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City Club of Portland

BULLETIN

Portland, Oregon

Vol. 63, No. 22

Benson Hotel, Mayfair Room

12:00 Noon

Friday, October 29, 1982

PRESENTATION, DISCUSSION & VOTE ON NOVEMBER 2, 1982 GENERAL ELECTION BALLOT MEASURES

Printed herein, to be discussed this Friday:

Three Related Clackamas County Measures:

- No. 3-7 (Burning of Solid Waste Prohibited)
- No. 3-8 (Would Prevent Ratepayers' Debt
Obligation for Certain Garbage Facilities)
- No. 3-9 (Prohibits Discharge into Air of
Certain Agents by Garbage Burner)

City of Portland Measure No. 51

(Ordinance Establishing a Police Internal
Investigations Auditing Committee)

State Measure No. 1

(Increased Tax Base with New Property
Construction Increases District's Value)

State Measure No. 3

(Constitutional Real Property Tax Limit
Preserving 85% Districts' 1979-80 Revenue)

State Measure No. 6

(Ends State's Land Use Planning Powers,
Retains Local Planning)

(Note: Measures will be presented in order listed above.)

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligation of citizenship."*

BOARD APPOINTS FUTURES GROUP

Adam Davis, Secretary of the Board of Governors, will head a special committee of the Board to track "futures" issues for the Club. Appointed by the Board to the committee are: Steve Ames, Marge Kafoury, Richard Lakeman, Ned Look, Richard Norman, E. Kimbark MacColl, Kenneth O'Kane, Randall Scheel, Marsha Rhodes, Cynthia Toher, and Ed Samuelson.

The committee's major activities will be to review the City Club's research process for ways to assure that City Club reports are far-sighted as well as timely; to assist the Program Committee in developing programs about Futures; and to keep other Club committees apprised of Futures issues and topics relevant to their areas of study.

The City Club of Portland Bulletin

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PROGRAM SCHEDULE

Next Friday, November 5: *Dr. Matthew Prophet*, Superintendent of Portland Public Schools, will make his first appearance before the City Club. Benson Hotel, Mayfair Room, noon.

Wednesday, November 10: Second Wednesday Club.

Friday, November 12: *T. A. Wilson*, Chairman of the Board and Chief Executive Officer, The Boeing Company. "The Boeing Outlook." Benson Hotel, Mayfair Room, noon.

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PREFACE

Between now and election day, City Club members will receive committee reports on most of the significant state and local ballot measures to be voted on this November 2. However, you will not receive reports on two issues that will appear on the ballot: the nuclear weapons freeze question, which will be on the state-wide ballot (Measure 5), and the aid to El Salvador question, which will appear only on Multnomah County ballots. The Research Board decided not to issue reports on these questions because they present issues far beyond the research capabilities of the Club. Neither question is a "measure" in the usual sense; that is, neither will have any effect on the law of Oregon, and it seemed unlikely that the Club's ordinary study report format could do justice to either issue.

There is also a third question that may appear on the November ballot, on which no Club report will be prepared: the proposed Portland City Charter amendment involving residency requirements for city employees. That measure was proposed very late in the election season, after our study committees on all the other ballot measures were well under way, and the Research Board concluded that there was not enough time to organize another committee to study the issue and prepare a report. In addition, there has continued to be great confusion in the City Council as to whether the measure will even be on the ballot. The contradictory decisions emanating from the Council illustrate the disadvantages of haste in these matters, and we did not want to rush into print with an inadequately researched report on the measure.

- Charles F. Hinkle
Chairman, Research Board

BALLOT MEASURE PRESENTATION SCHEDULE

MEASURE	DATE	PLACE & TIME
State Measure No. 1.....	Fri. Oct. 29.....	Benson Hotel, Mayfair Room Noon - 1:30 pm
State Measure No. 2*.....	Fri. Oct. 22.....	Benson Hotel, Mayfair Room 12:15 pm
State Measure No. 3.....	Fri. Oct. 29.....	Benson Hotel, Mayfair Room Noon - 1:30 pm
State Measure No. 4*.....	Fri. Oct. 22.....	Benson Hotel, Mayfair Room 12:15 pm
State Measure No. 6.....	Fri. Oct. 29.....	Benson Hotel, Mayfair Room Noon - 1:30 pm
Clackamas County Measures 3-7, 3-8, 3-9 (Relating to Garbage Burning Plant).....	Fri. Oct. 29.....	Benson Hotel, Mayfair Room Noon - 1:30 pm
City of Portland Measure No. 51.....	Fri. Oct. 29.....	Benson Hotel, Mayfair Room Noon - 1:30 pm

*These reports published in Vol. 63, No. 21, October 22, 1982.

Report On Three Related Ballot Measures

BURNING OF SOLID WASTE PROHIBITED
(Clackamas County Measure No. 3-7)

Purpose: "This measure would not allow the building or running of a furnace or incinerator that burns solid waste within one mile of a public school, hospital or retirement home in Clackamas County."

WOULD PREVENT RATEPAYERS' DEBT OBLIGATION FOR CERTAIN GARBAGE
BURNING FACILITIES
(Clackamas County Measure No. 3-8)

Purpose: "This measure would prevent any Clackamas County garbage rate-payers' debt to finance or repay the costs of any garbage burner costing more than \$100,000,000."

PROHIBITS DISCHARGE INTO AIR OF CERTAIN AGENTS BY GARBAGE BURNER
(Clackamas County Measure No. 3-9)

Purpose: "This measure would prohibit the discharge into the air of lead, mercury or cancer causing agents from any garbage burner in Clackamas County."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

These three measures would impose restrictions on disposal of garbage by burning in Clackamas County. Although each is directed at a specific concern (proximity to certain institutions, financing, and air pollution), and although no particular incinerator is identified, the intent of each is to prevent construction of the garbage burning plant planned by the Metropolitan Service District (Metro) in Oregon City.

The measures were initiated by a citizen group, Oregonians for Clean Air, working with James Johnson, Oregon City Commissioner, and will appear on the November 2 general election ballots of Clackamas County voters only. Three other municipal measures with the same intent will be before voters in Oregon City, West Linn, and Gladstone. Because the purpose of those other measures is the same as the purpose of the county measures above, and because the authority of the city measures is under legal challenge, your Committee elected to restrict its study to the county measures.

The solid waste management issue, however, concerns the entire Portland Metropolitan Area, represented by Metro. This report will first discuss the background of the garbage burning issue in general, and then the specific ballot measures. The Committee's recommendations concerning these ballot measures should not be construed as either an endorsement or a condemnation of Metro's planned facility or of the viability of burning garbage as a general proposition. However, your Committee has some concerns about the timing and evaluation procedure apparently being pursued by Metro, which are set forth in Section IX, General Discussion of Measures.

A glossary of terms appears as Appendix A. Persons interviewed are listed in Appendix B and the bibliography is contained in Appendix C.

II. HISTORY AND BACKGROUND

Metro staff has planned this garbage burner, called a "Resource Recovery Facility" (RRF) during the last four years. It would be built, owned and operated by WRESCO, an affiliate of Wheelabrator-Frye Inc., (Wheelabrator) on 10 acres which Metro owns a mile northeast of Oregon City's business district. No contract has yet been finalized. Metro staff is expected to release the final proposed contract in October. The Metro Council is expected to act on the contract by the end of 1982.

The particular contract terms will be largely determinative of whether the RRF can be reasonably expected to be environmentally safe and economically sound. To date, (October 8, 1982), Metro staff has excluded the public from contract negotiations and has not yet made a copy of the proposed contract available to the Metro Council. Your Committee declined an invitation to discuss, on a confidential basis, Metro staff's present expectations concerning contract terms. In any event, your Committee has no way of knowing whether Metro staff's expectations concerning the contract will actually be realized, or the extent to which Metro staff's negotiations have limited the Metro Council's ability to make additional contract changes. However, during the period this report was being prepared, we were impressed by the ever-changing nature of Metro staff's negotiations with Wheelabrator. For example, when we interviewed Metro staff, the RRF was described as having three units and it was stressed that there was sufficient overcapacity to assure reliable operations. Less than two weeks later, Metro staff, with no mention of reliability, announced to the public that, to save money, only two units were to be constructed, without a proportionate reduction in total capacity.

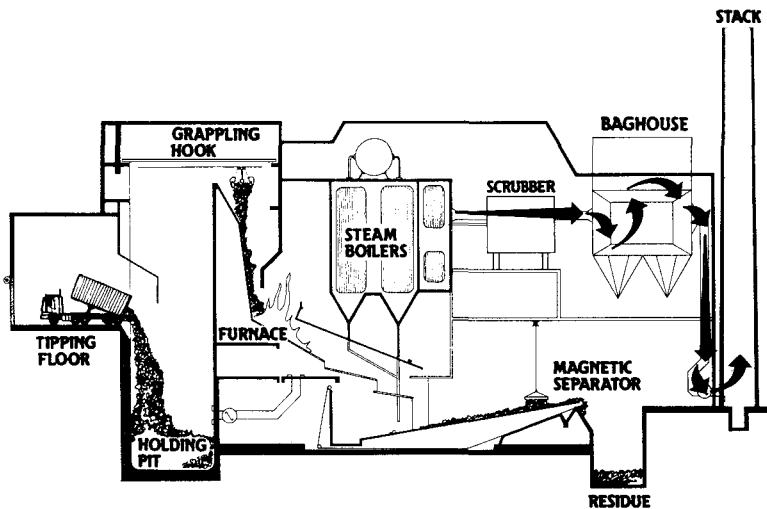
The RRF site is triangular, bounded by Oregon highway 213 on two sides and by a railroad right-of-way on the third, is half a mile south of the Clackamas River, and is directly across the highway from Rossman's Landfill (a garbage dump to be closed in 1983).

Metro expects the resource recovery facility to process approximately two-thirds of the garbage collected in the Portland Metropolitan Area. (The rest would be disposed of by existing methods.) The burnable resource, approximately 526,000 tons of garbage a year, would generate steam to be sold to Publishers Paper Company to dry paper and generate electricity. Publishers signed a contract in 1980 to buy the steam produced by the RRF for 25 years. Apparently this contract will have to be renegotiated. (Further information on RRF financing may be found in Section VI of this report.) The steam would be transmitted to the Publishers plant approximately a mile away by pipeline.

Metro staff outlined this operating procedure according to the following scenario (illustrated in the figure following): Local garbage collectors would deposit refuse at "transfer stations" (whose sites and costs are not yet determined) in Washington and Multnomah counties. Large trucks would haul the garbage to the RRF and dump their contents into a deep concrete holding pit. This "receiving area," would be in an enclosed building kept under negative air pressure, so that when its doors are opened to admit trucks, outside air would be drawn in to prevent odors and dust from escaping. An overhead traveling crane then would lift garbage from the pit into a hopper, from which it would be fed to furnaces and agitated on a moving grate while burning. Oil would be used to ignite the fires, but once started, combustion should continue without additional oil. The burn-

ing rate would be controlled. High-pressure, high-temperature steam would be generated from surrounding water tubes and piped to the paper mill.

The process would create two by-products, an ashy substance and a mixture of particles and gases. The ash would fall from the grate to a holding tank (for cooling), then travel to a magnetic separator where ferrous metals would be removed for recycling uses. The residue (estimated by Metro staff to be approximately 200,000 tons, but greatly reduced in volume) would be dumped in landfills. (Metro is exploring potential markets for the ash.) Some gases would be exposed to a "scrubbing" process where they would be partially absorbed by lime. The particles would be processed in a device called a baghouse where most would be trapped. Those remaining would go out the exhaust stack.



During the last 18 months, after public hearings in Oregon City, Metro obtained required permits from the Oregon City Economic Development Committee, Oregon City Planning Commission, and Oregon City Commission. The City Commission granted a conditional use permit, which was subsequently appealed to, and upheld by, the state Land Use Board of Appeals. An earlier attempt to block construction of the plant, a November 1981 ballot measure which would have amended the Oregon City Charter to require voter approval of a garbage burner, failed by a 52 percent to 48 percent margin.

In June, 1982, the Department of Environmental Quality (DEQ) prepared draft permits to allow for the facility's air and solid waste discharges. Final permits were expected by October 1, but may be modified due to changes in the proposed facility. In July, the Metro Council appointed a ten-member citizens Energy Recovery Task Force (Task Force) to examine financing of the burning facility, its environmental impacts, and the legal consequences of proposed contracts. Public criticism of the RRF has been focused on these three issues, as well as on the plant's perceived negative impact on recycling and waste reduction planning efforts. The Task Force is expected to report to the Metro Council within the next few months. The

final decision on whether or not to construct the plant is a responsibility of the Council.

Metro staff described the RRF as one-third of a "three-legged stool" supporting its solid waste management program. The other two legs are the continued use of a landfill (presumably the one proposed at Wildwood) and the implementation of Metro's recycling and waste reduction programs. Proponents of the ballot measures, and other critics, are concerned that the time, staff involvement, and money Metro staff has devoted to the first two legs (the burner and the landfill) will leave the third leg (recycling) substantially short.

Opponents of the burning facility argue that it could deter recycling efforts in two ways. First, the RRF burns everything fed into its furnace, but its magnets cannot separate aluminum and glass (as examples) which are now acceptable at recycling centers. Second, they fear that Metro, in order to keep the RRF sufficiently supplied to meet contract steam requirements, might burn material which otherwise could be recycled. Information was received by your Committee that this has occurred in other cities with similar facilities. Some even asserted that the consumption of oil in the RRF might be required to meet contract steam requirements. The plant has a backup burner which could be used to meet such high temperature burning requirements.

Some commentators further argue, without providing substantiation, that emissions from the plant into an already overburdened airshed could lead to a ban on backyard burning, a passionate prerogative of persons in the proximity of Portland.

III. ARGUMENTS ADVANCED IN FAVOR OF AND AGAINST MEASURE 3-7

(Prohibition of a solid waste incinerator within one mile of a school, hospital, or retirement home)

A. Arguments In Favor

1. An incinerator poses health and environmental threats to children, the ill, and the elderly due to its emissions, noise, odor, and increased traffic.
2. Burning garbage is an unacceptable solution to the solid waste problem because it undercuts other solid waste options.
3. Oregon City is an unacceptable site because of the already overburdened airshed.
4. The metropolitan area's solid waste problems should not literally be dumped in Oregon City.
5. Because of the region's substantial investment in the RRF, or because of a lack of other options, if emission levels are exceeded, DEQ will be politically unable to curtail the operation of the facility.

B. Arguments Against

1. The proposed burner would not produce harmful health and environmental effects.

2. The one-mile restriction has no rational relationship to expected emission patterns associated with the RRF.
3. One county should not obstruct the solution of a regional problem.

IV. DISCUSSION OF MEASURE 3-7

Presumably the population targeted in this measure represents those most susceptible to harmful health effects produced by a garbage burner. However, the measure does not identify those effects and their specific causes.

The weight given to harmful health effects of the RRF depends upon the confidence one has in available data and the interpretations of it, as well as in the ability to monitor and control emission levels once the facility is constructed.

Proponents of this measure argue that too little is known about long-term effects (health, genetic) of identifiable emissions, or those which might be identified in the future. They also are not confident that the DEQ could, or would, effectively enforce state emission standards if appropriate emission levels are exceeded. Proponents of this measure claim that standards have been relaxed after construction of similar pollution sources.

Based on testimony heard, your Committee is concerned that, given the large investment in this facility, there would be significant political pressure to relax environmental standards rather than close down the facility. However, we believe this does not constitute a sufficient reason to support the measure.

Metro staff contends that projected emission levels would be far below amounts known to cause adverse health effects in humans, and that the design, operating, monitoring and enforcement requirements will assure safe operation.

Proponents of the measure concede that the one mile restriction is arbitrary. If the cogeneration potential of a RRF is to be exploited, the RRF would have to be located near a major industrial facility and the limits contained in this measure would prove unduly restrictive. Nearly 300 public garbage incinerators of various types and techniques are in operation throughout the world, many of them in urban centers with no proven harmful health effects to date.

Opponents of this measure express indignation that the initiative process is being used to thwart solution of a regional problem. Representatives of Oregonians for Clean Air say the site was chosen for expedient rather than environmentally-sound reasons and find the initiative process the only way left to them to oppose it.

V. ARGUMENTS ADVANCED IN FAVOR OF AND AGAINST MEASURE 3-8

(prevents any Clackamas County garbage ratepayers' debt to finance or repay the costs of any garbage burner costing more than \$100,000,000)

A. Arguments In Favor

1. Clackamas County garbage ratepayers should not be responsible for a debt over \$100,000,000.

2. The RRF is too expensive and overscaled. The Measure's limitation would place a ceiling on the cost of the plant.
3. Contract provisions notwithstanding, businesses involved would pass cost overruns to garbage ratepayers.

B. Arguments Against

1. The \$100,000,000 figure is arbitrary and unsubstantiated.
2. Repayment of bonds is an obligation of the private builders, not of Metro and citizens of Clackamas County or any other county.
3. Private builders will have an incentive to minimize cost overruns and to operate the plant profitably.

VI. DISCUSSION OF MEASURE 3-8

The basic economic issue here appears to be not one of citizen indebtedness so much as it is one of determining the cost of the plant. Although your Committee was not able to examine the proposed contract, Metro staff indicated that it is intended that Metro's only obligation will be to pay a fixed price (escalated to reflect inflation) for the disposal of garbage. If this fixed price proves insufficient, or the RRF fails to operate, the economic risk and indebtedness would be entirely borne by private parties. If this is the case, the public's only economic concern should be with what disposal price is fixed in the contract.

Metro intends to issue industrial development revenue bonds (IDRBs) which would be repaid solely from revenues received from the plant. These revenues would come from disposal fees paid by Metro from "tipping fees" it charges garbage collectors, the contract agreement with Publishers Paper for steam energy, and the sale of reclaimed residue. Metro will contract with the plant operator to supply 526,000 tons of garbage.

Proponents of the measure are concerned that the plant will cost too much and that Clackamas County citizens ultimately would be responsible for the debt. Although this is an understandable concern, your Committee believes that the measure as written is not relevant to the proposed manner of financing the RRF. If financed as proposed by Metro, the citizens of Clackamas County would not be obligated to repay any debt. Default on debt repayment would be an obligation of the private parties building the plant, with no recourse to Metro or to the local taxpayers. "Garbage ratepayers" sole responsibility would be contributing, indirectly, to paying contract disposal charges which should not increase if the plant proves uneconomic. However, the level of these charges has not been firmly established and the economic viability of the RRF, from the standpoint of the public, cannot now be assessed.

Metro contends that a vote for this measure would not affect its plans. Moreover, the Committee believes that passage would not achieve the objectives of the proponents of the Measure, but would serve only to inordinately complicate the bond sale.

VII. ARGUMENTS ADVANCED IN FAVOR OF AND AGAINST MEASURE 3-9
(prohibits discharge of lead, mercury, or cancer-causing agents)

A. Arguments In Favor

1. Location of the burner is premature because no federal or state standards exist regarding several potential cancer-causing agents.
2. Clackamas County residents would be unnecessarily subjected to air pollutants.
3. Government agencies lack the technical resources, objectivity, and history of reliability to assess health hazards competently.

B. Arguments Against

1. The burner would meet emission standards set by federal and state agencies best equipped to determine them.
2. The measure is defectively worded and key terms are impossible to define in practice.
3. Complex environmental determinations are best made by agencies with specialized expertise, rather than by voters at large.

VIII. DISCUSSION OF MEASURE 3-9

The three substances singled out for concern in this measure are lead, mercury, and "cancer-causing agents." The Committee found that the dangers of lead and mercury are well known. Lead can accumulate in the human system and cause neurological disorders and, ultimately, death. Its dangers have led to federal regulations which discourage its use in refinement of gasoline. Mercury enters the solid waste system from batteries and fluorescent tubes. Long known as a toxic, it was the source of the "Mad Hatter's" twitchy behavior in "Alice in Wonderland."

Lead and mercury emissions would be largely reduced in the RRF scrubber system. Particulates trapped in the burner's scrubber system become part of fly ash residue.

Metro staff said that projected emission levels of both elements would be well below state and federal standards. State and federal standards have been developed for one dioxin, TCDD, and these standards also would be met by the RRF.

"Cancer-causing agents" defy practical definition, because almost any substance, in sufficient quantities under certain circumstances, can cause cancer in humans or other animals. One family of potentially cancer-causing agents which predominated in literature researched for this report is the dioxin family. Dioxins are highly toxic in minute quantities, and cancer is included in their adverse effects on people and animals. There is little research on dioxins, however, because their presence in the environment only recently has been identified and their quantities are exceedingly small.

As lay persons, your Committee was unable to assess the technical arguments on potential health effects from RRF emissions. It is evident that technical knowledge will expand in the future. However, in the absence of

any hard evidence of bias or misconduct by environmental agencies involved, we feel compelled to accept their determination that the proposed plant easily exceeds established environmental standards and poses no significant threat to human health.

IX. GENERAL DISCUSSION OF MEASURES

As stated at the outset, your Committee wants to make it clear that we are taking no position on the appropriateness of the proposed facility. What criticisms we do have concern the planning process which led to the choice of this particular site, size, and time frame for construction of the facility. We are particularly concerned that Metro staff apparently has elected to negotiate contract terms without the benefit of review by the Metro Council or the public at large.

Although Metro staff contends that the landfills at Rossman's and St. Johns will soon reach capacity, and public approval of the proposed dump at Wildwood remains uncertain, we were not persuaded that an RRF must be contracted for in advance of finalizing plans for a future landfill and waste reduction/recycling programs. It can be reasonably expected that premature placement of the RRF could undercut the impetus for recycling efforts. Your Committee believes that the other two legs (recycling and landfill) of Metro's solid waste management program ought to be firmly in place first, so that the third leg can be reasonably sized and located. Otherwise, a lop-sided stool could result.

We were surprised to find that the Metro Council has had little input in regard to formulating precise contract terms and that it apparently will be asked to consider the RRF on a "take it or leave it" basis. We believe that Metro Council should have more closely monitored staff allocation of resources to secure approval of a project of this magnitude and should have determined that sufficient effort was being devoted to recycling and waste reduction programs and their promotion.

It would make more sense to give the belatedly appointed Energy Recovery Facility Task Force adequate time to do its work. Instead, the Metro staff has been moving full speed ahead on RRF construction contract negotiations and requisite permits. The effect is to present to the Task Force, the Metro Council, and the public a fait accompli, the terms of which were fixed in secret sessions. Metro Council should slow this headlong approach.

X. GENERAL CONCLUSIONS

Despite our concerns, we believe the ballot measures under study have missed their mark. We sympathize with the concerns presented by the proponents of these measures and recognize that all the data are not yet available. But the ballot measures are inartfully drafted and will thwart not only the proposed RRF, but future solutions to a major regional problem.

XI. RECOMMENDATION

Your Committee recommends "No" votes on each of the three measures presented: Clackamas County Measures 3-7, 3-8, and 3-9.

Respectfully Submitted,

George Galloway
Jim McCreight
Dean Morell
Roxanne Nelson
Barbara C. Ring
Tom Stimmel
Kristine Olson Rogers, Chair

Approved by the Research Board and the Board of Governors on September 29, 1982 and ordered published and distributed to the membership for discussion and action on October 29, 1982.

APPENDIX A

Glossary of Terms

BACT..."best available control technology" - standard applied by DEQ, weighing the environmental impacts of emissions versus the economic factors.

CO-GENERATION...the burning of alternative fuels to supplement traditional fossil fuels for industrial uses.

DEQ...Oregon State Department of Environmental Quality - the state agency mandated to issue the permits for the RRF to be constructed and to operate; also responsible for monitoring the environmental impact of its operation.

DIOXINS...toxic man-made compounds synthesized in the combustion process, possibly dangerous in miniscule concentration. Little is known about their environmental impact to date.

EPA...federal Environmental Protection Agency - responsible for enforcing the Clean Air Act, among other national environmental standards.

GBB...Gershman, Brickner and Bratton, Inc. - Consultants in Resource Recovery, Solid & Hazardous Waste Management, Alternative energy systems. Located in Washington D.C. Completed a third-party Independent Review of the RRF at the request of Oregon City in April 1981.

LANDFILL...garbage dumping pits. There are two general purpose landfills left in the region: Rossman's in Oregon City (slated to be full by 1983) and St. Johns (full by 1987).

LAER..."least achievable emission rate" - level of pollution control applied by DEQ (more stringent than BACT).

METHANE...a highly volatile natural gas produced by the decomposition of organic compounds at landfills.

MSD...Metropolitan Service District (Metro) - Regional government, proponent of the RRF headed by Rick Gustafson.

MSW...municipal solid waste (garbage).

OAPI...Oregon Accountants for the Public Interest - currently conducting a study of the financing of the RRF.

OCA...Oregonians for Clean Air - a Clackamas County citizens group opposed to the construction of the RRF; proponents of the ballot measure.

OEC...Oregon Environmental Council - a private citizens watchdog group which has criticized portions of the DEQ draft permit for the RRF.

OFFSET REQUIREMENT...DEQ program to ensure net air quality improvement with economic growth. In order to offset the projected 84 tons of fine particulates from the RRF, MSD suggests "offsetting" 10 tons from the closure of Rossman's landfill and 74 tons from the implementation of a backyard debris collection program in Clackamas County.

PARTICULATES...pollution particles suspended in air, such as dirt, soot and smoke.

PCB'S...polychlorinated biphenyls. Primary precursors to dibenzofurans (see TCDD), widely used in the Pacific Northwest and therefore present in its garbage. Little is currently known about the health effects of the incineration of these substances, although research concerns have been highlighted and will be studied in the future.

PUBLISHERS...Publishers Paper Co., the firm contracting to purchase the steam from the proposed RRF in Oregon City.

RRF...Resource Recovery Facility - (garbage burning plant) - also known as ERF (energy recovery facility).

SO₂...sulfur dioxide (emissions responsible for sulfuric acid rain).

TCDD'S...trace organic chemicals. DEQ estimates that 8.6 grams/year of TCDD will be emitted by the RRF. Other toxic non-TCDD compounds potentially emitted are some isomers of penta CDD's and some isomers of polychlorinated dibenzofurans (PCDF's).

"TIPPING FEE"...a charge per truck for garbage dumped into the burner.

"TRANSFER STATIONS"...sites for small garbage collection trucks to deposit their loads into larger garbage haulers which will then transport tons of garbage to the Oregon City burner.

WASTE REDUCTION...the production of less garbage through changes in packaging, consumer practice in re-using materials, etc., as contrasted with recycling which reclaims refuse. Waste reduction programs aim at reducing waste at the source with fewer throwaways.

WHEELABRATOR-FRYE, INC....corporation contracting to build the RRF, through its subsidiary, WRESCO.

WILDWOOD...site of Metro's proposed landfill in Northwest Portland - MSD application recently rejected by Multnomah County hearings officer.

APPENDIX B

Witnesses Interviewed

John Charles, Executive Director, Oregon Environmental Council
 Tim Davison, Resource Recovery Section, Solid Waste Division, DEQ
 Dan Durig, Solid Waste Director, Metro
 Bruce Etlinger, District 10, Metro Council
 Janet Gillespie, Public Involvement Coordinator, Air Quality Division, DEQ
 Rick Gustafson, Executive Officer, Metropolitan Service District
 Cary Jackson, Project Manager, Metro
 James Johnson, Commissioner, Oregon City (opponent of RRF)
 Jonathan Kaffman, Superintendent of Records and Elections, Clackamas County
 Lloyd Kostow, Program Planning and Development Section, Air Quality Division, DEQ
 Dan LaGrande, Director of Public Affairs, Metro
 Dr. Andrew Moschogianis, Dentist and Member, Oregonians for Clean Air
 Tom O'Connor, Energy Recovery Field Office Manager, Metro
 Pete Schnell, Assistant to President, Publishers Paper Taskforce on Energy Recovery Facility (Metro) - Testimony considered and meeting attended on September 15, 1982.

APPENDIX C

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Report On
ORDINANCE ESTABLISHING A POLICE INTERNAL
INVESTIGATIONS AUDITING COMMITTEE
(City of Portland Measure No. 51)

Purpose: "This ordinance creates a Police Internal Investigations Auditing Committee consisting of three City Council members. The Committee may use City staff and citizen volunteers. The Committee will investigate the internal system used by the Police Bureau to investigate charges of police misconduct. The Committee may consider appeals from internal Police Bureau decisions in individual cases where police misconduct is charged. The Committee may publicize its decisions. The Committee may not determine police officer discipline."

To the Board of Governors,
City Club of Portland:

1. INTRODUCTION AND BACKGROUND

On January 16, 1981, Charles R. Jordan, the Portland City Commissioner in charge of the Police Bureau, appointed the Citizens Task Force on Police Internal Affairs to investigate the Police Bureau process for handling citizen complaints of police misconduct. Commissioner Jordan said he was responding to increasing reports that the Bureau's internal investigation procedures were not fair to complainants. At a press conference called to introduce the panel, Jordan said, "My efforts are not intended as a criticism of our bureau or its officers. Portland is served by an effective, professional police bureau. Its officers, who have a very difficult job, work hard to serve their community conscientiously. However, any system that investigates itself suffers from a credibility problem."

During the months prior to Commissioner Jordan's decision to create the task force, a number of incidents had plagued the bureau:

- * An Internal Affairs Division (IAD) [now Internal Investigations Division (IID)] investigation during the summer of 1980 led to the resignations of Portland Police Officers Scott T. Deppe and William T. Dugan, Jr. who had been assigned to the Special Investigations Division (SID) which is responsible for vice and narcotics investigations.
- * In December 1980, Deppe was arrested on charges of unlawfully obtaining narcotics from a drug wholesaler and subsequently was tried and convicted.
- * A joint investigation by Police Bureau detectives and the District Attorney's office was conducted into allegations that police officers planted narcotics evidence, stole money and narcotics from suspects, invented non-existent informants to obtain search warrants, and collected evidence payments for the non-existent informants.

1 "Police handling of citizen gripes to be evaluated," The Oregonian, January 17, 1982.

- * An allegation was made by the principal of Boise School that police failed to respond to a call at the school where an armed man was searching for a youth. The incident allegedly had racial implications.
- * The City Council reached a \$10,000 out-of-court settlement with a Northeast Portland father and son who accused some East Precinct officers of extending 30-minute coffee breaks into more than an hour. The complainants alleged that after their initial complaint about the coffee breaks, they were harassed by police officers.²

Chaired by Dr. Frances J. Storrs, the "Storrs Committee" spent six months investigating the then-existing Internal Affairs Division (IAD). On March 12, 1981, while the Storrs Committee was conducting its investigation, the Bureau became front page news again when a black restaurateur charged that police officers dumped four dead opossums by the front door of his business on Northeast Union Avenue. At a press conference, Ron Haddon, co-chairman of the Black United Front and Bruce Broussard, then-publisher of the Portland Observer, charged that this incident was "only one more in a long list of instances of police harassment, misconduct, and cover-up that has plagued the black community."³

On May 29, 1981 the Police Bureau and the District Attorney's office issued their SID investigation report. The investigation found police misconduct in 59 cases where criminal defendants had been convicted. Police misconduct was also identified in 35 other cases which were then dismissed before trial.

Three days later, on June 1, 1981, Mayor Frank Ivancie reassigned responsibility for the Police Bureau from Commissioner Jordan to himself and requested the Storrs Committee to complete its report.

On July 16, 1981, the Storrs Committee issued its report. One of its conclusions was that: "Many citizens have no confidence in the IAD and its procedures and are therefore reluctant to file complaints with the police."⁴ One of the report's recommendations was the appointment of a permanent citizens advisory committee to continue the work of the Storrs Committee and to hear citizen appeals of IID (successor to IAD) investigations. Chief of Police Ron Still, newly appointed by Mayor Ivancie to replace Bruce Baker, opposed the creation of a citizens advisory committee. When it became clear that the idea of a committee was unacceptable to the Bureau and to the Mayor, an ordinance drafted by the Storrs Committee to create such a committee was introduced by Commissioner Jordan.

During City Council hearings on the ordinance, questions were raised as to whether the Council could delegate its authority to investigate a City bureau to a committee of private citizens, and as to whether such a citizen committee could exercise the Council's powers to subpoena documents and compel testimony. Commissioner Mildred Schwab found that under a specific

2 "Embarrassed Police Bureau cleanest in nation," Oregon Journal. January 24, 1981.

3 "Blacks claim 'opossums' another insult by police," Oregon Journal. March 19, 1982.

4 Report of the Citizens Task Force on Police Internal Affairs, July 16, 1982, p.17.

provision of the City Charter, the Council could establish a committee of Council members to investigate and subpoena evidence on any City matter. A memorandum from the City Attorney's office stated that a committee of Council members would have the authority to investigate IID and to hear appeals of IID investigations, and that citizen volunteers could be utilized by the committee in the performance of its duties.

At the request of Commissioner Jordan, the City Attorney's office re-drafted the ordinance. The modified ordinance established a committee of three City Commissioners which may utilize citizen volunteers to carry out its duties. This modified ordinance, which created the Police Internal Investigations Auditing Committee (Auditing Committee) was approved by the City Council on a 3-to-2 vote on April 8, 1982. (A discussion of the Auditing Committee's structure, duties and powers is contained in Section IV. 5. of this report.)

After the ordinance was passed, Commissioners Jordan, Lindberg, and Strachan, a majority of the Council, voted to appoint themselves to the Auditing Committee. They then appointed nine private citizens to serve on the Committee.

Stan Peters, President of the Portland Police Association, led a successful petition drive, largely organized and financed by the police union, to refer this ordinance to the voters. Because the referendum drive was successful, the Auditing Committee has not met pending the outcome of the November 2, 1982 election.

A "Yes" vote on Measure No. 51 is in favor of the ordinance which established the Police Internal Investigations Auditing Committee. A "No" vote is in opposition to the Auditing Committee.

II. ARGUMENTS ADVANCED IN FAVOR OF MEASURE

1. The Police Bureau, like most governmental agencies, must have community oversight.
2. The community believes that the Police Bureau has not effectively investigated itself and that it cannot be expected to do so in the future.
3. The Auditing Committee is needed to balance the power of the police union in the area of discipline.
4. The existing review process is inadequate for many citizens. The Auditing Committee would help reduce police/community tension by providing citizens with other avenues for filing complaints and appealing IID decisions.
5. Public accountability for police procedures and performances, especially those of the IID, is inadequate.
6. The IID process would be improved with an outside audit because the Auditing Committee could find procedural and functional errors which the police might not discover.
7. The Auditing Committee would have high visibility and accessibility and therefore would do a better job of informing the public of the complaint process.

8. Outside review of Internal Investigations would make that process more effective and fair.
9. The open, outside audit would help restore or strengthen police credibility with the public.
10. If the ballot measure is not passed, the "irresponsible element" within the Police bureau will perceive defeat of the measure as tacit acceptance of reckless and illegal activity.
11. In the long term, the Auditing Committee would reduce the high cost of civil suits filed against the City by aggrieved citizens.

III. ARGUMENTS ADVANCED AGAINST MEASURE

1. Police discipline under the administration of Chief Still has been improved and there is no need for a citizen review process.
2. The IID is adequately investigating citizen complaints of police misconduct.
3. The Auditing Committee would be costly in terms of time and money.
4. Committee hearings would become media events which would subject citizen complainants and accused police officers to public embarrassment.
5. Police officers would be less willing to engage in "self-initiated activity." In other words, while on patrol, officers would be less assertive in instances where they have the discretion to intervene.
6. Civilians are not qualified to review police activity.
7. The appeal process of the Auditing Committee would interfere with the disciplinary process within the Police Bureau.
8. Evidence uncovered by the Auditing Committee could be utilized in civil and criminal lawsuits, thus increasing the City's liability exposure where the investigation substantiates the citizen's complaint.
9. The ordinance does not sufficiently specify the procedures to be used, leaving unclear the manner in which the Auditing Committee will operate.
10. The Auditing Committee would not "satisfy the dissatisfied" because many complainants of police misconduct are habitual criminals or troublemakers who oppose the entire police process.
11. The Auditing Committee review process would politicize police matters because the three Commissioners on the committee could be searching for political issues and support.
12. The Auditing Committee may develop into a full-blown, independent investigatory committee with disciplinary powers.
13. Establishment of the Auditing Committee would damage police morale.
14. Without an independent investigator, the Auditing Committee would not be effective.

15. Police Internal Investigations are already overseen by a citizen--the member of the City Council who acts as commissioner of police.

IV. DISCUSSION

1. The Complaint Process

Your Committee believes that, before presenting discussion of this measure, it is important to outline the current citizen complaint process.

Complaints may be made to the IID of the Police Bureau by letter, by telephone, in writing on a complaint form, or in person at any of the three Police Precincts. The IID also receives citizen complaints made to the office of the Commissioner in charge of police (police commissioner) who then forwards the complaint to the IID.

The following types of cases are investigated by the IID: excessive force; theft; missing property; or other cases that could result in serious disciplinary action or which appear to present serious questions of misconduct. Less serious cases are sent to the police officer's commander for review and investigation.

Under the existing IID system, the first step in processing a citizen complaint is to gather summary information on the incident using a standardized work sheet. Information is also obtained from a police report (if there is one) and it is standard procedure to run a criminal history check through the Police Bureau's computer to gather any available background information on the complaining citizen or the witnesses.

The investigation then proceeds with interviews of the officers involved, the complaining citizen, witnesses identified by the citizen, and other police officers who were at the scene of the incident. Witnesses may be interviewed at their own residence or by phone if they are not willing to come to Central Precinct. Witnesses may have a friend or attorney present during the interview.

Investigative reports are written by the IID investigator based on these interviews and other information from the investigative file (for example, police reports, background on the complaining citizen and witnesses, and physical evidence, including photographs).

Upon completion of the investigation, the file is turned over to the IID Commander for review. The case is then sent to the accused officer's commander who makes a recommended finding, which is one of the following: 1) Unfounded. The complaint is false; 2) Exonerated. The complaint is accurate but the actions are proper and lawful; 3) Insufficient evidence. The complaint cannot be proven or disproven based on evidence; 4) Sustained. The complaint is true and is a violation. The case with the commander's findings is returned to the IID Commander who may concur or disagree (called a controverted finding).

If the complaint is sustained, or a controverted finding, or of a serious nature regardless of finding, the case file is forwarded to the deputy chief, Investigations branch, who then determines if the investigation is complete. If so, the case file is then forwarded to the Discipline Review Committee. The Discipline Review Committee (composed of three senior police officers) reviews the completed investigation and produces a recommended finding. If it is recommended as sustained, a disciplinary recom-

mentation is attached to the file and it is forwarded to the offending officer's deputy chief and then to the Police Chief. The Police Chief makes a recommendation to the police commissioner who ultimately decides upon discipline in sustained cases. As an option the police officer may appeal a disciplinary action through the police union for arbitration.

According to the 1981 IID statistical summary, 30.8 percent of the cases received are "file pending court." This means that IID investigations associated with pending court cases are delayed until all court actions are completed, unless the complainant waives discovery in civil cases. When the court procedures are completed, the IID recontacts the complainant to ascertain if the complainant wishes to pursue the investigation. It is estimated by IID that about 5 percent of "file pending court" cases are actually reopened.

2. Community Oversight

Both proponents and opponents of the ordinance agree that some community oversight of police internal investigations is necessary. However, opponents argue that citizens do not understand police activities and are not qualified by either training or experience to review police conduct. In their view, the existing system should be retained in which community oversight is exercised by citizens acting through the mayor who selects the police chief, who is a professional.

The report of the Storrs Committee argues to the contrary. That citizen body identified various deficiencies in IID activities and made a series of recommendations to correct them. The current police administration says that all but two of the 20 recommendations have been substantially implemented.

Community oversight is fundamental to the democratic system. There is no aspect of government which should be above public scrutiny. Given the extraordinary powers granted police, there is even greater cause to have oversight of that agency of government.

As the American Bar Association stated in a 1973 report, "No other agency in government offers, by the nature of its operations, greater opportunities for its employees to engage in wrongdoing than does a police department. Individual police officers have enormous discretion, but limited guidance, supervision, and accountability as to how this discretion is utilized. This means that police officers daily make sensitive judgments on their own often without clear direction and with conflicting demands being placed upon them."⁵

Lay citizens already review and judge many professions (including the medical and legal professions), as well as judges and other governmental officials. They sit on juries which decide matters of life and liberty. Citizen participation in other areas of government has a long record of success in Portland. Therefore, your Committee is of the opinion that lay citizens are qualified to directly study and judge the internal investigations of the Police Bureau.

⁵ American Bar Association Project on Standards for Criminal Justice: The Urban Police Function. Washington, D.C., 1973, p. 145.

3. Police Internal Investigations

Due to the confidentiality of IID files, your Committee was not in a position to determine whether the Portland Police have been effectively performing their internal investigations. However, various community leaders told the Committee of their clear perception that the IID unfairly favors the police officer.

Police Chief Ron Still said that complaints against police are down significantly and that discipline has been tightened. The percentage of sustained complaints against officers has risen in the past year from 7 percent to 16 percent and many more 30-day suspensions were handed out to officers for misconduct than during the previous year. However, the reasons for this trend are almost impossible to document. The review process is almost invisible to the public, the City Council, and, according to Commissioner Jordan, sometimes even to the Commissioner in charge of the Police Bureau.

One of the reasons for the increase in sustained complaints may well be the public attention to the issue, resulting from the Storrs committee's work. Another reason for the increase in sustained complaints may be the high incidence of lawsuits filed in the last 18 months against the City because of police misconduct.

Your Committee found that the existing system of internal investigations, in which the police are in a position of investigating themselves, has a number of inherent shortcomings. According to Chief Still, IID duty is considered a highly undesirable assignment for which officers do not volunteer. IID duty typically is no longer than two years. Investigators may have worked with accused officers previously and may have to work with them subsequently. Both the investigators and the accused officers are members of the same union, and the union challenges most of the sustained complaints. Additionally, officers tend to bind together because their lives may rest in the hands of one another on their next shift.

While police say most complaints against them are not justified, if a citizen does have a legitimate grievance it may be impossible to gain satisfaction through the IID process. According to an assistant city attorney, a complaint will only be sustained against a police officer where the complaint has been found by the IID to be valid "beyond a reasonable doubt." Often only a police officer and complainant are involved in the incident, and if conflicting testimony arises police will nearly always believe "their own." Your Committee particularly noted the comments of Lt. Rob Aichele, then head of IID, made on a local television program aired in 1980.

"I think you have to look at the credibility of the class of people you are dealing with. Now, on the one hand, you're dealing with 700 plus officers of unquestioned credibility and integrity. On the other hand, you are looking at the vast majority of complainants who have proven and demonstrated criminal and behavioral problems in society over a long period of time...

"The majority of people that we deal with, the majority of citizen complainant people, and citizen witnesses, people that we deal with, I think are undesirable type of people. Most of the people that come in here and complain are people with criminal records, behavior problem records, and we get gross exaggerations from com-

plainants. We get a lot of fabrication and a lot of exaggeration...

"They come in here, some of them with records as long as your arm, and come up with the most exaggerated kind of fabricated stories. It's just ridiculous sometimes."⁶

Despite Lt. Aichele's comments, Police Chief Still told your Committee that a significant percentage of complaints are received from "ordinary citizens" arrested for the first time. Your Committee believes that the Police Bureau is no different from any other governmental agency in its inclination to protect itself from public scrutiny which could lead to the revelation of damaging or embarrassing information.

4. Avenues of Appeal

Opponents of the ordinance state that complainants already have a number of avenues of appeal from an IID determination, and therefore the Auditing Committee is unnecessary. Complainants can appeal directly to City Commissioners, the District Attorney, the F.B.I., the U.S. Attorney, community groups, and the news media, and they can file a civil action against the City. Chief Still furnished a diagram of these "avenues of appeal," reproduced in Appendix A.

On the other hand, proponents point out that the formal appeal process ends with the Mayor's office. The District Attorney, the U.S. Attorney and the F.B.I. have no direct responsibility to review IID investigations. Furthermore, they do have very specific duties which they must perform with limited resources. The avenue of filing a civil action contesting an IID decision requires time and the expenses of a private attorney. Finally, appealing an IID determination to community groups and the media will, realistically, only succeed where the damage to the individual is severe or the issue raised is of great importance to the general community.

For a citizen who is disadvantaged -- without sufficient means to pursue an appeal, uneducated, with a language problem or disability -- these avenues of appeal outside the formal complaint process are virtually inaccessible.

5. The Auditing Committee Process

The Auditing Committee is composed of three members of the City Council appointed by the Council, none of whom shall be the police commissioner. The ordinance states that the Auditing Committee may, but need not, utilize citizen volunteers to participate and help carry out the Committee's duties. The ordinance leaves unclear whether or not these citizens are to be members of the Auditing Committee or constitute a separate, ex-officio Committee. Commissioner Jordan, who is one of the Commissioners appointed to the Auditing Committee, said he envisions that the citizen volunteers would perform most of the work.

The two major functions of the Auditing Committee are: a) to monitor independently the IID; and b) to hear and determine appeals from police

⁶ "Who's Policing the Police?" Northwest Illustrated, KOIN-TV, Portland. Air date: July 27, 1980 and January 25, 1981.

officers or complaining citizens who are dissatisfied with IID investigations or decisions. The Auditing Committee has subpoena power to compel attendance, testimony and production of documents. The Committee is expected to make a quarterly review of the activities of the IID and to prepare a written report of its findings, conclusions and recommendations to the police commissioner, the police chief and the City Council.

The ordinance provides an extensive appeal process. The Auditing Committee has discretion to determine which appeals to hear and whether to receive testimony from witnesses. After considering an appeal, the Committee reports to the police commissioner and police chief whether it believes: 1) the IID investigation to be satisfactory and the determination approved; 2) further investigation is needed; or 3) the determination of the IID was inappropriate and the decision should be reviewed by the police commissioner and the police chief.

In turn, the police commissioner must report to the Auditing Committee what action is to be taken with respect to its recommendations and to the final disposition of each appealed case. If the Auditing Committee and the police commissioner differ with respect to an appeal, a report of such differences, including the position of each, will be forwarded to the City Council for its review and appropriate action.

The actions of the Auditing Committee are purely advisory. However, if the three Council members who serve on the Auditing Committee, and who constitute a majority of the Council, were to vote to enforce the Auditing Committee's recommendation, then it would be implemented whether or not the police commissioner was in agreement.

Your Committee found various minor ambiguities and drafting flaws in the ordinance. However, these and others that may be found as the Auditing Committee begins to work can be easily remedied through amendment by the City Council, a majority of which constitutes the Auditing Committee.

Opponents, however, still argue that because the committee procedures are not yet established and the role of private citizens is unclear, the voters do not know what they are voting for. Voters need to realize that they are not facing a charter amendment to establish an Auditing Committee. Rather, the ordinance is a device by which the majority of the Council can impose on a reluctant police commissioner an Auditing Committee which possesses powers already enjoyed by that Council majority. Clearly, the life and powers of the Auditing Committee are limited to the will of the Council majority.

Opponents have raised the question that the Auditing Committee must have an independent investigator or it is not worth creating. However, proponents say that the committee could use staff members of the City Council when needed. Furthermore, that argument misses the point because the committee is not designed to reconduct IID investigations by sending investigators to find and reinterview all witnesses. The Auditing Committee is set up to review what has been done by the IID, to take new testimony, and to make sure there are no major omissions, contradictions, or disturbing trends in the findings.

One of the most strongly advanced arguments heard against the proposed measure is that the Auditing Committee would be too political because it is comprised of three Council members. Police union president Stan Peters

said that the Auditing Committee would be motivated by the political maneuvering of politicians running for office.

However, the City Council is already empowered by the City Charter to investigate any area of its choosing pertaining to City government, including police activity. Moreover, the presence of appointed private citizens who are not holding elective office would be likely to restrain such political maneuvering.

Your Committee also recognizes the fact that everything pertaining to city government is inherently political. Presumably, the Auditing Committee consisting of three commissioners would be less "political" than the existing system in which only one commissioner oversees the police. Three members would be more likely to represent the views of the electorate than just one.

Opponents charge that Auditing Committee hearings could be a public circus and media event for political mileage. Public supervision of public issues always faces that risk. What will occur is dependent on the good faith of public representatives to conduct themselves in a responsible manner. Additionally, when an individual case is considered, your Committee has been informed that the Auditing Committee would normally meet in executive session to discuss any personnel matter.

Your Committee makes the assumption that the Auditing Committee will make every effort in establishing its rules to see that the rights of both officers and citizens are protected in the course of its hearings. Neither the public nor the police should expect, or receive, anything less.

6. Costs of an Auditing Committee

The issue of cost, both in time and money, of operating the Auditing Committee has been raised by both opponents and proponents of the measure.

Proponents say that the commissioners will make their staff members available for the necessary staff clerical work. Opponents argue that this would be costly because the work would require countless hours spent in investigations, meetings and report preparation. In addition, police officers would be required to spend time in meetings, preparation of reports, and in providing the Auditing Committee with information concerning investigations. Police union president Stan Peters said that a \$100,000 budget was required to operate a similar committee in Berkeley, California.

According to Commissioner Jordan, damage suits for over \$60 million were filed in the past year against the City for police misconduct, and the City has already paid out \$183,000 in settlements. Where the investigation substantiates the citizen's complaint, evidence uncovered by the Auditing Committee could increase the City's liability exposure. While representatives of the City Attorney's office acknowledge this, they state that, in the long term, this will be less costly. As continually offending officers are identified through an outside audit for illegal, abusive behavior, the number of civil suits should be reduced, bringing long-term savings to the City and to citizens.

7. Police Morale and Performance

Opponents have charged that the Auditing Committee would damage the morale of the officers in the Bureau and that self-initiated activity in

the course of police work would diminish because of the fear of outside review.

Conversely, your Committee found that the highly publicized illegal activities of the SID and the deplorable opossum incident were highly damaging to police morale.

Some of the opponents, including Stan Peters, claim that police will not do their job because of the "threat" of citizen review. On the other hand, your Committee heard both police management and police officers say that the Bureau is too professional to back away from its sworn responsibility--that officers would continue to perform investigations and make arrests.

Police officials interviewed complain that the ordinance would delay and interfere with police disciplinary procedures and diminish the authority of the police chief. Your Committee recognizes that the chief, as head of a paramilitary organization, needs authority to exercise discipline. However, officers already have numerous avenues of appeal from IID findings and resultant discipline, and the availability of the Auditing Committee to the police officer adds only one more avenue. Moreover, the Auditing Committee is not required to hear every request for appeal, and if it does hear an appeal, its decision is only advisory.

8. Police Credibility In the Community

Your Committee was told that exposure of offending officers through Auditing Committee investigation would damage public credibility of the Police Bureau.

It is hard for your Committee to believe that public credibility of the Police Bureau could be any further damaged than it was by the disclosures of the SID investigations and the subsequent wholesale dismissal of criminal convictions because of police misconduct, all of which occurred without an Auditing Committee.

Rather it can be expected that in those cases where an IID investigation finds complaints unfounded or the officer is exonerated, and the Auditing Committee agrees with the findings, public credibility will be restored. Should, however, police misconduct be exposed by the Auditing Committee, the resultant loss of public credibility in the police is a price your Committee believes is worth paying.

Moreover, your Committee found that the same community leaders who indicated that there is a perception of unfairness in the investigation process also indicated that the existence of the Auditing Committee will assist in dispelling this perception.

9. Can the Auditing Committee be Expected to Work?

Opponents have argued that "review commissions do not work, have not worked, and never will work." On the other hand, a former Portland police chief, J. Bard Purcell, said he believed it was possible for a review committee to work in this city, and the current City Attorney wrote in a memorandum to Commissioner Schwab that "the system proposed by the ordinance in the long-run will cause a diminishment of police misconduct."

While the record of review commissions certainly contains some failures, the record also shows some successes. Due to time constraints, your Committee was not able to study in depth review commissions in other cities. However, it did find that the review commissions in Oakland, California, and Kansas City, Missouri had met with some success, both with the police and the community.

In Oakland, California, the president of the police union, who opposes the Oakland citizens review board, told KOIN television's "Northwest Illustrated" in an interview that he believes that the board has "helped community relations and has had a positive effect in the community." In Kansas City, Missouri the police representative told "Northwest Illustrated" that the review board "pleases not only officers but civilians."

The key question is not whether review commissions have worked elsewhere. If there is a perceived need in this community, then it is the responsibility of the community to address this need. The Auditing Committee is different from other review commissions. One of the most important differences is that it consists of three members of the City Council. While opponents argue that this politicizes the process, your Committee believes that the Council members presence on the Auditing Committee will, in fact, give it a better chance of working.

V. CONCLUSIONS

1. Existing channels are not adequate for citizens to appeal complaints against police.
2. Strengthening the internal affairs process by insuring thoroughness through public scrutiny will discourage future illegal activity and thus enhance police morale and police credibility in the community.
3. External review of the IID process is essential to insure fairness to complainants.
4. Public officials and citizens are qualified to review police procedures.
5. Although much controversy has arisen over the potential politicization of the Police Bureau, it must be realized that government and politics are perpetually interrelated. Having three Council members review police conduct, instead of only one, will be more reflective of the disparate views of the entire electorate. Furthermore, the presence of appointed citizens will temper the potential for political excesses.
6. The anticipated cost of the Auditing Committee is not a paramount issue in pursuing the goal of a well-run, well-conducted police force with citizen oversight. Moreover, the Auditing Committee, in the long run, will reduce the high cost of civil suits filed against the City by aggrieved citizens by identifying continually offending officers.
7. The Police Bureau, like any agency or business, will benefit from an outside, unbiased review of policies which can point to improved methods and procedures. Opening the IID process to public review will motivate additional thoroughness and accuracy.

8. While review committees in some other cities have had varying degrees of success, our research has shown that major elements in those cities, including the police, point to specific successes, such as better community relations and greater confidence in police processes.
9. Your Committee has a strong sense that, while the huge majority of Portland Police officers are highly competent and of excellent integrity, there does exist a small element within the bureau which is responsible for a high percentage of the complaints. If the measure is not passed, that small irresponsible element will perceive defeat of the measure as public endorsement of their continuing reckless and illegal activity.

VI. RECOMMENDATION

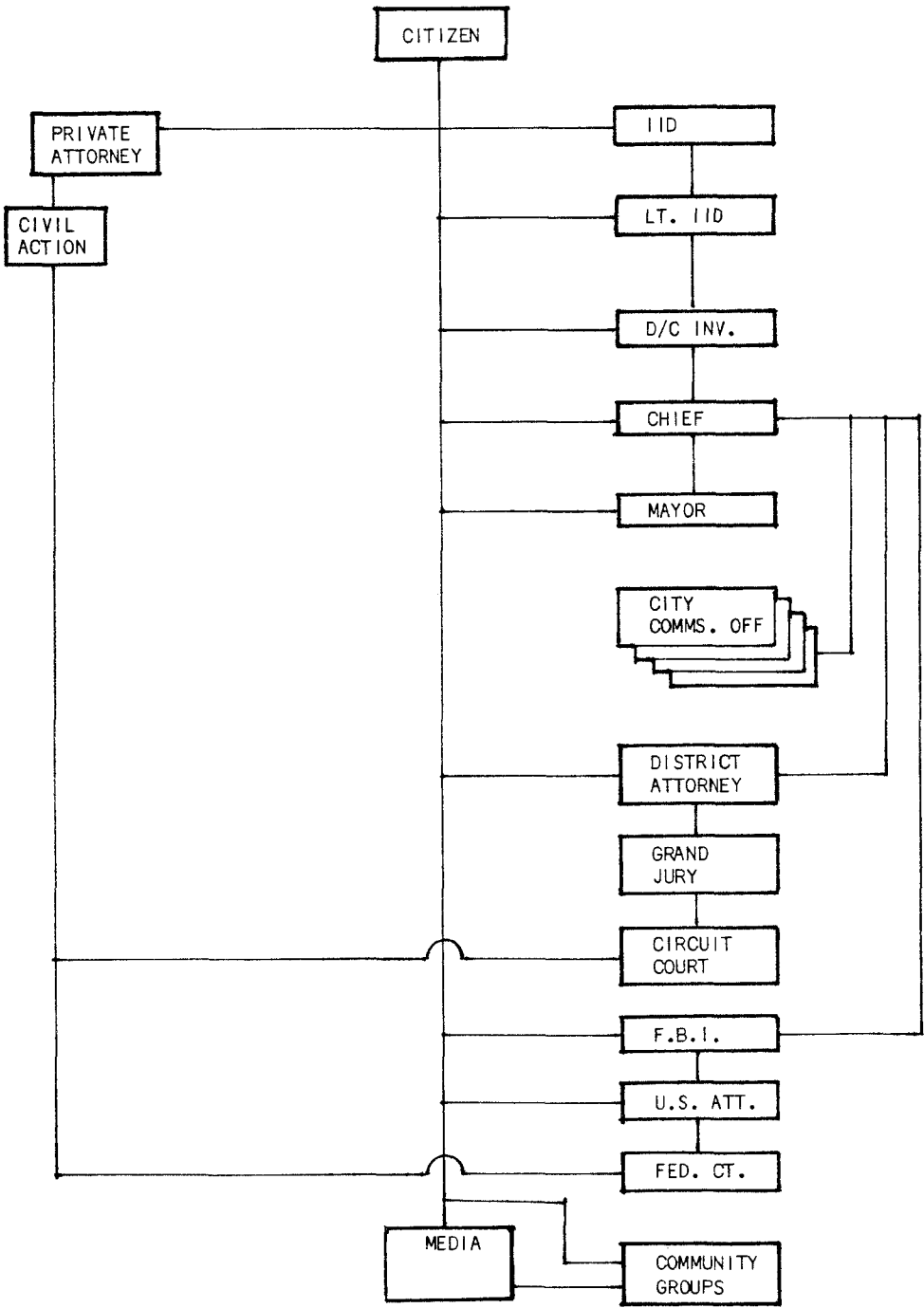
Your Committee unanimously recommends a "Yes" vote on Ballot Measure No. 51.

Respectfully Submitted,

Forest W. Amsden
Michele Bowler
Rev. Royald Vest Caldwell
Stephen B. Hill
W.E. Hunter
Jerome M. Margulis
W. Robert Naito
Malinda Pinson
Chuck Williams
Herbert O. Crane, Chairman

Approved by the Research Board on September 22, 1982 for transmittal to the Board of Governors. Received by the Board of Governors on October 4, 1982 and ordered published and distributed to the membership for discussion and action on October 29, 1982.

APPENDIX A
Avenues of Appeal



APPENDIX B

Persons Interviewed

Anonymous Officers, Portland Police Bureau
Bruce Baker, Former Chief, Portland Police Bureau
David Fleming, Director of Bureau of Risk Management, City of Portland
Gary Haynes, Deputy Chief, Portland Police Bureau
Duke Jennings, Northwest Ex-Offenders Association
Charles R. Jordan, Commissioner, City of Portland
Robert Lamb, Jr., Northwest Regional Director, Community Relations Service,
U.S. Dept. of Justice, Seattle
Stan Peters, President, Portland Police Association, and Chairman, Citizens
for a Safe Portland
Robert Phillips, Deputy Director, Affirmative Action Office, Office of the
Governor, State of Oregon; past president, Greater Northeast Precinct
Council.
J. Bard Purcell, former Portland Chief of Police and former Multnomah
County Sheriff
Diane Rader, Citizens for a Safe Portland
Gary Roberts, Attorney, Citizen Task Force on Police Internal Affairs
(Storrs Committee)
Mildred Schwab, Commissioner, City of Portland
Kristopher H. Scoumperdis, Deputy City Attorney, City of Portland
Michael Schrunk, District Attorney, Multnomah County
Robert Schwartz, Deputy Chief, Portland Police Bureau
Ronald R. Still, Chief, Portland Police Bureau
Frances J. Storrs M.D., Chairman, Citizen Task Force on Police Internal
Affairs (Storrs Committee)
Mercer Tate, Attorney and former Chairman, Police Advisory Board,
Philadelphia, Pennsylvania
Frank Turney, Northwest Ex-Offenders Association
Jerry Weller, Executive Director, Portland Town Council Foundation
Donna Wiench, Producer, "Northwest Illustrated," KOIN-TV

APPENDIX C

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Interoffice Memorandum from Lt. Michael P. Thomas, Internal Investigation Division to Deputy Chief Robert A. Schwartz, Police Bureau (Investigation Branch). July 31, 1982.
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Prepared Statements of Stan Peters and Charles Jordan before the City Club of Portland. Re: "Shall a Police Internal Investigations Auditing Committee Be Formed In Portland?" September 3, 1982.
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Statement of Mayor Frank Ivancie, Undated.
Tape of KPBS broadcast of City Club Debate 9/3/82.
The Internal Investigations Complaint Process, Portland Police Bureau. I.I.D. Statistical Survey through July 31, 1982.
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Report On
INCREASED TAX BASE WHEN NEW PROPERTY CONSTRUCTION INCREASES
DISTRICT'S VALUE
(State Measure No. 1)

Purpose: "Constitution now allows taxing districts a six percent annual increase over their previous year's tax base. Measure 1 would allow an additional tax base increase based on value of newly constructed property in the taxing district. Two years after new construction increasing a district's assessed value, its tax base would increase in proportion to the value of the rise due to new construction plus six percent. Increase cannot be more than 15 percent of prior year's tax base."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

This Committee was assigned to study and report on State Ballot Measures No. 1 and 3 (Measures 1 and 3) on the November 2, 1982 general election ballot. This report focuses on the first of these measures. Measure 1, referred to the voters by the 1981 legislature, would amend the state's constitution to allow a taxing district's tax base to grow in proportion to the value of new construction in the district (see Appendix A). This increase would take place two years after new construction is completed and could not augment the prior year's tax base by more than 15 percent.

II. BACKGROUND AND BRIEF ANALYSIS OF MEASURE 1

In order to understand the possible impact of Measure 1, it is necessary to begin with a brief, if oversimplified, explanation of Oregon's present property tax system. Under Oregon's "tax base" system, the voters in a taxing district initially approve a level of expenditures or "tax base" which may be levied every year thereafter. This tax base may then be increased by one of three methods: an automatic 6 percent per annum increase provided in the constitution; voter approval of a new, higher tax base; or annexation or expansion by a taxing district to include surrounding property. Taxes may also be raised through the enactment of special (i.e. temporary) levies. Under existing law, however, an increase in the value of real property in a district caused by new development does not increase the revenue raised. This is as true for rapidly growing communities as it is for communities experiencing slow or no growth.

Once the amount to be raised by a taxing district has been determined, the tax rate for the district is then computed by dividing this sum by the current assessed valuation of real property in thousands of dollars in the district. Because the addition of new real property developments does not of itself increase the total amount which a district may raise, the present effect of such development is to tend to decrease the tax rate assessed against all property in a district.

By contrast, Measure 1 would provide a district experiencing economic growth with an automatic proportionate increase in its tax base. This increase would occur two years after the newly developed property was added to the tax rolls, but would not exceed 15 percent of the prior year's tax base. Presumably, the increase in property tax funds collected would help

defray the cost of extending existing services to include the newly developed or improved property. An illustration of how Measure 1 would operate is provided by the following chart, developed by the Committee:

TAX LEVY CALCULATIONS UNDER CHANGING TAX BASE/ASSESSED VALUATION

Case A - \$100,000,000 assessed property valuation in year 0

6% tax base increase per year

No new construction

In year 0, tax base = \$2,500,000

Case B - \$100,000,000 assessed property valuation in year 0

6% tax base increase per year, Measure 1 not in effect

New construction has been and continues to increase assessed valuation by 5% per year

In year 0, tax base = \$2,500,000

Case C - \$100,000,000 assessed property valuation in year 0

6% tax base increase per year; Measure 1 in effect

New construction has been and continues to increase assessed valuation by 5% per year

In year 0, tax base = \$2,500,000

<u>Year</u>	<u>Case A</u>	<u>Case B</u>	<u>Case C</u>
1	2,650,000	2,650,000	2,782,500
2	2,809,000	2,809,000	3,096,923
3	2,977,540	2,977,540	3,446,875
4	3,156,192	3,156,192	3,836,372
5	3,345,564	3,345,564	4,269,882

Tax Rate per thousand
dollars of assessed
valuation in year 5

\$33.46

\$26.21

\$33.46

If both Measures 1 and 3 are enacted, the overall property tax ceiling contained in Measure 3 will control. In such a case, passage of Measure 1 would probably have almost no effect; most property taxes would already be at the maximum permissible levels before any Measure 1 increases. For further information, see the discussion of Measure 3 later in this volume.

III. ARGUMENTS ADVANCED IN FAVOR OF MEASURE

Proponents of Measure 1 offer the following arguments:

1. The measure keeps property tax bases current. In growing communities, the existing annual 6 percent increase is insufficient to keep pace with increasing demands for services caused by such growth.
2. The measure reduces the necessity for time consuming and expensive special levy and increased tax base elections. As a result, governmental resources would be more productively utilized delivering needed services.
3. The measure encourages economic growth by assuring prospective developers that communities would have improved resources to provide services needed for new construction. It also lessens the pressure on local

taxing districts to charge expensive front-end fees which drive up costs and discourage development.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

Opponents of Measure 1 offer the following arguments:

1. The measure would encourage additional government spending without local voter approval. In addition, public participation in the decision-making process would be reduced.
2. The number of elections would not be substantially reduced. A high percentage of the state's taxing districts would still require special levy or tax base elections to raise needed revenues.
3. A better way to reduce the number of special levy elections would be to permit the public to vote on a substantial tax base increase which would be likely to last several years.
4. There is no clear evidence that passage of this measure would significantly encourage economic development.

V. MAJORITY DISCUSSION

The overriding purpose served by local property tax decision-making is that local voters are assured the right to make local decisions as to the levels and types of services provided. This purpose is especially important in a period in which the public is demanding increased governmental restraint. Because Measure 1 provides an automatic increase in certain cases, it runs contrary to this purpose. A Majority of your Committee believes that it is preferable to require local government officials or developers to bear the burden of proving to the voters that additional revenues should be raised. This is true whether the revenues are needed to maintain service levels to existing taxpayers or to provide additional services as a result of new construction. Government restraint is encouraged by requiring officials to go to the voters and "sell" their programs at regular intervals. While these campaigns require a substantial amount of governmental time, this is necessary in the long run to assure adequate governmental accountability.

The Majority recognizes that under the present system, local government officials may be disinclined to promote local development and thereby over-extend what already may be an inadequate tax base. We also recognize that if local government officials could rely upon an increasing tax base, they might conceivably be willing to reduce front-end development fees and special assessments, which might improve the climate for local development. In our opinion, however, the proponents have failed to convert these theoretical arguments into arguments backed by solid data which deserve the voters' support.

For example, the measure's proponents have failed to present any comprehensive assessment of the probable economic impact of Measure 1 on growing districts, and we were unable to locate an assessment from any other source. The available data which exists at the state level suggests that the measure's overall effect would be relatively small. For fiscal year 1981-82, for example, the Legislative Revenue Office estimates Oregon's aggregate tax base at \$922 million, excluding assessments in excess of the 6 percent limitation. This sum also does not include property tax amounts

raised by special or temporary levies, which are often relied upon by many districts. The Legislative Revenue Office estimates that Measure 1 would result in approximately \$30 million in permanent levying authority and a net revenue increase of approximately \$15-19 million in 1983-84, an increase of approximately 2 percent over the existing tax base.

It is true that the percentage increase for a particular district which was experiencing greater than average growth would necessarily be greater. The measure's proponents whom your Committee consulted have failed to show, however, that even a far greater increase would, in fact, defray a sufficient portion of development-related expenses so that local decision-making would actually be affected in a large number of cases. To the contrary, your Committee was told that approximately two-thirds of the various districts' tax bases lag so far behind actual needs that tax base increases and special levy elections would be required on a regular basis in any event. It thus seems unlikely that the need for special elections would be significantly reduced.

VI. MAJORITY CONCLUSION

The Majority of your Committee is not convinced that Measure 1 is needed or that, if passed, it would do what proponents say it will. Measure 1 would, however, tend to weaken local community control over spending. Although it is possible that the measure might marginally improve the climate for economic development, this same development can be encouraged by the voters under the present system by voting for an increased tax base if this is desirable.

VII. MAJORITY RECOMMENDATION

The Majority of your Committee recommends a "No" vote on State Measure 1 at the November 2, 1982, general election.

Respectfully Submitted,

P. Barton De Lacy
James R. Erskine
Gaulda L. Hahn
Daniel I. Herborn
Peter E. Heuser

Diana Koin
Nancy J. Randall
Bernard F. Stea
Anne Seiler Jarvis, Chair
FOR THE MAJORITY

VIII. MINORITY DISCUSSION

Measure 1 will give communities a reason to support new investment whether it be industrial, commercial, recreational or residential. Additionally, communities will have an incentive to plan for and entice new investment because of the prospect of fiscal payback and not fiscal drain. Finally, new revenue generated by Measure 1 may be reinvested in a community's infrastructure to create a more attractive climate for development. Measure 1 provides the governing bodies of communities with the fiscal wherewithal to support economic development as it occurs.

Under Oregon's current system, new development imposes additional costs on a community without increasing property tax revenues proportionately. Because of that, it is nearly impossible to demonstrate fiscal benefits

which accrue to a community from new investment. In some cases, this compels a community to deny or delay projects, or to charge large front-end fees which may discourage investment. By contrast, Measure 1 would encourage communities to prepare and implement plans based on the communities' growth rate which could help prevent bottlenecks in the development of the infrastructure to support this growth. Under the current situation, communities often fear new development because of the demand it imposes on the level of services available with its fixed revenue base. Communities may also feel compelled to encourage only those types of growth which place minimal demands on local services which are in limited supply. Communities would have an incentive to encourage and attract new and more varied investments rather than spurn growth in favor of maintaining current service levels.

The arguments of the Majority that Measure 1 may erode local control or increase taxes to an unacceptable extent are unconvincing. The Minority agrees with the Majority that Measure 1 would not substantially reduce the number of special levy or tax base elections because a high percentage of the state's tax base lags behind the need for revenue. As a result, voters still would have the opportunity to vote on proposed spending increases which enhance service beyond basic levels. The only automatic tax increases would be those needed to match the level of growth and development in a community. Public budget hearings, required by law, also permit local participation in local spending matters. In addition, the voters retain control through the electoral process over the individuals who make the budget.

IX. MINORITY CONCLUSIONS

Measure 1 will not confuse voters or increase the effective tax rate. Measure 1 is an effective way to offset the additional costs of new investment without confusing taxpayers or inspiring their opposition. The problems which local governments face in trying to stretch a constant amount of revenue to include services to new developments would be partially alleviated. In fact, the tax rate for existing taxpayers may ultimately be reduced if sufficient new growth is stimulated that the increase in revenue collected is greater than the amount expended to extend existing services.

Although Measure 1 is not a cure-all and its overall impact on the tax base may be small in the short-term, it is the only responsible ballot measure this November which provides communities with a solid reason to support new development.

X. MINORITY RECOMMENDATION

The Minority recommends a "Yes" vote on the Measure 1 at the November 2, 1982, general election.

Respectfully Submitted,

Chris Nelson
FOR THE MINORITY

Approved by the Research Board and the Board of Governors on September 30, 1982 and ordered published and distributed to the membership for discussion and action on October 29, 1982.

APPENDIX A

Senate Joint Resolution 4

Referred to the Electorate of Oregon by the 1981 Legislature, to be voted on at the General Election, November 2, 1982.

MEASURE NO. 1

Ballot Title: INCREASES TAX BASE WHEN NEW PROPERTY CONSTRUCTION INCREASES DISTRICT'S VALUE

Question: Shall a taxing district's constitutional tax base increase when new property construction causes district's true cash value to increase?

Purpose: Constitution now allows taxing districts a six percent annual increase over their previous year's tax base. Measure would allow an additional tax base increase based on value of newly constructed property in the taxing district. Two years after new construction increasing a district's assessed value, its tax base would increase in proportion to the value rise due to new construction plus six percent. Increase cannot be more than 15 percent of prior year's tax base.

Be It Resolved by the Legislative Assembly of the State of Oregon:

Paragraph 1. Section 11, Article XI of the constitution of the State of Oregon, is amended to read:

Section 11.

- (1) Except as provided in subsection (3) of this section, no taxing unit, whether it be the state, any county, municipality, district or other body to which the power to levy a tax has been delegated, shall in any year so exercise that power to raise a greater amount of revenue than its tax base as defined in subsection (2) of this section. The portion of any tax levied in excess of any limitation imposed by this section shall be void.
- (2) The tax base of each taxing unit in a given year shall be one of the following:
 - (a) The amount obtained by adding six percent to the total amount of tax lawfully levied by the taxing unit, exclusive of amounts described in paragraphs (a) and (b) of subsection (3) of this section, in any one of the last three years in which such a tax was levied by the unit; or
 - (b) An amount approved as a new tax base by a majority of the legal voters of the taxing unit voting on the question submitted to them in a form specifying in dollars and cents the amount of the tax base in effect and the amount of the tax base submitted for approval. The new tax base, if approved, shall first apply to the levy for the fiscal year next following its approval.
- (3) The limitation provided in subsection (1) of this section shall not apply to:

- (a) That portion of any tax levied which is for the payment of bonded indebtedness or interest thereon.
 - (b) That portion of any tax levied which is specifically voted outside the limitation imposed by subsection (1) of this section by a majority of the legal voters of the taxing unit voting on the question.
- (4) Notwithstanding the provisions of subsections (1) to (3) of this section, the following special rules shall apply during the periods indicated:
- (a) During the fiscal year following the creation of a new taxing unit which includes property previously included in a similar taxing unit, the new taxing unit and the old taxing unit may not levy amounts on the portions of property received or retained greater than the amount obtained by adding six percent to the total amount of tax lawfully levied by the old taxing unit on the portion received or retained, exclusive of amounts described in paragraphs (a) and (b) of subsection (3) of this section, in any one of the last three years in which such a tax was levied.
 - (b) During the fiscal year following the annexation of additional property to an existing taxing unit, the tax base of the annexing unit established under subsection (2) of this section shall be increased by an amount equal to the equalized assessed valuation of the taxable property in the annexed territory for the fiscal year of annexation multiplied by the millage rate within the tax base of the annexing unit for the fiscal year of annexation, plus six percent of such amount.
 - (c) During the second fiscal year following the fiscal year in which the value of newly constructed real property has caused an increase in the true cash value of the taxable real property in a taxing unit over the true cash value of real property in the taxing unit as of the preceding January 1, the tax base of the taxing unit shall be increased as follows:
 - (A) The increase shall be an amount equal to the assessed value of the newly constructed real property which created the increase in true cash value of the taxable real property of the taxing unit multiplied by the tax rate within the tax base of the taxing unit for the fiscal year in which the increase occurred, plus six percent of such amount; or
 - (B) Fifteen percent of the prior year's tax base, whichever is the lesser. For purposes of this paragraph, new construction shall be defined by the Legislative Assembly. However, in an urban renewal project as described in section 1c, Article IX of this Constitution, an increase in the tax base of a taxing unit attributed to new construction shall be calculated each year in the manner provided in subparagraph (A) of this paragraph but shall be effective only after any tax on any portion of the equalized value has been used to pay off any urban renewal indebtedness or operating costs.

- (5) The Legislative Assembly may provide for the time and manner of calling and holding elections authorized under this section. However, the question of establishing a new tax base by a taxing unit other than the state shall be submitted at a regular state-wide general or primary election.

Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.

APPENDIX B

Persons Interviewed

Joyce Cohen, State Representative, District 24
 Terry Drake, Legislative Revenue Office
 John Marshall, Oregon Taxpayer's Union
 Rod Monroe, State Senator, District 7
 Jim Scherzinger, Legislative Revenue Office
 Barbara Seymour, Legislative Counsel
 Norm Smith, State Representative, District 7
 Mildred Sundleaf, Executive Board Director, Women's Legislative Counsel

APPENDIX C

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 State Housing Division Report (undated)
 City Club of Portland, Report on State Measure No. 6 and State Measure No. 11. Volume 49, No. 22, October 20, 1978.
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 City Club of Portland, Report on Constitutional Real Property Tax Limit Preserving 85% Districts 1977 Revenue (State Measure No. 6). Volume 61, No. 18, October 3, 1980.
 Legislative Revenue Office, Research Report #12-82, Sept. 1982.
 "Governor's Economic Recovery Council Report," May 2, 1982.

Report On
CONSTITUTIONAL REAL PROPERTY TAX LIMIT PRESERVING 85% DISTRICTS'
1979-80 REVENUE
(State Measure No. 3)

Purpose: "Constitutional amendment limits real property tax to 1-1/2% 1979 true cash value, plus enough for 85% (100% for emergency services) districts' 1979-1980 revenues. Requires equivalent renter relief. Taxable values, district revenues may increase 2% annually. Taxes for existing debts exempted. Preserves HARRP. Prohibits special ad valorem or sales tax on realty. Tax increases require 2/3 legislative or majority popular vote. Certain taxes require elections. Annual limit of two tax elections."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

In addition to its work on State Ballot Measure No. 1 (Measure 1), your Committee was asked to review and report on State Ballot Measure No. 3 (Measure 3) on the November 2, 1982 ballot. Measure 3 would amend the Oregon constitution by adding a new Article IX(a) which would, among other things, limit local property taxes, limit the ability of the state and local governments to issue general obligation bonds, and require that any future state tax measures enacted by the legislature receive a two-thirds vote of each house. [See Appendix A for full text of proposed Article IX(a).]

II. BACKGROUND

A. Oregon's Present System of Taxation and Bonding

1. Property Taxes

Property taxes were first adopted in Oregon in 1844, 15 years before statehood. Historically, property taxes have provided the largest single source of funds for government services at the local level, including public schools, fire and police protection, community colleges, and city and county programs. For the sake of ease of administration, however, the counties perform the actual collection process for all taxing units.

Although the percentage of local government expenditures from property tax revenues decreased through most of the 1960s and 1970s as federal and state aid for local programs increased, recent years have seen a sharp reversal of this trend. For fiscal year 1981-82, Oregon raised approximately \$1.413 billion in property taxes. A breakdown of the allocation of property tax revenues on a statewide basis for the year 1981-82 is contained in Appendix B.

As a result of a constitutional amendment passed in 1915, the funds which a local taxing district can raise each year may not increase more than 6 percent over the highest permanent tax base in the three preceding years unless voter approval is obtained. Over the years, this has meant that virtually all taxing districts have had to justify their revenue needs and budgeted expenditures to the voters on a regular basis in the form of permanent tax base or special (i.e. temporary) levy requests. The absolute

level of property taxes raised and the allocation of those taxes for different purposes are also determined locally.

Once the amount of funds which a particular taxing district can raise has been determined, the appropriate tax rate is determined by dividing the total tax to be levied by the total assessed value in thousands of the taxable real property of that district. The sum of the individual tax rates for each taxing district in which a parcel of property is located can then be multiplied by the property's assessed value in thousands to derive the total tax levied on that parcel.

A number of property tax limitation measures have been placed before Oregon voters in recent years, and all were rejected. In an attempt to provide a form of property tax relief to property owners and renters, the legislature enacted the Homeowner and Renter Relief Program (HARRP) in 1971 and a property tax refund program in 1979. The latter was referred to the voters and ratified by them in 1980. For fiscal year 1982-83, the maximum payment under the latter program is presently projected at \$192 per residence.

2. Income and Other Taxes

Since 1929, Oregon also has had a system of personal and corporate income taxation. In addition, Oregon raises revenue through the use of various excise taxes such as those on cigarettes and gasoline. At present, these taxes are enacted by a majority vote of the legislature and generally are subject to voter review through the initiative and referendum process.

Oregon has no state sales tax. The most recent major effort to establish one was rejected by the voters in 1969.

3. Local Bonding Authority

Taxing districts currently have the authority to issue general obligation bonds, tax increment financing bonds, and so-called "Bancroft bonds" to finance district improvements. All three forms of bonds are heavily relied upon by the local districts in order to raise the capital necessary to finance projects which will be paid for by subsequent revenues. "Infrastructure" investments such as sewers, streets, water systems, lighting projects and buildings are commonly financed through the use of general obligation bonds. Under present Oregon law, school buildings may only be financed by general obligation bonds.

Tax increment financing is particularly well suited to urban renewal projects where the improved real estate generates increased or "incremental" tax revenues which help defray principal and interest on the bonds.

Bancroft bonds, which are bonds secured primarily by the revenues from special assessments on the property to be affected by the improvements and secondarily by the district's general obligation bond authority, are often used for special projects affecting a neighborhood or area smaller than an entire district.

4. State General Obligation Bonding Authority

Oregon currently uses a variety of state bonding programs to finance capital improvements. The Veterans Home Loan program, irrigation and water projects, assistance to the elderly, pollution control and university capi-

tal construction projects are financed by general obligation bonds which are secured by the value of real property in the state.

III. BRIEF ANALYSIS OF MEASURE 3

The following analysis is based primarily on the Attorney General's Opinion No. 8130 on Measure 3 issued September 1, 1982, and on Legislative Revenue Report No. 12-82, Legislative Revenue Office, issued September 2, 1982. This report does not attempt to present every change which Measure 3 would invoke but focuses instead on the principal changes.

A. Effect on Assessed Valuation

Measure 3 would roll back the assessed value of real property in the state from its present level of assessed value to its 1979 true cash value.¹ Property newly constructed after 1979 would be assessed as if it had been built in 1979, based upon an estimate of the value that such property would have had in 1979. Beginning in 1984-85, the 1979 true cash values would be allowed to increase annually by the lesser of 2 percent or the rate of inflation as measured by the Consumer Price Index.

B. Effect on Maximum Tax Rate

Measure 3 also would limit to 1.5 percent, or \$15 per thousand of assessed valuation, the total amount of property taxes assessed against each parcel of residential and nonresidential property. This maximum tax rate could only be exceeded to fund indebtedness incurred prior to or concurrent with the passage of the measure or to maintain certain levels of services as described below.

At present, most real property in the state is taxed at rates much greater than 1.5 percent of its 1979 true cash valuation. Consequently, it seems likely that under Measure 3 most parts of the state would tax at or near the maximum level. The net effect of the change in total property tax revenues is discussed in a subsequent section of this report.

C. Apportionment of Property Tax

Under Measure 3, the counties would be required to collect the taxes levied and to apportion them among the taxing districts "according to law." Since the measure does not define this phrase and there are no current apportionment statutes, the state legislature would have to assume this responsibility.

D. Effect on Bonding

The 1.5 percent limitation would not apply to taxes or assessments levied to pay the principal or interest on indebtedness incurred prior to or concurrent with the passage of Measure 3. The 1979 true cash valuation as

¹ Under Oregon law the term "true cash value" refers to a property's fair market value. Through 1979, "true cash value" and "assessed value" were synonymous. Due to legislative changes made at that time, assessed valuation has lagged behind true cash value since 1980, with a present difference of approximately 15 percent between 1981-82 true cash and assessed values. Throughout this report, the term "1979 true cash value" is used to refer to the true cash value for the tax year beginning July 1, 1979.

adjusted by the lesser of 2 percent or the Consumer Price Index would then become the base for calculating the maximum amount of bonds which could be issued in the future. State and local bonding authority would be reduced, and certain programs like the Veterans Home Loan Program would be unable to issue new bonds for some time into the future.

The Attorney General has expressed the opinion that the passage of Measure 3 would effectively preclude the issuance of Bancroft bonds and other general obligation bonds. The issuance of tax increment bonds would also be adversely affected. These changes would be brought about by Section 8(a) which flatly prohibits any "special" ad valorem tax on real property or on the sale or transaction of real property. In the Attorney General's opinion, a tax levied to pay the principal and interest on newly issued bonds or a general obligation pledge to the same effect would constitute a "special" tax and therefore be prohibited.

E. The Revenue Safety Net

Section 4 of Measure 3 allows the 1.5 percent property tax limitation to be exceeded under certain circumstances. Regardless of how much revenue the 1.5 percent tax rate would generate, the total revenue of a district which provides only "essential services" could not be reduced below the district's fiscal year 1979-80 total revenue. "Essential services" are defined by the measure as "emergency services, including police, sheriff, fire, ambulance, and paramedic services." A district providing services other than those deemed "essential" by the measure, such as libraries, schools, and housing for the elderly, would be guaranteed funding equal to 85 percent of its total 1979-80 level. In the case of a district that provides both "essential" and nonessential services, the funding level of essential services could not drop below 100 percent of its 1979-80 level until the funding level of other services dropped below 66-2/3 percent of its 1979-80 level. These alternatives are depicted on the chart below, developed by your Committee:

A District Offering:

Safety Net Provides:

Essential Services

100% of 1979-80
Total Revenue

Essential and Other

85% of 1979-80

100% Essential (if other services are funded at 66 2/3% or more of their 1979-80 total revenue).

Less than 100% Essential (if other services are funded at less than 66 2/3% of 1979-80 total revenue).

The Attorney General construes "total revenue" very broadly to include the total gross income of a taxing district, including funds from state and federal sources, as well as any carryover of liquid assets and bond proceeds. This safety net amount may increase annually by the lesser of 2

percent of the district's 1979-80 total revenue or the rate of inflation as measured by the Consumer Price Index.

F. Effect on Present Tax Relief Programs

Section 6 of Measure 3 mandates that HARRP program benefits shall not be reduced. The Attorney General has concluded, however, that the legislature could abolish the program altogether. Measure 3 does not affect the present property tax refund program, although the legislature would be free to revise it. Measure 3 also does not require that any decrease in property taxes realized by landlords be passed on to renters.

G. Other Effect on State and Local Taxes

Section 7 of the measure requires that any legislative change in any state taxes for the purpose of increasing revenues be passed by at least two-thirds of the members of both houses of the legislature or a majority of those voting on the measure. Also under the section, changes relating to real property taxes could only be enacted by a statewide vote, and such elections could not exceed two per year.

Section 8 allows the state and local governments to impose "special" taxes or assessments only upon a majority vote of the affected voters (except "special" ad valorem property taxes and sales or transaction taxes on the sale of real property which are prohibited). For example, a local government which had the necessary authority to do so could impose a "special" tax which did not represent ad valorem real property tax, such as a sales tax, by majority vote.² Any additional ad valorem taxes on real property imposed under Section 7 or 8 would not exceed the 1.5 percent limitation.

H. Effect on Other Constitutional Provisions

Measure 3 does not repeal any existing constitutional taxation provisions. The annual 6 percent allowable increase in property tax bases would still be applicable but only to the extent that such an increase would not exceed the 1.5 percent limitation or the alternative safety net under Measure 3.³

IV. ARGUMENTS ADVANCED IN FAVOR OF MEASURE 3

The following arguments were advanced by proponents of Measure 3:

1. The measure would reduce property taxes which already are too high.
2. The measure would reduce property tax revenues available for public education, forcing school districts to be more fiscally responsible and

² Measure 3 does not define the term "special tax." An August, 1982 opinion of the California Supreme Court interpreting Proposition 13, which in many ways is similar to Measure 3, holds that "special" taxes include taxes earmarked for a special purpose, such as the support of a particular program or activity, as distinct from a levy placed for general funds to be used for general government purposes.

³ For instance, if both Measures 1 and 3 pass, additional taxes could only be assessed under Measure 1 to the extent that the limits of Measure 3 were not exceeded.

to become more efficient in delivering educational services.

3. The measure would reduce funds available to local government, forcing them to trim "fat" and waste.

4. The measure would encourage local government to reconsider programs that can be supported by the users of those services through greater reliance on user fees.

5. The measure would assure that "essential services" are adequately funded.

6. The measure would stimulate economic development by reducing the corporate tax burden.

7. The measure would stimulate the state economy by shifting nearly half a billion dollars the first year from the public to the private sector, making it available for investment and creating new jobs.

8. The passage of this measure would force the legislature to pursue the issue of tax reform, especially the establishment of a sales tax.

9. The measure would insure that new taxes were broadly supported by requiring the approval of two-thirds of the legislature or a majority of the affected voters.

V. ARGUMENTS ADVANCED IN OPPOSITION TO MEASURE 3

The following arguments were advanced by opponents of Measure 3:

1. The measure would preclude local taxpayers from raising real property taxes in order to fund local services and capital improvements at the level they desire.

2. The measure would force local governments to seek additional funding at the state and federal levels. If this funding is available at all, it is likely to come with strings attached, further limiting local control.

3. The measure's safety net provision would provide insufficient funding for "essential services," and other services would be slashed beyond the bare minimum.

4. The measure would seriously curtail economic development in two ways:

(a) The reduction or limitation of state and local bonding capacity would seriously curtail the financing of capital improvements which are generally a precondition to privately financed economic growth.

(b) The reduction in the level and types of local government services would also make Oregon a far less attractive place in which to work or invest.

5. Because taxpayers would have less property tax to claim as deductions on their tax returns, the measure would result in increased federal and state income taxes, little of which are likely to flow back to local economies.

6. Since the measure would be a constitutional amendment, it would be difficult to change at a later date. In addition, the difficulty of passing additional revenue-raising measures would allow a minority of legislators to block an attempt at tax reform.

VI. DISCUSSION

A. Impact of Measure 3 on Government

1. Reduction in local decision-making authority and control

Several proponents of Measure 3 believe they represent the "little man" against "big government." However, Measure 3 shifts a tremendous amount of decision-making power from local voters and local governments or taxing districts to the state. Local voter control over the amount of property taxes levied is an important part of local governmental authority. In Oregon, it is clear that local tax measures and locally elected officials frequently come before the voters in open elections. Oregon voters presently vote on all tax base increases above 6 percent per year.

Under Measure 3 the citizens of an area would be constitutionally prohibited from approving additional property taxes if they wanted to meet special local needs and if they were already at the 1.5 percent limit. As a result, the voters of a district would not be able to raise property tax revenues, for example, to renovate an aging downtown core or to improve their public schools.

Local control also would be undercut in another respect. As noted in the Background section, the allocation of local property tax revenues to the various taxing districts in an area would be made by the state legislature. Local governments and taxing units operating on behalf of their constituencies would be unable to allocate the property taxes by themselves. The legislature, with its own limited resources and the increasing demands placed upon it by truly statewide issues, is ill-equipped to undertake this obligation.

2. The Two-Thirds Legislative Requirement

Currently Oregon law requires a simple majority of both houses to enact a new law. Measure 3 would increase this requirement to two-thirds of each house whenever the measure would raise taxes. Since most tax measures are referred to the voters through the initiative and referendum process, this change may well have little practical effect. However, the proponents have not demonstrated either the need or the ultimate desirability of this change. In fact, the measure may tend to make the operation of state government less responsive and more cumbersome. For example, it could permit a minority of legislators to hold up tax reform legislation until some special concession was made which the majority did not favor.

3. Measure 3 as a Means of Forcing Tax Reform

Tax reform is not the goal of Measure 3. The major proponents of Measure 3 intend this measure to result in an absolute reduction in local government spending.

A number of others interviewed by your Committee, however, felt that a by-product of the measure's passage would be that overall statewide tax reform, including the adoption of a sales tax, would ultimately follow.

Whether or not this prediction is accurate cannot, of course, be determined in advance. Nevertheless, even if this outcome were certain to follow, we believe that Measure 3's adverse impacts as described elsewhere in this report are far too great to make this alternative worthwhile. In addition, Measure 3's restrictions on future changes in the tax laws will make it harder to achieve reform. We believe it to be more appropriate for those favoring such reform to do so directly and by presenting a complete plan to the voters.

B. Impact of Measure 3 on the Economy

1. Effect on Present Local Programs

It is not possible at present to predict the exact impact on specific taxing districts since property tax revenues will be apportioned among taxing districts by the legislature. However, a recently released report by the Legislative Revenue office estimated that if Measure 3 had been in effect for the 1981-1982 tax year, property tax revenues would have been reduced by 33.3 percent or from \$1,413.2 million to \$941.9 million. For the 1983-1984 tax year, the report estimated that Measure 3 would reduce property tax revenues by 43.5 percent from \$1.764 million to \$997 million over what they would otherwise have been. Another recent study suggested that Multnomah County's revenue from property taxes for the 1983-1984 tax year would be decreased by 57.6 percent when compared to presently projected 1983-84 property tax revenues. These reductions would come at a time when further reductions in federal and state support also are a certainty. Such further cuts would be likely to have a devastating impact on many local services.

Several of the proponents interviewed expressed discontent with the efficiency and quality of the delivery of local services, particularly public education. The proponents charge that state school expenditures per pupil have increased dramatically in the last decade while the quality and effectiveness of our schools have declined. Far from maintaining public school quality, however, your Committee believes that the Measure 3 cuts would only weaken public education. Many school districts already are operating under lean budgets as a result of their inability to obtain voter approval of funding levels. Your Committee also believes that objections to public school funding levels or the quality of service are better addressed at the local level.

2. Effect on Economic Growth

The long-term effect of Measure 3 on economic growth is perhaps the most difficult issue which your Committee confronted. The question is this: Would the positive economic effects of increased property tax savings outweigh the effects of the inability of state and local governments to finance "infrastructure" investments such as roads, water, and sewers and the reduction in the quality and quantity of local governmental services?

Neither the proponents nor the opponents of Measure 3 have presented detailed economic forecasts of the long-term effects of the measure on Oregon's economic growth. Both groups appear to be reasoning from first principles. At recent public discussions, however, a number of speakers knowledgeable in this field have stressed the importance of improvements, generally financed by state or local government, as a necessary precondition to private development. The speakers said, for example, that Oregon

is extremely deficient in the number of large industrial sites with adequate facilities available for immediate development.

Measure 3 appears likely to exacerbate this problem rather than alleviate it. As noted earlier in this report, your Committee believes that the passage of Measure 3 would severely restrict the issuance of general obligation bonds, Bancroft bonds, and tax increment financing for urban renewal projects. These financing tools are essential to the promotion of economic development as presently conducted throughout the country. Without the general obligation pledge, alternative forms of financing such as revenue bonds, could only be obtained at a significantly higher cost. The proponents of Measure 3 have not indicated to any meaningful degree how Oregon's state and local governments could promote economic development under these restrictions, and your Committee was not presented with any specific evidence.

Furthermore, unless national economic trends change substantially, it will not even be possible for local governments to provide services at or near their present levels on a 1979-80 cost basis. The annual increase permitted by Measure 3--limited to the lesser of the increase in the Consumer Price Index or 2 percent--simply would not be adequate. Your Committee believes that the long-run economic effect of the curtailment of local services under Measure 3 would be severe and that the promise of Measure 3 under its revenue safety net to maintain even "essential" services is illusory.

VII. CONCLUSION

Your Committee believes that Measure 3 fails on all counts. Local control of local taxing and spending decisions would, in significant part, be taken away from the citizens most affected and left in the hands of the state legislature. Local governmental services would be severely curtailed, diminishing the quality of life for all. The loss of bonding flexibility and the increased difficulty of raising new taxes can only further hinder the efforts now being made for economic recovery. Measure 3 does not constitute tax reform and may in fact hinder such reform.

We do not deny that there are many Oregonians who are unhappy with the levels of state and local governmental spending. What we do deny is that passage of Measure 3 would satisfy such concerns at an overall price to the state and its citizens which is anywhere near tolerable. At best, Measure 3 is a poorly drafted and unduly restrictive attempt to deal with such concerns.

VIII. RECOMMENDATION

Your Committee unanimously recommends the City Club of Portland support a "No" vote on Measure 3 at the November 2, 1982 general election.

Respectfully submitted,

P. Barton De Lacy
James R. Erskine
Gaulda L. Hahn
Daniel I. Herborn
Peter E. Heuser

Diana Koin
Chris Nelson
Nancy J. Randall
Bernard F. Stea
Anne Seiler Jarvis, Chair

Approved by the Research Board and the Board of Governors on September

23, 1982 and ordered published and distributed to the membership for discussion and action on October 29, 1982.

APPENDIX A

INITIATIVE PETITION

Submitted to the Electorate of Oregon by initiative petition, to be voted on at the General Election, November 2, 1982.

MEASURE NO. 3

Ballot Title: CONSTITUTIONAL REAL PROPERTY TAX LIMIT PRESERVING 85% DISTRICTS' 1979 REVENUE

Question: Shall constitution limit real property tax rates and valuations, preserve HARRP, require elections for certain taxes and limit tax elections?

Purpose: Constitutional amendment limits real property tax to 1-1/2% 1979 true cash value, plus enough for 85% (100% for emergency services) districts' 1979-1980 revenues. Requires equivalent renter relief. Taxable values, district revenues may increase 2% annually. Taxes for existing debts exempted. Preserves HARRP. Prohibits special ad valorem or sales tax on realty. Tax increases require 2/3 legislative or majority popular vote. Certain taxes require elections. Annual limit of two tax elections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

The Constitution of the State of Oregon is amended by creating a new Article to be known as Article IXa and to read:

Section 1

(a) "True Cash Value" shall mean the respective County Assessor's valuation of real property as shown on the tax statement for the tax year beginning July 1, 1979, under the heading "full cash value" or its equivalent terminology.

(b) "Real Property" shall include mobile homes used as private residences even if placed upon rented or leased space, and floating homes. (Houseboats.)

(c) "Total Revenue" means a district's total revenue from whatever sources derived, including but not limited to property and other taxes, fees and licenses, grants, state and federal revenue sharing and cost-sharing contracts.

(d) "Essential Services" means emergency services, including police, sheriff, fire, ambulance, and paramedic services.

(e) "Other Services" means any service, budget, program, or other benefit not specifically an essential service as defined in Section 1(d) above.

Section 2

(a) The maximum amount of all ad valorem taxes levied against any real property shall not exceed one and one-half percent (1-1/2%) per annum of the true cash value of such property, except as provided in Section 4.

(b) The tax provided in paragraph 2(a) above shall be collected by the counties and apportioned according to law to the districts within the counties.

(c) The one and one-half percent (1-1/2%) limitation on ad valorem taxes shall not apply to ad valorem taxes or special assessments levied to pay the interest and redemption charges on any indebtedness incurred, whether or not approved by the voters, prior to or concurrent with passage of this Article.

Section 3

(a) The true cash value of real property may increase in any one year by not more than two percent (2%) over the prior year's valuation, provided however, that in no event may any increase in true cash value exceed the inflationary rate as measured by the Consumer Price Index.

(b) All property undergoing sale or purchase, change of ownership, or new construction subsequent to the tax year beginning July 1, 1979, shall carry the true cash value it had or would have had, in the case of newly constructed property, on the tax statement for the tax year beginning July 1, 1979, subject to increase as provided in paragraph 3(a) above.

Section 4

(a) For this Article's first effective year, Sections 2(a) and 3(a) of this Article shall not reduce the total revenue of any district which provides only essential services to an amount less than that district's total revenue for the tax year beginning July 1, 1979. For each effective year thereafter, Sections 2(a) and 3(a) of this Article shall not reduce the total revenue of such a district to an amount less than that set forth in the foregoing sentence plus, for each successive effective year, two percent (2%) of that district's total revenue for the tax year beginning July 1, 1979.

(b) For this Article's first effective year, Sections 2(a) and 3(a) of this Article shall not reduce the total revenue of any other district to an amount less than eighty-five percent (85%) of that district's total revenue for the tax year beginning July 1, 1979. For each effective year thereafter, Sections 2(a) and 3(a) of this article shall not reduce the total revenue of such a district to an amount less than that set forth in the foregoing sentence plus, for each successive effective year, two percent (2%) of that district's total revenue for the tax year beginning July 1, 1979.

(c) The one and one-half percent (1-1/2%) limitation contained in Section 2(a) of this Article shall be overridden to the extent necessary to accomplish the purposes of this Section.

Section 5

(a) In the case of a district which provides essential and other services, for the first effective year of this Article, Sections 2(a) and 3(a) of this Article shall not reduce the budgets of essential services below their amounts for the tax year beginning July 1, 1979, until the total of all other budgets is reduced to two-thirds ($66\frac{2}{3}\%$) of its amount for the tax year beginning July 1, 1979. Sections 2(a) and 3(a) of this Article, for each effective year thereafter, shall not reduce the budgets of essential services below their amounts for the tax year beginning July 1, 1979, until the total of all other budgets is reduced to the amount set forth in the foregoing sentence minus, for each successive effective year, two percent (2%) of the total of all other budgets for the tax year beginning July 1, 1979.

(b) The foregoing paragraph, 5(a), shall not be construed to prevent reduction of the budgets of essential services through contracts between governmental and private entities for the provision of essential or other services.

Section 6

(a) This Constitutional Amendment preserves that participants in the Homeowners' and Renters' Relief Program, ORS 310.630, et seq., or such other equivalent provision as may exist on the date of passage of this Article, incur no reduced benefits as a result of Sections 2(a) and 3(a) of this Article.

(b) In addition to the foregoing paragraph, 6(a), this Constitutional Amendment preserves that natural persons who rent or lease real property receive individual relief equivalent to that provided homeowners by Sections 2(a) and 3(a) of this Article.

Section 7

From and after passage of this Article, any change in Oregon State taxes for the purpose of increasing revenues collected pursuant thereto, whether by increased rates of taxation or changes in methods of computation, shall be enacted by either:

(a) an act passed by not less than two-thirds ($2/3$) of all members elected to each of the two houses of the Oregon Legislative Assembly, or

(b) by majority vote of the legal voters of the State voting on the question, or, if by the proposed change shall affect only a portion, or the district of the State, by a vote of the majority of the legal voters of the portion of the district voting on the question; this Amendment requires elections pertaining to real property taxes, special assessments, tax abatement, legislative administrative acts, tax increment financing plan or transfer of real property taxes from one class of real property to another that affects the rates paid by real property owners. This limits these elections to not more than two (2) elections in any one year, the dates of these elections to be the third (3rd) Tuesday in May, and the first (1st) Tuesday after the first (1st) Monday in November.

Section 8

(a) From and after passage of this Measure, the state, cities, counties, special districts, municipal corporations, quasi-municipal corporations, and other political and governmental subdivisions may impose special taxes or special assessments upon residents or property within such district, only upon a majority vote of the legal voters of the district voting on the question, or in the case of a proposed special tax or special assessment taxed or assessed against only a portion of the district, by a vote of the majority of legal voters of the portion voting on the question, provided however, that neither any special ad valorem tax on real property nor any sales or transaction tax on any sale of real property may be imposed.

Section 9

This Article shall take effect for the tax year beginning July 1 following the passage of this Constitutional Amendment, except Sections 7 and 8 which shall become effective upon passage of this Article.

Section 10

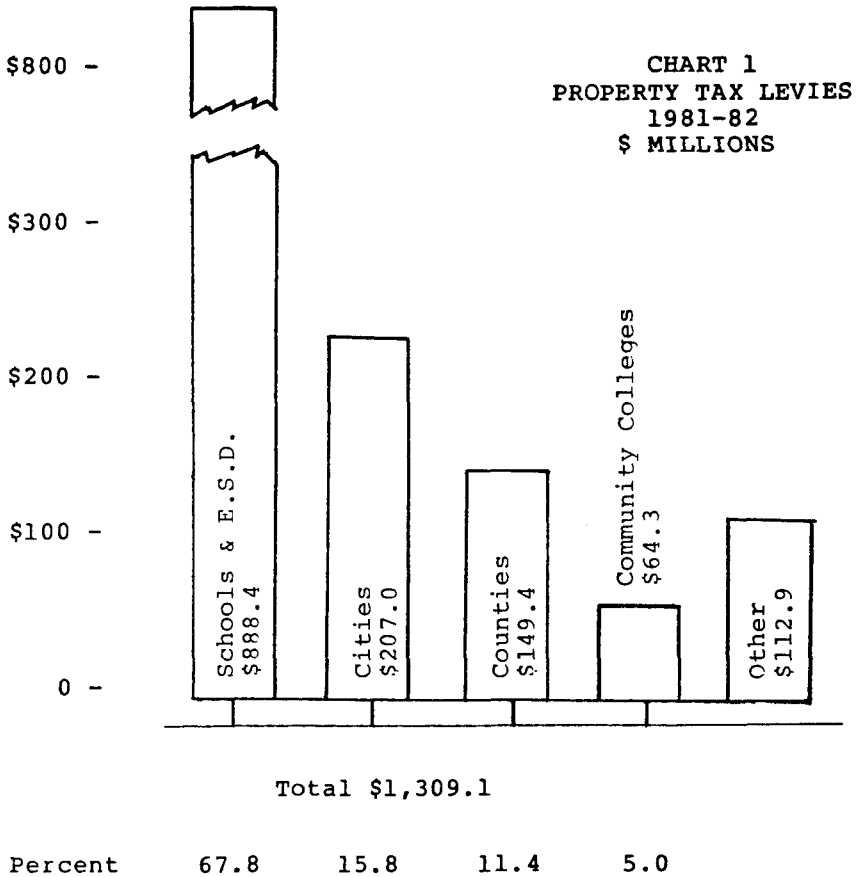
If any section, portion, clause or phrase of this Article is for any reason held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force and effect.

Section 11

In case of conflict between this Initiative and any Initiative or Referendum submitted to the vote of the people of the State of Oregon subsequent to this Initiative's filing with the Secretary of State and prior to or concurrent with this Initiative's submission to the vote of the people, only the Initiative or referendum receiving a majority vote and the highest number of affirmative votes shall become part of the Constitution.

APPENDIX B

ALLOCATION OF PROPERTY TAX REVENUES STATEWIDE



Legislative Revenue Research Report #12-82, Sept. 2, 1982.

NOTE: Total revenues detailed above of \$1422 million differ from the \$1413 million estimate of total 1981-1982 Oregon property taxes, due primarily to adjustments for urban renewal levies and an underaccrual of school levies.

APPENDIX C

Persons Interviewed

C. Leonard Anderson, President, Portland Association of Teachers
 Phil Bogue, Retired Partner, Arthur Andersen & Co.
 Ray Broughton, Vice-President, First Interstate Bank of Oregon
 Gary Carlson, Oregon Taxpayer's for a Better Economy
 Gertrude Clark, Volunteer, Gray Panthers
 Charles Clemens, Superintendent, Oregon City Schools
 Dave Dietz, Oregon Taxpayer's for a Better Economy
 Thomas C. Donaca, Senior Vice President and General Counsel, Associated Oregon Industries
 Terry Drake, Legislative Revenue Office
 Mark Gardiner, Director of Fiscal Administration, City of Portland
 Sarah Goldberg, Deputy Health Officer, Multnomah County
 Kevin Hanway, Counsel, Metropolitan Homebuilders
 Neal Higgin, Professor, University of Portland
 Joe Hollman, State Coordinator, Oregon Taxpayers Union
 Doris Keel, Executive Director, Portland Board of Realtors
 Kevin Kelly, Senior Vice President, US National Bank of Oregon
 Mary Klein, Treasurer, Portland Gray Panthers and Chairperson of Health and Nursing Home Task Force
 Patrick LaCrosse, Executive Director, Portland Development Commission
 Richard Munn, Legislative Revenue Officer, Legislative Revenue Office
 Ray Phillips, Oregon Taxpayers Union
 Robert Randall, President, Robert Randall Company
 Joe Smith, Secretary of Retired Associates, Portland State School of Urban Affairs
 Norm Winningstad, President and Chief Executive Officer, Floating Point Systems, Inc.

APPENDIX D

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 Ragen, Roberts, O'Scannlain, et al. "Impact of Proposed Property Tax Limitation Amendment on Ability of Oregon Municipalities to Issue Bonds". "Governor's Economic Recovery Council Report", May 2, 1982.
 State of Oregon Voters' Pamphlet on Measure 3.
 Tax Supervising and Conservation Commission, Ballot Measure No. 3 - 1.5% Property Tax Limitation, Sept. 7, 1982.
 Various newspaper and magazine articles and newspaper editorials.

NOTES

Report On State Measure No. 6
ENDS STATE'S LAND USE PLANNING POWERS, RETAINS LOCAL PLANNING

Purpose: "Measure removes the requirement that local plans conform to statewide planning goals. It retains the requirement that each city and county establish and maintain a master land use plan. Abolishes Department of Land Conservation and Development, Land Conservation and Development Commission and Land Use Board of Appeals. Appeals of local land use decisions transferred to circuit courts. Directs formation of committees to advise on statewide goals, and to draft legislation consistent with measure."

To the Board of Governors,
City Club of Portland:

1. INTRODUCTION AND BACKGROUND

A "Yes" vote on State Measure No. 6, placed on the ballot by initiative, would substantially change Oregon's land use planning system by repealing ORS Chapter 197, thus abolishing the Land Conservation and Development Commission (LCDC), the Department of Land Conservation and Development (DLCD), and the Land Use Board of Appeals (LUBA). The measure retains the requirement that each city and county establish and maintain a master land use plan, but the measure does not define a "master plan," it does not require that the local "master plans" conform to statewide planning goals, and it does not set a time frame for the adoption of those plans. Under Measure 6, land use and planning decisions made at city, county, and agency levels would be appealed through the circuit courts to the Oregon Court of Appeals, instead of through LUBA.

ORS Chapter 197, adopted in 1973, created LCDC. This agency, together with its administrative arm, DLCD, was directed to establish and enforce statewide standards, or "Statewide Planning Goals and Guidelines," to govern local, regional, and state agency land use decisions. The statewide goals now serve as the framework for the development, by cities and counties, of a coordinated, statewide system of comprehensive land use plans and implementing ordinances. Such plans and ordinances, once approved or "acknowledged" by LCDC, supersede the goals and become the controlling instruments for land conservation and development in Oregon. To date, the comprehensive plans of 154 of the 278 applicable jurisdictions have been acknowledged.

The legislature declared as policy, when it passed the legislation in 1973, that:

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

The opening paragraph of ORS Chapter 197 states that:

"Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state."

The system was intended to result in state-coordinated but locally adminis-

tered programs of land use regulation which would produce greater stability and certainty and would encourage the best use of Oregon's urban and rural lands.

Originally, LCDC heard appeals of land use decisions made at the local governmental level. Appeals from LCDC rulings were to the circuit courts, and appeals from circuit courts were to the Oregon Court of Appeals. In 1979, ORS 197 was amended to create LUBA, which now handles both the LCDC and the circuit court levels of appeal. LUBA decisions are appealed directly to the Court of Appeals.

For the 1981-83 biennium, LCDC's budget is \$5.1 million, after excluding federal grants totaling \$2.2 million. LCDC's general fund budget will be utilized as follows:

Cities' and counties' planning grants	\$ 1.4 million
Coordinating grants to counties	0.7
Other grants	0.2
LUBA	0.5
Administration (net of federal grants)	<u>2.3</u>
Total	\$ 5.1 million

Your Committee found considerable organized support for and opposition to State Ballot Measure 6. Testimony reflected differing opinions on the impact of the measure's passage. Definite disagreement exists regarding the impact of the existing system on Oregon's economy and in particular on land development. There is no dispute, however, that the measure repeats previous efforts to eliminate mandated application of statewide land use goals.

Sponsors of the measure are Paul A. Hanneman from Cloverdale, D.E. Jones from Ontario, and Caroline Magruder from Clatskanie. Organized support for the measure is led by Oregon Citizens for Fair Land Planning. Other groups supporting the measure include the Associated Oregon Industries, the Association of Oregon Counties, and the Oregon State Grange. Organized opposition is led by Citizens to Defend Your Land. Other groups opposing the measure include the League of Oregon Cities, 1000 Friends of Oregon, and the Oregon AFL/CIO. Your Committee interviewed the individuals listed in Appendix A. Appendix B lists the material researched by your Committee.

II. LEGISLATIVE HISTORY OF OREGON'S STATE-COORDINATED LAND USE PLANNING SYSTEM

A. 1969 Legislation.

The concept of a statewide framework for local land use planning was first introduced during the 1969 legislative session and resulted in the adoption of Senate Bill 10 (SB 10). Counties were required to complete comprehensive plans which addressed statewide goals for use of natural resources and farm land and for making a transition from rural to urban land.

However, SB 10 provided no funding or administrative machinery for implementation. It was challenged through the initiative process in 1970. The ballot measure was defeated by 56 percent of the voters, thus retaining the mandate for local comprehensive planning within the context of statewide goals.

B. 1973 Legislation.

Senate Bill 100 (SB 100), adopted during the 1973 legislative session, strengthened and broadened the statewide comprehensive planning effort. This legislation deepened Oregon's commitment to comprehensive land use planning based on a statewide framework by: (1) requiring that local jurisdictions address statewide goals; and (2) creating and funding a state enforcement agency, the Land Conservation and Development Commission (LCDC), and its administrative arm, the Department of Land Conservation and Development (DLCD).

Under the 1973 legislation, LCDC was given a January 1, 1975 deadline for adoption of a set of statewide planning goals to be used by local jurisdictions in completing their comprehensive plans. SB 100 was drafted to maintain the land use planning responsibility at the local level. LCDC was responsible for preparing statewide goals, coordinating land use planning efforts, and monitoring comprehensive plans for compliance with the statewide goals.

On December 27, 1974, after numerous public hearings throughout the state, LCDC adopted the original 14 statewide planning goals. The Willamette River Greenway goal was adopted in 1975, and four new goals dealing specifically with the Oregon Coast were adopted in 1976.

In 1976, the first initiative campaign aimed at repealing LCDC and the legislation resulting from SB 100, Ballot Measure 10, was launched. Voters rejected this measure in 1976 by 57 percent of the vote. A majority of the electorate thus indicated its general approval of the direction the legislature had taken in coordinating land use planning on a statewide basis.

C. 1977 Legislation.

Despite its defeat, the 1976 repeal attempt resulted in a full-scale review of statewide land use planning in the 1977 legislative session. After extensive hearings in both the House and Senate, Senate Bill 570 (SB 570) was enacted into law. Designed to resolve many of the concerns raised by the 1976 ballot measure, SB 570: (1) removed LCDC's controversial power to "take over" planning at the local level; (2) imposed a two-year moratorium on the adoption of new goals by LCDC; (3) clarified the non-mandatory nature of the LCDC "guidelines" (not the goals themselves, but the LCDC's interpretive commentary which accompanied the goals); (4) instructed LCDC to tailor its requirements to the diverse administrative capabilities of local governments; (5) mandated state agency cooperation and coordination with local planning activities; and (6) required mailed notice to affected landowners of contemplated planning and zoning changes. Finally, SB 570 tightened up certain definitions, particularly those of the statewide goals.

In addition to SB 570, the 1977 legislature passed other bills making corrective changes in the basic statutory framework established by the 1973 legislation, all of which were responsive to the concerns raised in the 1976 repeal effort.

In 1978, a constitutional amendment was placed on the ballot by initiative. If passed, the amendment would have nullified the LCDC goals and guidelines and returned total planning and zoning authority to cities and counties. Oregon voters rejected the amendment by a vote of 61 percent.

D. 1979 Legislation.

Since its creation, one of LCDC's functions has been to review local, regional, and state land use decisions. LCDC's decisions could be appealed to the circuit courts, and circuit court decisions could be appealed to the Oregon Court of Appeals.

To ease problems created by inconsistent decisions and by slowness and expense of review, the 1979 Legislature passed Senate Bill 435, which created a nationally-unique state administrative court to hear controversies regarding land use. The Land Use Board of Appeals (LUBA), since 1979, has taken the place of the circuit courts in land use cases.

LUBA replaced LCDC as the first level of review of local governing bodies' decisions. Since 1979, appeals of local land use decisions are directly to LUBA and appeals of LUBA decisions are to the Oregon Court of Appeals.

Only on issues related to the statewide goals does LCDC have any role in the appeal process. LCDC makes final policy determinations based on LUBA's recommendation after LUBA has completed its review. LUBA's final opinion, including LCDC's review on goal-related issues if necessary, must be issued within 90 days from the date the petition for review is filed.

Established in the 1979 legislation, the concept of "standing" before LUBA is broad. Any person who appeared before and was entitled to notice, or who was adversely affected, may seek review of a land use decision.

E. 1981 Legislation.

The 1981 legislation added several new processes and concepts to Oregon's land use system, as created in 1973 and amended in 1977 and 1979, with the intent to simplify and streamline the land use process. The purpose of House Bill 2225 (HB 2225), enacted in 1981, was to facilitate LCDC's acknowledgement of comprehensive plans, to encourage efficiency, and to smooth state-local relations.

The 1981 legislation imposed a two-year moratorium on the adoption of any new goals and prohibited amendments to existing goals except for a "compelling reason." Additionally, the 1981 legislation clarified the requirement that each goal is to be given equal weight and codified the acknowledgement process which had previously been governed by administrative rule.

Two new processes were added to Oregon's land use system and to LCDC's functions in 1981: (1) "post-acknowledgement," a process to amend acknowledged plans and land use regulations, and (2) "periodic review," a process for review of acknowledged comprehensive plans.

The post-acknowledgement procedure is highly complex. The procedure, whereby the burden of proof regarding an amendment's compliance is on the state rather than on the local government, creates a presumption that the amendment is valid unless challenged by the state or by other objecting parties. In practice, the result of this has been to streamline the process.

A system for periodic review of local plans was also added. Beginning July 1, 1983, LCDC must review acknowledged comprehensive plans and land

use regulations once every two to five years. This process was added to ensure that the plans are in compliance with the statewide goals and are coordinated with the plans and programs of state agencies.

HB 2225 made several other important changes to Oregon's land use system. Among these, it allowed: (1) LCDC to impose enforcement orders based on a finding that local plans are deficient or that a decision-making practice violates an acknowledged plan or land use regulation; (2) the decision of a local government's hearings officer or planning commission to be the final decision, which eliminates the requirement that appeals go first to the local governing body before appealing to LUBA; (3) citizen participation to increase by broadening the concept of who has "standing" to object to the acknowledgement of plans and to post-acknowledgement amendments; and (4) an additional farm dwelling to be permitted on exclusive farm use land if the dwelling is occupied by a relative.

Other legislation in 1981 was passed in response to complaints by developers regarding the state's land use system. Senate Bill 419 (SB 419), as enacted, requires that applications for subdivisions or major partitions within acknowledged urban growth boundaries shall be acted upon within 180 days of the determination that the application is complete. As enacted, SB 419 also requires that cities and counties inventory their housing needs at particular price ranges and rent levels. If a need for lower-, middle-, or fixed-income housing is demonstrated, the cities and counties must designate enough land, with sufficient services, that may be developed without unreasonable cost or delay. Furthermore, the legislation reinforced the concept that implementation and enforcement of acknowledged plans and regulations are matters of statewide concern.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

1. The fundamental problems inherent in the system can best be corrected by abolishing the present system.
2. The inflexible state-dictated system removes local influence and decision-making authority.
3. The state's land use system is inherently bureaucratic, allowing biases, insensitivity, and heavy-handedness on the part of planners who interpret the goals too mechanistically and who are not responsive to the different areas of the state.
4. Costly delays and uncertainties resulting from the current acknowledgement and appeal processes have limited the supply of industrial land, raised its price, and failed to ensure necessary services, thereby unduly hindering economic growth in the state.
5. Statewide goals which are advisory rather than mandatory will increase local control and citizen involvement. Local "master plans" will be in effect.
6. Passage of the measure will direct the legislature to re-examine the statewide land use system which has been subject to inconsistent court interpretation and legislative action.
7. The state's land use process already is entangled in litigation. Removal of LCDC, DLCD, and LUBA will result in a vastly simpler system, ultimately requiring less litigation.

8. Desired changes in local land use plans, such as the purchase or division of parcels below the minimum established lot size in rural areas, will no longer be hindered by the inflexible application of goal requirements.
9. The goals were not written with equal detail and emphasis and have not been applied evenly by the present system.
10. Abolishing the state-mandated administrative system will require stricter qualifying standards for those initiating litigation. "Standing" will be limited to those who can demonstrate they have a recognized legal interest which may be adversely affected.
11. The measure returns litigation to the appropriate court, the circuit court, which provides flexible interpretations in cases regarding individual parcels of land.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

1. Oregon's innovative and nationally unique land use system works, and it should be preserved. The legislature has demonstrated an ability to resolve problems as the system evolves by way of legislative amendment.
2. A coordinating agency for land use planning, such as DLCD, is needed at the state level because regional, state, and federal agencies frequently have conflicting special interests in land use matters.
3. Much of the uncertainty encountered thus far has been the result of the acknowledgement process. For those jurisdictions with acknowledged plans, there is more certainty than ever in the land use process.
4. Post-acknowledgement procedures were designed to, and in practice do, speed up land use decisions.
5. The present system requires local participation and, in fact, requires localities to have direct control of the preparation of their comprehensive plans.
6. Statewide standards and technical assistance reinforce the ability of local officials to make enforceable, and often difficult, decisions with certainty and consistency, which promotes orderly development throughout the state.
7. Statewide goals discourage "leapfrog" development which is too expensive to service with sewers, water and roads.
8. The existence of LUBA has resulted in faster and more consistent decisions. Circuit courts do not have the expertise needed to decide complex land use controversies with speed and consistency.
9. The language of the measure is vague and confusing, and will result in years of chaos for planners, legislators, and the courts.
10. Passage of the measure will not necessarily speed permit approval because land use statutes other than ORS 197 will remain in place and will provide grounds for objecting to or delaying land use decisions.
11. Economic incentives, federal aid, and economic assistance to local

planners will be lost along with state involvement in the land use process.

12. Passage will result in an erosion of past accomplishments and will jeopardize values held in high regard by Oregonians, such as the ability to protect the state's natural resources.
13. Under the measure, there is no assurance that local "master plans" will address statewide goals or that there will be any statewide land use coordination.
14. Since citizen participation would not be required, decision making and power will be left to local officials who may act from biases and personal political motives.
15. LCDC is often used as a scapegoat by local planning staff, whereas in reality most delays result from obstacles at the local level or from unacknowledged plans.

V. MAJORITY DISCUSSION

Oregon has been under significant and varied pressures during the past two decades. During the 1970s, Oregon had to come to grips with how government would provide services to the fastest growing population in any of the west coast states, as well as how to plan for the logical development of limited land resources. In the 1980s, Oregon is facing one of the deepest economic downturns since the Great Depression. Measure opponents testified to your Committee that Oregon's nationally unique system of state-coordinated, locally administered programs of land use regulation has the ability to respond to these pressures. Measure supporters, in a third attempt to eliminate mandated statewide goals, believe that: (1) statewide planning has created a system that discourages new business development in Oregon, and (2) a coordinating agency and state-acknowledged plans are unnecessary.

The Majority of your Committee opposes the measure. A Minority of your Committee supports the measure.

In its analysis of the testimony the Majority examined the following: (A) impact on economic development; (B) importance of statewide coordination; (C) status of acknowledgement process; (D) benefits from the existing system; (E) effect of goal application; and (F) suggested changes for the process.

A. Planning System's Impact on Economic Development

Opponents of the measure believe that Oregon's attractiveness to business increased with the 1981 legislative action which clarified that each of the statewide planning goals (including Goal 9, Economic Development) was to receive equal weight. Comprehensive plans must address the issue of whether local governments have adequately considered industrial land needs and other economic development issues.

Opponents of the measure also testified that Oregon is attractive to business. A survey recently released in the monthly publication Inc. shows that Oregon's national ranking in overall climate for small business has moved from 33rd to 8th in the past 12 months. Items measured included tax programs, labor relations, capital, general business activity, and state

support. The survey contradicts the position of measure supporters that state interference discourages new business development in Oregon. Opponents of the measure, including developers, testified that livability, availability of services, and the desire to promote orderly development attract businesses to Oregon.

B. Importance of Statewide Coordination

Measure opponents testified that a major benefit of the existing land use planning system is its ability to coordinate the plans and actions of differing governmental entities through the application of statewide goals. This coordination occurs at three levels. First, state acknowledgement of comprehensive plans brings local governments' land use plans into conformance with statewide goals. Second, comprehensive plans result in needed coordination between the land use policies and practices of adjacent government jurisdictions. Third, LCDC and DLCD, through the requirement of acknowledged comprehensive plans for each local jurisdiction, coordinate the actions of federal and state agencies which frequently conflict on land use objectives. Through this coordination function, DLCD has reduced conflict among the many governmental bodies involved in land use decisions.

Measure supporters assert that an appropriate level of planning will occur if ORS 197 is abolished. Measure opponents disagree. In 1973, the legislature recognized that an enforcement agency and mandatory land use goals had to be created to insure that land use planning would occur. The legislature created LCDC because local governments had not even begun to fulfill the intent of SB 10, passed in 1969. LCDC, by enforcing compliance with statewide goals, assures coordinated, consistent plan preparation by local jurisdictions.

C. Status of the Acknowledgement Process

Of the 278 city and county jurisdictions in Oregon, only 17 have not submitted their initial comprehensive plans to the LCDC. DLCD staff informed the Committee that of the 107 plans in the process of acknowledgement, many are near completion. One hundred and twenty five local jurisdictions did not file their plans until the deadline period between July 1 and September 1, 1980, creating a large backlog of plans requiring acknowledgement.

The process of acknowledging local jurisdictions' plans has been time-consuming. Both opponents and supporters testified that delays result from (1) the complexity of the process; (2) a resistance to submit plans or comply with goals; (3) a lack of local expertise and information; (4) inadequate staffing at the DLCD; and (5) the need for refinement of goals and procedures through administrative action and litigation. Testimony to your Committee confirmed that a confrontive attitude exists between some local governments and DLCD. However, DLCD has implemented administrative changes to reduce this problem. Testimony by measure supporters indicated they believe that any bureaucracy is a problem, and their proposed solution is the removal of LCDC and DLCD.

The Minority and the measure supporters state that bureaucracies far removed from the local jurisdictions judge the adequacy of comprehensive plans. However, measure opponents believe that the actual plan acknowledgement process does not support this conclusion. LCDC must verify that a local jurisdiction's comprehensive plan conforms to statewide land use goals. This occurs after DLCD reviews the plan, assuring among other

things, that all goals have been met. Delays in acknowledgement of a plan occur because, in addition to the LCDC staff review, the plan must be approved by other affected agencies and is open to challenge by special interest groups. Such groups in the past have included Associated Oregon Industries, Oregon Home Builders Association, Association of General Contractors, and 1000 Friends of Oregon. If, after all of these various reviews, LCDC determines that a plan does not meet all applicable goals, the plan is returned to the local jurisdiction.

Prior to acknowledgement, local land use decisions must be measured against the statewide goals. After plan acknowledgement, they are measured against the plan itself. Measure opponents and supporters agree that, prior to acknowledgement, a local jurisdiction faces additional uncertainty regarding land use decisions.

One of the most criticized aspects of the present system is the strict standard for compliance of comprehensive plans with the goals. It has been suggested that the legislature modify this standard to allow "substantial compliance" with statewide goals. With such a change in the system, the LCDC arguably could acknowledge plans more quickly and with increased flexibility.

Eventually, even without any legislative action regarding "substantial compliance," all plans will be acknowledged. The delays and uncertainty experienced prior to plan acknowledgment will be greatly reduced. After acknowledgement, the burden of proof rests with the state, not with the local government, to demonstrate that a change is not in compliance with the goals.

Opponents to the measure testified that between January, 1982, when post-acknowledgement procedures became effective, and August, 1982, 148 proposed amendments were submitted. Of these, LCDC questioned only 10 of the amendments on the basis of compliance with the goals. After discussions and adjustments were made by the local governments, LCDC approved the changes. LCDC approved each amendment within 45 days after receipt of the request. It appears that post-acknowledgement procedures do speed decisions and allow locally initiated amendments to acknowledged comprehensive plans. This record contradicts the claim by measure supporters that plans produced under the current process are static, inflexible documents. In fact, plans can be amended as the need occurs.

D. Benefits from the Existing System

Supporters of the existing system believe that the benefits Oregonians have received from statewide planning clearly outweigh any process deficiencies. They testified that benefits of the process include: coordination among local, state, and federal agencies; consistent high quality in the preparation of local plans through the application of statewide standards; improved land classification and inventories; preservation and limited development of resource land; increased citizen participation; consistent and speedy decision-making by LUBA instead of the circuit courts; and an overall improvement of land use planning by local government. Measure supporters testified that the complexity and inflexibility of the system prevent development. Measure opponents disagree. The complexity exists, but it does not necessarily prevent development. Oregon's statewide planning process has facilitated development by requiring local governments to plan for both conservation and development.

Measure opponents stated that the development of planning functions has provided both local and state governments with the first comprehensive inventory of Oregon's resource land. This includes industrial, forest, agricultural, and residential land classifications.

The availability of industrial land has become a particularly important issue. Proponents of the measure testified that environmentally biased procedures have resulted in a lack of industrial land sites and that statewide goals emphasize environmental considerations to the detriment of economic development. Industrial land surveys and studies made available to the Committee show conflicting results.

When the July, 1982 report by SRI International, Inc. (prepared for the Portland Chamber of Commerce) was first released, it appeared to confirm the belief that industrial land is lacking. The SRI study had reported only 68 to 153 acres of readily available, industrial sites of 50 acres or more in the Tri-County area. In addition, the report heavily criticized the time delays in Oregon's permit approval process.

Measure opponents testified that the SRI report understated the amount of available land. They contend there has been considerable expansion of vacant industrial land in the state's major urban areas since local governments began to conform their plans to the statewide goals. A report subsequently released by 1000 Friends of Oregon identified an increase of 12,587 acres of vacant industrial land in Oregon, or a 79 percent increase occurring during LCDC's existence. 1000 Friends identified the existence of 7,049 acres of industrial land in Multnomah County, 4,084 acres in Clackamas County, and 2,493 acres in Washington County.

A January 1982 report issued by the Metropolitan Service District (Metro) cited 16,400 acres of vacant land designated as industrial in the comprehensive plans of jurisdictions within Metro's boundary. Approximately 4,200 acres have sewer and water services. A total of 900 acres do not require the development of any new services.

Analysis of these various reports suggests that the statewide system has increased the awareness of the need for properly serviced, readily available, industrial land. Measure opponents argue persuasively that statewide planning standards and mandated goals are not the reason that services are lacking and that the permit process is unduly time-consuming. Acknowledged plans have and can continue to aid local governments in planning and developing necessary services.

E. Effect of Goal Application

Both measure supporters and opponents agree that the application of statewide goals has contributed to some delays and denials of land development proposals, many of which received tremendous notoriety. Measure opponents believe that if a development does not meet statewide goals, it should not be approved. However, measure supporters believe that LCDC alone is responsible for all development delays caused by objections based upon state mandated goals.

The Majority found the supporters' argument unpersuasive. All of the cases advanced to your Committee by measure supporters as examples of developments delayed or stopped by LCDC had one or both of two common elements: First, the development was opposed by a local group of citizens or the local jurisdiction. Second, the local jurisdiction had not submitted a

comprehensive plan for acknowledgement. Occasionally a third element has been present in examples advanced: a denial by a local jurisdiction had occurred before the goals were in force.

Measure opponents stated that local jurisdictions must face their citizens and step up to the responsibility of preparing comprehensive plans and making land use decisions in conformance with statewide land use goals. If local jurisdictions do not take this responsibility, their citizens' frustrations will continue.

Testimony to your Committee reinforced that citizens are unsure which government or governmental agency is to blame for the uncertainty surrounding building permits and ordinance changes. Any developer requesting a land use decision in a jurisdiction without an acknowledged plan is faced with the possibility of an appeal based on statewide goals. Measure opponents contend that if local jurisdictions would submit their plans for acknowledgement, the uncertainty problems would be close to solution. It appears to the Majority that citizens have little reason to be patient with government bodies blaming each other for the delay and denial problems.

F. Projected Impact of the Measure

Opponents testified that passage would remove the certainty, consistency, and coordination existing in the present system. They have expressed alarm over the measure's vague and unclear language. Measure opponents stated that passage will result in years of chaos while the legislature and courts attempt to interpret the measure's intent. While specifically repealing ORS Chapter 197, the measure allows other existing statewide land use statutes to remain, thereby creating confusion and providing new grounds for appeal of or delay in land use decisions. The measure does not address the status of existing plans. The measure creates no time frame for adoption of local master plans. Land development would be delayed or prevented until the legislature and the courts could resolve the lack of definition and the contradictions in the language of the measure.

LCDC's coordination of enforced goal compliance is the primary issue. Measure supporters argue that the goals should be thrown away so that the legislature would be motivated to create new, more flexible advisory standards. They do not want state interference. Measure opponents believe advisory goals would be widely interpreted among local jurisdictions, resulting in inconsistent and poor quality planning, or no planning at all. Essentially, passage of the measure returns land use planning to the pre-1973 era. Because the measure does not provide a deadline for local jurisdictions to complete their "master plans," it may be years before the jurisdictions could interpret the advisory goals and apply them to specific situations.

Testimony to your Committee indicated that the existing goals, developed after extensive public hearings, required years to clarify through application to specific situations. Oregon has applied and redefined land use goals and procedures with widespread, sometimes very active, citizen participation. Measure opponents believe that throwing out the statewide standards without replacement will throw away millions of taxpayer dollars and years of work.

Proponents support the return of land use litigation to the circuit courts. Opponents believe that reintroducing land use appeals to the circuit court is perhaps the most disturbing element of the measure. Circuit

courts, they say, will not have the expertise needed to decide complex land use controversies with speed and consistency. Chief Judge George M. Joseph of the Oregon Court of Appeals clearly opposes such a change. He considers that the combination of eliminating LUBA and returning land use litigation to the circuit courts would "hold nothing but the promise of catastrophe."

Measure supporters believe passage would send a message to the legislature. Opponents believe that passage of the measure could be interpreted by the legislature either as a clear rejection of statewide land use planning or as a demand for a different statewide land use system. If the legislature interprets the measure as a rejection of the system in general, land use planning will remain in chaos for years. If the legislature interprets the measure as a call for reform of the system, the entire body statewide of land use law will need to be recreated. Measure opponents believe that the cost of such revisions and the accompanying uncertainty is too high.

G. Suggested Changes for the Process

Testimony by both proponents and opponents included recommendations for modifications to the process. Some of the changes proposed include: (1) strengthening DLCD's ability to coordinate agencies; (2) adding "substantial compliance" with the goals as a criterion for compliance; (3) increasing technical and financial assistance to local jurisdictions; (4) redefining Agricultural Goal #3; (5) strengthening Economic Development Goal #9; (6) easing the burden of proof in the Goal #2 exception process; (7) re-examining the concept of urban growth boundaries; and (8) narrowing "Standing" by requiring that only parties who are adversely affected may object.

The Committee analyzed the recommended changes and the possibility for legislative action. It appears reasonable to the Majority that these process changes can be made. Both of Oregon's gubernatorial candidates support modifications in, but not abolition of, the existing system. The current Governor's Task Force, after extensive statewide hearings, is also drafting recommendations to improve the process. Supporters of the present system realize its evolutionary nature. They recognize that significant legislative changes have occurred in the past and they believe that needed change can occur in the future.

VI. MAJORITY CONCLUSIONS

The entire Committee agrees that some form of land use planning is essential. We also agree that the present statewide process requires further improvement. However, the Committee diverges as to the type and degree of change needed. The Majority believes that we should not eliminate the state's basic land use structure in order to correct what clearly are process problems.

The Majority is convinced that State Ballot Measure 6 is yet another initiative effort to throw out state land use planning and decision-making. By retaining the state requirement that local governments adopt local "master plans," the measure purports to retain statewide land use planning. Because no definition of "master plan" has been provided, the Majority concludes that the measure is deceptive and that, if passed, the quality of land use planning will be totally discretionary.

Some local governments will continue their commitment to comprehensive planning but others, with budgetary or other limitations, simply will not.

Further, it is clear that the quality of the local plans produced will decrease markedly. In addition, uniformity of land use planning will be lost.

Oregon's statewide land use planning system does work. Oregon's present land use structure promotes economic development, conserves valuable resource land, and produces quality local plans and desirable land use decisions. The Majority believes that the state is the appropriate level to coordinate land use planning and to set land use standards. The arguments for a state-level commission are more persuasive than ever. Uncoordinated use of land within Oregon is still a threat to orderly development, to our environment, and to our welfare.

Passage of the measure would not improve Oregon's land use planning system. Poorly written, vague, and subject to a variety of interpretations, the measure will bring years of confusion for planners, legislators and the courts. The measure's return of land use litigation to the circuit courts is not in the best interest of consistent and prompt decision making.

The measure does not give the state a better base for economic development. The argument that Oregon has faced economic hardship because of its statewide planning system is not persuasive. To the contrary, the planning system insures orderly development and livability which in turn promotes economic development.

The argument that passage will return local control is also inaccurate. Local governments currently have both responsibility for and control in administering state-coordinated land use regulations. Although such standards are complex, the benefits of the process are greater than the drawbacks.

The arguments that acknowledged plans are too inflexible and too limiting are also not persuasive. Post-acknowledgement procedures allow flexibility.

The Majority believes that the legislative history reflects the degree of flexibility the legislature has been willing to show in response to citizen input. With confidence that the recommendations for refining the present system will receive the commitment of elected officials, the Majority of your Committee opposes passage of State Ballot Measure 6.

VII. MAJORITY RECOMMENDATION

A Majority of your Committee recommends a "No" vote on State Measure 6 in the November 2, 1982 general election.

Respectfully submitted,*

Teace Adams
Samuel L. Anderson
Janet C. Hanson
James V. Mitchell
Catherine P. Holland, Chair
FOR THE MAJORITY

* The Committee wishes to thank Richard D. Bach and Douglas Seymour who participated in the earlier stages of the study.

VIII. MINORITY DISCUSSION

The Minority agrees that the state should require all municipalities to adopt land use plans. The Minority disagrees that the state should dictate that those land use plans conform to state mandated goals and guidelines or that a statewide bureaucracy is necessary to coordinate land use planning among those municipalities. The Minority believes that passage of Measure 6 can save considerable time and money. Additional modifications to a fundamentally unworkable land use planning system can be avoided.

The Minority finds the main issues to be: (A) need for local control of land use planning, (B) need for change in the basic land use planning system, and (C) the impact of the status quo versus passage of the measure.

A. Need for Local Control of Land Use Planning

Opponents of the Measure stated that the current system of state review and acknowledgement of local comprehensive plans provides certainty and needed coordination. However, numerous witnesses believe that the existing state law mandates rigid conformity and interpretation of goals, dictating the form and content of local comprehensive plans. For example, under the existing system local officials have responsibility only for drafting the local plans, without commensurate decision-making authority over the content of those plans. Proponents assert that this restrains local initiative and needlessly usurps the degree of local control necessary to make the land use planning process viable.

Proponents point out that, due to the lack of local control, the existing land use planning system has proven to be inflexible and unresponsive. Local commissions and planners have been insulated from their constituents by the presence of LCDC and DLCD. As a result, LCDC has been used as a scapegoat and has been the subject of repeal efforts. LCDC has been faulted for numerous recall efforts against local officials, for the election losses of some local officials and for the increased frustration of citizens in dealing with local government. At the same time, LCDC is isolated from and unresponsive to criticism and calls for change in the existing system, and is not directly accountable to those affected by its decisions.

Despite the existing system's intent to promote an atmosphere of cooperation and coordination, proponents contend that the present system has spawned confusion and animosity. Proponents give examples of confrontations which frequently occur among state agency representatives, state and local officials, and those citizens caught up in the process. They believe the current bureaucratic system has created an adversarial environment.

B. Need for Change in Basic Land Use Planning System

Opponents believe that process problems of the existing system have been addressed and will continue to be corrected by legislative review and amendment. Proponents, on the other hand, believe that past changes have not been successful in eliminating the fundamental flaws of an inflexible and unresponsive land use planning system. Further promises for meaningful legislative change are purely illusory, they believe. Only by eliminating the excessive degree of state involvement in the land use planning process can those flaws be eliminated.

Opponents contend that the current system is almost complete. However, because local plans require continual review and change, the planning pro-

cess is ongoing. If the planning process does not permit review and change, comprehensive plans become static documents and artificial final products. Proponents argue that change under the current system is possible only through a difficult and time consuming 21-step amendment process requiring state approval and possibly extensive litigation.

Contrary to the opponents' position that Measure 6 is simply reminiscent of past attacks on the existing state land use system, Measure 6 differs from past initiatives. This measure has different sponsors and supporters. Included among the measure's supporters are groups such as Associated Oregon Industries, Association of Oregon Counties and Association of General Contractors, who have been actively involved in the present system and believe local control should be returned to land use planning. In addition, opponents ignore the fact that Measure 6 is a statutory, not a constitutional amendment, allowing the legislature flexibility to act. Measure 6 retains the state requirement for local land use plans, contrary to the opponents' assertion that it will abolish statewide land use planning.

C. Impact of Status Quo vs. Measure Passage

While it is difficult to measure economic loss, testimony indicates that the present land use planning system has and will continue to have an adverse economic impact in Oregon. The Governor's Economic Recovery Council Report identified "legal and regulatory barriers, delay, lack of service sites..." as constraints hampering Oregon's ability to attract outside business. The system has been identified as a major cause of Oregon's negative business image and environment by SRI International and 1000 Friends of Oregon.² This issue is so critical that the report of the Governor's special task force on land use planning will outline major changes in the state's land use planning system.

Proponents testified that the current bureaucratic and environmentally-biased system has resulted in the absence of readily available, large, buildable industrial sites.³ This paucity, and the slowness and uncertainty associated with the approval process, are frequently cited as reasons major firms overlook Oregon. The loss of Data General at the Cone/Breeden site in Eugene is an excellent example of the impact of the system. Testimony disclosed that two other electronics firms recently considered locating in Oregon, but located elsewhere citing the shortage of feasible industrial land and the slowness of the approval process as a major reason for their decision. Testimony stated that the scarcity created by the system drives industrial land prices up and outside business away.

According to the Metro study, only 900 acres of the 16,400 acres of vacant industrial land within Metro's boundary are readily available for in-

1 Governor's Economic Recovery Council Report, May 1982.

2 SRI International, Inc., Strengths and Weaknesses of the Portland Area as an Industrial Location. Prepared for the Portland Chamber of Commerce, Portland, Oregon. July 1982.

1000 Friends of Oregon, Making Land Use Planning Part of the Solution to Oregon's Economic Recovery: A Two Year Plan of Action. May 10, 1982.

3 SRI International Report, and Metro, Industrial Land Market Assessment. January 1982. Executive Summary.

dustrial development. Of the 900 acres, according to the SRI Study, only two contiguous parcels suitable for development by a major firm, (containing more than 50 acres), are ready for development. The Metro and SRI studies invalidate assertions by Measure opponents that there has been an increase of thousands of acres of industrial land due to the present system. Opponents also overlook the fact that these increases frequently characterize municipalities without comprehensive plans. Moreover, the industrial acreage touted by measure opponents resulting from the present system is frequently unusable, currently inaccessible, and is not served by utilities. Even testimony of the staunchest opponents indicated the near impossibility of initiating a major agricultural/ economic development like the Rancho Rajneesh in Antelope under an acknowledged comprehensive plan.

Opponents assert that passage of the Measure will jeopardize protection of the State's natural resources. Proponents, however, testified that other state and federal agencies have the statutory responsibility and authority to protect such critical natural resources. Many of these critical areas currently fall under federal and state ownership; for example, testimony indicated that over 60 percent of forest and rangeland is either federally or state-owned. Opponents believe the legislature will provide the statutory protection necessary to prevent harm to these resources, without imposing a rigid land use planning system on local cities and counties.

Both proponents and opponents admitted that a "needs" exception has never been granted under the agricultural and forestland goals in a contested case. Proponents believe this further emphasizes the inflexibility and environmental bias of the existing system and its inability to accommodate rapid land classification changes necessary to promote needed economic development.

Proponents believe that LCDC's and LUBA's strict interpretations do not recognize the uniqueness of each individual parcel of land. They maintain that only our circuit court system, with its generalist philosophy, can recognize the diverse environmental and economic factors which determine the value and utility of individual parcels. LUBA's strict interpretations, resulting in a rigid conformity to the goals, has not provided the flexibility needed for local land use decisions.

IX. MINORITY CONCLUSIONS

The Minority is convinced that passage of Measure 6 will assure that local land use planning will occur, while allowing local officials the discretion to select appropriate advisory statewide goals and determine the extent of the application in accordance with the desires of their constituency, community characteristics, and historical development. Measure 6 will end the universally mandated application of statewide standards across a diversity of terrain and communities. It will prevent the application of poorly conceived statewide goals which, for example, classify lava beds as agricultural land. It will allow local officials to determine the degree of sophistication necessary in their land use plans.

It is also obvious to the Minority that no consensus exists on the nature of the problems in the existing system. The only consensus appears to be that problems are numerous. So profuse and diverse were the problems and proposals for change, it appears, that evolutionary change is impossible.

Furthermore, Measure 6 will vest decision-making responsibility and authority in local officials who are in close and continuous contact with their constituents, thereby allowing more rapid and responsive land use decisions. It is well within the abilities of local officials and planners to draft and implement land use plans. These local officials and planners are most capable of preserving or altering the social and economic character of the community in accordance with prevailing public attitudes.

Measure 6 requires local municipalities to adopt land use plans. However, the Measure eliminates the mandated application of the statewide goals which has caused considerable harm to the very citizens they were meant to protect. These citizens inadvertently find themselves caught between local governments and the state enforcement agency (LCDC and DLCD) in a labyrinth of complicated, state-mandated land use regulations. The Minority believes that considerable time and money can be saved by avoiding additional modifications to a fundamentally unsound, unworkable land use planning system.

Charges of chaos by measure opponents are myopic. Virtually any new statute affecting the rights of citizens is subject to interpretation and will be litigated. The current adversarial system has spawned and will continue to create chaos, conflict, and litigation. The Minority believes that early circuit court rulings, the reinstatement of a more limited definition of "standing," and the overthrow of a complex body of confusing statutes, case law, and administrative rulings will ultimately reduce litigation. Measure 6 will simplify the appeal process by returning it to local officials and circuit courts.

Only by removing bureaucratic constraints and returning local control to land use planning can we have a flexible planning system operating in concert with a dynamic and flexible market system to enhance necessary economic change and development. Futurist Alvin Toffler states in The Third Wave, "We need greater flexibility in dealing with today's complicated economic, social and government problems.... the institutions of government must correlate with the structure of economy, the information system, and other features of civilization. Today, little noticed by conventional economists, we are witnessing a fundamental decentralization of production and economic activity."⁴ Measure 6 will shift decision-making authority downward which will provide the flexibility needed in dealing with today's land use planning issues. Passage of Measure 6 will assure a flexible and workable statewide land use planning system.

X. MINORITY RECOMMENDATION

The Minority of your Committee recommends a "Yes" vote on Ballot Measure No. 6 in the November 2, 1982 general election.

Respectfully submitted,

Peter F. Behr
FOR THE MINORITY

Approved by the Research Board and the Board of Governors on September 30, 1982 for publication and distribution to the membership for discussion and action on October 29, 1982.

4 Alvin Toffler, The Third Wave, p. 431.

APPENDIX A

Persons Interviewed

Patricia Amedeo, Assistant to the Governor
 Wayne Atteberry, Standard Insurance Company
 Robert S. Baldwin, Director, Planning and Development, Multnomah County
 Albert Benkendorf, General Partner, Benkendorf-Evans Ltd. Land Use Planning Consultants
 Phil Bladine, Chairman, Economic Development Commission
 Edward Borst, Venture Financial Enterprises
 Douglas Butler, Rembold Corporation
 Arnold Cogan, Planning Consultant, Cogan & Associates, and former Chairman, Land Conservation and Development Commission
 June S. Cook, Campaign Manager, Oregon Citizens for Fair Land Planning, Inc.
 William C. Cox, Member, Land Use Board of Appeals
 Mary Delts, Attorney-In-Charge, General Counsel Division, Natural Resources Section, Attorney General's Office, State of Oregon
 Carl Deters, Standard Insurance Company
 John Dinkelspiel, Herbridge, Harris, Inc., Boston, Massachusetts
 Edward Ray Fechtel, Attorney, Husband, Johnson, and Fechtel, representing Oregon Citizens for Fair Land Planning, Inc.
 Kimball Ferris, Washington County Planning Commission
 Gordon Fultz, Executive Assistant, Association of Oregon Counties
 Steve Gale, Corporate Real Estate and Properties Manager, Fred Meyer, Inc.
 Daniel L. Goldy, Consulting Economist
 Mary Anne Hutton, Land Use Specialist, Associated Oregon Industries
 Don Johnson, Associate Director, Bureau of Governmental Research & Service, University of Oregon
 George M. Joseph, Chief Judge, Oregon Court of Appeals
 Sharon Kafoury, Portland Chamber of Commerce
 William R. Lesh, Director of Public Relations and Government Affairs, Publishers Paper Company
 Jim Mathis, Legal Representative, Bureau of Governmental Research & Service, University of Oregon
 Jack McConnell, Norris, Beggs & Simpson
 Garry McMurry, Attorney, Rankin, McMurry, Vavrosky & Doherty
 Alan Mellis, Manager, Economic Development, Portland General Electric
 Scott Parker, Clackamas County Counsel, representing Association of Oregon Counties
 Cheryl D. Perrin, Director, Governmental Relations/Assistant to Chairman of the Board, Fred Meyer, Inc.
 Agnes Peterson, Representative, Tri-County Citizens for Fair Land Planning
 Richard Porn, Smith-Ritchie/Wachovia
 Henry Richmond, Executive Director, 1000 Friends of Oregon
 Mitchell Rohse, Plan Reviewer, Department of Land Conservation & Development, and Technical Assistant, Governor's Task Force on Land Use
 James F. Ross, Executive Director, Department of Land Conservation & Development, State of Oregon
 Steven R. Schell, Attorney, Black, Helterline et al and former Member, Land Conservation and Development Commission
 Gordon E. Shadburne, Multnomah County Commissioner
 James R. Sitzman, Portland Field Representative, Department of Land Conservation & Development, State of Oregon
 Anne Squier, Member, Land Conservation and Development Commission (since 1976)

Ardis Stevenson, Assistant Director, Clackamas County Department of Environmental Services, representing Association of Oregon Counties
 James F. Teasdale, Consultant, Land Use/Project Development/Public Affairs
 Steve Turlis, Consultant, Real Estate Resources, Inc., Tacoma, Washington
 Burton Weast, Director, Government Affairs, Home Builders Association of Metropolitan Portland
 Carol A. Wood, Vice President, Public Affairs, Hampton Affiliates

APPENDIX B

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NOTES

NOTES

NOVEMBER GENERAL ELECTION BOX SCORES

	Committee Recommendation		Club Vote		Your Vote		Election Results	
	YES	NO	YES	NO	YES	NO	YES	NO
Clackamas County Measures								
No. 3-7		X	—	—	—	—	—	—
No. 3-8		X	—	—	—	—	—	—
No. 3-9		X	—	—	—	—	—	—
City of Portland Measure No. 51 (Ordinance Establishing a Police Internal Investigations Auditing Committee)	X		—	—	—	—	—	—
State Measure No. 1 (Increased Tax Base with New Property Construction Increases Districts' Value)								
Majority		X	—	—	—	—	—	—
Minority	X		—	—	—	—	—	—
State Measure No. 2 (Lengthens Governor's Time for Postsession Veto or Approval of Bills)	X	—	—	—	—	—	—	—
State Measure No. 3 (Constitutional Real Property Tax Limit Preserving 85% Districts' 1979-80 Revenue)		X	—	—	—	—	—	—
State Measure No. 4 (Permits Self-Service Dispensing of Motor Vehicle Fuel at Retail)	X		—	—	—	—	—	—
State Measure No. 5 (No Report)								
State Measure No. 6 (Ends State's Land Use Planning Powers, Retains Local Planning)								
Majority		X	—	—	—	—	—	—
Minority	X		—	—	—	—	—	—