HB 2209
LC709
66000-006
12/1/08 (BHC/ps)
1/12/09 (RMW)

DRAFT

SUMMARY

Establishes main principles for state land use system.

Expands authorities for regional land use planning. Authorizes establishment of regional definitions of "agricultural land" and "forest land" for purposes of land use goals and state statutes.

Directs Land Conservation and Development Commission to carry out policy-neutral review and audit of land use system to reduce complexity.

Provides for state strategic plan integrating land use, transportation and economic development priorities.

Directs Oregon Progress Board to coordinate with Department of Land Conservation and Development, during or before next review of Oregon Benchmarks, to develop performance measures for each statewide land use goal.

Appropriates moneys from General Fund to Department of Land Conservation and Development to implement specified provisions.

Declares emergency, effective on passage.

Comment [w1]: Note that remapping of "agricultural land" and "forest land" will have consequences in terms of uses allowed by statute in ORS chapter 215.

A BILL FOR AN ACT

Relating to recommendations of Oregon Task Force on Land Use Planning; creating new provisions; amending ORS 197.010, 197.040, 197.230, 197.628, 197.652, 197.654, 197.656 and 197.747; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.010 is amended to read:

197.010. The Legislative Assembly declares that:

(1) In order to assure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

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LAND CONSERVATION & DEVELOPMENT COMMISSION
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SUBMITTED BY: Whitman DLCD

(a) Must be adopted by the appropriate governing body at the local and state levels;

(b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;

(d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.

(2)(a) The overarching principles guiding the land use program in the State of Oregon are to:

(A) Provide a healthy environment;

(B) Sustain a prosperous economy;

(C) Ensure a desirable quality of life; and

(D) Provide fairness and equity to all Oregonians.

(b) When the statutes codified in ORS chapters 195, 196, 197, 215 and 227, the goals and rules of the Land Conservation and Development Commission, or local government comprehensive plans, land use regulations, or Metro land use planning goals and objectives or regional framework plan are adopted, amended or interpreted, the entity adopting, amending or interpreting the law, rule or ordinance should consider the principles in paragraph (a) of this subsection.

[*(2)*] **(3)** The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.

SECTION 2. ORS 197.040 is amended to read:

Comment [r2]: This (original) language of the Task Force proposal is intended to make the four principles an "umbrella" that fits over the entire land use program. LCDC and local governments are required to *consider* these principles when they adopt, amend or interpret land use laws, but they are not intended as judicially-enforceable standards for approval of new or amended land use laws.

32 197.040. (1) The Land Conservation and Development Commission shall:
33 (a) Direct the performance by the Director of the Department of Land
34 Conservation and Development and the director's staff of their functions
35 under ORS chapters 195, 196 and 197.
36 (b) In accordance with the provisions of ORS chapter 183, adopt rules that
37 it considers necessary to carry out ORS chapters 195, 196 and 197. Except
38 as provided in subsection (3) of this section, in designing its administrative
39 requirements, the commission shall:
40 (A) Allow for the diverse administrative and planning capabilities of local
41 governments;
42 **(B) Consider the variation in conditions and needs in different regions**
43 **of the state;**
44 [*(B)*] **(C)** Assess what economic and property interests will be, or are
45 likely to be, affected by the proposed rule;
46 [*(C)*] **(D)** Assess the likely degree of economic impact on identified property
47 and economic interests; and
48 [*(D)*] **(E)** Assess whether alternative actions are available that would
49 achieve the underlying lawful governmental objective and would have a
50 lesser economic impact.
51 (c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under
52 ORS chapters 195, 196 and 197 any statewide land use policies that it considers
53 necessary to carry out ORS chapters 195, 196 and 197.
54 (B) Adopt by rule in accordance with ORS chapter 183 any procedures
55 necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b).
56 (C) Review decisions of the Land Use Board of Appeals and land use decisions
57 of the Court of Appeals and the Supreme Court within 120 days of
58 the date the decisions are issued to determine if goal or rule amendments
59 are necessary.
60 (d) Cooperate with the appropriate agencies of the United States, this
61 state and its political subdivisions, any other state, any interstate agency,
62 any person or groups of persons with respect to land conservation and development.

Comment [w3]: This language is intended to require LCDC to *consider* (as a part of its process in adopting or amending goals or rules) regional differences; it is not a judicially-enforceable standard for review of LCDC rules or goals.

63 (e) Appoint advisory committees to aid it in carrying out ORS chapters
64 195, 196 and 197 and provide technical and other assistance, as it considers
65 necessary, to each such committee.
66 (2) Pursuant to ORS chapters 195, 196 and 197, the commission shall:
67 (a) Adopt, amend and revise goals consistent with regional, county and
68 city concerns;
69 (b) Prepare, collect, provide or cause to be prepared, collected or provided
70 land use inventories;
71 (c) Prepare statewide planning guidelines;
72 (d) Review comprehensive plans for compliance with goals;
73 (e) Coordinate planning efforts of state agencies to assure compliance
74 with goals and compatibility with city and county comprehensive plans;
75 (d) Insure widespread citizen involvement and input in all phases of the
76 process;
77 (g) Review and recommend to the Legislative Assembly the designation
78 of areas of critical state concern;
79 (h) Report periodically to the Legislative Assembly and to the committee; and
80 (i) Perform other duties required by law.
81 (3) The requirements of subsection (l)(b) of this section shall not be interpreted as
82 requiring an assessment for each lot or parcel that could be affected by the proposed rule.
83 **SECTION 3.** ORS 197.230 is amended to read:
84 197.230. (1) In preparing, adopting and amending goals and guidelines, the
85 Department of Land Conservation and Development and the Land Conserva-
86 tion and Development Commission shall:
87 (a) Assess:
88 (A) What economic and property interests will be, or are likely to be,
89 affected by the proposed goal or guideline;
90 (B) The likely degree of economic impact on identified property and economic
91 interests; and
92 (C) Whether alternative actions are available that would achieve the
93 underlying lawful governmental objective and would have a lesser economic impact.

94 (b) Consider the existing comprehensive plans of local governments and
95 the plans and programs affecting land use of state agencies and special dis-
96 tricts in order to preserve functional and local aspects of land conservation
97 and development.
98 (c) Give consideration to the following areas and activities:
99 (A) Lands adjacent to freeway interchanges;
100 (B) Estuarine areas;
101 (C) Tide, marsh and wetland areas;
102 (D) Lakes and lakeshore areas;
103 (E) Wilderness, recreational and outstanding scenic areas;
104 (F) Beaches, dunes, coastal headlands and related areas;
105 (G) Wild and scenic rivers and related lands;
106 (H) Floodplains and areas of geologic hazard;
107 (I) Unique wildlife habitats; and
108 (J) Agricultural land.
109 (d) Make a finding of statewide need for the adoption of any new goal
110 or the amendment of any existing goal.
111 (e) Design goals to:
112 **(A)** Allow a reasonable degree of flexibility in the application of goals
113 by state agencies, cities, counties and special districts;
114 **(B) Provide a healthy environment;**
115 **(C) Sustain a prosperous economy;**
116 **(D) Ensure a desirable quality of life; and**
117 **(E) Provide fairness and equity to all Oregonians.**
118 (2) Goals shall not be land management regulations for specified ge-
119 ographic areas established through designation of an area of critical state
120 concern under ORS 197.405.

Comment [w4]: ORS 197.230 is the statute that tells LCDC what it must do and consider in adopting any new goal or any amendment to an existing goal. This change would add the Task Force's four overarching principles as outcomes that the goals should be designed to achieve.

(3) The requirements of subsection (l)(a) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.

(4) The commission may exempt cities with a population less than 10,000, or those areas of a county inside an urban growth boundary that contain a population less than 10,000, from all or any part of land use planning goals, guidelines and administrative rules that relate to transportation planning.

SECTION 4. ORS 197.628 is amended to read:

197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services and urbanization.

(2) The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on:

(a) Achieving compliance with those statewide land use planning laws and goals that address economic development, needed housing, transport ation, public facilities and services and urbanization; **and**

(b) Actions by counties to propose or to adopt provisions relating to "agricultural land," "forest land" and other rural lands under sections 6 to 8 of this 2009 Act if the actions are taken jointly by at least two counties, with the agreement of the cities in the region.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning

Comment [w5]: This amendment is intended to add actions by counties to propose a regional definition of farm and/or forest lands, and actions by counties to implement such definitions if their petition is approved by LCDC to the list of things that get priority for DLCD technical assistance grant funding. It is given priority only where the petition or remapping is done by at least two counties, with the agreement of the cities in those counties. The edits to the bill are for clarification only.

31 goals relating to economic development, needed housing, transportation, public facilities
32 and services and urbanization;
33 (b) Decisions implementing acknowledged comprehensive plan and land
34 use regulations are inconsistent with the goals relating to economic development, needed
35 housing, transportation, public facilities and services and urbanization;
36 (c) There are Issues of regional or statewide significance, intergovernmental
37 coordination or state agency plans or programs affecting land use which must be
38 addressed in order to bring comprehensive plans and land use regulations into compliance
39 with the goals relating to economic development, needed housing, transportation" public
40 facilities and services and urbanization; or
41 (d) The local government, commission or Department of Land Conserva-
42 tion and Development determines that the existing comprehensive plan and
43 land use regulations are not achieving the statewide planning goals relating
44 to economic development, needed housing, transportation, public facilities
45 and services and urbanization.
46 **SECTION 5. Sections 6 to 8 of this 2009 Act are added to and made**
47 **a part of ORS chapter 195.**
48 **SECTION 6. (1) Two or more counties in**
49 **which farmlands, forestlands and farm and forest practices are similar**
50 **may petition the Land Conservation and Development Commission to**
51 **establish regional definitions of the terms "agricultural land" or "for-**
52 **est land" for purposes of the goals.**
53 **(2) If the commission accepts the petition, the commission shall:**
54 **(a) Identify the region to which the definitions apply, which may include**
55 **more than the petitioning counties. In determining the extent of the region, the**
56 **commission shall confer with the State Department of Agriculture and the State**
57 **Department of Forestry, and shall take into consideration:**
58 **(A) The content of the petition;**
59 **(B) The need to address similar and related lands as one region;**
60 **(C) The need to address similar and related farm or forest practices**
61 **and products in a region in a consistent manner; and**

Comment [w6]: The counties that petition LCDC are not necessarily *the* "region" that a new definition would be created for. The requirement for at least two counties is to assure broad political support in the area for a new definition, and that at least two counties will, in fact, remap once LCDC adopts a new definition.

Comment [w7]: This section is intended to give counties the *option* to ask LCDC for a regional definition of agricultural or forest lands, but only where two or more counties agree to do so, together (to assure that there is a *regional* interest). The counties' petition will include their proposed definition(s) (this is required under other laws governing what must be in a rulemaking petition).

Comment [w8]: LCDC may, but is not required to, accept a petition. The intent is that the region covered will typically be larger than two counties. The size of the region will depend on the Commission's consideration of what makes sense in functional terms for agriculture and/or forestry.

Comment [w9]: As with the prior technical change, this added language is intended to clarify that the region may include *more* lands that just lands in the two or more petitioning counties.

Comment [w10]: This text has been moved up to clarify that LCDC must confer with ODA and ODF in identifying the region.

62 (D) The need to have a limited number of regional definitions in the state.

63

64 (b) Adopt the regionals definitions of "agricultural land" or "forest land" by
65 rule, after conferring with the State Department of Agriculture and the State
66 Department of Forestry, based on the petition and on the considerations set forth in
67 subsection (4) of this section.

68 (3) The commission is not subject to ORS 197.235 (l)(a) for the pur-
69 pose of considering the extent and content of regional definitions of "agricultural
70 land" or "forest land" under sections 6 to 8 of this 2009 Act. However, the
71 commission shall hold at least one public hearing in each county in which the
72 regional definitions would apply.

73 (4) The commission shall base regional definitions established under
74 sections 6 to 8 of this 2009 Act on the characteristics of the land and farm
75 or forest practices in the region and its consideration of factors in-
76 cluding, but not limited to:

77 (a) ORS 215.243 and 215.700;

78 (b) Soil capability and suitability for farming or forestry;

79 (c) The long-term viability of current and potential future farm or
80 forest operations on the land;

81 (d) The importance of the land to farm or forest operations on ad-
82 jacent and nearby lands;

83 (e) The availability of water needed to sustain current or antic-
84 ipated farm operations on the land;

85 (f) The land use pattern on the land and on adjacent and nearby
86 lands, including the location of the property in relation to adjacent
87 and nearby nonfarm and nonforest uses and the existence of buffers
88 between farm or forest operations and nonfarm or nonforest uses;

89 (g) The farm or forest land use pattern, including parcelization,
90 tenure and ownership patterns of the land and nearby lands;

91 (h) The sufficiency and stability of the farm or forest infrastructure
92 in the area; and

Comment [w11]: Text moved to front.

Comment [w12]: Clarifies requirements for the regional *definitions*, as opposed to the requirements for setting the boundaries of the region, which are addessing in the preceding paragraph (a). For the definitions, LCDC must confer with ODA and ODF, and must consider both the petition from the counties, and the considerations in subsection (4).

Comment [w13]: Clarifies that the exemption from the procedural requirements for goal amendments applies to all aspects of the regional definition (e.g., both the extent of the region and the criteria for what lands within that region are "agricultural land" or "forest land.").

Comment [w14]: LCDC's regional definitions must be based on factors including, but not limited to, those listed. The listed factors are drawn from existing legislative policy for farm and forest lands, the existing goal 3 (Agriculture), and from SB 1011 (Metro - rural reserves).

93 **(i) The importance of farmlands and forestlands as a means to**
94 **sequester carbon and as a means of significantly avoiding or minimizing the adverse**
95 **effects of climate change.**
96 **SECTION 7. (1) Once the Land Conservation and Development Com-**
97 **mission adopts a definition of "agricultural land" or "forest land" for a region**
98 **under sections 6 to 8 of this 2009 Act, a county in the region may elect to:**
99 **(a) Review and amend its comprehensive plan and zoning map des-**
100 **ignations for farmlands or forestlands; and**
101 **(b) Redesignate as other rural lands those farmlands and**
102 **forestlands that do not meet the regional definition of "agricultural**
103 **land" or "forest land."**
104 **(2) A county that elects to amend its comprehensive plan and zon-**
105 **ing map designations under this section:**
106 **(a) Shall act through a legislative amendment of the comprehensive**
107 **plan and zoning map designations.**
108 **(b) Shall submit the legislative amendment to the commission for**
109 **review in the manner provided for periodic review under ORS 197.628**
110 **to 197.650.**
111 **(c) Shall, as part of the process of adopting the legislative amend-**
112 **ment:**
113 **(A) Adopt, as a part of the comprehensive plan, a map that:**
114 **(i) Identifies the farmlands, forestlands and other rural lands under**
115 **review that contain ecologically significant natural areas or resources;**
116 **(ii) Establishes priorities for protection from conflicting develop-**
117 **ment; and**
118 **(iii) Determines which of the lands have the highest priority for**
119 **protection from conflicting development;**
120 **(B) Adopt, as part of its comprehensive plan and land use regulations, a non-**
121 **regulatory program to protect lands that contain ecologically significant natural**
122 **resources or areas, in compliance with rules adopted by the commission under**
123 **subsection (4) of this section. The county's program may provide for the purchase,**

Comment [w15]: Added at direction of task force.

Comment [w16]: Clarifies regional definitions must be adopted by rule before counties may remap.

Comment [w17]: Note that this section creates an *option*, not a requirement, for counties to remap once LCDC adopts regional definitions for the area include the county.

Comment [w18]: Requiring that counties act by legislative amendment is intended to require that this section not be used to allow property-specific rezoning. Counties must consider the entire county or at least an area of the county when proposing an amendment under this section.

Comment [w19]: Requires that the amendment be *reviewed* by LCDC; this does *not* require DLCD to approve a work program or work tasks – it simply specifies that the review is subject to the normal rules for periodic review.

Comment [w20]: Requires updated inventory of significant natural areas and resources as a condition of rezoning farm/forest lands. It is expected that LCDC *may* need to revise Goal 5 or the Goal 5 rules to define this requirement further. LCDC's rules may include guidance or direction concerning minimum criteria for ecological significance, in coordination with ODFW and others.

124 lease or transfer of development rights to protect ecologically significant natural
125 resources or areas.
126 (C) Adopt, as part of its comprehensive plan and land use regulations,
127 appropriate limitations on the uses allowed on lands
128 designated as other rural lands, in compliance with rules adopted by
129 the commission under subsection (5) of this section.
130
131 (3) In determining whether to approve a comprehensive plan
132 and zoning map and text amendment proposed under sections 6 to 8 of this 2009
133 Act, in addition to reviewing the proposed amendment for compliance with the rules
134 adopted under subsections (4) and (5) of this section, the commission shall:
135 (a) Coordinate with the State Department of Agriculture, the State
136 Forestry Department, other interested state agencies, and other local governments
137 that may be affected by the proposed amendment.
138 (b) Consider the adequacy of the county's program for protecting
139 ecologically significant natural areas.
140
141 (4) If the commission adopts a regional definition of "agricultural
142 land" or "forest land" under sections 6 to 8 of this 2009 Act, the commission
143 at the same time shall also adopt rules that guide counties in meeting the
144 requirements of subsection (2)(c)(A) and (2)(c)(B) of this section.
145 (5) If the commission adopts a regional definition of "agricultural
146 land" or "forest land" under sections 6 to 8 of this 2009 Act, the commission
147 shall adopt the definition by rule, and at the same time shall also adopt rules
148 concerning lands
149 redesignated as other rural lands. The rules for the other rural lands must
150 be designed to achieve the following outcomes:
151 (a) The amount, type, location and pattern of development on lands
152 that are redesignated as other rural lands:
153 (A) Must be rural in character and may not significantly interfere with
154 orderly and efficient development of urban areas in the vicinity of the other

Comment [w21]: Moved the provisions describing what counties mu do concerning ecologically-significant lands (other than identify and prioritize them) up, so that all requirements are in the same place.

Comment [w22]: Requires a county to adopt limits on lands that are rezoned from farm or forest to other rural lands, in compliance with LCDC rules designed to assure sustainability.

Comment [w23]: Change reflects that review is for compliance with statutes, not goals.

Comment [w24]: Added at request of ODOT.

Comment [w25]: This is intended to make the adequacy of the county(ies)'s program to protect natural areas a consideration in whether to approve redesignation of farm, forest and other rural lands.

Comment [w26]: Moved to subsection (6).

Comment [w27]: These are the requirements to map ecologically-significant lands, and to develop a non-regulatory program to protect them.

Comment [w28]: Ties regional definitions of farm/forest lands to rules that control what development may occur on lands that are rezoned. The use of "designed" here is not intended to require certainty that the listed outcomes will result, only a reasonable relation between the rules and the desired outcomes

155 **rural lands;**

156 **(B) May not significantly conflict with existing or reasonably foreseeable**

157 **future farm or forest uses or accepted farm or forest practices; and**

158 **(C) May not lead to significant adverse effects, as specified by the**

159 **commission in rules, including but not limited to adverse effects on:**

160 **(i) Water quality or the availability or cost of water supply;**

161 **(ii) Energy use;**

162 **(iii) State or local transportation facilities;**

163 **(iv) Fish or wildlife habitat or other ecologically significant lands;**

164 **(v) The risk of wildland fire or the cost of fire suppression;**

165 **(vi) The cost of public facilities or services; or**

166 **(vii) The fiscal health of a local government.**

167 **(b) Additional residential development on other rural lands that is**

168 **authorized by the commission under this section must, to the extent**

169 **practicable, be clustered and located to minimize the effects on farm and**

170 **forest uses and to reduce the costs of public facilities and services.**

171 **SECTION 8. (1) Any rules adopted by the Land Conservation and**

172 **Development Commission implementing sections 6 to 8 of this 2009 Act:**

173 **(a) Must reflect the differing conditions in different regions of the**

174 **state.**

175 **(b) May not contain new regulatory restrictions on the use of lands**

176 **identified as containing ecologically significant natural resources or**

177 **areas to protect those resources or areas.**

178 **(c) May provide criteria for designating ecologically significant natural**

179 **resources or areas.**

180 **(d) May provide for the purchase, lease or transfer of development**

181 **rights to protect the resources or areas.**

182 **SECTION 9.** ORS 197.652 is amended to read:

183 197.652. *[Programs of the collaborative regional problem-solving process*

184 *described in DRS* 197.654 *and* 197.656 *shall be established in counties or re-*

185 *gions geographically distributed throughout the state.]*

Comment [w29]: First basic limitations on uses of other rural lands is that the uses must be *rural* in nature, and not interfere with resource uses or accepted practices.

Comment [w30]: LCDC may adopt rules specifying other types of adverse affects that must be avoided. Use of term "significant" is intended to allow LCDC some flexibility. Water impacts include effects on water delivery systems for agriculture. This is *not* intended to require LCDC or local governments to adopt objective standards.

Comment [w31]: This is intended to assure landowners that any overlay zone adopted identifying areas that are priorities for protection due to natural resource values will not be protected by new or additional land use regulations. The intent is that market-based tools be used if additional protections are needed.

186 **(1) At the request of a county and at least one other local govern-**
187 **ment in a region, the Department of Land Conservation and Develop-**
188 **ment, other state agencies, as defined in ORS 171.133, metropolitan**
189 **planning organizations and special districts may participate with the**
190 **local governments in a collaborative regional problem-solving process.**
191 **(2) If requested to participate, the department:**
192 **(a) Shall convene the process and work to encourage regional ef-**
193 **forts to resolve land use planning problems using the authorities de-**
194 **scribed in ORS 197.654 and 197.658.**
195 **(b) May include representatives of an advisory committee on transportation**
196 **established under ORS 367.822 in a regional effort under**
197 **ORS 197.652 to 197.658.**
198 **SECTION 10.** ORS 197.654 is amended to read:
199 197.654. (1) *[Local governments and those special districts that provide ur-*
200 *ban services may enter into a collaborative regional problem-solving process.*
201 *A collaborative regional problem-solving process is a planning process directed*
202 *toward resolution of land use problems in a region. The process must offer an*
203 *opportunity to participate with appropriate state agencies and all local gov-*
204 *ernments within the region affected by the problems that are the subject of the*
205 *problem-solving process.]* **Local governments, state agencies as defined in**
206 **ORS 171.133, metropolitan planning organizations and special districts**
207 **may enter into a regional problem-solving agreement to resolve a re-**
208 **gional land use problem. The agreement must include, as parties to**
209 **the agreement, entities that are necessary to resolve each land use**
210 **problem identified in the agreement, including the Department of**
211 **Transportation if the agreement requires amendments to a compre-**
212 **hensive plan or land use regulations that will have a significant ad-**
213 **verse effect on an existing or planned state transportation facility.**
214 *[(2) As used in ORS 197.652 to 197.658, "region" means an area of one or*
215 *more counties, together with the cities within the county, counties, or affected*
216 *portion of the county.]*

Comment [w32]: This sentence is modeled on a sentence in ORS 197.656 that makes more sense to put here, at the start of the regional problem solving process – describing how it is initiated.

Comment [w33]: This clause authorizes (but does not require) a representative of ODOT's ACTs to be included in a regional problem solving effort. It is expected that this would be done where the regional problem involves some aspect of the state transportation system.

Comment [w34]: Language allows all types of districts to participate in an RPS process.

Comment [w35]: This change makes who must participates in a regional problem solving agreement a function of what the regional problem is, and who is necessary to resolve the problem. Unanimity still is required, *but* the change is intended to clarify that a region does not have to include entities if they are not needed to resolve the problem (except as provided regarding ODOT.

Comment [w36]: The language is modeled on OAR 660-012-0060, and is intended to require ODOT agreement where the land uses authorized by a local government's comprehensive plan or land use regulation amendments will have a significant adverse effect on a state transportation facility.

Comment [w37]: This language was deleted in the draft submitted to legislative counsel, and should have been deleted in the bill draft. These provisions have caused considerable confusion about what process the statute refers to. As counties and cities still must carry out a public process to consider and adopt any comprehensive plan amendments through the RPS process (just as they normally would) there is no reason to repeat process steps here.

Comment [w38]: This entire subsection is deleted. Arguably, the language required *all* cities in a county (or affected portion of a county) to agree to regional problem solving. The definition serves no functional purpose now that subsection (1) clarifies who must be a party to the agreement.

217 **(2) A decision by a local government, state agency as defined in**
218 **ORS 171.133, metropolitan planning organization or special district to**
219 **enter into an agreement under ORS 197.652 to 197.658 is not a final land**
220 **use decision. However, an agreement entered into under ORS 197.652 to 197.658**
221 **does not become final and binding until:**
222 **(a) All local governments that are parties to the agreement have**
223 **enacted the comprehensive plan provisions or land use regulations set**
224 **forth in the agreement; and**
225 **(b) The Land Conservation and Development Commission has ap-**
226 **proved the comprehensive plan provisions and land use regulations as**
227 **provided under ORS 197.656.**
228 **(3) Comprehensive plan provisions and land use regulations made**
229 **to implement an agreement under ORS 197.652 to 197.658 take effect 60 (sixty)**
230 **days after the commission provides notice to all parties to the**
231 **agreement that the commission has approved all of the amendments**
232 **to comprehensive plan provisions and land use regulations.**
233 **SECTION 11.** ORS 197.656 is amended to read:
234 197.656. (1) *[Upon invitation by the local governments in a region, the Land*
235 *Conservation and Development Commission and other state agencies may par-*
236 *ticipate with the local governments in a collaborative regional problem-solving*
237 *process.]* **A local government that adopts comprehensive plan provisions**
238 **or land use regulations to implement a regional problem-solving**
239 **agreement entered into under ORS 197.652 to 197.658 shall submit the**
240 **provision or regulation to the Land Conservation and Development**
241 **Commission for review in the manner set forth in ORS 197.628 to**
242 **197.650 for periodic review.**
243 (2) Following the procedures set forth in this subsection, the commission
244 may *[acknowledge]* **approve** amendments to comprehensive plans and land
245 use regulations, or new land use regulations, that do not fully comply with
246 the **goals, or** rules of the commission that implement the statewide planning
247 goals, without taking an exception, upon a determination that:

Comment [w39]: This subsection addresses when it is that the operative decisions are made in an RPS process. Those decisions occur when all local governments who are a party to the RPS agreement approve plan amendments necessary to implement the agreement. That may occur simultaneously with approval of an RPS agreement, or it may occur after approval of an RPS agreement if the local governments wish to separate the two into two stages. The term "approved" rather than "acknowledged" is substituted because the LCDC review is in the manner of period review, not acknowledgment.

Comment [w40]: This was left blank in the draft sent to legislative counsel, and legislative counsel did not fill it in. We recommend that you specify a 60-day period.

Comment [w41]: Under current law, the major advantage of and incentive for RPS is that local governments may avoid full compliance with LCDC rules. Other provisions state that the RPS plan must "comply" with the LCDC goals, which in turn means that they comply on the whole with the purposes of the goals. This amendment is intended to be consistent with those other provisions, and avoid confusion.

248 *[(a) The amendments or new provisions are based upon agreements reached*
249 *by all local participants, the commission and other participating state agencies,*
250 *in the collaborative regional problem-solving process;]*
251 *[(b) The regional problem-solving process has included agreement among the*
252 *participants on:]*
253 **(a) The amendments to comprehensive plans or land use regu-**
254 **lations, or new comprehensive plan provisions or land use regulations,**
255 **conform on the whole with the purposes of the goals and any failure**
256 **to meet individual goal requirements is technical or minor in nature;**
257 **and**
258 **(b) The amendments to comprehensive plans or land use regu-**
259 **lations, or new comprehensive plan provisions or land use regulations,**
260 **include:**
261 (A) Regional goals for resolution of each regional problem that IS the
262 subject of the *[process]* **agreement;**
263 (B) *[Optional]* Techniques to achieve the **regional** goals *[for each regional*
264 *problem that is the subject of the process];*
265 (C) Measurable indicators of performance **and a system for monitoring**
266 **progress** toward achievement of the **regional** goals[*for each regional prob-*
267 *lem that is the subject of the process];*
268 (D) *[A system of]* Incentives and disincentives to encourage successful
269 implementation of the techniques chosen by the participants to achieve the
270 regional goals;
271 (E) *[A system for monitoring progress toward achievement of the goals]* **If**
272 **the regional goals involve the management of an urban growth**
273 **boundary, tools to coordinate the planning and provision of water,**
274 **sewer and transportation facilities in the region;** and
275 (F) A process for correction of the techniques if monitoring indicates that
276 the techniques are not achieving the **regional** goals. [; *and]*
277 *[(c) The agreement reached by regional problem-solving process participants*
278 *and the implementing plan amendments and land use regulations conform, on*

Comment [w42]: This provision was moved up from paragraph (c) of this subsection to the front (paragraph (a)), because it is *the* key standard for LCDC approval of an RPS Plan. This is the same standard for approval in terms of what "comply with the goals" means that was used for LCDC's acknowledgement (initial approval) of local comp plans back in the late 1970s and 1980s. This change is intended to clarify that point

Comment [w43]: This change clarifies that the operative RPS provisions are intended to be in the local government comprehensive plans and land use regulations, *not* in the RPS agreement

Comment [w44]: This is a new requirement for regional coordination on infrastructure and transportation planning if RPS is being used to manage an urban growth boundary (this is intended to include urban reserve designations).

279 *the whole, with the purposes of the statewide planning goals.]*

Comment [w45]: Moved up to paragraph (a).

280 [(3) *A local government that amends an acknowledged comprehensive plan*
281 *or land use regulation or adopts a new land use regulation in order to imple-*
282 *ment an agreement reached in a regional problem-solving process shall submit the*
283 *amendment or new regulation to the commission* m *the manner set forth*
284 *in ORS* 197.628 *to 197.650 for periodic review or set forth in ORS* 197.251 *for*
285 *acknowledgment.]*
286 [(4) *The commission shall have exclusive jurisdiction for review of amend-*
287 *ments or new regulations described in subsection* (3) *of this section. A partic-*
288 *ipant or stakeholder in the collaborative regional problem-solving process shall*
289 *not raise an issue before the commission on review that was not raised at the*
290 *local level.]*

Comment [w46]: Provisions moved to a new subsection (3), and clarified.

291 **(3) The commission:**
292 **(a) May adopt rules to establish additional procedural and substan-**
293 **tive requirements for review and approval of an agreement and com-**
294 **prehensive plan provisions and land use regulations adopted under**
295 **ORS 197.652 to 197.658.**
296 **(b) Has exclusive jurisdiction for review of amendments to com-**
297 **prehensive plans or land use regulations, or new comprehensive plan**
298 **provisions or land use regulations, adopted by a local government un-**
299 **der ORS 197.652 to 197.658. A party to the agreement and a person who**
300 **participated in the proceedings leading to the adoption of the com-**
301 **prehensive plan provisions or land use regulations may not raise an**
302 **issue on review before the commission that was not raised in the local proceedings**
303 **for adoption of the plan or regulation.**
304 [(5)] **(4)** If the commission denies *[an amendment or new regulation]*
305 **amendments to comprehensive plans or land use regulations, or new**
306 **comprehensive plan provisions or land use regulations,** submitted pur-
307 suant to subsection [(3)] **(1)** of this section, the commission shall issue a
308 written statement describing the reasons for the denial and suggesting al-
309 ternative methods for accomplishing the goals on a timely basis.

310 [(6)] **(5)** If, in order to resolve regional land use problems, *[the*
311 *participants]* **a local government** in a collaborative regional problem-solving
312 process *[decide]* **decides** to devote agricultural land or forestland, as defined
313 in the statewide planning goals, to uses not authorized by those goals, the *[participants]*
314 **local government** shall choose land that is not part of the
315 region's commercial agricultural or forestland base, or take an exception to
316 those goals pursuant to ORS 197.732. To identify land that is not part of the
317 region's commercial agricultural or forestland base, the *[participants]* **local**
318 **government** shall consider the recommendation of a committee of persons
319 appointed by the affected county, with expertise in appropriate fields, in-
320 cluding but not limited to farmers, ranchers, foresters and soils scientists
321 and representatives of the State Department of Agriculture, the State De-
322 partment of Forestry and the Department of Land Conservation and Devel-
323 opment.

Comment [w47]: The changes to this subsection only to conform it to the usage in the preceding sections; they are not intended to be substantive.

324 [(7)] **(6)** The Governor *[shall]* **may** require all appropriate state agencies
325 to participate in the collaborative regional problem-solving process.
326 **SECTION 12.** ORS 197.747 is amended to read:
327 197.747. For the purposes of acknowledgment under ORS 197.251, board
328 review under ORS 197.805 to 197.855, **Land Conservation and Development**
329 **Commission review of a proposed regional problem solving agreement**
330 **under ORS 197.652 to 197.658** and periodic review under ORS 197.628 to
331 197.650, "compliance with the goals" means the comprehensive plan and
332 regulations, on the whole, conform with the purposes of the goals and any
333 failure to meet individual goal requirements is technical or minor in nature.

Comment [w48]: This changes is simply intended to parallel the standard for goal compliance in the preceding section.

334 **SECTION 13. Section 14 of this 2009 Act is added to and made a part**
335 **of ORS 197.652 to 197.658.**
336 **SECTION 14. (1) A local government that is a party to a regional**
337 **problem-solving agreement under ORS 197.652 to 197.658 that involves**
338 **nonconforming lots or parcels, as defined in ORS 92.010, on rural lands**
339 **may authorize the transfer of residential development rights from the**
340 **nonconforming lots or parcels and may authorize corresponding addi-**

341 **tional development rights on receiving lots or parcels that are within**
342 **or adjacent to an urban growth boundary without regard to whether**
343 **the receiving lots or parcels are under the jurisdiction of the same**
344 **local government as the nonconforming lots or parcels.**

Comment [w49]: Transfer of development rights authorization for non-conforming lots/parcels

345 **(2) The Land Conservation and Development Commission shall**
346 **amend the statewide land use planning goals or rules implementing**
347 **the goals if necessary to implement this section.**
348 **SECTION 15. In addition to other criteria provided by federal, state or local**
349 **law, rule or policy, in areas of the state that are growing rapidly, cities, counties and**
350 **state agencies, as defined in ORS 171.133, including but not limited to the**
351 **Department of Transportation, shall:**
352 **(1) Demonstrate that major public infrastructure investments, including**
353 **major transportation investments, reinforce compact urban development; and**
354 **(2) Give priority to funding investments that promote infill or redevelopment**
355 **of existing urban areas to encourage the density necessary to support alternative**
356 **modes of transportation.**

Comment [w50]: These changes are recommended by ODOT, OECDD and DLCD staff who have met and conferred about this section. The changes are intended to clarify and acknowledge that these provisions are in addition to other criteria for investment decisions. Note that staff have agreed to recommend that parallel provisions also be added to the 2009 Jobs and Transportation Act (JTA) (section 14 STIP criteria).

357 **SECTION 16. Section 17 of this 2009 Act is added to and made a part**
358 **of ORS 222.111 to 222.180.**
359 **SECTION 17. (1) If a city adds land to its urban growth boundary, the city**
360 **shall annex the land to the city prior to the time that the comprehensive plan and**
361 **zoning designations for the land are amended to allow urban uses. Notwithstanding**
362 **ORS 195.215, for purposes of this paragraph, if the governing body of the city finds**
363 **that a majority of all of the votes cast in the territory and the city favor the**
364 **annexation plan, then the governing body, by resolution or ordinance, shall declare**
365 **the adoption of the annexation plan.**

Comment [w51]: Amendment added at request of task force to clarify when annexation must occur.

Comment [w52]: This added language is intended to ease the requirements for annexation, but only for land newly-added to an urban growth boundary. Current law requires a double majority to approve annexation (of landowners in the territory to be annexed, and of voters in the city proposing annexation). This change would require a majority of voters in the combined area of the city and the territory to be annexed.

366 **(2) If Metro adds land to the regional urban growth boundary it must**
367 **determine whether it is feasible for a city to provide urban services to the land. If**
368 **Metro determines that it is feasible, the city or cities shall annex the land prior to**
369 **the time that the comprehensive plan and zoning designations for the land are**
370 **amended to allow urban uses. Notwithstanding ORS 195.215, for purposes of this**
371 **paragraph, if the governing body of the city finds that a majority of all of the votes**

Comment [w53]: Separate provision added for Metro - recognizing that there are large unincorporated areas already within the UGB and that as a result it may not be feasible to annex lands added at the edge of the urban growth boundary where those lands are separated from cities by large amounts of unincorporated land.

372 **cast in the territory and the city favor the annexation plan, then the governing body,**
373 **by resolution or ordinance, shall declare the adoption of the annexation plan.**
374 **(3) Nothing in this section exempts a city, a county, or Metro from complying**
375 **with otherwise applicable statutes, goals or rules in determining what land to add to**
376 **an urban growth boundary.**

Comment [w54]: This subsection is added in response to concerns raised that the annexation provisions would allow local governments to justify skipping over areas that may be difficult to annex in determining where to amend their urban growth boundary.

377 **SECTION 18. The Land Conservation and Development Commission**
378 **shall appoint a work group to conduct a policy-neutral review and**
379 **audit of ORS chapters 195, 196, 197, 215 and 227, the statewide land use**
380 **planning goals and the rules of the commission implementing the**
381 **goals. The commission shall make recommendations, based on the re-**
382 **view and audit, of major policies and key procedures that are most**
383 **appropriate for enactment by law and other policies and procedures**
384 **that are most appropriate for adoption by statewide land use planning**
385 **goals to allow for greater variation between· regions of the state over**
386 **time and to reduce complexity.**
387 **SECTION 19. (1) The Land Conservation and Development Com-**
388 **mission and other boards, commissions and departments, including**
389 **but not limited to the Oregon Transportation Commission, the State**
390 **Board of Agriculture, the State Board of Forestry, the Housing and**
391 **Community Services Department, the Water Resources Commission**
392 **and the Oregon Economic and Community Development Commission shall prepare**
393 **an integrated state strategic plan that is integrated with**
394 **the strategic plan prepared pursuant to ORS 284.615 and that includes,**
395 **but is not limited to:**
396 **(a) Identification of emerging economic, environmental, social and**
397 **population trends likely to affect the state;**
398 **(b) A description of desirable future land use, transportation and**
399 **economic development outcomes that are consistent with the princi-**
400 **ples in ORS 197.010 (2)(a) and that can be achieved through coordinated**
401 **action and investment; and**
402 **(c) Identification of strategic opportunities and needs for invest-**

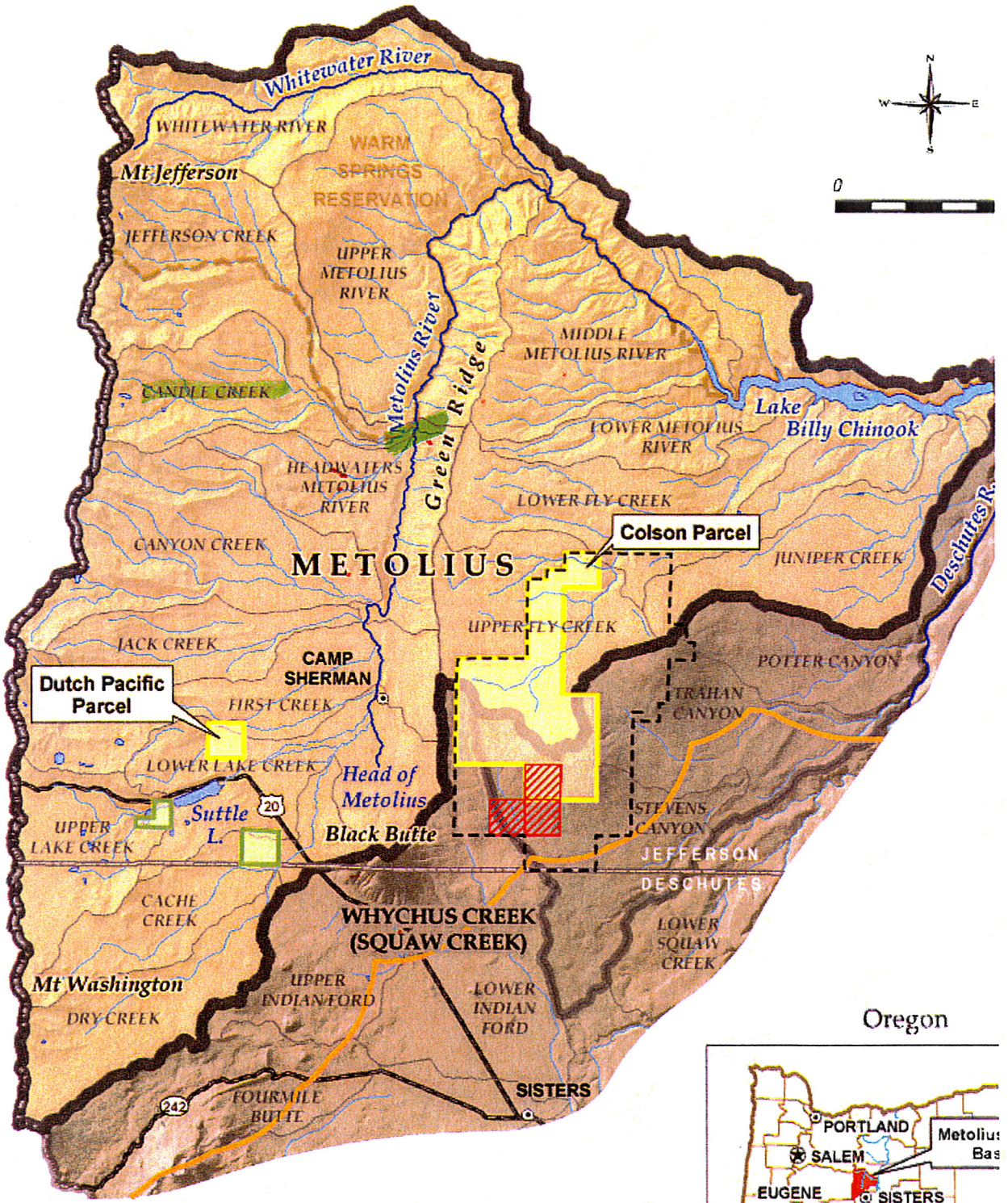
403 **ment that would increase the likelihood of achieving the outcomes**
404 **described in paragraph (b) of this subsection.**
405 **(2) The strategic plan required by this section must be prepared in**
406 **consultation with local governments and representatives of business**
407 **and citizen interests and updated prior to each regular session of the**
408 **Legislative Assembly.**
409 **(3) The boards, commissions and departments listed in subsection**
410 **(1) of this section shall meet annually to review progress toward**
411 **achieving the strategic plan and to coordinate actions for the following**
412 **year.**
413 **SECTION 20. (1) The Oregon Progress Board, in cooperation with**
414 **the Department of Land Conservation and Development, shall review**
415 **and revise the goals for Oregon's progress and benchmarks that relate**
416 **to the land use system during or before the next review required by**
417 **ORS 284.628.**
418 **(2) The benchmarks must include an integrated data gathering,**
419 **tracking and reporting system that provides for at least one perform-**
420 **ance measure for each statewide land use planning goal and for an**
421 **ongoing comparative analysis of how the land use system is perform-**
422 **ing relative to the land use systems of other states and the costs and**
423 **benefits of the system for citizens in different regions.**
424 **(3) The Oregon Progress Board and the Department of Land Con-**
425 **servation and Development shall design the data gathering, tracking**
426 **and reporting system to provide reasonably accurate information**
427 **concerning the performance of the land use system while minimizing**
428 **costs to local governments and state agencies, as defined in ORS**
429 **171.133. The board and the department shall convene a work group to**
430 **advise the board and the department concerning the design of the**
431 **system, data availability, collection and reporting that includes, but**
432 **is not limited to, representatives of:**
433 **(a) Local government;**

Comment [w55]: This section is based on the recommendations of the OSU/PSU consortium that completed a review of Oregon's existing land use program and its efficacy in meeting some of the main state land use goals.

434 **(b) The Building Codes Division of the Department of Consumer and**
435 **Business Services;**
436 **(c) The Department of State Lands;**
437 **(d) The State Department of Agriculture;**
438 **(e) The State Forestry Department;**
439 **(f) The Department of Transportation; and**
440 **(g) The Oregon University System.**
441 **(4) The State Forestry Department, the State Department of Agri-**
442 **culture and the Department of Transportation shall cooperate in the**
443 **development and implementation of the reporting system.**
444 **SECTION 21. There is appropriated to the Department of Land**
445 **Conservation and Development, for the biennium beginning July 1,**
446 **2009, out of the General Fund, the amount of $_____ for the purpose**
447 **of carrying out the provisions of sections 6 to 8, 14, 15, 18, 19 and 20**
448 **of this 2009 Act and the amendments to ORS 197.010, 197.040, 197.230,**
449 **197.628, 197.652, 197.654, 197.656 and 197.747 by sections 1, 2, 3, 4, 9, 10,**
450 **11 and 12 of this 2009 Act.**
451 **SECTION 22. This 2009 Act being necessary for the immediate**
452 **preservation of the public peace, health and safety, an emergency is**
453 **declared to exist, and this 2009 Act takes effect on its passage.**

EXHIBIT: Item 7
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 1-15-09
PAGES: 1
SUBMITTED BY: Richard Whitman

Metolius River Basin



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SUBMITTED BY: DLCD Whitman

c.486 §3; 1977 c.664 §26; 1979 c.772 §7c; 1981 c.748 §40; 1983 c.827 §44]

197.400 [1973 c.80 §25; 1977 c.664 §27; repealed by 1981 c.748 §56]

AREAS OF CRITICAL CONCERN

197.405 Designation of areas of critical state concern; commission recommendation; committee review; approval by Legislative Assembly. (1) The Land Conservation and Development Commission may recommend to appropriate legislative committees the designation of areas of critical state concern. Each such recommendation:

(a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the area;

(c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;

(d) May establish permissible use limitations for all or part of the area;

(e) Shall locate a boundary describing the area; and

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.

(2) The commission may act under subsection (1) of this section on its own motion or upon the recommendation of a state agency or a local government. If the commission receives a recommendation from a state agency or a local government and finds the proposed area to be unsuitable for designation, it shall notify the state agency or the local government of its decision and its reasons for that decision.

(3) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsection (1) of this section to the appropriate legislative committees for review.

(4) No proposed designation under subsection (1) of this section shall take effect unless it has first been submitted to appropriate legislative committees under subsection (3) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28; 1981 c.748 §12; 2007 c.354 §11]

197.410 Use and activities regulated; enjoining violations. (1) No use or activity subjected to state regulations required or allowed for a designated area of critical state concern shall be undertaken except in accordance with the applicable state regulations.

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29; 1981 c.748 §13]

197.415 [1973 c.80 §27; 1977 c.664 §30; repealed by 1981 c.748 §56]

197.420 [1973 c.80 §28; 1977 c.664 §31; repealed by 1981 c.748 §56]

197.425 [1973 c.80 §29; 1977 c.664 §32; repealed by 1981 c.748 §56]

197.430 Enforcement powers. If the county governing body or the Land Conservation and Development Commission determines the existence of an alleged violation under ORS 197.410, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS chapters 195, 196 and 197, as soon as possible.

EXHIBIT: _____
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 1-15-09
PAGES: 6
SUBMITTED BY: Richard Whitman DLCD

HB 2225 – AFFORDABLE HOUSING

PURPOSE:

This proposed legislation would establish a Pilot Program to allow up to five cities to provide "sites dedicated to affordable housing" within urban growth boundaries (UGBs). The proposal would direct the Land Conservation and Development Commission (LCDC) – in coordination with the Oregon Department of Housing and Community Services – to adopt rules for the pilot project, and for selecting a limited number of local governments (up to five) to provide sites dedicated to affordable housing under the legislation and LCDC rules. The legislation would authorize pilot cities to designate sites dedicated to affordable housing through an expedited process for UGB expansion, or through other methods as may be specified in agency rules. LCDC and OHCS would evaluate the results of this pilot program and report to the 2011 legislature regarding the results.

BRIEF DESCRIPTION:

The proposal is intended to test one of several ideas being developed by a work group investigating ways to lower housing costs, including bariers to affordable housing, and to encourage the provision of more "affordable housing" statewide. LCDC is interested in pursuing new strategies to reduce the cost of housing in Oregon. The concept also responds to recent (2007) legislation requiring LCDC to explore ways to encourage local governments to plan and zone "land dedicated to affordable housing, including manufactured dwelling parks or mobile home parks."

LCDC and OHCS would define "affordable housing" and "sites dedicated to" affordable housing – these definitions would probably vary by region and would need to be adjusted over time. The legislation would authorize expedited UGB amendments as one method to provide sites dedicated to affordable housing – but only for up to five "pilot cities" selected by LCDC. Sites dedicated to affordable housing will likely be developed in conjunction with "market rate housing." However, sites designated under this legislation must be planned and zoned primarily for "affordable housing," and cannot be rezoned for other uses. The concept anticipates that local governments and land owners will work together to ensure sites are located and priced to support development of "affordable housing"

LCDC would be required to:

- Adopt rules to establish and implement the Affordable Housing Pilot Program, working with the Oregon Housing and Community Services Department and local governments.
- Define "affordable housing" for purposes of this program.
- Establish a process to select five pilot projects from nominations made by local governments
- Ensure that nominated pilot projects include concept plans and any proposed amendments to comprehensive plans and land use regulations needed to carry out the pilot project
- Ensure pilot projects are likely to provide sites for affordable housing that would not or could not otherwise be provided, that would serve identified populations who require such housing, be near transportation and other public facilities and services, and avoid or minimize adverse effects on natural resources, farm land, or forest land uses.
- Deliver a report to the Seventy-seventh Legislative Assembly evaluating the affordable housing pilot program, including recommendations for legislation based on the evaluation.

HB 2226 – METOLIUS BASIN DESTINATION RESORTS

PURPOSE:
This proposed legislation would prohibit the development of destination resorts in the Metolius River Basin. This concept would also disallow any application for approval of a destination resort in the basin, including an application filed with a county prior to September 1, 2006. In the future, if a county maps lands as eligible for a destination resorts within 10 miles of the Metolius River Basin (i.e., outside the basin), the county's plan must require the applicant to obtain an interest or a transferable development credit (pursuant to ORS 94.531) in lands within the basin that were previously eligible for a destination resort. This aspect of the proposal is intended to provide some economic return to the owners of lands that may be mapped for a destination resort (but that would now be prohibited from proceeding).

BACKGROUND
The Metolius River Basin is a subbasin of the Deschutes River basin, primarily in Jefferson County with a small portion extending into Deschutes County. The basin contains many natural resource values – habitat for fish, birds and mammals, a hydrogeolically unique source of springs and wetlands, and scenic area values. Portions of the basin have already received recognition for natural resource values through previous federal or state designations, including: In 1988 the Metolius River was added to the National Wild and Scenic Rivers system in the Omnibus Oregon Wild and Scenic Rivers Act, and designated as a state scenic waterway.. In 1990, 86,000 acres of the Metolius River Basin were designated as the Metolius Conservation Area. The state has listed threatened and sensitive species in the basin including birds, fish, amphibians and mammals. Federally-listed species include the northern spotted owl and the bull trout. The basin also includes important deer winter range habitat, as mapped by the Oregon Department of Fish and Wildlife and by the county under Statewide Planning Goal 5.

This proposed legislation is intended to preserve the current character of the Metolius Basin. Jefferson County has adopted a map of "lands eligible for destination resorts" that includes land in the Metolius Basin. That map was adopted in December of 2006, and is still under appeal. That map identifies at least two sites totalling 3,627 acres that could allow destination resorts. This legislative concept rescinds a portion of the county's destination resort development mapping (the county also mapped some lands that are outside of the basin).

HB 2227 – STATE REVIEW OF DESTINATION RESORTS POLICY

PURPOSE:

This proposed legislation would authorize the Land Conservation and Development Commission (LCDC) to review and and update requirements for county approval of destination resorts. An update of these requirements is appropriate after 25 years of state land use planning law allowing resort development on farm and forest lands. Some areas have a number of resorts, while others have none. Currently, most requirements for resorts are in state statute and, as a result, there is no ability to adapt the program over time or to different areas of the state (without legislative action). The Department of Land Conservation and Development (DLCD) believes that the current economic downturn provides an appropriate opportunity to study and document what the benefits and costs of this program have beeen, and to adjust the program to reflect our experience in different areas of the state.

BACKGROUND AND DESCRIPTION OF THE PROPOSED LEGISLATION:

This legislation would amend resort statutes to remove some detailed *statutory* requirements, but would retain identical requirements in LCDC's Statewide Planning Goal 8. Under this approach, LCDC would be charged with studying resorts, and then proposing (based on that analysis) amendments to Goal 8 requirements for resort approval, including regional variations as appropriate. Although the legislation would remove some requirements for resorts, key provisions limiting where resorts may be sited would be retained in statute. Because LCDC's Goal 8 includes parallel provisions identical to state statutes, enactment of this bill would not immediately affect resort requirements. Instead, LCDC would be directed to study issues and revise and update Goal 8 based on those studies.

Authorization for counties to approve resorts outside urban growth boundaries without consideration of farm and forest goals and other state planning goals was goven by LCDC in 1984 through Goal 8. The content of Goal 8 was later incorporated into state statutes (ORS 197.435 – 197.465). Consequently, LCDC cannot update, refine, revise or adjust resort requirements except through legislation. This bill would restore LCDC's ability to fine-tune policy over time and to meet differing conditions in different areas of the state. The bill directs LCDC to evaluate the state's resort policies and implementation, update requirements, and address certain issues through special studies and, as necessary, through amendments to Goal 8. Issues to be studied and addressed include the following:

- The adequacy of resort siting provisions to ensure that resorts function as originally intended – to attract and serve visitors and tourism – rather than as residential or second-home subdivisions or as suburban communities.
- Protection of important natural resources, including farm and forest lands and water resources, natural areas and habitats, and evaluation of such resources prior to resort approval.
- Attention to natural hazards, particularly wildfires.
- Effects of concentrations resorts in particular regions.
- Impacts of existing and planned resorts on nearby cities, including impacts on public facilities and services, workforce housing and transportation.
- The potential expansion of existing resorts and conversion of existing rural housing to resorts.
- Equity among counties regarding destination resort development and potential development.
- Requirements for developed recreational facilities, that have made it difficult to site resorts in some parts of the state, and that tend to increase water usage.

Destination Resorts were originally authorized as an economic development strategy to attract tourists and visitors for longer stays in Oregon. In October 2008 LCDC and a legislative subcommittee held a public hearing in Prineville to gather information and hear public testimony about destination resorts. The testimony generally supported the need for a full review of resort policy.

HB 2228
FOREST LAND CONVERSION PILOT PROGRAM

PURPOSE:
This proposed program would provide incentives for the retention of working forests. In some areas of the state (and in most other western states) we are seeing industrial forest lands sold to entities that are focused on shorter-term maximization of profit - usually through the sale of large acreage tracts for high-end residential use. These properties are most often removed from the working forest base, and the increased residential development on the lands leads to conflicts with adjoining lands still in active timber management, including increased fire risks and fire suppression costs. This program would allow up to six pilot projects where landowners would sell the (limited) residential development rights associated with their forest land (two of the six pilots could be on farm land) -- removing the incentive to take the lands out of timber production. These residential development rights would be purchased by private owners who want to increase the extent of development allowed on other lands. This transfer would involve only willing participants -- landowners in the "sending" areas and landowners in the "receiving" areas. The amounts of lands and rights that could be sold or transferred are limited in a number of ways to assure that this program is truly a pilot.

BRIEF DESCRIPTION OF THIS PROPOSAL
LCDC would be authorized to establish this program working with counties and the Departments of Forestry and Agriculture. Up to six pilot projects would selected, based on nominations by local governments. The pilot projects would be selected to test this approach in different regions of the state. Each nominated project would identify "sending" and "receiving" areas and include a concept plan and any proposed amendments to comprehensive plans and land use regulations to carry out the project. The concept plans would also require approval from the Department of Agriculture or the Department of Forestry, depending on the planning designations in the sending and receiving areas.

Under the proposed legislation, "sending areas" would consist of either (a) "at risk" (of conversion) farm and/or forest lands, where commercial management is currently underway but may be impaired due to existing development pressure or for other reasons determined by DLCD in consultation with the Departments of Forestry and Agriculture, or (b) fish and wildlife habitat or other natural resource areas that are "at risk" due to development pressure or for other reasons.

Receiving areas would be identified based on a list of *priorities* established by the statute and LCDC rules. First preference would be lands within an existing urban growth boundary. Second preference would be lands adjacent to an existing UGB subject to an exception from state goals. Third preference would be lands adjacent to an urban growth boundary not subject to an exception to goals. Fourth priority would be lands not adjacent to an urban growth boundary but that are subject to an exception from state goals. Fifth priority would be lands that are planned and zoned as marginal lands or as nonresource lands. Sixth priority would be rural lands not described above, but that consist of areas where resource use – or adjacent resource use – may be improved under carefully controlled conditions. For land adjacent to UGBs, rules would ensure such areas are planned for urban development, which would not occur until the areas are added to a UGB.

The statute would authorizes cities, counties and regional governments, as well as other entities, to establish systems to facilitate the sale of development rights, such as a development rights bank.

POLICY IMPLICATIONS
This tool would be a non-regulatory tool to retain working forests and farms, and the job and industry base associated with those industries. This concept could also be used as a strategy to reduce greenhouse gases associated with climate change, by providing incentives to keep forest land in forest cover - sequestering carbon. Carbon trading could be a source of funding to pay for the purchase of development rights.

HB 2229

Legislative Recommendations of the Oregon Task Force on Land Use Planning

SUMMARY OF PROPOSED LEGISLATION

This legislation is proposed by the Task Force on Land Use Planning (the "Big Look"). The Task Force legislative proposal would change state land use laws to:

- Establish four main principles for the state land use system.
- Provide refinements and additional incentives for local governments to use the existing regional land use planning process known as "Regional Problem Solving."
- Provide for counties that wish to revisit their mapping of farm and forest lands to correct prior errors to propose regional criteria for what lands are designated as farm or forest land. Once the Land Conservation & Development Commission approves regional criteria, counties in that region would have the option of remapping. If they do so, they also must identify ecologically significant lands in the remapped areas, and develop a non-regulatory program to protect them. In addition, they must place limits on any lands that are rezoned to assure that the uses allowed are sustainable.
- Direct the Land Conservation and Development Commission to carry out a policy-neutral review and audit of the land use system to reduce complexity.
- Provide an additional consideration for transportation and infrastructure investments in rapidly-growing areas to support compact urban development.
- Provide for areas added to urban growth boundaries to be annexed to cities before they are rezoned to allow urban uses.
- Provide for a state strategic plan integrating land use, transportation and economic development priorities.
- Direct the Oregon Progress Board to coordinate with Department of Land Conservation and Development, during or before next review of Oregon Benchmarks, to develop performance measures for each statewide land use goal.

BACKGROUND:

In 2005 the governor and the legislature appointed the bipartisan task force of individuals from around the state to review Oregon's land-use program. The Oregon Task Force on Land Use Planning was charged with conducting a comprehensive review of the Oregon Statewide Planning Program. The Task Force also was directed to make recommendations for any needed changes to land-use laws to the 2009 Legislature, including recommendations on:

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

The Task Force proposed this legislation after nearly three years of extensive examination, discussions with interested groups and the public, and technical research. The Task Force recommendations are designed and prioritized so that they may be implemented over time as resources are available. The legislation is intended to position the state to continue and build its comparative advantages in quality communities and quality of life. The task force does not believe that fundamental changes are needed, but instead recommends strategic adjustments as reflected by its legislative proposal.

HB 2230 – UPDATE OF THE STATE AGENCY COORDINATION PROGRAM

PURPOSE

This proposal would amend State Agency Coordination statutes and direct DLCD to update and streamline administrative rules to improve coordination regarding state agency and local permit decisions. The concept would ensure that a local government's issuance of a "Land Use Compatibility Statement" or "LUCS" (documenting that a proposed state permit is consistent with local land use plans) is *not* a "land use decision" where it is based on a prior local permit approval for the same use. As long as the use authorized by a state agency permit is consistent with what was already allowed by a local permit, the state agency permit would not be a land use decision subject to an appeal to the Land Use Board of Appeals.

BACKGROUND:

By statute, state agency permits must comply with the Statewide Land Use Planning Goals and must be compatible with local comprehensive plans and land use regulations (ORS 197.180). By LCDC rules (OAR 660, divisions 30 and 31), state agencies rely on local government compatibility determinations – or LUCS – to satisfy this statutory coordination requirement. However, the Land Use Board of Appeals (LUBA) has ruled that a local government LUCS may be appealed as "land use decision" in some circumstances. Conversely, a state agency decision to allow a use already allowed by a local government can be subject to appeal as a land use decision. This creates the possibility of multiple appeals of what is effectively one local decision. This concept is intended to foreclose this dual appeal opportunity, and to make other changes as necessary to streamline permitting where local and state permitting authorities overlap.

LCDC and the department last worked with state agencies to put land use coordination programs in place several decades ago. The purpose of these programs is to ensure state agency programs and rules affecting land use are coordinated and consistent with state land use policies, rules and statutes and with acknowledged local land use plans. Many of the resulting agreements and other measures to ensure state agency coordination have not been updated since that time. This concept also provide for the updating of this coordination program.

POLICY IMPLICATIONS:

Improving current mechanisms to ensure consistency of state agency actions with state and local land use policies will improve the effectiveness of the land use program and avoid unexpected conflicts between state and local regulatory decisions. Increased attention to state agency coordination is one way to streamline state and local land use approval and permit processes.