retroactive would effectively repeal even more planning regulations. Likewise, their enforcement would be more complicated and costly. Measure 7 was one such measure that would have had broad applications and was retroactive. While the degree of retroactivity was not fully agreed upon, the economic and planning consulting firm ECONorthwest estimated claims for “lost urbanization” as a result of the Urban Growth Boundary under partial retroactivity at \$3.5 billion and almost \$7 billion assuming full retroactivity (Liberty, p.12).

Measure 7 would have been so wide reaching in its application because it called for compensation for “restrictions” in property use rather than full-fledged takings. It also applied to both state and local governments (City Club, p.24). Though there was some disagreement over the extent to which the measure would have been retroactive, many land use lawyers believe that Measure 7 claims could have been made against regulations that were already in place when the land was purchased, and that landowners were aware of as a condition of purchase.

The ambiguity in the measure meant that the details of implementation would have to be worked out through litigation, undoubtedly a costly and time-consuming endeavor. However, no funding source for claims or litigation was identified (City Club, p.27). One analyst has identified Measure 7 as “far and away the most extreme takings measure enacted anywhere in the United States at any level of government” (Echeverria, first paragraph).

Measure 37

Though Measure 7 was struck down in the Oregon courts, property rights interest groups continue their campaign for instituting a compensation measure in the state. The most recent incarnation of this movement is Measure 37, which recently qualified for the 2004 ballot. Unlike its predecessor, Measure 37 is a statutory measure, not a proposed constitutional amendment. While it does bear some similarity to Measure 7, Measure 37 is quite different in its approach,

and could prove to be more wide reaching in its impact than Measure 7. The language of the new measure, unsurprisingly, has at least facially broad popular appeal. The ballot title states simply that, “governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value” (OR Secretary of State).

What this means is that local governments would face a choice of waiving existing land use regulations or paying landowners to comply with them. Since the measure does not specify a funding source, and could potentially lead to billions of dollars in claims, public officials may be left with little choice but to refuse to enforce long-established land use regulations. This “pay-or-waive” requirement applies to “any statute regulating the use of land or any interest therein,” which could include an extremely broad set of laws (Secretary of State). Much of the complexity of Measure 37 stems from its retroactivity. It would effectively repeal laws that have been established and accepted for many decades, as long as a family member has owned the land in question or legal entity related to the current owner at the time the challenged regulation was enacted. In practice, this would mean that each parcel of land in Oregon would be subject to a different set of laws and regulations.

Like Measure 7, Measure 37 does not specify a new funding source, nor does it create any new agency or apparatus to deal with new claims. Existing agencies will be required to pay these claims or waive the applicable regulation. Since local governments, courts and state agencies are overburdened under the current funding structure; the default position under Measure 37 will be to waive land use regulations.

In this way, Measure 37 would have the effect of removing many laws and regulations that protect property values and quality of life. The effect will be that governments may have to pay people to not build taverns, convenience stores, parking lots or other developments in locations where they are opposed by most neighbors. Further, these “pay-or-waive” decisions would not be considered land use decisions and therefore will not require public notice and hearings. Any claim that has not been paid within two years would allow the landowner to use their land according to the regulations in place at the time the property was acquired by the owner or his or

her family. The initiative “would create uncertainty for most private land owners and destabilize the value of their homes” (Beaumont).

Populist Sentiment backed by Industry

Measure 37 is the most recent in a series of citizen-driven compensation measures meant have broad appeal with citizens. The campaign it appeals to populist sentiment, which is particularly strong in the West, especially in the current context of concern over taxes. Ironically, such property rights laws will inevitably disproportionately benefit large landowners. Nationally, three-quarters of private land is held by just 5% of the landowning population (Meltz, Sec4D, fourth paragraph). Landowners who stand to benefit the most from Measure 37 or other compensation measures include agribusiness, real estate development interests and the extractive industries, such as timber, mining and oil (OLCV). Likewise, past supporters of regulatory takings measures include special interests like Texaco, Exxon, the American Mining Congress and Chemical Manufacturing Association (Ibid). While some small landowners may also benefit under compensation systems, the public should be aware that the largest benefit would be bestowed on the largest landowners.

Regardless of the fate of Measure 37 at the ballot box this fall, other property rights and compensation measures will certainly be proposed in the future, both in Oregon and nationally. Poorly drafted measures such as Measure 7 and Measure 37 are legally ambiguous and lead to costly, time-consuming litigation. The American Planning Association opposes compensation measures, and the Oregon branch of the American Planning Association (OAPA) opposed Measure 37. These groups believe that existing avenues for compensation are adequate and oppose the passage of any additional system of compensation. However, should compensation legislation be adopted, it must meet a set of carefully considered criteria to be as fair as possible. First, a funding source must be identified prior to adoption (League of Oregon Cities; City Club of Portland). To the extent possible, this revenue should be tied to private gains from land use regulation (City Club of Portland). Furthermore, a thorough and public examination of its fiscal impact should be required and the results publicized.

Next, a threshold should be set for losses that are compensable, to prevent claims on minor damages (City Club). A minimum diminution in value will prevent minor claims whose cost far outweighs the actual loss of value claimed, and will minimize the number of claims made. Likewise, the measure should establish a clear point in time beyond which claims on regulations cannot be made (i.e., prohibit retroactivity) (League of Oregon Cities). Alternatives to compensation should be permitted as well. Landowners could be granted transferable development rights or density bonuses, for example, rather than monetary awards (City Club).

Lastly, the process of drafting any legislation should be transparent open to public input. If the public truly wished to limit public regulations on land beyond existing systems, the full consequences of any action, both fiscal and practical, should be readily apparent to voters. Any compensation measure should represent the true public will, and not that of special interest groups.

Update: Planning in Oregon after Measure 37

Much of the above commentary on measure 37 has proven accurate. The measure passed by a comfortable 61-39 margin, never really in jeopardy of being defeated as a result of two primary factors.

1. The language used in the ballot title appealed to the widespread ‘conservative populism’ found in Oregon.
2. The many benefits of 35 years of restrictive land use planning had not been widely disseminated to the public.

Measure 37 was a poorly written measure with ambiguity, unnecessary complexity-- particularly in regard to statute of limitations-- and overlapping state and local regulations. The “significant practical difficulties” of implementation means that planning in Oregon has been thrown into a state of crisis, or at least, excessive uncertainty (Sullivan 2005, 2).

Measure 37 may weaken planning in Oregon and allow for development in previously restricted patterns, such as large housing development in farm or forestland. However, the unacceptable levels of uncertainty, for planners as well as landowners concerned with property value, may in



the end strengthen Oregon planning regulations by making a statewide review of the planning program a necessity.

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Exhibit E

Measure 7 City Club Report

Executive Summary of
“Measure 7 and Compensation for the Impacts of Government Regulation”

City Club of Portland Report
April 2002

Full report is available online at <http://www.pdxcityclub.org/research/reports.php>.

MEASURE 7 REPORT

EXECUTIVE SUMMARY

In November 2000, Oregon voters shocked the land use community, both locally and nationally, by approving Ballot Measure 7, which represents a relatively new and extremely controversial principle requiring compensation for so-called "regulatory takings."

The term "takings"¹ derives from the Fifth Amendment to the U.S. Constitution, which prohibits the government from taking private property for public use without just compensation. Early in the 20th Century, as local governments began adopting zoning laws and other laws that placed limitations on land use, the Supreme Court attempted to address just how much of the landowner's rights had to be infringed before a "takings" was considered to have occurred and a right to compensation triggered. The court set forth some general guidelines, which generally resulted in a subjective, case-by-case analysis, but almost always focused on whether the landowner had any remaining viable economic use of the property after the regulation was applied.

From the 1930s to the early 1970s, the takings clause received little attention in the courts, at least at the national level. This same period saw a marked increase in the amount of governmental regulation—from Roosevelt's New Deal to environmental regulations to historic preservation ordinances. Much of this new body of regulations restricted how landowners could use their land. Beginning in the mid-1970s, nearly every Supreme Court term has seen at least one high profile case involving claims for "just compensation" due to a restriction on the use of real property.

Early in this period of increased interest in the takings clause—in the mid-1980s—a University of Chicago law professor, Richard Epstein, developed the concept of a "regulatory" taking. This theory responded to the frustration of many property owners with the threshold of loss that had to be shown to establish the right to just compensation under traditional takings law. Epstein argued that the right to compensation should hinge on how much value the government "takes"—not on how much value is left to the landowner.

Epstein's theories found a receptive audience in the administration of President Ronald Reagan and resonated with property rights advocates around the country. In fact, regulatory takings legislation was included in the Republican Party's "Contract with America" in the 1994 mid-term elections. And, the regulatory takings concept is at the heart of Oregon's Ballot Measure 7.

¹ For the reader's convenience, a glossary of terms is included as *Appendix A*.

Measure 7 was marketed to voters as a question of basic fairness: when the government takes action that reduces the value of property, it should pay for the reduction. Advertisements focused on a few individuals who purchased land in established residential areas and then were unable to build a residence on the land following adoption of new regulations. Your committee interviewed a number of landowners and confirmed that there have been cases of hardships imposed by new regulations. A majority of the committee felt that some form of relief is appropriate for these hardship cases.

However, in many cases of apparent hardship, there are extenuating circumstances that were not widely discussed publicly prior to the election and that are not given any weight in Measure 7's compensation provisions. Instead, Measure 7 adopts a simplistic approach to a complex problem. In addition, Measure 7 would apparently have consequences not intended by its drafters, including extending a right to compensation to property owners who purchase land after a regulation is adopted but before the regulation is formally applied to their specific parcel. We point out some of these defects in Measure 7 and identify a number of elements that should be considered in developing a compensation system for regulatory takings.

For reasons detailed in the body of the report, your committee concluded that, although the Oregon land-use system is not perfect, Measure 7 is not the proper vehicle for remedying hardships. Your committee believes that some action should be taken to alleviate long-standing frustrations stemming from Oregon's land use system and to provide relief to those property owners who have clearly suffered unfair hardship. Although implementation of Measure 7 has been stayed pending Oregon Supreme Court review, the issues it raises are likely to continue being controversial and the subject of future public debate. Accordingly, we set forth a list of principles intended to strike a balance between individual property rights and the interests of the community. We believe these principles should guide any effort to replace Measure 7.

PRINCIPLES FOR "SON OF 7" SOLUTIONS

In the course of our work, we learned that the issues surrounding compensation for governmental restrictions on the use of property are extremely complex. We developed a set of principles that we believe should guide any debate over compensation for land use regulations and any legislative or initiative response to Measure 7. The principles include the following:

1. Real property is a finite resource that is subject to increasing pressures due to population growth. Society has a strong interest in protecting and regulating the use of this resource.

MEASURE 7 REPORT

Executive Summary

2. Although Oregon's current land-use system may not be perfect, it is a legitimate and successful tool for accomplishing many goals that are in the public's interest.
3. The current constitutional and statutory framework of land use planning in some cases puts unfair burdens on certain landowners, and those burdens should be compensated. Government regulations can cause a loss in the value of private property that, in some cases, should be compensated.
4. The definition of a "taking" needs to be refined to set definite parameters on the scope of compensable takings caused by land use regulations.
5. Compensation should not be paid for alleged reductions in value resulting from regulations abating nuisances. The definition of a "nuisance" needs to be clarified and updated periodically to reflect evolving scientific knowledge, the cumulative impact of individual land-use decisions, and community values.
6. Any compensation system should be codified in statutes rather than the Oregon Constitution and should emphasize certainty and stability.
7. If the government is required to pay compensation to a property owner, the government should acquire an enforceable property-related right. The government's right should be transferable. Subsequent property owners should take ownership of the land subject to the government's acquired right to restrict use of the property without further compensation.
8. The government should have options in terms of the form of compensation (such as tax abatements and property swaps, among others). These should include the option to sell back the right to engage in the restricted use at a later date.
9. Only losses of value above a certain threshold should be eligible for compensation.
10. The government should not guarantee unreasonable expectations of profit. Expectations are more likely to be reasonable if they involve continuation of a historic use or a use that was expressly permitted (e.g., under zoning laws) at the time the owner acquired the property. Speculation (e.g., of the assumed right to build a subdivision on farmland) should not be compensated.

11. The compensation scheme should set a date that establishes the baseline of regulations or restrictions that will not be compensable.
12. There should be a statute of limitations on submitting claims.
13. If an alternative to Measure 7 is presented to voters, it should include not only the compensation scheme, but also the corresponding funding mechanism.
14. Compensation for losses by regulatory takings should be funded, to the extent practicable, by revenue generated from property owners who benefit from changes in land-use regulation. This inverse corollary to takings compensation should be assessed upon the property owners' realization of profits.
15. In reviewing specific proposed land use regulations, regulators should be required to take into account the burden on private landowners (such as in a fiscal impact statement) versus the benefits to the public from the regulations and the amount of likely regulatory takings claims that will result.

Making land-use planning work for positive purposes while mitigating negative side effects is a very challenging and critically important undertaking. Oregon has wrestled with this dilemma since the state's land-use system was created in 1973. Regardless of how the Oregon Supreme Court rules on Measure 7, the issue is not going away. Your committee thinks the time is right to take a comprehensive look at the issue of compensation for regulatory takings. Any relief should be narrowly tailored to cases of truly unfair hardships, taking into account the principles we have set forth above.

RECOMMENDATIONS

1. **Adopt Principles:** The City Club should formally adopt each of the fifteen principles. The Club should use these principles to evaluate any future proposals for a system of compensation for the impact of government regulations on property values.
2. **Identify Appropriate Balance:** The governor and Oregon Legislative Assembly should immediately begin a public process that will identify the appropriate balance between property rights and community interests that is acceptable to, and will be supported by, the majority of Oregonians.
3. **Develop and Implement Limited Compensation Program:** The governor and Oregon Legislative Assembly should use the input from the public process and work with interested and affected parties to craft and implement a statutory compensation program that follows the principles that we have laid out.

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4. **Eliminate Measure 7 language from the Oregon Constitution:**
If the Oregon Supreme Court upholds Measure 7, the Oregon Legislative Assembly should refer to voters a measure to remove Measure 7 from the Oregon Constitution.

Exhibit F

Excerpt from “A Quiet Counterrevolution in Land Use Regulation: The Origins and Impact of Oregon’s Measure 7”

Abstract and Conclusion From
“A Quiet Counterrevolution in Land Use Regulation: The Origins and Impact of Oregon’s Measure 7”

By
Carl Abbott, Sy Adler, and Deborah Howe

Full article originally appeared in the journal *Housing Policy Debate*.

Full citation:
Abbott, C., Adler, S., & Howe, D. (2003). A quiet counterrevolution in land use regulation: The origins and impact of Oregon’s Measure 7. *Housing Policy Debate*, 14, 383-425.

Full text of article is available online at
www.fanniemae.foundation.org/programs/hpd/pdf/hpd_1403_abbott.pdf.

Abstract (p. 383)

In November 2000, Oregon voters adopted Measure 7, the nation’s most absolute definition of a regulatory “taking” and the compensation required for any and all loss of potential property value because of state or local regulations. Although the Oregon Supreme Court later invalidated Measure 7 on technical grounds, it is important to understand the origins and meaning of this drastic action. This article describes the proplanning consensus that has dominated Oregon since the 1970s, examines the Measure 7 campaign and its political consequences, and analyzes the emerging tensions within the Portland metropolitan area and across the state that led to this grassroots counterrevolution.

We conclude that Measure 7 does not signal the end of Oregon’s land use planning system, but that it is likely to force a rebalancing of the regulatory system to address the real hardships that regulations governing land development can impose.

Conclusion (pp. 416-418)

For nearly 30 years, Oregon has operated within a consensus-based system of politics. Particularly in the realm of growth management and land use planning, this consensus has spanned the two major political parties, creating a very strong pull toward a moderately progressive center. The operation of the consensus can be seen in the bipartisan establishment of state land use planning in the 1970s; in the bipartisan, centrist defense of the state system in the 1980s and its support by major business interests as well as environmentalists; in the success of a downtown-neighborhood coalition in Portland; and in the substantial progress of a smart growth agenda among state bureaucracies as well as planning advocacy groups. The strength of the consensus is shown by the fact that there was no serious statewide challenge to the planning system from 1982 to 2000.

Yet there is evidence that the consensus may have unraveled at the start of the new century. In the Portland metropolitan area, the goal of compact growth still commands majority support, but it is an increasingly tenuous and fragile majority that has lost support in both city neighborhoods and the suburbs. Statewide, the passage of Measure 7 signaled that the proplanning majority of the 1970s and 1980s may no longer be in place. Although it is possible to explain the passage of Measure 7 in terms of specific tactical choices, it may express a larger disaffection with comprehensive interventions in the land market.

Measure 7 raises a practical political issue: Is it possible to keep people committed to a particular set of values over more than a few decades? Although a number of politically active Oregonians still remember the passion of the 1970s, most residents have come of political age, or arrived from elsewhere, during the more recent decades when the system has been an exfoliating bureaucracy rather than a cause. Examples from other cities suggest that the civic moment in which coalitions develop around comprehensive planning and public service improvements seldom lasts more than 30 years: Birmingham, England, from 1860 to 1890, for example, or Chicago from 1890 to 1920. Oregon may be no different.

However, one common explanation for Measure 7 – that Californians did it to Oregon – is not supported by the evidence. Oregon has enjoyed a net in-migration every year since 1988, with roughly one-third of all newcomers arriving from California. By Oregon mythology, these folks are gas-hogging SUV drivers who bring with them a brand-name fixation and individualistic, anti-environmental values. Unfortunately for the myth, surveys conducted by the state's leading opinion polling firm show almost no difference in attitudes toward environmental protection and planning between long-term residents and newcomers at either the metropolitan or the state level. Polls do show a growing discontent with the complexity of land use and environmental regulations, but the desire to modify or improve the system is shared by newcomers and old-timers alike (Adam Davis, personal communication, May 13, 2003). In this light, Measure 7 was the first chance for many people to express this concern, even though it was designed as a sledgehammer rather than a scalpel.

Despite its failure in the courts and the inability to craft an alternative in the 2001 legislature, Measure 7 will force a rethinking and rebalancing of the regulatory system. If Florida's experience is any indication, even a milder revision of Measure 7 is likely to have a chilling effect on the development of new regulations (Benner 2002). It is likely that environmental absolutists will need to deal with the real hardships that land development regulations can impose. The substantive problem is whether the Oregon approach to growth management makes too many promises. As a variety of different pressures have built inside and outside UGBs, it may be necessary to craft new compromises between the needs of the poor and the preferences of the rich, the claims of people and the requirements of natural systems, the attractions of urban life and the appeals of a "Little House in the Big Woods."

Any successor to Measure 7 will still require a state-level response. Measure 7 put three options on the table: eliminate regulations, cut public services to finance compensation, or raise taxes to finance compensation. Local governments have little leeway to cut services and no politically practical revenue sources that generate adequate compensation funds. Moreover, state law

currently requires a variety of land use and zoning restrictions. Efforts by some cities or counties to ignore or bypass state requirements would quickly put pressure on the others to do likewise or lose the ability to find a new revenue source that is both large enough and comprehensive enough to be fair, such as a real estate transfer tax or a land increment value tax (actually proposed by Governor Tom McCall in 1974).

Finally, Measure 7 presents a challenge of political philosophy: how and whether to keep people committed to a social compact (Benner 2002). From one point of view, Measure 7 is a direct blow at the idea of Oregon as a community with collective interests. Couched as a fairness measure, it was a Trojan horse that did something – it negated 30 years of land use planning – that could not have been sold explicitly to the voters (Lamb 2001). Phrased in terms of individual fairness, Measure 7 ignored the reciprocal individual benefits and the comprehensive community benefits that can flow from public regulations. Oregonians were clearly voting to reaffirm private property (no surprise) and not offering a judgment about planning. Indeed, Measure 7 plays out one of the major tensions in U.S. society between a conservatism that emphasizes individualism and open markets and a conservatism that values community needs and interests.¹ Oregon is not likely to craft a successful response to the concerns behind Measure 7 until its residents again share a common vision of a preferred future.

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¹ Advocates of the Oregon planning system tend to be most comfortable pitching their arguments in terms of environmental values and broad community interests. They deemphasize the arguments of individual and neighborhood self-interest – that comprehensive planning maintains the market value of improved urban real estate – even though this is probably one of the sources of support in developed areas such as Portland. It is possible to be a “homevoter” as defined by William Fischel and also to be a firm ally of systematic land use planning (Fischel 2001).

Exhibit G

Changes to Oregon's Land Use Laws

Oregon's legislature and Land Conservation and Development Commission (LCDC) amended the land use planning program many times since the program's origin in the 1960s. The table in this appendix describes many of these changes. Bob Stacey, Executive Director of 1,000 Friends of Oregon, compiled this list. It is subject to correction or addition.

	LEGISLATIVE CHANGES TO FARM & FOREST RULES
Date	Action
1963	The legislature creates Exclusive Farm Use (EFU) zones and lists five nonfarm uses allowed on farmland.
1967	The legislature removes "the construction and use of dwellings" from the definitions of farm use. (Oregon Laws Chapter 386, 1967)
1969	The legislature enacts SB10, which includes as an interim land use goal "[t]o conserve prime farm land for the production of crops." ORS 215.515(d) The legislature adds back in "dwellings and other buildings customarily provided in conjunction with farm use" as uses allowed in farm zone.
1973	The legislature passes and the governor signs SB100, which created the statewide planning program and applied interim land use goals to comprehensive plans prior to the effective date of statewide planning goals. SB101 passes the same day as SB100 (October 5, 1973) and changes the EFU zone by establishing statewide Agricultural Land Use Policy in ORS 215.243. Section (4) of ORS 215.243 states: <div style="padding-left: 40px;">“(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners or rural lands to hold such lands in exclusive farm use zones.”</div> The legislature removes the \$500 minimum income standards in order for land to qualify for farm tax assessment in EFU zone. The legislature adds six new uses allowable in farm zone.
Jan. 25, 1975	Statewide Goals 1-14 become effective (OAR 660-015-0000) and applicable to legislative land use decisions and some quasi-judicial land use decisions where site-specific goal provisions apply.
1975	The legislature adds one additional use allowed in EFU zones.
1977	The legislature adds three more uses to the list of those allowed in EFU zones, bringing the total to 15.
1979	The legislature adds one additional use allowed in EFU zones.
1981	The legislature authorizes a dwelling on a "lot-of-record" in farm and forest zones until July 1, 1985. The legislature adds one additional use allowed in EFU zones.

1983	<p>The legislature passes SB837, the “Marginal Lands Act” to exempt “marginal lands” from requirements of Statewide Goals 3 (Farm) and 4 (Forest) and, in exchange for EFU requirements, broaden the number of qualified “lots of record” under ORS 215. Counties had the discretion to choose whether to identify and designate marginal lands and use new, expanded lot-of-record provisions and could adopt new EFU provisions alone. The legislature repealed this act and replaced it with HB 3661 in 1993.</p> <p>The legislature also expands types of home occupations allowed in EFU zones.</p>
1985	The legislature adds six more allowable uses in EFU zones for 23 total uses.
1987	The legislature adds three more allowable uses in EFU zones for 26 total uses.
1988	LCDC adopts definition of “secondary lands” and a proposal for identifying and defining permitted uses and densities on primary and secondary resource lands.
1989	The legislature adds four more allowable uses in EFU zones for a total of 30 uses.
1991	The legislature adds two more uses allowed in EFU zones.
Aug. 7, 1993	LCDC amendments to Goal 4 and administrative rules in OAR Division 6 become effective.
Nov. 4, 1993	The legislature adopts HB 3661, which requires LCDC to repeal its “small-scale resource land” rules, adds a new definition of “high-value” farmland, describes uses allowed on less productive resource lands (allowing more nonfarm development on such lands), establishes new standards for dwellings in forest zones, and establishes a statewide minimum lot size for forest zones. The legislature also adds four new uses allowed in EFU zones for a total of 36.
March 1, 1994	LCDC adopts amendments to its administrative rules (small-scale resource land rules) as required under HB3661.
1995	The legislature adds five more allowable uses in EFU zones for a total of 41 uses.
1997	The legislature adds six more allowable uses in EFU zones for a total of 48 uses.
1999	<p>The legislature amends the definition of the “Willamette Valley” to exclude part of Benton County in the Alsea area west of Mary’s Peak, to make this area subject to less stringent, non-Willamette Valley standards for new parcels and non-farm dwellings. ORS 215.010(5)</p> <p>The legislature passes SB 882, authorizing a limited number of yurts in campgrounds in farm, forest, and mixed farm/forest zones.</p>
2000	LCDC amends Goal 4 to allow youth camps in forest zones in response to HB2540 in ORS 215.457.
2001	The legislature passes HB 3326, loosening requirements to allow the creation of new parcels and new nonfarm dwellings on EFU land under some circumstances.
2002	<p>LCDC amends Goal 4 rule in response to SB715, which allows a lot or parcel with more than one legal dwelling to be divided into separate parcels.</p> <p>LCDC amends rules relating to approval of farm dwellings and eliminates the requirement that the county must determine the gross income amount for farm</p>

	<p> dwellings based on 1994 dollars. The new rules allow the gross income from the entire farm operation to be counted (not just from the tract on which the dwelling will be located) and allow the gross income earned on one farm to be counted towards a new farm dwelling on the owners' new farm. </p>
2004	<p> LCDC amends Goal 4, allowing yurts in campgrounds as provided in ORS 215.457. </p>

Exhibit H

Oregon Land Use Laws Supporting Development

Although Oregon's statewide land use planning system primarily grew out of concern for limiting development in rural areas, the system includes many provisions designed to encourage or support development in appropriate places. This appendix describes the provisions designed to support development. These provisions address housing, urban growth boundaries, procedural issues, and other miscellaneous characteristics of the system. Bob Stacey, Executive Director of 1,000 Friends of Oregon, compiled this list. It is subject to correction or addition.

Oregon Land Use Laws Supporting Development

Housing

- **The Housing Goal.** In 1974, the Land Conservation and Development Commission made Goal 10, the Housing Goal, part of the original statewide planning goals. The goal requires every city to plan and zone a sufficient amount of residential land to ensure that it can provide a variety of types, densities, and prices of housing units, as well as enough housing to meet the community's needs, for 20 years.
- **The Housing Rule.** In 1982, LCDC adopted an administrative rule to further implement the Housing Goal. The rule includes specific requirements about how communities must define "housing need" and provide a sufficient residential land supply. The rule also states that housing developments may be subject only to "clear and objective standards," that do not permit a housing application to be denied solely based on neighborhood objections or subjective considerations such as "character of the area." OAR ch. 660, div.008.
- **Metropolitan Housing Rule.** In 1982, LCDC adopted an administrative rule assigning minimum densities for housing to each city and county within the Metro jurisdiction. Cities and counties must achieve these densities on land zoned for residential use. OAR ch. 660, div. 007.
- **Housing Statutes.** The legislature has passed a number of statutes that reinforce and expand on the requirements described above. These include:
 - Local governments must apply clear and objective standards to housing developments; these standards cannot have the effect of reducing the zoned density. ORS 197.307.
 - Local governments cannot prohibit the siting of manufactured homes in single family residential zones. ORS 197.314.
 - Local governments cannot prohibit multi-family housing or rental housing from all residential zones. ORS 197.312.
 - Local governments cannot deny an application for a housing development solely because of lack of school capacity. ORS 195.110.

- **Prohibition of Inclusionary Housing.** The 1999 legislature passed a bill that prohibits local governments from requiring that a certain percentage of the units be made available to those of lower incomes or for rent as a condition of a housing development. Affordable housing providers and many local governments strongly opposed this legislation because they supported the use of inclusionary housing. ORS 197.309.

Urban Growth Boundaries

- **20 Year Land Supply.** In 1995, the legislature passed a law requiring every city in Metro, every city over 25,000 people, and other cities as designated by LCDC to include a 20 year supply of residential land within its UGB. The law codified what had been LCDC's practice prior to the law's passage. ORS 197.296.
- In 1995, the legislature established very detailed criteria that cities must follow in assessing their residential land supply, future needs, and UGB capacity. In addition, the law requires Metro to re-evaluate its UGB every five years and expand its UGB if necessary. ORS 197.296 and ORS 197.299.
- The 2005 legislature passed a bill requiring Metro to establish a process for expanding the UGB to site schools serving the children of urban residents. ORS 197.299.

Outside UGBs

- The 2003 and 2005 legislatures enacted legislation allowing industrial uses of any type and scale on exception lands outside UGBs and outside the Willamette Valley. ORS 197.713.
- The 2003 Legislature passed legislation allowing local governments to site any industrial use on abandoned mill sites outside UGBs. ORS 197.719.

Procedural Issues

- **120-Day Law.** In 1983, the legislature enacted a law requiring local governments to decide on a land use application – including all local appeals and hearings – within 120 days of the receipt of a complete application. If the local government misses the deadline and does not receive an extension approved by the applicant, the applicant can go to the county circuit court where the local government has the burden of proving why the local government should not issue the permit. Many observers believe this is the fastest approval process in the nation. ORS 227.178
- **Limited Land Use Decisions.** In 1991, the legislature created a new decision-making process, titled “limited land use decisions” (LLUDs). Under the LLUD process, all land division and design review decisions are LLUDs, as is any local decision regarding *how* a local government sites a land use, as opposed to *whether* the government allows the use. The law authorizes local governments to review LLUD applications without holding hearings and without providing for an appeal at the local level. ORS 197.195.

- Expedited Land Division. The 1995 legislature created another special review process for some land divisions that meet minimum density and other standards. For qualifying “expedited land use divisions” (ELDs), the law *prohibits* local governments from holding public hearings or allowing appeals to the City Council or County Commission. In addition, the does not allow an appeal to the Land Use Board of Appeals (LUBA). For cases that do qualify as an ELD, the referee “shall seek to identify means by which the application can satisfy the applicable requirements.” The law requires the referee to do everything possible to approve the application. An applicant may appeal an ELD to the Oregon Court of Appeals, but only on very narrow grounds. ORS 197.375(4)(a) and ORS 197.360-.380.

Miscellaneous

- Ban on Growth Moratoria. During the 1982 special session, the legislature passed the moratorium statute, which limits the ability of local governments to impose building moratoria. Under this law, local governments may enact a temporary suspension of land use approvals in particular categories (such as residential or retail) if the local government documents there is a service inadequacy (such as roads or water systems) and demonstrates there is no alternative to a temporary building moratorium. Any moratorium may last only 120 days, with allowance for extensions of up to 6 months if the local government demonstrates progress toward alleviating the service problem that led to the moratorium. ORS 197.505
- Systems Development Charges. Over several sessions, the legislature has tightened local government authority to set systems development charges (SDCs) on new development. Generally, only capital costs directly attributable to the new development are eligible for recovery through SDCs, and then only to provide service equivalent to the level currently existing in the city. Local governments may assess SDCs for stormwater, transportation, water, sewer service, and parks. Local governments cannot assess SDCs for any other services, such as schools, police and fire services, and libraries. ORS Ch. 223.
- Vesting. The 1983 legislature passed a “vested rights” law that prohibits local governments from requiring landowners to comply with newly-enacted regulations if the land owner files an application before the effective date of the new regulation. As soon as a landowner applies for a permit, that applicant has the right to a decision based on the plan and zoning in effect when he or she filed the application. The law allows the applicant to take up to six months to finish putting together a last-minute application. ORS 215.427(3)(a)
- Property Owner Notice of Zoning Changes. The 1997 legislature passed and referred HB 2515 to the voters as Ballot Measure 56. The voters approved Ballot Measure 56 in November 1998. Ballot Measure 56 required government to comply with extensive notice requirements - written notice mailed to all owners of affected property. The law required written notice requirements to include the following language: “The (city / county) has determined that adoption of this ordinance will affect the permissible uses of

your property and may reduce the value of your property.” The legislature has since amended Measure 56 and the required notice now states that the adoption of the noticed ordinance may “change” the value of a property. ORS 227.186 and ORS 215.503

Exhibit I

Existing Tools for Tailoring Planning to Regional and Local Conditions

Oregon's statewide planning program includes provisions that allow the state to tailor planning to regional and local conditions. This appendix describes some major provisions that allow local and regional areas to adapt statewide rules to their own needs. Bob Stacey, Executive Director of 1,000 Friends of Oregon, compiled this list. It is subject to correction or addition.

1. Although cities and counties must comply with state rules, the 241 Oregon cities and 36 Oregon counties, not the state, create and adopt all comprehensive plans. The state assures consistency, but no two plans are the same because no two conditions are the same. Each plan reflects different conditions, buildings, trends, geographic characteristics, and other factors.
2. Statewide Planning Goals take into account policies for different parts of the state. Goal 3 protects farmland, but the regulations apply to eastern Oregon differently than western Oregon. The coastal goals apply only to the coast and the Willamette Greenway only applies to jurisdictions that border the Willamette River from Eugene to Portland. Certain administrative rules apply only to Portland Metro area cities
3. Smaller jurisdictions have fewer requirements than larger ones:
 - a. Detailed planning requirements, including transportation planning and UGB analysis, only apply to cities larger than 25,000 people and Metro. Larger cities covered by more extensive requirements include Portland, Salem, Eugene, Medford, Bend and Corvallis.
 - b. Moderate cities (population 2,500 to 24,999) do not have to address specific residential and urban growth boundary planning requirements or mass transit planning under the Transportation Planning Rule. These cities include La Grande, Klamath Falls, Roseburg, and Dallas.
 - c. Only cities with over 10,000 people or that have a metropolitan planning organization for transportation must periodically review their local land use plans.
 - d. Cities with fewer than 2,500 people and counties with fewer than 15,000 people are exempt from many planning requirements.
4. Oregon is Diverse; So Are Planning Requirements
 - a. Agricultural land is defined differently east vs. west.
 - b. The state defines high-value farmland differently for the Willamette Valley and the coast than elsewhere.
 - c. The Portland Metro region complies with different planning requirements.
 - d. The state authorizes regional problem solving, which allows collaborative regional efforts to create unique solutions.
 - e. Dwelling approval standards vary between high-value farmland and non high-value farmland.

- f. Criteria for non-farm dwellings vary: Willamette Valley standards are different than those for eastern Oregon.
- g. New parcel criteria vary; Eastern Oregon and areas outside the Willamette Valley have different standards than the Willamette Valley.

Exhibit J

Measure 37 Fast Facts

Summary of information from Portland State University Institute of Metropolitan Studies'
Measure 37 Database
October 16, 2006

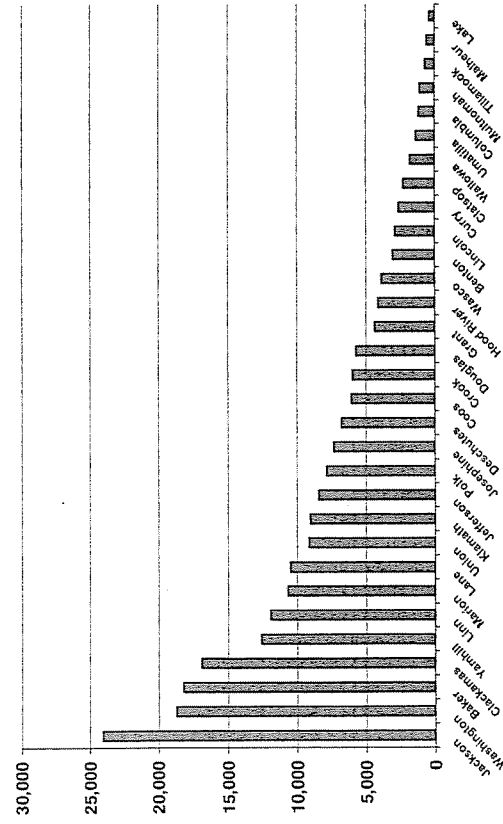
Database accessible online at:
<http://www.pdx.edu/ims/m37database.html>

Measure 37 Fast Facts: October 16, 2006

Region	Claims	Total Acres
NW/Valley	2,199	98,942
Coast	233	14,804
Southern	578	46,292
Central	222	25,240
Eastern	151	36,136
All Claims	3,383	221,415

- ✓ The average sized claim is 66 acres; the largest is 6,250.
- ✓ About 53% of claims have been decided.
- ✓ Of those, about 92% have been approved.
- ✓ Most of the land subject to claim is resource land; over half of all acres subject to claim are EFU land.
- ✓ Most of the claims are pursuing residential development.
- ✓ Total compensation requested is over \$5.7 billion.
- ✓ The average request is \$2.3 million; the average compensation per acre is about \$91 thousand.

Claim Acreage by County



Claim Decisions

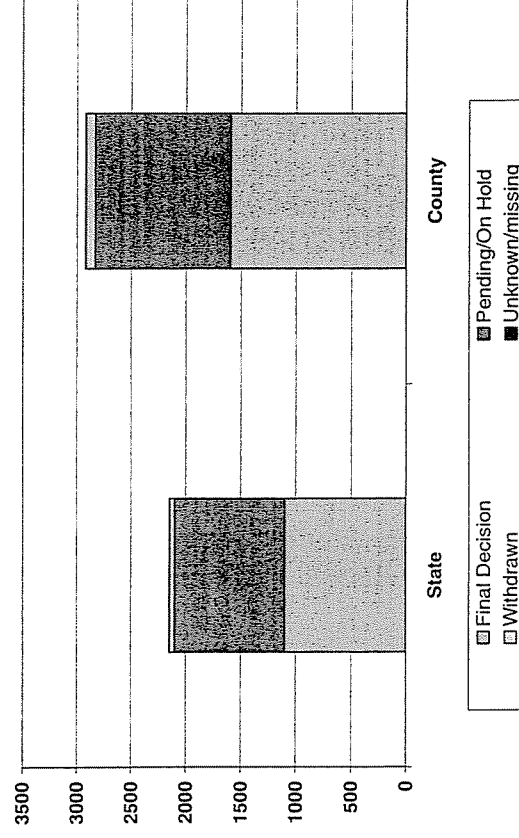


Exhibit K

Big Look Task Force Review of Issues

Memorandum to the Oregon Task Force on Land Use Planning (“Big Look Task Force”) regarding issues raised at task force meetings by task force members, presenters, and public comment between March 3 and July 13, 2006.

This document, along with other information about the Big Look Task Force, is available online at <http://www.lcd.state.or.us/LCD/BIGLOOK/index.shtml>.



Oregon

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July 14, 2006



TO: Oregon Task Force on Land Use Planning
CC: Lane Shetterly
FROM: Becky Steckler
RE: Agenda Item 1: Review of issues from Task Force meetings

In preparation for the issue identification discussion at the July 23-24 meeting, staff reviewed meeting minutes, presentations, and public comments from all Task Force meetings to compile a summary of land use issues discussed to date. This memorandum provides this summary. It has three sections:

- **Introduction** describes the background of the Big Look project and the research methods for completing this memorandum.
- **Summary** provides a brief overview of key findings of the research.
- **Detailed comments** provides a description of detailed comments made by Task Force members, presenters, and public comment at Task Force meetings between March 3 and July 13, 2006.

INTRODUCTION

Background

The Oregon Task Force on Land Use Planning will identify issues that they will focus on for the remainder of the Big Look project at the July 23-24 meeting. Staff worked with Steve Clark and Judie Hammerstad to on materials that will help inform this discussion, including this memorandum. This memorandum summarizes discussions and information presented to the Task Force at meetings between March 3, 2006 and May 24, 2006, as well as public comments submitted as of July 13, 2006.

In 2005, the Oregon Legislature passed and Governor Kulongoski signed Senate Bill 82 (also known as the Big Look), which established the Oregon Task Force on Land Use Planning. The Task Force is charged with a comprehensive review of Oregon's land use planning program and drafting recommendations for the 2009 Legislative Assembly.

Senate Bill 82 states that the Task Force must:

- Gather information to assess the effectiveness of Oregon's land use planning program in meeting current and future needs of Oregonians in all parts of the state

- Provide information as needed to inform the public discussion regarding the current land use planning program
- Study and make recommendations on the respective roles and responsibilities of state and local governments in land use planning
- Study and make recommendations regarding land use issues specific to areas inside and outside urban growth boundaries, and the interface of these areas.

Methods

Staff reviewed the minutes, presentation materials, and public comments for all Task Force meetings held between March 3 to May 24, 2006, plus public comment received between May 25 through July 13, 2006.

SUMMARY

The following topics are in alphabetical order and do not suggest a ranking of importance.

Economy

Comments regarding the economy and land use in Oregon state that the land use planning system is not as responsive to the economic needs of the state as it could be. One suggestion was to “marry” economic and land use planning in the same way that land use and transportation planning are coordinated.

Environment, sustainability, and carrying capacity

There were a wide range of issues related to the environment and the impact of development on natural resources. Several people brought up the idea of a “carrying capacity” of the natural resources, especially water resources. Others discussed the role of planning to reduce energy consumption. Some mentioned that protection of natural resources for habitat is not a strong argument.

Fairness

Many of the comments expressed to Task Force members is that Measure 37 is unfair (though some have supported it). Some expressed a desire to balance conflicting needs. One person asked why a landowner can’t build a house on his or her property.

Farm and forest lands

Comments regarding farm and forest land describe the frustration some Oregonians have at not being able to build a home on resource land, and others who believe that the farm and forest lands should continue to be protected from development.

Several people suggested re-examining resource land classifications and rezone if necessary. A lack of water rights was also identified as inhibiting development of land. Several people

called for resolving issues related to secondary lands. Are there other ways to protect farm land than how Oregon does it now? Many people submitting comments to the Task Force state that the preservation of farm land is prioritized over almost all other lands, urban or rural.

Funding

Most of the comments regarding funding are related to the costs of growth, especially the costs of funding infrastructure (roads, sewer, water, etc.). Local jurisdictions are required to pay a larger portion of infrastructure projects today than they have in the past, due to decreased funding at the national and state level. Many commenters question how best to fund growth.

Goals and values

Several people stated that the Task Force should evaluate or recraft the statewide land use goals. One person suggested that an examination of the underlying assumptions of Oregon's land use planning program is needed. Others question what Oregonians value in relation to land use, does the current program express these values, and what are the outcomes that achieve that implement these values? One person said the program is focused more on the process and less on the actual outcomes.

Growth management and UGBs

Numerous people said that there is a need to manage or control growth. The effectiveness and impacts of the UGB was questioned. One person noted that some buildable land inventories are out of date, implying that some decisions aren't based on accurate data. Annexation and governance issues were also mentioned as issues related to growth management and expansion of UGBs. One person questioned if UGBs should be expanded, especially if the community does not want to expand its UGB.

Many aspects of UGB expansion process. Should the present policy that discourage the inclusion of resource lands be continued? Once lands are included, how do we insure that infrastructure and services will be provided? How do we improve the provision of government services through annexation or incorporation? Should the process be easier? Several issues related to expansion of the Metro UGB were also discussed.

Infrastructure

Water availability, especially in rural areas, was mentioned several times as an issue. Funding infrastructure was also mentioned.

Interaction with the public

Several of the comments discuss the challenge of interacting with the public. Others brought up the chilling affect of appeals on creative development.

Land use planning (general)

Like the growth management and UGB section. Several general comments about land use planning related to the need for a better process for expanding urban areas. Some commenters discussed the differences between urban and rural residents and east and west of the Cascade Mountains. The need to change the program to allow more variation for differences in different regions was mentioned. One person thought the land use system is too complicated. One person has suggested that how marginal or secondary lands are treated should be addressed. Several people also said that homes should be allowed on legal parcels in resource lands.

Private property rights

Task Force members and a presenter mentioned the need to balance the rights of individual property owners with other (community) needs.

Process and regulations

Court decisions, subsequent legislation, and other factors made it hard for local jurisdictions to keep up with regulation changes. Balancing the goals is often hard to do. Many people have complained that the process is too expensive, legalistic, and rigid and suggest making rules simpler.

Another issue raised by Task Force members, presenters, and the public is the need rely less on regulation and more on incentives. Making the program more flexible was also mentioned. One person asked how the UGB expansion process can be changed to ensure that urbanizable land will be available when it is needed.

Issues related to the appeals process was also mentioned.

Role of local and state governments in land use planning

Most of the issues raised regarding the role of local and state governments discuss the desire to allow more local control of land use decisions. A regional approach to planning is an oft mentioned solution. One person wanted local decisions to be more predictable. He also mentioned that Land Conservation and Development Commissioners appointed by the Governor do not represent the state.

Surveys

Surveys conducted in the last couple of years regarding land use issues show that generally, Oregonians support land use planning. Oregonians generally agree that land use planning results in well planned communities that provide jobs, protects the quality of life, and helps protect the value of their home. At the same time, they believe that property rights are important.

DETAILED COMMENTS

This section is organized by topics in alphabetical order. Each comment is identified by the type of comment (Task Force member, presenter, or public comment) and the meeting date.

Economy

- Enhance regional opportunities for the economy – jobs (Task Force brainstorming session, March 20, 2006)
- Land use decision making not connected to economic issues. (Task Force brainstorming session, March 20, 2006)
- Need to address economic issues – is land use and the market aligned? Are there regional differences for the economy? (Task Force brainstorming session, March 20, 2006).
- Zoning issues – restricts economic uses. (Task Force brainstorming session, March 20, 2006).
- Land use laws restrict economic uses. (Task Force brainstorming session, March 20, 2006).
- Although we are beginning to "marry" transportation planning with land use planning, should we also marry economic development planning/ projects to a larger extent? What about planning for water? Many people believe, especially within the M37 context, that this will be a large issue, i.e. without predictable and adequate water supply planning, comprehensive planning for growth and economic success cannot occur- and that all these planning efforts should occur concurrently. (Wes Hare, submitted comments, May 10, 2006).
- Is the land use system responsible for a loss of economic activity to other states with more flexible regulatory environments? (Nikki Whitty, submitted comments, May 10, 2006).
- The Oregon planning program does not provide for an adequate short- and long-term supply of commercial, office, and industrial land. ???
- The farm and forest land economy should be reconceptualized from the corporate-commodity model toward smaller, locally owned, more sustainable units. (Public comment, July 23 and 24, 2006).

Environment, sustainability, and carrying capacity

- How many people can Oregon support and still meet current land use goals? (Wes Hare, submitted comments, May 10, 2006).
- Are factors such as climate, topography, soil fertility, and population density more important to land use planning than political boundaries? (Wes Hare, submitted comments, May 10, 2006).
- Feds, state, and others take our farmland and put it into wetlands. (Nikki Whitty, submitted comments, May 10, 2006).

- How many people can (Oregon) support at what standard of living? (Public comment, July 23 and 24, 2006).
- How can land use reduce energy consumption? (Public comment, July 23 and 24, 2006).
- To what extent do Oregonians want their government to protect natural values that are not directly economically based? and, What kinds of government activity would be preferable and most effective in protecting wildlife and its habitat? (Public comment, July 23 and 24, 2006).
- Protection of natural resources is one of the weakest elements of our existing land use system. Clean water, access to nature and abundant fish and wildlife habitat are central to our quality of life and our statewide identity. In the face of rapid population growth, we need a land use system that provides real protection for these values or they will be lost forever for future generations.
 - Natural resource protection is scattered among at least four different planning goals
 - Goal 5 is process rather than outcome oriented
 - Our current planning system mandates that resources be protected based upon political rather than natural boundaries.
 - Our planning system explicitly prioritizes the protection of farm land over natural resources. (Public comment, July 23 and 24, 2006).
- Make sustainability a top priority. (Public comment, July 23 and 24, 2006).

Fairness

- Measure 37 – Fair for one, unfair for others – develop compensation system. (Task Force brainstorming session, March 20, 2006).
- Public perceptions of fairness – compensation. (Task Force brainstorming session, March 20, 2006).
- It appears rules are more relaxed in urban areas, you don't hear about many problems. (Nikki Whitty, submitted comments, May 10, 2006).
- Measure 37 is unfair (multiple public comments, May 24, 2006).
- Need to balance conflicting needs of different people (public comments, May 24, 2006).
- Why can a landowner not live on his or her own property merely because it is zoned as resource land? Stated differently, should zoning an area exclusive farm use (regardless of its actual capability for farming) foreclose an owner's right to build a house unless the owner can meet nearly impossible criteria, such as the \$80,000 income test? (Harlan Levy, invited testimony, May 24, 2006).

Farm and forest lands

- Is farm land a sacred cow? Is that the best use? (Task Force brainstorming session, March 20, 2006).
- Hobby farms where people don't intend to farm. (Task Force brainstorming session, March 20, 2006).
- Require all "conditional use" exemption holders to sign a statement that prevents them forever challenging any farm use by their neighbors. (Nikki Whitty, submitted comments, May 10, 2006).
- Eliminate the income provision for those growing "bio-fuel" material. (Nikki Whitty, submitted comments, May 10, 2006).
- From Nikki Whitty, submitted comments, May 10, 2006:
 - Propose grading farmland (with a 10 year re-examination – Coos County abounds in farmland that cannot grow a profitable crop and allow 10 to 20 acre exemptions for land that is truly fallow.)
 - Revise resource EFU/Forest limitations/roll back standards
 - I think the \$80,000 rule for EFU land was enacted to fix some problem in the Willamette Valley. If that is true, then get rid of it.
 - Could you take a look at whether or not a lot of farm and forest zoning was done correctly and figure out an economical way to make it right
 - Dwelling by lot size in resource lands
 - Need a way to honestly deal with marginal resource land
 - We have so many property owners with 10-20-30-40-50 acres that no longer are agriculture or forest producing lands, the income does not make it viable to farm.
 - The Statewide plan does not address the needs of cities and primarily counties in this state.
 - Give us back some rights
 - In general, the lot size of forest land grades to smaller and smaller lots as it moves toward the roads. In Coos County's Interim zoning most of the smaller lots were given the zones the owners wanted. In the later confusion over state acceptance of the Coos County Land Use Plan, many of those marginal lots were down-zoned to Forest Zone. Land owners were not necessarily notified.
 - Lands zoned forest (not Prime forest lands) that are not in the UGB but are close to the UGB would be good sites for high density manufactured home/seniors park. There is an incredible demand for affordable homes in a secure environment for our seniors.
 - On lands zoned EFU it is impossible to get any water rights (Coos County) how does the state expect us to grow crops if we can't get water rights.

- Shouldn't the state make "no-growth" payments if they won't allow water rights.
- Who came up with the acreage limits on farm land?
- Why should you have to have \$80,000 annual income in order to build a home?
- Acreage requirements on EFU land need variety across the state.
- In 1983 in the interim zoning for Coos County, my property was zoned Small Woodlot-10. It is 24.5 acres all in trees. In the final plan, my property was zoned EFU-80+ acres. The land has never been farmed and most of the property around me is RR-5. When I asked what happened, the Planning Department said, "The State made us do it".
- My family has owned nearly 100 acres in Myrtle Point for 100 years. My aunt and I now own two 49-acre parcels. The County said laws passed in 1973 prevent us from splitting the property into two separate parcels so we could each own one outright. We can't afford to go out and buy a parcel exceeding 80 acres, we just want to live on the 49 acres that we believe we each own.
- Please help us to end these restrictive land use laws that only benefit the rich Californians who are coming here with plenty of money to buy large parcels. These laws leave us native Oregonians unable to use the small family farms we inherit from our parents.
- Environmental easements that are "perpetual" may bring immediate relief to financially troubled land owners, but will leave long lasting impediments to Oregon's future productivity.
- I bought 78 acres of IRR-5 land in 1970 and shortly thereafter it was rezoned into EFU/Forest – 40 acres which was a terrible financial setback
- Need to protect farm and forest lands from residential and commercial uses. (Public comment, May 24, 2006).
- Need to reevaluate how Oregon protects resource lands (farm and forest). (Jon Chandler, invited testimony, May 24, 2006).
- Need to reform LCD's farm and forest zoning system and resolve the farmland and forestland debates. (David Hunnicut, invited testimony, May 24, 2006).
- Resolve issues related to secondary lands that are preserved as farm and forest lands. (David Hunnicut, invited testimony, May 24, 2006).
- In light of the changes to Oregon's economy over the last 30 years, why is farmland still protected over all other types of uses? Wouldn't a balancing test be more appropriate? (Harlan Levy, invited testimony, May 24, 2006).
- Assuming we still want to protect farmland, shouldn't we do a better job of defining farmland? Should the counties be able to determine what constitutes farmland to be protected under their jurisdiction? Why is so much unproductive land protected from development? Wouldn't it be better for society (higher property taxes, more housing,

etc.) to rezone this unproductive land to allow for higher and better uses? (Harlan Levy, invited testimony, May 24, 2006).

- Are there other less draconian ways to protect ongoing farm operations from conflicting uses such as “right to farm laws” or clustering of houses? How do other states protect their farmland? (Harlan Levy, invited testimony, May 24, 2006).
- The system...emphasizes the aspirations of agricultural areas that need to be protected from cities, rather more than it focuses on the aspirations of cities to be great places. (Andy Cotugno, written testimony, May 24, 2006).
- Farmland hierarchy. When we need to expand the UGB to accommodate population growth, state law prescribes the hierarchy of expanding into exception lands first and prime farm or forest land last. While the goal is laudable, the result is not necessarily the best either for an optimum urban form or for protection of resource lands, and in the long run it fails to protect even the best lands. (Andy Cotugno, written testimony, May 24, 2006).
- Loss of urban forests. (Public comment, July 23 and 24, 2006).
- Consider the impact of factory farms on our environment and local farmers. (Public comment, July 23 and 24, 2006).

Funding

- Need to improve public finance. (Task Force brainstorming session, March 20, 2006)
- What is the cost of growth on communities? (Task Force brainstorming session, March 20, 2006).
- Given the state of Oregon public finance, do state and local agencies have sufficient resources to sustain our land use planning system? (Wes Hare, submitted comments, May 10, 2006).
- With local government and state government funding decreasing, how can infrastructure needs be provided in areas that have been planned to accommodate long-term growth? (Wes Hare, submitted comments, May 10, 2006).
- If we make significant changes that add more complexity and require more resources in the statewide planning program, who and how will it be paid for? (Wes Hare, submitted comments, May 10, 2006).
- Get past zoning – add some ag incentives – think about job creation. (Nikki Whitty, submitted comments, May 10, 2006).
- Provision of infrastructure with decreasing federal/state/local funding options ???
- Financial resources. Tax deferral within UGB as a disincentive for urban development – against UGB expansion. No farm/forest tax deferral in UGB. Adopt a comprehensive tax reform package. There are generally too many unfunded planning mandates. The new Goal 9 rules for MPOs are very difficult to comply with and will require lots of money to staff to be

able to complete the initial analysis and keep up with oversight. (Douglas Parker, written testimony, May 24, 2006).

- Determine the net tax benefit or loss. (Public comment, July 23 and 24, 2006).
- Make growth pay its own way. (Public comment, July 23 and 24, 2006).

Goals and values (general)

- Need to evaluate the goals. (Task Force brainstorming session, March 20, 2006).
- What do Oregonians value related to land use planning (Multiple Task Force members, Task Force meeting, April 18, 2006).
- Look for outcomes valid to everyone – what do people want today? (Task Force brainstorming session, March 20, 2006).
- Plan for the next 30 years. (Task Force brainstorming session, March 20, 2006).
- Make land use laws more effective. (Public comment, April 18, 2006 meeting).
- Do Oregon's land use goals enjoy grassroots support or are they primarily the concern of government officials, planners, and academics? (Wes Hare, submitted comments, May 10, 2006).
- Do Oregonians agree that the current land use system is responsible for Oregon's status as one of the fastest growing states in the nation? (Wes Hare, submitted comments, May 10, 2006).
- If we were writing the statewide land use goals from scratch, how would they be different today or have they adequately withstood the test of time? (Wes Hare, submitted comments, May 10, 2006).
- Need to question the underlying assumptions of Oregon's land use planning program. (David Hunnicut, invited testimony, May 24, 2006).
- Back to goals – toss regulations. LCDC / DLCD staff gotten away from state goals being very broad goals and continued to micro-manage what cities are doing to implement the goals. Eliminate a lot of regulations and go back to goals and let communities implement planning. Too much focus on detail and requirement, too little focus on vision. Focus on outcomes, not on process and requirements. (Douglas Parker, written testimony, May 24, 2006).
- Review the 19 goals and develop guidelines or protocols for prioritizing or weighting the objectives in the balancing process. Who has the final say on prioritization and weighting? (Public comment, July 23 and 24, 2006).
- The "Big Look" Task Force should place livability issues at the top of their priority list. (Public comment, July 23 and 24, 2006).

Growth management and UGBs

- Need to control growth. (Task Force brainstorming session, March 20, 2006).
- Need to Master Plan on a regional basis. (Task Force brainstorming session, March 20, 2006).
- Need to guide land use. (Task Force brainstorming session, March 20, 2006).
- Rational extension of services. (Task Force brainstorming session, March 20, 2006).
- Land use, public finance, economy, and the private sector are a new way of decision making. (Task Force brainstorming session, March 20, 2006).
- Maintaining a tight UGB has resulted in development going to the next town, increasing traffic, and increasing land prices within the UGB. (Public comment, May 10, 2006).
- How effective have urban growth boundaries been in accomplishing Goal 14 objectives. (Wes Hare, submitted comments, May 10, 2006).
- Available lands issue for cities – the inventory that LCDC uses is 5- to 10-year old information, not even close to recognizing the current trends and needs or what is built out already or no longer available. (Nikki Whitty, submitted comments, May 10, 2006).
- Form/function of urban growth boundaries and the expansion process. (Public comment, May 24, 2006).
- Annexation policy integration with land use planning program requirements. (Public comment, May 24, 2006).
- Governance choices for urbanizing land. (Public comment, May 24, 2006).
- Urban fringe development/management. (Public comment, May 24, 2006).
- Need to examine the barriers to easily developing within UGBs. (Jon Chandler, invited testimony, May 24, 2006).
- Should (UGBs) be expanded at all? We obviously believe that they were intended to grow as needs demanded, but there is a policy discussion to be had over the premise of UGB expansion in the first place. (Jon Chandler, invited testimony, May 24, 2006).
- Assuming that UGBs are expandable, should every jurisdiction be required to expand theirs, even if the local citizenry would prefer to remain static? Conversely, should a city be able to choose a more-land intensive development pattern that would require UGB expansion? (Jon Chandler, invited testimony, May 24, 2006).
- Should the present policy of discouraging if not preventing resource land from being included in UGB expansions be continued? (Jon Chandler, invited testimony, May 24, 2006).
- Once UGBs are expanded, how do we ensure that infrastructure and governmental structures are in place, as well as the money to construct and operate them, to allow development to proceed? (Jon Chandler, invited testimony, May 24, 2006).

- Should the priority lands statute be replaced by a balancing test? (Harlan Levy, invited testimony, May 24, 2006).
- Should the process be made easier for expanding an urban growth boundary? (Harlan Levy, invited testimony, May 24, 2006). Should a decision to expand an urban growth boundary be more difficult to overturn on appeal as long as there was substantial compliance with state law? (Harlan Levy, invited testimony, May 24, 2006).
- Should cities be required to expand their urban growth boundary when certain conditions are met? (Harlan Levy, invited testimony, May 24, 2006). Once urban growth boundaries are expanded, how do you ensure that the newly “urbanizable” land actually gets urbanized? (Harlan Levy, invited testimony, May 24, 2006).
- Annexation. The annexation laws for the state need to be structured to support the land use planning program. (Douglas Parker, written testimony, May 24, 2006).
- Population growth. The pace of growth means that the problems we face are getting bigger, in both complexity and geographic extent. (Andy Cotugno, written testimony, May 24, 2006).
- Perpetual urban expansion. There are numerous problems with the requirements that Metro must update its 20-year supply of urban lands every five years. . (Andy Cotugno, written testimony, May 24, 2006).
- Issues related to governance are exacerbated by expansion of the Metro UGB. Urban areas within the Metro UGB that are not within a city experience varying degrees of inefficient service delivery, illogical public finance structures, and general frustration. (Andy Cotugno, written testimony, May 24, 2006).
- Population growth is not a given or entirely out of control. (Public comment, July 23 and 24, 2006)
- No one is calling for a slowing or stopping Oregon’s growth. (Multiple public comment, July 23 and 24, 2006).

Infrastructure

- Water and sewer are big issues for developing within UGBs. (Nikki Whitty, submitted comments, May 10, 2006).
- Availability of water in rural areas. (multiple public comments, May 24, 2006).
- How should the necessary infrastructure for development be provided and who should be responsible for paying for it? This issue of infrastructure financing has not historically been considered an a land use issue, but we believe that it should be. (Jon Chandler, invited testimony, May 24, 2006).
- Need to address the funding of infrastructure within UGBs. (Andy Cotugno, written testimony, May 24, 2006).

Interaction with the public

- How can complex issues be objectively explained to an electorate that is overwhelmed with information? (Wes Hare, submitted comments, May 10, 2006).
- Citizens have lost their trust in the government. Terms are redefined and citizens are intentionally work out, and no public benefit results. Discretionary rules are used to benefit the well-connected and punish citizens who speak out against that behavior. (Public comment, May 10, 2006).
- Oregon's current system allows substantial access to the process and the threat of appeals results in developers trading density or other more creative aspects of the proposal for public approval. (Jon Chandler, invited testimony, May 24, 2006).
- What level of public participation/legal appeals should be allowed for development taking place in accord with the local comprehensive plan and zoning code? (Jon Chandler, invited testimony, May 24, 2006).
- Education/outreach/relevance/inspire. (Catherine Morrow, survey of County Planning Directors handout, May 24, 2006).
- Public involvement should be improved. (Public comment, July 23 and 24, 2006).

Land use planning (general)

- Is the current land use planning program effectively dealing with regional differences? (Wes Hare, submitted comments, May 10, 2006)
- What are the most logical methods of extending municipal boundaries and services in order to achieve efficient land use patterns and other program objectives? What are the best mechanisms to resolve regional and interjurisdictional land use conflicts? (Wes Hare, submitted comments, May 10, 2006).
- If left entirely to market forces for the past 30 years, how would Oregon look different today and would we like it any better or worse? (Wes Hare, submitted comments, May 10, 2006).
- What changes to the land use program are needed to encourage growth in rural Oregon versus continued sprawl in urban and suburban areas? (Wes Hare, submitted comments, May 10, 2006).
- Like the federal tax code, the Oregon land use system is too complicated (with statewide goals, state statutes, administrative rules, LUBA decisions, etc....contributing to the problem. How can the land use system be simplified? (Wes Hare, submitted comments, May 10, 2006).
- Does the land use planning program support all populations? There is a divide between urban and rural populations, as well as east and west. (Public comment, May 10, 2006).
- Special interest groups shape the discussion. (Public comment, May 10, 2006).

- Should be some process in place to take a good hard look at surrounding properties when a property is being zoned “Destination Resort” to ensure the surrounding uses are compatible. (Nikki Whitty, submitted comments, May 10, 2006).
- Dwelling by right on resource lands/legal parcels. Rural residential lot size reduction. Lot of record/dwelling by right. (Nikki Whitty, submitted comments, May 10, 2006).
- LCDC requires soils reports for zone changes. Coos County produces a report for \$25 and often states that the property has “marginal lands.” LCDC will not accept those reports until Coos County defines what Marginal Lands are. How can we get past this technical verbiage snag? (Nikki Whitty, submitted comments, May 10, 2006).
- Authorize open space/secondary lands with more flexibility. You can have your cake and eat it too if you plan carefully when doing a development by including open space as a natural amenity to a project. (Nikki Whitty, submitted comments, May 10, 2006).
- Dwelling by right on resource lands/legal parcels. (Catherine Morrow, survey of County Planning Directors handout, May 24, 2006).

Private property rights

- Need to protect individual rights. (Task Force brainstorming session, March 20, 2006).
- Balance personal property rights and other needs. (Task Force brainstorming session, March 20, 2006).
- What is a regional expectations for property owners in regard to the value of their land? (Wes Hare, submitted comments, May 10, 2006).
- Need to strike a better balance between competing interests and respect private property rights. (David Hunnicut, invited testimony, May 24, 2006).

Process and regulations

- Implementation in the early years of the program (after the approval of the goals) was difficult because court decisions, subsequent legislation, and other factors made it hard for local jurisdictions to follow and keep local regulations up-to-date. (Bryant, Jenkins, Rindy, and Shetterly presentation, Task Force meeting, March 3, 2006).
- Goals sometimes conflict with each other. Balancing the goals is difficult to do. (Task Force member comment, Task Force meeting, March 3, 2006).
- Need reliable outcomes in land use planning. (Task Force brainstorming session, March 20, 2006).
- Need to streamline process by region. (Task Force brainstorming session, March 20, 2006).
- Expensive system. (Task Force brainstorming session, March 20, 2006).
- Highly legalistic – decision makers must treat land use like science. (Task Force brainstorming session, March 20, 2006).

- Less flexibility in the system than in 1970s – program has changed significantly. (Task Force brainstorming session, March 20, 2006).
- Current process for planning is cumbersome. (Task Force brainstorming session, March 20, 2006).
- One person can halt planning activities. (Task Force brainstorming session, March 20, 2006).
- Need to be clear about legal expectations. (Task Force brainstorming session, March 20, 2006).
- Allow the system to adapt over time. (Task Force brainstorming session, March 20, 2006).
- Everyone is involved and has a role in the outcome. (Task Force brainstorming session, March 20, 2006).
- Need for nimbleness, scenario planning. (Task Force brainstorming session, March 20, 2006).
- Oregon is at risk of sprawl that characterizes other communities throughout the United States. (Multiple people, public comment, May 10, 2006).
- Need to rely less on regulatory tools, use incentives and investment funds to achieve goals. (Public comment, May 10, 2006).
- Although cities are required by state law to maintain a 20 year buildable land inventory within the UGB, how does this actually provide buildable land for urbanization when many annexations are controlled by voter approval and are refused? If the function of the UGB is actually to provide future land for urbanization, what other considerations or changes to law need to occur to ensure that the territory within the UGB can actually be urbanized. (Wes Hare, submitted comments, May 10, 2006).
- Lots of regulations discourage development. (Public comment, May 10, 2006).
- Need changes to the appeals process. (Nikki Whitty, submitted comments, May 10, 2006).
- Reduce the Oregon Administrative Rules. Make sure the rules address the individual needs of cities and counties in our state. (Nikki Whitty, submitted comments, May 10, 2006).
- How can an Oregon investor make long-term plans when the rules keep changing?
- From Nikki Whitty, submitted comments, May 10, 2006:
 - Local areas should do a sound strategic (master) plan. Ensure reasonable flexibility. Update periodically. Utilize professional guidance with broad local participation. It should not be “packed” politically.
 - Suggest we use Coos, Curry and Western Douglas as a region
 - What about using Duncan Wyse’s system of polling or focus groups (keypad responses)
 - Use the expertise of higher ed and others such as:
 - OSU – extension
 - Department of forestry
 - ODOT

- Special Districts – water/sewer infrastructure
 - Etc.
- Safe harbor on all rules. (Nikki Whitty, submitted comments, May 10, 2006).
- More limits on standing. Ensure integrity of who is actually filing an appeal. (Nikki Whitty, submitted comments, May 10, 2006).
- Streamline UGB amendments. (Nikki Whitty, submitted comments, May 10, 2006).
- Annexation of all properties in UGBs. (Nikki Whitty, submitted comments, May 10, 2006).
- Administrative rule-making process. (Public comment, May 24, 2006).
- Appeals process. (Public comment, May 24, 2006).
- Should it be more difficult to appeal a quasi-judicial land use application than a legislative decision?
- Should standing be allowed for anyone who appears regardless of any actual impact to that person? (Harlan Levy, invited testimony, May 24, 2006).
- Should LUBA's filing fee be increased, or should LUBA have more power to award attorney's fees in order to deter appeals only designed to drive up the applicant's transaction costs? (Harlan Levy, invited testimony, May 24, 2006).
- Need to streamline/simplify program/notices/decisions. (Catherine Morrow, survey of County Planning Directors handout, May 24, 2006).
- Courts and legal precedent. Litigation and court decisions are driving planning decisions and precedents. Process is too complicated, too legalistic, and too complex. Too difficult for public to use. Appeals, anyone can appeal. Easier to impose penalty for frivolous appeals. (Douglas Parker, written testimony, May 24, 2006).
- Periodic review. Periodic review is too complex. It's very important, but it takes too long. The system needs to be shortened and streamlined. Mandate regular 1 or 2 year plan updates in lieu of Periodic Review. (Douglas Parker, written testimony, May 24, 2006).
- Process vs. outcomes. Whether by practice or by rule and law, the land use system has devolved into a regulatory program that involves prescriptive requirements and excessive bean counting. The focus should be on the aspirations of our state and our communities and how to achieve those aspirations. (Andy Cotugno, written testimony, May 24, 2006).
- Lack of flexibility in the process, process is "encumbered with documentation." Allow for more creativity (such as form-based codes, open ceilings on density, and rural hamlets and clustered farm communities). (Public comment, July 23 and 24, 2006)

Role of local and state government in land use planning

- Address regional issues. (Task Force brainstorming session, March 20, 2006).
- Locals should be able to make final decisions. (Task Force brainstorming session, March 20, 2006).

- Less local decision making. (Task Force brainstorming session, March 20, 2006).
- Land use criteria constrains local decision makers. (Task Force brainstorming session, March 20, 2006).
- Should the state conduct a statewide evaluation on a regular basis? (Task Force brainstorming session, March 20, 2006).
- Restore local and regional decision making. (Task Force brainstorming session, March 20, 2006).
- One size doesn't fit all – some land zoned properly. (Task Force brainstorming session, March 20, 2006).
- Need to revamp DLCD public involvement and outreach program to increase the awareness of the impacts of planning. (Public comment, April 18, 2006 meeting).
- Is a regional approach to planning desirable or possible? (Wes Hare, submitted comments, May 10, 2006).
- ...One question that comes to mind is the planning system a top down or bottom up system? In other words, should our planning program be a state directed system locally implemented, or is it a locally determined system with state oversight? These two scenarios are somewhat different in implementation and currently those roles are oftentimes gray, or switch back and forth, making for significant confusion and frustration for local jurisdictions. (Wes Hare, submitted comments, May 10, 2006).
- More local control, less top down. A regional approach. Greater local control. Local control/autonomy. Stronger role for county coordination. Get the legislature out of the process. (Nikki Whitty, submitted comments, May 10, 2006).
- Consider the relationship of state and local governmental “partners” (public comment, May 24, 2006).
- Resources for mandatory requirements of local governments. (Public comment, May 24, 2006).
- Should there be different standards for different parts of the state, or for different sizes of urban areas? (Jon Chandler, invited testimony, May 24, 2006).
- What role should local preferences play in determining the function and development of their community? (Jon Chandler, invited testimony, May 24, 2006).
- Do we have a statewide and state-run land use planning system with local implementation, or a local land use planning system with some level of state oversight? (Jon Chandler, invited testimony, May 24, 2006).
- Need to expand local government decision making, or regionalize LCDC. (David Hunnicut, invited testimony, May 24, 2006).

- Make local government decisions more predictable. The committee should question the timing of citizen involvement, and evaluate whether the current system operates properly. (David Hunnicut, invited testimony, May 24, 2006).
- LCDC commissioners are appointed by the Governor and do not represent the state. Those most affected by LCDC's rules and goals have very limited means for changing those goals and rules. Explore the possibility of creating regional LCDCs. (David Hunnicut, invited testimony, May 24, 2006).
- More local control, less top down. (Catherine Morrow, survey of County Planning Directors handout, May 24, 2006).
- Local control. More flexibility at local level. Annexations – voter approved annexations interfering with Comprehensive Plan implementation and Goal compliance – especially affordable housing. State imposes significant limitations in flexibility to deal with local factors. Inadequate resources to make system effective. No one size fits all. The statewide planning program should be more responsive to local needs and priorities. Give much greater deference to locally adopted plans. UGB expansion process too complicated. Control of development needs to be better coordinated, specially the role of special districts. Notice to LCDC should not be required for simple amendments to development codes that do not involve major policy issues. It may be worth noting that the 45-day comment period unnecessarily lengthens the plan and code amendment process. (Douglas Parker, written testimony, May 24, 2006).
- Regional consideration. Willamette Valley problems are not same statewide. Relevant local issues bypassed due to focus on west side issues. Metro issues not readily applicable outside Portland/Metro area. Simplify Regional Problem Solving process. Equity between east/west. Regionalization. (Douglas Parker, written testimony, May 24, 2006).
- DLCD/LCDC. Eliminate inflexibility in Salem (DLCD). Salem staff out of touch with local considerations. Need more field staff. DLCD staff implements own agenda. Frustrating to deal with distant DLCD staff in Salem. Salem DLCD staff send a different message and interpretation of regulations than field staff. Make a periodic review of the system at the state level a regular event. Needs to re-energize people about planning – promote positive aspects of planning. No nexus between new state requirements and local community conditions. No accountability for LCDC and DLCD. Inadequate funding for growth-related impacts. There needs to be some method so that when a city initiates a UGB expansion program, it is acknowledged and recognized by DLCD. LCDC OARs are not always consistent with ORS intent. Generally the state needs to do a better job of educating citizens about the workings of local government and the planning process. An overall examination of administrative rule making should take place to ensure that these executive decisions are, not in fact, creating new state policy that is more appropriately done by the legislative branch. (Douglas Parker, written testimony, May 24, 2006).
- Counties and cities should have more control over land use. (Public comment, July 23 and 24, 2006).

- State agencies must do their coordination and advocacy with the local government during the local review and determination stages. Meaning they get one bite of the apple, and they get it during the local review and decision process, not after the fact. (Public comment, July 23 and 24, 2006).

Surveys

Oregonians Values and Beliefs about Land Use

Survey by Conkling Fiskum and McCormick (CFM) for the Oregon Business Association, Institute of Portland Metropolitan Studies, Toulon School of Urban Studies, Portland State University. Presented by Tom Eiland to the Oregon Task Force on Land Use Planning on May 10, 2006.

CFM conducted a telephone survey of 500 Oregonians in March 2005 (margin of error +/- 4.5%). The survey was conducted after Measure 37 was passed in 2004.

According to the survey, "Oregonians have strong, diverse views about land use planning. Property rights, environmental protection and preserving farmland are all important. There is no consensus about the administration of public policies regarding land use. Yet two in three think growth management has improved Oregon's livability.

Fairness and protection from government are primary reasons Oregonians supported Measure 37. Property rights and land use planning are not black and white issues. Most Oregonians think reason and flexibility are the best ways to address issues related to Measure 37." (Summary slides of Values and Beliefs Survey, Eiland, May 10, 2006).

Public attitudes about land use issues

By Davis, Hibbits & Midghall for Metro, February 2006. Presented by Adam Davis to the Oregon Task Force on Land Use Planning on May 10, 2006.

Adam Davis made the following observations about the survey, "Preserving and not converting farm and forestland are important to Oregonians. There is a split opinion about individual property rights over broader community interest and whether land use regulations hurt too many private property owners.

Residents support planning:

- Well planned communities bring jobs
- Essential to protecting quality of life
- Helps protect value of their home." (Summary slide from Hibbits presentation, May 24, 2006)

Miscellaneous

- Excessive bureaucracy, appropriate levels of protection for land, and private property rights (Karen Minnis letter to the Task Force, Task Force meeting, March 3, 2006).

- Need to consider community impacts and benefits. (Task Force brainstorming session, March 20, 2006).
- Are secondary lands appropriately zoned? (Task Force brainstorming session, March 20, 2006).
- Difficulty changing hazard definitions. (Task Force brainstorming session, March 20, 2006).
- Look at what works in other states. (Task Force brainstorming session, March 20, 2006).
- Eliminate “extremes” in decision making. (Task Force brainstorming session, March 20, 2006).
- Look outside the box – address real issues. (Task Force brainstorming session, March 20, 2006).
- Need to consider energy supplies and land use (especially farm land and the ability to grow food locally). (Multiple people, public comment, May 10, 2006).
- Is a system clearly supported by the left and clearly opposed by the right sustainable, given Oregon’s divided electorate? (Wes Hare, submitted comments, May 10, 2006).
- What other places, if any, have produced livable, attractive urban areas while preserving resource lands? How did they do it? (Wes Hare, submitted comments, May 10, 2006).
- Does technology such as on-line permitting and GIS offer hope for reducing the frustrations of amateur and professional developers? (Wes Hare, submitted comments, May 10, 2006).
- Is there a better way to select LCDC members to represent a more accurate cross section of Oregonians? (Wes Hare, submitted comments, May 10, 2006).
- Many lots are worthless because we can’t meet city requirements for lot size. Many subdivisions were platted years ago. Now the lot sizes are far too small to develop. (Nikki Whitty, submitted comments, May 10, 2006).
- Need to address noise management. (Public comment, July 23 and 24, 2006)
- Affordable housing. (Public comment, July 23 and 24, 2006).

Exhibit L

Big Look Task Force Online Survey

Memorandum to the Oregon Task Force on Land Use Planning (“Big Look Task Force”) regarding online survey that informs task force’s work to determine the major issues it will study and make recommendations on.

This document, along with other information about the Big Look Task Force, is available online at <http://www.lcd.state.or.us/LCD/BIGLOOK/index.shtml>.



Oregon

Theodore R. Kulongoski, Governor

Oregon Task Force on Land Use Planning

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(503) 373-0050

Fax (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

July 18, 2006



TO: Oregon Task Force on Land Use Planning
CC: Lane Shetterly
FROM: Becky Steckler
RE: Agenda Item 1: Results of the web survey

This memorandum presents the results of an online survey conducted for the Oregon Task Force on Land Use Planning (otherwise known as the Big Look) from June 24 to July 10, 2006. It is part of broader effort to obtain information from organizations, government agencies, and individuals for Phase I of the Big Look project.

This memorandum has two sections:

- **Introduction** describes the purpose of the memorandum and how it contributes to the Big Look. This section also describes the methods used to collect and analyze the information.
- **Survey results** provides a graph of the results for each statement, followed by a summary of comments under each topic area:
 - Citizen involvement
 - Private property rights
 - Farm and forest lands
 - Urban growth boundary (UGB) policies

- Quality community outcomes
- Economic development strategies
- Land use process and procedures
- Environmental issues
- Survey respondent information

INTRODUCTION

Background

At the May 24, 2006 Oregon Task Force on Land Use Planning (the Task Force) meeting, Chair Mike Thorne appointed Task Force members Steve Clark and Judie Hammerstad to work with staff to conduct outreach related to identifying land use related issues in preparation for the July 23-24 meeting. The Task Force will identify issues that they will focus on for the remainder of the Big Look project at the July meeting. The subcommittee worked with staff to create a research plan and reviewed and approved all materials.

In 2005, the Oregon Legislature passed and Governor Kulongoski signed Senate Bill 82 (also known as the Big Look), which established the Oregon Task Force on Land Use Planning. The Task Force is charged with a comprehensive review of Oregon's land use planning program and drafting recommendations for the 2009 Legislative Assembly.

Senate Bill 82 states that the Task Force must:

- Gather information to assess the effectiveness of Oregon's land use planning program in meeting current and future needs of Oregonians in all parts of the state
- Provide information as needed to inform the public discussion regarding the current land use planning program
- Study and make recommendations on the respective roles and responsibilities of state and local governments in land use planning

Study and make recommendations regarding land use issues specific to areas inside and outside urban growth boundaries, and the interface of these areas.

Methods

A Task Force subcommittee comprised of Steve Clark and Judie Hammerstad worked with staff to create an online survey that would help inform the Task Force's work to determine the major issues that it will study and make recommendations on during the course of the Big Look.

Survey Monkey (www.surveymonkey.com) to conduct the survey. Subcommittee members drafted the statements (which Oregonians were asked to state the degree that they agreed with the

statements), which were then tested by members of the University consortium, the Citizen Involvement Advisory Committee, and several Department of Land Conservation and Commission staff members for clarity.

The survey was available online from June 24 to July 10, 2006. Over 3,000 people completed the survey.

Limitations

The subcommittee had approximately seven weeks to conduct the survey. Given the short amount of time to create the website, draft survey statements, allow Oregonians to fill it out, and summarize the findings, the subcommittee determined that the most efficient format to collect information about issues from citizens was through an online survey.

Given these constraints, this survey has the following limitations¹:

- The survey is not a random sample survey and the results do not represent Oregon as a whole. People who responded are "self-selecting," that is to say, they had the interest and time to complete the survey. Professional public opinion researchers generally find that those with a strong view point are more likely to respond to these types of surveys.
- The survey does not gauge the familiarity of the respondent for each topic. Thus, it is impossible to determine if respondents are basing their responses on experience or a "gut" feeling.

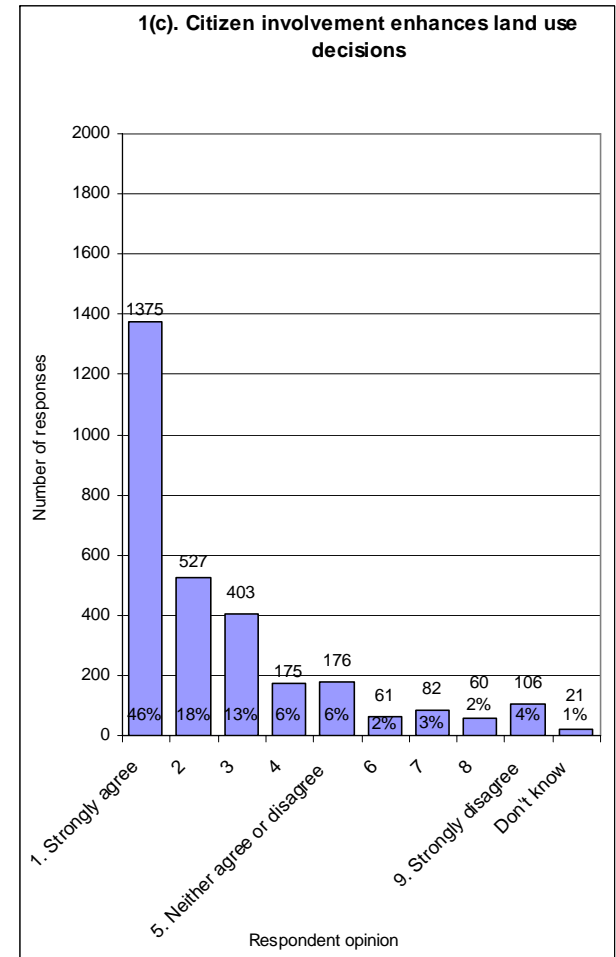
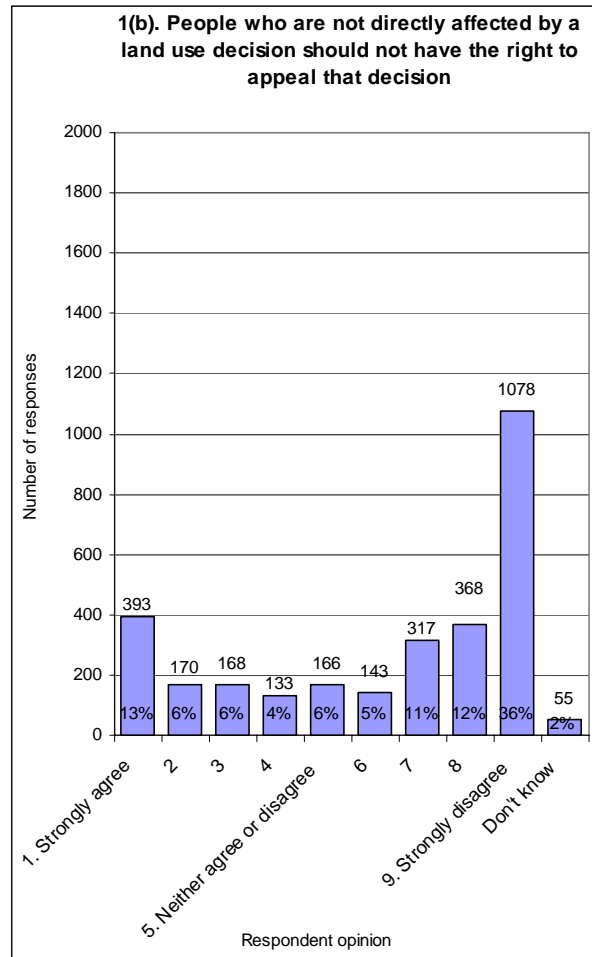
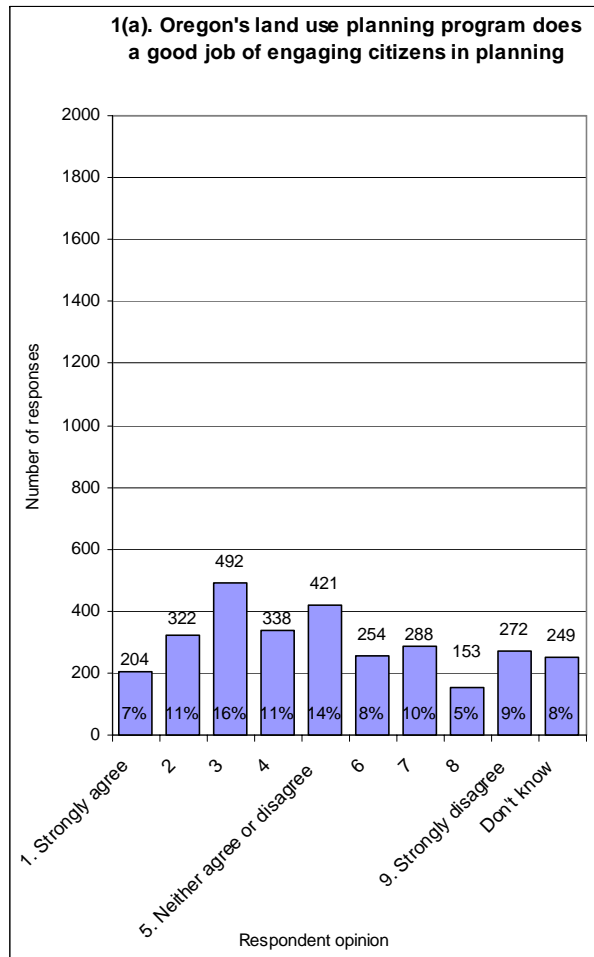
¹ Adam Davis, Davis, Hibbitts, and Midghall, provided input into the limitations of this survey.

Regarding: Results of the web survey

- The order of the questions can influence response patterns. This survey did not change the order of questions to correct for this possibility.
- Because this was an online survey, only those people with access to a computer filled it out. Thus, people without access to a computer are not represented in the results.
- Due to large volume of open-ended comments (over 8,000) and the short turn-around time to compile the survey responses before distributing them to the Task Force (approximately six days), staff was unable to complete a summary of open-ended comments by July 17, 2006. Staff will finish reviewing and summarizing these comments and distribute them to the Task Force by Sunday, July 23, 2006.

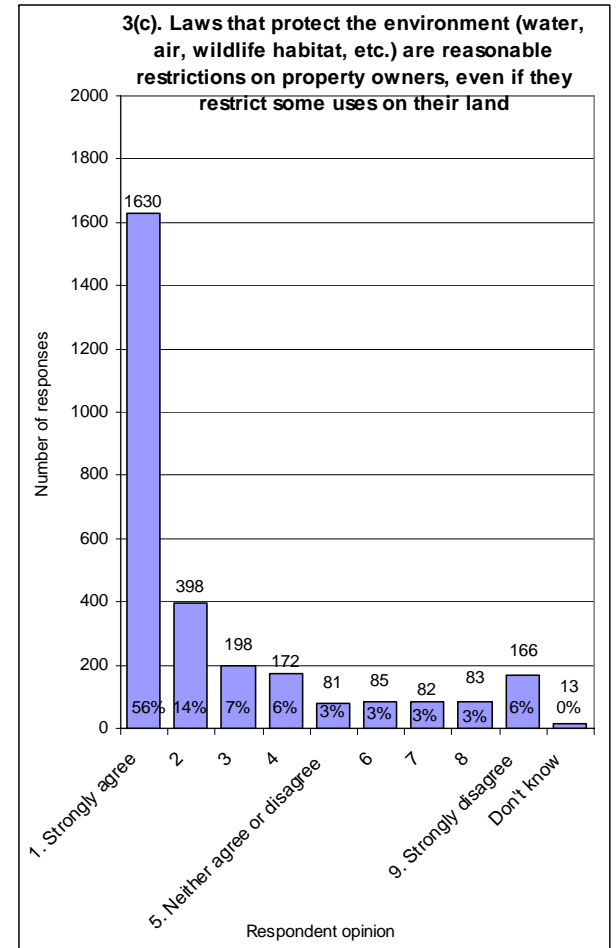
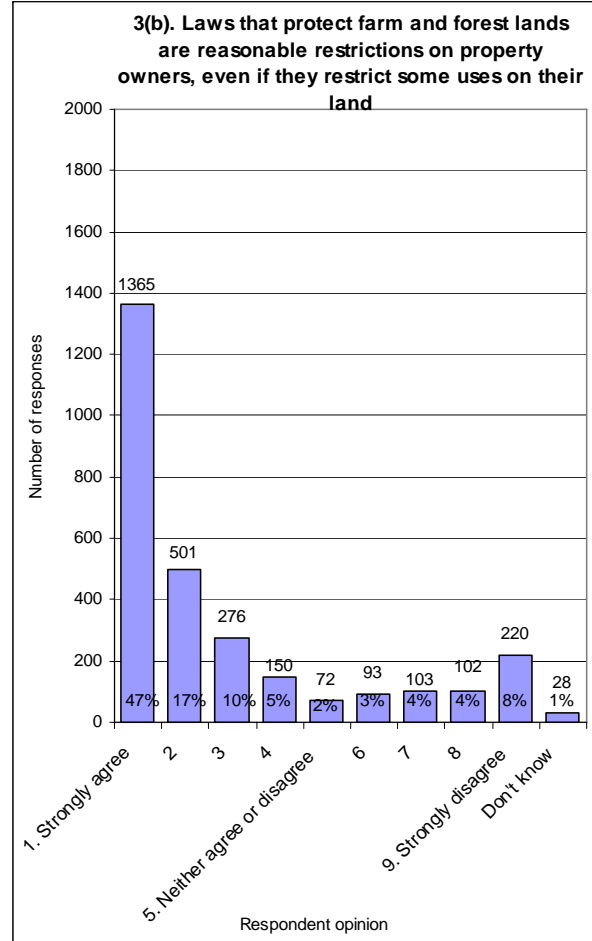
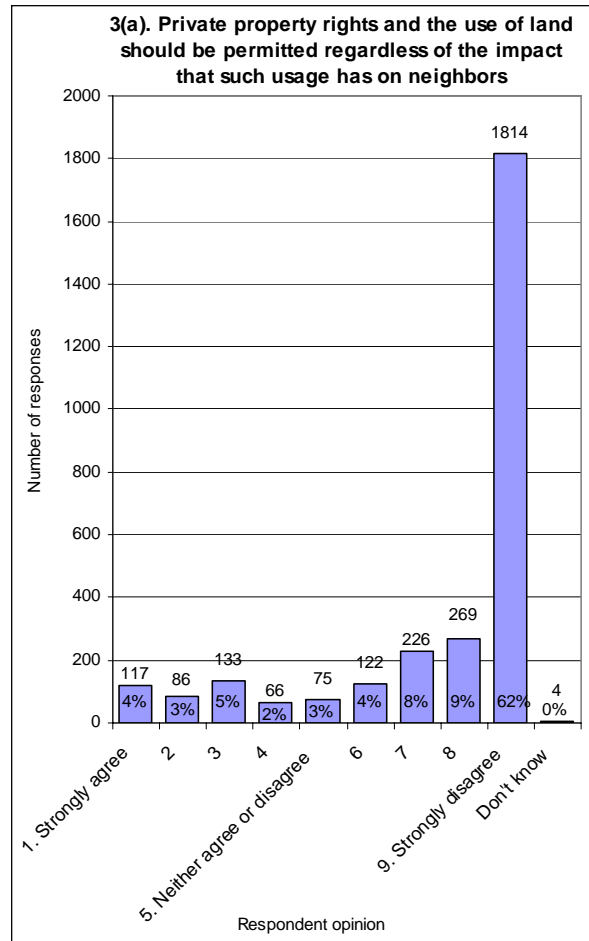
SURVEY RESULTS

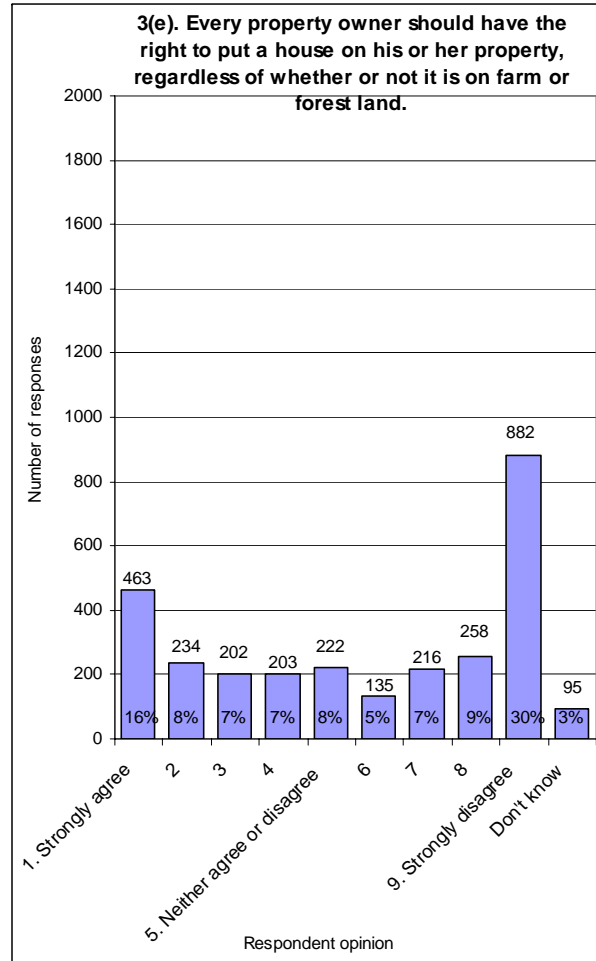
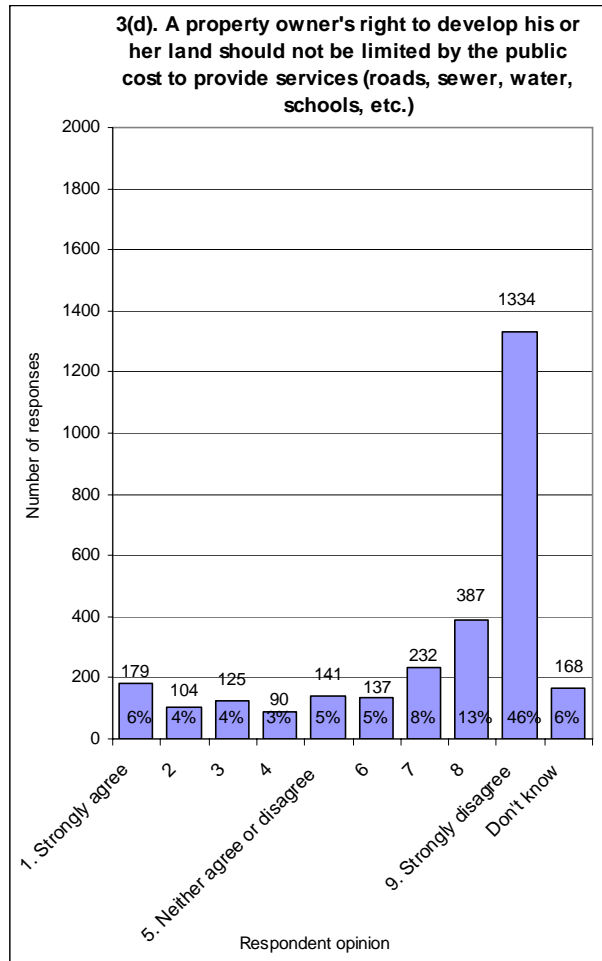
Citizen Involvement ²



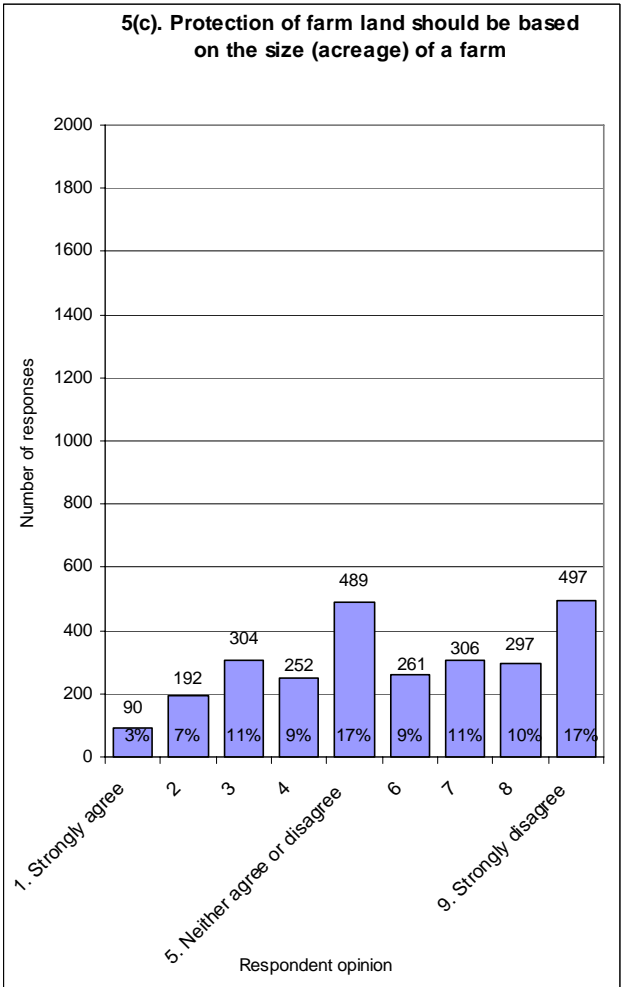
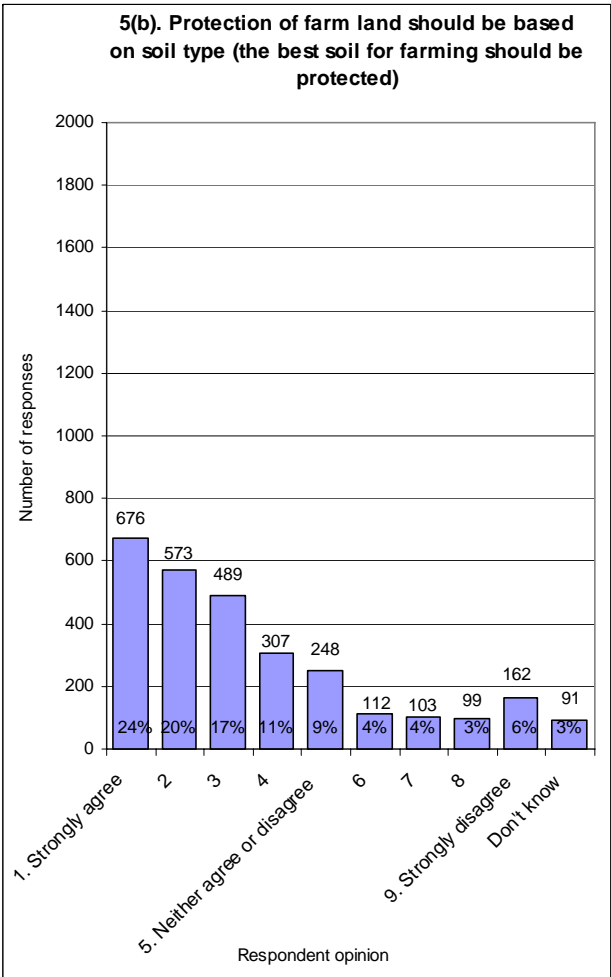
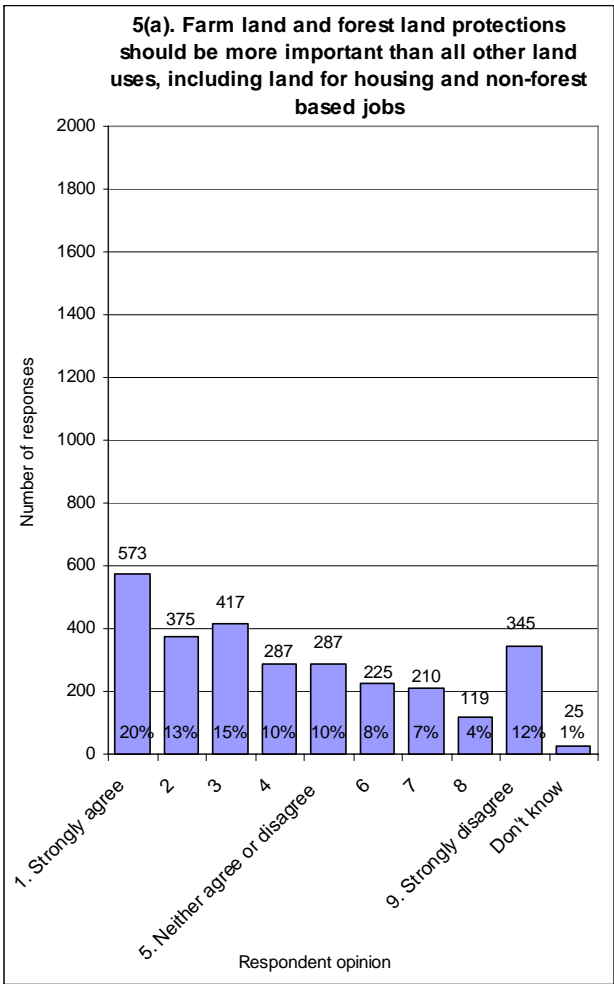
² Note that the numbering on each graph refers to the survey number. Even numbers (2, 4, 6, etc.) are skipped because they refer to the open-ended comments in each section.

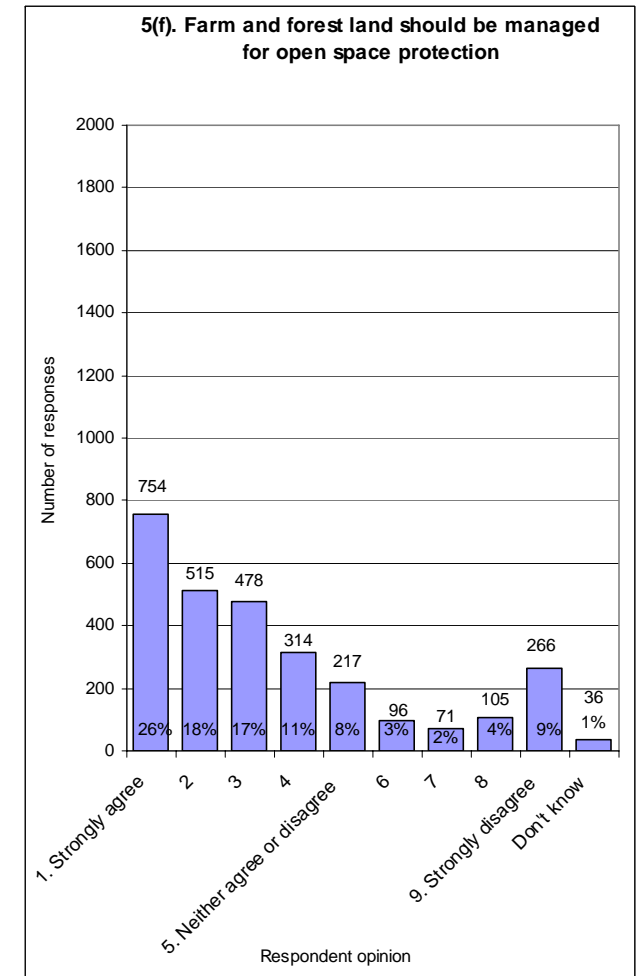
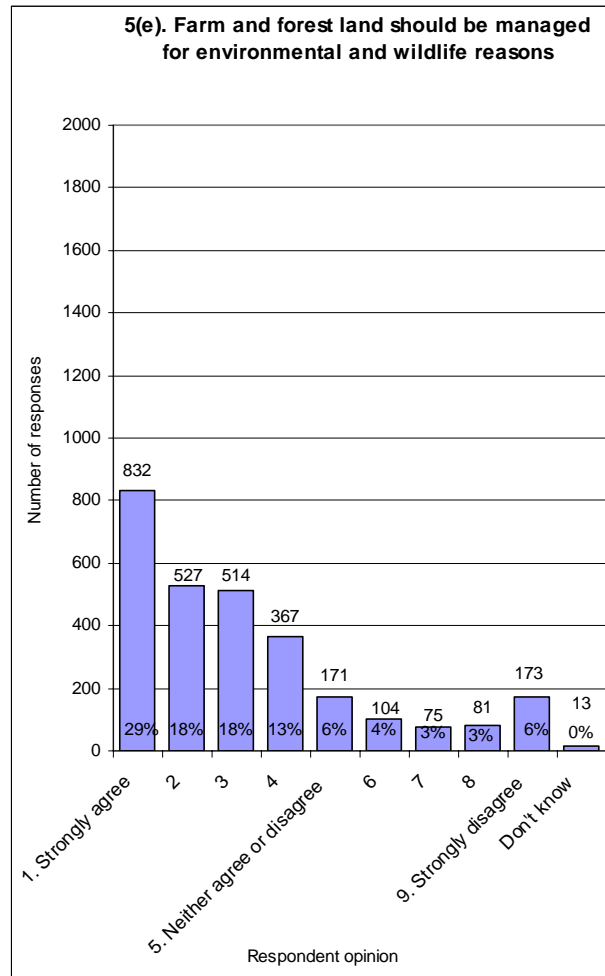
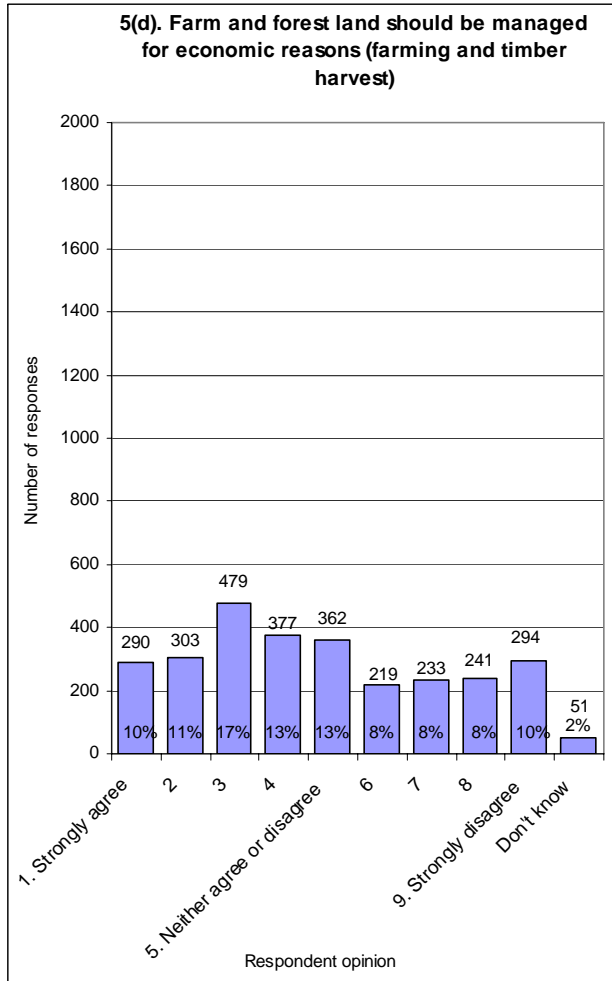
Private Property Rights



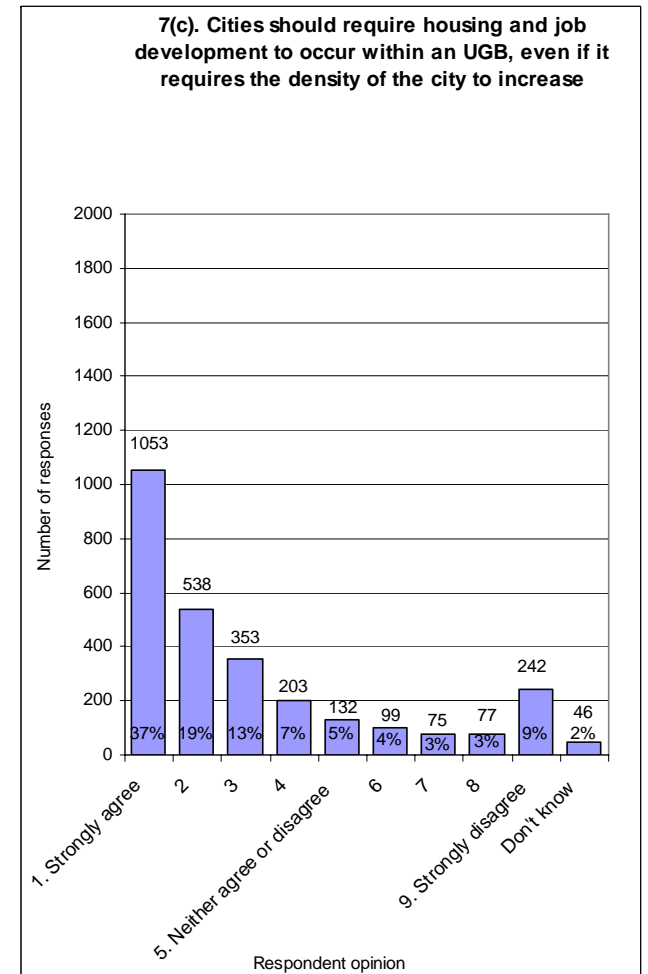
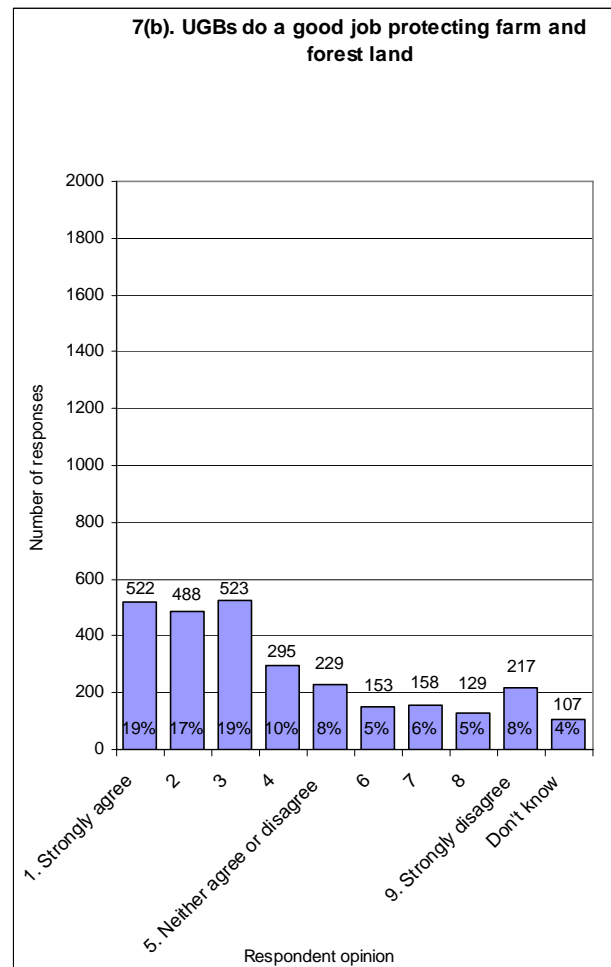
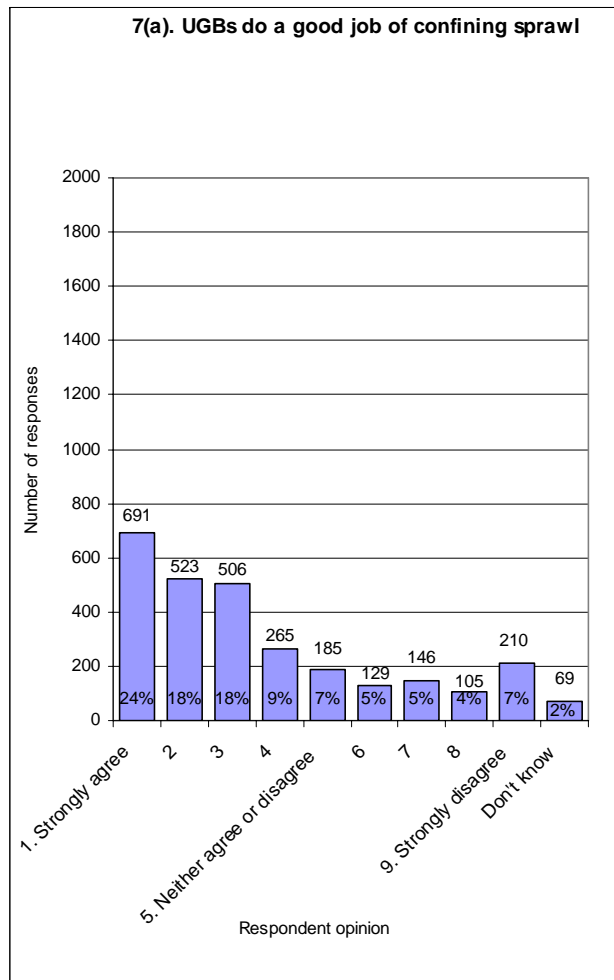


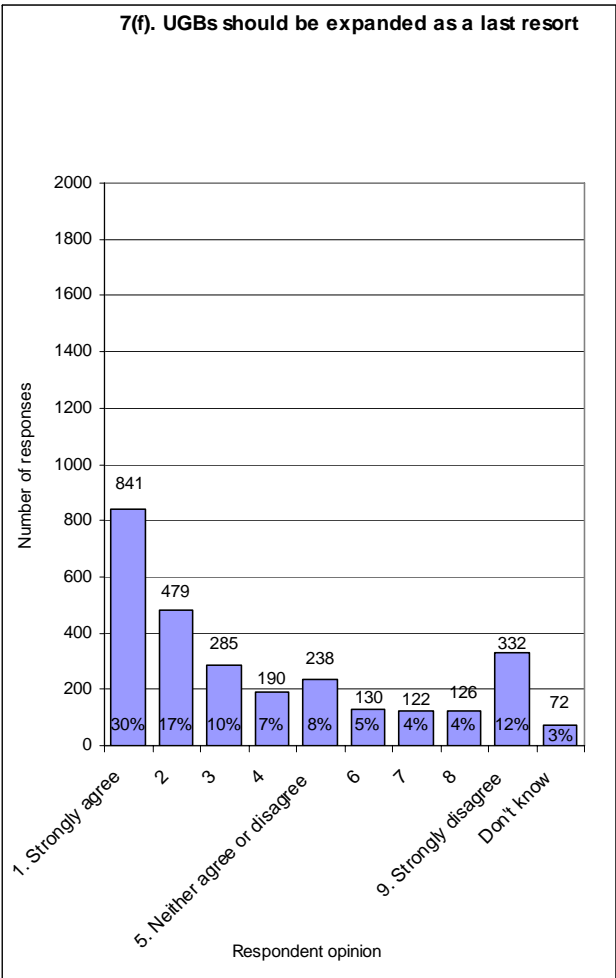
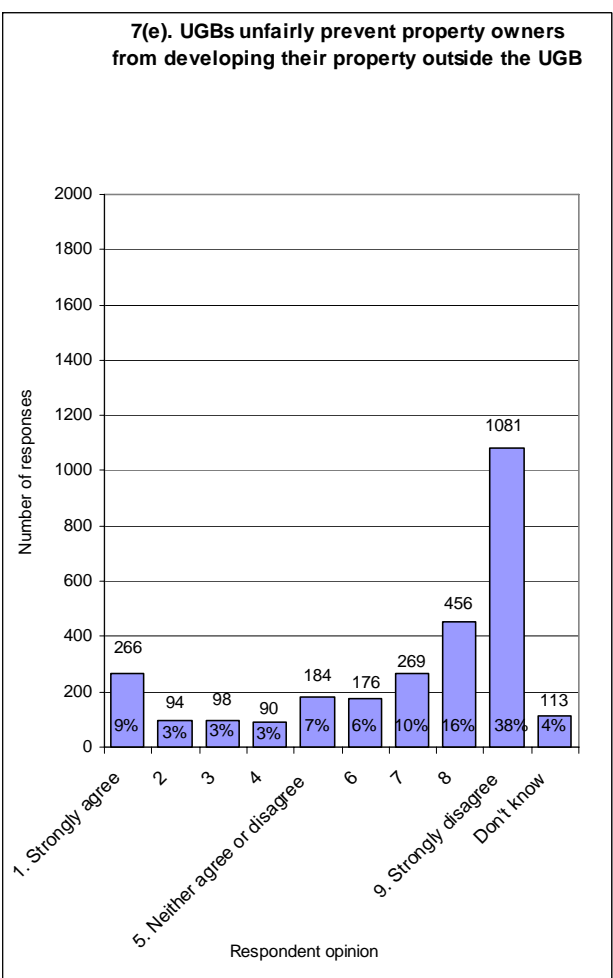
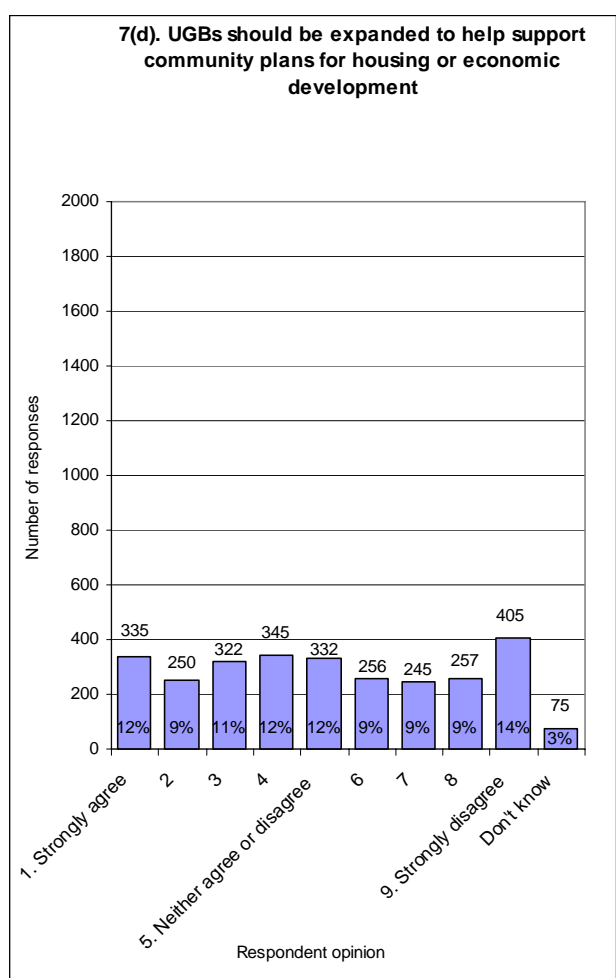
Farm and Forest Lands

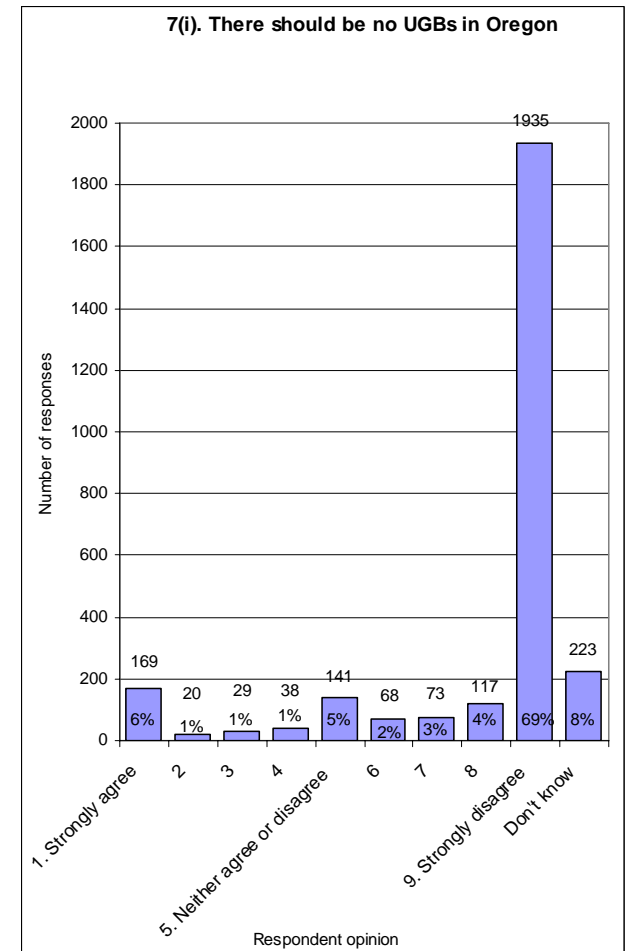
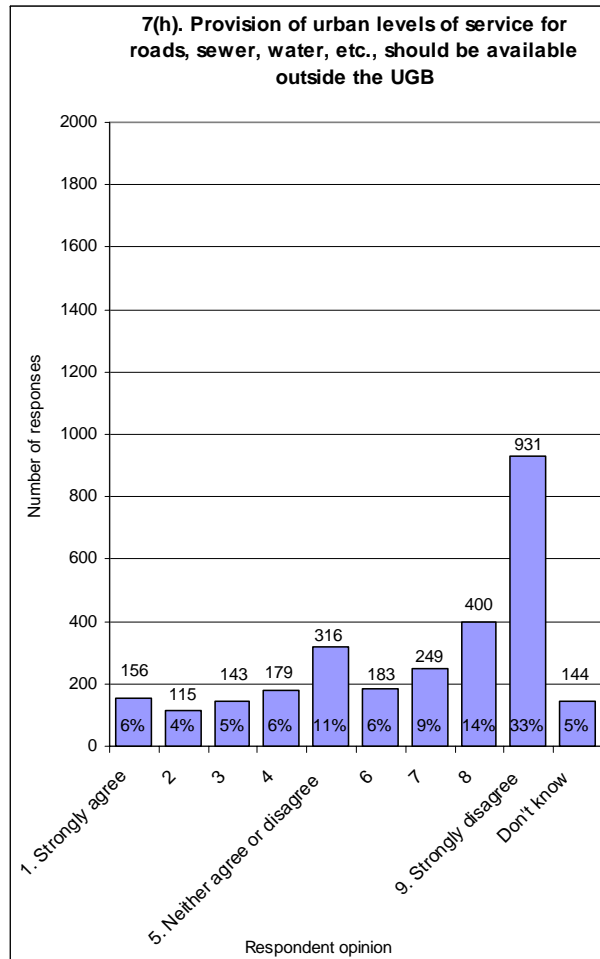
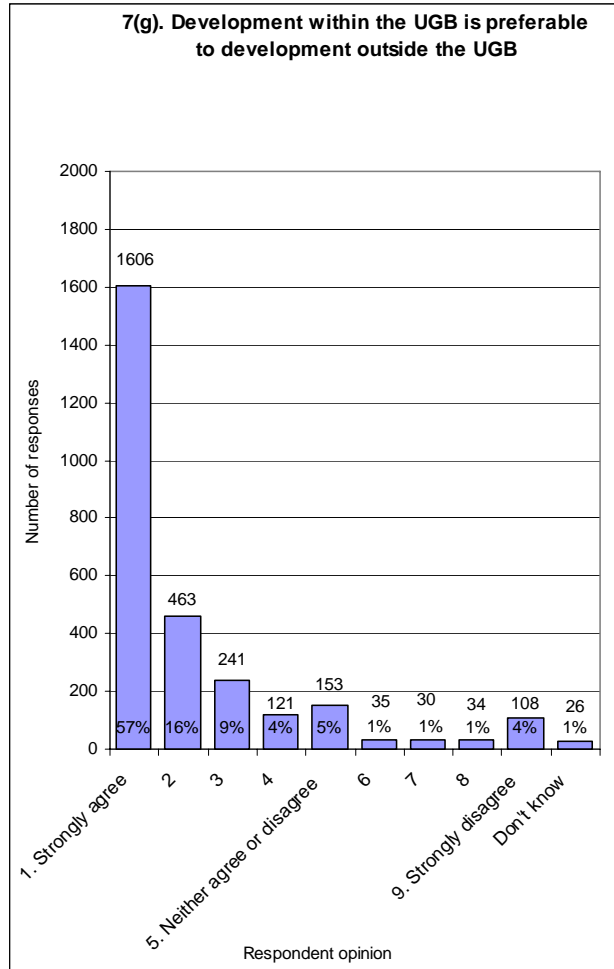




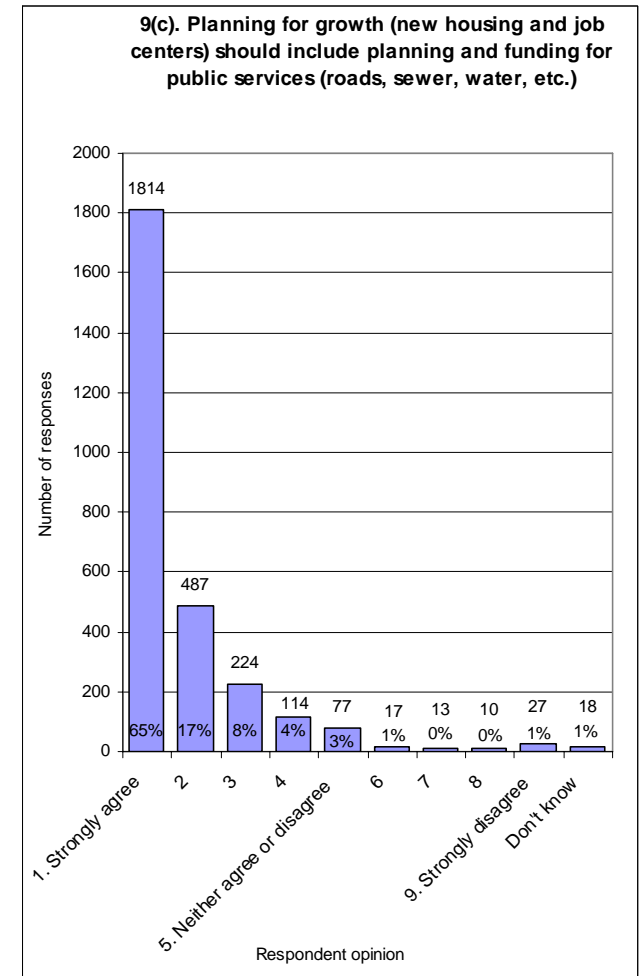
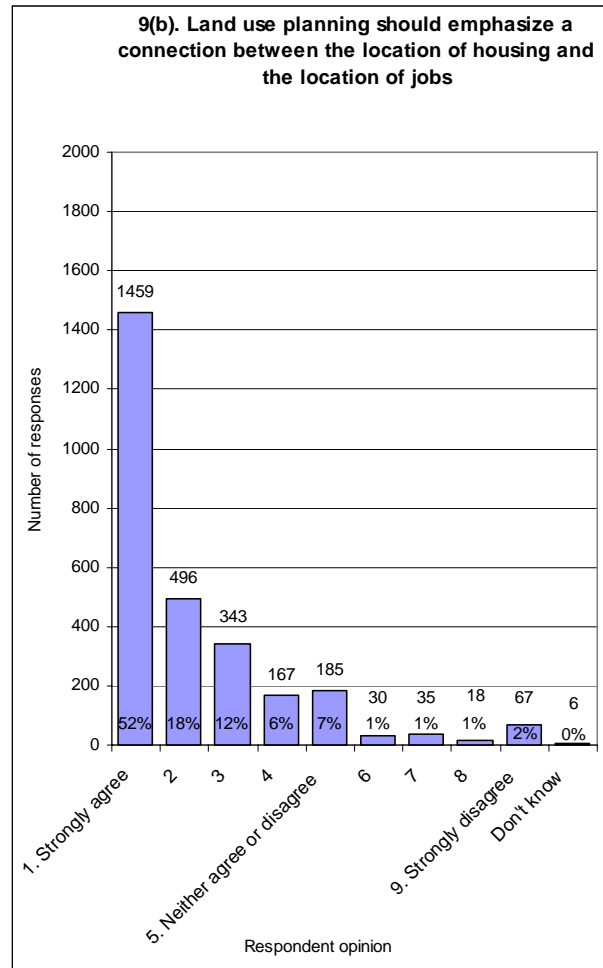
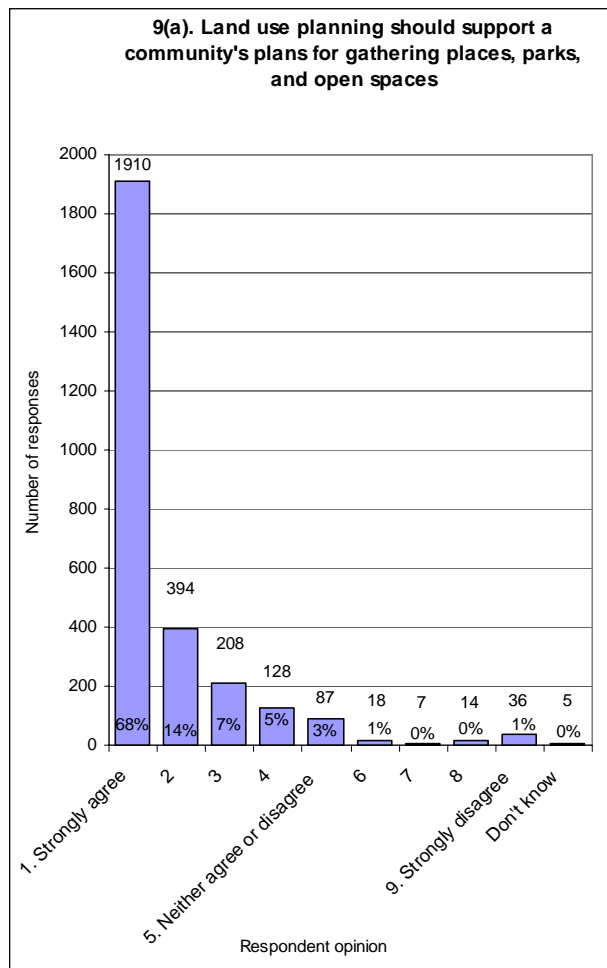
Urban Growth Boundary (UGB) Policies

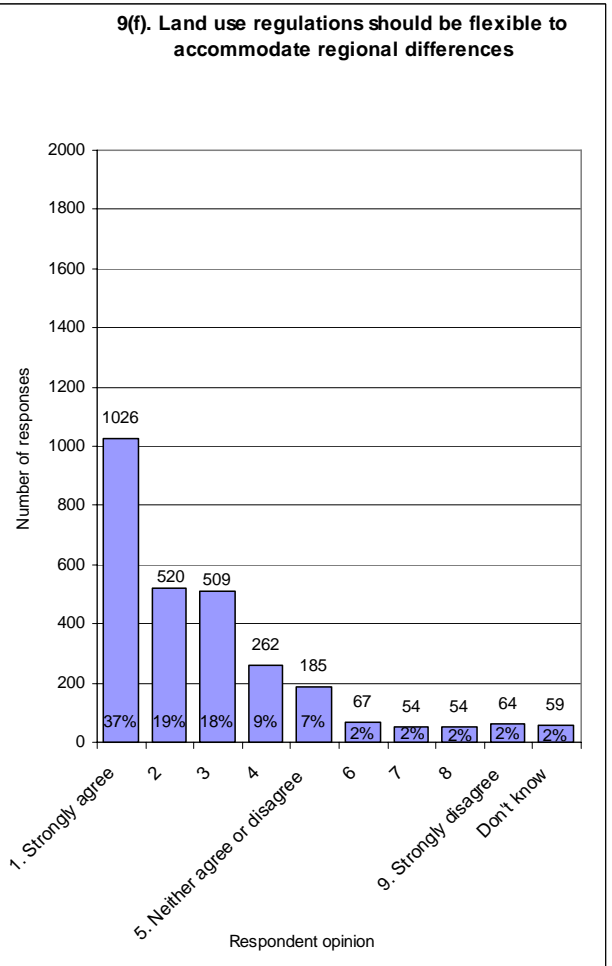
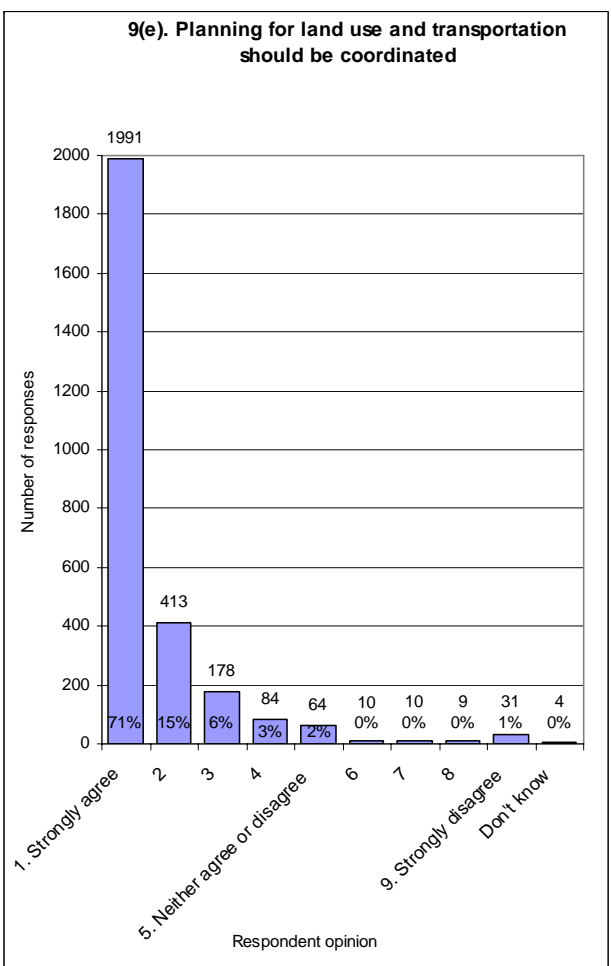
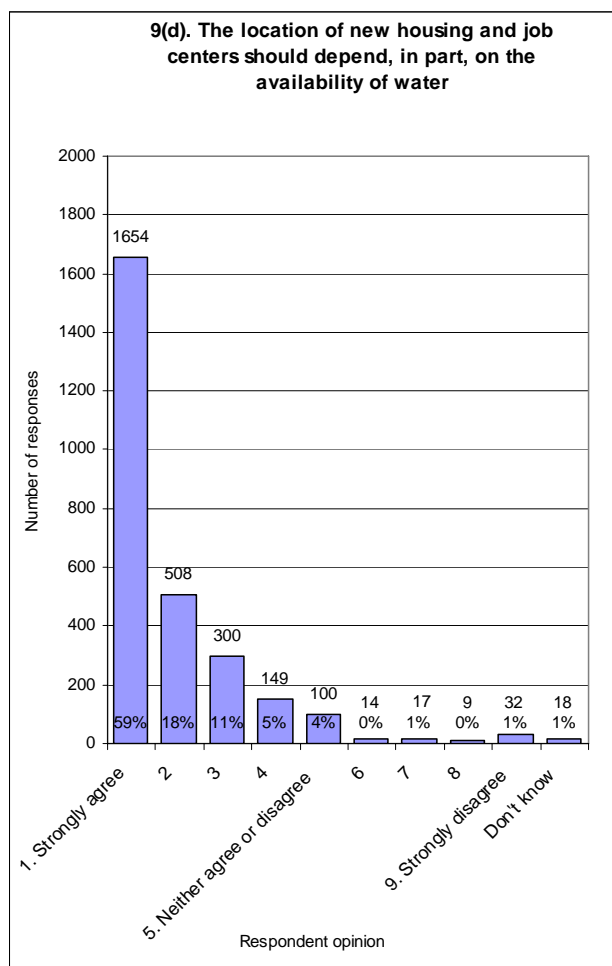




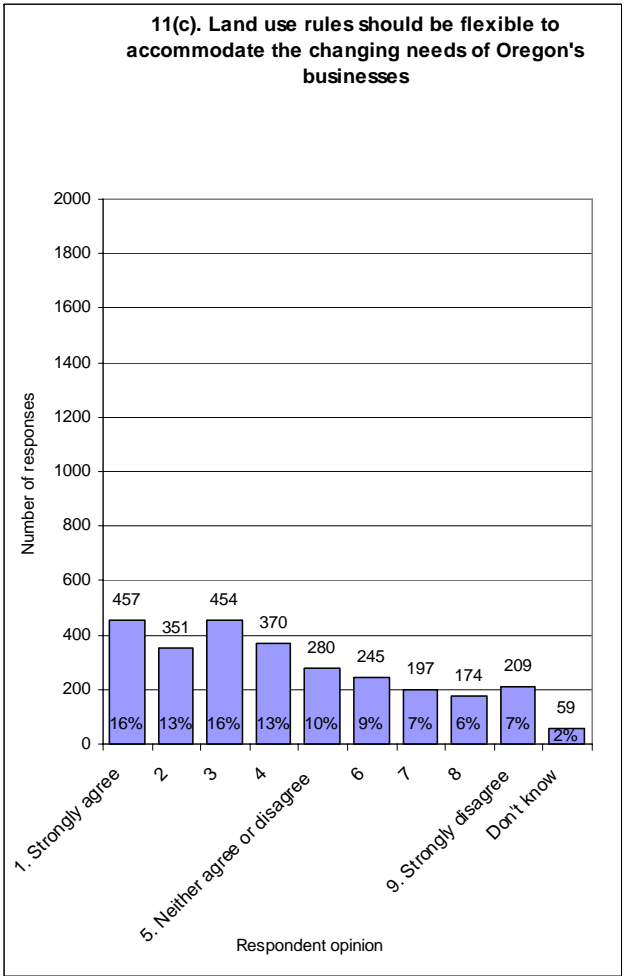
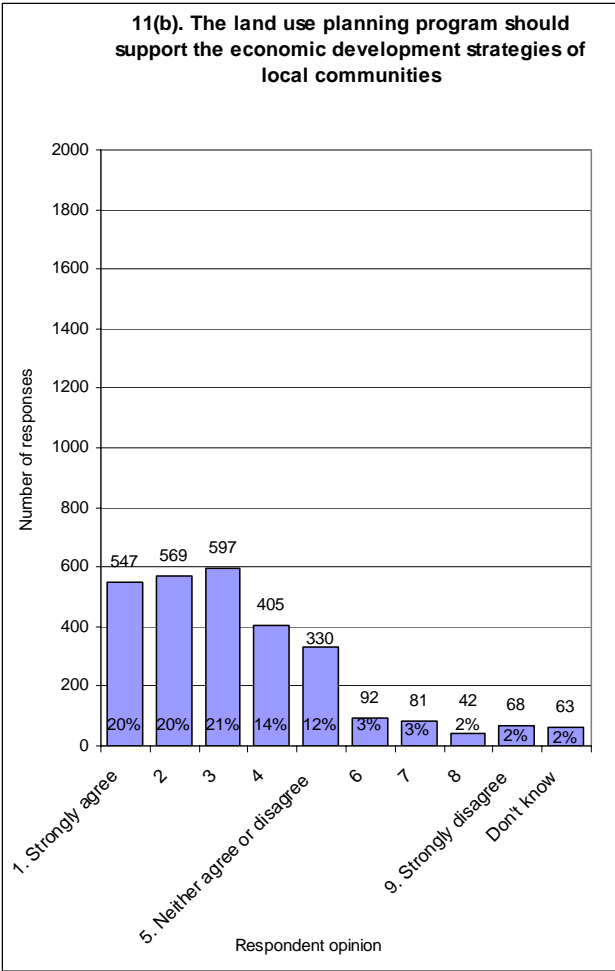
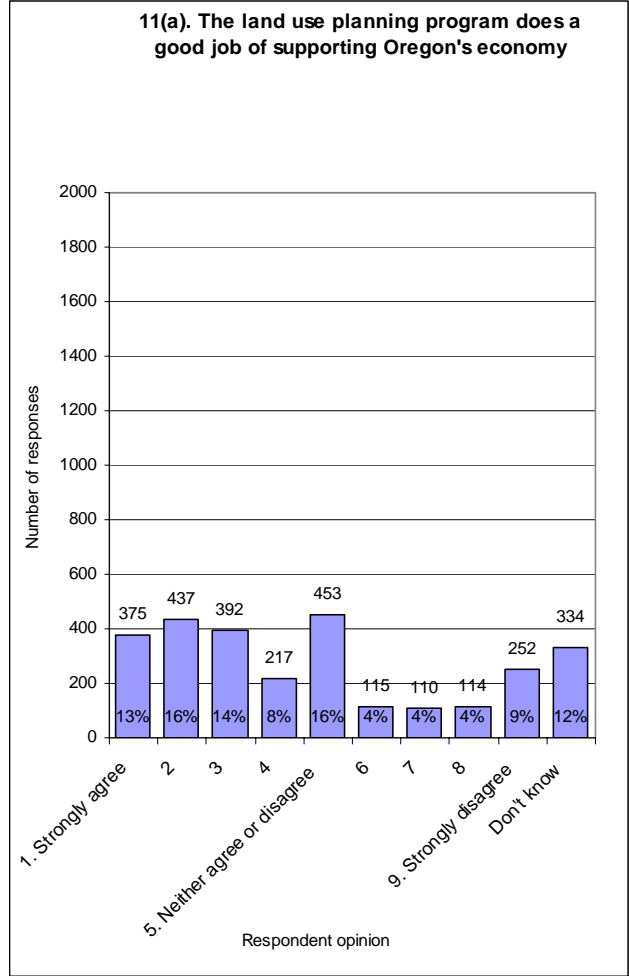


Quality Community Outcomes

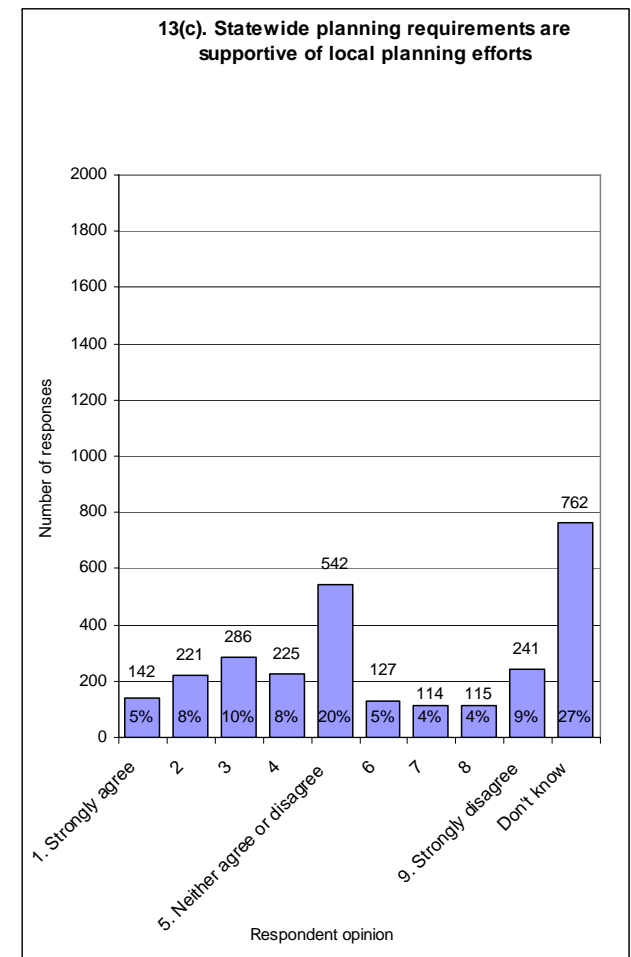
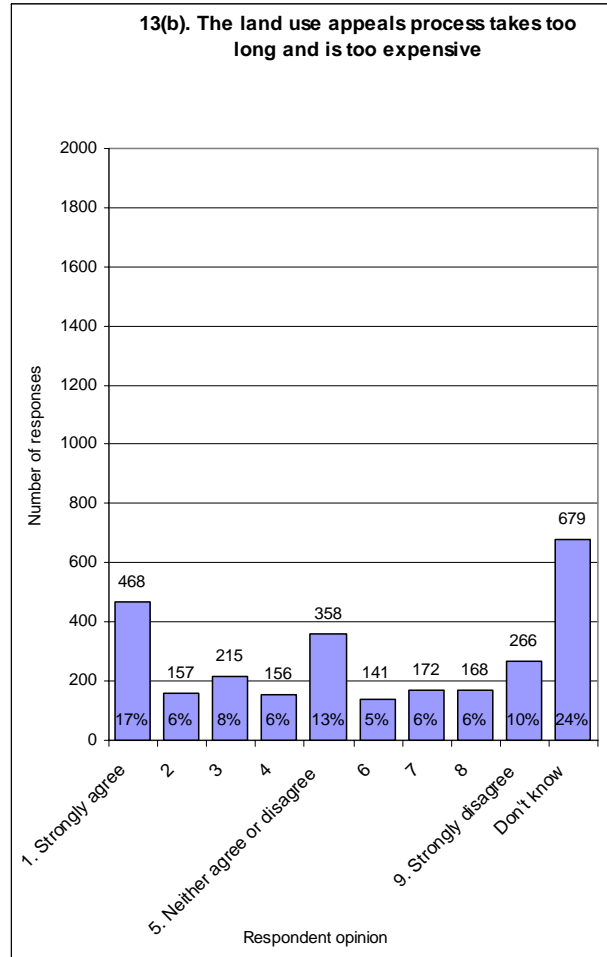
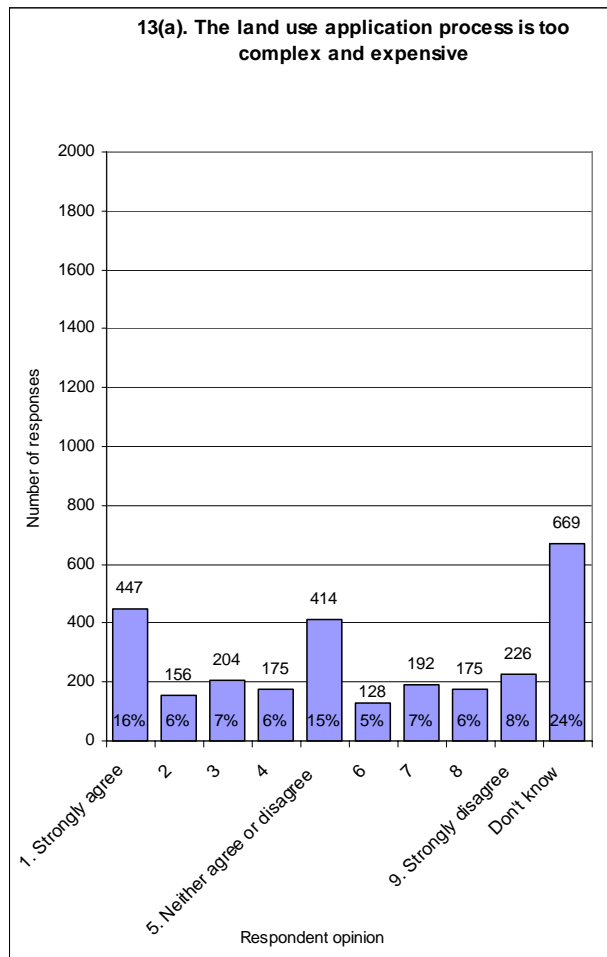




Economic Development Strategies

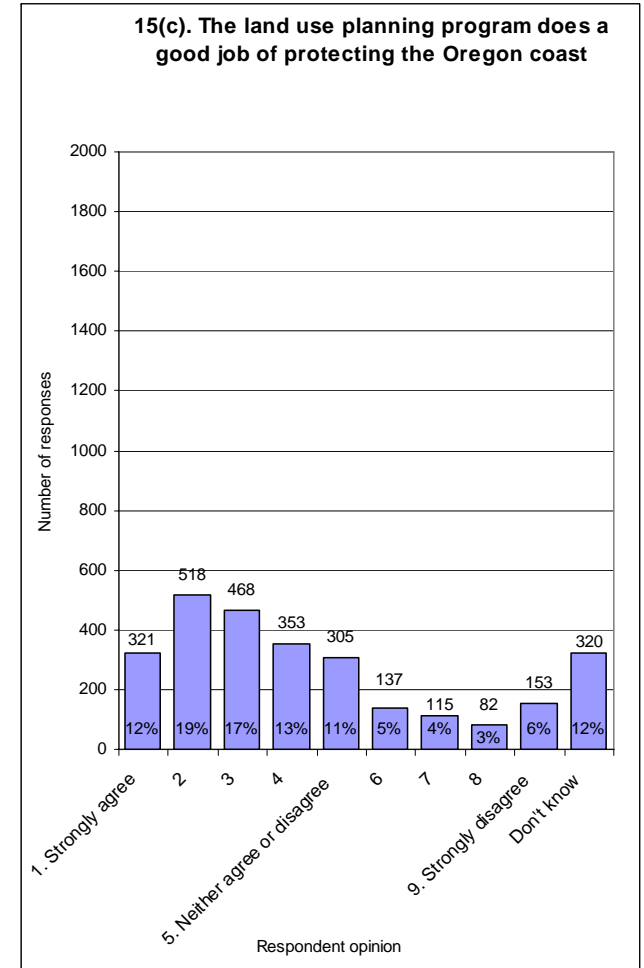
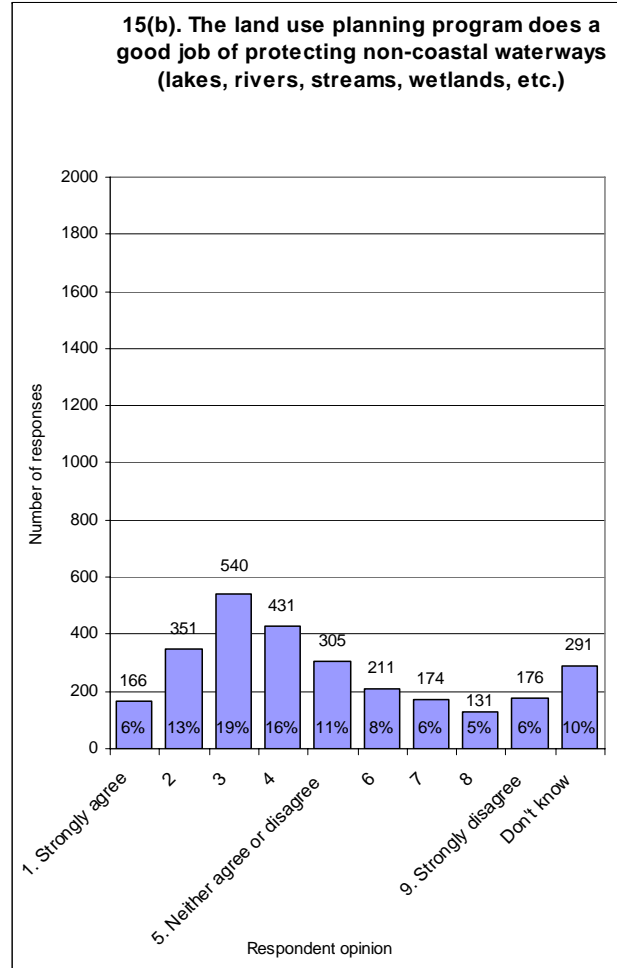
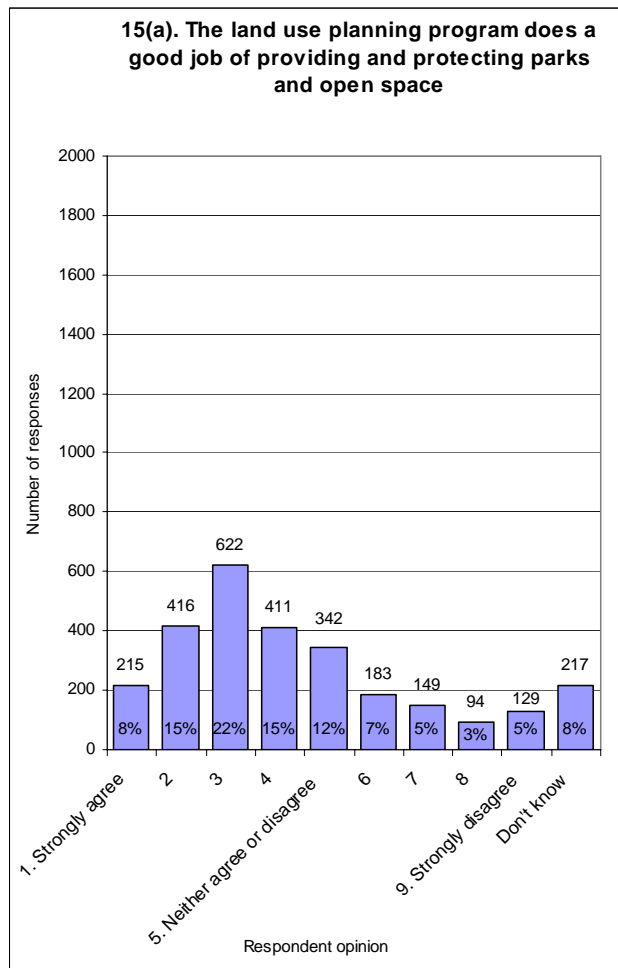


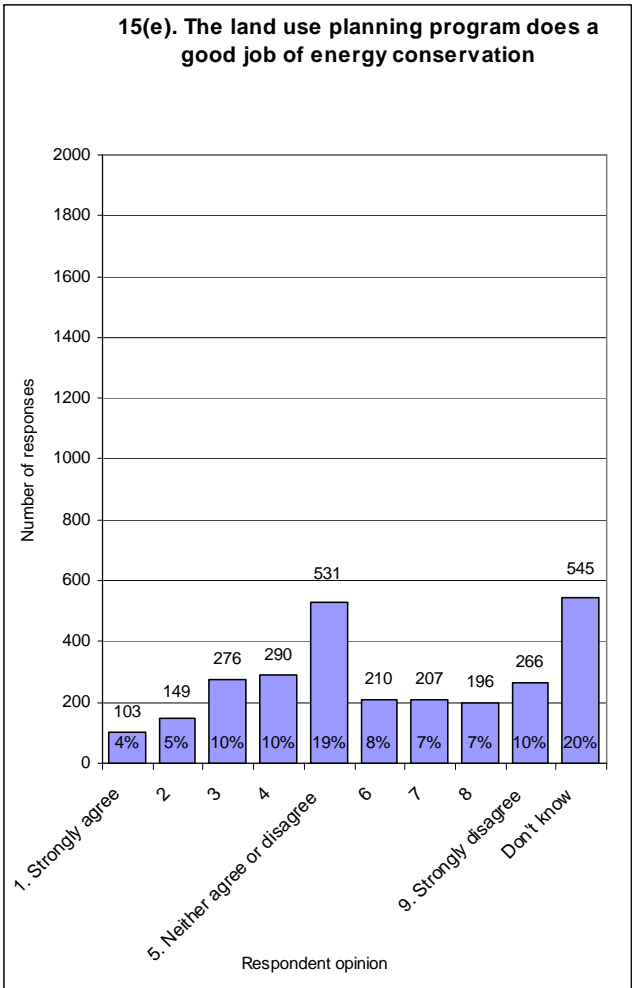
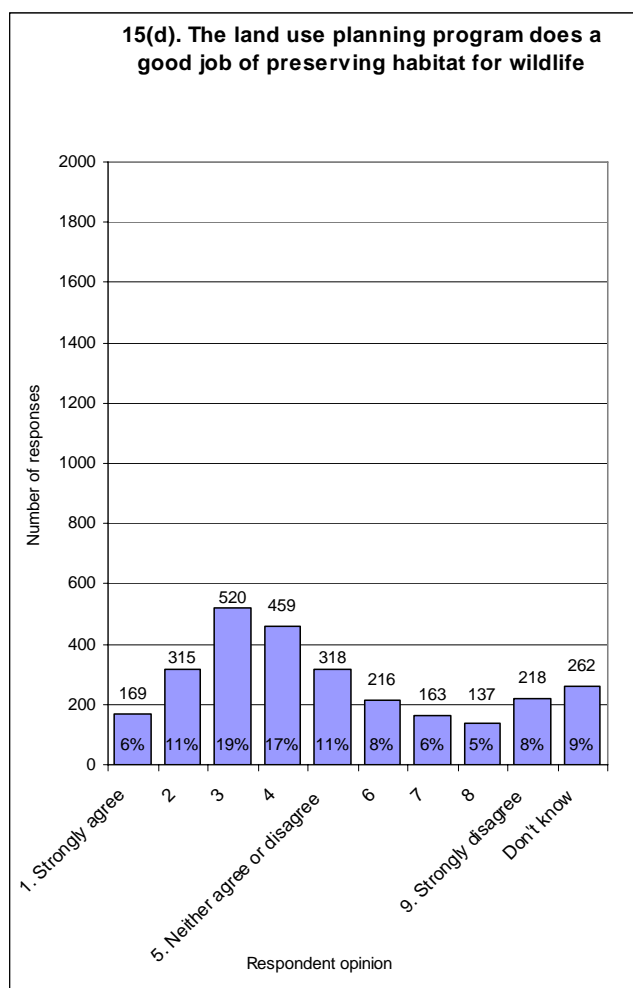
Land Use Process and Procedures



Fill in comment information.

Environmental Issues





Survey respondent information

Note, not all respondents answered all questions.

Table 1. Respondent gender

Gender	Number	Percent
Male	1526	55%
Female	1236	45%
Total	2762	100%

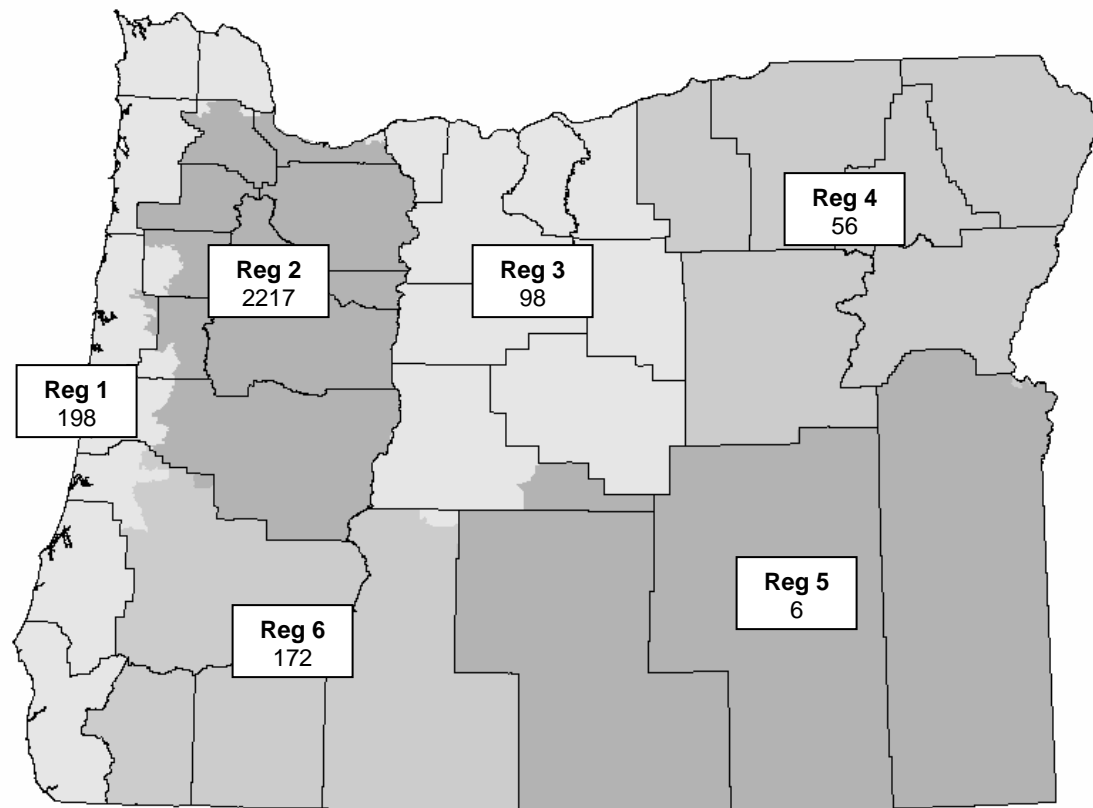
Table 2. Respondent age

Age	Number	Percent
Less than 19 years old	0	0%
19 to 25 years old	47	2%
26 to 35 years old	410	15%
36 to 45 years old	515	19%
46 to 55 years old	751	27%
56 to 65 years old	742	27%
66 or older	313	11%
Total	2778	100%

Table 1. Years respondent lived in Oregon

Years in Oregon	Number	Percent
Less than one year	29	1%
One to five years	241	9%
Six to ten years	283	10%
Eleven to 20 years	490	18%
More than 20 years	1737	62%
Total	2780	100%

Figure 1. Response by region



Region 1: Coastal
 Region 2: Willamette Valley
 Region 3: North and Central
 Region 4: Northeastern
 Region 5: Southeastern
 Region 6: Southern

Exhibit M

Key Issues Big Look Task Force Will Study

Memorandum to the Oregon Task Force on Land Use Planning (“Big Look Task Force”) providing a record of the key issue questions identified at the Task Force meeting on July 23-24, 2006 in Lincoln City, Oregon.

Information about the Big Look Task Force is available online at
<http://www.lcd.state.or.us/LCD/BIGLOOK/index.shtml>.



Oregon

Theodore R. Kulongoski, Governor

Oregon Task Force on Land Use Planning

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Web Address: <http://www.oregon.gov/LCD>

October 18, 2006



TO: Oregon Task Force on Land Use Planning
CC: Lane Shetterly, Steve Shipsey, and Jody Haury
FROM: Becky Steckler
RE: Discussion of draft issues at the July 23-24, 2006 meeting

This memorandum provides a record of the key issue questions identified at the Task Force meeting on July 23-24, 2006 in Lincoln City, Oregon. It includes the subtopics discussed during the two day meeting. I added the topics discussed on Monday to the summary I drafted from Sunday's discussion. These subtopics are now organized by key issue question. I thought it would be helpful to distribute a record of the subtopics discussed and get them out to the Task Force members for use by the work groups.

These notes will be incorporated into the meeting minutes

What are the appropriate roles of state and local governments in land use in Oregon?

- Impacts of legislative decisions
- Impacts of legal decisions
- Is there a role for regional planning/problem solving?
- To what degree, and who, should provide education for land use?
- Consider regional issues:
 - Independence from the state to make regional regulations
 - Take a regional approach to planning that allows/encourages jurisdictions to work together (for example, on transportation, economic opportunities, or watershed planning)

What is the appropriate role of citizen involvement in land use?

- At what level?
- Is there a need to redefine standing?
- How does citizen involvement impact the land use planning process? Does citizen involvement make the process more complex and legalistic?

What role should land use planning play in enhancing Oregon's economy now and in the future?

- Will the land use program accommodate changes as the economy changes?
- What is the appropriate role of land use in promoting agriculture, forestry, and open space (other uses)?
- Consider environmental issues within the economic context. What role does land use planning play in protecting the environment?
 - People move to Oregon because of the environment
 - Regulations on agricultural and forest lands to protect the environment may make it more difficult to use the land productively for farming and forestry.
- Consider housing issues related to the economy (also under the next issue, managing population growth)

What are the most effective tools to manage population growth to achieve community goals?

- Does the UGB reflect the values of Oregonians?
- Should Oregon manage growth?
- Should Oregon manage regional growth?
- How does land use planning shape infrastructure?
- The mechanics of expanding UGBs
- Manage growth/urbanization
- Infrastructure
- Population growth
- Is it the role of land use planning to encourage or inhibit growth?
 - Employment
 - Wages
 - Population growth issues (people moving to Oregon)
- Are high growth areas different than slow/no growth areas?
- Does (and should) the land use planning system allow for flexibility in housing choices?

How should Oregon's system of infrastructure, finance, and governance influence land use?

- Relates to UGB issues

- Need to address the disconnect between UGB policies and annexation/governance policies
- Impacts on service delivery
- Need to make sure planning (and related activities) is funded and implemented appropriately

How can the land use process appropriately address the benefits and burdens that fall on individual land owners and the general public?

- Does the land use process appropriately accommodate the burdens that fall on individual land owners?
 - Is this part of the economic question?
 - Balance
 - Historic uses
 - Proportionality
 - Should people have a right to any use on their property? Or just some uses?
 - What is the role of the farm use assessment tax structure (it was originally conceived as a reward for approving SB 100)

Exhibit N
Envision Oregon Town Hall Forum

Envision Oregon August 3 Town Hall Forum
Summary

Information about Envision Oregon available online at <http://www.envisionoregon.org/>.

TO: Oregon Task Force on Land Use Planning
c/o Department of Land Conservation and Development
635 Capitol St. N.E., Suite 150
Salem, OR 97301-2540

CC: All Cosponsors

FROM: Envision Oregon

RE: Envision Oregon Portland Town Hall Forum, August 3, 2006

DATE: August 11, 2006

On August 3rd, Envision Oregon organized a town hall forum in Portland, the third in a series of forums scheduled around Oregon. The event was well attended and sponsored by a wide array of organizations, including:

- Active Living by Design
- Audubon Society of Portland
- Bicycle Transportation Alliance
- Bus Project
- City Club of Portland
- Coalition for a Livable Future
- Community Development Network
- Home Builders Association of Metropolitan Portland
- Housing Alliance
- League of Women Voters® of Oregon
- Oregon Action
- Oregon Business Association
- Portland Business Alliance
- Portland Habitat for Humanity®
- SOLV
- The Neighborhood Partnership Fund
- visionPDX
- 1000 Friends of Oregon

Approximately 500 Oregonians participated in the forum, with registration completely full prior to the event. The majority of participants were from the Portland metropolitan area, but the event also attracted Oregonians from other areas around the state, including Madras, Eugene, and Salem. Among the attendees were several local political officials: State Representative Jeff Merkley, Metro Councilors Rex Burkholder and Robert Liberty, Damascus Mayor Dee Westcott, Happy Valley Mayor Gene Grant, Tigard Mayor Craig Dirksen, Lake Oswego City Councilor Jack Hoffman, and Damascus Councilor John Hartsock. Task force members Steve Clark and Judie Hammerstad were also on hand at the event.

As the Task Force begins further analysis and evaluation of the six issues you've identified to guide your review of our statewide land use planning program, we hope you will consider the opinions, ideas, and input put forth by over 500 Oregonians at this Envision Oregon event.

The town hall forum was participant-driven. The majority of the three-hour event was devoted to participants assessing and discussing with each other their values and vision for Oregon's future. Although Envision Oregon provided an opportunity for Oregonians to talk about their ideas and find common ground, sponsoring organizations did not interfere or intervene in their discussions. Participants submitted answers at three levels: each participant wrote down his or her individual answer, participants agreed on a common answer for their table, and table captains (designated by the participants at the table) gathered in groups and synthesized input from the individual tables.

What did Oregonians say about their values and vision for our state?

The following reflects the collective responses of the more than 500 people who shared their values and vision for Oregon at the August 3 Envision Oregon event. These responses were synthesized by groups at tables and later collectively agreed upon by groups of table captains. Each of these six groups was composed of approximately nine table captains and represented by a distinct color (Blue, Buff, Green, Orange, White, and Yellow). Although we have sorted the following responses under common categories, the values and vision statements are taken directly from the table captain group worksheets, with no additional edits or interpretation by us. For responses from individual participants, as well as summary reports from each table, please see the appendix to this report.

Question One: What three things do you value most about living in Oregon today?

Oregon's Natural Environment and Landscape

- "Access to and protection of natural environment" (Orange Group)
- "Diversity of natural environments and access to these environments" (Green Group)
- "Public access to diverse and protected natural areas" (White Group)
- "Landscape: deserts, forests, rivers, coast, agriculture, mountains, rural/urban diversity" (Buff Group)
- "Natural beauty, diversity of landscapes, access to nature" (Blue Group)

- “Access to open spaces: high quality options” (Yellow Group)

Oregonians’ Culture of Civic Engagement

- “People: can-do attitude, civic engagement, creative, independent, involved” (Buff Group)
- “Civic mindedness, intentionality” (Blue Group)
- “Civic engagement and shared sense of community” (Orange Group)
- “Culture of participation and openness of institutions” (Green Group)
- “Community of engaged, involved, grassroots citizens” (Yellow Group)

Oregon’s Communities

- “Community-economic opportunity, access to nearby goods and services, urban livability/sustainability, sense of place” (Buff Group)
- “Appreciation of diversity and community” (Green Group)
- “Human scale, density of towns and cities, livability of neighborhoods” (Blue Group)

Land Use Planning:

- “Legacy of land use planning creates distinct urban and rural environments” (Green Group)
- “Commitment to sustainability and livability, transportation options, agricultural protection, and creative solutions to shared problems.” (Orange Group)
- “Innovative urban planning - non conformist, out-of-box thinking” (Yellow Group)
- “Public will to protect land from urban sprawl and to protect farms and forests.” (White Group)

Innovative and Open Government:

- “Fosters creative, innovative solutions: transportation choices, locally-owned businesses, food, housing” (Yellow Group)
- “Open and accessible government that allows citizens to make a difference” (White Group)

Question Two: What is your vision for Oregon thirty years from now?

Citizen Participation in Effective, Open Government:

- “Collaborative government: less partisan, break deadlocks, get things done, increase public grassroots participation, no out of state election financing” (Blue Group)

- “Equitable public finance system designed to provide excellent public institutions and services that support the values of Oregon, especially education, public transportation, and health care.” (White Group)
- “Leadership-renewed participation in politics, responsive government” (Buff Group)
- “A well-educated, informed citizenry that is engaged in community and civic issues” (Yellow Group)
- “Willingness to pay taxes to achieve these goals, taxes by individuals and corporations” (Blue Group)
- “Engaged and active citizens and responsive government” (Orange Group)

Social and Economic Vision:

- “Social equity for all: education, housing, healthcare, jobs, etc.” (Yellow Group)
- “Social visions: continue to enhance the diversity of people, adequate health care, education, equity of opportunity” (Green Group)
- “Great education for all” (Buff Group)
- “People (all ages, all ethnic groups) enjoy access to jobs, housing, opportunity, education, all are integrated” (Blue Group)
- “Economic visions: jobs (livable wage), locally-owned businesses, sustainable industry” (Green Group)
- “Livability-access to health, education, housing, etc, affordability, community, protection of natural environment, fossil-free, equitable transportation” (Buff Group)

Land Use Planning:

- “Balanced land use planning for common good and individuals, continue dialogue” (Yellow Group)
- “Natural areas preserved, growth is concentrated, growth as an engine for renewal and repair, transit does not equal cars” (Blue Group)
- “Continued leadership in policies that protect agriculture, natural beauty and strong communities, sustainability” (Orange Group)
- “Planning-retain compact cities, resource lands, green spaces between cities, and planning well for infrastructure” (White Group)

Sustainability:

- “Sustainability: We can provide for our essential needs locally” (White Group)
- “Culture of sustainability” (Buff Group)
- “Environmental visions: better public transportation (including rail), smart growth, natural resources (access to, preservation, and protection)” (Green Group)
- “New and revitalized small and medium urban centers that are human-scale, eco-vibrant, and sustainable throughout Oregon” (Yellow Group)

Next Steps?

Between the three town hall forums in Corvallis, Hood River, and Portland, Envision Oregon efforts have directly engaged approximately eight hundred Oregonians in neighbor-to-neighbor dialogue about the future of our state. These forums are the first step in forging a vision for what Oregonians would like our state to become in the coming years. What we learn about Oregonians' values and visions for our state will serve to inform the objectives and policies of a rejuvenated land use planning program.

The next Envision Oregon town hall forums will be held October 12 in La Grande and October 26 in Medford. Future forums are also planned elsewhere around Oregon, including Bend and Bandon.

Our experience suggests that many Oregonians can find agreement on what they feel is important and what they would like for Oregon's future. It is apparent that Oregonians care deeply about our communities and want to be involved in helping to shape the future of our state. We were pleased to have a diverse audience in Portland, with our varied co-sponsors helping to attract a crowd with many different points of view. We hope that dialogue spurred with open-ended questions will encourage people to think "outside the box" as a step toward synthesizing people's concerns and good ideas into specific recommendations for policy changes.

Like other interested organizations, we want to assist the Oregon Task Force on Land Use Planning in its work. As we move forward, we welcome suggestions from you as to how we can improve our efforts.

Envision Oregon August 3, 2006 Portland Town Hall Forum
hosted by



Gerding Edlen



DEVELOPMENT



WILLIAMS & DAME

DEVELOPMENT

ZIMMER·GUNSUL·FRASCA PARTNERSHIP

Envision Oregon is supported by generous grants from
The Gray Family Fund at The Oregon Community Foundation
The Bullitt Foundation
The Surdna Foundation

Exhibit O

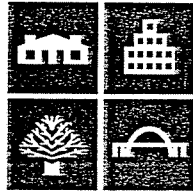
Historical Appraisal of Washington County Farmland

Excerpt of historical appraisal of 54 acre parcel of farmland located in Washington County.

Parcel is also known as the “Bernards Property.”

Analysis conducted by PGP Valuation Inc. and submitted March 30, 2006.

1,000 Friends of Oregon commissioned this appraisal in connection with pending litigation in VanderZanden v. Oregon Land Conservation and Development Commission (Marion County Court).



PGP
VALUATION INC

March 30, 2006

Mr. Robert Stacey, Executive Director
1000 Friends of Oregon
534 SW Third Street, Suite 300
Portland, Oregon 97204

RE: **BERNARD PROPERTY - 54.08 ACRES**
TL 1300, Sec. 19 T1N-R3W
Washington County, Oregon

Dear Mr. Stacey:

At your request, we have analyzed the captioned property using generally accepted appraisal principles and practices. This report is intended to comply with the reporting requirements for a real property appraisal consulting report format consistent with Standards Rule 5 of the *Uniform Standards of Professional Appraisal Practice (USPAP)* as adopted by the Appraisal Institute.

The subject property consists of 54.08 acres of farm land that lies immediately north of the cities of Forest Grove and Cornelius in unincorporated Washington County. The property is currently zoned EFU, Exclusive Farm Use and is in cultivated farming use.

The purpose of this report is to determine farmland valuation trends leading up to and shortly after the retrospective date of value. For the purposes of our analysis, the retrospective date of value is defined as a period of time from June 12, 1973 through January 25, 1975. This time period defines the implementation of a temporary 38-acre minimum site size adopted for the F-1 zone by Washington County through to the date that the state wide land use goals and policies as adopted by the Oregon Land Conservation and Development Commission went into effect. During this time period Washington County adopted the GFU-38 zoning district which generally replaced the F-1 zone. Our analysis will be, to the best of our ability based on our understanding of economic conditions and available and verifiable market data, leading up to and shortly after the retrospective date of value.

110 SW Yamhill Street, Suite 200
Portland, OR 97204
503.226.0983
503.273.4273 facsimile

www.pgpinc.com

Real Estate Appraisers and Consultants
OFFICES IN CALIFORNIA,
OREGON & WASHINGTON

①

SUMMARY OF CONCLUSIONS

Source of Information	Prior to 6/12/73	After 1/25/75
Farmland Sales *	\$600 to \$850 per acre	\$1,500 to \$2,700 per acre
Agriculture Census **	\$851 to \$1,416 per acre	\$1,416 to \$2,452 per acre

*PGP Valuation Inc. Sales Data

** U.S. Department of Commerce, Agricultural Census Data

Based upon our investigation and analysis of available information, the general farmland valuation trends throughout the 1970's indicated, in our opinion, sufficient support to conclude that the subject's value from the time period prior to the retrospective date of value relative to the time period shortly thereafter improved.

The value ranges presented above assume that the site is free of all hazardous waste and toxic materials and is based on the following special assumptions:

1. Access to the property was via the former alignment of Martin Road that adjoined the east half of the subject's south property line.
2. The property was fully improved as a cultivated tract of farmland, with no areas of undue wetness or soil conditions that would affect the productivity of the soils.
3. This report assumes the property was unencumbered by easements that would impact the full utility of the property.

Whenever possible the sales data presented herein were verified by persons who were familiar with the transaction. Due to the age of the data, we were often unable to contact either the buyer or seller, and the market participants whose recollection of the transaction details was often vague. Whenever possible, facts were verified by historical assessor records.

This appraisal is subject to the assumptions and limiting conditions presented in this report and has been prepared by the undersigned with professional assistance from James E. Lingeman (OR State Registered Appraiser Assistant No. AA01509) who provided significant assistance in collecting and analyzing available sales information used in the appraisal consulting process as outlined by OAR 161-025-0030 (9) A-H.

REAL PROPERTY APPRAISAL CONSULTING SUMMARY

Property Type: Cultivated Farmland

Name: Bernards Property

Location: North of Martin Road Approximately one half mile south of the Verboort Road intersection. (as of 1975)

Parcel Number/Site Size— Tax Lot 1300, Section 29, Township 1 North - Range 3 West, Willamette Meridian, Washington County, Oregon.

54.08 acres, according to the Washington County Assessor Records.

Neighborhood Description: The subject is located in an area of primarily cultivated farmland tracts. The property is in close proximity to the Washington County communities of Forest Grove and Cornelius beyond the western portion of the Portland metropolitan area. Residential development in this area generally consists of widely dispersed farm homes on larger acreage tracts, or on lots that have been divided off of the parent, larger farm land parcels. Several areas in the vicinity of the subject have small clusters of residences generally located along paved public roads. The City of Forest Grove and Cornelius serve as the local commercial centers for daily goods and services with Portland and Hillsboro to the east providing a full range of services.

Zoning and Comprehensive Plan: Prior to 6/12/73: F-1, Agriculture

After 1/25/75: GFU-38, General Farm Use - 38-acre minimum.

Highest & Best Use: Prior to 6/12/73: Cultivated farm land with possible speculative alternative uses, including residences on smaller acreage tracts.

After 1/25/75: Cultivated farm land with a 38-acre minimum site size, with residences allowed in support of farming activity only.

REAL PROPERTY APPRAISAL CONSULTING SUMMARY (continued)

Retrospective Date of Valuation: For the purposes of our analysis, the retrospective date of value is defined as a period of time from June 12, 1973 through January 25, 1975. This time period defines the implementation of a temporary 38-acre minimum site size adopted for the F-1 zone by Washington County through to the date that the state wide land use goals and policies as adopted by the Oregon Land Conservation and Development Commission went into effect. During this time period Washington County adopted the GFU-38 zoning district which generally replaced the F-1 zone.

Date of Report: March 30, 2006

CONCLUSION OF RELATIVE VALUE ANALYSIS

SUMMARY OF CONCLUSIONS

Source of Information	Prior to 6/12/73	After 1/25/75
Farmland Sales *	\$600 to \$850 per acre	\$1,500 to \$2,700 per acre
Agriculture Census **	\$851 to \$1,416 per acre	\$1,416 to \$2,452 per acre

*PGP Valuation Inc. Sales Data

** U.S. Department of Commerce, Agricultural Census Data

Based upon our investigation and analysis of available information, the general farmland valuation trends throughout the 1970's indicated, in our opinion, sufficient support to conclude that the subject's value from the time period prior to the retrospective date of value, relative to the time period shortly thereafter improved.

This conclusion of farmland value trends affecting the subject's market value is subject to the assumptions and limiting conditions presented in the letter of transmittal and on pages 8 and 9.

PGP Valuation Inc

File No.: C051258

Exhibit P
Oregon Chapter of the American Planning Association “COPE” Report

An Evaluation of Planning in Oregon, 1973-2001
A Report to the Oregon Chapter of the American Planning Association (OAPA)

from

The Committee on the Oregon Planning Experience (COPE)

November 2001

Includes OAPA Board’s Responses to Recommendations Outlined in COPE Report

Full text of the COPE Report is available online at
<http://www.oregonapa.org/content/blogcategory/45/90/>.



Oregon Chapter of the American Planning Association

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OREGON PLANNERS' JOURNAL

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Ethics: Mark Greenfield

STUDENT REPRESENTATIVES

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Portland State University: Clark Henry

STAFF

Executive Assistant: Marty Stiven

February 8, 2002

TO: Governor John A. Kitzhaber, M.D.
Randy Franke, Chair, Land Conservation and
Development Commission
Paul Curcio, Director, Department of Land
Conservation and Development
Dr. Nohad Toulon, FAICP, Dean, PSU College of
Urban and Public Affairs
OAPA Members and Interested Persons

FROM: Dr. Sumner Sharpe, FAICP, President

RE: *An Evaluation of Planning in Oregon, 1973 - 2001:
A Report to OAPA from COPE (Committee on the
Oregon Planning Experience)*

Oregon's approach to land use planning is one of the oldest and most highly acclaimed in the nation. While its accomplishments are many, challenges remain. To evaluate the program's accomplishments and challenges, the Oregon Chapter of the American Planning Association (OAPA) appointed a special committee to evaluate planning in Oregon. The Committee on the Oregon Planning Experience (COPE) recently completed that evaluation.

We commend the committee for its work and convey our sincere appreciation to Dr. Nohad Toulon, Dean of the School of Urban and Public Affairs, Portland State University, for chairing this effort. He, his staff at PSU, and COPE's members--all of whom worked as unpaid volunteers--completed an impressive task with limited resources.

The COPE report is based on interviews with 55 informed citizens, planners, elected officials, planning commissioners and others in related fields around the state. The interviews revealed considerable praise for Oregon's planning system, for its contribution to community livability, protection of resource land,

citizen involvement and other accomplishments. They also identified some areas that merit careful review and discussion.

This memorandum is a foreword to the COPE report. It presents the OAPA Board's response to COPE's seven main recommendations. The Board accepted some of these recommendations, but did not completely concur with others. The Board agrees with COPE that these recommendations are based on concerns that need to be addressed. To begin this discussion, OAPA plans to launch an extensive effort to engage Oregonians in a reaffirmation of the Oregon vision. This effort will increase new and old residents' understanding of the role of land use planning in preserving and protecting our unique quality of life.

The recommendations from COPE and the OAPA Board's responses to them follow.

COPE Recommendation 1 – Develop a vision for the future. OAPA generally concurs with this recommendation. This does not necessarily entail establishing a new vision. The appropriate action may be to refine and better articulate the vision for land use planning in Oregon that has emerged since the goals were first articulated. Recognizing that many jurisdictions have adopted visions for their areas, this emphasis will be on a vision for the state as a whole. In the coming months, we will be looking for partners to address this recommendation by re-engaging Oregonians in all parts of the state.

COPE Recommendation 2 – Expand education. The OAPA Board strongly agrees with and supports this recommendation. The Board has directed the Chapter's Education and Outreach Committee to lead this important effort. Again, we invite others to assist. Many of the successes of our statewide land use planning program are little known and should be widely shared. Moreover, information about what planning has accomplished is sorely needed. Our efforts will serve to inform as well as engage Oregonians in preserving our quality of life.

COPE Recommendation 3 – Consider whether state standards should be differentiated for varied physical and geographical circumstances. Several Board members believe this recommendation fails to recognize that Oregon's planning system has evolved greatly since its inception. DLCD's Acting Director, Bill Blosser, wrote the Board a letter identifying the many rules and regulations that make distinctions based on physical and geographical circumstances. Noting this diversity, several board members suggested that the appropriate action here may be to inform planners and other Oregonians about what is currently possible and to look for improvements based upon a more comprehensive review of this concern.

COPE Recommendation 4 – Streamline the planning process. Oregon's planning system and permitting process is reputed to be more efficient and certain than that of most other states. The Board recommends that objective data be gathered to compare processing times and costs with other states. We agree with COPE's findings that the system should be made more accessible to users, and that in some areas, the process could be made less cumbersome. We note, however, that land use permits in Oregon are implemented locally: additional technical or financial support to local governments, rather than broad changes in state policy, may be the best way to improve user satisfaction with the planning program.

COPE Recommendation 5 – Explore regionalism and regional planning. The Board agrees that the focus of the planning program should be on shared problem-solving and allow for visions and plans for regions with common concerns and opportunities to be developed. Some Board members note that Oregon already has numerous programs and provisions for regional planning and they recommend that these programs and provisions be formally evaluated to inform further discussion on this topic.

COPE Recommendation 6 – Increase focus on urban areas. Oregon’s statewide planning program originally placed great emphasis on protecting resource lands from urban sprawl. It has achieved considerable success in protecting rural resource lands, but it has been less successful in fostering high-quality development of urban areas. However, the Transportation and Growth Management (TGM) Program and other statewide initiatives have provided support to local communities and regions in developing a focus on urban areas. We will continue to support these efforts.

COPE Recommendation 7 – Address fairness and equity. OAPA has consistently taken the position that monetary compensation is not the only or necessarily the best remedy to address fairness and equity regarding land use planning and related regulations. Other ways of dealing with this issue may be more effective and less costly. Although the Board is well aware of public concern about land use regulation as evidenced by the passage of Ballot Measure 7 in 1999, members also believe that the value and benefits of land use planning and zoning to property owners are under-appreciated. The chapter’s Legislative and Policy Affairs Committee and other committees will continue to work on this issue. Again, we strongly urge others to join us in this effort.

OAPA’S CALL TO ACTION

In conclusion, the COPE report finds broad support for Oregon’s planning program. Indeed, there are many successes to be celebrated. Our statewide planning program is internationally recognized, and our quality of life remains enviable. Our planning system and the people who implement it all deserve much credit for controlling urban sprawl; preserving farmland and open spaces; improving water quality and transportation choices; encouraging the choice and provision of adequate affordable housing; and maintaining and improving our overall livability. There remain, however, concerns to be addressed and work to be done.

To meet those challenges, we agree with COPE that the land use planning program must have the understanding and support of those it serves. ***To this end, OAPA calls for a statewide dialogue to revisit and affirm the shared vision for Oregon, and to agree on the means to achieve that vision.*** That dialogue must be achieved through a collaborative process involving agencies, individuals and organizations involved in and affected by land use planning. As described in the COPE report, more than half the people who live in Oregon today were not here when our statewide planning program was formed. Many lack personal experience with or knowledge about our planning system. The statewide dialogue we propose thus will serve as a much-needed opportunity to inform and reconnect with Oregonians throughout the state.

We know full well that past accomplishments do not guarantee future success. For Oregon's planning system to maintain its effectiveness, we must address the concerns described in this report and help Oregonians become more informed about and involved in planning. We invite your help in making that happen.

Thank you for your interest. If you have questions or comments about this report, please contact us. Additional information about OAPA can be found on our website at www.oregonapa.org.

AN EVALUATION OF PLANNING IN OREGON
1973 - 2001

**A Report Submitted to
The Oregon Chapter of the American Planning Association**

**By
The Committee on the Oregon Planning Experience (COPE)**

November 2001



COMMITTEE PARTICIPANTS

Chair: Nohad A. Toulan, FAICP

Members:

Arnold Cogan, FAICP
Linda Davis, FAICP
Reeve L. Hennion
Wayne (Rusty) S. Klem, AICP
Scot Siegel, AICP
Edward J. Sullivan, Esq.
Damian P.N. Syrnyk, AICP

PSU Staff:

Rod Johnson
Beth St. Amand

ACKNOWLEDGMENTS

The Committee wishes to acknowledge the contributions made to its work by Steven Ames, Dick Benner, Sally Puent, AICP, and Sumner Sharpe, FAICP. Early in its work the Committee received valuable support from Keith L. Cubic, Michael Hibbard, Ph.D., Hanley Jenkins II, and Marcy McInelly. The work of this Committee would not have been completed without the generous support we received from the College of Urban and Public Affairs at Portland State University. We also wish to acknowledge the invaluable services of Rod Johnson, Assistant to the Dean in the College, and Beth St. Amand, a graduate research assistant, who provided much of the technical support for the Committee. The Committee also wishes to thank all individuals who consented to participate in the survey, as well as those who gave freely of their time to conduct interviews. The names of these individuals and their affiliations are listed in Appendix 4.

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I. EXECUTIVE SUMMARY

The Committee on the Oregon Planning Experience (COPE) was established by the Board of the Oregon Chapter of the American Planning Association in Spring 2000. Its principal charge has been to review and comment on the accomplishments of mandated land use planning in Oregon and to identify directions for the future.

From the beginning of its work, the Committee has been aware that controversy has accompanied the Oregon land use planning program since its inception in 1969. However, the passage of Ballot Measure 7 in November 2000 was perhaps a more dramatic manifestation of such controversy. Although that measure will not likely survive a state constitutional challenge, its passage does raise concerns over the depth of knowledge and support for the state land use program, as well as the need to re-evaluate that program.

To complete its task to review and comment on the accomplishments of the land use planning program in Oregon, the Committee employed the following methodology: a review of all available written material, a dialogue with former Department of Land Conservation and Development (DLCD) Director Richard Benner and other individuals familiar with the program, an outreach session with concerned APA members during OPI 2000, and 55 interviews of diverse individuals, including planners and civic leaders, from all regions of the state. The Committee's recommendations are based on this research, as well as its members', experience.

In general, the findings of the committee and outcome of its work has been favorable to the program. With one or two exceptions the views expressed to the committee can only be described as positive criticism. The strengths of the program are summarized in three points:

- Uniformity and consistency of statewide goals,
- Contribution to livability, and
- Efficiency and better definition of land uses and the development process.

The Committee also finds that there exists a widespread belief that the program needs to adapt to changing realities. Challenges facing the program include:

- Perception of unfairness,
- Articulation of a vision and a purpose that is responsive to current political and social views of Oregonians,
- Increased population and emerging issues of the 21st century, and
- Enhancing the roles of regional and local governments. Providing for local and regional differences while maintaining statewide consistency with the goals.

With regard to Ballot Measure 7, the Committee finds that the prevailing view is that its passage did not represent dissatisfaction with the program's basic objectives. Rather it came about as a result of misunderstanding or because of unhappiness with bureaucratic aspects of the program, or other genuine concerns about the program. Finally, the Committee is surprised by the near uniformity of these views among individuals contacted from all regions

of the state. Indeed, we find a desire for more regional flexibility but no outright hostility statewide.

Based on its work, the Committee makes seven key recommendations for the statewide land use planning program:

- **Develop a vision for the future.** The state should embark on articulating a vision for the spatial development of Oregon that reflects the direction in which the state, in concert with citizens and local governments, is heading over the next 20 to 30 years. The vision can provide a framework and context for discussing possible changes to the program. A dialogue as extensive as the outreach effort that was conducted when the program was first adopted in 1973 will be vital so that the general public will feel a sense of ownership for the program.
- **Expand education.** OAPA, DLCD, and others in the planning field should reach out to as many different groups in Oregon as possible through a variety of channels and explain how the planning system works, why it is important, and the benefits it gives to Oregon. APA could also provide more education and training to local government planners on the issue of negative impacts of regulations, not to avoid adopting difficult regulations but to improve the profession's image and provide a worthwhile service.
- **Consider whether state standards should be differentiated for varied physical and geographical circumstances.** The current program tends to have a “one-size-fits-all” approach to policy application. The state should consider amending goals, rules and statutes to allow for local differences—or justify statewide application.
- **Streamline the planning process.** Wherever possible, development review should be simplified with respect to process and cost, so as to allow for the elimination of unnecessary proceedings, while retaining meaningful citizen participation.
- **Explore Regionalism and Regional Planning.** The Committee recommends that the State utilize regional planning to address this report’s concerns. Geographic, demographic, and economic criteria can be used to define five to six regions in the state; commonality of interests and mutual and compatible values should be emphasized during their creation.
- **Increase focus on urban areas.** The planning program should give increased attention to urban areas, including patterns of development inside UGBs and what a desirable urban landscape looks like.
- **Address fairness and equity.** The planning community should recognize that the benefits and costs of planning do not accrue equally to all Oregonians. The State should develop a process to provide remedies, monetary and otherwise, in those cases where the impacts of land-use regulations result in unreasonable hardships to legitimate property expectations.

2. INTRODUCTION

In Spring 2000 the Executive Board of the American Planning Association's Oregon Chapter established a committee to assess the performance of statewide land use planning in Oregon. The charge to the Committee was broad, allowing considerable leeway in defining the Committee's scope. The as-yet unnamed Committee met first in July 2000, when the "Committee on the Oregon Planning Experience" (COPE) emerged as the most appropriate title. By August the Committee adopted a mission statement to guide its work (see Appendix 1). The mission states that the Committee's central mission is to review and comment on the accomplishments of mandated land use planning in Oregon. To fulfill its mandate, the Committee identified two main tasks: 1) a short-term task to identify issues to draft a 2001 legislative agenda, and 2) a long-term task to address the evolutionary changes needed to enhance the value and effectiveness of statewide land use planning.

The Committee embarked on this two-fold assignment by conducting a review of previous studies and surveys including the results of the Oregon Visions Project and its Statewide Planners' Dialogue. A brief summary of that Dialogue is included as Appendix 2. The Committee also held extensive discussions with the then-Director of Department of Land Conservation and Development Richard Benner. Furthermore, the Committee benefited from the presence among its membership of individuals who have long-standing experience and knowledge of the history and workings of the Oregon planning process.

By September 2000 the Committee became concerned about the serious challenge of the proposed Ballot Measure 7 and decided the need exists for a wider dialogue focused on the challenges facing planning in Oregon. A discussion session was held at the Oregon Planning Institute in October 2000. The Committee's objective was to gain the planning community's perspective on COPE's assignment, soliciting inputs as to what has gone right and wrong with the statewide program, and listing desired changes including components of the system requiring enhancement. Members also distributed a questionnaire asking planners to share their thoughts about the Oregon statewide land-use planning system and legislative issues.

The discussion and questionnaire responses produced two conclusions: 1) The respondents' top legislative concerns were already reflected in the agenda of OAPA's Legislative and Policy Affairs Committee (LPAC), and 2) planners also felt the system needed to be critically examined at all levels. Based on these results, the Committee reoriented its work program to focus solely on the mission statement's longer-term purpose and no longer concerned itself with developing a short-term legislative agenda. The Committee hopes that the recommendations of this report will assist in defining an agenda for the next legislative session.

The Committee's conversation then turned to implementation: What methodology should be used to answer these complex questions and to produce a final report? The Committee agreed to take a three-fold thematic approach, addressing the program's structure, vision, and its legitimacy (i.e., public perceptions of the program). However, the course of the discussion changed shortly afterward, as the Committee found itself caught up in the aftermath of Ballot Measure 7, which voters approved in the November 2000 election. The Committee, like the

majority of the planning community, spent time discussing the root causes of the measure's passage and whether it reflected widespread disenchantment with the planning system.

Although the depth of the Committee members' experience provided insight to these questions, members felt strongly that the report should reflect the collective, statewide experience of individuals intimately involved with, and knowledgeable about, the system. Given a limited budget and time, the Committee determined that a series of in-depth interviews, based on a pre-designed questionnaire, provided the best methodology for meeting this objective. The members agreed that the interviews should include individuals from all regions, from large and small jurisdictions, from outside the profession and representation from all levels of government (see Appendices 3 and 4).

The interviews did not produce any major surprises or concerns that were unknown to the Committee. However, they helped focus and frame the issues and, as such, they were of great help to the Committee. Nevertheless, all findings and recommendations included in this report are based on a broad and comprehensive assessment that goes beyond the results of the interviews.

3. OVERVIEW OF OREGON'S LAND USE PLANNING PROGRAM

The seed of Oregon's statewide land use planning program was planted in 1969 with the Legislature's passage of Senate Bill 10, initiated by Governor Tom McCall. SB 10 required local governments (cities and counties) to adopt land use plans. Because there was no state agency to enforce these provisions, many jurisdictions ignored them.

Four years later, Senate Bills 100 and 101 were passed by the Oregon Legislature, again, with strong support by Tom McCall. SB 100 established the land use planning program and created the Oregon Land Conservation and Development Commission (LCDC) and the Oregon Department of Land Conservation and Development (DLCD) to oversee the program. SB 101 stated that the purpose of the planning program was to contain urban development and protect farmland. Over the next few years, the commission and the department made an unprecedented effort—which has not been repeated—to meet with residents throughout the entire state to determine what direction the new land use planning program should take.

A key element of the land use planning program is the set of Statewide Planning Goals. There were originally 14 goals that addressed issues from citizen involvement to conservation of natural resources, to urbanization and economic development. In 1975, an additional goal for protecting the Willamette River Greenway was adopted. Later that same year, four more goals were created that related to coastal resources. The statewide land use planning program is applied at the local level.

Each of the state's 36 counties and 240 cities must adopt comprehensive land use plans, along with policies and regulations such as zoning and subdivision ordinances. These plans are then reviewed by DLCD for compliance with the 19 Goals. Plans that comply are formally acknowledged by LCDC, and further land use decisions must be consistent with the locally adopted plan. Local jurisdictions are required to update these plans every few years in a

process called periodic review. All plans have been adopted and have been in various stages of periodic review, as required by law. In addition, notice of amendments to acknowledged comprehensive plans and land use regulations must be given to DLCD and are subject to post-acknowledgement appeal.

Another key element of the program is coordination of state agencies. Programs of certain state agencies must also be reviewed and certified by DLCD as being in compliance with the Goals. Future land use actions by these agencies are henceforth subject to the intent of the certification.

A third feature of Oregon's land use planning program, which often seems to be its poster child to both well-wishers and critics inside and outside of Oregon, is the urban growth boundary or UGB. Metro in the Portland area and all Oregon cities and counties must delineate UGBs. Outside of this boundary, urban-level development is generally prohibited. UGBs must be established to provide adequate land for projected urban development needs, with some exceptions. UGBs have been effective in protecting farmland and forest land and preventing sprawling, leapfrog development outside the boundaries, with some exceptions.

Because some of the goals provide only general guidance and objectives on what should be achieved by a local comprehensive plan, LCDC has adopted more detailed administrative rules. These rules provide further direction to cities and counties concerning what they must do to comply with a particular goal. Over the course of the past 30 years, new administrative rules have been adopted and old ones amended. For example, in 1995, the administrative rule for Goal 5 (Natural Resources) was amended to allow for an alternate "safe harbor" process that set objective standards for compliance to protect certain natural resources such as riparian areas. Other examples include the rule adopted for transportation systems requiring safety and efficiency, and the administrative rule proposed for Goal 14 (Urbanization) to provide more contemporary and detailed guidance on patterns of urban development within urban growth boundaries.

In 1979, the Oregon Legislature initiated an experiment to deal with the problems associated with judicial review of planning decisions of state and local governments. Courts were, and are, generally unfamiliar with the planning system devised earlier in that decade, i.e., the goals, state participation in planning and the like. Planning cases received less priority than criminal cases, particularly when a defendant was in custody. Moreover, the sheer cost of litigation to all parties in the state court system was prohibitive. The solution reached by the Legislature was the creation of an administrative tribunal, the Land Use Board of Appeals (LUBA), consisting of three lawyer-referees, who would have "exclusive jurisdiction" over "land use decisions" of local governments and state agencies. Made permanent in 1981, LUBA receives about 300 cases per year and has succeeded both in terms of judicial review (where its decisions are affirmed about 75% of the time) and in the court of public opinion, where LUBA is perceived as a speedy, efficient and inexpensive means of review of land use decisions.

The state land use planning program has continuously adopted new programs to address various issues. There is a technical assistance program which provides grants to small

jurisdictions to carry out planning activities for which they may not have adequate staff. The Transportation and Growth Management program seeks to address the closely related challenges of land use and transportation planning in an integrated manner, through technical assistance grants and regional approaches. The Community Solutions Team and regional problem-solving programs provide an alternative path for local communities to collaborate and address regional problems. Regional problem-solving has been implemented on a pilot basis in several locations throughout the state with mixed success.

4. CONCERNS OVER THE OREGON PLANNING PROGRAM

Controversy has been no stranger to the Oregon planning program. The program was controversial when passed, beginning with Governor McCall's exhortation to the Oregon Legislature at the beginning of the 1973 session to pass strong planning laws. SB 100 was controversial as it made its way through the legislative process that year, with cities fearing the powers of counties, special districts fearing the powers of cities and counties, and all fearing the powers allocated to the State. There was also concern over powers to be allocated to regional governments which was addressed instead, by designating counties as the coordination agencies for local goal compliance. Aside from these intramural squabbles, many citizens feared the powers of a new state agency to supervise local planning and regulatory efforts.

There was no referral of SB 100 to voters, even though its emergency clause had been struck to allow for referral. However, there were three initiatives in 1976, 1978, and 1982 attempting to repeal or substantially reduce the power of public agencies over land. Each of these measures was the subject of strong political efforts for and against the program, and each of them failed. Nevertheless, the presence of these measures made legislators and administrators more cautious.

In the first 10 years of the program, state and local governments struggled with the meaning and application of broadly worded goals, particularly those dealing with reservation of resource lands for resource uses. The Legislature and LCDC initially attempted to develop standards for individual parcel creations or allowance of houses on these lands with such requirements that the parcel be "necessary and accessory" for forest uses, or that a home not "seriously interfere" with surrounding agricultural uses. In 1993, the Legislature concluded that these individualized standards would not work and established general minimum lot sizes for new farm and forest parcels at 80 and 160 acres. In addition, there have been efforts over the years to create "lots of record" so as to "grandfather in" parcels lawfully created before more restrictive regulations were adopted. Besides disturbing the conservation base that supported the program, these measures did not go far enough to satisfy critics.

Similarly, the program has had a spotty history of citizen participation, a major objective of the state planning effort. On the one hand, if one follows the public notices, or is entitled to individual notice of a land use proceeding, he or she has the right to participate and appeal in those proceedings. On the other hand, one must be sufficiently sophisticated to know, assert, and use the many criteria that may be applicable to a case. One must have patience and financial resources to assure one can appeal a local government decision. The legislature

alternately encourages and discourages citizen participation by manipulating the procedural and substantive standards used locally. The inability to participate easily, or the application of tricky procedures to prevent or limit such participation, breeds immense frustration. This frustration is shared by the development community, which views the process as presenting obstacles to development. At the same time, many citizens have been alienated by a process that seemed to be not conducive to public participation.

In rural areas, the limitation of almost any non-resource use to urban areas and the limitation of housing on rural lands have caused immense resentment against the program. For example, the application of criteria derived from the Coastal Goals has made development in the Coast very difficult. Similarly, in the Columbia River Gorge, landowner expectations for development have been repressed by a plan and regulations which either block, or seek to make unobtrusive (at no little cost), what development might otherwise be allowed. While the Committee recognizes that the Coast and Gorge are special cases, the problems that exist in these places may also exist elsewhere. At the same time, some individuals point to instances of rural development that appear to defy the Goals and rules.

In the 1980s, as growth boundaries began to have a noticeable impact, the focus shifted to what was happening in urban areas. The Legislature heard the concerns of the homebuilding industry and housing advocates beginning in 1981 and required LCDC and local governments to estimate and provide sufficient land for "needed housing." In 1986, the Oregon Supreme Court found that urban uses must generally be located within urban growth boundaries, so that new one- and two-acre housing tracts were not permitted. Cities became subject to regulations that caused them to increase densities and provide density "floors" as well as "ceilings" for housing, thereby raising the ire of urban dwellers normally supportive of the state planning program. In 1991, the state recognized the relationship between urban uses and transportation in its adoption of the Transportation Planning Rule ("TPR"). That rule required new transportation planning standards and additional considerations in terms of design and infrastructure that many critics suggested added undue costs and delay to development. Supporters responded that the Legislature provided for full application of the TPR, including its planning requirements, to larger communities, but limited that application to smaller communities. Supporters added that it is necessary for local governments to undertake smart growth policies in any event.

In 1998 the voters adopted Measure 56, which purported to require individual notice to property owners if state or local governments undertake to change a plan or zoning designation. Buried in the measure was a required form of notice, which tells the property owner that the city or county "has determined that adoption of this ordinance will affect the permissible uses of your property and may reduce the value of your property." The effect of this often misleading statement, required for each plan or zoning redesignation, has been to engender economic fear and resentment against planning in general and planning agencies in particular.

In the 2000 election, voters passed Ballot Measure 7, which purported to amend the state constitution to provide, among other effects, that property owners must be compensated when land use regulations lower the value of property. The measure was successfully challenged in

the state trial court. An affirmance of the decision is expected from the state Supreme Court. Nonetheless, the passage of Ballot Measure 7 may indicate some degree of dissatisfaction with the state's planning program by some factions.

Much of the recent adverse criticism, which was reflected in comments made to the Committee, arose out of the State's efforts to conserve farm and forest lands by legislative adoption of a minimum lot size and LCDC's adoption of minimum gross income necessary before dwelling permits may be issued on farmland. Similarly, the program has been criticized for its "one-size-fits-all" approach to regulation, rather than providing local governments with more flexibility in meeting local problems.

The state planning program has been a primary vehicle for social change in Oregon. Because of that fact, it has garnered the resentment of those who prefer other alternatives. The cast of characters in the opposition has changed over the years. However, the concerns and sources of opposition to the program have remained and relate to the extent to which government should limit the use of land.

5. PROGRAM EVALUATION: Survey and Issue Identification

As part of its research, the Committee conducted a series of in-depth interviews with 55 people from throughout the state considered to be knowledgeable about the statewide land use planning program. The survey methodology, the names of those interviewed, and the actual questions themselves are presented in Appendices 3-5.

The interviews addressed the Committee's charge and were intended to give Committee members an up-to-date view of leaders' thoughts about the statewide land use planning program throughout the state. Its timing came on the heels of the passage of Ballot Measure 7 and the controversy surrounding it. The Committee found it difficult to identify how the ballot measure and the fact that it passed influenced the attitudes and views of the survey respondents. There is no doubt, however, that the ballot measure is a reality that injected itself as an important milestone in the evolution of the Oregon planning experience. Nevertheless, throughout the Committee's work it has become clear that the issues raised by the survey were not directly influenced by that measure. Instead they suggest an awareness of a widening concern that has been building over time. As a result, it is important to note that while Ballot Measure 7 casts and will continue to cast a shadow on the assessment of the statewide planning program, it is the Committee's conclusion that the findings being discussed here would not have been much different without it.

The survey questions did not lend themselves to narrowly defined answers. As a result, the findings are analyzed under headings that do not correspond specifically to any of the questions: Past performance, future performance, challenges, Ballot Measure 7, and regional differences. In general, the results of the survey produced very few surprises and reinforced many of the views of Committee members as they embarked on the project. Furthermore, the findings presented below, while using the interviews as a frame of reference, are a reflection of the Committee's views and experiences, as well as extrapolated from the Planner's Dialogue, other literature, discussions with leaders in the profession, and discussions within

the Planning Community, including two public meetings held in Eugene at the Oregon Planning Institute in October 2000 and October 2001. In other words, while this section of the report focuses on the survey, our recommendations are based on a much broader process.

Past Performance

In general, the survey results are favorable to the program. With one or two exceptions, the views expressed can only be described as positive criticism. Indeed, while very few respondents viewed the program as an unqualified success, those who considered it a total failure were significantly fewer. Most of the responses reflected some criticism of the program, both constructive and negative. It is interesting to note that almost all those who are critical of the program went the extra step to voice their support for planning if not necessarily the way it is being done in Oregon. Among those supportive of the program the concerns focus on the lack of an explicit and stated articulation of the program, rigid bureaucracies, and the absence of regional flexibility. On specific issues, there appears to be a unanimous recognition that the program worked well in protecting farmland and in encouraging compact urbanized areas with minimum sprawl. Respondents also view the program as a major contributor to the scenic beauty and environmental quality of the state. Several of the respondents identify other aspects of the program that contribute to its success. These are discussed below.

Statewide Goals: There seems to be a general agreement on the centrality of the goals to the success of the program. Goals, however, are not self implementing, and it is at this level that differences in expectations and perceptions begin to appear. In a sense this is easy to understand, since the 19 Goals reflect ideals to which most Oregonians subscribe. Consistency of the goals is an important asset, but, again, there is the problem of uniform interpretation of what the goals mean for the various regions of the state. A significant number of the respondents perceive such uniformity as one of the program's major weaknesses. On the other hand, uniformity also means equity, in the minds of some individuals—every city and county, as well as state agencies, have been required to comply with the statewide planning goals.

Contribution to Livability: The program's role in enhancing the livability of the state is generally acknowledged. This takes different forms: some are explicit, but more are indirect and implicit. Respondents refer to the fact that the program and the public debate it unleashed forced people to step back and reflect on the implications of growth. While there is concern for the lack of vision, there seems to be recognition that the public has been engaged in a dialogue concerning future directions for growth and development in the state. This recognition includes the perception that this dialogue creates a general awareness of the virtues of planning; but it appears to be more focused on what happened in the Portland area and Metro's 2040 plan. The uniqueness of the program and the national recognition it has gained is another positive contributor to the state's progressive image.

Efficiency: With few exceptions there is clear recognition that the program provides better definition of land uses and has led to greater involvement by Oregonians in the decision-making process. There is awareness that the program brings a more defined

development process and has enabled developers to experiment with alternative housing types. It is interesting that these views are expressed by, among others, some of the respondents who are critical of the program as a whole. It should be noted, however, that these views are moderated and sometimes contradicted by complaints about bureaucratic failings of the program. It also seems that there is a feeling that the program worked well in its first 15 years but has been on a declining path since then. Again, this does not come as a surprise, given the large size of the original urban growth boundaries and the slow growth during the decade that followed the adoption of those boundaries. But it also means with a faster rate of development in recent changes in both rural and urban areas, the program is ready for a comprehensive reassessment to ensure its continuing viability.

The Future

One thing that becomes clear as a result of the survey is the need for change. Beyond this basic notion, opinions differ widely as to what needs to change. Those who would like to see the program disappear or undergo dramatic change are very few. In fact, with two or three exceptions, those who favor the elimination of the program expressed such views implicitly and in a context that still praised some of its elements. As a result it is safe to assume that there is no real sentiment among those who are familiar with the program to see it reduced significantly, including amending the statewide planning goals to any major extent. Quite to the contrary, there have been repeated references to the importance of staying the course. Nevertheless, the Committee feels that there is widespread concern that if the program is not adapted to emerging realities, it may not survive much longer.

Areas where change is needed are generally related to the way the goals are being interpreted and implemented. As growth continues there is great need for better understanding of how economic, political and social conditions have changed since the inception of Senate Bill 100 in 1973. There seems to be growing interest in re-examining the objectives of the program and how they relate to changing social and economic conditions, especially in rural areas. There is also recognition of the need to devote more funds to help local governments do their job, including infrastructure financing to handle new growth. In summary, respondents to the survey are concerned about the ability of the program to meet the challenges lying ahead.

The Challenges

The challenges that are stated directly by the respondents or could be indirectly inferred from their comments can be summarized in three groups.

Perception of unfairness: This concern is stated directly in reference to the changing economic realities facing farmers and other rural land owners, many of whom may have property that they cannot develop and which is no longer economically feasible to maintain. There is also a perception of unfairness involving imposition of changing and stricter requirements on rural property owners, especially for housing on resource land. It is not clear, however, that fairness is a major concern in the urban areas. Other than the loss and restrictions confronting rural property owners, there is sufficient reason to conclude that in the minds of many respondents fairness is more related to

bureaucratic hurdles and the lack of flexibility. Whatever the reality of the situation, the program may not survive the next 30 years unless it addresses these concerns.

Articulating a vision and a purpose: References are repeatedly made to the early vision of the program. This comes out clearly in the statements of respondents who like the original concept of the program but not the way it has evolved. Concerns are also expressed regarding the heavy reliance on regulations that are not supported by well articulated plans and policies.¹ There appear to be questions regarding how clearly the State has articulated its vision with regard to agriculture, housing, and settlement patterns in general. Obviously there is a disconnect here, because plans and policies do exist in many of the major urban areas of the state; Metro's 2040 is one clear example. Nevertheless, it is a reality that this is a major challenge that must be addressed.

Enhancing the roles of regional and local governments to meet regional and local needs: There seems to be a prevailing view that the program places too much authority in the hands of the State and too few resources in the hands of local governments. It is obvious that many feel that the program is not cost neutral and that the cost is being disproportionately borne by local government. This is not unusual. Many other services face the same dilemma. The main difference, however, is that planning is not perceived as the same kind of service as other governmental programs, and many of the requirements for changes in plans and regulations come about as mandates from the Legislature, LCDC and the voters. The challenge lying ahead is how to redefine the relationship between the various governmental levels. This has to be done without sacrificing the basic statewide nature of the program.

There is also a perception that the program does not recognize geographical and other differences in requirements for implementation of the Goals, often forcing local jurisdictions into decisions that do not reflect regional differences in applying the statewide Goals.

Ballot Measure 7

The Committee wanted to know if the interviewees believe that passage of Ballot Measure 7 was due to Oregonians' dissatisfaction with the statewide planning system. The questions were also intended to identify future initiative targets. The results strongly echo recent focus group findings, as most respondents do not see passage of the measure as a referendum on planning. Instead, the most frequently cited reason for its passage is misinformation and confusion to voters regarding the bill. Respondents also cite voters' perception of the measure as a fairness issue and the proliferation of media and neighborhood "horror stories" of unfair regulations. Respondents also recognize the need for the Oregon land use planning system to

¹ It should be noted that while an overarching vision for the state seems to have remained unclear, it is a fact that the program stipulates the following: 1. Preservation of resource lands for resource uses; 2. Requiring plans, regulations and actions to be consistent with statewide planning goals which articulate state land use policy through active and meaningful citizen participation; 3. Providing for the conditions in which the market can operate in urban areas through compact urban areas served in a timely and efficient way by urban infrastructure; 4 Requiring that development meet land capabilities and that change occurs in a planned manner.

address the issue of compensation for legitimate loss of land value, regardless of the lawsuit's outcome. If this does not happen, respondents envision the creation of an "offspring of 7" initiative.

Those subjects cited most frequently as targets of future initiatives include an "offspring of Measure 7" initiative and farmland-related topics. For example, respondents mentioned income requirements for new dwellings on farmland, the definition of "prime" farmland, the regulatory requirements of exclusive farm use zoning, and overall protection of farmland as potential initiative territory. Other potential initiative topics include annexation, the state (and local) government level of involvement in urban growth management, economic impacts of the Endangered Species Act, lots-of-record, density goals, and transportation.

Regional Differences

The Committee is aware of the "conventional wisdom" that attitudes vary in different parts of the state toward the land use planning program. For example, that there is more hostility toward the program in rural areas than in Portland and perhaps the Willamette Valley. However, the results of the survey do not support the conventional wisdom. Responses from throughout the state—whether Metro, Willamette Valley, Southern, Eastern, Central or Coast—identify the same concerns and successes. It does not matter whether the respondents are in Portland or Klamath Falls; in Coos Bay or Baker City. Respondents from all parts of the state express opinions that the program has preserved resource land and contained growth, but all express concern about the program having a "one-size-fits-all" approach, too much control at the state level, and the complexity of the process.

How, then, does one explain the "conventional wisdom"? And how does one explain such things as the fact that there was significantly more support for Ballot Measure 7 outside the Willamette Valley? The survey participants, for the most part, are quite knowledgeable about the land use program. There could be differences among those whose understanding of the program is limited.

It is also possible that perceived differences in attitude may simply be differences in emphasis. The concerns and successes expressed by participants may depend on their exposure to, and experience with, different parts of the program based on where they are located and the type of community they live in. For example, issues of housing on farm and forest land play a bigger role in rural communities than in the Portland metropolitan area. On the other hand, effects brought about by UGBs have more impact in urban areas, but it should be noted that this is the case in smaller urban areas as well as larger cities like Portland and Eugene. However, once again, the Committee hesitates to draw such a conclusion because of the small size of the sample.

The survey reveals several opinions that are shared by respondents from throughout the state. Respondents repeatedly express the opinion that they feel the system works better in other parts of the state than in their own. For example, respondents in the Eastern and Southern areas of the state say they feel that Portland's reputation as a viable and livable city is in large part due to the planning program. Respondents in the Metro region, on the other hand, point to preservation of farmland as a success.

There also is criticism from some respondents in more rural parts of the state that the rules for preservation of farmland seem to be applied more loosely in the Willamette Valley to allow development. Several respondents outside the Willamette Valley express their perception that Portland's political and economic influence in the Legislature results in legislation that is too Portland-oriented and does not address the needs of the rest of the state.

Finally, one of the strongest themes that comes out of the interviews, throughout the state, is people's frustration with the complexity of the program and the lack of flexibility or "local control" to conduct planning. Most of the respondents who assert that the program needs to change identify the system of goals, rules, laws and case law as too complex for the average citizen, discouraging involvement in local planning efforts. New laws and rules that may have been passed to address issues in a particular area of the state often take precedence over what some local governments see as more pressing, priority issues in their local area. Respondents also criticize the State—including the Legislature, DLCD and LCDC—for making small changes over time, instead of tackling larger issues of statewide significance such as citizen involvement at all levels.

6. CONCLUSIONS

In making its recommendations, the Committee sought as much as possible to reflect the views of the planning profession and the views of other members of the Oregon Chapter of the American Planning Association in its continued support for the Oregon planning program. The structure of that program includes mandatory planning as the basis for regulation, involvement of a state agency authorized to establish, maintain, and, if necessary, enforce state policy and local implementation of that policy. It represents a different path from that taken by other states since 1969. That state program is a defining element of Oregon and the source of much justifiable pride in the establishment of well-considered public policy. But public policy need not only be established; it must be maintained and change in the face of changing circumstances and priorities.

Structure in a state land use program is necessary but not sufficient. Continued public support for the program requires that its public policy premises be systematically and periodically reviewed and renewed to assure continued public support. This policy review, whether designated as a renewed "vision" or otherwise, is the primary recommendation of the Committee, which believes it must also be the major task for both the State and the Chapter over the near term.

Further, the Committee believes that a continuing obligation of the Chapter is to work with others to explain the Oregon planning program to those in and outside the State, rather than assuming that this program is known and understood and its objectives are accepted. The demographics, as well as the population, of the state have changed significantly since the early 1970s, so that half of the population does not have the memory of those days and the reasons for enactment of that program. Every planner, planning commissioner, elected public official or other person involved in the program must be able to explain that program, its underlying bases, and the role of program participants. Beyond mere mechanical explanation

of the program, planners and other interested persons must be able to change that program, so that its dynamics fits changing public policies and priorities. The continuation of the Oregon planning program requires the reflection of those who experience it, so that the program is able to change, as public policy changes.

The Committee believes that the Chapter possesses the knowledge, experience, and expertise to make an ongoing and substantial contribution to the reevaluation and administration of the state's planning program. The Committee's own examination of the program suggests that the Legislature and LCDC must consciously consider whether those existing policies, procedures and regulations must be applied on a statewide basis or may be differentiated regionally or locally. Similarly, APA can make a contribution to the program by constantly seeking to refine standards, eliminate unnecessary discretion, and reduce development process costs.

While problems persist in the formulation and application of state policy in rural areas, the Committee finds some clarity of state vision for these areas, i.e., that resource lands be retained for resource use and that urban sprawl into these lands be discouraged. The urban vision of the state is less clear, however, and the Committee recommends an increased focus on urban issues, consideration of which was muted during the first half of the current state program. If sprawl is not to occur on rural lands, the responsibility of wise use of urban lands becomes even more important.

Finally, the Committee believes the Legislature must take on the issue of equities of landowners impacted by the planning program. In most cases, the Committee recognizes that this is a political, rather than a constitutional, obligation and is addressed to political ends and tempered by fiscal resource considerations.

In sum, the Committee believes the Oregon land use planning program is working well, but also believes that, for the long haul, explaining that program and renewing its source of support in the electorate requires a continuing effort. In the short term, the Committee believes that review of policy implementation measures to assure smooth functioning of that program is necessary and that a system for blunting the harder edges of program impacts to adversely affected persons may also be in order.

Finally, it should be noted that the recommendations presented in the next section of this report are based on the committee's firm belief that Oregon is a more livable state today because of thirty years of the innovative state-wide land use planning program. It is also our belief that no program can survive without periodic reviews and land use planning is no exception. As great as it has been, it is beginning to show signs of stress that cannot be ignored. They are not failures but they need attention, nevertheless.

7. THE COMMITTEE’S RECOMMENDATIONS

The Committee makes the following seven recommendations:

▪ DEVELOP A VISION FOR THE FUTURE

The Committee initially found two contradictory findings perplexing: while survey respondents and the public in general laud the efforts of the past 25 years, many also fear for the future and believe that the statewide land use planning program is potentially in trouble. How can these contradictions be reconciled? The Committee believes the answer lies in the need for a re-examination of the program’s objectives to more clearly refine a vision and aspirations for the future. This approach is consistent with the Planners' Dialogue which, among other recommendations, concluded that the State must “articulate the overarching vision/goal of the statewide system and market the vision and program.”

The list of economic, demographic, technological and environmental changes that have occurred since 1973 is long. The world today was not envisioned when the planning goals were adopted. At the same time, the Committee believes that the goals are still extremely relevant in the 21st century—it is the context and the details that need to be reviewed to bring the goals to life and provide them with relevance to the new generation of citizens, government leaders and professional planners.

An examination of the vision and priorities for Oregon will provide the context and framework for many of the other recommendations contained in this report, as well as indicate whether any of the goals need revision. For example, the Committee’s recommendation concerning differentiations of state standards needs to be formulated within the context of a current statewide vision to avoid tenuous, short-lived approaches such as Regional Strategies or Regional Problem Solving. Further tinkering with the goals and rules without a broad context will only exacerbate weaknesses in the program.

A significant part of this process of reexamination and possible reformulation of state policy and priorities should involve defining the role of the State of Oregon in land use planning. Many feel that the predominant role of the state has been in land use regulation and not land use policy. The Committee does not feel that pure regulation should be the primary role of the Land Conservation and Development Commission. There is a tremendous need to address land use policy for the coming 20 to 30 years, and the State of Oregon should be the leader through a thoughtful process that engages its citizens, interest groups and partners in local government. Following the re-examination and reformulation of state policy and priorities, LCDC should review the statewide planning goals. Any goal revisions will then require the revision of local plans and regulations, as well as conformity of local land use actions. Moreover, the Committee recommends that this re-examination and reformulation should occur on a regular periodic basis so as to avoid a disconnect between policies formulated years ago and current needs. APA must commit itself not only to participate in these efforts, but to lead them.

The Committee is heartened to hear that DLCD intends to embark upon a strategic planning process. The Committee members are concerned, however, that the time period contemplated may be too short and the scope too narrow to permit the level of research, citizen involvement and intergovernmental dialogue that is needed to make this a meaningful process.

▪ **EXPAND EDUCATION**

There is a crucial need for OAPA, DLCD and others in the planning field to increase their efforts to educate the general public about planning in general and Oregon's program in particular. Planners need to explain how the planning system works, what it does, why it is important, the economic and social benefits it creates, and how it contributes to Oregon's livability.

This need for education is especially pressing today. Most people are not aware of the program, which is a much different situation from 25 years ago. Well over half the people living in Oregon today were not around when SB 100 was passed, and many have not experienced the fierce battles to save the program in the intervening years.

Planners throughout the state should conduct an extensive and comprehensive outreach effort to explain the benefits of the program to the general public, students, businesses, environmental groups, legislators—in short, as many different communities in the state as possible.

The planning community should use a variety of venues to reach people. The Oregon APA chapter could organize a speakers bureau. Planners should volunteer to speak at civic and community organizations such as Kiwanis, Lions and Rotary, as well as to universities, religious groups, and chambers of commerce. The Chapter should also enlist the help of planning commissioners, as these citizens could play a crucial role in communicating the “nuts and bolts” of planning to others. Other important channels of communication include writing op-ed articles for local newspapers, giving presentations on radio and television talk shows, and speaking at community meetings.

In addition, education efforts should be expanded within the planning community. Oregon APA members could provide more education and training to local government planners on the issue of negative impacts of regulations, not to avoid adopting difficult regulations, but to improve the profession's image, which is often described as being unaware of, or insensitive to, these “real world” situations.

▪ **CONSIDER WHETHER STATE STANDARDS SHOULD BE DIFFERENTIATED FOR VARIED PHYSICAL AND GEOGRAPHICAL CIRCUMSTANCES**

One of the most frequent criticisms of the state's planning program is that it tends toward a “one-size-fits-all” approach to policy application. While the state program does have

elements of differentiation (e.g., soil classification for agricultural lands and relaxation of standards for the Transportation Planning Rule and Periodic Review), the mood persists among some landowners and local government officials that administrators of the state land use program are unaware or unconcerned over the effects of uniform application of state land use policy. This leads to the concern that the state is trying to hold all communities, both urban and rural, to a single model that does not recognize a sufficient amount of diversity in local needs and circumstances within the larger context of the Goals.

As a means of more effective application of state policy to local jurisdictions with a view towards appreciating local differences, COPE recommends that new or amended planning statutes, goals or rules justify statewide application and consciously consider whether different applications of state policy should rather be undertaken. Considerations that might be used include the need for uniformity, prevention of circumvention of state policy at the local level, and local financial resources available for application of state policy.

Once this and other recommendations have been implemented, the Committee urges the people of the state of Oregon to explore whether further planning steps should be undertaken, such as more detailed regional plans to channel future growth and development.

▪ **STREAMLINE THE PLANNING PROCESS**

The complexity of the land use program, whether it be regulations, development review procedures, or pathways of citizen involvement, undermines support for it. Both applicants and other interested parties should have a clearer understanding of what is allowed, and what is not. In the attempt to regulate away every potential bad decision, the current system is in danger of becoming a tangled maze that does not give direction as to how Oregon should develop.

In addition, the Committee recommends that the current system of mandatory, multi-level hearings be reviewed and simplified, and that regulatory language be reviewed to eliminate broad, vague terms. The Committee does not advocate removing effective participation in the planning process; however, undue burdens should not be imposed on those whose development plans have no meaningful opposition. Finally, the Committee urges a review of Measure 56, the ballot measure requiring notice to property owners of proceedings that could affect them, to ensure that its required notification language and procedures accurately reflect the situations addressed.

▪ **EXPLORE REGIONALISM AND REGIONAL PLANNING**

With a 2000 population of 3.42 million, Oregon ranks 28 among the fifty states. Area wise, however, it is as large as the former West Germany. It is a state with wide variations in climate, terrain, vegetation, population characteristics, and economic activities. Indeed, all Oregonians share many of the basic values but they have different needs and priorities. They also have different understandings of the challenges facing their parts of the state and how to address those challenges. As the state continues to grow there is, also, a greater need to

address the imbalance of population and economic activities that currently exists. Census data shows that today the I-5 corridor has the same proportion of the state's population as it was in 1870. In other words, as Oregon's population doubles during the 21st century the same pattern will likely continue. Serious problems of congestion, air and water pollution, and destruction of valuable farm land and forests in the valley could become unavoidable unless we plan ahead.

The Committee recommends that the State utilize regional planning as one of the means for addressing the concerns expressed above and raised in this report. The Committee is aware that the legislature rejected this approach when it adopted SB 100 in 1973 but that was thirty years ago and many things have changed since then. The Committee is also aware that the this term means different things to different people. In this context, "regionalism" concerns communities of interest that make planning for more than one community sensible. The point is to move away from planning on an individual jurisdictional basis and toward planning based on logical commonalities that cross jurisdictional boundaries. Regional theory employs many criteria to define regions, including geographic, demographic, and economic criteria; the Committee does not consider the term "region" to apply to individual counties. While the Committee does not suggest any specific criteria at this point, it believes that regions should be defined by a process that ensures local participation by individuals and local governments affected by that planning. These regions should encompass areas that have commonality of interests, as well as mutual and compatible values. In particular, the Portland region should logically include Clark County; although it is not located in Oregon and is not subject to Oregon laws, it should be considered for coordination purposes.

▪ **INCREASE FOCUS ON URBAN AREAS**

An original emphasis of the planning program was to protect resource lands from urban sprawl. The planning program has been very successful in protecting resource areas. It has been less successful in encouraging urban areas to develop in a high-quality manner, partially because the Goals do not give much guidance in this area. Sprawl has been occurring inside UGBs. The program should pay more attention to Oregon's cities and urban areas, and start developing policies and guidelines—and visions—of the types of urban landscapes that Oregonians desire, and which distinguish our state. This requires the program to examine the existing pattern of urban settlements and to define future patterns that allow the state to absorb anticipated growth while enhancing quality of life. The Oregon Department of Transportation's Transportation Growth Management (TGM) program provides one current approach to defining urban development; however, this program was undertaken with the assumption by the State that certain types of urban development were preferred, without engaging the public and local governments. Furthermore, urban areas have continued to grow without the degree of planning for public infrastructure that is necessary to avoid long-term environmental and financial consequences and a backlash by Oregon citizens against growth. Many communities do not have the financial resources to pay for increased infrastructure. APA, in concert with the State, needs to help identify how to better address this issue within the context of the Goals and growth projections.

▪ ADDRESS FAIRNESS AND EQUITY

There is significant concern that land use regulations are not implemented equitably, and that the benefits of the planning program are not accruing to all Oregonians. Planners in Oregon simply need to admit that sometimes good planning inevitably harms some people, especially individual landowners, and that there should be a means to resolve those situations. The State should explore the possibility of developing a process that will ensure remedies in cases where the impacts of land-use regulations entail unreasonable hardships. The State should develop a process to provide remedies, monetary and otherwise, in those cases. The State is already subject to the requirement that just compensation be paid in regulatory takings cases as a matter of constitutional law. However, there are other situations in which the Legislature may authorize other such remedies, even when not constitutionally required. This is a political judgment for the Legislature to make. APA should be involved in any legislative proceedings dealing with this matter and provide advice and expertise.

8. NEXT STEPS

The Committee recommends that the Executive Board of the Oregon Chapter of the American Planning Association (OAPA) pursue the following next steps after adoption of this report:

1. Appoint a committee to publicize and implement the recommendations of this report. This includes disseminating the report to OAPA members through the newsletter and by posting it online.
2. Circulate this report widely, to the Governor, Legislature, LCDC and DLCD, among the members of OAPA and others in the planning community, the general public and candidates in the 2002 election.
3. Appear before LCDC and its Strategic Planning Committee to present and discuss this report.
4. Work with LCDC, the Governor, and other elected officials to secure the appointment of a committee to re-examine the objectives of the program and work toward a long-range vision for the state's land use planning program.
5. Formulate an OAPA program to work jointly with DLCD to better inform the public regarding the planning program. This program could be tied into the Lewis & Clark Exposition Centennial in 2003, thus associating this educational effort with a highly visible event.
6. Work with DLCD and local elected officials to secure the appointment of a committee to identify appropriate geographic regions for standards that benefit from regional differentiation.

Appendix 1: COPE Mission Statement

The central mission of this Committee is to review and comment on the accomplishments of mandated land use planning in the state of Oregon. Oregon has become a model for other states and is often cited as a successful case when it comes to livability and urban growth management. Within the state, however, doubts and questions arise from time to time regarding the impact of our land use laws and regulations. This Committee should attempt to identify the challenges facing us as we enter the fourth decade of the state's involvement in land use planning. The Committee should address the evolutionary changes needed to enhance the value and effectiveness of contributions of statewide planning.

Appendix 2: The Statewide Planners Dialogue

Beginning in Fall 1997, the Oregon Visions Project, a standing committee of the Oregon Chapter of the American Planning Association, undertook a year-and-a-half study of planning in Oregon. It consisted of participation by some 400 planners throughout the state and was designed as an introspective look at the planning profession, how it operates, and what lies ahead.

Through interviews, focus groups, surveys and a Planners Summit conference, the Dialogue gathered information and then compiled the results in its April 1999 Final Report, which presented a series of strategies to be implemented. Four of the six strategy areas were particularly relevant to the work of this committee: Improving the Statewide Planning Program, Enhancing Public Involvement, Educating the Public about Planning, and Fostering Proactive Planning and Policy.

In the area of Improving the Statewide Planning Program, the Dialogue judged the following to be the most highly rated strategies:

- Focus on managing growth, urban design, land ethics, livability, and planned communities within the UGBs. Plan for communities rather than land use.
- Articulate the overarching vision/goal of the statewide system and market the vision and the program.
- Structure statewide planning goals to reflect regional differences.
- Overhaul systems development charges to allow capture of other infrastructure costs.

Throughout the other areas, all involving the wider public outside the profession itself, the strategies indicate a need to make the statewide planning program and other planning activities more relevant to people's daily lives. They include such things as workshops and training, school curricula, visual tools to "see" what planning does, communicating the value of planning to elected officials and the media, and developing documents that discuss the benefits of planning. One strategy that ranked highly with planners was marking UGBs with signs.

Appendix 3: Questionnaire Methodology

The Committee created a 10-question survey to address its central charge. Members acknowledged from the beginning that the survey would not be scientific, and it should not be treated as such. The 10 questions reflect a qualitative approach to the Committee's task in order to obtain in-depth perspectives on the statewide land-use planning program. Due to the extensive analysis of Ballot Measure 7, including the sizable amount of focus group work and polling already completed, the Committee agreed to focus mostly on COPE's original charge and only include two questions on Ballot Measure 7. Test interviews were conducted and the questionnaire adjusted accordingly. The final questionnaire is attached as Appendix 5.

Members agreed that about 60 interviews would be ideal due to the Committee's limited resources. The Committee emphasized that good, in-depth and quality interviews were more important than the quantity. Each Committee member contacted individuals from each region to develop a master list. Individuals to be surveyed were chosen based on their level of involvement with the program to assure high-quality, knowledgeable responses. The Committee then developed the final list, paying careful attention to representation by region, gender, race and ethnicity, municipal size, and occupation. The final list represented individuals from all of these areas, including planners, planning commissions, city councils, mayors, land-use lawyers, environmentalists, the media, special-interest groups, state government including boards and commissions, developers and homebuilders, and former and current land-use leaders.

From March 2001 to July 2001, Committee members and volunteers throughout the state conducted 55 interviews in person or by phone and transcribed the interviews (see Appendix 4). Most interviews averaged approximately 45 minutes. The interviews were conducted confidentially in order to obtain candor in responses.

Appendix 4: Interviewee and Interviewer Names

The Committee would like to acknowledge and thank everyone who participated in the interview process. The following 56 individuals consented to interviews:

Central

John Costa, Editor, *The Bend Bulletin*
Deborah McMahon, Director, City of Bend
Community Development Department
Mike Hollern, Chairman/CEO, Brooks Resources
Dennis Luke, Deschutes County Commissioner
John Mabry, Wasco County Judge
Hershell Read, Jefferson County Commissioner
Steve Uffelman, Mayor, Prineville
Anne Wheeler, Executive Director, Friends of Bend

Coastal

David Davis, Realtor, Bandon
Steve Forrester, Editor, *Daily Astorian*
Bill Grile, City Manager, Coos Bay
Fran Recht, Citizen Activist, Lincoln County
Sam Sasaki, City Manager, Newport

Metropolitan Portland

John Charles, Environmental Policy Director,
Cascade Policy Institute
Dorothy Cofield, Attorney in solo private practice
Jeff Condit, Attorney, Miller-Nash
Rob Drake, Mayor, Beaverton
Larry Hildebrand, Policy & Communications
Advisor, *The Oregonian*
Scott Lazenby, City Manager, Sandy
Robert Liberty, Executive Director, 1000 Friends
Paul Leistner, Research Director, City Club
LeeAnne MacColl, President, Regional League of
Women Voters
Don Morrisette, Homebuilder, Venture Properties
Jonathan Poisner, Executive Director, League of
Conservation Voters
Steve Schell, Attorney with Black Helterline, Portland
Ethan Seltzer, Director, Institute of Portland
Metropolitan Studies, Portland State
University
Carl Talton, Vice President of Government Affairs
and Economic Development, PGE
Ed Washington, former Metro councilor, Program

Officer-Community Relations,
Portland
State University

Southern

Lindsay Berryman, Mayor and LCDC
Commissioner, Medford
Jane Carpenter, Farmer and
Philanthropist, Medford
Keith Cubic, Planning Director,
Douglas County
Jim Eisenhard, former Planning
Director, Medford
Bud Hart, City Councilor,
Klamath Falls
John Hassen, Attorney, Medford
Robert Hunter, Editor, *Medford Mail
Tribune*
Mike Mahar, Owner, Mahar Homes,
Medford
James Miller, Rancher, Ashland
Mark Skillman, Owner, Skillman
Properties, Medford

Valley

Steve Bryant, City Manager, Albany
Jon Chandler, Partner, Legislative
Advocates
Steve Cornacchia, Attorney with
Hershner, Hunter, et al, Eugene
Steve Gennett, Administrator, Oregon
Small Woodlands Association
Larry George, Executive Director,
Oregonians in Action
Allen Johnson, Attorney, Johnson &
Sherton, Salem
Randy Kugler, City Manager, Philomath
Steve Nofzinger, Former Mayor, Tangent
Mike Swaim, Mayor, Salem
Charlie Vars, Vice-chair of LCDC,
Corvallis
Peter Watt, Principal Planner, Lane

Council of Governments
Burton Weast, Western Advocates,
Eastern
Steve Anderson, Partner, Anderson-Perry
Engineering
Terry Edvalson, Consultant, Terry
Edvalson & Associates, La Grande

Salem

David Hadley, Attorney, Hermiston
Wes Hare, City Manager, La Grande
Susan Roberts, Mayor, Enterprise
Gail Sargent, Architect, Hermiston

The following individuals volunteered to conduct the interviews:

Bryan Aptekar
Tom Armstrong
Jennifer Brost
Arnold Cogan
Linda Davis
Jason Franklin
Jeff Heilman
Reeve Hennion
Clark Henry
Hanley Jenkins
Rusty Klem
Jennifer Lewis

Lauren Maloney
Skye Mendenhall
Marlys Mock
Dan Moore
Laurel Prairie-Kuntz
Robyn Scofiel
Miranda Shapiro
Beth St. Amand
Ed Sullivan
Damian Syrnyk
Nohad A. Toulan
Rick Walker

Appendix 5: Questionnaire

***COPE INTERVIEWS ON THE STATE OF OREGON'S
STATEWIDE LAND-USE PLANNING PROGRAM***

Interviewee: _____

Title: _____

Address: _____ ***Region:*** _____

Phone #: _____

Interviewer: _____

Phone #: _____

Date: _____ ***Location:*** _____ ***Time:*** _____

Directions for Interviewer:

To ensure reliability and consistency of the results, the interview should be conducted systematically. Although it is not a scientific survey, interviewers should remain impartial and refrain from leading questions. However, in order to obtain as much information as possible, interviewees may be asked to expand on their responses. Each interview should require between 30 and 45 minutes and preferably be conducted in person, wherever possible. Please transcribe your notes and send both an electronic copy and the original document to Rod Johnson, Office of the Dean, College of Urban & Public Affairs, Portland State University, P. O. Box 751, Portland, OR, 97207-0751. All results should be submitted by April 30th, 2001.

Background Statement: Please read for Interviewee

The American Planning Association (APA) created COPE, the Committee on the Oregon Planning Experience, to address the evolutionary changes needed to enhance the efficiency and visionary contributions of statewide planning. (Ask if the interviewee is familiar with APA; if not, offer a brief description.) To help accomplish this mission, COPE members and volunteers currently are conducting interviews with diverse individuals throughout the state to identify challenges facing statewide land-use planning as it enters its fourth decade. When we refer to the land-use planning program in this interview, we are referring to the goals, administrative rules, procedures, and guidelines that are carried out at both the local and state level to implement the Oregon statewide land-use planning program. The interview results will be compiled and examined by the committee, which will produce a final report for distribution later this year. The report will analyze the most critical issues facing the statewide land-use planning program, and will identify recommendations to the APA Board and membership. Your comments are totally confidential. We will not attribute any comments to you personally. All interviewees will receive a copy of the final report.

1. Can you give me a short summary of your involvement in the Oregon statewide land-use planning program?
2. The Oregon statewide land-use planning program celebrated its 25th anniversary two years ago. In looking back over the past 25 years, generally how well do you think the program has worked at all levels of government?
3. Oregon is widely considered one of the most livable states in the nation. How much of this do you think is attributable to our land-use planning?
4. What aspects of the statewide land-use planning program are working well and what aspects need to be changed, improved or addressed from scratch? (Probe: the goals, administration rules, LCDC/DLCD, local government, citizen involvement)
5. How well do you think the current statewide land-use planning program and its direction will work for Oregon in the next 25 years?
6. There is a perception by some that the passage of Ballot Measure 7 came about as a result of dissatisfaction with the Oregon planning process. Do you agree or disagree with this perception, and why?
7. ***If they answered no*** to question 7 ask “Regardless of your understanding, there is a perception among supporters of the initiative that the Oregon Planning process needs to be changed. If this perception carries on, what do you think are other aspects of the process that could generate more initiatives?”

If they answered yes to #6 then ask, “Are there other aspects of the Oregon planning process that might be the subject of future initiatives?”

8. In making our committee's findings and recommendations to the Oregon Chapter of APA, what would you like to see included? (Probe: specifics concerning a course of action)
9. Is there anything else about the Oregon statewide land-use planning program that you would like to add?
10. We are planning to talk to a broad cross-section of Oregonians, but is there anybody else in particular who you think that this committee should talk to?

Appendix 6: Background of Committee Members

A brief background of each of the participating members of the COPE Committee:

Chair: Nohad A. Toulan, FAICP, Portland: *Dean of the College of Urban and Public Affairs, Portland State University*

Members:

Arnold Cogan, FAICP, Portland: *Managing Partner, Cogan Owens Cogan*

Linda Davis, FAICP, Sisters: *Consultant*

Reeve L. Hennion, Jacksonville: *Vice Chair, Jackson County Planning Commission; Member, Executive Board, Oregon Chapter, American Planning Association*

Wayne (Rusty) S. Klem, AICP

Scot Siegel, AICP

Edward J. Sullivan, Esq., Portland: *Partner, Preston, Gates & Ellis*

Damian P.N. Syrnyk, AICP, Bend, *Senior Planner, Deschutes County Planning Division; At-Large Member, Executive Board, Oregon Chapter, American Planning Association*