

# Report to Governor Vic Atiyeh

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## GOVERNOR'S TASK FORCE ON LAND USE IN OREGON September 1982

"... The Task Force believes these recommendations will make a positive contribution to improving Oregon's land use planning program. Our time was limited and more detailed work is needed to translate these recommendations into fully-developed proposals for legislative action..."



Task Force Chairman

THE GOVERNOR'S TASK FORCE ON LAND USE

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## **I. OVERVIEW: LAND USE PLANNING IN OREGON**

As early as the 1920s, a few Oregon cities and counties had adopted various forms of land use planning. The issue was controversial then--and it remains the focus of sharp public disputes today.

In the half century that followed, a series of State councils, boards and divisions and a State Department of Planning and Development were created, abolished and created again as expressions of legislative interest in land use planning.

By the 1960s, most cities and counties had zoning ordinances in place. Many jurisdictions had adopted comprehensive plans and relied on the plans for guidance in local land use decisions.

In 1969, the Oregon Legislature adopted a uniform set of statewide planning goals--the nation's first--with passage of Senate Bill 10. The purpose of the measure was to promote comprehensive and coordinated planning and to provide for orderly growth and development while preserving the state's resources.

The measure established nine goals which emphasized protection for agricultural and undeveloped land. The concepts embodied in Senate Bill 10 were affirmed by voters in a statewide referendum in 1970.

Senate Bill 10 did not, however, appropriate funds for planning programs at the state level and did not give the Governor enforcement authority. The legislation had no provisions by which local government could coordinate the development of land use plans.

In 1973, with passage of Senate Bill 100, the Legislature addressed these issues by creating and funding the policy-making Land Conservation and Development Commission (LCDC) and its staff, the Department of Land Conservation and Development (DLCD).<sup>1</sup>

Senate Bill 10 goals remained in place and were accommodated in 14 new statewide land use planning goals which emerged from an extensive citizen participation process in 1974. A Greenway Goal was added in 1975 and four Coastal Goals were added in 1976.

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<sup>1</sup>In this report, the Land Conservation and Development Commission (LCDC) is referred to as "the Commission". The Department of Land Conservation and Development (DLCD) is referred to as "the Department".



The Legislature appropriated funds to help cities and counties prepare comprehensive plans in accordance with statewide goals. All local jurisdictions were to have plans acknowledged (approved) by the Department by January 5, 1976. None did.

Beginning in early 1976, the Department negotiated deadline extensions and provided financial assistance grants to help local jurisdictions prepare comprehensive plans. The extensions tie jurisdictions to compliance schedules and work programs designed to achieve plan acknowledgments.

Implementation of Senate Bill 100 was delayed several months in 1973 when some legislators threatened to refer the new law to a statewide vote. That threat was not carried out. But, in 1976 and again in 1978, Oregon voters refused to weaken or abolish statewide land use planning. In November 1982, voters again will decide whether to keep or abandon state-mandated land use planning.

SB 100 assured continuing legislative review of the program. The Joint Legislative Committee on Land Use advises the Department, reviews its programs and recommends changes in the law to the Legislature.

The 1977 Legislature withdrew the Department's power to assume planning authority for local jurisdictions which had not made satisfactory progress toward compliance. In place of that authority, the Legislature empowered the Department to use enforcement orders. Typically, an enforcement order imposes a partial or complete moratorium on land use actions. The Department has used that authority on 12 occasions.

Before 1979, State Circuit Courts heard appeals of local or state land use decisions. The 1979 Legislature created the Land Use Board of Appeals (LUBA) to review such decisions and to make recommendations for compliance to the Department. Efforts to abolish LUBA, or to bring its function into the formal judiciary, are expected when the LUBA "sunset" is reviewed in 1983.

Judicial decisions and interpretations of land use planning law have shaped the program from the beginning. Of many rulings, Fasano v. Washington County in 1973 is regarded as benchmark law. The decision held that the issuance of planning permits is a quasi-judicial procedure that requires due process.

Fasano v. Washington County introduced a multitude of legal complexities and resultant litigation to land use planning processes. A private, non-profit "watchdog" organization, 1,000 Friends of Oregon, became an active litigant in land use issues in 1975.

There are 278 units of local government that must comply with Oregon's land use goals. By 1980, the State had invested \$18 million in state and federal funds for planning assistance and coordination grants to help local jurisdictions comply with the goals. By September 1982, 151 local comprehensive plans--54 percent of the total--had been acknowledged by the Department.

Oregon's latest legislative refinement of land use planning law (House Bill 2225-1981) sets rules for appeals of local plan amendment decisions: Any objector--including the Department--must have been a participant at the local level proceeding to have appellant status before LUBA, the Court of Appeals or the Oregon Supreme Court. The new law also extends the Department's enforcement authority beyond plan acknowledgment and into the post-acknowledgment review process.

Recession-caused cutbacks in state agency budgets could affect the Department's capability to provide timely review of local plan amendments in the post-acknowledgment process. Severe cuts in local government budgets also could impair the planning capabilities of some cities and counties.

## II. FORMATION OF THE GOVERNOR'S TASK FORCE

In 1981, Governor Vic Atiyeh was urged to conduct an impartial evaluation of both the positive and negative impacts of Oregon's land use planning program. The first such recommendation came from the Home Builders Association of Metropolitan Portland. That request later was supported by the Portland Metropolitan Service District, the American Planning Association's Portland chapter, the Oregon Savings & Loan League, the Oregon Association of Realtors, 1,000 Friends of Oregon and Benton County.

The Department joined in the requests for a program evaluation and suggested to the Governor specific ways the study would be useful to the Department.

Governor Atiyeh, in May 1982, appointed 12 citizens to his Task Force on Land Use. The Governor named Stafford Hansell, a Hermiston rancher and former legislator, to chair the Task Force.

The Governor's charge to the Task Force asked for specifics and he suggested a scope of inquiry.

*"An appropriate theme for your review might be:  
'How does Oregon's land use program impact  
economic development?' Separate fact from  
fiction."*

Although the Governor's charge did not preclude the Task Force from pursuing other related issues as they deemed appropriate, he did outline his four areas of special interest.

1. The length of time required to complete acknowledged plans.
2. Efficiencies and inefficiencies in the state and local permit process.
3. Problems of plan implementation, keying on development and financing capital improvement programs including, if possible, a discussion of continued and/or enhanced state financial assistance to local governments.
4. Land use litigation.

The Task Force agreed on an approach that offered citizens access to forums in which the spectrum of land use issues and opinions would be fully and openly discussed. During June, July, August and September, a series of public hearings in Salem, La Grande, Bend, Medford, Eugene, Portland, Tillamook and Coos Bay attracted more than 1,000 citizens. The Task Force heard 401 witnesses and received written testimony from 75 others.

After a slow start in Salem on June 9 and June 23, public interest and participation in the Task Force hearings built quickly. At hearings in Portland and Eugene, so many persons asked to testify that the Chairman was obliged to split the Task Force into two groups. Each simultaneously heard testimony in separate rooms. Subsequently, the Task Force regrouped and exchanged notes and written testimony from each session.

The Task Force heard and received a wide variety of testimony and exhibits. A half-dozen new studies and reports were submitted for the record. Members gained access to unpublished manuscripts and heard thoughtful recommendations and sophisticated analyses. Many witnesses provided extensive documentation for their assertions about the land use planning program.

When hearings were finished, the Task Force staff compiled seven looseleaf notebooks of testimony and more than 70 tape recordings. Each person who asked to testify or who was invited to testify, is on a master file list. Testimony was coded by subject and indexed for easy reference and study by the Task Force and other interested persons. The index is in Appendix A.<sup>2</sup>

In addition to the public hearings, the Task Force made special efforts to meet and talk with local officials. Several no-host briefing dinners on the hearing tour attracted more than 200 city, county and special district officials. The informal dinners were organized with the help of the League of Oregon Cities, the Association of Oregon Counties and the Special Districts Association of Oregon.

In both Eugene and Tillamook, local planners and officials arranged for the Task Force to tour areas of special land use planning and economic development interest.

The Task Force conducted its last public hearing on August 28. At three day-long work sessions in mid-September, members drafted a final Report to the Governor. Chairman Hansell submitted the report to Governor Atiyeh on September 30, 1982.

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<sup>2</sup>For information about or access to appendices, testimony or exhibits, contact Mary Crockett, Executive Department, 155 Cottage Street NE, Salem, OR 973101. In Salem, call 373-1996. The state toll-free number is 1-800-452-7813.

### III. INTRODUCTION

The Task Force proceedings revealed the range and depth of public opinions and attitudes about Oregon's land use planning process. Few citizens were neutral on the subject. At one extreme, the Task Force was told that the "Land Conservation and Development Commission is a Communist plot." At the other extreme, witnesses testified that not a single change should be made in land use laws.

Testimony showed that even some of Oregon's most respected business and civic leaders have different views about land use planning. John A. Elorriaga, chairman, U.S. Bancorp, told the Task Force:

*"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."*

Conversely, John Gray, chairman of Omark Industries, stated in the September 1982 issue of Oregon Business Magazine:

*"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."*

The Task Force heard many witnesses who began statements with the caveat, "I'm all for land use planning, but...."

The Task Force repeatedly was told--and the members believe--that economic conditions in Oregon today are the result of circumstances beyond the control of both citizens and decision-makers in Oregon.

According to testimony, factors that contribute to Oregon's failure to attract new industry include:

1. Land use laws and practices.
2. Lack of suitably-sized, serviced and available parcels of land.
3. Oregon's tax structure.
4. Oregon's high rates for worker compensation.
5. Lack of various programs in higher education in some areas.
6. Attitudes of government officials, including members of the Legislature and elected officials.

The Task Force has not tried to address all these issues in this report. Nevertheless, the Task Force did give broad interpretation to the Governor's directive: "How does Oregon's land use program impact economic development?" Clearly, almost every decision of the Commission and the Department creates an economic impact on someone somewhere in Oregon. The Task Force did not seek to limit discussions of these impacts.

In August, the Oregon Chapter of the American Planning Association testified:

*"There's no way that land use planning can make everyone happy because it involves many having to give up individual rights to do as they please with their property for the overall good of the citizens of the state."*

The Task Force recognizes that much of the testimony represented highly personal opinions and attitudes. Too, much testimony focused on city, county and federal problems and issues that are beyond the scope of the Department's statutory authority and responsibility. However, the Task Force did hear ideas for improving local components of the land use planning system. Those ideas are included in this report.

Overall, there was sufficient evidence to persuade the Task Force to agree in principle with witness Ed Taylor,<sup>3</sup> who said in Eugene:

*"To say the (Department) doesn't affect economic development...Well, anyone who believes that believes in the tooth fairy."*

The Task Force heard much testimony that held that out-of-state industries had given up on Oregon and had gone to other states because of land use problems here. It was not possible, however, to pinpoint a single industry that had, beyond doubt, declined to come to Oregon solely because of state-mandated land use planning here.

Conversely, the Task Force found no evidence that any industry came to Oregon solely because of state-mandated land use planning. There is a national perception that Oregon is reluctant to welcome industrial development. It is therefore reasonable to assume that many prospective industries have never applied. That assumption is supported by the testimony of professional site locators.

Another witness, Linn County Commissioner, Dave Cooper<sup>4</sup>, testified:

*"It is almost like placing a maze in front of prospective industries and saying to them, 'Sure, we want you in Oregon, but first you are going to have to work your way through this maze. Then, we are bewildered because they don't even start through the maze. The next thing we learn, they have located in North Carolina or Texas or somewhere else where they recognize that businessmen have to spend most of their time with business and economic concepts--not with bureaucratic games."*

The Task Force believes there is much that can and should be done. Further, the Task Force believes that a serious attempt must be made to create an atmosphere of mutual trust among land use decision makers and citizens at all levels.

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<sup>3</sup>Witness #150, Eugene, July 27, 1982. See Appendix A.

<sup>4</sup>Witness #74, Bend, July 20, 1982. See Appendix A.

At public hearings and in meetings with local elected officials, the Task Force was impressed with the intensity and depth of feelings about the Department and the Commission. Outside Oregon's urban areas, the Task Force perceived a continuing distrust of the Department and festering problems of the past and the present. Whatever the merits of these problems, the Task Forces urges efforts to reverse the lack of trust.

The Task Force believes its recommendations will make a positive contribution to improving Oregon's land use planning program. Time was limited and more detailed work must be done to translate these recommendations into fully-developed proposals for legislative action.



**IV. STREAMLINING STATE REVIEW OF LOCAL LAND USE DECISIONS**

In just nine years, Oregon's land use planning program has built up a tangled thicket of rules and court decisions. The Department and the Commission, the courts, the Legislature and aggressive citizens all have contributed to the problem.

A report prepared for the Land Use Study Group<sup>5</sup> states:

*"It is a complex system of rules and procedures--a system with a face that only a lawyer could love."*

Steve Schell, a Portland lawyer, wrote in the Willamette Law Review:<sup>6</sup>

*"The path of one decision may take years to complete. Only the rich, the extremely tenacious or those paid annual salaries to advocate, can afford to persevere in such a system. The courts and the lawyers have lost the program in the procedural woods."*

The Task Force repeatedly heard suggestions that standing in the appeals process should be limited. Many methods to limit standing seemed to create more problems than solutions.

The Task Force believes a better remedy is to shorten the appeals process so that proposed changes will not be killed simply by delays. A shortened procedure, coupled with placing the appellant at financial risk for court costs--thus making frivolous appeals too costly--will streamline the system.

If a local plan has not achieved the Department's acknowledgment, appeals of local land use decisions now go to LUBA for initial review. If the issue involves a land use goal, LUBA's decisions must be reviewed by the Department and returned to LUBA before issuance. Nearly a third of LUBA's cases have involved goal issues.

<sup>5</sup>Exhibit #478

<sup>6</sup>Exhibit #211

LUBA decisions can become a revolving door when LUBA remands matters to the local jurisdiction to correct minor errors. If the original local decision is reaffirmed, the decision can be appealed again to LUBA. And, subsequent appeals go to the Court of Appeals and possibly the Oregon Supreme Court. So many different hands touch the case as it wends its weary way through the system that a land use appeal can stretch out for years.

More than a little pruning is required to clear out this thicket. Drastic surgery is needed. The basic guideline for state involvement should be: One state hearing and one appeal by right.

The Task Force recommends that the 1983 Oregon Legislature allow the Land Use Board of Appeals to sunset on June 30, 1983. Further, the Task Force recommends that legislation be introduced to:

**1. Create a New Land Use Court.**

The Land Use Court would have exclusive jurisdiction to review all appeals of both legislative and quasi-judicial land use decisions made at the local level and by the Department and other state agencies. The Land Use Court would function under the same time limits now imposed by statute on LUBA actions. The Court would not have jurisdiction to hear claims on constitutional questions involving damages, such as inverse condemnation claims.

The Land Use Court would have authority to grant such legal or equitable relief as it deems necessary. This would remedy the problem that LUBA cannot order a local jurisdiction or the Department to approve an application. LUBA can only reverse a denial and wish good luck to the appellant who decides to try again.

The Land Use Court would have authority to take enforcement action as it deems appropriate to effect the completion of comprehensive planning processes in local jurisdictions that do not achieve plan acknowledgment by January 1, 1984.

**2. Shift the Burden of Proof to the Appellant.**

To shorten the appeals process, the burden of proof should be shifted to the appellant at an early stage in the process. The appellant should be put at risk by requiring the posting of an appeals bond or by allowing court costs and legal fees to be awarded to the prevailing party.

**3. Provide for Discretionary Review of Land Use Court Decisions by the Oregon Supreme Court.**

The Land Use Court's decisions would be final unless appealed directly to and accepted by the Oregon Supreme Court. The Land Use Court's decisions would establish binding precedents on the Department, other state agencies and local governments.



**V. FINISHING COMPREHENSIVE PLANS**

Much of the controversy and litigation in land use planning in Oregon is focused on local jurisdictions that do not have acknowledged plans. Business and industry can plan and invest with greater certainty in jurisdictions that have acknowledged plans. The Task Force believes that completion of the acknowledgment process for the remaining 127 cities and counties is of the highest priority.<sup>7</sup>

The Task Force recommends:

1. The Governor, the Commission and the Department, local governments, the Legislature and special interest groups independently and collectively should do all they can to complete the acknowledgment process by January 1, 1984.

Each city and county in the state is different. Each has a unique environment, economy and community identify. Each has different needs and different levels of expertise. Oregon's land use planning program must recognize and respond to these unique and disparate characteristics in a flexible manner.

The Task Force recommends:

2. The Department should defer more to local judgment on how best to interpret and balance land use planning goals in that jurisdiction. On disputed issues that are a "close call," the Department should look to local government's judgment in applying the goal in a way that best meets local needs.

The Task Force recommends:

3. The Department should acknowledge comprehensive plans that are in substantial compliance with statewide land use planning goals.

The Task Force suggests that Black's Law Dictionary definition be applied to the term "substantial":

*"Substantial performance exists where there has been no willful departure from the terms of the contract, and no omission in essential points, and the contract has been honestly and faithfully performed in its material and substantial particulars, and the only variance from the strict and literal performance consists of technical or unimportant omissions or defects."*

<sup>7</sup>Legislative authority may be required to implement Recommendations 2 and 3.

The Task Force recommends:

4. When major portions of a plan are adequate, but some segment clearly is inconsistent with state goals, the Department should acknowledge the adequate portions of the plan and continue to work with the local jurisdiction to correct remaining deficiencies. This procedure can apply to a policy, a small geographic area, or an element for which good planning information is not yet available.

**VI. ENFORCING THE PLAN COMPLETION DEADLINE**

The Task Force recommends:

1. January 1, 1984 should be the final deadline for the completion and acknowledgment or denial of all pending comprehensive plans. After the deadline, the State should assume that local jurisdictions which do not have acknowledged plans cannot independently complete the local planning process.

It is in Oregon's best interests that all citizens and all local jurisdictions live under similar rules. A means is needed to bring all remaining unacknowledged plans into compliance with statewide goals.

The Task Force recommends:

2. After January 1, 1984, denied or unfinished comprehensive plans should be referred by the Department to the Land Use Court for final disposition.
3. The Land Use Court shall take such action as it deems appropriate to complete the planning process. Court action includes but is not limited to:

- Assign completion of the plan to another jurisdiction, e.g. the county for a city
- Assign preparation of the plan to the Department
- Assign completion of the plan to the State with the Department as lead agency to coordinate the work of other agencies such as the departments of Transportation, Economic Development, Agriculture, Forestry, the Housing Division, etc.
- Require the local jurisdiction to complete the plan under order of the Land Use Court and under the Court's jurisdiction. Such order could restrict further decisions by the local jurisdiction.
- Order that specified land use decisions be denied or approved.
- Withhold state-shared revenues until completion of the plan.
- Adopt some combination of the above enforcement measures. Legislatively transfer the Department's statutory enforcement powers to the Land Use Court along with any other necessary or desirable enforcement powers.

The Task Force recommends:

4. The local jurisdiction should be billed by the Land Use Court for the cost of preparing the comprehensive plan and gaining plan acknowledgment.

#### VII. STATE AND LOCAL GOVERNMENT ROLES IN POST-ACKNOWLEDGMENT

The Task Force believes it is imperative that state and local governments cooperate in the plan implementation stage that follows plan acknowledgment. Such cooperation must include an efficient method by which disagreements can be resolved.

After acknowledgment, it is the responsibility of local jurisdictions to respond to changing conditions and to develop plan amendments which meet local objectives and which remain consistent with statewide goals. The Department should provide assistance through its county coordinators and/or field representatives. The Department should continue to review local land use plan and ordinance amendments to assure that amendments comply with statewide land use goals.

The Task Force recommends:

1. Periodic review of local plans should be handled by the plan amendment process.

If the Department determines that the plan amendment is not consistent with the statewide goals, the amendment should be denied. If the local jurisdiction or an individual challenges the denial, the appeal would be brought before the Land Use Court for disposition.

#### VIII. SPEEDING THE PROCESS

For processing applications for land use actions which are consistent with adopted comprehensive plans, the Task Force recommends:

1. All applications should receive final action by the local jurisdiction within 120 days. This period should include any appeals to the local jurisdiction unless the applicant requests a postponement.
2. The State should provide technical assistance to local jurisdictions that are working to improve procedures so that they can comply with the 120-day limit.

More specifically, the University of Oregon Bureau of Governmental Research and Services should design several theoretical models and methods for processing applications. The models should be based on successful programs which have been implemented in cities and counties of varying sizes throughout the state. County coordinators could then help local jurisdictions adapt the most efficient techniques to local situations.

For processing applications for land use actions that require comprehensive plan or ordinance amendments, the Task Force recommends:

1. Local jurisdictions and the Department cooperatively should develop a more efficient process for handling minor changes. The process should avoid excessive paperwork and delays.

#### REMOVING BARRIERS IN STATE LAW THAT IMPEDE THE LOCAL PROCESS

The Task Force recommends:

1. The Association of Oregon Counties and the League of Oregon Cities should be requested to propose 1983 legislation to eliminate certain barriers in state law which impede the local process. For example, the Association and the League should consider legislative proposals which would:
  - Give the Department the option to waive the 45-day notice period when it is not needed in handling plan or ordinance amendments.
  - Streamline the annexation process for cities.
  - Shorten the appeals period for Planning Commission decisions from 30 days to 15 days.
  - Shorten notice periods for routine actions.
  - Substitute mailed notice to affective parties in place of newspaper publication notice in some applications.

Further, the Task Force recommends:

2. The term "land use decision" needs a more precise definition. A "laundry list" of actions which are "land use decisions" should be prepared.

#### **IX. NEW EMPHASIS ON GOAL 9**

Oregon land use law gives equal emphasis to all statewide goals. However, the process has not maintained that balanced emphasis. Emphasis needs to shift now from conservation and preservation. As required by law, economic development (Goal 9) must attain equal status with other goals. That will not happen until attitudes change. Commission members, Department staff, local officials and other participants must rethink and rework their roles in the system to allow economic development opportunities to surface easily and to be achieved.

The Task Force recommends:

1. Definitive standards should be developed to validate plans for Goal 9 compliance.
2. Conservation-related decisions should be reviewed for their economic impact as rigorously as development decisions are reviewed for their compliance with conservation goals.
3. The State should adopt a more comprehensive and cohesive economic development strategy.
4. Cities and counties should be encouraged to develop economic development strategies that address:
  - Diversification
  - Promotion (marketing)
  - Identification of the type of development to be pursued
  - The adequacy of serviced land to fulfill local development strategies
  - Realistic capital improvements, programs and budgets
5. The use of market factors analyses, instead of extrapolating historical trends, to justify needs.

Economic development involves much more than just industrially-zoned or designated land. Economic development applies to destination resorts as well. The term applies to any activity that contributes to the economic well-being of Oregon.

Comprehensive plans must look beyond today's needs. Newly-emerging requirements of changing technology and production techniques or fluctuating markets require flexible plans that can be adjusted as needed.

State and local economic development strategies must be supported by sufficient and available land. Reasonably projected needs require accommodation if they are to be met. There may be a need to designate greater quantities of land for economic development.

The Task Force heard much about the lack of adequate inventories of industrial land. The Task Force applauds the efforts of the Department of Economic Development to resolve that problem. The Department in September 1982 began collecting information for a computer inventory of industrial land sites.

In addition to those data, the Task Force believes additional information on the availability of vacant industrial land should be included in the inventory:

- Is the land now on the market? If not, why not?
- Is the land owned by an industrial firm that intends it for future industrial use?

The Task Force recommends:

6. The State's industrial land inventory should be maintained with timely and site-specific information so that potential users can determine if inventoried property that meets their needs is available.
7. The Department of Economic Development should have staff to interpret and explain the inventory data to users of the system.

#### **X. FINANCING AS A BARRIER**

The Task Force heard testimony that suggests that financing public facilities and local improvements is a significant potential problem for economic development in Oregon. This barrier will be most apparent in the post-acknowledgment period of land use planning. It could well prove to be the stumbling block for the entire planning process.

Managing and Financing Growth, prepared in August 1982 by the League of Oregon Cities,<sup>8</sup> lays out sources of financing that are available now and suggests new sources. No single solution for financing public improvements will fit all cities and counties. Because of the financial dilemma that local governments face today, several measures should be considered by the 1983 Legislature.

The Task Force recommends:

1. Make State loans available to a targeted or priority listing of local jurisdictions selected and ranked for their economic development potential. Objective criteria should be used to establish funding priorities. Limited state funds should not be spread thinly over the entire state.

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<sup>8</sup>See Appendix C.



2. Target or award the economic development portion of Federal Community Development Block Grants, now available for administration by the State, to local areas selected for economic development potential.
3. Add the value of new development to the local area tax base.

Other tools the Task Force believes may have potential for financing needed local improvements include:

- County Service (Economic Development) Districts.<sup>9</sup>
  - Clackamas County's idea of using tax increment financing to develop an infrastructure in designated industrial districts.<sup>9</sup> To make this remedy available in situations other than urban renewal, the Legislature must ask voters to amend the State Constitution.
4. The State should take action to improve the marketability of its general obligation and revenue bonds.
  5. Other traditional methods of financing public facilities should not be overlooked. These include:
    - Incremental user fees that reflect actual costs.
    - System development charges.
    - Title transfer and other specialized taxes.
    - Local improvement districts.
    - Developer-supplied public facilities.
    - Federal and State-shared revenues.
    - General Fund revenue (property taxes).
    - Federal grants.

**XI. GOAL 2: THE EXCEPTIONS PROCESS**

The language used in statewide planning goals and guidelines is an important issue. Thomas Gallagher told the Task Force:

*"The goals are poorly written...using the words such as 'need' and 'unique' which have no meaning. There are entire books written on 'need' that do not reach a singular definition. I expect these words were used simply to confuse issues and encourage future litigation."*

<sup>9</sup>See a technical paper by Task Force member Lyle Stewart in Appendix D.

David Peterson<sup>10</sup>, a planning consultant for Weyerhaeuser Real Estate Company, commented on the exceptions process:

*"In the case of counties without acknowledged plans, Goal 2, Part 2, dealing with exceptions, resembles a mirage. You think you see it and you work toward it, feverishly, but you never reach it. It always remains an elusive phantom promising relief but offering none."*

According to Stephen T. Janik<sup>11</sup>, a Portland lawyer, the goals as standards resemble:

*"...almost Biblical statements, in the sense that they can be interpreted to mean many things to many different interpreters."*

Janik went on to reveal the intent of the exceptions process and he suggested specific changes:

*"It was originally intended that under Goal 2, Part 2, an exceptions process would exist where site-specific exceptions to the goals could be taken. It was intended that this would serve as a 'safety valve' and allow for some tailoring of the impact of the goals to certain land use proposals. Unfortunately, the exceptions process as written, when viewed as a statutory standard, is hopelessly vague, if taken literally will require a monumental research effort to comply with, and is fraught with opportunities for litigation."*

The Task Force recommends that the exceptions process (Goal 2, Part 2) be rewritten so that:<sup>12</sup>

1. To take an exception, applicants should be required to state the impacts of the proposed use on all of the goals and the benefits and the costs that would result from allowing the exception.
2. The legal standard for allowing an exception would be met if the benefits of the proposed use outweigh the impacts demonstrating that certain other goals would not be met. If so, the exception would be granted.

<sup>10</sup>Witness #147, Eugene.

<sup>11</sup>Witness #191, Portland.

<sup>12</sup>Alternate language proposed by Task Force member Jim Irvine is in Appendix E.

**XII. GOAL 3: AGRICULTURAL LANDS**

Competition among existing and potential uses of agricultural and forest resources land increases as Oregon works to achieve maximum economic potential. The State's concern for protecting agricultural lands must be weighed with other concerns now. Competing needs must balance more equitably in rural Oregon. Oregon's diverse agricultural lands are able to produce food, feed, forage and fiber. But Goal 3, as now applied, is too inflexible to accommodate this diversity.

The Task Force recommends consideration be given to redefining Goal 3 in these specific ways:

1. Identify agricultural land more precisely on a regional basis. Identification of Exclusive Farm Use (EFU) agricultural land should include these criteria as a supplement to the soil classification system:
  - Water availability
  - Soil suitability
  - Climate
  - Parcel size
  - Lot size and uses of adjacent parcels
  - Potential markets
  - Transportation
  - Drainage
2. Recognize that prime agricultural land in the Willamette Valley is not identical to prime land in other parts of the state.
3. Clarify the intended meaning of "commercial agricultural enterprise."
4. Recognize destination resorts in EFU as a condition use and compatible with other uses in ORS 215.213, 2c, 2d and 2e.
5. Allow rural housing as an appropriate use of marginal agricultural lands if such housing does not conflict with adjacent agricultural land use and if public services and future public costs have been considered.<sup>13</sup>
6. Recognize the unique character of Oregon's prime rangeland.

**XIII. GOAL 4: FOREST LANDS**

In addition to its intrinsic economic value, Oregon forest land nurtures other economic development potentials that should more carefully be balanced.

<sup>13</sup>See discussion paper by Task Force member Barbara Ross in Appendix F.

The Task Force recommends these refinements for Goal 4:

1. Recognize reservoir sites as a compatible forest use.
2. Include destination resorts as a forest use.

**GOAL 5: OPEN SPACE, SCENIC AND HISTORICAL AREAS AND NATURAL RESOURCES**

The effort to conserve open space and protect natural resources (Goal 5) often has created restrictions that are harmful to Oregon's economy. Today, maximum preservation is favored in the process. Preservation in restrictive goals requires little justification, evidence or findings. But, any departure from a restrictive view of goal compliance, for development or a higher use, requires extensive justification.

The Task Force recommends:

1. Goal 5 interpretations should balance resource protection and resource use.

**COASTAL GOALS**

The combination of state and federal regulations on coastal lands creates unusual conditions. Care must be taken in writing state and federal regulations so that development is not altogether precluded. The Task Force hearings documented the problem. But the testimony failed to offer a solution. Coastal issues may not yet have evolved to the point at which solutions readily are apparent. To date, no coastal county has achieved plan acknowledgment.

**XIV. OTHER RECOMMENDATIONS**

The Task Force agrees that the Commission should not adopt new goals in the near future. The 1981 Legislature directed that the Commission shall not adopt a new goal until after June 30, 1983.

The Task Force recommends:

1. The period during which no new goals will be adopted should be extended for one year to June 30, 1984. If goals are amended, the amendments should be coupled with the State's commitment of assistance to local jurisdictions which must comply with the amendments.



The Task Force believes Oregon's Lot-of-Record law is deficient and recommends:

1. The 1983 Legislature should consider ways to make the Lot-of-Record statute more equitable to individuals who purchased property before December 31, 1964 with the expectation of someday building a home on the property.

#### XV. STATE AGENCY COOPERATION

The Task Force heard derogatory comments about state agencies--other than the Department and the Commission--during the public hearings. The Department of Economic Development most often was the object of complaints. But other agencies were mentioned, including the departments of Transportation, Energy, Forestry and Fish and Wildlife.

It appears that one agency often does not know what the other agency is doing.

The Task Force is aware that the Department of Economic Development recently has made substantial changes in management. Nevertheless, the Task Force initially was disappointed in the lack of information about available industrial sites or the sites' general readiness. But further information revealed that a plan for a computer inventory of industrial sites is being implemented by the Department of Economic Development.

The historic lack of communication between the Department of Land Conservation and Development and the Department of Economic Development and their respective commissions is both surprising and disturbing.

In fact, the Task Force did not sense from any testimony that attracting new industry to Oregon or expanding existing industry is the absolute top priority of the Department of Economic Development or any other state agency.

Oregon must become a serious player in the market for new industries.

The Task Force recommends:

1. The Governor and his immediate staff should take aggressive leadership responsibility to get agency cooperation so that there is no question in anyone's mind that Oregon aggressively is seeking new industry.

2. The commissions and staffs of the departments of Land Conservation and Development and Economic Development should become better acquainted. Department of Economic Development staff should know the state of land use planning in each community in which they work. Healthy communications between these two agencies is imperative.
3. All state agencies and local governments should be informed about economic development progress. This awareness should not be confined only to agency administrators but should permeate entire agencies. "Oregon is Open for Business" should not be just an attractive slogan. It should be a part of the work orders of every state and local government employee.

#### XVI. PEOPLE PROBLEMS

Clearly, the most difficult problem to solve in the land use area is associated with people. In communities in which people have wanted the land use planning laws to work and were willing to compromise and were able to talk with one another, success has been rewarding. But it takes only one person, at any level, to upset the process, offend others and, eventually, to cause a stalemate.

Testimony before the Task Force reflects these feelings. But there also was a sense of willingness to work for changes to make the process work better.

The Task Force heard acrimonious statements about individual Department staff and former Commission members and state officials. However, there appeared to be support for Department Director Jim Ross and a belief that he might solve some of the people problems.

Local planners and state planners seem to avoid mingling. It appears that too often, communication came only after battle lines had been drawn.

The Task Force is aware that many people who testified are long-time opponents of land use planning and oppose it on philosophical, constitutional or other grounds. These opponents seemed to have an almost religious fervor in their opposition. When they were questioned, it was obvious that only abolition of all land use laws would satisfy them.

Another group of people were ardent supporters of Oregon's land use laws. They defended the Department's and the Commission's decisions almost blindly. Many members of this group testified and wrote many letters to the Task Force. While not as adamant as the opponents, this group as a whole reluctantly accepted changes of any type.

Undoubtedly, 1,000 Friends of Oregon has been the most important influence on the way land use planning works in Oregon. This organization was castigated by many at the public hearings and strongly defended by others.

As a strong defender of environmental concerns - including agriculture and forestry protection - 1,000 Friends of Oregon's influence has not been counterbalanced by an interest in the creation of jobs or economic development. The presence and subtle pressure of 1000 Friends of Oregon has had an intimidating influence on the entire land use planning process.

**The Task Force Recommends:**

1. Exchanges of staff be arranged among state, county and city programs. Provide specific opportunities for exchange staff to better appreciate problems of other levels of government. Encourage, recognize and reward staff contributions that improve in state-local relationships.
2. State field representatives, county coordinators and state plan reviewers should be given the same information base. Coordinated and/or combined information distribution and training is needed to achieve this objective. Field representatives should be given the authority and responsibility to give answers to local government--answers that will be upheld in plan reviews. Require state plan reviewers to first visit the locality covered by a plan and meet local officials and local planners. Consider combining the roles of county coordinators and other state field representatives to help make the most use of available funds.
3. Serious thought should be given to developing a code of conduct for publicly-employed planners. Activities that can be construed as a conflict of interest and which destroy credibility should be prevented.
4. Consideration should be given to establishing required standards of education, experience, etc., for professional planners.
5. Unacknowledged jurisdictions should be the priority of all field representatives and county coordinators. A program should be developed to "share" technical assistance in areas where more direct help is needed.
6. Provide state funding to insure continuing coordination, implementation, monitoring and development of good local plans and plan amendments for cities and counties in which planning expertise and staffing levels are not comparable to larger or more affluent jurisdictions.

**ACKNOWLEDGMENTS**

Many persons generously contributed time and expertise to the Governor's Task Force on Land Use. The Task Force thanks everyone who has made a contribution and especially acknowledges a few.

Mary Crockett from the Executive Department, Intergovernmental Relations Division, was the lead staff person assigned to this project. She contributed organization and management skills of the highest order. In addition to working out details of meetings and public hearings, Mary assisted in the writing and editing of this report. She also devised a new system for organizing and indexing the large volume of testimony.

Mitch Rohse from the Department of Land Conservation and Development provided excellent technical advice and services. Special contributions included a useful Glossary of planning terms and follow-up on certain individual cases heard in public testimony. Mitch's hard work helped move the Task Force through a difficult public hearing schedule. His help in tracking down technical details was invaluable.

John Vaughn accommodated Task Force support requirements speedily. Gene Valteau took on extra Task Force work in the word processing section with quiet efficiency. Gay Brousseau is appreciated for fiscal support. Karen Richey's generous sharing of experience and resources made Task Force travel arrangements far more pleasant.

As noted in the report body, meetings with local officials could not have been arranged without the special assistance of League of Oregon Cities, the Association of Oregon Counties and the Special Districts Association of Oregon.

The Task Force is deeply indebted to the many professionals who clarified matters of fact or approach and checked our work at many stages.



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Stafford Hansell, Chairman

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10/08/82

GOVERNOR'S TASK FORCE ON LAND USE  
SUMMARY OF ACTIVITIES

LOCATION	DATE	TIME	SPECIAL EVENTS	DINNER BRIEFINGS WITH OFFICIALS:				PUBLIC HEARINGS:	
				CITY	COUNTY	SP. DIST.	TOTAL	#ATTENDING	SIGNED UP TO TESTIFY:
SALEM	6/9/82	10AM-1:47PM	Work Session and Invited Testimony #1 - 3						
SALEM	6/23/82	10AM-5PM	Invited Testimony #4-22					28	# 23 - 29
LA GRANDE	7/19/82	5PM-10:27PM		18	6	1	25	95	# 30 - 51
BEND	7/20/82	5PM-10:53PM		11	19	2	32	90	# 52 - 84
MEDFORD	7/21/82	5PM-Midnight		14	2	7	23	150	# 85 - 132
EUGENE	7/22/82	2PM-11:35PM	Bus tour guided by city and county planners/officials	12	1	3	16	150	Combo. Rooms 133-143 Mid-Will. Rm. 144-165 E. Will. Rm. 165-18?
SALEM	8/05/82	9AM-3PM	Work Session and Invited Testimony #183-185						
PORTLAND	8/10/82	1PM-12:44AM	Invited Testimony #186-192	43	5	3	51	310	Combo. Rooms 193-205 Auditorium 206-254 Training Rm. 255-30?
TILLAMOOK	8/11/82	2PM-11:55PM	Van tour of land use and ec. dev. sites guided by local officials	21	14	-	35	90	# 304 - 349
COOS BAY	8/12/82	5PM-11:40PM		21	8	-	29	131	# 350 - 397
SALEM	8/19/82	9AM-9PM	Work Session Observe						
	8/28/82	10AM-3PM	LCDC, Invited Testimony #398-401						
SILVER FALLS	9/13/82	10AM-10PM							
	9/14/82	9AM - 3PM	Work session						
TOTALS			109 hours, 31 minutes	40	35	16	211	1044	401 plus 75 mailed testimonies 476 TOTAL