# Supplemental Comments

to

# Oregon Task Force on Land Use Planning

from

American Land Institute

Henry R. Richmond

September 12, 2008

Contents

# I. INTRODUCTION

## A. Measure 37, the "Big Look," and Measure 49

On June 28, 2005, near the end of the 2005 Legislative session, the legislature enacted Senate Bill 82 to create the 10-member Oregon Task Force for Land Use Planning. In large part, the creation of the "Big Look" Task Force reflected the inability of the legislature to agree whether modifications should be made to the land use program in response to voter enactment of Measure 37 in 2004, and if so, how.

The 2005 legislature directed the Task Force to make recommendations on:

- "The effectiveness of Oregon's land use planning program in meeting current and future needs of Oregonians in all parts of the state;
- "The respective roles and responsibilities of state and local governments in land use planning; and
- "Land use issues specific to areas inside and outside urban growth boundaries and the interface between areas inside and outside urban growth boundaries." (Section 1)

The legislature also directed the Task Force to submit its report to the 2009 Legislature by February 1, 2009.

Prompted by public reaction to 7,462 Measure 37 claims, including 4,309 subdivisions on farm and forest land, the 2007 legislature developed adjustments to Measure 37 and asked voters if they agreed, by placing Measure 49 on the November 2007 ballot. Measure 49 allowed 3,153 claims for 1 - 3 homesites, which otherwise were inconsistent with Oregon land use law, and allowed an additional 4,309 claims for 4 - 10 lots if supported by proof of loss. Claims seeking more than 10 lots were disallowed, though all 4+ lot claims were allowed to "amend down" to 1 - 3 lot status, which requires no proof of loss. Voters resoundingly approved Measure 49, 62-38

## B. ALI Comments to the Task Force

On July 11, 2008, the American Land Institute (ALI) submitted two reports to the Big Look Task Force:

- Comments on the Task Force's May 30, 2008 Preliminary Recommendations;[1]
- ALI's analysis of the November 7, 2007 vote on Measure 49.[2]

Section II, "Prior American Land Institute Comment," below, summarizes the conclusion of these two reports.

Since ALI's July 11, 2008 submittal to the Task Force, various comments and recommendations pertaining to the Task Force have been published, including the following four:

- July 31, 2008 Oregon State University draft assessment of the five key goals of the Oregon land use program;
- August 15, 2008 comments of Oregonians in Action calling for "local control" for counties;
- August 22, 2008 call for "repeal of Measure 49 and full implementation of Measure 37" at the inaugural Oregon Rural Congress conference;
- August 15, 2008 draft recommendation of the Task Force on agricultural lands.

This report responds to these comments and recommendations.

---

1 Henry R. Richmond, "Comments on 'Big Look: Choices for the Future,' May 30, 2008 to Oregon Task Force on Land Use Planning," July 11, 2008, published online at http://ir.library.oregonstate.edu/dspace/bitstream/1957/9129/5/BLTF%20070808.pdf

2 Henry R. Richmond, "The 'Yes' Vote on Measure 49: Protecting the Geese That Lay the Golden Eggs," published at http://hdl.handle.net/1957/9129

## II. PRIOR AMERICAN LAND INSTITUTE COMMENTS

ALI's two prior comments submitted to the Task Force are summarized here.

### A. July 11, 2008 Comments

ALI's July 11, 2008 comments on the Task Force's Preliminary Recommendations[3] analyzed three premises perceived to underlie the Task Force's preliminary recommendations to change state land use law. ALI found those premises to be invalid, and concluded *these premises should not be the basis of the Task Force's evaluation of the effectiveness of Oregon's land use law, or of recommendations to change state land use policy:*

- *Ossified Laws.* The 1973 laws have not "ossified," but have been changed by the legislature 1,071 times, 1975-2005 (pp. 4 - 9); LCDC also has adapted the law by interpretation (p. 6);
- *One Size Fits All.* The land use laws never have been "one-size-fits-all;" flexibility has been provided (pp. 11-12), and the laws vary by region and size of jurisdiction (pp. 12 - 14);
- *Unfair Rural Regulations.* Given $4.9 billion in property tax reduction, billions more in publically-financed irrigation water, and farm land values rising faster than the stock market, farm zoning -- covering over half of Oregon's private land -- has not been unfair to the average owner of farm or forest land. (pp. 15 - 21).

ALI concluded other Task Force *premises* are valid and important:

- Notwithstanding general fairness in farm and forest zoning, and notwithstanding Measure 49's 13,000-lot "safety valve," specific fairness issues -- urban and rural -- warrant Task Force attention (pp. 21 - 24);
- Oregon lacks policy clarity and infrastructure finance capacity needed for mixed-use, transit-oriented urban re-development (pp. 24 - 28).

---

[3] "Big Look: Choices for the Future," May 30, 2008, Oregon Task Force on Land Use Planning, published at http://centralpt.com/upload/301/5291_BigLook_StakeholderBooklet_060608_screen.pdf

ALI found Task Force *recommendations* to be similarly mixed:

- Conforming existing land use statutes and rules to four new "overarching principles" is not feasible or worth the long period of uncertainty and litigation that would result (p. 31-32);
- The Task Force is correct that articulating policy for mixed-use, transit-served redevelopment, and financing infrastructure for that redevelopment, are key to: housing affordability, access and mobility, and pollution control in future decades (p. 33);
- Task Force urbanization policy and infrastructure finance recommendations seek to harness, not regulate, market forces (p. 25).

B. July 10, 2008 Analysis of Measure 49 Vote

On July 11, 2008 ALI also submitted to the Task Force analysis of the November 7, 2007 vote on Measure 49.[4] That analysis found:

- With only 10.5% of the state's farm land, but 57% of the state's farm sales, Northwest Oregon had 62% of 7,462 Measure 37 claims, statewide, including 2,394 claims demanding subdivisions.
- To scale back those 2,394 subdivision claims, Northwest Oregon voters approved Measure 49 68.4% - 31.6%.

ALI also found no urban rural "divide," -- whether statewide, or on either side of the Cascades.

- Eastern Oregon's 18 counties split 9 - 9, voting 49.8% "Yes," and 50.1% "No."
- Western Oregon's 11 rural counties[5] voted 52.1% "Yes," and 47.9% "No."

The vote on Measure 49 in these 29 rural counties was 198,336 "Yes," 188,817 "no," or 51.2% "Yes," and 49.05% "No."

If two "mixed" urban/rural counties west of the Cascades -- Jackson and Benton -- are counted as "rural," the vote in 31 rural counties would be 245,072 "Yes," (51%) and 235,939 "No" (49%).

---

4 See Note 2, p. 1.

5 Clatsop, Columbia, Coos, Curry, Douglas, Josephine, Lincoln, Linn, Polk, Tillamook, Yamhill

## III. OREGON STATE UNIVERSITY ASSESSMENT OF LCDC GOALS

On July 31, 2008, the Institute for Natural Resources (INR), Oregon State University, submitted a 159-page draft final report, "The Oregon Land Use Program: An Assessment of Selected Goals,"[6] to the Oregon Department of Conservation and Development. DLCD contracted for the independent assessment of its program out of its own budget.

DLCD asked INR to answer the following key questions: "Has the Oregon land use program been effective in:

"Fostering citizen involvement in land use policy (Goal 1)?

"Preserving farm and forest land for farm and forest use (Goals 3 and 4)?

"Managing growth (Goal 14); and

"Protecting and developing estuary areas as appropriate?"

*The basic question of program "effectiveness" is the same question the 2005 Legislature asked the Task Force to answer.*

The OSU assessment appears to be the *most rigorous, exhaustive, and objective, evaluation of Oregon's 35-year-old land use program ever attempted.* The assessment focuses on the five statewide planning goals that make up the heart of the program: 1, Citizen Involvement; 3, Agricultural Land; 4, Forest Land; 14, Urbanization, and 16, Estuarine Resources. *To conduct the assessment, INR assembled over 20 experts from OSU, U of O, PSU, U.S. Forest Service, Oregon Department of Agriculture, and Division of State Lands.* Reviewers included the Planning Directors of Douglas and Clackamas counties.

### A. "Oregon's Land Use System is Sound"

The assessment notes its central conclusion at the outset:

"Overall, the study suggests Oregon's current land use system is sound." (p. iii).

On the five specific goal assessments, OSU-led teams found:

Goal 1 had "fallen short of goal objectives;"

---

[6] The report is published online at http://www.centralpt.com/upload/301/5735_DRAFT%20REPORT%20 Land%20Use%20Project.pdf

Goal 3: "Oregon's land use program has been effective in preserving the agricultural land base." (p. iv).

The Goal 3 assessment also found:

> "There is also evidence that *program adjustments and amendments since 1973 have improved the performance of the program*." (p. v)

Goal 4: The "empirical analysis" suggests the *land use planning system has redirected residential and other development to location within the urban growth boundary and other designated growth areas*" but weakness in the literature make it difficult to reach "strong conclusions" regarding the likely influence of zoning on "rates and patterns" of change of forest land use.

Goal 14: Teams reviewed the literature with regard to "the effectiveness of Goal 14" in terms of seven factors: urban forests; infrastructure and public service delivery, transportation, social, equity, and economic growth. *The seven "bottom line" findings all found "positive" impacts or lack of negative impacts* (pp. v-vi). Lack of "unifying evaluations applied in the literature" made summarizing the findings on Goal 14 "a challenge."

Goal 16 has been "effective."

B. Putting Future Evaluations on Better Footing

Beyond assessing the effectiveness of the five goals, the OSU teams identified data needs relative to future evaluations of program effectiveness. The assessment recommended carefully developed, goal-specific improvements regarding data sources, data gathering, data evaluation, data analysis, and agency coordination.

OSU recommendations likely would be expensive to implement. The chances of Governor Kulongoski's budget including these recommendations, and the 2009 legislature's adopting them, would be increased by the Task Force carefully assessing and endorsing OSU's recommendations.

## IV. OREGONIANS IN ACTION: TREAT COUNTIES LIKE CITIES

The idea that state oversight of counties should be loosened so that counties would be treated more like cities is invalid.

### A. OIA's Argument

On August 15, 2008, the *Oregonian* published an article[7] about a draft Task Force recommendation to give rural counties "more local control" over farm land development decisions. The article stated that Oregonians in Action argued this step "would *give rural counties the same sort of regulatory discretion cities have.*"

The article attributed to Oregonians in Action President Dave Hunnicutt the view that "Oregon's cities have more planning leeway than counties do."

> "Portland, for example, rezoned the Pearl District from industrial warehouses to allow the shops, lofts and galleries that it's known for today."
>
> "The current system allows cities all kinds of flexibility in creating zones." Hunnicutt said, 'There's far less state oversight over planning in cities -- they actually have the tools to solve local issues. Rural planners don't have those tools.'"

### B. Comment on OIA's Argument

*Any significant loosening of state oversight of counties would put counties in a fundamentally different position than cities, not the same position.*

#### 1. Senate Bill 100: Cities and Counties Both Must Comply with LCDC Goals

The purposes of state land use goals are different in cities and urban areas compared to counties and rural areas. Likewise, the steps cities and counties must take to comply with state goals are different. However, *SB 100 requires state land use goals regarding housing and industrial lands be applied just as firmly to cities as goals relating to farm and forest land are applied to counties.* Indeed, during the 11-year acknowledgment review process, 1975-1986, city officials and planners objected just as loudly as *county* officials and planners that LCDC was running roughshod over local control. More to the point, *no city today, in the name of "local control," may change its LCDC-approved residential zoning in violation of Goal 10, Housing, any more than a county could change its LCDC-approved zoning in violation of Goal 3, Agricultural Lands.*

---

[7] Eric Mortenson, "Land-Use Panel Will Focus on Local Control," *Oregonian*, August 15, 2008, p. D1.

Senate Bill 100 recognizes cities are pressured by NIMBY's just as counties[8] are pressured by developers. Senate Bill 100 also recognizes the constant temptation faced by both city and county to use land use decisions to increase tax base -- without having to take the "heat" when the time comes later to find the tax dollars to pay for the services the new "ratables" demand. *Senate Bill 100 thus unavoidably involves tensions between pressured local officials, on the one hand, and development-limiting policies adopted by the legislature and approved by the people, on the other.* For cities and counties alike, local compliance with state law, and state-level administrative capacity to oversee local implementation of state law, each have been indispensable to achieving, and maintaining, nationally unprecedented gains in housing affordability and farm and forest land protection.

2. Housing

ALI's July 11, 2008 comments (pp. 6 - 10) detailed the progress 24 local governments in the Portland Metro area made on affordable housing by means of LCDC firmly enforcing LCDC Goal 10, Housing, 1977-1983. More to the point, progress -- not to mention *further* affordability progress since 1983 -- is kept in place today by the same state laws that brought those gains into place 25 years ago.

The residential zoning ordinances of the cities of Beaverton, Lake Oswego, Milwaukie, among others, were appealed to LCDC and courts by 1000 Friends of Oregon and by home builders on the ground cities had not complied with state law -- just as county zoning for farm and forest land was appealed by farmers and 1000 Friends of Oregon.

Without the limits Senate Bill 100 placed on wide open local discretion, the "fiscal zoning" and sprawl[9] of the 1950's and 1960's would have continued, in the 1970s, 1980s, and 1990s, as it has in other states, and the gains in housing affordability of the last 30 years would not have happened. As elsewhere, Oregon would have *zoning-caused shortages of building sites*,[10] despite an abundance of land.

---

8 The Oregon Supreme Court noted pressures on county officials in its 1973 *Fasano* opinion.

9 From 1950 to 1974 land in farms in the Willamette Valley, as reported by USDA Census of Agriculture, fell from 2,744,211 acres to 1,819,306 acres, 33%. See Richmond and Houchen, "Oregon's Public Investment in Conservation, Prosperity, and Fairness," 2007, p. 3, published online at http://hdl.handle.net/1957/5503 .

10 After cities changed zoning to meet Goal 10, 1977-1983, the capacity of the same base of residentially-zoned land to receive housing units increased from 129,000 to 305,000.

3. Industrial Lands

Senate Bill 100's core principle of local compliance with state land use law also is responsible for similarly dramatic progress on industrial lands. *Before Senate Bill 100, city plans and zoning did not articulate up-to-date economic development goals.* When goals were articulated, *planning and zoning did not support the goals* -- i.e., instead of large campus-type sites near airports and freeways, industrial land consisted of brownfields near railroad tracks -- sites abhorrent to the Hewlett Packards of the world. Finally, *necessary infrastructure decisions were not being made,* let alone coordinated with neighboring jurisdictions which could share the benefits and burdens of efficiently- scaled infrastructure.

LCDC's Goal 9, Economic Development, sensibly requires cities to conduct this kind of analysis and intergovernmental coordination, and to adopt zoning which implements the results. Senate Bill 100's acknowledgment review process assured successive legislatures and the people of Oregon that the state's 241 cities took these steps. The "updating" called for by LCDC's "post-acknowledgment" process, assures city inventories of industrial land will be "modernized" on a 5 - 7 year cycle -- objections about "local control" notwithstanding. Oregon legislators and voters consistently have been more concerned about local performance than sloganeering about "local control" -- especially when, under Senate Bill 100, "performance" meant providing badly-needed economic diversification in the form of *$13 billion* in electronics "fab plant" investments in the late 1980's.

To cut back on Senate bill 100's core principle of local compliance with state policy -- *for cities or counties -- would damage something that has worked well, and risk returning Oregon to the posture of "anything goes" un-accountability of the 1950's and 1960's.*

4. Senate Bill 100 and the Pearl District

The success of the Pearl District is not an illustration of lack of city accountability to state land use law, and is not a reason to relax county compliance with state land use law, as OIA suggests. *The City of Portland is to be commended* for its rezoning and other actions to make old rails yards and warehouses feasible for mixed use development, for "street-leveling" the above-ground west off-ramp of the Broadway Bridge, and for providing street-car transit from downtown to the Pearl and beyond to Good Samaritan Hospital on NW 23rd Avenue, among other steps.

However, the nationally-acclaimed developments in the Pearl *did not conflict with, but implemented*, LCDC Goal 10 Housing. More important, the Pearl, and other vibrant, investment-fueled revitalizing areas of Portland owe a great deal of their financial feasibility and marketplace success (a) to the Portland Metro UGB required by Goal 14, and (b) to conservation of the countryside beyond the UGB as required by Goal 3, Agricultural Lands. In addition to supporting agriculture, farmland protection outside the Portland Metro UGB powerfully *deflects demand* for *residential, commercial and other investment back to the center of the region.* Investors have taken advantage of this market demand, and buyers comprising that demand have flocked to the investors' offerings.

## V. OREGON RURAL CONGRESS CONFERENCE

The August 22, 2008 the Oregon Rural Congress (ORC) held an inaugural two-day meeting in Cascade Locks.

Conceived by the Eastern Oregon Rural Alliance,[11] the ORC met to discuss rural health care, management of federal forest lands, economic development, timber tax payments, telecommunications, and other major issues. The objective was a report stating a "common agenda" which ORC leaders could give to state and federal officials.

News coverage of the conference reported the following:

> "One of the biggest applause lines of the day came when property-rights activist Rita Swyers of Hood River called for the repeal of Measure 49 and full implementation of Measure 37."[12]

*The Task Force should bear in mind the election results when hearing such statements.*

### A. Rural Oregon Supported Measure 49

An organization purporting to represent rural Oregon is out of step with rural Oregon voters when it applauds a call for "repeal of Measure 49 and full implementation of Measure 37." *A majority of voters in Oregon's 29 rural counties voted for Measure 49, 198,336 "Yes," and 188,817 "No,"-- 51 - 49* (see p. 4, *supra*).

The property rights activist from Hood River County who called for repeal of Measure 49 is particularly out of step with voter sentiment. Hood River County had 233 Measure 37 claims, more than any other Eastern Oregon county, and *nearly a third of the claims in all of Eastern Oregon. Hood River County voted to approve Measure 49, and thereby scale back Measure 37, 65.2 - 34.8.*

---

[11] The Eastern Oregonian Rural Alliance was founded in 2003 to "actively support development and implementation of policies and programs that strengthen communities and the economy in Eastern Oregon and thereby the State of Oregon." http://www3.eou.edu/alliance/documents/EORA%20Bylaws%20approved%202-7-03.pdf

[12] Matthew Preusch, "Oregonians Push for Ideas to Create Rural Prosperity," *Oregonian*, August 22, 2008, p. B. 1

B. Counties With Most Measure 37 Claims Heavily Supported Measure 49

Voters in counties with the most Measure 37 claims will resent calls for repeal of Measure 49 because voters in those counties voted most strongly to limit Measure 37 claims.

Northwest Oregon's 13 counties[13] have only 10.5% of the state's farmland, but about 78% of the state's "prime" farm land. With that land, and with favorable climate, Northwest Oregon produces 57% of the state's crops and livestock -- i.e., more than the other 89 percent of the state's farm land.

Northwest Oregon also has the state's most productive forest land and over half the state's timber harvest -- *double* the harvest in Southwestern Oregon, and double the harvest in all of Eastern Oregon.

Alarmed that 62% of all Measure 37 claims were on Oregon's best farm and forest land, residents of Northwest Oregon resoundingly rejected "full implementation" of Measure 37, by voting 68.4% - 31.6% to pass Measure 49.[14]

The Oregon Rural Congress will need the support of Oregonians from across the state to deal with problems far more important to rural Oregon than LCDC's Goal 3 or Goal 4. ORC hampers its efforts to gain support for its agenda from Oregonians who voted 2 - 1 in favor of Measure 49 when the ORC applauds efforts to "repeal" Measure 49 -- especially when Measure 49 supporters know a majority of rural Oregonians voted in favor of Measure 49, too.

---

13 Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill

14 Measure 37 (2004) offered landowners an opportunity to seek relief from land use law. Landowners in eight huge Eastern Oregon counties with 47% of all the farmland in Oregon (Morrow, Sherman, Gilliam, Harney, Wheeler, Lake, Malheur and Grant ) sought little relief: These counties have filed only 119 claims -- less than half of one percent of 7,462 claims statewide. Oddly, in these counties with little landowner stake in Measure 37, voters rejected Measure 49 scaling back Measure 37 -- 59.2% - 40.8%.

## VI. TASK FORCE RECOMMENDATION ON FARM LAND

In connection with its August 15, 2008 meeting in Madras, the Task Force released a recommendation on farm land in the form of a six-page "white paper," attached here as Appendix A.[15]

### A. Summary of Recommendation

The discussion under "Framing Question 2" (App-A-4) notes the Task Force already has "proposed the state clarify what types of lands it considers important for statewide land use goals of protecting working farms,[16] forests and natural area." Lands so "clarified" would "continue to be subject to limitations on non-farm and non-forest uses already in place." Lands not so "clarified" would cease to be covered by LCDC Goal 3, Agricultural Lands, and Goal 4, Forest Lands.

The paper then recommends four options the legislature could choose from to address the farm land issue, roughly summarized, as follows:

- Use the current system;
- State would classify "important" land, but *counties could ignore the state classifications and "carry out own analysis* using state's criteria," subject to state review;
- Counties reclassify land under state criteria with state review;
- Similar to 3, but with neighboring jurisdictions involved, and with urban-rural reserve analysis folded into the process (App-A-5).

What development would be allowed on the lands not found to be "important"? (App-A-6) Counties would develop new zoning ordinances for newly-designated 'unimportant' land, subject to "state-defined criteria and performance standards." (App-A-6). Such "criteria and performance standards" would have to be developed and adopted.

### B. Comments on August 15, 2008 Farm Land Recommendations

The August 15, 2008 Task Force proposal to identify "important" rural lands, and remove lands not so identified from existing state policy protection, is similar to the Task Force's May 30, 2008 recommendations (p. 16) calling for a *top-to-bottom revamp*

---

15 "White Paper: Assessing Oregon's Working Farm and Forest, and Protecting Important Natural Areas" (undated; pages un-numbered)

16 Goals 3 and 4 protect "agricultural land" and "forest land," not "working farms."

of the land use program. Under the May 30 proposal, "experts" would review the "outcomes" of the land use law in terms of "four overarching principles." Based on the review, the four (inarguably appealing but vague) principles would thereafter "guide" all state land use policy (see ALI's July 16, 2008 comments to the Task Force, pp. 31-32.)

It is not clear whether the Task Force's August 15, 2008 farm land recommendation replaces the Task Force's May 30, 2008 recommendation that all state land use policy be changed to conform to "four overarching principles," or whether the August 15 recommendation simply clarifies a part of the May 30 recommendation. Either way, as discussed in ALI's July 11 comments (p. 11) and below, *such a process would be a major undertaking that would take years, would cost considerable money, and would not be helpful to the legislature, to landowners, to county governments, or to industrial land users. Moreover, such a major undertaking would disregard repeated decisions of Oregon voters upholding the basic structure of the land use law.*

1. Massive Undertaking

Deciding what lands are "important," or what "outcomes" advance yet-to-be adopted overarching principles, would be a huge task. After that, would be the step of modifying existing statutes and goals to reflect the conclusions reached. Then each county would have to assess existing plans and zones to see which lands meet the new state policies and which do not. All these determinations, and LCDC's response to each of them, could be subject to appeal and litigation.

Rural lands issues were the most difficult part of *the original "acknowledgment review" process, which took eleven years, 1975 - 1986.* The Task Force proposes a not-so-mini "Son of Acknowledgment Review."

2. Does Not Help Legislature

Proposing the 2009 Legislature identify rural land of "importance" would be unhelpful to the Legislature.

For two reasons, the 2005 Legislature was fully aware of this policy option when it created the Task Force. *First, the idea of identifying "important" land, and allowing "local control" on rural lands not so identified, is as old as Senate Bill 100 itself.* As ALI pointed out in its July 11, 2008 comments, in 1974, during the goal-adoption process, LCDC made the basic important/less important, state/local "cut" on agricultural lands at Class I - IV soil in Western Oregon, and Class I - VI soil in Eastern Oregon. Thereafter, LCDC loosened that cut by allowing counties to take "built and committed" exceptions to Goal 3 for land that otherwise was "good" but previously had been partitioned and developed to the extent agriculture was no longer "practicable."

Counties have designated about one million acres of such "less important" exception lands. *Second,* and more important, since 1974, the legislature has already gone through several exhaustive processes to identify "less important" agricultural land -- and to allow counties to treat "less important" land differently.

The Task Force material offers no analysis that these legislative efforts were unsuccessful, especially the 1993 designation of "high value" and "non-high value." The Task Force material does not acknowledge the impact of House Bill 3661 -- the kind of mid-course correction the rigorous OSU assessment found to be effective. Efforts to identify "important" and not important land include:

- Lot of Record (1979),
- Marginal lands (1983),
- Secondary lands by LCDC (1988),
- Small-scale resource lands (1992),
- High-value and Non-high-value lands (1993).

House Bill 3661 identified the more important "High Value" resource lands and differentiated treatment of the "less important" lands -- well over half the land that previously had been treated as one class. Annual reports from counties compiled by LCDC, show that House Bill 3661 has been effective in improving protection of "high value farmland" (reducing the number of new dwellings and creation of small parcels) and in allowing more development on the "non high value" (more dwellings and more parcels).

After three years' existence, for the Task Force to suggest the legislature identify "less important" lands without assessing the legislature's prior efforts, and without taking a substantive stab at the issue itself, would be a lame, unhelpful passing of the buck back to the legislature.

3. Does Not Help Landowners

Landowners with persuasive complaints about existing unreasonable or unfair circumstances not addressed by Measure 37 or Measure 49 are not helped by a process which will take several years, and which may not help them in any event.

*If the Task Force is concerned about rural landowners, it should try to identify specific problems that can be solved via rifle-shot policy adjustments and that are able to be implemented on adoption.*

Besides providing faster, more certain relief, *addressing specific circumstances also minimizes risk of unintended harmful spillover impacts on adjacent or nearby lands which everyone would agree are "important."* The 62-38 vote approving Measure 49 shows, again, a desire by Oregonians that any process to change state land use law not harm agriculture or forestry.

*ALI's July 11, 2008 comments identify circumstances presenting issues of landowner fairness and reasonableness* -- e.g., the $80,000 income rule for establishing vineyards; uncompensated prohibition on logging near nest trees; limitations on nonfarm development on poor quality, un-farmed farm land in a slow-growing Eastern Oregon county with over 1.2 million acres of farm land; and urban "environmental overlay" zones (see July 11, 2008 comments, p. 35-36).

4. Does Not Help County Governments

With the federal timber tax debacle, *few cash-strapped rural counties have extra staff or financial resources to undertake a multi-year rural lands assessment,* and then conduct public hearings for area-by-area rezonings. Policy changes which counties can immediately incorporate into development approval criteria are less burdensome, and able to be implemented more easily and quickly.

*Since 1973, almost every session of the legislature has changed the farm zoning statutes to allow counties greater "local control." Today, counties may approve 44 more mainly non-farm uses in EFU zones than they could in 1975.* Some say the legislature has gone overboard in this regard. Others say the legislature has not gone far enough. Regardless, such an approach gets faster, and more predictable results than a call for the legislature to, somehow, come up with a definition of "less important land," with a goal of expanding "local control."

5. Does Not Help Industrial Land Users

The hope that sites for industrial land use will 'fall out' of a vaguely-defined proposal to revamp the entire rural land use process is an illusion. As METRO has shown in recent years, there are more effective, direct, and site-specific ways to deal with the need for cities to provide relatively small acreages involved in industrial designations. Apart from this argument, in the Willamette Valley, little flat industrial land is likely to fall out of a search for "unimportant" land, because little, if any, flat Willamette Valley agricultural land can be described as "unimportant," on the basis of farmland productivity criteria. This "call" has to made on the basis of other considerations.

6. Does Not Respect Voter Decisions

Over the last 38 years, voters have upheld statewide land use planning six times.[17] *The 62-38 statewide "Yes" vote on Measure 49 in 2007 included majorities in both urban and rural Oregon.*[18] By resoundingly approving Measure 49, voters scaled back 4,309 subdivisions allowed by Measure 37 (2004), while allowing 3,153 claims seeking 1-3 homesites.[19] Given this 38-year political history, a Task Force response more respectful of the will of the voters, and also consistent with the Task Force's 2005 legislative charge,[20] would not be a wholesale revision of rural land use policy, but (a) identification of specific circumstances which present the kinds of "unreasonableness" concerns that fueled Measure 7 in 2000 and Measure 37 in 2004, and (b) carefully crafted solutions to the problems indicated by those circumstances.

7. Rural Residential Development the Only Task Force Beneficiary

Inasmuch as no other interest is helped by the major do-over of rural land use policy tentatively proposed by the Task Force, the default beneficiary seems to be rural residential development. Intended or not, if this would be the effect of the recommended rural land policy overhaul "redo," -- which appears to be the case -- *to go forward, the recommendations must be supported by assessments of impact more rural residential development -- beyond the 10,000 allowed by Measure 49* -- on fire, on increased fire-fighting costs (it is cheaper and easier to protect timber and forage than rural homes), on falling water table, on conflicts with commercial farms and forest operations, and on increased road, sheriff patrol, and school bus expense, etc.

Finally, the suggestion (App-A-5) that Metro's use of the category of "conflicted land, can help the Legislature or LCDC identify "unimportant" land is incorrect. The methodology ODA developed for METRO does not identify "unimportant land." Rather, it identifies land that is good for the most part, but it can no longer contribute to the agricultural economy significantly because of conflicting uses at its perimeter. *ODA did not develop a method to identify "unimportant" land that is not suffering from conflicts.* It is this latter category BLTF is concerned with.

---

17 1970, 1976, 1978, 1982, 1996, 2007.

18 Page 4, *supra*, and "The 'Yes' Vote on Measure 49," Table p. 6.

19 Richmond and Houchen, "Measure 37: Is It Doing What Oregon Voters Wanted?"

20 P. 1, *supra*

## VII. CONCLUSIONS

By placing Measure 49 on the November 2007 ballot, the 2007 Legislature did two things the 2005 Legislature was unable to do. *First,* carve out from Measure 37, and *endorse, a "fairness" adjustment to Oregon's land use program. Second, prevent large rural subdivisions the legislature believed voters did not intend* when voters approved Measure 37. Under Measure 49's "fairness" adjustment, if, when a landowner bought land, 1 - 3 homesites were allowed, but later, state or local officials "moved the goal posts" by adopting new regulations that prohibited 1 - 3 homes, such landowners would be exempt from the new regulations. Unlike Measure 37, no proof of loss if required. On the other hand, claims larger than four lots could proceed only by proving actual loss of value, unless the claimant wanted to "amend down" to a 1 - 3 lot claim. Voters approved Measure 49, 62-38. Some 3,153 claims seeking 1 - 3 lots, and are now being processed. The vast majority of claims seeking 4 lots or more have "amended down" to 1 - 3 lots, and those claims also are also being processed. About 10,000 new rural homesites likely will be approved.

Beyond the "moving-the goal-posts" fairness issue, *the other big recurring rural land use issue is "reasonableness,"* i.e., classification of land as "farm" or "forest," and limitations on the use or division of "farm" or "forest" land, regardless of *when* a landowner purchased land. Thus, after adoption of Measure 49, the issue facing the legislature and the Task Force is: *What's the best way to address the "reasonableness" issue:* A broad overhaul of land use policy that affords landowners no relief anytime soon, or maybe ever, but will immediately cost county governments money they don't have? Or, a *less dramatic effort that identifies specific instances of "unreasonableness," and then responds to those circumstances with narrowly-crafted corrective policy changes? The OSU assessment found the latter approach has been helpful in the past 35 year.*

*A Task Force recommendation for a major overhaul of rural land use policies would not be appropriate* because a major overhaul:

- Would not be helpful to landowners, legislators, industrial land users, or county officials;
- Would fly in the face of conclusions of a milestone July 31, 2008 Oregon State University assessment of LCDC's five key goals:
    - The land use program overall is "sound."

- LCDC Goal 3, Agricultural Land, has been "effective;"[21]
- The process of incremental modification over the years -- not drastic change -- has increased Goal 3's effectiveness;

- Would be premature, given no assessment has been done of the impact on adjacent farming and forestry, of the roughly 10,000 new rural dwellings now being allowed by Measure 37 and Measure 49.

Six times over 38 years Oregonians have voted to reject sweeping changes to Oregon's land use law. Voters approved Measure 7 in 2000 and Measure 37 in 2004, in part because of assurances by the measures' sponsors the measures would cause no drastically harmful results -- assurances later shown to be unreliable.

Given that a major overhaul of rural land use policy helps no one, given the OSU assessment findings, given six voter decisions, and given the unknown impact of the 10,000 or so new rural dwellings soon to be introduced into the countryside by Measure 37 and Measure 49, *any recommendation to the 2009 Oregon Legislature for a major overhaul of LCDC Goals 3 and 4 must be supported by a clearly articulated justification which is (1) strong enough to override the above considerations, and (2) based not on casual references to verbal anecdote and lore, but on well-documented systemic defects that have broad practical consequences. No such justification appears in the Task Force material to date.*

At the very least, the Task Force should condition any call for a sweeping overhaul of Oregon's farm and forest land use laws on the completion of an assessment of the impacts on farming and forestry of Measure 37's/Measure 49's 10,000 new rural houses.

---

[21] Precise question the 2005 Legislature formed the Task Force to answer, see *supra.*