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Information Report on 1983 Land Use Regulation

City Club of Portland (Portland, Or.)

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Information Report on
1983 LAND USE LEGISLATION

BACKGROUND

When Oregon's land use planning program became the subject of a statewide initiative in 1981-82, Governor Atiyeh responded to requests for an impartial evaluation by appointing a special Task Force on land use, which reported to the Governor in September, 1983. The Governor's Task Force, charged to focus on the program's impact on economic development, found a need for a better balance between protection and use of the state's natural resources. This information report summarizes 1983 legislation ("Law") and compares it with recommendations of the Task Force.

1. Completion and Acknowledgment of Local Plans

The Task Force recommended a plan acknowledgment deadline of January 1, 1984. The Law requires plan completion by January 1, 1984, but allows until July 1, 1984 for acknowledgment, with some exceptions. The Task Force recommended acknowledgment of plans that "substantially" comply. The Law allows acknowledgment of plans covering less than an entire jurisdiction and containing "technical or minor" departures from the Goals. The Task Force recommended completion of incomplete plans by a new land use court, with expenses paid by the local government. The Law gives the LCDC an option to complete plans and the power to withhold state-shared revenues to pay the expenses.

2. Shortening Time for Local Land Use Decisions

The Task Force, seeking to cut development costs caused by delay, recommended that proposals, including local appeals, be processed within 120 days. The Law concurs and: requires cities and counties to provide consolidated permit procedures; allows approvals without a hearing and provides standing for appeal; cuts the time for appeal to LUBA from 30 to 21 days; exempts completed applications submitted within 180 days of the initial application from newly adopted local criteria; and removes from appeal to LUBA ministerial decisions made under clear and objective standards. The Law agrees with the Task Force by directing the LCDC to provide technical assistance on land use processes.

3. Shortening Time for Appeals

The Task Force found review of local land use decisions too lengthy and costly. It recommended that the Land Use Board of Appeals (LUBA) be replaced by a land use court June 30, 1983. The Law extends LUBA to October 1, 1983 and establishes in its place a new LUBA with these differences: prohibits LUBA review of state agency decisions over which the Court of Appeals has jurisdiction for initial judicial review; ends LCDC review of LUBA opinions on Goal-related issues; shortens the time period for LUBA decisions; and permits LCDC to appeal land use decisions. The Law requires the Court of Appeals to decide appeals from LUBA within 91 days after oral argument.

4. Improving Post-Acknowledgment Procedures

Consistent with the Task Force concern about state and local disagreements over amendments to acknowledged plans, the Law allows: 1) local waiver of the 45-day notice to DLCD on proposed amendments if a local government finds that the Goals do not apply and 2) less than 45-days notice in emergencies. If either procedure is used, DLCD and parties not participating in the amendment may appeal to LUBA. The Law makes periodic review similar to the amendment process as recom-

mended by the Task Force and delays mandatory review until July 1, 1984, or two years following acknowledgment, whichever is later. The Law requires LCDC to set the schedule for reviews conducted by local jurisdictions, to offer assistance to the local governments and to simplify by rule the periodic review conducted by small cities and counties. In keeping with Task Force concerns, the Law follows a Task Force suggestion by exempting governments with an unacknowledged plan from complying with new Goal or rule requirements before January 1, 1985. The Law clarifies that Goals apply to incorporation of a new city and requires LCDC to adopt rules governing the process.

5. Aiding Economic Development (Goal 9)

The Task Force stressed Goal 9 by asking for more definitive standards, state and local economic development strategies, market analyses to justify land needs, and state assistance to interpret land inventory data. The Law requires LCDC, through Goals and/or rules, to ensure that local plans and regulations: 1) include an analysis of economic patterns and potentials; 2) contain economic development policies; 3) provide for an adequate supply of developable sites; and 4) provide for compatible uses on or near industrial sites. The Law requires state agency a) technical assistance for local governments; b) coordination and issuance of permits affecting land use in compliance with LCDC Goals and acknowledged local plans; and c) reliance on local findings under prescribed circumstances.

6. Modifying Agriculture and Forest Land Rules (Goals 2, 3, 4)

The Task Force found the Goals "exceptions" process too restrictive, and the emphasis on resource land protection unfavorable to competing economic development. The Law sets the standard for LCDC rules and redefines criteria for "exceptions" as 1) land irrevocably committed or physically developed and unavailable for uses allowed by the Goals, or 2) a) justification by other reasons, b) absence of a reasonable alternative site, c) findings of insignificant adverse impact, and d) compatibility with adjacent uses or reduction of adverse impacts. The Law states that "compatible" does not mean "no interference or adverse impact." Task Force concerns about siting destination resorts and defining agricultural land regionally were not addressed by the Law. The Law authorizes the option of a new designation for resource lands which in terms of income, parcelization and soil quality are marginally productive. While more homes may be sited and new lots created on marginal lands, use of this designation obligates the county to apply stricter regulations on other agricultural and forest lands. Changes were made in the 1981 "lot of record" legislation.

Some Outstanding Issues

- 1) Will the changes in Goal 9, the marginal land designation, and the exceptions process create a new round of planning delays, disputes and appeals?
- 2) Will the deadlines for plan completion and acknowledgment bring haste and waste?
- 3) Will the changes mollify the critics?
- 4) Does the Law respond to the Task Force recommendation that LCDC defer to local judgment regarding acknowledgment?
- 5) The Task Force said that problems of financing public facilities and infrastructure may "prove to be the stumbling block for the entire planning process." Does the land use legislation adopted help to solve the problem?

Respectfully submitted,

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