Oregon Department of Forestry

Land Use Planning Handbook 2003

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I. STRUCTURE OF OREGON'S STATEWIDE LAND USE PLANNING PROGRAM

The State of Oregon has an extensive program for land-use planning. It is not the first or only statewide planning effort to be undertaken in this country, but it is one of the most comprehensive. The following sections provide background and an introduction to the program.

A. PURPOSE OF THE STATEWIDE LAND USE PLANNING PROGRAM

The program has many aims and objectives; the most important of which are expressed in 19 statewide planning goals. Generally, the program is intended to:

- conserve farm land, forest land, coastal resources, and other important natural resources;
- encourage efficient development;
- coordinate the planning activities of local governments and state and federal agencies;
- enhance the state's economy; and
- reduce the public costs that result from poorly planned development.

B. LEGISLATIVE HISTORY

The present system for statewide planning originated with Senate Bill 100 in the 1973 Legislature. Enacted as *The Oregon Land Use Act*, SB 100 became effective on October 5, 1973.

The basic system from SB 100 remains intact, but numerous adjustments and refinements have been made through subsequent legislation. The most notable recent measures were Senate Bill 237 and House Bill 2295, both from the 1983 Legislature. SB 237, *The Marginal Lands Act*, created optional provisions for counties to allow residential development on certain less productive farm and forest lands. HB 2295, *The Governor's Land Use Reform Act*, introduced changes to streamline the planning process and enhance economic development. HB 3661 (1993) developed "lot of record" provisions that provide an equitable solution for people that purchased land with expectations for a dwelling, before the land use plans were implemented, and developed objective standards for land divisions and rural dwellings.

Statewide planning has been referred to and affirmed by Oregon's voters three times: in 1977 (the vote was 57 percent for, 43 percent against); 1978 (61 percent for, 39 percent

against); and 1982 (55 percent for, 45 percent against). An initiative measure against the program in 1984 failed to get enough signatures to be placed on the ballot.

C. THE STATE'S ROLE

Prior to the 1970's, the state's role in land-use planning was small. The state had enabling legislation that allowed cities and counties to plan and zone land; local governments did the actual planning and zoning largely at their discretion. Some jurisdictions had very effective plans and land-use ordinances; some had none at all.

With Senate Bill 100, the state *required* all of Oregon's 242 cities and 36 counties to adopt comprehensive plans and land-use regulations. It specified planning concerns that had to be addressed, set statewide standards which local plans and ordinances had to meet, and established a review process to ensure that those standards were met.

The state asserted greater responsibility in an area that traditionally had been a local concern, but the state also gave over some of its traditional powers to local governments: it promised that state agencies would work with local governments to develop coordinated comprehensive plans and that certain state-agency programs would conform to local plans after their approval by LCDC.

Because SB 100's program was new and complicated and because it altered the traditional state-local relationship in planning, many people misunderstood it. They concluded that the state had taken over land-use planning. The facts of the matter are these:

- The State of Oregon does not write or adopt comprehensive plans; cities and counties do.
- There is no "state land-use plan"; rather, there is a mosaic of 278 local plans that covers the entire state.
- The state does not zone land; again, local governments do that.
- The state does not administer common planning permits; cities and counties issue the permits for variances, conditional uses, subdivisions, land partitions, etc.

D. STATE AGENCIES ASSOCIATED WITH PLANNING

Although many state agencies are involved in the planning process, three organizations are central to it: LCDC, DLCD, and LUBA.

LCDC is the *Land Conservation and Development Commission*. This seven-person commission was created by Senate Bill 100. It began operating in January 1974. Its

members are appointed by the governor and confirmed by the state senate. They receive no salary. LCDC typically holds two-day public meetings in Salem once a month. It is the policy-making body that sets the standards for Oregon's statewide planning program.

DLCD is the *Department of Land Conservation and Development*. It is the state agency that administers Oregon's statewide planning program and that provides professional support to the lay commission that oversees the program. (This combination of a lay commission supported by an administrative agency is common in Oregon; almost all of the state's main programs use it.)

DLCD is among the smallest of Oregon's state agencies: it has a central staff of 30-40 in Salem, and field representatives in five other cities. The address and phone number of the Salem office are:

Department of Land Conservation and Development
635 Capitol Street NE, Suite 200
Salem, OR 97310
Phone: (503) 373-0050

LUBA is the *Land Use Board of Appeals.* It is essentially a state court that rules on matters involving land use. An appeal of a county's zone change, for example, would go to LUBA, then to the state Court of Appeals, and finally to the state's Supreme Court. LUBA was established in 1979. It originally made recommendations to LCDC, which then made the actual rulings. Since 1981, however, LUBA has been an independent tribunal. LUBA is a three-member panel. Its office is in Salem at this address:

Land Use Board of Appeals
100 High Street, Suite 220
Salem, OR 97310
Phone: (503) 373-1265

E. THE STATEWIDE PLANNING GOALS

Oregon's standards for land-use planning are set forth in 19 statements formally called the Statewide Planning Goals, but often referred to simply as "the goals." Although the word "goal" sometimes connotes vague statements of what may be done someday, that connotation does not apply here: Oregon's Statewide Planning Goals are quite detailed, they are mandatory, and they have the force of law.

The first fourteen goals were adopted by the Land Conservation and Development Commission on December 27, 1974. Goal 15, for the Willamette River Greenway, was adopted by LCDC on December 6, 1975. The final four goals, for coastal resources, were adopted on December 18, 1976. A complete set of the statewide goals can be obtained from the Department of Land Conservation and Development in Salem. A brief outline of the goals is below.

Summary Of Oregon's 19 Statewide Planning Goals

GOAL 1: Citizen Involvement -- The main aim of this goal is for cities and counties to develop programs that will "insure the opportunity for citizens to be involved in all phases of the planning process." Such programs must be approved by LCDC and by the state's Citizen Involvement Advisory Committee (CIAC). The goal specifies six "components" for such programs and requires each local government to establish a committee to monitor and encourage citizen involvement.

GOAL 2: Land-Use Planning -- The goal outlines the basic procedures of Oregon's statewide planning program. It establishes that comprehensive plans shall be the basis for making land-use decisions and that suitable "implementation ordinances" (e.g., zoning and land-division ordinances) to put the plans' policies into effect must be adopted. It requires that comprehensive plans be based on a collection of "factual information" (variously known as the factual base, inventory, background document, or supporting document); that plans and their implementing ordinances be coordinated with those of other jurisdictions and agencies; that plans be reviewed and, if necessary, amended periodically.

One of the most important elements in Goal 2 is the set of standards it provides for taking exceptions to statewide goals. An exception is a "safety-valve" to be used (in accordance with several rigorous standards) when a statement goal cannot or should not be applied to a particular area or situation. Related administrative rule provisions are found in OAR 660, Division 4, *Interpretations of Goal 2 Exception Process.*

GOAL 3: Agricultural Lands -- This very precise goal defines "agricultural land" and requires all jurisdictions to inventory such lands and then "preserve and maintain" them through appropriate policies and zoning. The determination of what constitutes appropriate zoning is not left to chance: a complementary statute (ORS Chapter 215) specifies what is and is not permissible in the required exclusive farm use (EFU) zone. Related administrative rule provisions are found in OAR 660, Division 5, *Agricultural Lands*.

GOAL 4: Forest Lands -- Amended in January 1990, the forest lands goal defines the types of land to be addressed, and it requires each jurisdiction to adopt policies and ordinances that will "conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture." The forest lands goal is unlike Goal 3 in that it has no complementary statutes to clarify or embellish the general language of Goal 4. Administrative rules relating to Goal 4 are set forth in OAR 660, Division 6, Goal 4 Forest Lands, *Goal 4 Forest Lands*.

GOAL 5: Open Spaces, Scenic and Historic Areas, and Natural Resources -- As its name suggests, this goal encompasses several different types of resources -- 12 in all. Wildlife habitats, mineral resources, wetlands and waterways are among several types of

resources not reflected in the goal's title. Goal 5 is not a direct conservation goal that simply requires each jurisdiction to protect all of the specified resources. Rather, the goal establishes a process through which resources must be inventoried and evaluated. If a particular resource or site is found to have significant value, the local government must weigh three alternatives: preserving the resource, allowing more important uses that would destroy the resource, or establishing some balance between the first two approaches. On the basis of that evaluation, the local government then must choose the appropriate alternative and adopt a combination of policies and ordinance provisions that will effect that choice. Administrative rules relating to Goal 5 are found in OAR 660, Division 16.

GOAL 6: Air, Water and Land Resources Quality -- This goal requires that local comprehensive plans and their associated implementing measures be consistent with state and federal regulations on matters such as ground-water pollution.

GOAL 7: Areas Subject to Natural Disasters and Hazards -- Goal 7 deals with development in places subject to natural hazards such as floods, wildfire, or landslides. The goal does not *prohibit* development in such places; it requires that jurisdictions apply "appropriate safeguards" when planning for development there. Floodplain zoning in accordance with federal standards is an example of such a safeguard.

GOAL 8: Recreation Needs -- The main thrust of Goal 8 is that each community must evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. The community must consider not only local demands but also the needs for visitors. An important special section of Goal 8 established by amendments in 1984 sets forth standards for destination resorts.

GOAL 9: Economy of the State -- This goal generally calls for diversification and improvement of the economy. Among the goal's most important provisions are those that require inventorying and planning of areas suitable for "increased economic growth and activity." Each community must inventory its stock of buildable commercial and industrial lands, project future need for such lands, and plan and zone adequate areas to meet the projected needs.

GOAL 10: Housing -- The housing goal requires that each community plan for and accommodate a variety of housing types (single-family, multifamily, and manufactured). Each city must inventory its buildable residential lands, project future needs for such lands, and plan and zone to meet those needs. The goal is reinforced by statutory provisions (ORS 197.295-197.313) that prohibit local plans from discriminating against needed housing types.

GOAL 11: Public Facilities and Services -- This goal generally calls for efficient planning of services such as sewers, water, law enforcement, and fire protection. The basic aim of the goal is that public services and facilities should be planned in accordance with a community's projected needs and capacities. Related administrative rules are set forth in OAR 660, Division 11, *Public Facilities Planning*.

GOAL 12: Transportation: -- The state's overall goal is "to provide . . . a safe, convenient and economic transportation system." An area of special concern within Goal 12 is that communities address the needs of the "transportation disadvantaged."

GOAL 13: Energy -- Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

GOAL 14: Urbanization -- This goal requires all cities to estimate their future growth and the resulting need for land and then plan and zone accordingly. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." Cities must work with the affected counties to establish those boundaries. Goal 14 specifies seven "factors" that must be considered in drawing up a UGB. The goal also sets forth four criteria to be applied to the conversion of undeveloped land within the UGB to urban uses.

GOAL 15: Willamette Greenway -- Goal 15 sets forth the procedures for administering the greenway that protects the Willamette River, including all channels of the Willamette River, from its confluence with the Columbia River upstream to Dexter Dam and the Coast Fork of the Willamette River upstream to Cottage Grove Dam. Related standards are found in OAR 660, Division 20, *Willamette River Greenway Plan.*

GOAL 16: Estuarine Resources -- This coastal goal calls for the classification of Oregon's 22 major estuaries into four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes the types of land uses and activities that are permissible in those four types of "management units." The classification of estuaries is found in OAR 660, Division 17, *Classifying Oregon Estuaries*.

GOAL 17: Coastal Shorelands -- The shorelands goal defines a planning area that is, with a few variations, bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. The goal specifies how certain types of land and resources within the planning area are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water-related" uses.

GOAL 18: Beaches and Dunes -- This goal sets planning standards for development on various types of dunes. Residential development is prohibited, for example, on beaches and active foredunes, but other types of development may be permitted if they meet applicable criteria. The goal also deals with groundwater drawdown in dunal aquifers, dune grading, and the breaching of foredunes.

GOAL 19: Ocean Resources --The last statewide planning goal aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as the dumping of dredge spoils and

discharging of waste products into the open sea. Its primary effects are on state agencies rather than cities and counties.

F. STATUTES, ADMINISTRATIVE RULES, AND LOCAL ORDINANCES

Several chapters of state laws (formally known as Oregon Revised Statutes and abbreviated "ORS") deal with planning and land use. The four most significant chapters are these:

- ORS Chapter 92, "Subdivisions and Partitions"
- ORS Chapter 197, "Comprehensive Land Use Planning Coordination"
- ORS Chapter 215, "County Planning; Zoning; Housing Codes"
- ORS Chapter 227, "City Planning and Zoning"

Official statements to clarify the statutes or express policies relating to state laws are called *Oregon Administrative Rules* (OAR's, or just "rules"). The administrative rules most applicable to land-use planning appear in OAR Chapter 660. Within that chapter are 20 divisions, each of which deals with a special topic, such as the incorporation of cities or the classification of estuaries. Division 6 contains the specific rules for forestland.

At the local level, land use is governed by a city or county comprehensive plan and some regulations associated with it. Typically, a plan is adopted as an ordinance and its policies are mandatory; a zoning ordinance and a land-division ordinance specify how the plan's general policies are to be accomplished. For example, a county plan might contain a definition of agricultural land, an inventory of where such land occurs, and a policy to preserve that land. The zoning ordinance would establish farm use zoning for that land; the land-division ordinance would specify the procedures for dividing it.

G. STATE APPROVAL OF LOCAL PLANS (Acknowledgement)

Each city and county was required to submit its comprehensive plan and associated land-use regulations to the state. The submittal went to DLCD, which reviewed it and scheduled it for a hearing before the Land Conservation and Development Commission (LCDC). DLCD wrote a report and made recommendations. Other interested parties (state agencies, interest groups, private citizens) also had an opportunity to review the plan and report for or against its approval. The commission then denied, continued, or approved the local government's request.

The formal term for LCDC's approval of a city's or county's plan is "acknowledgment of compliance with the Statewide Planning Goals." Most people familiar with the program just use the word "Acknowledgment" to describe LCDC's approval.

The acknowledgment process took longer than was originally expected. The amount of work to develop acknowledgeable plans was underestimated. It took LCDC and DLCD

longer to establish a review process and longer to do the reviews than had been hoped. Some local governments were slow to comply because they opposed the program. And a series of ballot measures challenging statewide planning slowed the process. Still, by the end of the initial decade of the program, all local governments had adopted plans and zoning, all had submitted their plans to LCDC, all had been reviewed one or more times, and more than 90 percent had been acknowledged.

H. AFTER ACKNOWLEDGEMENT

Two mechanisms ensure that local plans do not go out of compliance with statewide goals after those plans have been acknowledged by LCDC. In the *plan amendment process*, proposals to amend an acknowledged local plan or land-use ordinance must be submitted to DLCD before they are adopted. If DLCD finds that such a proposal does not comply with the statewide goals, it so advises the local government. If that government adopts the proposal in spite of the negative recommendation, DLCD (or other interested parties with standing) may appeal the action to LUBA.

In the *periodic review process*, each local government must review its acknowledged plan and land-use ordinances. It must provide, to DLCD, findings that the plan and ordinances remain in compliance with the goals, or it must submit the amendments necessary to restore the plan and ordinances to compliance. LCDC reviews DLCD's report on the matter and hears from interested parties and agencies, much as it did for acknowledgment review. Periodic review, however, is expected to be a much briefer and less complicated process than were the original acknowledgment reviews.

I. COORDINATION

An important part of Oregon's planning program is its emphasis on coordinated planning. Each county and the cities within it are required to adopt plans that are consistent with each other as well as with the statewide goals. Counties, or in some cases regional associations of governments, have the primary responsibility for such coordination.

The programs of state agencies are also required to be consistent with statewide planning goals and with acknowledged local comprehensive plans. When state agency programs are reviewed by LCDC and found to be consistent with the goals, they are said to be *certified.*

J. GRANTS

The State of Oregon gives grants to cities and counties to help them develop land-use plans consistent with statewide goals. The bulk of the money thus far has been in the form of "planning assistance grants," which are used to pay the salaries of some local planners, to cover costs of printing and distributing plans, etc. "Post-acknowledgment grants" help cities and counties revise their plans to satisfy new goal or statutory requirements.

"Implementation grants" are given to coastal jurisdictions to help them carry out the requirements of Oregon's coastal management program, which is directed by LCDC.

K. ENFORCEMENT

LCDC has three measures it can use to ensure that local governments comply with state planning requirements: enforcement orders, court orders, and revenue withholding.

An enforcement order is a special temporary injunction issued by LCDC to limit some or most forms of development. It can be issued for an entire county or city or for some special area within. LCDC could, for example, adopt an enforcement order that would stop all land divisions and residential development on a county's farm land. LCDC has used the enforcement order relatively sparingly.

The court order is a civil remedy available to all agencies to compel compliance with the law. LCDC has used this sanction only once.

The third measure, revenue withholding, was given to LCDC in 1983. Oregon collects taxes on certain commodities, e.g., gasoline, cigarettes, and liquor. It then shares the revenues from those taxes with local governments. The Legislature directed LCDC to withhold such revenues from cities and counties who were not making satisfactory progress toward acknowledgment. The amount to be withheld would equal that which the city or county had received in state planning grants - a few hundred dollars for the smallest jurisdictions, hundreds of thousands of dollars for the largest. LCDC has adopted withholding orders against several counties. Each order sets a target date. IF a county fails to submit acceptably revised plans before the specified deadlines, the revenue withholding begins immediately.

L. THE COASTAL MANAGEMENT PROGRAM

The Land Conservation and Development Commission has administered the Oregon coastal management program (OCMP) since 1975. The federal government officially recognized and approved that program in 1977, thus authorizing the state to receive federal grants for coastal-zone management. Since then, Oregon has received more than $11 million in grants to operate the program and to aid local governments through subgrants and technical assistance. One very important feature of this local-state-federal partnership is that once the federal government has approved the coastal program and local governments have made their plans consistent with it, federal agencies must conduct their programs in accordance with the approved local plans.

Oregon's coastal program is based on the state's planning goals, particularly the four adopted by LCDC in December, 1976, and known as the coastal goals: Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; Goal 18, Beaches and Dunes; Goal 19, Ocean Resources. The program also encompasses several other state laws and state agency programs, including the Fill and Removal Act and the Beach Improvement Program.

II. THE DEPARTMENT OF FORESTRY'S OBJECTIVES FOR THE LAND USE PLANNING PROGRAM

The goals of the Board of Forestry include maintaining the size of the forest land base and maintaining the productivity of the land base by promoting a favorable investment climate for commercial forestry in Oregon. Active involvement in state and local land use planning programs is an essential part of meeting these objectives.

Major objectives of the Land Use Planning Program are:

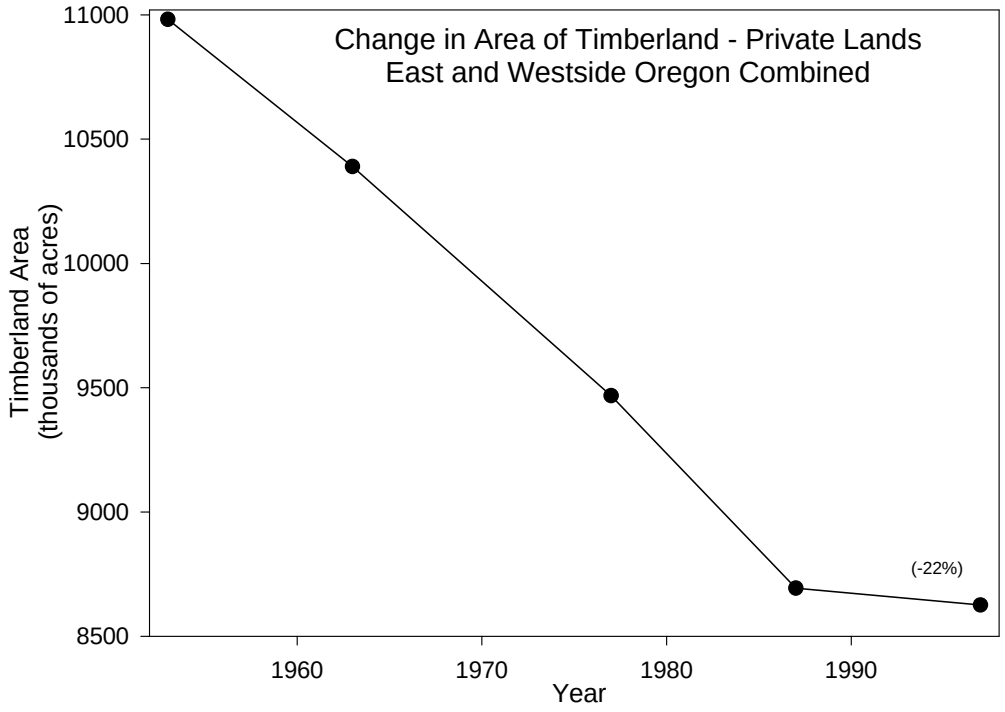
1. To maintain the state's total forest land base to provide the multitude of forest benefits – social, environmental, and economic – desired by Oregonians,
2. To maintain the productivity of the forest land base with the continuous growing and harvesting of forest tree species as the leading use subject to the protection of soil, air, water, and fish and wildlife values,
3. To promote active management of Oregon's forests by limiting conflicts to the commercial management of forestland for forest uses created by the siting of dwellings, related improvements and non-forest uses on forest land,
4. To reduce the costs and conflicts related to fire prevention and suppression caused by siting dwellings and related improvements on forest lands.
5. To encourage thoughtful planning and oversight of development activities that convert forestlands to non-forest uses.

A. MAINTAINING THE SIZE OF THE FOREST LAND BASE

Forestland provides many goods and services to Oregonians including jobs, recreation, clean water, and wildlife habitat. Development on forestland is a major concern to Oregonians. "When asked to rank the biggest problems affecting Oregon's forests if Oregon's population doubles over the next 30 years, survey respondents put losing forestland to development at the top (45%) followed by not having enough high quality drinking water (19%) and loss of fish and wildlife habitat (14%)" (Davis et. al. 2001).

The wood products industry is a very important part of Oregon's economy. During recently available reporting years (1994-96), the total value of wood products shipped from Oregon's forests has been around $13 to $14 billion (BEA). In 1996 the lumber and wood products and paper products sectors combined, accounted for 26% of the state's manufacturing employment and 5% of Oregon's gross state product. The wood products industry is especially important in rural areas of the state because it brings in a large proportion of the money that comes from outside the local community. Oregon needs a stable productive forestland base to continue producing these goods and services. As the size of the forest declines, the amount of goods and services produced by the forest also declines. Since the 1950's Oregon has experienced a significant decline in its private commercial forestland base.

Figure 1



Source: Donnegan, 2001. Assessing temporal trends in Forest Inventory and Analysis data: Applications to Criteria and Indicators. Wood Compatibility Workshop, Dec. 5-7, 2001. Base dataset: Resource Planning Act, 2000.

The United States is losing an alarming amount of its forestland to development. "According to final figures from the 1997 Natural Resource Inventory, 10 million acres of private forests were lost to development between 1982 and 1997. This amounts to an area of forestland twice the size of Massachusetts, lost forever (Best, 2002)." During the same time period, Washington lost 262,800 acres (2%) and California lost 564,600 acres (3.9%) of their forestland to development.

However, primarily because of the land use planning program, Oregon's forests have faired much better than neighboring states. In western Oregon, where most of the State's development has occurred, only 41,000 acres (0.6%) of wildland forest was converted to urban or low-density residential uses between 1982 and 2000 (Lettman, et. al. 2002).

Table 1 – Area and Changes in Dominant Land Use, Western Oregon 1973 – 2000.

	Thousands Acres				% Change Per Period			Total % Change
Dominant Land Use	**1973**	**1982**	**1994**	**2000**	**1973-82**	**1982-94**	**1994-00**	**1973-00**
Wildland Forest	7,335	7,238	7,200	7,197	-1.3%	-0.5%	0.0%	-2%
Mixed Forest/Agriculture	832	791	775	774	-5.2%	-2.1%	-0.1%	-7%
Low-Density Residential	518	704	751	753	26.4%	6.3%	0.3%	31%
Urban	317	378	407	430	16.1%	7.1%	5.3%	26%

Adapted from Lettman et. al., 2002.

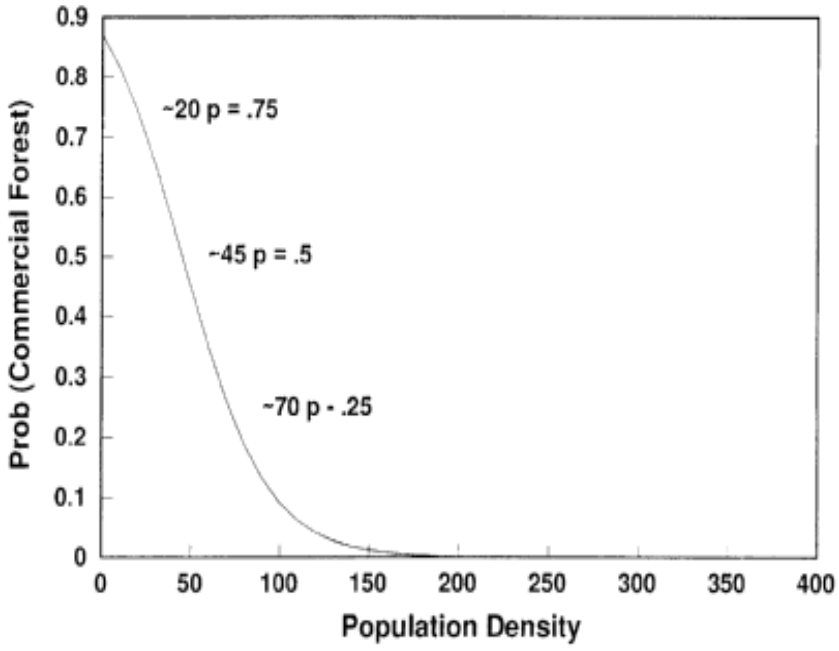
The rate of forestland conversion has also slowed substantially since the beginning of the land use planning program. In the period between 1973 (when the program started) and 1982 (when the land use plans were implemented) about 10,778 acres of wildland forest were being developed annually, but between 1994 and 2000 only 500 acres of wildland forest were being developed per year. Most of this development has occurred within Urban Growth Boundaries and other areas planned for development (e. g., rural residential areas). "Notably, urban and low-density residential development, both before and after comprehensive land use planning was instituted, occurred predominantly within lands that became zoned as developable (Lettman, et. al. 2002)."

Oregon's land use planning laws are helping to achieve Oregon's forestland goals. The conversion of commercial forestland to urban and low-density residential uses has slowed dramatically since the beginning of the land use planning program, and the vast majority of the forestland that is being converted is within urban growth boundaries and rural residential areas where conversion has been planned.

B. MAINTAINING THE COMMERCIAL PRODUCTIVITY OF THE FOREST LAND BASE

Adding parcels and dwellings can reduce the commercial productivity of the forest. Wear, et. al. (1999) established a relationship between population density and the probability of forests being managed for commercial timber production. Figure 2 shows that as population increases the probability of management decreases.

Figure 2 - Relationship of Population Density to the Probability of Commercial Forest Management (From Wear 1999)



Wear found that, "…the probability of forest management approaches zero at about 150 people per square mile (psm). At 70 psm there is a 25% chance of commercial forestry. At about 45 psm the odds are 50:50 that commercial forestry will be practiced and at 20 psm there is a 75% chance. The implication is that a transition between rural and urban use of forests occurs between 20 and 70 psm."

Lettman, et. al. (2002) used this relationship to create population density classes (Table 2) and examine the change in the amount of forestland affected by low-density population levels.

Table 2 - Density Classes Based on Estimated Population Density

Density Class	Structure Count Per Square Mile	Estimated Average Population Per Square Mile
0	0	0
1	1 – 3	5
2	4 – 12	20
3	13 – 22	45
4	23 – 37	70
5	37+	90+

Adapted from Lettman et. al., 2002.

In 1993 the Oregon Legislature passed laws restricting land divisions and new dwellings. The laws are designed to slow the spread of low-density population levels on forestland. Under these laws, new forestland divisions are generally limited to a minimum of 80 acres, and most new dwellings are limited to parcels that can meet the "Large Lot[1]" or "Template Test[2]" standards. The parcel and dwelling requirements combine to limit the spread of higher population densities on forestland. Table 3 shows that the growth in the area of the highest density classes (4 and 5) has declined from about 1,500 acres per year before the 1993 legal changes to about 333 acres per year after the laws were put into place.

Table 3 - Change in Area of Privately Owned Land Zoned Forest by Density Class, Western Oregon 1973-2000, Thousand Acres

	Density Class		
Year	**0 and 1**	**2 and 3**	**4 and 5**
1973-82	-41	19	22
1982-94	-31	13	18
1994-00	-16	14	2

Adapted from Lettman et. al., 2002.

[1] "Large Lot" dwellings – In western Oregon, Large lot dwellings are limited to parcels of at least 160 contiguous acres, or ownerships of 200 acres or more.

[2] "Template Test" dwellings – Generally in western Oregon, to qualify for a template dwelling all or part of at least 11 other lots or parcels, that existed on January 1, 1993, must be within a 160-acre square centered on the center of the subject tract, and three dwellings must exist on those lots or parcels.

However, the majority of the new forest dwellings built since 1994 have been placed in the high-density areas where most of the negative impacts from increased development have already taken place. Table 4 shows that more than half the new dwellings were cited in density class 5 and almost 70 percent went into classes 4 and 5. In essence the new laws are filling in the higher density areas, where little timber production is expected, rather that expanding the higher density areas into the more productive forestlands.

Table 4 – Location of New Forest Dwellings between 1994 –2000 located on land Zoned for Forest Use in Western Oregon (Percentage)

	Density Class					
Year	**0**	**1**	**2**	**3**	**4**	**5**
1994 - 2000	1.0%	6.5%	16.0%	8.9%	14.3%	53.2%

Adapted from Lettman et. al., 2002.

The 1993 Legislature changed the dwelling and land division laws to protect the forest from being fragmented by very low-density development. About 77 percent of Oregon's private forestlands are in density classes 1 and 2 and therefore, still relatively free from the effects of development. However, the amount of land in the transition and higher density classes has been increasing over time (Table 5). About 23 percent of the private lands in western Oregon, zoned for commercial forestry, have a population density approaching or above 20 people per square mile. This is up from 18 percent in 1974, and might indicate long-term erosion in the amount of forestland that is managed for commercial timber production. However the rate of growth in the higher population density areas has steadily declined over time as the land use program has been implemented.

Table 5 – Percentage of Forest Zones by Density Class (Private Land Only) in Western Oregon

	Density Class					
Year	**0**	**1**	**2**	**3**	**4**	**5**
1974	68.6%	13.8%	12.7%	2.7%	1.8%	0.9%
1982	66.4%	13.4%	12.7%	3.9%	2.0%	1.5%
1994	65.3%	12.6%	12.5%	5.0%	2.4%	2.2%
2000	64.8%	12.0%	12.9%	5.5%	2.4%	2.4%

Adapted from Lettman et. al., 2002.

Nationally, approximately 15 – 20 million acres of forestland will be converted to urban and developed uses over the next 50 years if historical trends continue (Alig et al. 2000). The commercial, biological, and other forest values available from these lands will be lost or severely reduced. With timber harvests from federal lands at historic lows and public demands for water and wildlife protection increasing, Oregon needs a strong land use planning program more than ever.

C. REDUCING CONFLICTS BETWEEN COMMERCIAL FOREST MANAGEMENT AND OTHER LAND USES

Zoning is one of the primary tools government uses to protect the land values in an area because it limits conflicts between incompatible uses. For example, residential zones prohibit the siting of heavy industrial uses because it is incompatible with residential uses and would lower the value of the residential property in the area. Similarly, forest zones are designed to limit incompatible urban uses to protect the commercial value of the forest. The uses authorized in Forest Zones can be found in OAR 660-006-0025.

There can also be conflicts between commercial forest uses and residential uses. However, dwellings are allowed in forest zones under limited circumstances. The conditions under which dwellings are authorized in Forest Zones can be found in ORS 215.720 to 215.750 and OAR 660-006-0027. Additionally, siting standards have been developed for dwellings in forest zones to increase the compatibility with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards can be found in OAR 660-006-0029.

Forest fragmentation is the process of dividing large blocks of forest into smaller more isolated islands within a mosaic of other land uses, typically agricultural or urban land uses (Helms, 1998). Dividing the forest into smaller parcels and adding dwellings can seriously reduce the values that the forest provides by displacing wildlife, increasing conflicts between residential and commercial uses, increasing the cost of fire protection, and reducing commercial timber production.

Forest fragmentation displaces wildlife by reducing the total area of contiguous forest, introducing non-native invasive species, and isolating the remaining forest patches. This can lead to removal of the top predators, an increase in the number of small to mid-sized predators, and in some places large increases in the number of herbivores. The results of fragmentation can be over-browsing and removal of certain plant species, increased predation and nest parasitism, a reduction in the number of ground-nesting birds and other species, plus a general reduction in certain types of wildlife habitats (Patel-Weynand, 2002).

What conflicts with commercial forest uses have residential uses and other development been documented as creating?

a. The conversion of forest land to non-commercial uses.

   i. Land directly removed from forest uses for access roads, homesite and service corridors.

   ii. Division of land into small parcels rendering parcels too small to be managed economically due to high fixed management and harvesting costs per tract and the consequent decrease in timber prices.

iii. "Shadow conversion." Occurs when land use conflicts between residential uses and forestry activities increases the difficulty and raises the cost of forest management to the point that further investments in forest management are unprofitable or the landowner perceives the riskiness of the investment is too great due to the likelihood of conflicts that will either preclude harvest or will greatly increase the costs or decrease potential revenues.

b. Indirect conversion of forest land may occur.

i. The aesthetic and recreation values generated by the "next-door" forest is captured and capitalized by residential tracts, resulting in owners of such tracts turning to the courts to defend "their rights" when the forest owner attempts to follow through on long planned forestry operations.

Example: The new Deschutes National Forest Plan and the management of the area around the Metolius and Black Butte strongly reflects the desire of the residents of the area to protect their "rights" to the neighboring commercial forest land.

ii. Indirect conversion may occur when other uses such as watershed, winter range and water quality are impacted or displaced by development.

Example: Tualatin Basin in Washington County and Clear Lake in Lane County are two watersheds that are becoming water quality limited due to residential and other development. As a result, forest uses may need to be curtailed within the watersheds to help offset the consequences of residential and commercial developments on water quality.

Example: Where conflicts become severe between residential uses and wildlife, forest land may need to be converted to permanent forage areas for deer or elk. Mule Deer Winter Range has been "squeezed out" of south Bend onto Deschutes National Forest and private industrial forest to the west and southwest of Bend.

c. Conflicts between the residential use and forest management uses reduce forest management or increase the costs of forest management:

i. Commercial wood fiber production, like commercial farming, is often incompatible with residential uses. The residents of forested areas often publicly object to common industrial forestry practices such as the aerial application of pesticides, the burning of slash, road construction, hauling activities that create dust or harvesting and especially the use of clearcutting as a harvest method.

ii. Regulations are proposed and adopted to protect residential uses.

Example: The Forest Practices Act currently includes provisions to protect domestic water supplies during spray operations.

iii. Liability and other concerns may preclude the use of forest management tools. For example, the use of prescribed fire may become impossible due to nearby dwellings and the legal treatment of smoke liability.

d. Transfer in ownership class; resource-based owners to amenity value owners.

i. Urban-oriented owners tend to view resource protection in preservationist terms rather than in terms of 'conservation for use.' This leads the new owners to "preserve" the forest by not harvesting any trees on their property and to conflicts when adjacent owners harvest their timber.

ii. Residential developers compete with timber growers for the same land but can afford to outbid these other purchasers. The Department of Revenue values forest land from $100 to $500/acre but homesite buyers often pay ten times those amounts per acre.

e. Disincentive to forest management provided by the potential profit to be made on the conversion of commercial forest land to more valuable "forest homesite" lands (speculation).

i. Owners holding land for speculative purposes seldom are interested in forest management.

The reasons are simple. Owners expect to sell their land before they recover investments in timber cultural treatments and often do not harvest timber because it might adversely affect the attractiveness of the site.

ii. Areas which are subject to speculation may often produce market values for forestland which exceeds the income potential from timber production. Such pricing makes it impossible for commercial forest interests to compete for forestland in such areas.

f. Changes in market infrastructure.

i. As the timber production is reduced in an area, processors may go out of business or may move to an area with a more stable supply. When the market leaves, timber production becomes more marginal as an economic enterprise, thus landowners become even less likely to manage for timber.

D. REDUCING CONFLICTS RELATED TO FIRE PREVENTION AND SUPPRESSION

Residential forest development can increase the costs of wildland fire protection by changing or restricting the tactics that can be used to fight a wildfire and by redirecting fire-fighting efforts away from protecting forest resources. The Oregon Department of Forestry found that the cost of suppressing large wildfires increased if dwellings were threatened. On average, the fires that threatened dwellings were 48.3% more expensive to suppress than similar large fires without dwellings (ODF, 1993).

Conflicts between the residential use and wildfire protection.

i. Rural residents cause many fires;

"Out of 1,581 forest fires on state protected lands during 1987, 976 were caused by people. Most others were started from lightning. Historically, 70% of fires are human-caused." (An Action Plan for Protecting Rural/Forest Lands from Wildfire at page 3.)

Many of the human-caused fires are related to rural dwellings and their occupants (ruralists). In particular, rural dwellings and ruralists are related to many of the debris burning fires, they contribute greatly to the miscellaneous category (especially children caused fires), and contribute somewhat to the smoker and camper fires. For 1989, there were 158 debris fires (21% of the total human-caused fires), 270 miscellaneous (includes children caused fires) fires (36%), 87 camper fires and 91 smoker fires. Ruralists were identified as directly causing 186 fires (25% of the total human-caused fires) in 1989.

ii. Management of fuel around dwellings becomes more difficult (residents want to retain cover for aesthetic and screening purposes) resulting in the long-term accumulation of fuel, increasing the chance of disastrous fires (Example: all of Deschutes County would have significantly less fuel - many fewer junipers, fewer trees per acre and a grass understory rather than brush if the natural fire cycle had been maintained);

iii. Fire protection priorities are complicated and fire-fighting resources can be diverted to the protection of homes and their residents while millions of dollars worth of timber burn along with the aesthetic, wildlife and watershed benefits.

iv. Tactics which can be employed in the suppression of wildfire may be restricted. Often dwellings sited on forest land dictate that the traditional perimeter control strategy must be sacrificed and other more dangerous, more expensive and less efficient strategies must be used, such as a frontal assault with large volumes of water, which requires great manpower and machinery resources.

v. Additional time must be devoted to coordination with structural protection agencies, resulting in both higher suppression costs and greater natural resource damages and losses.

E. TO ENCOURAGE THOUGHTFUL PLANNING AND OVERSIGHT OF DEVELOPMENT ACTIVITIES THAT CONVERT FORESTLANDS TO NON-FOREST USES

Oregon's land use program does not prohibit all development or residential uses on forestland; rather, it attempts to segregate the potential conflicts between commercial and residential uses and control the growth of residential uses in a systematic way. Many counties have slight variations on the theme and call their zones by different names, but in general there are five different types of non-urban land uses on forestland: commercial forest, small scale forestry, mixed farm forest, rural residential, and non-resource. The different land allocations are described through a combination of zoning options and rules that control the amount of new dwellings and land divisions within an area (See Table 6). Dwellings in all qualifying forest zones (acknowledged under Goal 4), whether commercial or small scale, are approved under a set of objective rules (see section III B.) that are prescribed in statute. However, about 70% of the new forest dwellings are being approved in areas that already have large amounts of existing development. Plan Amendments and Zone Changes can remove forestland from the commercial land base or down-zone the land resulting in less protection.

Table 6 – Generalized Land Use and Dwelling Options on Forested Lands

Generalized Land Use Type	Commercial Forest	Small Scale Forestry	Mixed Farm Forest	Rural Residential	Non-Resource
Description	Large blocks of Commercial Forest	Smaller blocks of forest w/ a mix of commercial and residential uses	Smaller blocks of forest intermixed with Agricultural uses	Residential Uses	Forestlands not suitable for commercial timber production
General Zoning	Zoned Forest (Goal 4)	Zoned Forest (Goal 4)	Zoned Mixed Farm-Forest (Goals 3 and 4)	Zoned Rural Residential (exception to Goal 4)	Zoned as non-resource.
Dwelling Opportunities	Large Lot Dwellings (160 Acres)	"Template Dwellings" and "Lot of record dwellings."	"Template," "Lot of record" non-farm and Farm dwellings	Dwellings allowed on all parcels.	Dwellings allowed on all parcels.
Land Divisions	80 Acre Minimum	80 ac. or size that will protect current commercial activities	80 ac. or size that will protect current commercial activities	Varies from about 2 to 10 acres.	20 or 40 acre minimum.

Notes: "Lot of Record dwellings" are allowed on a parcel which was acquired by the present owner prior to January 1, 1985, if the tract is composed of soil that is not capable of producing 5,000 cubic feet per year of commercial tree species, and is located within 1,500 feet of a public road.

"Template Dwellings" are allowed on parcels where all or part of 3 to 11 (depending on soil productivity) other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the subject tract; and at least three dwellings exist on the other lots or parcels.

III. DEPARTMENT INVOLVEMENT IN LAND USE PLANNING

A. ESTABLISHING CONTACTS

Establishing good working relationships with local planners and DLCD field representatives is essential if the Department is going to efficiently meet its land use planning objectives. Even though we have statutory responsibility requiring involvement in land use planning, the Department is not directly funded to accomplish its role, and tracking and commenting on all forest changes would be cost prohibitive. DLCD field representatives receive notification on all land use activities and can act as an early warning system to alert the Department to proposed changes in forest zoning, help prioritize issues, and help Department personnel structure responses so that they meet the legal requirements.

1. The Area Directors and District Foresters should develop contacts with local planning commissions, planning directors, elected officials, landowners and other involved parties to inform them about topics of concern to the Department of Forestry. Major topics of concern and information on the topics are contained in Section II of the handbook.

2. The Area Director, District Forester and local land use planning coordinator should develop and maintain a working relationship with the appropriate Department of Land Conservation and Development (DLCD) field representative(s) and appropriate city and county planning staff to allow the Department to fully participate in local land use planning programs; including, the review of proposed local land use actions, amendments to comprehensive plans, and periodic review.

3. Relationships should encourage local government to consult with the Department's local land use planning coordinator prior to consideration and approval of land use actions and plan amendments within forest or agriculture/forest zones.

4. DLCD field representatives should be notified of Department concerns regarding land use actions and plan amendments. Active participation by the DLCD field representative in cases of concern to the Department of Forestry should be encouraged.

B. FOREST DWELLINGS

Our State's land use program has always been involved in limiting the expansion of residential uses onto our farm and forest lands, but House Bill 3661, passed by the 1993 Legislature, completely redid the system used to approve dwellings on forest land. Its net effect is to make it easier to get dwellings in areas that are already negatively impacted by parcelization and dwellings, and to tighten protection on the lands most

susceptible to the changes caused by development. The approach in HB 3661 sets clear and objective standards that use market forces to keep forestland in production.

Prior to HB 3661 (1993) the State's land use system granted dwellings, and controlled the growth of the urban-forest interface on a case by case basis, using unclear subjective standards such as the nonforest dwelling, "will not materially alter the stability of the overall land use pattern," and the forest dwelling "necessary and accessory" test. The subjective standards caused problems by sending mixed signals to the market. Allowing dwellings inconsistently throughout the forest encouraged people to invest in land with the expectation that they could live on that land. When those expectations were not met, people justifiably got angry because their investment had been misplaced.

In 1993 the Legislature replaced the subjective standards with clear and objective criteria that provide certainty for the landowner, the county, and the state. The objective standards for dwelling approvals add certainty to the market, are understandable by the landowner, and limit the placement of dwellings to areas already affected by parcelization and residential values, or parcels unlikely to be changed by the presence of a dwelling.

Forest dwellings are allowed under three circumstances:

1. Where landowners had a reasonable investment backed expectation for a dwelling closed by the land use program,

2. on parcels of land that are already dominated by nontimber values, or

3. on tracts large enough that the dwelling will not change the tract's character.

In all the cases where dwellings are allowed, the concept of a “nonforest dwelling” (i.e., residential dwellings in the forest not associated with forest management) has been eliminated. All forest lands are required to be stocked with trees before a dwelling is built, and all timber lands are intended to be managed for forest production.

1. LOT OF RECORD DWELLINGS

Since even low levels of development can cause reductions in forest management, the state’s strategy to maintain commercial forest production has always included restrictions on siting new dwellings. This restriction, though effective at maintaining the commercial use of the forestland base, has caused controversy with landowners that feel that an opportunity to build a dwelling has been unfairly taken from them. For forestlands, the 1993 Legislature took up the fairness issue and developed criteria to differentiate between parcels purchased with reasonable investment-backed expectations for commercial forest management from those purchased with reasonable investment-backed expectations for a residential use.

The "lot of record" provisions in HB 3661 (1993) were designed to provide an equitable solution for people that purchased land with reasonable investment-backed expectations for a dwelling. People that purchased forest land before January 1, 1985 are allowed to build a dwelling on less productive tracts (those not capable of producing 5000 Cf/tract/yr west side, or 4000 Cf/tract/yr east-side) if the tract is located within 1500 feet of a state or county road. The reasoning behind the criteria included:

a. Larger productive parcels of forestland are commercial by nature and form the base of the forest industry in Oregon. Productive parcels about 40 acres or greater in size are commonly traded and managed commercially by the forest industry and others in the timber business. Smaller or less productive tracts were the most likely parcels to have been purchased with a legitimate expectation of a residential use.
b. Parcels with a legitimate expectation of a residential use also needed to be able to obtain county services (i.e., police and fire protection, etc). Tracts located within 1500 feet of a state or county road could reasonably expect such services, but tracts in the middle of the forest could not.
c. By January 1, 1985 people had more than 10 years experience with the land use planning program, all county plans were in place, and people should have known that dwellings were restricted on forestland. The expectation for dwellings on forest parcels purchased after that date was more speculative in nature.

2. THE "TEMPLATE TEST"

Opportunities for dwellings in conjunction with small woodland management are provided on tracts that are already conflicted by a pattern of parcelization and other dwellings. Dwellings are allowed on tracts if a 160-acre template centered on the property contains all or part of a specified number of parcels. The number is based on the soil quality as shown in the table below. At least three of those parcels must have dwellings located on them to qualify.

Western Oregon		
Soils Rating	# of Other Parcels Within the Template	# of Dwellings on the Parcels
0 - 49 CF/ac/yr	3	3
50 - 85 CF/ac/yr	7	3
> 85 CF/ac/yr	11	3

Eastern Oregon		
Soils Rating	# of Other Parcels Within the Template	# of Dwellings on the Parcels
0 - 20 CF/ac/yr	3	3
21 - 50 CF/ac/yr	7	3
> 50 CF/ac/yr	11	3

3. THE LARGE TRACT OPTION

Forest dwellings are allowed on ownerships that are large enough that the presence of the dwelling is less likely to change the character of the area. The legislature defined those circumstances using the rules below.

- Forest dwellings are allowed on tracts of 160 acres, or ownerships of 200 acres on the west-side,

- and on 240 acre tracts or 320 acre ownerships on the east-side.

4. DEPARTMENT INVOLVEMENT

State law contains standards designed to reduce conflicts between residential and commercial forest uses, and standards designed to reduce the cost of fighting wildfires around residential structures. Applicants are required to submit a siting plan and other information to local governments as a condition of dwelling approval. The department can request a copy of forest dwelling applications and review the siting plan for conformance with the standards. However, without involvement in the application process, there is no legal mechanism to determine whether local governments are implementing these standards when they approve forest dwellings. Working with county planners to see these standards are implemented correctly during new construction can reduce future forest practice conflicts and reduce future fire-fighting costs for the Department. Local land use planning coordinators should monitor whether local governments are implementing the siting and fire standards effectively, and if they are not, work with the local government to improve implementation of the rules.

OAR 660-006-0029 contains the Siting Standards for Dwellings and Structures in Forest Zones. These criteria are designed to make dwellings more compatible with forest operations. The standards require using setbacks or clustering, other techniques to site dwellings so that they have the least impact on nearby forest operations, and require applicants to minimize the land taken out of forest production for access roads, service corridors, the dwelling and other structures.

The rules also require the applicant to plant a sufficient number of trees on the tract to meet Forest Practices Act stocking requirements. Dwelling approvals in forest zone create a reforestation requirement similar to a commercial harvest. Landowners are required to reforest at the time they build on parcels larger than 10 acres on the west-side and 30 acres on the east-side, and must meet the free to grow reforestation standards in the Forest Practices Act. The department has agreed to assist local governments when they cannot determine whether these standards have been met. The details are contained in the following rules.

OAR 660-006-0029 (5) Approval of a dwelling shall be subject to the following requirements:
(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules;
(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;
(c) If the lot or parcel is more than 10 acres in western Oregon, as defined in ORS 321.257, or more than 30 acres in eastern Oregon, as defined in ORS 321.405, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.
(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

OAR 660-006-0035 contains Fire-Siting Standards for Dwellings and Structures. New forest dwellings must be located within a fire protection district, be provided with residential fire protection by contract, or if the local government determines that inclusion within a fire protection district is impracticable, the governing body may require alternative means for protecting the dwelling from fire hazards. This could include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. Applicants are also required to maintain a fuel-break around all structures and have a fire retardant roof. Dwellings can not be sited on a slope of greater than 40 percent, and if the dwelling has a chimney it must have a spark arrester.

C. PLAN AND ZONE AMENDMENTS

1. PURPOSE OF PLAN AND ZONE AMENDMENTS

Comprehensive plans and zones may be amended by local government to address changes in circumstances such as population growth, changes in applicable laws, etc. In amending plans and zones, local government is required to comply with the statewide

planning goals (or take exception to the goals), and their own planning policies and land use ordinances.

2. DEPARTMENT INVOLVEMENT

Plan and zone amendments can have the affect of reducing both the total and commercial forest land bases (the amount of land zoned as forest land) and the level of protection afforded land that is zoned as forest land. Therefore, the Department's participation in the review of comprehensive plan amendments and zone changes is an important means of ensuring that the Department's land use planning objectives are met.

3. RESPONSIBILITIES and PROCEDURES

Review of zone changes or plan amendments proposed in forest zones and mixed agricultural/forest zones should include technical assistance and a policy evaluation.

a. Notifications. Pursuant to OAR 660-18-020, local governments are required to submit notification of a proposed amendment to DLCD 45 days prior to the final hearing on adoption of the amendment. The local land use coordinator should request copies of notifications affecting forest land from the local government or the DLCD field representative.

b. Technical Assistance. The Department will make technical comments to assist local government in making the required findings. For example, a local government may be required to make findings that land being rezoned from forest land to non-resource land must be unsuitable for growing forest tree species. Technical comments, such as the relative soil productivity, should be provided to help make the findings.

   Technical assistance might include specific technical or factual information about soil productivity, fire hazard, adjacent forest management activity, etc. The technical advice provided to the local government should: 1) be timely; 2) be consistent with the local decision making process; 3) make available the technical and philosophical basis for the comments, and; 4) provide an opportunity for local government to interact with the Department for clarification.

c. Policy Evaluation. After conducting a technical evaluation, the local coordinator will evaluate the proposal for consistency with local government plan policy standards, Goal 4 and, in the case of plan amendments, with Department of Forestry land use objectives.

   Written "objections" should be included with the technical comments when:

   i. A proposed zone change or plan amendment does not comply with the standards contained within the local jurisdiction's acknowledged comprehensive plan and/or land use regulations for approval of such uses (copies of the approval criteria in the local standards can be obtained from the local DLCD field representative or the local government);

ii. A proposed zone change or plan amendment is not consistent with the purpose of Goal 4;

iii. A proposed zone change does not meet the "exceptions test" pursuant to Goal 2; or,

iv. A proposed comprehensive plan amendment is otherwise inconsistent with the Department of Forestry's positions relative to achievement of Department land use policy and objectives.

d. Department Response. To receive standing and enable the Department to potentially appeal a decision, the local land use planning coordinator must participate in the local hearings process and submit comments. It is critical that a response be received by the deadline listed on the notice in order to maintain the Department's party status on any proposal.

If there are objections to the proposed amendments, a response must be coordinated with staff at the Salem office and submitted to the local hearing as written testimony. The Department's objections will state the reasons why the Department believes a request does not comply with the standards. Such objections should be supported by documentation.

e. Findings of Fact. The county will develop "findings of fact" based on information received from the applicant, affected parties (which would include Department comments), and the county's own review and interpretation. The findings of fact support a decision to approve or deny a request. If the county approves the request and findings do not adequately address the Department's concerns, an appeal of the decision will be considered (see the section on APPEALS).

4. PLAN AMENDMENTS

A plan amendment is an official change to a city or county's comprehensive plan made by a local governing body. It includes changes in the plan map and/or text. A plan amendment may be the result of: 1) goal amendments by LCDC; 2) a request during Periodic Review; or, 3) a response to a request based upon local conditions; e.g., a request for a zone change or goal exception.

For proposed plan amendments, the local coordinator will provide technical assistance appropriate to the proposal. The local coordinator will also conduct a policy evaluation by reviewing the proposal against the appropriate Statewide Land Use Goals (such as Goals 2, 3, and 4) and written positions in this Handbook on various issues. Comments are made to the local jurisdiction based upon the review and the consistency of the proposed amendment with the Statewide Goals and Department of Forestry positions.

Examples of plan amendments that would warrant a response from the Department would be: 1) a proposal to expand an urban growth boundary to encompass more forest lands; or, 2) policy changes in the plan or plan review standards for the application or approval of conditional uses in forest zones; or 3) the adoption or amendment of comprehensive plan

standards due to a Goal amendment. Plan amendments should be reviewed against the standards of the applicable Goals, Department of Forestry land use policies and positions, and the county's own standards.

5. ZONE CHANGES

A zone change is an action taken by a local governing body to change the type of zoning on one or more parcels. A zone change may be sought by an individual property owner or it may be initiated by a planning commission or governing body. Zone changes can remove land from commercial forest zones and place it in a zone with less protection (i.e., a zone change from commercial forest to mixed farm forest).

Generally, a change in forest zoning results in greater development. This in turn can result in a loss of commercial resource land and an introduction of additional conflicts into an area. Therefore, the local coordinator will conduct a technical evaluation to identify the potential resource value of the subject property and will provide this to the county in order to assist in their review process. The local coordinator will also conduct a policy evaluation by reviewing the proposal to determine consistency with the county's standards, the comprehensive plan and Goal 4. Any inconsistencies will be included in the written comments as described above.

6. GOAL EXCEPTIONS

Goal Exceptions are a specific type of zone change provided for in Goal 2 of the Statewide Planning Goals. The criteria, rules and review regarding goal exceptions are specified in ORS 197.732 and OAR Chapter 660, Division 4. An "exception" is an amendment to an acknowledged comprehensive plan, that: 1) applies to a specific property or situation and does not establish a planning or zoning policy that can be generally applied; 2) does not comply with some or all goal requirements which pertain to the subject property or situation; and, 3) complies with the standards under OAR 197.732(1).

Goal Exceptions have the potential to reduce management of forest land for forest uses by either:

a. allowing additional conflicting uses (e.g., expansion of an existing development); or,

b. prohibiting forest operations on forest lands.

A local government may establish that forest operations in a particular area would be in conflict with values found in another statewide goal (e.g.. Goal 5, "Open Spaces, Scenic and Historic Areas, and Natural Resources"). It may be asserted that these values would not be adequately protected under the FPA. Pursuant to ORS 527.722 (4), counties can prohibit, but in no other manner regulate, forest practices on lands for which an acknowledged exception has been taken.

Therefore, the Department will monitor the review process for proposed goal exceptions affecting forest zones. The local land use coordinator will receive notice of the proposed exception and should provide technical assistance relative to the subject area to the local government to assist in their review process. The local coordinator should also conduct a policy evaluation using the applicable criteria in OAR 660, Division 4 and other criteria that may apply (as specified in the notice of the proposed amendment). If the proposal is not consistent with the review criteria and the Department's land use policy objectives, these concerns will be included in the written response to the county.

Following is a summary of the criteria found in OAR 660, Division 4. When writing objections or comments, please refer to the precise language of the applicable section of this rule.

a. Reasons Necessary to Justify an Exception. The reasons necessary to justify an exception under Goal 2 are found in OAR 660-04-022. Those applicable to forest lands are summarized as follows:

i. The reasons must justify why the applicable goal should not apply. Such reasons include but are not limited to the following:

A. There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either,

B. A resource upon which the proposed use or activity is dependent can be obtained only at the proposed exception site and the use or activity requires a location near the resource; or,

C. The use or activity has special features or qualities that require it to be located on or near the proposed exception site.

D. For Rural Residential Development: the reasons cannot be based on market demand for housing (except as provided for in this rule) assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands.

iii. For Rural Industrial Development, reasons and facts include but are not limited to the following:

A. The use is significantly dependent upon a unique resource located on agricultural or forest land; e.g., geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or,

B. The use cannot be located inside an urban growth boundary due to hazardous or incompatible impacts in densely populated areas or;

C. The use would have a significant advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

b. Land Physically Developed to Other Uses. Exception requirements for land physically developed to other uses are found in OAR 660-04-025 and summarized as follows:

i. An exception to a goal may be taken when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

ii. The exact nature of the areas found to be physically developed shall be clearly defined in the justification for the exception. The findings of fact shall identify the extent and location of the existing physical development on the land; e.g., structures, roads, sewer, water and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

c. Land Irrevocably Committed to Other Uses. Exception requirements for land irrevocably committed to other uses are found in OAR 660-04-028 and summarized as follows:

i. An exception to a goal may be taken when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other factors make uses allowed by the applicable goal impracticable.

ii. Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

A. the characteristics of the exception area;

B. the characteristics of adjacent lands;

C. the relationship between the exception area and adjacent lands;

D. the other relevant factors set forth in OAR 660-04-028(6).

iii. OAR 660-04-028(6) is summarized as follows:

Findings of fact for a committed exception shall address the following factors:

A. Existing adjacent uses;

B. Existing public facilities and services;

C. Parcel size and ownership patterns of the exception area and adjacent lands:

1. An analysis of how the existing development came about...only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or if other relevant factors make resource use on it or nearby lands unsuitable, can the parcels be considered "irrevocably committed."

2. Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations. They are more likely to qualify if they are developed, clustered in a large group, or clustered around a road designed to serve them.

D. Neighborhood and regional characteristics;

E. Natural or man-made features or other impediments separating the exception area from adjacent resource land;

F. Physical development according to OAR 660-04-025;

G. Other relevant factors.

For the specific rules regarding requirements for the findings of fact see OAR 660-04-028(3) through (8).

4. Technical Assistance for Exceptions. The technical evaluation for proposed goal exceptions should include:

   i. Evaluation of soils to determine the resource capability of the subject area.

   ii. History of land use in the proposed exception area including planned forest management activities.

   iii. Tax status of the subject area; e.g., are parcels currently receiving forest tax deferral?

   iv. An overall impression of the level of conflicts which currently exist in the area.

D. PERIODIC REVIEW

Oregon's statewide land use "plan" is really a network of 277 state-approved city and county comprehensive plans. They reflect the interests of both the local communities and the state. As those interests change, so too must the plans. Periodic review is the process used to evaluate and update the plans on a schedule established by statute. Periodic review gives communities a scheduled opportunity to examine the assumptions, conditions, and values on which the current plan is based. Periodic review also offers local governments and state agencies an opportunity to ensure that their respective plans and programs are properly coordinated.

In 1999, legislative changes to periodic review took effect that include:

- Exempting cities under 2,500 in population and counties under 15,000 people from periodic review.
- Extending the timeline for those cities and counties required to go through periodic review. For cities whose population is 2,500 to 25,000 and counties of 15,000 to 50,000, the interval between periodic reviews is 5 to 15 years. Cities over 25,000 and counties over 50,000 must go through the process every 5 to 10 years. (Copies of the periodic review schedule are available from DLCD upon request.)
- Local governments in periodic review are required to strive to complete their reviews within three years. DLCD helps to achieve this requirement by ensuring that new local work programs do not contain more work tasks than can be accomplished in three years.
- LCDC authority to grant time extensions for local governments to complete periodic review was limited to approving a single extension not to exceed 180 days. Those communities exceeding their extensions are subject to commission sanctions.
- DLCD was directed to concentrate its periodic review efforts and resources in four key areas related to managing urban growth: needed housing, employment, public facilities and transportation.

These changes have made it more difficult for ODF to use the periodic review process as a tool to make minor adjustments. However, it is still a good process to use when major substantive issues need to be addressed in local government plans.

One of the following conditions must be met to use the periodic review process:

1. 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 goals;

2. Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals;

3. There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals; or

4. The existing comprehensive plan and land use regulations are not achieving the statewide planning goals.

E. STATE AGENCY COORDINATION REQUIREMENTS

1. NEED FOR COORDINATION

ORS 197.180 requires each state agency to prepare a coordination program for review and certification by the Oregon Land Conservation and Development Commission. The purpose of the State Agency Coordination Program (SAC) is to assure that Department of Forestry rules and programs which affect land use comply with the statewide planning goals and are compatible with acknowledged city and county comprehensive plans.

ORS 197.180 requires state agencies to carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use: 1) In compliance with goals adopted or amended pursuant to ORS chapters 196 and 197; and 2) in a manner compatible with acknowledged comprehensive plans and land use regulations.

Furthermore, ORS 197.180 requires each state agency to submit to the Department of Land Conservation and Development (DLCD) the following coordination program:

a. Agency rules and summaries of programs affecting land use; and

b. A program for coordination pursuant to ORS 197.040(2)(e) (ORS 197.040(2)(e) requires that LCDC coordinate planning efforts of state agencies to assure compliance with goals and compatibility with city and comprehensive plans);

c. A program for coordination pursuant to ORS 197.090(1)(b) (requires DLCD to coordinate their functions with federal agencies, other state agencies, local government and special districts); and

d. A program for cooperation with and technical assistance to local governments.

The Forest Practices Act is expressly exempted by ORS 197.180 and 197.277 from any requirements of ORS 197.180 applying to rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.730 and 527.990 (the Forest Practices Act). The exemption of the Forest Practices Act was an element of House Bill 3396 passed by the 1987 Legislature.

In December, 1990, the Land Conservation and Development Commission certified the Department's SAC Program submittal as meeting the requirements of ORS 197.180 and related OAR's. The submittal included the conclusion that the State Forest Management and Administrative Services programs are the only Department programs that affect land use.

The Department's SAC Program document describes in detail the Department's programs and findings relative to land use programs. In addition, the document includes information about the required compliance, compatibility and coordination procedures, the program for cooperation and technical assistance, and procedures for involvement in periodic review. Administrative rules (OAR 629-20-000 to OAR 629-20-080) have been developed to assure "compliance and compatibility." Additionally, the rules include procedures for dispute resolution, compatibility of new or amended programs, coordination, and cooperation and technical assistance.

The Department's SAC program document guides the Department's present and future involvement with local government in land use issues. In addition, the document serves as an important reference for local government, state and federal agencies, and special districts concerning the Board of Forestry and Department of Forestry programs and resources. The SAC Program document is available upon request from the Forest Resources Planning Program. A copy of the Department's SAC Program Administrative Rule is available in the Forest Resources Planning Library.

2. GENERAL RESPONSIBILITIES AND PROCEDURES

a. <u>Program to Assure Compliance with the Statewide Goals and Compatibility with Local Comprehensive Plans.</u>

The Department's two land use programs must be administered consistent with the Department's SAC Program and Rules to assure compliance with the Statewide Goals and compatibility with local comprehensive plans.

i. Administrative Services Program.

The program elements related to the siting and construction of new facilities, the expansion of existing facilities, and approval and siting of some non-forest uses on state-owned forest land have been determined to affect land use and therefore, rules have been adopted to ensure compatibility.

Specifically, program elements that affect land use include:

A. Construction, improvement, relocation and removal of state-owned buildings or facilities (including radio towers, repeaters, etc. owned and operated by the Department).

B. Purchase of additional land for administrative sites, including nursery or seed orchard.

C. Approval by the Department of some non-forest uses (radio towers, repeater buildings, etc.) owned and operated by other parties on state-owned forest land.

It is the intent of the Department when implementing any of the projects listed above, to act the same as does any other similarly situated landowner to assure plan compatibility and goal compliance. Whenever the Department implements projects included within these elements listed above, the standards and procedures outlined in the SAC program handbook (pp. 34 - 36) and OAR 629-20-000 to 629-20-080 will be followed to ensure compatibility.

ii. Forest Management Program.

The elements of the Forest Management Program that affect land use include:

A. Land use designations.

B. Plans (long range, block plans, annual operation plans and transportation plans).

C. Land acquisition, sale or exchange.

D. Other forest uses (recreation, wildlife uses, etc.) and non-forest uses (such as, commercial mining of rock, sand, gravel, pumice and other

such material from the lands, powerlines, reservoirs, etc.). Note: Mined land reclamation permits are required from DOGAMI for commercial mining operations in excess of 5000 cubic yards.

E. Management actions on State forest lands within urban growth boundaries (may be subject to local government regulation of forest practices if local government has developed forest practice regulations).

Each of the above elements are detailed separately in the standards and procedures outlined in the SAC program handbook (pp. 36 - 41) and OAR's 629-20-000 to 629-20-080. These standards, procedures and rules must be followed to ensure compatibility.

iii. Dispute Resolution.

A situation may occur where the Department believes its statutory requirements, including but not limited to ORS Chapter 530 (Acquisition and Management of State Forests), may prevent the Department from meeting its land use compatibility responsibility under ORS 197.180. To address such a situation, the Board of Forestry has adopted OAR 629-20-050 which requires the Department to first attempt to resolve disputes regarding land use issues by direct contact with the affected cities and counties. If no agreement can be reached, the procedures listed in OAR 629-20-050 will be followed to resolve land use disputes regarding approval of a Department program or action (see OAR 629-20-050).

b. Compliance and Compatibility of New or Amended Land Use Programs (OAR 629-020-0060)

The Department of Forestry will use the following procedures to assure that new or amended agency rules and programs affecting land use will comply with the statewide goals and be compatible with acknowledged comprehensive plans and land use regulations:

(1) The Department shall submit notice of any amendment to any Department program affecting land use or any new Department rule or program, except for amendments or new rules and programs related to the Oregon Forest Practices Act (which is expressly exempt from these requirements), to the Department of Land Conservation and Development as required by OAR 660-030-0075.
(2) Such notice shall be provided to DLCD in writing not less than 45 days before adoption of any amendment to a program affecting land use or adoption of any new rule or program.
(3) The notice provided to DLCD shall demonstrate that the proposed new adoption or amendment:
(a) Does not affect land use and therefore is not a land use program; or

(b) Affects land use and that goal compliance and comprehensive plan compatibility can be assured through the existing SAC Program procedures; or
(c) Affects land use and procedures in the certified SAC Program are not adequate to ensure compatibility and compliance. In this case, the notice shall include an explanation of how compliance and compatibility will be achieved in accordance with the applicable provisions of OAR 660-030-0075.

F. APPEALS

1. PURPOSE OF APPEALS

An appeal is a request for the review of a land use decision by a higher authority than the body making the decision in order to determine if the decision was correct, given the standards for approval.

Appeals are made to different levels of local government. For example, the decision of a Hearings Officer may be appealed to the Planning Commission whose decision may be appealed to the Board of Commissioners. After all appeals to the various levels of local government are exhausted, an appeal to the Land Use Board of Appeals (LUBA) may be made. The county's land use ordinance contains procedures for appeals within the hierarchy of governing bodies that make the land use decisions for the county.

Generally, only parties that participated either orally or in writing in the local government proceedings may appeal. Before an appeal to LUBA can be made, all remedies available by right must be exhausted; i.e., all levels of appeal at the local level must have been expended.

Local government may engage in a pattern or practice of decision that continually violates an acknowledged comprehensive plan, land use regulation, or a Statewide Goal. Procedures are available to bring such a pattern or practice to the attention of LCDC.

2. DEPARTMENT OF FORESTRY INVOLVEMENT

If a local jurisdiction decides to approve land use actions, zone changes, or plan amendments in which the Department of Forestry has participated in the review process and found not to comply with applicable Goals, rules or ordinances, the Department will then implement remedies to increase understanding of the Department's concerns and urge due consideration of the Department's comments.

a. Such remedies include: (1) joint meetings between the Department, the local jurisdiction, and DLCD; (2) field tours with local planners, commissioners and other local officials; (3) involvement of other affected forest landowners

or agencies; and (4) provide an analysis to the local government of the impact of their decision on services, jobs and taxes.

b. If the implemented remedies do not improve the local jurisdiction's land use decisions, then consideration of an appeal to a review authority, on a case by case basis, may be considered.

3. RESPONSIBILITIES AND PROCEDURES

a. The following responsibilities and procedure will be used to determine when the Department of Forestry shall appeal a local land use decision:

i. The District Forester and local land use coordinator, in consultation with the Department's land use planning coordinator, will determine if there is a technical basis and standing for an appeal. For land use actions, this will be done by documenting why the approval of the land use action does not conform to the standards for approval of the proposed action. In addition, it must be affirmed that the Department has maintained party status by providing oral or written testimony to the local jurisdiction, which was received prior to the comment deadline. For zoning changes or plan amendments, documentation of why the proposed changes or amendments do not comply with the applicable criteria will be developed and the Department's party status will be affirmed.

ii. The District Forester will determine whether the resource values at risk are important and whether the proposal conflicts with Goal 4 objectives and uses. If the approved action will significantly restrict the ability of the affected parcel or adjacent parcels to continue to be managed for commercial forest purposes, significant resource values will generally be considered to be at risk.

iii. Identification of the level of appeal (type of Board/Commission appealed from and to) and amount of the appeal fee will be provided and considered.

iv. A determination by the District Forester will be made if the proposed action will have direct impacts on department operating programs; e.g., will the proposal restrict the ability of State Forest Lands to be managed or will the proposal increase fire prevention and control problems?

v. A recommendation from DLCD's field representative in regard to the merit of an appeal will be requested. DLCD coordination of other agencies' objectives related to the proposal will be discussed.

vi. Included with the recommendation for appeal, the District Forester will prepare a report outlining the information and determinations identified above. This report will be routed to the Area Director and Deputy State Forester for their review.

vii. The Area Director and Deputy State Forester will review the report and the Deputy State Forester will make the decision on whether to proceed with an appeal.

viii. If the Deputy State Forester determines an appeal should be made, the Department's General Counsel (Attorney General) may be asked to review the basis for the appeal and assist in the preparation of the appeal.

ix. The Assistant State Forester in charge of the Forest Policy Division may request review by the State Forester of the appeal decision that was made by the Deputy State Forester.

b. If the local land use planning coordinator believes that a local government is engaging in a pattern or practice of decision making that violates an acknowledged comprehensive plan, land use regulation, or a Statewide Goal, the local coordinator should inform the Department land use planning coordinator and provide documentation of the pattern or practice. If the Department coordinator concurs with the local coordinator, the DLCD field representative will be informed of the situation and appropriate action will be taken. A review of past decisions by the local government will be made to determine if a pattern or practice of decisions that violate the comprehensive plan, land use regulations or Goal 4 exists. Indications of the amount and type of inputs (record of contacts, meetings, and testimony) provided to the local government by the Department should be made.

G. OUTLINE FOR SUBMISSIONS ON PROPOSED LAND USE ACTIONS

Presented to Planning Directors, Local Commissions and Boards

1. INTRODUCTION

a. Address written testimony to the county's planning department contact listed on the application. If no contact is listed, address it to the planning director.

Begin the letter with a description of the application being made, including the applicant's name, file number, the nature of the request, the number of acres involved, and the zone. For example, "The Department of Forestry has received the application of John Doe (file #) for a zone change on 40 acres in the Forest Commercial (FC) Zone"). Include the general reason for the comments in the opening paragraph (e.g., "for consideration in your

review," "appeal the Hearings Officer decision to approve this request on the following grounds," etc.).

b. If you are presenting oral testimony, identify yourself by position and expertise. Explain your background and experience on issues relating to the particular land use action, such as: wildfire and dwellings in the forest, forest soils, forest management conflicts, etc.

c. Be clear about the decision you are providing testimony for. Sometimes more than one land use decision is being made; e.g., a conditional use permit and a land partition. The notice from the county should identify them. If the information is unclear, call the planning department contact person for clarification.

2. ADDRESS APPLICABLE PLAN POLICIES AND ORDINANCES

a. Begin this section with an identification of the overall purpose of the zone in which the action is proposed. This generally is found in the county's zoning ordinance within the first section of the chapter on that zone. It may also be found in the comprehensive plan policy relating to Goal 4 (however, a land use action is not subject to the provisions of the plan unless an applicable ordinance specifically states that it must comply with comprehensive plan policies).

b. Follow this with a general description of why the proposal is not consistent with the purpose or policy. Include the character of the overall subject area; is it currently dominated by the uses intended for this zone? Would the proposed use be consistent with the general resource character of the subject area? Identify the basic Department concerns or interests; e.g., adjacent or nearby federal, state, or privately managed forest lands, high risk fire area, potential loss of productive forest land, etc.

c. Find the applicable zoning ordinance review criteria and address each in order (be sure you have the most up-to-date version of the county's ordinance). Begin by citing the ordinance including the section number and text. Next, provide the technical documentation necessary to determine compliance with the ordinance.

d. Documentation should include information on the suitability and compatibility of the proposed use as it applies to the criteria (e.g., the cubic foot site index, terrain characteristics, wildfire hazard, available fire protection, etc.).

e. Follow with the reason(s) why the Department believes the request does not comply with the ordinance. Include statistics and reference works where appropriate. When using general studies be sure to identify how they are relevant to the subject case. If you have copies of the studies or reference works, file them in the record (even if only those portions pertaining to the specific issues); or, cite pertinent material in your comments. If you have

documentation on local examples, use them; e.g., the Awbrey Hall fire, or a specific case where local conflicts lead to a reduction in local forest management activities.

f. All information must lead to a demonstration of whether or not the proposal complies with the applicable criteria. If there simply is not enough information to determine this, stating such is enough (e.g., "substantial evidence has not been provided to indicate that this criterion has been satisfied"). Remember, the burden of proof is on the applicant to show that their proposal is in compliance with the applicable criteria.

g. If you are presenting oral testimony, be ready to answer contrary testimony. If you hear information being presented that is inaccurate or against your position, ask for the opportunity to rebut. If necessary you can ask for extra time to get evidence together (this is also true for written testimony, but you must request it in advance).

h. Contact other state agencies that may have information which could help the record or that may also be interested in providing comments. In particular, coordinate with a DLCD field representative and/or the DLCD Salem office in addition to any other affected agencies; e.g., ODFW, if a Big Game Winter Range area is involved.

3. CONCLUSION

a. The conclusion should include the Department's recommendation based on the concerns outlined in the body of the letter.

Example: "It is the Department's position that, for the reasons cited above, this proposal does not satisfy the requirements of Section 5.10(I), and Sections 5.30(1), (2) and (3) of the Hood River County Zoning Ordinance. Therefore, we recommend that this request be denied".

b. Include the action you want the county to take on your written comments. For example, if the decision will be made by the planning director, you should add, "please consider our letter in reviewing this application," or, if by a hearings officer, "please enter our letter into the record of the proceedings for this application."

c. If the decision will be made by means of a hearing which you will not attend, you may request, pursuant to ORS 197.763(4), that the public hearing be continued if new evidence is presented in support of the application.

d. Include your phone number and an invitation to call if there are any questions.

e. Send copies of written comments to the Department's land use coordinator in Salem, other affected agencies or interested parties you have contacted in preparing the comments, and DLCD.

4. EXAMPLE SUBMISSIONS

Date

(Name of Planning Department Contact)
Jackson County Planning and Development Services
10 S. Oakdale Ave. Room 100
Medford, OR 97501

RE: Fall Creek Watershed, File: 98-238-PA

Dear Ms. (Name):

We received your request for comments on the City of Yreka's proposal to create an Area of Special Concern in the Fall Creek Watershed. I would like to take this opportunity to provide you with some technical information about forest practice regulation and how it relates to water quality issues.

Let me start with a little legal background on the system Oregon uses to regulate forest practices. In 1989 the Legislature decided to have one consistent set of rules statewide to protect the environment from adverse effects of forest operations rather than having local governments develop 36 different sets of overlay zones. Therefore, the Legislature prohibited local governments from regulating forest operations (ORS 527.722).

A suite of best management practices was designed into the Oregon Forest Practices Act (FPA) to ensure that, to the maximum extent practicable, water polluting discharges are minimized from forest operations like harvesting and road building. Use of these best management practices should provide the City of Yreka with water that can be treated and used for domestic purposes. If this is not the case, and technical evidence indicates that the stream's water quality is impaired, the Board of Forestry can develop watershed specific rules to address the problem. Under Oregon's process the stream must be put on the 303 (d) list by the Department of Environmental Quality. After this action, total maximum daily load allocations will be developed for all point and non-point pollution sources in the watershed. If Fall Creek is not water quality limited, and the City of Yreka wants landowners to use different practices than those allowed under the FPA, voluntary easements may be negotiated with the forest landowners in the watershed.

I have attached some additional information on the water quality process. Please share this information with the City of Yreka during your pre-application conference. If you have any questions feel free to call me at (503) 945-7405.

Sincerely,

December 24, 2001

Nancy Kincaid
Department of Land Conservation and Development
635 Capitol St. NE Su. 200
Salem, OR 97310

Re: Otis/Lewis Zone Change Application

Per your request I have reviewed the information provided by the applicant and disagree with the conclusion that the site is occupied by non-forest soils. The applicant contends that "site indexes lower than 80 are not generally considered to be viable tree growing sites. " This is incorrect. With a 50-year site index of 80, sites are capable of growing about 97 cubic feet per acre per year (cf/ac/yr) at culmination of mean annual increment[3]. This is far above the 20 cubic feet per acre per year level that is considered to be the commercial/non-commercial dividing line by the Department of Forestry. Twenty cubic feet per acre per year is the biological dividing line where sites can become fully occupied with stands of commercial pine species. Therefore, the Forest Practices Act requires sites to be reforested after harvest if the soil is capable of producing 20 cf/ac/yr. The federal agencies (USFS and BLM) also consider sites greater than 20 cf/ac/yr to be commercial timber growing sites, and the USDA considers sites better than 80 cf/ac/yr to be "prime" timberland. The forest industry also manages lands that are in the lower productivity classes. In southwestern Oregon (Coos, Curry, Jackson, Josephine, and Douglas counties) 12 percent of the land managed by industrial forest managers is capable of producing between 20 and 85 cf/ac/yr.

The applicant lists three soils for the property. Contrary to the information provided by the applicant, the NRCS gives all these soils forest ratings that indicate they are commercially viable for growing timber (Atring – No. 8E – site index 99, Windygap – No. 262F – site index 118, Bellpine – No. 23F – site index 111), and recommend planting Douglas-fir.

According to the information provided by NRCS, these parcels are capable of producing about 1.35 million board feet of Douglas-fir timber at the end of a normal 60-year rotation. Therefore, the Department of Forestry considers these parcels to be capable of commercial timber production.

Sincerely,

[3] Chambers, C. J. 1980. Empirical growth and yield tables for the Douglas-fir zone. DNR Report 41. 49 pgs.

Example Testimony

Date

(Name) Chair
Wallowa County Planning Commission
Address

Chair (Name) and Members of Commission:

Re: Wallowa Lake Agenda Item

We have reviewed your proposed Goal 5 Resource Overly for the area around Wallowa Lake and want to enter the following information into the record.

ORS 527.722 specifically prohibits local governments from regulating forest practices. It says, "no unit of local government shall adopt any rules, regulations, or ordinances or take any other actions that prohibit, limit, regulate, or subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary." Many of the provisions in your proposed Goal 5 Resource Overly would limit how forest practices may be conducted or otherwise condition forest operations. Adopting these provisions would be a clear violation of the statutes.

While you cannot regulate forest practices as proposed you do have some options.

1. Under ORS 527.722 (4) local governments may prohibit forest practices in an area where they have taken an exception to Goal 4. Therefore, you could take an exception to Goal 4 to preserve outstanding natural features in the area.

2. ORS 527.722 specifically states that no limits are to be placed on local government's ability to regulate dwelling approvals. Therefore, if the county wants standards in rural residential areas (i.e., road grade limits, vegetative screening, etc) that are not contained in the FPA, they should make them a condition of the dwelling approval.

3. There are no limits on a local government's ability to negotiate scenic easements with landowners.

We respectfully suggest that you remove the provisions that are contrary to the statutes from your proposal and pursue one of the other options that are available to you. Please enter my comments into the record and inform me of your decision.

Sincerely,

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