



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

[www.lcd.state.or.us](http://www.lcd.state.or.us)



October 2, 2008

TO: Land Conservation and Development Commission

FROM: John Renz, Southern Oregon Regional Representative;  
Darren Nichols, Community Services

SUBJECT: **Agenda Item 11b, October 15-17, 2008, LCDC Meeting**

## **GREATER BEAR CREEK VALLEY REGIONAL PROBLEM SOLVING AGREEMENT**

### **I. AGENDA ITEM SUMMARY**

**A. Type of Action and Commission Role** –The regional planning project participants ask that the Commission act in its role as a participant in this Project and determine: (1) whether the agreement meets the requirements of ORS 197.656; and (2) whether to direct Chair VanLandingham to sign the agreement on behalf of the Commission.

**B. Staff Contact Information** – John Renz, Southern Oregon Regional Representative is the local DLCD contact for this project. John serves on the project's Technical Advisory Committee, the Resource Lands Review Committee, and is a non-voting member of the project's Policy Committee. John can be reached at (541) 858-3189; [John.Renz@state.or.us](mailto:John.Renz@state.or.us); or at PO Box 3275, Central Point, OR 97502.

### **II. SUMMARY OF RECOMMENDED ACTION**

Staff is recommending a few limited changes to the agreement as shown in the Attachment for Agenda Item 11a. Staff also recommends the Commission advise the project participants of any changes to the agreement that may be necessary for the Commission to enter into the agreement and indicate whether it expects to sign the agreement following preparation of adequate findings and completion of proper procedures.

### **III. BACKGROUND AND COMPLIANCE WITH ORS 197.656**

The jurisdictions in the Bear Creek Valley have been working for the past eight years to develop a regional plan which directs future urbanization in the valley through the establishment of urban

reserves. The project is using ORS 197.652- 197.658 – Collaborative Regional Problem Solving (RPS) to accomplish the regional plan.

ORS 197.656(2)(a-c) authorizes the Commission to acknowledge comprehensive plan amendments which do not fully comply with the Commission's rules, requires the Commission to be a participant in an agreement with other participants, details the minimum requirements for the agreement and allows the Commission to acknowledge comprehensive plan amendments and regulations that conform with the purposes of the statewide planning goals. In this report staff assesses whether the proposed agreement complies with salutatory requirements.

ORS 197.656(2)(a-c) states:

(2) Following the procedures set forth in this subsection, the commission may acknowledge amendments to comprehensive plans and land use regulations, or new land use regulations, that do not fully comply with the rules of the commission that implement the statewide planning goals, without taking an exception, upon a determination that:

(a) The amendments or new provisions are based upon agreements reached by all local participants, the commission and other participating state agencies, in the collaborative regional problem-solving process;

(b) The regional problem-solving process has included agreement among the participants on:

(A) Regional goals for resolution of each regional problem that is the subject of the process;

(B) Optional techniques to achieve the goals for each regional problem that is the subject of the process;

(C) Measurable indicators of performance toward achievement of the goals for each regional problem that is the subject of the process;

(D) A system of incentives and disincentives to encourage successful implementation of the techniques chosen by the participants to achieve the goals;

(E) A system for monitoring progress toward achievement of the goals; and

(F) A process for correction of the techniques if monitoring indicates that the techniques are not achieving the goals; and

(c) The agreement reached by regional problem-solving process participants and the implementing plan amendments and land use regulations conform, on the whole, with the purposes of the statewide planning goals.

Based on the above statute the agreement must include:

(A) Regional goals for resolution of each regional problem that is the subject of the process;

Section III of the attached agreement contains a statement of the problems to be solved and Section IV states the goals which address these problems.

(B) Optional techniques to achieve the goals for each regional problem that is the subject of the process;

Section V of the agreement contains the optional techniques to achieve the goals for each problem.

(C) Measurable indicators of performance toward achievement of the goals for each regional problem that is the subject of the process;

Section VI of the agreement lists ten measurable performance indicators. Of these ten performance indicators indicator, seven may require further work. This key performance indicator requires cities to achieve at least the higher land need average gross residential densities shown on page 3-5 of the regional plan. The cities in the region have committed to increasing their average gross residential densities. However, based on recent work done by Medford for its housing needs analysis, these target densities may not accurately reflect the cities' projected future density based on a housing needs analyses completed under ORS 197.296, Goals 10 & 14 and the implementing rules. Further studies may result in amendments to the plan to change to these target densities.

(D) A system of incentives and disincentives to encourage successful implementation of the techniques chosen by the participants to achieve the goals;

Section VII of the agreement lists incentives and disincentives for compliance with the regional plan. Much of the debate on the agreement has centered on the disincentives. Disincentive language has in some cases been changed from mandatory to discretionary. The region would like to hear form the Commission regarding its opinion on the strength of the disincentives.

(E) A system for monitoring progress toward achievement of the goals; and

(F) A process for correction of the techniques if monitoring indicates that the techniques are not achieving the goals; and

Section VIII of the agreement provides for a system to monitor progress in achieving the region's goals and an amendment process.

(c) The agreement reached by regional problem-solving process participants and the implementing plan amendments and land use regulations conform, on the whole, with the purposes of the statewide planning goals.

Findings need to be prepared to address conformity with the statewide planning goals.

Each jurisdiction has elected to adopt the agreement using their land use decision-making process for a legislative decision. In most cases this will mean at least one hearing before a jurisdiction's planning commission, and at least one hearing before its governing body. In this way adoption of the agreement will be noticed and citizens will have the opportunity to comment. Findings will need to be prepared to support the adoption of the agreement by each jurisdiction. The expectation is that a single set of coordinated findings will be prepared for all the jurisdictions and presented to LCDC.

Still at issue is what is required to find conformity with the "purposes of the statewide planning goals?" The department believes this is an acknowledgment standard, whereas some local participants believe the purpose is only the first sentence of each goal statement. A resolution of this question is critical to direct preparation of findings for the plan and agreement.

#### **IV. OTHER ISSUES WITH THE AGREEMENT**

On page 2 Section II – General Agreement - the agreement states: “The Land Conservation and Development Commission agrees to acknowledge signatory jurisdictions’ lawful comprehensive plan amendments that comply with the adopted plan.” This language was the last change made to the agreement prior to this report. It was added to substitute for the following statement:

“Should a jurisdiction, following the processes described in this Agreement, lawfully amend its comprehensive plan to adhere to the adopted Regional Plan, and LCDC does not acknowledge the amendments under ORS 197.656(3), a jurisdiction may voluntarily terminate its participation in this Agreement without being considered to have failed to adhere to the adopted Plan, and shall not be subject to the Disincentives in Section VII and applicable legal and legislative repercussions.”

Some members of the RPS Policy Committee felt the above statement carried forward a sense of distrust which the region has struggled to overcome and that there was already ample opportunity for jurisdictions to withdraw from the plan without making it automatic with an LCDC decision. The present language was offered as a substitute.

The last paragraphs of Sections XI – Amendments to the Agreement, XII – Termination of Participation, and XIII – Termination of Agreement except LCDC from participation in the specific action the Sections enable. The region needs to know if this is acceptable to the Commission.

#### **V. STATUS OF AGREEMENT AT THIS TIME**

As of the date of drafting this report, the cities of Ashland, Talent, Phoenix, Eagle Point and Central Point support the agreement as written. Staff believes the City of Medford also supports the agreement because language the city has requested or its equivalent has been incorporated into the agreement. The City of Jacksonville also just decided to support the agreement and the regional plan.

#### **VI. CONCLUSION AND RECOMMENDATION**

Staff recommends that the Commission make a preliminary finding that the Agreement, as revised in the Attachment to Item 11a, complies with ORS 197.656, subject to the preparation of adequate findings and completion of appropriate public process.

Formatted: Bullets and Numbering

If there are additional changes to the Agreement that the Commission desires, the department requests that those changes be identified now.