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Politics of land use : the lengthy saga of Senate bill 100

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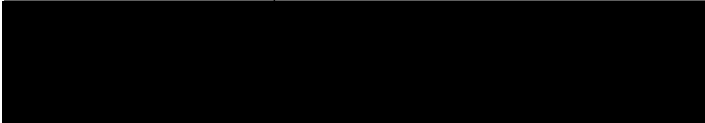
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AN ABSTRACT OF THE THESIS OF Kathleen Joan Zachary for the Master of Arts in Political Science presented January 1, 1978.

Title: Politics of Land Use: The Lengthy Saga of Senate Bill 100.

APPROVED BY MEMBERS OF THE THESIS COMMITTEE:


Marko L. Haggard, Chairman


Howard E. Dean


Ronald G. Cease

Theoretical literature on the politics of land use is so limited that original research into the problem was required. The drafting and enactment of Senate Bill 100 by the Fifty-seventh Session of the Oregon Legislature provided the basis for researching my premise of need equals want. The bill designated state land use planning organizational structure.

The Land Use Policy Committee minutes and Legislative minutes were merged with information attained through person-

al interviews from a variety of participants in the drafting of the Senate Bill 100. Theoretical literature was equally available in Public Administration, Law and Land Use Planning. The Constitutions of the United States and the State of Oregon plus the Oregon Revised Statutes were fundamental in the research.

The research material on the politics of land use was found by sifting through public and private records and four separate libraries: Oregon State Archives, the Oregon State Law Library, Multnomah County Law Library and Portland State University Library. Personal interviews provided valuable additional data.

The politics of land use is the lengthy saga of the enactment of Senate Bill 100 (1973) by the Oregon Legislature. It is the story of the bill's conception, conflicts and compromises.

The Land Use Policy Committee (LUPC), created and chaired by State Senator Hector Macpherson, drafted the original SB 100 in 1972, which was assigned to the Oregon Senate Environment and Land Use Committee (SELUC) in January, 1973. The LUPC bill was designed of, by and for proponents of land use planning. When the opponents to the planning concept were heard by the SELUC, need vs. want made passage of Senate Bill 100 a political impossibility. The issues that surfaced generated a series of conflicts which required political compromises. In addition to the primary conflict, need vs. want, there were provocations concerning localism

vs. regionalism; economy vs. environment and who holds what reins of power.

The Drafting Subcommittee of the Ad Hoc Committee of the SELUC made six significant changes in SB 100 to insure legislative enactment of the bill in 1973. The changes, while resolving most of the conflicts, still did not equate need and want, so the SELUC added a Statement of Legislative Intent, not to SB 100, but to the Senate Journal as a limit on administrative power.

The last political compromise was made during the Senate Floor Debate on SB 100 when the emergency clause was removed from the bill. To all intents and purposes, need equaled want with Senate passage.

POLITICS OF LAND USE

THE LENGTHY SAGA OF SENATE BILL 100

by

KATHLEEN JOAN ZACHARY

A thesis submitted in partial fulfillment of the
requirements for the degree of

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1978

TO THE OFFICE OF GRADUATE STUDIES AND RESEARCH

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To each in his or her own way, I am extremely grateful for their time, courtesy, consideration and magnificent help.

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Abbreviations

AIA	American Institute of Architects
AIP	American Institute of Planners
ALI	American Law Institute
AOI	Association of Oregon Industries
BLM	Bureau of Land Management (United States)
COG	Council of Governments
COGs	Councils of Governments
CRAG	Columbia Region Association of Governments
DEQ	Department of Environmental Quality (Oregon)
HELUC	House Environment and Land Use Committee (Oregon)
HUD	Housing and Urban Development (United States)
LCDC	Land Conservation and Development Commission (Oregon)
LUPC	Land Use Policy Committee (Oregon)
OCC&DC	Oregon Coastal Conservation and Development Commission
OEC	Oregon Environmental Council
OLRC	Oregon Legislative and Research Committee
ORS	Oregon Revised Statutes
OSCC	Oregon Shores Conservation Coalition
OSPIRG	Oregon Student Public Interest Research Group
OTI	Oregon Technical Institute
PGE	Portland General Electric Company

Abbreviations (Con't)

PP&L Pacific Power and Light Company
PSU Portland State University
RFD Rural Free Delivery (United States)
SELUC Senate Environment and Land Use Committee
(Oregon)
U of O University of Oregon

CHAPTER I

INTRODUCTION

Senate Bill 100 designated a state land use planning organization, and ordered local planning agencies to do comprehensive plans that were to be coordinated with the plans of their neighboring planning units to form a state-wide comprehensive plan.

The Oregon Senate passed the bill on April 18, 1973, which was followed by passage in the House of Representatives on May 24, 1973. The bill was signed by Governor Tom McCall on May 29, 1973, and Enrolled Senate Bill 100 became part of Oregon Revised Statutes (ORS) as the new Land Use Planning Law for the State of Oregon on October 4, 1973.

Senate Bill 100 detailed land use planning in Oregon. Land, to most people, means property and their zealously-guarded property rights; people own and/or use property; both property and people are governed by law; legislatures enact laws; and legislators are politicians who are elected by the people.

The bill was the product of a series of conflicts among people's values concerning property, which had to be, and were, resolved by political compromises.

THESIS ORGANIZATION

The lengthy saga of Senate Bill 100 is organized into three chronological parts -- Parts One, Two and Three.

Part One shows the eleven months of work by the Land Use Policy Committee (LUPC) in drafting the original Senate Bill 100 (SB 100). Part Two describes the efforts of the Senate Environment and Land Use Committee (SELUC) to salvage the land use planning concept in a purely political setting. Part Three relates the passage of the redrafted SB 100 through to its final enactment as Enrolled Senate Bill 100.

PART ONE -- 1972:

- Chapter II delineates the Land Use Policy Committee.
- Chapter III develops Who Plans -- State?
- Chapter IV designates Who Plans -- Substate?
- Chapter V decides who Plans What?
- Chapter VI determines who holds the Reins of Power.

PART TWO -- WINTER OF 1973:

- Chapter VII demarks the Senate Environment and Land Use Committee
- Chapter VIII details the Opposing Concepts
- Chapter IX denotes Who Plans -- State?
- Chapter X debates Who Plans -- Substate?
- Chapter XI deduces who Plans What?

Chapter XII delegates the Reassigned Roles.

Chapter XIII defines Legislative Intent.

PART THREE -- SPRING OF 1973:

Chapter XIV describes the Enactment of Senate Bill 100 (SB 100).

Chapter XV delivers the Conclusions.

HISTORICAL BACKGROUND

Oregon's first Land Use Planning Law, Senate Bill 10 (SB10), was enacted by the 1969 Session of the Oregon Legislature. The bill said that counties in Oregon were to make comprehensive plans. However, SB 10 gave the Governor the authority to make the plans if local units did not, and to charge for them, or to grant exceptions to permit the counties to delay action or avoid it entirely.

For this reason House Bill 3056 (HB 3056) was introduced in the 1971 Session of the Oregon Legislature. This bill provided for the establishment of regional planning commissions and designated zones of urban, rural, agricultural and conservation use within the regions. Local governments would then determine the uses allowed within each zone. More than one regional commission could have jurisdiction within one county, while one commission could extend into more than one county. This 1971 bill did not pass the legislature.

THE OREGON ENACTMENT PROCESS

The enactment process of the Oregon Legislature involves three significant segments, the Bills, the Legislature, consisting of the Senate and the House of Representatives, and the Executive.

The Bills

A bill in Legislative terminology is a proposed piece of legislation. The three types of bills which may have a place in the Legislative process are Legislative Counsel (LC) bills, Senate Bills (SB), or House Bills (HB).

Legislative Counsel (LC) bills are so designated by the Legislative Counsel's Office prior to submission to the Legislature during a Legislative Session, when the LC bills become either a Senate Bill (SB) or a House Bill (HB). Legislative Counsel bills, when revised, are numbered by drafts, for example, first draft, second draft . . . fifth, sixth, etc.

Senate Bills are those which are entered before the Senate by sponsoring Senators. They do not include appropriation bills, which are submitted only in the House under the Oregon Constitution.

House Bills are those which, when entered before the House, have members of the House of Representatives as sponsors of the proposed legislation.

Senate and House Bills, when amended, become Engrossed

bills the first time. On the second change they become Re-engrossed. The third revisions are titled Engrossed Re-engrossed bills. In Oregon, after a bill has been passed and signed by both the President of the Senate and the Speaker of the House, the Governor may or may not add his signature. If and when the bill is enacted, it becomes an Enrolled bill.

The Legislative Process

The Oregon Legislature has two Houses -- the Senate and the House of Representatives -- which meet in the State Capitol in Salem every two years, in the odd-numbered years.

The Senate Process. The Senate has 30 members, each elected in a single-member district for a four-year term. Only 15 Senators are elected every two years (even-numbered years). The Senators in each Legislative Session elect a President of the Senate from among their members, and vote the Senate Rules for that Session.

The President of the Senate designates all Senate Committee Chairman and Senate Committee members. He assigns all bills to one of the Senate Committees upon its Second Reading in the Senate.

Senate Rules, in addition to Robert's Rules of Order, cover the Readings of Bills plus the right of any Senator to call for a Roll Call vote of the Senate. However, Committee Members may not discuss on the Senate Floor the actions of Committee Members during committee meetings.

The Senate Rules provide for three possible readings of a bill. The First Reading takes place the day the bill is entered into the Senate. The Senators vote on the passage of the bill to its Second Reading. The Second Reading is usually scheduled for the next day. Upon a Senate vote the bill is assigned by the President of the Senate to a Committee of his choice. If the Committee does not Table the bill, but rather gives it a "do-pass" recommendation the bill is scheduled for a Third Reading by the Senate. After the Third Reading, the Senate votes to either pass or refer the bill to its original committee or another committee. A second referral of a bill is usually a method of "killing" the bill. After Senate passage a bill goes to the House of Representatives, or if already passed by the House to the Governor for his signature. If so much as a punctuation mark or a word is changed, that change must be voted by both houses of the Legislature. This action may require a joint committee of the House and Senate.

The Senate usually has fifteen committees of seven members each, including a Joint Ways and Means Committee made up of seven Senators and seven Representatives. Each of the 30 Senators are members of three or four committees, plus several subcommittees of committees.

The 14 Senate Standing Committees (1973) were Agriculture and Natural Resources, Consumer and Business Affairs, Economic Development, Education, Elections, Environment and

Land Use, Human Resources, Judiciary, Labor, Local Government and Urban Affairs, Revenue, Rules and Resolutions, State and Federal Affairs, and Transportation, plus the Senate half of the Joint Ways and Means Committee.

The Senate had three Special Committees (1973) -- Legislative Administration, Legislative Procedures and Per Diem, plus three Joint (with the House) Special Committees -- Aging, Alcohol and Drugs, and Professional Responsibility.

The Senate also had two Statutory Committees -- the Emergency Board and Executive Appointments. The Statutory Committees meet between Legislative Sessions.

Each Committee Chairman has a paid Legislative Administrative Assistant in addition to legal help on bills from the Legislative Counsel Office, which provides legal services to the Legislature, as an Administrative function for the Legislature.

When the President of the Senate assigns a bill to a Senate Committee, after its Second Reading in the Senate, the Committee reviews the bill in a closed work session, then usually schedules and holds public hearings on the bill. After hearing public testimony, the Committee either revises or tables the bill in work sessions. If the Committee rewrites the bill significantly, new public hearings are scheduled and held. Then, after due consideration, the Committee decides to either table the bill or recommend a "do-pass" resolution to the Senate.

The House Process. The process in the House of Representatives is similar to the Senate process, except that there are 60 members in the House from single-member districts, all of whom are elected by popular vote every two even-numbered years.

The Rules are basically similar, including the requirement that, if a bill is changed in any way, that bill must be revoted upon until both Houses of the Legislature concur on the bill before it goes to the Governor for his signature. The concurrence of both Legislative Chambers is achieved by the appointment of a Joint Committee, usually made up of three members from each legislative body appointed by their respective presiding officers, to resolve the differences between the two versions of the bill.

The Speaker of the House of Representatives is elected by his 59 peers in the House. The Speaker usually has the same powers over bills and committees as has the President of the Senate. However, Oregon Representatives, acting as a Committee-of-the-Whole, may strip him of those powers at any time by a majority vote.

The Rules, other than Robert's Rules of Order, are voted each Session by members of the House of Representatives. While mostly related to good manners, the Rules can be and have been changed by the House. On the whole, they are the same as for the Senate regarding the three readings of bills.

There are 13 House Standing Committees including the

Joint Ways and Means Committee with the Senate. The House has the same Standing Committees as the Senate except for the ones on Economic Development and on Elections, which seem to be the private preserve of the Senate. The House Committees' treatment of bills is similar to that of Senate Committees'.

The House has three Special Committees -- Legislative Administration, Per Diem and Property Tax Relief and School Finance (appointed May 7, 1973), in addition to the three Joint (with the Senate) Special Committees -- Aging, Alcohol and Drugs, and Professional Responsibility, plus the statutorily-required Joint Emergency Board.

The Executive

The Chief Executive in the State of Oregon is the Governor, who is elected by vote of the people for a four-year term, for a maximum of two consecutive terms. After both Chambers of the Oregon Legislature have passed the same bill, the Governor of Oregon has the option to sign, to veto, to item veto, or to allow a bill to be enacted into law without his signature. The latter is termed a "pocket veto."

THE THREE MAJOR THEMES

In this study of the design and development of Senate Bill 100, in an effort to provide Oregon with state-wide land use planning, we shall see that the major clashes between the Bill's proponents and opponents reflected conflicting policy judgments regarding three major themes: (1) the

relationship between needs and wants, i. e., needs for land use planning as perceived by some legislators but which had not yet become wants felt by the public, or significant elements thereof; the values of localism versus regionalism, and (3) the conflicts between economic and environmental values. In large measure, the saga of Senate Bill 100 is the story of how political conflicts, focussing on these three themes, were finally resolved through the process of political compromise.

The issues between the proponents and the opponents of land use planning in Oregon, and their ensuing battles and compromises were to determine the provisions of Senate Bill 100.

PART ONE -- 1972:

The year 1972 saw the Land Use Policy Committee (LUPC), which is delineated in Chapter II, create in five separate drafts the original Senate Bill 100.

The LUPC sought to detail its concepts of Who Plans What? The Committee members reasoned in Who Plans - State?, Chapter III, that a state agency was needed to coordinate regional land use planning in Who Plans - Substate?, Chapter IV. The Committee, through detailing in Plans What?, Chapter V, could provide Oregon with a state-wide land use planning bill, Senate Bill 100. Who should hold the Reins of Power in state-wide land use planning is discussed in Chapter VI.

CHAPTER II

THE LAND USE POLICY COMMITTEE

The Land Use Policy Committee (LUPC) and its participants had an important purpose. The Committee's purpose was the resolution of the need for state-wide land use planning, which the two previous bills, SB 10 (1969) and HB 3056 (1971) had failed to do.

THE COMMITTEE

The LUPC was formed early in 1972 by State Senator Hector Macpherson, who selected the members of the Committee. LUPC members received a charge from Macpherson which set the preliminary goals for the Committee, plus a series of outlines. Under Macpherson's guidance, the Committee held meetings throughout 1972.

The LUPC was a personal creation of State Senator Hector Macpherson, a Republican freshman lawmaker and farmer from Albany, Oregon, who had served in the Oregon State Legislature for only two years. After the burial of HB 3056, he felt an urgent concern for the rapid change from rural to urban in land use. Agricultural land was being rezoned in his Mid-Willamette Valley area for both housing and industry.

As a concerned citizen, he saw prime farm land disappearing forever from productive agricultural use.

Macpherson expressed his concern to his fellow State Senators during the 1971 Legislative Session, and requested the creation of an Interim Committee to study the steady erosion of rural land away from farm use. The Legislature denied his request.

On his own, however, because he believed in the urgency of the need, Macpherson created, with the help of his wife, Kitty, the Land Use Policy Committee (LUPC) to study the problem. While, as a State Senator, he had full use of state facilities and services, he utilized his own personal funds, when necessary, to finance the Committee's work.

Macpherson named himself Chairman of the Committee, which was composed of members of his own choosing. He also selected the guest speakers. The LUPC audiences were there as invited guests. The Committee members, the speakers, and the audiences, therefore, tended to reflect the Chairman's concepts of the problem, a problem which Macpherson felt demanded an immediate solution.

The proposed land use bill was written in an attempt to protect Oregon's scenic landscape from human abuse and misuse. Members of the LUPC and its staff, while not professional planners, were lay experts in land use planning who gave of themselves unstintingly to create the bill.

LUPC members were able and sincere Oregon citizens, who were completely dedicated to their project of turning

out a good land use bill, but they were wholly oblivious to the need for involving the public in plans, discussions and decisions on the terms of the bill, as a means of gaining popular approval and support. Without public understanding, cooperation and support, the proposed bill could not survive in its original form in the 1973 Session of the Oregon Legislature.

Land Use Policy Committee Members. Members of Hector Macpherson's specially chosen Land Use Policy Committee were as follows:

Senator Hector Macpherson, Albany, Oregon, Chairman

James Moore, Mayor of Beaverton, Oregon, and President of the League of Oregon Cities

Harry Carson, Salem, Oregon, Marion County Commissioner

Ralph Fulbright, Eugene, Oregon, Lane County Planning Commission

Martin Davis, Portland, Oregon, Oregon Environmental Council

Russell Tripp, Albany, Oregon, Governor's Commission for a Liveable Oregon

Norman Hilton, Portland, Oregon, Hilton Engineering

Ellen Lowe, Salem, Oregon, Salem City Planning Commission

Dr. Russell Beaton, Salem, Oregon, Willamette University Economics Professor

Dean Price, Portland, Oregon, Association of Oregon Industries Land Use Planning and Zoning Committee

Ann Squires, Portland, Oregon, Oregon Shores Conservation Coalition

David Hayes, Albany, Oregon, Oregon Homebuilders Association

Wilbur Bluhm, Salem, Oregon, Marion County Extension Service, and Chairman of Rural Planning and Conservation Subcommittee of Land Use Policy Committee.

Jerry Orrick, Salem, Oregon, Executive Director of Association of Oregon Counties (Added later)

A Charge to LUPC. Senator Macpherson prepared a detailed proposal for those interested in land use planning entitled "A Charge to the LUPC". Each Committee Member received a copy of the "Charge," as quoted in full below:¹

The Committee should consider and make recommendations for the following:

1. The designation of a state agency with responsibility to prepare and coordinate state comprehensive planning, including staff needs, funding needs, and relationships to Federal planning grant sources.
2. The definition of State, Region (COG), City and County Planning Roles, focusing on such questions as:
 - a. The role of zoning by each level of government and the possibility of vesting veto power at the State, Regional, or local levels
 - b. Who should decide the location of major industrial concentrations
 - c. Urban growth policies and urban service boundaries
 - d. Construction of major transportation facilities
3. Statutory definition of the elements of State, Regional and local comprehensive (land use) plans. Federal Agency (HUD, EPA, HEW, etc.) guidelines for planning, and requirements for hardware grants should be considered
4. Preparation of guidelines and criteria for development of an effectiveness testing mechanism for evaluating State, Regional and local planning efforts.

5. Criteria and composition of members and the role definition of local planning commissions
6. Creation of a State Land Use Commission

The ideas for the LUPC were gathered by a dedicated staff, which included Steve Hawes, Legislative Counsel, Lee Miller, John Marks, Richard Peterson, Lynden Brown, Gary Hill, Rick Rauber, and Kitty Macpherson, LUPC Secretary. Materials were disseminated through Senator Macpherson.

Senator Macpherson, LUPC Chairman, prepared guidelines for the Committee's discussion and decisions. He sent a copy to each Committee member prior to the March 31, 1972, meeting. The Chairman titled his document, "An Outline for Land Use Decisions in Oregon."²

The Macpherson Outlines. Chairman Macpherson wrote and mailed a series of four Outlines to those interested in land use planning in Oregon. The Outlines were used to guide the thinking of the LUPC throughout the early months of 1972. Upon the receipt of Macpherson's first Outline, Dr. Russell Beaton, LUPC member and a Willamette University Professor, promptly dubbed them, "Hector's Thoughts." The Outlines thus became known as "Hector's Thoughts I," "II," "III" and "IV." The name stuck.³

Chairman Macpherson also sent personal letters with copies of the Third and Fourth Drafts of LC 100, when inviting comments. To aid the recipients of the Fourth Draft, he also prepared a Summary of the bill which he enclosed with the letter and the draft.

Chairman Macpherson's ideas and concepts thus became an important factor in helping to determine the basic land use planning philosophy and its future implementation by LUPC. "Hector's Thoughts" set forth the preliminary organization pattern at the state level. His concepts were accepted by LUPC almost "in toto". In accepting "Hector's Thoughts", the Committee, unfortunately made little or no effort to study or research other factors, ideas, programs, or possible alternative solutions.

Committee Meetings

The LUPC in 1972 had one meeting in February, two in March, and one each in April, June and July, working on the First and Second Drafts of LC 100. The LUPC held semi-public work sessions in August and September on the Third Draft of LC 100. There are LUPC Minutes through the August work session. However, "Things," according to Kitty Macpherson, Secretary of LUPC, "became so hectic that no minutes were kept after that date."⁴

There were three meetings of the Committee held after the September work session to publicly discuss the Fourth Draft of LC 100, according to Steve Hawes, Legislative Counsel.⁵

Also according to Steve Hawes, "There were no LUPC meetings on the Fifth and final draft of LC 100,"⁶ which became Senate Bill 100 before the Senate in January, 1973.

THE PARTICIPANTS

In addition to the members of the LUPC, the proponents of Oregon's land use planning bill in 1972 included Governor Tom McCall, State Senator Ted Hallock, some land use planners, interest groups such as Tri-County New Politics, and various environmental groups, as participants. At Chairman Macpherson's invitation, Governor McCall, Senator Hallock, and representatives of the groups appeared before LUPC.

Governor Tom McCall

Governor Tom McCall, a Republican, had shown great interest in state land use planning from the inception of Senator Macpherson's Committee. Kessler Cannon, McCall's Executive Assistant for Natural Resources, was among the first speakers to appear before the Committee. The Governor, as a proponent of land conservation in Oregon, gave Senator Macpherson his complete support.

Robert Logan, Director of Governmental Relations for the State of Oregon, was loaned to Macpherson as a resource person by the Governor, during the original drafting of the bill.

Beginning in June, 1972, Governor McCall began publically endorsing the concept of state land use planning. While McCall's viewpoint concurred with Macpherson's, McCall did not publically endorse the bill until addressing the Oregon Legislature at a Legislative orientation meeting in Salem on

December 13, 1972, when he stated that he had two priorities for the 1973 Legislative Session. The Governor "almost equated" the need for state-wide land use planning with tax reform at the top of his list.

Senator Ted Hallock

State Senator Ted Hallock, Democrat from Portland, Oregon, did not speak out publically on the state land use planning concept when Chairman Macpherson, in July of 1972, sought his counsel on the Third Draft of LC 100.

After reviewing the proposed bill, Senator Hallock forwarded his comments to Macpherson with the request that he, Hallock, was to be kept informed. To insure this future flow of information, he also asked a Land Use Policy Committee member from Portland, Norman Hilton of Hilton Engineering, to keep him posted on the proposed land use legislation.⁸ This early interest later became a personal crusade for Senator Hallock.

Organizations

The proponent organizations were dedicated and hard-working supporters of LC 100. Representatives reported they had the unanimous concurrence of their members in support of the land use planning concept for Oregon. They gave freely of their time towards the creation and enactment of the bill. The environmentalists, whether public or private, worked as a moving force for the bill, as did the Councils of Governments (COGs), particularly the Columbia Region Association

of Governments (CRAG). Two interest groups, the League of Women Voters and Tri-County New Politics, were equally hard-working in the support of the state land use planning ideas.

Environmental Organizations. Environmental groups all supported state land use planning because, as the American Institute of Planners (AIP) stated so urgently, the general public had failed to protect its most valuable and limited resources, the land.⁹

The five predominantly environmental organizations were active -- OSPIRG, the Sierra Club, Oregon Shores Coalition, Environmental Council, and Wildlife Federation. Each was seeking land use planning for environmental protection.¹⁰

Governmental Organizations. The only governmental organizations to actively support the concept of state land use planning were the Councils of Governments (COGs). Their support was personal, for the enactment of the original legislation would have legalized the COGs' status within the state government. They were originally created by a Federal decree to funnel Federal funds to local governments. They were not created by state enabling legislation, and thus lacked the legitimate authority to oversee the various local governments. COG boards of directors were hardworking volunteers; COGs' source of power was derived indirectly from the Federal Government; their only state recognition was through the Intergovernmental Relations Office in the Executive Department. This Office lacked both power and authority. It

supplied only information to the various COGs in Oregon. Thus the COGs felt that state land use planning could have provided a vehicle to legalize their organizations. They were quite vehement in their support.

Interest Groups. Only two interest groups supported state land use planning, the League of Women Voters and Tri-County New Politics. Unfortunately, both organizations derived their memberships solely from urbanized areas.

The League of Women Voters usually tries to study all concepts in depth before publically offering its support. The League's lobbyists reflected this preliminary research throughout their testimony, particularly before Senator Macpherson's Land Use Policy Committee (LUPC) in 1972.

Tri-County New Politics was created to improve the quality of urban life in the Portland Metropolitan area. Joyce Cohen, group leader, had done her homework well on urban issues and her suggestions to LUPC seemed to command respect. She wanted citizen participation assured.

THE COMMITTEE'S PURPOSE

As conceived by Senator Hector Macpherson, the Land Use Policy Committee (LUPC) was created to fulfill a need in Oregon, i.e., the need to draft a state land use planning law. The Committee saw the need not only for the land use planning law itself, but also the need to provide for uniformity and for better enforcement.

The Need for a Planning Law

There had been legal control of land use in the United States for over a Century under various states' delegated police power. Both state and federal courts had upheld the legal usage of the police power. The growth in the number and use of automobiles plus the massive growth of urban areas had been considered factors in the changing patterns of land use. Kevin Lynch's book, The Image of the City,¹¹ discussed interrelationships, saying that nothing in physical planning was totally in isolation, but was always related directly to its surroundings. The need for local land use planning was an accepted fact but the concept of planning interrelationships was relatively new. State land use planning had attempted to deal legislatively with these interrelationships.

Chairman Macpherson utilized the February and March, 1972, meetings to guide the LUPC members toward his concept of the need for state land use planning. Macpherson invited State Representative Jack Anunsen, Marion County, a sponsor of HB 3056 (1971); Larry Sprecher, City Manager of Beaverton, Oregon; and Kessler Cannon, Governor McCall's Administrative Assistant for Natural Resources, as guest speakers for February, and invited Lloyd Anderson, Portland City Commissioner, for the March guest speaker.

Representative Anunsen, Larry Sprecher and Kessler Cannon concurred on the need for a state planning agency to

set up an overall land use plan for the State of Oregon. However, Anunsen and Sprecher believed planning needed to be done only at the local level, but that the reviewing by a regional agency, such as Councils of Governments (COGs), was to be tolerated.¹²

Larry Sprecher strongly supported the creation of a state planning agency for, at that time, the state was asking for plans by cities and counties, yet it had no overall plan of its own.

Kessler Cannon explained the major aspects of the National Land Use Policy Act (1972), which, at that time, was expected to be passed by Congress in the not too distant future.¹³ The Federal Act, originally authored by U.S. Senator Henry Jackson, Washington State, had been combined in later drafts with a similar Nixon Administration plan, which would have required a participating state to establish a state planning agency with regulatory authority. A judicial or administrative tribunal was to make the ultimate determination of disputes within the state plan. The Federal Government proposed to provide 90% of the cost of devising the state plan, and two-thirds of the cost required to implement the plan. The state was to have five years in which to prepare the plan, which was to be submitted to the Secretary of the Interior for approval. Where state plans related to Federally-owned lands within that state were not properly followed, the Federal Government provided a stiff penalty which permitted no further Federal investment in that state,

such as Federal construction projects. As Mr. Cannon said, "the plan was good but punitive."¹⁴

Because of the broad and detailed guidelines required and the severe penalties for non-compliance with the requirements, Cannon felt that many states might have been unwilling even to take the first step in utilizing the Federal plan.

The National Act required the state to identify in its plan existing areas of immediate environmental concern, to show the location of energy sources, transportation corridors, and sites for new towns in the public lands within that state.

According to Representative Anunsen, HB 3056 (1971) was based on the notion that each region of the state was different, and that the Legislature was to determine those elements necessary to fashion a plan for each particular region. The role of the state in this framework, stressed Anunsen, was to assist, but not to force, the adoption of land use plans. However, any state agency created for planning needed to be controlled from the local level upward, and not to be established as an arm of the state. Several LUPC members disagreed with Anunsen on this point, or seemed to doubt the effectiveness of a plan without some state level control.¹⁵

In March, Lloyd Anderson, Portland City Commissioner, stressed the need for "a lock" between authority and responsibility in land use planning and other planning. He cited, as an example, that the decision to build a sewer system,

made by a single agency only, might have determined the course of development for private investment and other public facilities for a large area. Land use planning should not ignore the consequent economic realities that work pressure upon city councils and other representative bodies to legislate zoning changes, despite the fact that a "comprehensive plan" could have existed.¹⁶

Lloyd Anderson continued, "There was no sense of direction at a regional level as to what the goals of a region needed to be. Instead, hundreds of local governmental units each have their own goals, which inevitably conflict with one another, and thwart the overall good of the regional community. For example, it is poor judgment for a city with a goal of increasing its tax base, to seek to attract new industry, if the development of industry in the area is inconsistent with the transportation facilities that exist here."¹⁷

LUPC member Jerry Orrick, Executive Director of Association of Oregon Counties, questioned whether the solution to all of Oregon's planning problems was to let the Federal Government do the all-out planning, even if it meant state acquiescence to Federal programs to move several million Americans from over-populated California to underpopulated Oregon.¹⁸

In general, the LUPC had collectively accepted the concept that Oregon needed state land use planning although there was a brief discussion on the land use philosophy after the presentation of the American Law Institute (ALI)

A Model Land Development Code (Model Code)¹⁹ at the April meeting. LUPC Staff Member Rick Rauber, in commenting on the ALI Model Code proposals, expressed his concern -- First, on the nature and source of any checks on the state agency; Second, whether or not there was, or needed to be, some kind of a plan for the state; and Third, the scope of state planning, i.e. was it possible for state planners to escape implying a specific planning decision when developing a general policy?²⁰

Chairman Macpherson responded to Mr. Rauber's comments. He stated that he believed everything had planning involvement. It had come to the point whether either the state was participating in land use decisions or the planning arrangements were to be made entirely by private land development interests. The Chairman said that he preferred to see massive development of Oregon by California interests "curbed at any cost."²¹

Andy Sedwick, Lincoln County Commissioner, stated that many state agencies were then involved in approving local and inter-county projects; e.g., the approval power of the State Game Commission or the Department of Environmental Quality. Wes Kvarsten, Mid-Willamette Valley Council of Governments (COG), answered that the state had no authority regarding how land was to be used.²²

At the July LUPC meeting, State Representative Sam Johnson, of Redmond, Oregon, as a LUPC guest, said it best, perhaps, when he stated that just getting any land use

concept passed through the Legislature was an important step forward.²³

By LUPC's July meeting, the need for the land use planning law was accepted by the Committee members, though some members still felt there was also a need for uniformity and for better enforcement provisions in the bill.

The Need for Uniformity

The need for uniformity was apparent to LUPC members in the Second Draft of LC 100 with the proposed Land Conservation and Development Commission (LCDC) authorized to determine which areas were to be designated as areas of critical state concern. This concept originated in the ALI Model Code which had been presented to the LUPC by Dr. Russell Beaton, Economics Professor at Willamette University, in April.²⁴

In July, during the LUPC meeting and discussion on Chairman Macpherson's recommendation on the need for uniformity, Dean Brice, Associated Oregon Industries (AOI), suggested that the areas of critical state concern needed to be designated in the bill, rather than by LCDC. Mr. Brice said that he was worried about how many areas were to be identified by the Commission, if the LCDC was given carte blanche. He continued by saying that he felt that the Legislature needed to be given a role in approving what the Commission chose to identify.²⁵

Senator Macpherson at once reminded Dean Brice that the Second Draft required the LCDC to submit the identified

critical areas in its final report to the 1975 Legislature for Legislative approval. Senator Macpherson added, "It becomes a mere question of the Legislature approving the areas via the bill, or via the Commission's final report."²⁶

State Representative Sam Johnson, Redmond, Oregon, asked Martin Davis, Oregon Environmental Council (OEC), "How far do you think the state should go in identifying critical areas?"²⁷

Martin Davis replied,

The critical areas provision was the most important feature of the land use bill. It is imperative that the state act quickly to discourage 'misdevelopment,' especially in areas of important environmental concern. If forced to make a half-step, I would compromise the review functions of the districts and the Commission before reducing the critical areas designation authority of the Commission.²⁸

The areas of critical state concern were so designated in the last two drafts of LC 100. Thus, when Senate Bill 100 made its public debut before the Senate Environment and Land Use Committee (SELUC) in January, 1973, critical areas were still specifically designated in the bill.

The Need for Better Enforcement

The need for better enforcement provisions in the proposed state land use planning bill was also discussed at the LUPC's July meeting, as follows:²⁹

Chairman Macpherson suggested that there was a need to strengthen the enforcement capabilities of the planned state commission. The suggestion struck a responsive chord among the Committee's guests. During the LUPC discussion a

representative of the Oregon Water Resources Board posed the problem of implementing guidelines and objectives. The bill outlined very specifically the adoption of state-wide planning policy, but failed to state how the policy was to be implemented and enforced.

Steve Hawes, Legislative Counsel, responded by reviewing the adoption process. Mr. Hawes noted that, with respect to implementation, unless local and district plans complied with policy directives from the proposed state agency for projects involving land development and conservation, they were not to have Federal and state financial support. Steve Hawes, however, agreed that the draft was essentially a planning bill, which would need some structural changes in respect to implementing and enforcing tools.

Andy Sedwick, Lincoln County Commissioner, reiterated the need for enforcement mechanisms in saying, as the bill read, it merely rendered local resolutions and ordinances "void" and unenforceable "if they were in conflict with the state guidelines." Commissioner Sedwick said further, "This left the locals to continue without any Commission or district power to ensure compliance."

Steve Hawes replied that the Commission was to still have the opportunity to enjoin the locals pursuant to the state-wide guidelines or to the orders from the Appeals Board. Thereupon, Martin Davis, OEC, suggested giving to the state the job of designating functions of district significance, saying that, after all, many functions (such as

sewer system planning) were common to all districts. Davis continued, "As written, the present provision counters strong state planning, which I consider essential to an effective department."

During the August and September work sessions, LUPC members decided that minimum planning standards were to be added to the bill. As such, Section 45 (1) of the Fifth and final Draft of LC 100 authorized the department (LCDC) to prepare state-wide planning guidelines by January 1, 1975, for use by state agencies, cities, counties, district councils and special districts in preparing, adopting, revising and implementing existing and future comprehensive plans.

SUMMARY

State Senator Hector Macpherson created the Land Use Policy Committee in his own image in 1972. Committee members were charged by him during their meetings to recognize and resolve the need for land use planning in the State of Oregon through legislation. The LUPC Members felt and came to accept, during the drafting of LC 100, the need concept so urgently championed by Chairman Macpherson. Committee members also sought, under the guidance of Macpherson, to fulfill the need for uniformity in land use planning, by designating specific geographic areas of critical concern in the bill. Further, to provide for the need for better enforcement, Committee Members authorized the promulgation of state-wide land use planning guidelines in the Fifth and final

Draft of Legislative Counsel 100 (LC 100).

Committee members, with a little help from their friends, the other participants, were able to fulfill their purpose to define the need and to provide, through LC 100, the proposed legislation to remedy the need for land use planning in Oregon. In solving this need, the Committee determined who plans what in the state.

NOTES

¹Hector Macpherson, A Charge to the LUPC (Salem, Oregon: January, 1972).

²Hector Macpherson, An Outline for Land Use Decisions in Oregon, 4 Outlines (Salem, Oregon: February, March and April, 1973).

³Ibid.

⁴Personal Interviews with Kitty Macpherson, Secretary to LUPC (Salem: February and March, 1973).

⁵Personal Interviews with Steve Hawes, Legislative Counsel's Office (Salem: November 30, 1973, December 3, 1973, and March 25, 1974).

⁶Ibid.

⁷Personal Interview with Gene Maudlin, Executive Assistant to Governor McCall. (Salem: December 3, 1972).

⁸Personal Interview with State Senator Ted Hallock (Portland, Oregon: December 15, 1973).

⁹Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Counsel 100 (LC 100) (Salem: March 31, 1972), p. 4.

¹⁰Personal Interviews with Steve Hawes (1973-1974).

¹¹Kevin Lynch, The Image of the City (Cambridge, Mass.: The Technology Press and Harvard University Press, 1960).

¹²Minutes of LUPC meeting on LC 100 February 4, 1972, pp. 1-5.

13The National Land Use Planning Act was tabled by its Committee in Congress.

14Minutes of LUPC Meeting, February 4, 1972, p. 5.

15Ibid., p. 1.

16Ibid., March 3, 1972, p. 2.

17Ibid., p. 5.

18Ibid., March 31, 1972, p. 3.

19American Law Institute, A Model Land Development Code, Articles 7, 8 and 9, Tentative Draft, No. 4 (Philadelphia: American Law Institute, 1971).

20Minutes of LUPC Meeting on April 28, 1972, p. 1.

21Ibid., p. 2.

22Ibid.

23Ibid., July 14, 1972, p. 1.

24Ibid., April 28, 1972, p. 3.

25Ibid., July 14, 1972, p. 13.

26Ibid., p. 14.

27Ibid.

28Ibid.

29Ibid.

CHAPTER III

WHO PLANS -- STATE?

In developing Who Plans -- State?, the Land Use Policy Committee had to determine the state agency organizational structure and the agency's position in state government; had to decide how appeals were to be resolved and by whom; had to designate who was to head the state agency, a single Director or a commission; and had to provide for a "sure-fire" method of insuring citizen participation under a state agency planning system.

Committee Members solved these problems and others to Chairman Macpherson's satisfaction when they produced LC 100 in their effort to fulfill the need for state-wide land use planning.

THE STATE AGENCY ORGANIZATIONAL STRUCTURE

The controversy involving the agency location within the overall state governmental structure was initiated at the February, 1972, Land Use Policy Committee (LUPC) meeting by Kessler Cannon, the Governor's Assistant for Natural Resources, when he said that he felt that a new state agency was an unnecessary creation. Rather, he felt that an agency, such as the Oregon Water Resources Board, or the State Highway Department, either of which had the administrative

background in planning with natural resources, would have been preferable.¹

In "Hector's Thoughts I," LUPC Chairman Macpherson offered three proposals for a state organizational structure prior to the March 3, 1972, committee meeting -- First, to create a State Conservation and Development Commission; Second, to create a section within the Department of Environmental Quality (DEQ); and Third, to create a State Land Use Board. The LUPC members thought that the first option would be subjected to too much political pressure. The Committee's principal objection to the DEQ concept, initially suggested by Kessler Cannon, was that the entire DEQ organization was scheduled to be far down the administrative ladder under the proposed Department of Natural Resources. To the LUPC members, it was questionable whether decisions as important and far-reaching as those relating to land use were to be made at such a low administrative level when the Committee felt that a top-level body of some kind was needed. The third option was not discussed.²

In "Hector's Thoughts II" the third option was dropped. The first and second options were each slightly revised, to show Option 1 with a State Conservation and Development Commission to be responsible directly to both the Governor and the Legislature, and Option 2 with a Planning and Development Department to be created either as a section within DEQ or with parallel status in the proposed Department of Natural

Resources. The state organizational structure was not discussed at the March 31st LUPC meeting.

However, the LUPC devoted much of the April meeting to the proposed state agency. Senator Macpherson's guidance was readily apparent in that LUPC member, Dr. Russell Beaton, Willamette University Professor, spent two hours topically describing two Articles (7 and 8) of the American Law Institute (ALI) Model Code at Macpherson's request. Section 8-101, in particular, titled Organization of State Land Planning Agency, caught their interest. It stated, "The State Land Planning Agency shall be an office of land planning within the Governor's office. The Governor shall appoint the Director of the Agency."³

Section 8-101 said, in essence, that an agency was to be directly responsible to the Governor. The agency was to be empowered to plan and coordinate land use patterns, but the role of the agency as a coordinator of other state-wide planning functions was to be secondary in importance. The LUPC members did not object to the Governor's power. However, they did question the agency's power to coordinate, particularly at the regional level.⁴

Later during their April meeting, LUPC members discussed "Hector's Thoughts III," which stated concerning a state organizational structure:

A State Department of Planning and Development. This would be a new department directly under the Governor, modeled after DEQ. The department director would be appointed by the Governor, thus tying the functioning of the department closer to the elected official.

The similarities between the ALI Model Code and "Hector's Thoughts III" were not coincidental, according to Steve Hawes, Legislative Counsel. He said that they were meant to reinforce one another.⁵

In discussing the organization of an agency to be charged with over-seeing land planning and development, Senator Macpherson said, "at this time no such agency exists at the state level. An agency similar to DEQ which would be responsible to the Governor's office should be created."⁶

There was no discussion of the organizational structure in the first and second drafts of LC 100. However, in the third draft, a state agency structure was discussed during the August work session, when a brief verbal exchange erupted between Bud Svalberg, Oregon Water Resources Board, and Martin Davis, Oregon Environmental Council (OEC).⁷

Bud Svalberg expressed the feared loss of his state agency's power and prestige, when he requested that representatives of his department be appointed to both the state and district planning agencies. Martin Davis rebutted by saying that, if representatives from Mr. Svalberg's agency were appointed to the commission and the districts, other state agency representatives needed to be similarly appointed. Davis assured Mr. Svalberg that the State Water Resources Board was to have ample opportunity to make recommendations and comments available to the planning bodies.⁸

Chairman Macpherson prepared a summary of the fourth draft of LC 100 in five facets, one of which was especially

applicable to a state land use agency, as follows:

Administration: The Department of Land Conservation and Development, to be titled the Land Conservation and Development Commission, was to be established to supervise the state-wide planning process. The Commission was to prepare objectives and regulations (for critical areas and activities) and guidelines (for non-critical areas) for approval by either the Legislature or, if the Legislature was not in session, by a Joint Committee on Land Use. In addition to its permit-issuing and reviewing functions, the Commission was to be charged with conducting land use inventories and with making additional designations for critical areas and activities.

There was no serious discussion of the state land use agency concept on the fourth draft of LC 100 during the three November meetings, according to Gordon Fultz, Assistant Director of the Association of Oregon Counties.⁹

Steve Hawes,¹⁰ Legislative Counsel, stated that the fifth draft of LC 100 was the first totally complete writing of the bill. Several sections were added in the fifth draft which pertained to the organizational structure of a state land use agency. These were Section 11 and Sections 46 through 48. Section 11 delineated the duties and powers of the Land Conservation and Development Commission (LCDC). Sections 46 through 48 detailed the rules governing the who, what, when, why and how of comprehensive planning and plans.

APPEALS BOARD

LUPC Chairman Macpherson in his first Outline, "Hector's Thoughts I," suggested that an "environmental court" needed to be included in the proposed legislation. He wrote that the court concept was only optional, but that the

creation of a special court, patterned after the state tax Court, to serve as an appeals court, was needed to hear all cases referred to it in the areas of land use and pollution control.

As a guest speaker before the LUPC, Wes Kvarsten, then Director of the Mid-Willamette Valley Council of Governments (COG) and in 1977 named Director of LCDC, stated that adjudication needed to be done at the state level in case of conflicts. He recommended that veto power had to be held by the COGs and/or the state.¹¹

The appeals concept was discussed briefly at the April, 1972, meeting, when the Committee considered the problem of having a board to hear the appealed land planning decisions. Senator Macpherson, in describing the adjudicatory board created in the ALI Model Code, explained that the land development agency, either at the state or local level, was to be one of the parties in planning questions to be heard before the adjudicatory board.¹²

Martin Davis, Oregon Environmental Council (OEC), raised a question concerning the appeal process when he wanted to know who were to be the parties in an appeal before the adjudicatory board? LUPC staff member, Rick Rauber, responded by saying that the ALI Model Code spelled out 10 factors which needed to be closely considered in the decision-making process, and pointed out that if these factors did consequently enter into the local board decision, an appeal to the adjudicatory board became very unlikely.¹³

The appeals court concept was not discussed by the LUPC again until the July meeting, when Committee Member Dean Brice presented testimony on behalf of the Association of Oregon Industries (AOI). He recommended that the appeals board concept be deleted from the proposed land use planning bill. Instead, his organization felt that the appeals from city and county controversies needed to be resolved at the district level, or in the Circuit Court, and that the appeals involving "critical areas" needed to be resolved by either the proposed Commission or the Circuit Court.¹⁴

In leading the discussion on AOI concepts, the Chairman noted that the purpose of the appeals board, contrary to AOI reasoning, was to protect the integrity of the planning agencies and any person injured by planning decisions. However, the concept was monumental, he admitted, and was to be considered further by the LUPC.¹⁵

During the August, 1972, work session discussion of the proposed commission department arrangement, it was decided to omit references to the appeals board and to include the petition-review function among the duties and powers of the commission. The LUPC members agreed that the creation of an additional agency to handle appeals would serve only to complicate the policy-making process -- one body establishing and implementing guidelines and another evaluating and interpreting them.¹⁶

The appeals concept was not eliminated from the LUPC's proposed bill. A separate board was created to hear the

appeals. The fourth draft of LC 100 utilized a hearings officer for appeals, with final review to be done by the Commission. This concept was expanded upon in the fifth and final draft of LC 100.

STATE AGENCY LEADERSHIP

That there was to be a state agency for land use planning was an accepted fact. However, whether the agency was to have simple or multiple leadership was yet to be resolved, as were the qualifications required for this leadership.

Senator Macpherson wrote in his Outlines sent to LUPC members prior to the March, 1972, meeting, suggesting that the agency be headed by either a single leader or by a commission, with its members composed of the State Treasurer, the Secretary of State, two individuals appointed by the Governor, plus one appointed by the Senate President and two appointed by the House Speaker. In discussing the two plans, the LUPC's major criticism was that some, if not all, of the proposed commissioners were subject to political pressure, and that probably none would be experts in the planning field. The single leadership option was not seriously discussed by the LUPC.¹⁷

The Committee Members were asked by Chairman Macpherson to comment on which option they preferred and what the possible problems in each were. Surprisingly, the fact that land use was susceptible "to political pressures" gave added weight to the commission concept.¹⁸

The commission suggested by Macpherson was to have its own staff, thereby acquiring the expertise necessary for effective functioning. However, Dr. Russell Beaton felt that, in the interests of giving the commission flexibility, its appointees needed to be distributed by statute among specialized fields and/or interest groups, and that these commission members needed to be people of some expertise just as staff members should be. Norman Hilton, of Hilton Engineering Company of Portland, stated that some commission members needed to be subject to political pressures in order to insure responsible handling of financial matters. Urban Planning Professor, Mr. Marvin Gloege, from the University of Oregon, rebutted that he liked having the

State Treasurer and the Secretary of State on the Commission, since this, in effect, reduced the power that the Governor was to have in placing a greater number of more politically insulated appointees as commission members.¹⁹

Chairman Macpherson, in "Hector's Thoughts III," recommended in an "about face" from "Hector's Thoughts I" and "II," that the new agency required a single department director which, unlike the Director of DEQ, was to be appointed by the Governor. Senator Macpherson reasoned that the functioning of the department would need to be tied more closely to an elected official. He wrote further that in place of a policy-making commission, there was to be a separate adjudicatory board composed of five members serving at the pleasure of the Governor, but confirmed by the Senate.

This second proposal by Senator Macpherson, which was

directly contrary to his earlier proposals, had been derived from the American Law Institute Model Code. The Committee members discussed both proposals -- Macpherson's and ALI's, but made no recorded decisions.²⁰

Despite the fact that the second draft of the Legislative Counsel bill (LC 100) stated that the proposed Land Conservation and Development Commission (LCDC) was to be lead by a five-member commission, "Hector's Thoughts IV" reiterated the concepts of his "Hector's Thoughts III" for the June LUPC meeting, but there was no committee discussion on the important matter of LCDC leadership recorded for that meeting.

Commission Membership

The discussion on commission membership was initiated by Mrs. Ann Squires, a Portland resident and a member of both the LUPC and the Oregon Shores Coastal Coalition, at the March 31st meeting. She suggested that the Oregon voters needed to elect the commission members. There was no LUPC discussion on the suggestion recorded.²¹

In "Hector's Thoughts IV" Senator Macpherson recommended that, in lieu of a policy-making commission, a separate adjudicatory (appeals) board composed of five members serving at the pleasure of the Governor, but confirmed by the Senate, was needed. However, this suggestion was not discussed by the LUPC either.

At the July LUPC meeting, the second draft of LC 100's Section 13 provided for five members of the commission to be

appointed. The LUPC staff said that commissions functioned more effectively with an odd number of members.²²

A minor change was made in the commission membership requirements at the August LUPC work session during the analysis of the third draft of LC 100. Since the projected appeals board members were to be selected from each of the Congressional Districts, the LUPC decided that the LCDC members, which had had no previous qualifications for appointment, were to thenceforth be chosen on the basis of geographical representation.²³

Conflict of Interest

The subject of conflict of interest was broached by LUPC Staff Member Steve Couch during his report to the committee on local planning commissions. He recommended that the LUPC members study the composition of local planning groups to determine if conflict of interest was present. Mr. Couch found that, in several instances in his five-county study, planning commission members acted according to personal needs rather than the needs of the community. He suggested that one way to eliminate this problem was to place tight occupational requirements on the selection of local members, i.e., "not more than one member of the commission shall be from a trade union."²⁴

ADVISORY COMMITTEES

Early in March, 1972, almost in passing, Wes Kvarsten,

Executive Director of the Mid-Willamette Council of Governments (COG) mentioned the need for public involvement when he said that planning needed to strive for two goals -- it needed to be area-wide in scope, and capable of being implemented. He suggested that to achieve these goals, public officials had to cultivate among citizens a sense of more than a purely local perspective.²⁵

Senator Macpherson noted this need, which he referred to as "community participation" in his first Outline. He wrote in "Hector's Thoughts I" and "II" that statutes for the appointment of planning and zoning advisory committees responsible to their respective planning commissions needed to be provided. His suggestion was not discussed at either March LUPC meeting, but Ellen Lowe, Salem, did suggest that on the local level, the concept of neighborhood councils in an advisory capacity needed to be used. While all concerned with creating a state land use planning bill agreed that there should be such a planning bill, not all agreed that it should be state-wide -- some still clung to their preconditioning towards local planning and decisions. This attitude was due to shift shortly as the LUPC members broadened their horizons.²⁶

"Hector's Thoughts III" reiterated his two previous Outlines on "community participation." In addition, two brief questions arose -- "Do we want advisory committees?"; "At what level?" Other than these two questions, the committee did not discuss "participation" at the April LUPC meet-

ing. The questions arose during an explanation of the ALI Model Code.²⁷

"Hector's Thoughts IV" reaffirmed Senator Macpherson's "participation" proposal. In July, Chairman Macpherson suddenly proposed to utilize a 20-member advisory committee in lieu of the five-member commission. This was the first specific mention of a state-level advisory group. Irv Luiten, lobbyist for Weyerhaeuser Company, later in the same meeting stressed the importance of "citizen visibility." He felt that the failure of many past planning efforts was traceable to the lack of citizen input into the formulation of the plans. Mr. Luiten said that, in too many cases, the public sector was left out, and was not subsequently informed of the product to be achieved through application of the plans. He continued by saying that he favored the advisory committee concept in order to guarantee the public a chance to be part of the planning process.²⁸

The advisory committee concept was written into the third draft of LC 100, which the LUPC discussed at the August and September work sessions. The LUPC favored at that time eliminating the advisory committee at the state level, and, in turn, strengthening the role of the advisory groups in deliberations at the district level.²⁹

The state advisory committee was omitted from the fourth draft of LC 100. However, in the fifth and final draft of LC 100, the five-member commission was allowed "to appoint advisory committees to aid it in carrying out this

act and provide technical and other assistance, as it considers necessary to each such committee."

SUMMARY

The Land Use Policy Committee (LUPC) did yeoman service in determining that there was to be a state agency, termed the Land Conservation and Development Commission (LCDC) to oversee state-wide land use planning in Oregon.

A five-member commission, which was to serve subject to the Governor's pleasure, was to decide appeals before the state agency. The commission, which was to be geographically representative, was allowed to appoint state Citizen Advisory Committees in lieu of other "citizen participation."

While the subject of commission members' possible conflicts of interest was discussed by LUPC, it was not mentioned in the fifth and final draft of LC 100, which became the original Senate Bill 100 before the Legislature in January, 1973.

NOTES

¹Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Counsel 100 (LC 100) (Salem: February 2, 1972), p. 4.

²Ibid., March 3, 1972, p. 1.

³Ibid., April 28, 1972, p. 5.

⁴Ibid., p. 1.

⁵Personal Interviews with Steve Hawes, Legislative Counsel's Office (Salem: November 30, 1973, December 3, 1973, March 25, 1974).

⁶Minutes of LUPC Meeting, April 28, 1972, p. 2.

⁷Ibid., August 14, 1972, p. 2.

⁸Ibid.

⁹Personal Interview with Gordon Fultz, Assistant Director of Association of Oregon Counties, (Salem: December 5, 1973).

¹⁰Personal Interviews with Steve Hawes (1973-1974).

¹¹Minutes of LUPC meeting, March 3, 1972, p. 1.

¹²Ibid., April 28, 1972, p. 2.

¹³Ibid., p. 3.

¹⁴Minutes of LUPC meeting, July 14, 1972, p. 15.

¹⁵Ibid., p. 16

¹⁶Ibid., August 14, 1972, p. 2.

¹⁷Ibid., March 31, 1972, p. 3.

¹⁸Ibid.

¹⁹Ibid., p. 6.

²⁰Ibid., April 28, 1972, pp. 1-6.

²¹Ibid., March 31, 1972, p. 3.

²²Ibid., July 14, 1972, p. 2.

²³Ibid., August 14, 1972, p. 1.

²⁴Ibid., July 14, 1972, p. 1

²⁵Ibid., March 3, 1972, p. 3.

²⁶Ibid., p. 1.

²⁷Ibid., April 28, 1972, p. 3.

²⁸Ibid., July 14, 1972, p. 6.

²⁹Ibid., August 14, 1972, p. 2.

CHAPTER IV

WHO PLANS -- SUBSTATE?

In deciding Who Plans -- Substate?, the LUPC struggled valiently under Chairman Macpherson's leadership. The committee members concurred with his Administrative Regions concept in the first draft of LC 100, and Macpherson's and Governor McCall's Administrative Districts in the second draft. However, when the concept of mandatory Councils of Governments (COGs) replaced the Administrative Districts in the fifth and final draft of LC 100, there was neither LUPC discussion nor concurrence on the concept.

ADMINISTRATIVE REGIONS

Senator Macpherson, Chairman of the LUPC, personally favored utilizing a regional land use planning agency. He reinforced the concept through his choice of the early speakers before LUPC, which included State Representative Jack Anunsen, Larry Sprecher, City Manager of Beaverton, and Lloyd Anderson, Portland City Commissioner. In addition, Macpherson recommended using regional agencies in his Outlines. Two other speakers, Don Jones, League of Oregon Cities, and Martin Davis, Oregon Environmental Council, were also invited. While not all were ardent proponents of mandatory regionalism, each in his own way concurred that some form of regionalism

was needed.

State Representative Jack Anunsen, Marion County Planning Commission Member, spoke on the results of a "Decisions and Directions" study done for the Oregon Legislature, which had begun in 1970. The study arrived at three conclusions concerning governmental planning in Oregon -- First, there are too many units of local government; Second, the major problem to be faced was how to simplify and consolidate these governmental units; and Third, decisions had to be made as to which governmental units had what jurisdiction, and what affairs were to fall within which jurisdiction. As a means towards unit consolidation, Anunsen supported the idea of a regional government in which the cities were to have neighborhood roles. Such an arrangement would have avoided a duplication of services, staff work, and expertise between city and county, to enable land use decisions to be made at one place, and to reduce the uncertainty about the path of development that an area needed to take. Anunsen suggested, almost in passing, that voluntary associations were more satisfactory than mandatory groups.¹

Representative Anunsen, strongly endorsing the Metropolitan Boundary Boards, established by the Legislature in 1969, felt that these boards fulfilled their presently authorized functions, and that they ought, therefore, to be integrated with the Councils of Governments (COGs) and be given the enforcement power over land use planning in the regions. He said that the COGs, which have had little power since

their establishment, needed to be the determining agencies for the regional plans. Anunsen, while acknowledging that such a set-up would have been contrary to his concept of locally-derived control, apparently felt that the state as provider of funds should have a piece of this decision-making to the extent that the planning and budgeting processes were to be meshed between state and local governments.²

Larry Sprecher, City Manager of Beaverton, at the LUPC opening meeting, February, 1972, presented one of his primary state land use planning concerns -- lack of local control. This concern marked the debut of the conflict "localism" vs. "regionalism." Sprecher said that he wanted "one city -- one vote," not "one man -- one vote" in any regional planning organization which, if properly provided for, was workable. He said that he had no objections to Beaverton's land planning being subjected to a veto by a regional authority, such as CRAG (Columbia Region Association of Governments), but only on the condition that Beaverton had some say in CRAG's overall planning.³

Larry Sprecher envisioned four levels to the planning process within the state. He cautioned that the state itself should have a broad overview and should set the course for planning and, for regional planning especially. To Sprecher, regional planning constituted a second level, but only the COGs could occupy this area at that time. He labeled cities and counties as third level, with neighborhoods as fourth.

Wes Kvarsten suggested, in the March meeting of LUPC,

that planning needed to strive for two goals -- It needed to be area-wide in scope, and it needed to be capable of being implemented. He felt that to achieve these goals, public officials need to cultivate among the citizens a sense of involvement of more than a purely local nature, and had to decide what functions of government could have best been carried out on a local or a regional level.⁴

The opposition to Larry Sprecher's viewpoint on regionalism was presented at the March 3, 1972, LUPC meeting, when Portland City Commissioner Lloyd Anderson said that part of the problem was deciding who was to be in charge. Anderson wanted to know what kind of representation a regional body needed to have. He noted that of the 19 members of CRAG, only six represented slightly over half of the Metropolitan population. Anderson suggested that certain of CRAG's area-wide decisions needed to be made more objectively at the state level. He continued by saying that where developments were about to occur with more than city-wide significance, the regional body needed to have the right of review as to the regional impact of such decisions. Anderson recommended that voluntary agreements among governmental units on such developments needed to be avoided, and that the regional right of review needed to be vested in state law to be exercised by the regional body.⁵

Anderson, a strong advocate of COG power, spoke for a "one man -- one vote" on the COGs, with the COGs having the legal right to mandatory regional review. He said further,

that, to compensate for a decreasing urban (city) tax base, tax equalization was necessary to support two-tier government under city-county consolidation. However, he said that the state needed to coordinate the regional planning.⁶

LUPC Staff Member John Marks presented an outline of a comparative study that he was making on the land use laws of other states. Mr. Marks said that his study focused on how other states had defined planning responsibilities among different levels of government, on whether the functions of local planning and zoning needed to be separated or combined, and on how citizen involvement was utilized in the planning process.⁷

Don Jones, of the League of Oregon Cities, was troubled by the current relations between state and local governments in the planning field, and wondered whether any decisions were to be kept at the county level. He pointed out that a major problem being faced on the coast was that, if planning was taken over on a regional level, the local governments were to be stuck with paying for services and planning, but left without the decision-making authority.⁸

The LUPC members discussed whether to eliminate the county planning commissions or remove their power to zone. A committee member suggested that provision for a hearings' officer over land use decisions at a regional level might be made.⁹

Martin Davis stated during his appearance before the LUPC that, on the relations between cities and counties on

the one hand and regions on the other, the regional concept should be avoided. He said that, instead, a development agency should be vested with the authority to settle local disputes, which could then be appealed to the state level, as provided for in the Model Code offered by the ALI.¹⁰

A suggestion was made for a cooperative program among local and regional units. Such an arrangement was to have for permitting local area planning services to be done under contract to a regional area staff. A program of this sort was to make monitoring of local decisions by the region an easier task.¹¹

In discussing the organizational structure proposed by Senator Macpherson, Chairman of the LUPC, in his Outline sent to committee members prior to the March 31, 1972, meeting, Ellen Lowe, Salem City Council member and a LUPC member, suggested that the concept of neighborhood councils needed to be tied in with a regional authority.¹²

Dr. Russell Beaton, Economics Professor at Willamette University, reported at the April meeting to his fellow committee members on Article 8-101 of the ALI Model Code, which was applicable to the question of what kind of an agency needed to be created. In discussing the article, various committee members asked the following questions:¹³

"How will regional considerations and rules be dealt with?"

"How will the several COGs, the Oregon Coastal Conservation and Development Commission, etc., fit into the state-wide scheme?"

"What, if any, would the responsibilities and powers of the regional commissions be?"

"Is it true that smaller planning groups represent a variety of local interests and are unrepresentative of any region or state-wide viewpoint?"

"Do we want advisory committees?"

"At what level?"

Dr. Beaton pointed out to the committee that, while the creation of newly developed areas was the responsibility of a local governmental unit, this role needed to be played by a larger government unit. Senator Macpherson, LUPC Chairman, replied that it was extremely difficult to implement regional planning involving a great deal of communication with local governmental units. Macpherson said that it became a question of whether regions were to be established by statute, or by petition among local groups, or whether they needed to be established at all, thereby retaining the then present administrative structure.¹⁴

Norman Hilton, Portland, stated that regardless of how it was done, the areas needed to be established and defined immediately. Tom Guilbert, of the State Local Government Relations Division, added that the 14 Administrative Districts set up through the Governor's Office ought to be used as the Legislative vehicles. It was stated that planning material was compiled according to those regions, and that, if new regions were to be created, it was going to be very costly and difficult to transfer this material.¹⁵

Dr. Beaton continued his analysis of the ALI Model Code.

saying that Article 7 was essentially drawn to preserve much of the local impact on planning decisions, despite the creation of a state-wide agency. According to the ALI recommendations, the local bodies were to continue to make nearly 90% of the land use decisions.¹⁶

The concept of the 14 Administrative Regions used for land use planning was written into the first draft (June, 1972), of LC 100, which stated:

For the purposes of providing regional cooperation and coordination among local governmental units engaged in land conservation and development functions within the state, the state is divided into the following regions --

- Region 1 -- Clatsop and Tillamook Counties
- Region 2 -- Clackamas, Columbia, Multnomah and Washington Counties
- Region 3 -- Marion, Polk and Yamhill Counties
- Region 4 -- Benton, Lincoln and Linn Counties
- Region 5 -- Lane County
- Region 6 -- Douglas County
- Region 7 -- Coos and Curry Counties
- Region 8 -- Jackson and Josephine Counties
- Region 9 -- Hood River, Sherman and Wasco Counties
- Region 10 -- Crook, Deschutes and Jefferson Counties
- Region 11 -- Klamath and Lake Counties
- Region 12 -- Gilliam, Grant, Morrow, Umatilla and Wheeler Counties
- Region 13 -- Baker, Union and Wallowa Counties
- Region 14 -- Harney and Malheur Counties

There was no further LUPC discussion on this concept of regionalism. It had been accepted, seemingly, by the committee. However, by the next meeting, the concept of Administrative Regions was to be past history for the proposed regions were replaced by Administrative Districts.

ADMINISTRATIVE DISTRICTS

In an about face, the second draft of LC 100 provided that the 14 Administrative Districts designated by Governor McCall in his Executive Order of 1970 were to be the regional planning and review agencies.

This second draft ordered the Governor to designate regional planning districts within the state, and authorized the Governor to "redesignate or change the boundaries of existing districts, or create one or more new districts from contiguous areas within the boundaries of one or more existing districts. . . ."

The second draft was presented at the LUPC's July meeting, where committee discussion centered on the concept that, since better understanding of many land problems was most complete at the local level, such problems needed to be solved locally.¹⁷

Ellen Lowe, Salem City Council member, proposed that a hearings' officer needed to be utilized at the local level. The rest of the LUPC members concurred with Mrs. Lowe's suggestion, as they felt that there was a need to buttress administratively-weak, local planning agencies.¹⁸

Other than a brief statement by Mr. Larry Rice, Lane County COG, in a LUPC discussion concerning necessary changes in the second draft of LC 100, the concept of "regionalism" was acquiesced to by the Committee members. Mr. Rice noted that some reference needed to be made to Oregon Coastal Conservation and Development Commission (OCC&DC) and other "super COGs" and their role in drafting local, district (in functions of district significance), and state (in areas of "critical state concern") plans.¹⁹

LUPC Chairman Hector Macpherson wrote, in a letter addressed "To Those interested in Land Use Planning," that the fourth draft was the first complete draft of LC 100.²⁰ The letter said of the fourth draft, "It assigns the major role to local government. . . . It requires that planning districts provide a regional link between state and local government."

A five-topic summary of the fourth draft of LC 100, encompassing land use planning in Oregon, was enclosed with Chairman Macpherson's letter. Two topics applied to the organizational sub-structure. They were as follows:

Preserving local decision-making: The Preamble of the fourth draft of LC 100 states that 'cities and counties should remain as the agencies to consider and promote the best interests of the people within their jurisdictions. . . .' Throughout the draft, functions of local governments in relation to land conservation and development programs are preserved and protected. . . .

A State-wide Planning Process: City and County governments will be required to prepare land use plans which comply with state-wide planning guidelines, objectives and regulations. Plans for critical areas

and activities will be submitted to the regional or district planning agency. . . .

Sections 18-22 of the fourth draft of LC 100 dealt with districts and district planning agencies. As with the two previous drafts, districts were to be designated and district planning agencies were to be established by the Governor, who was authorized to make changes in these districts and their planning agencies as needed.

As with the concept of Administrative Regions, the concept of Administrative Districts was to be equally short lived. Its replacement concept was to be mandatory Councils of Governments (COGs).

COUNCILS OF GOVERNMENTS

Councils of Governments, according to Steve Hawes, Legislative Counsel, were added to LC 100 by his office, which made several changes in writing the fifth draft. One of the changes, which authorized the 14 COGs as the regional planning agencies, was a recommendation that "slipped" into the fifth draft without LUPC debate.²¹

Until that time it was generally assumed that the 14 Administrative Districts designated by the Governor in his Executive Order of 1970, were to be utilized in the bill as regional agencies. The change from the Governor's 14 Administrative Districts to the 14 COGs seemed logical to the LUPC staff members, since there were 11 COGs already organized and one additional COG, which was still merely "on the boards."²²

The fifth and final draft of LC 100 included a significant change in the organizational sub-structure in Sections 16 through 27.

Sections 16 and 17 were added to assuage the feelings of the Oregon Coastal area residents -- they provided for the survival of the Oregon Coastal Conservation and Development Commission (OCC&DC). Sections 18 through 23 designated the 14 COGs as regional planning agencies. It should be noted that at no time had the LUPC seriously considered Marion County State Representative Jack Anunsen's suggestion involving voluntary associations, since his original presentation at the February, 1972, meeting. Sections 24 through 27 set forth the duties of cities, counties, special districts, and the various state agencies. Section 54 delegated power to the COGs.

Mr. Hawes provided an interesting item on the writing of the bill when he said, "The fifth draft of LC 100 was the first totally complete writing of the bill."²³

SUMMARY

The first draft of LC 100 designated Administrative Regions as district planning agencies. Then in the second and third drafts of LC 100, the LUPC switched to Executive designation of 14 Administrative Districts, as it did in the fourth draft. It is worthy of note that the 14 regions of the first draft and the 14 Administrative Districts per the Executive Order of 1970 were not exactly the same geo-

graphic areas. In the fifth draft of LC 100, the LUPC staff designated the Councils of Governments (COGs) as the regional planning agencies without the knowledge or consent of the Committee members, but with the the advice and consent of LUPC Chairman Hector Macpherson, since logically, as Legislative Counsel Steve Hawes pointed out, "COGs did not cross county boundary lines."²⁴ The first-named 14 regions did not cross county lines either. The 14 proposed Administrative Districts were based on geographical commonalities, not legal boundaries.

Since the Who Plans? of the Who Plans What? had thus been provided for in SB 100, only the Plans What? remained to be determined.

NOTES

¹Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Counsel 100 (LC 100) (Salem: February 4, 1972), p. 1.

²Ibid., p. 2.

³Ibid., p. 3.

⁴Ibid., March 3, 1972, p. 1.

⁵Ibid., p. 5.

⁶Ibid.

⁷Ibid., p. 6.

⁸Ibid., March 31, 1972, p. 3.

⁹Ibid., p. 2.

¹⁰Ibid., p. 5.

¹¹Ibid.

¹²Ibid.

13Minutes of LUPC meeting, April 28, 1972, p. 2.

14Ibid.

15Ibid., p. 3.

16Ibid., p. 5.

17Ibid., July 14, 1972, p. 5.

18Ibid., p. 2.

19Ibid., p. 9.

20Hector Macpherson, letter To those interested in Land Use Planning with enclosures of Summary of the fourth draft of LC 100 and copy of fourth draft of LC 100 (Salem: October 14, 1972).

21Personal Interviews with Steve Hawes, Legislative Counsel (Salem: November 30 and December 5, 1973).

22Ibid.

23Ibid.

24Ibid.

CHAPTER V

PLANS WHAT?

The LUPC concurred on the need concept and had decided Who Plans?, leaving the Plans What? to be determined. A set of goals had to be established first. In setting these goals, the Committee faced two special concerns -- critical areas and critical activities. To control future growth and development of land use in Oregon, the Committee instituted a permit system designed to prevent the destruction of the future goals of the proposed state-wide Comprehensive Plans.

A SET OF GOALS

Chairman Macpherson in his initial charge to his LUPC had requested that the Committee consider and make recommendations relating to a "State Comprehensive Plan and to statutory definition of the elements of that state plan."

At the LUPC's first meeting in February, 1972, Kessler Cannon, an Assistant to Governor McCall, addressed the Committee as one of Senator Macpherson's invited guest speakers. Mr. Cannon explained the National Land Use Planning Act to the Committee members. In particular, he said that the Act required the state to identify in its comprehensive plan existing areas of immediate environmental concern, and to show the location of energy sources, transportation corridors,

sites for new towns on the public lands in the state, and lands of state concern outside the state, as well as comply with other similar requirements.¹

During the March LUPC meeting, the goal concept was explored by Wes Kvarsten, Mid-Willamette Valley COG, when he presented the view that if the prepared legislation were fashioned individually for each region, the state had to avoid imposing a mandate or edict upon regions of vastly differing characteristics. The LUPC discussion of Kvarsten's ideas on the practice of utilizing Federal funding for area-wide planning, and the potential obstacles was based in the law at that time. In the past any governmental unit which merely planned was awarded funds. In 1972 the problem was spending planning money most effectively. It was said that changes in Federal procedure required that the project for which funds were sought needed to meet comprehensive planning specifications.²

After the early March meeting, the LUPC members received "Hector's Thoughts I," in which Chairman Macpherson wrote on state goals:

The state will establish objectives, policies, priorities and guidelines for local or regional governments' use in preparing the comprehensive plan. The state would require mandatory elements in local plans, such as open spaces, low-income housing areas, school locations, transportation network, flood plain, zoning, urban service boundaries, etc. The state reserves to itself by statute: control over certain decisions, such as nuclear power plants, major airports, port facilities, freeway locations and new cities. . . . in areas of critical concern. . . .

The Committee, in discussing Macpherson's proposals at

the March 31st LUPC meeting, decided that the state was to establish guidelines, policies, and priorities for local or regional plan preparation. In addition, the state was to reserve, by statute, the final "say" over certain decisions, such as a major airport, location of port facilities and freeways.³

The LUPC members had agreed that a set of goals was to be written into the proposed legislation. These goals were encompassed into the first draft of LC 100 which said that by January 1, 1975, the department was required to prepare state-wide planning objectives that were to be designed first, to guide a coordinated, adjusted, efficient and economic development of the lands within this state to best promote, in accordance with present and future needs and resources, the health, safety, order, prosperity, convenience and welfare of citizens of this state; to provide for patterns of urbanization and the uses of land and resources for trade, industry, recreation, forestry, agriculture and tourism; and to create conditions favorable to the development of human resources, and, otherwise, to promote the general welfare of the citizens of this state; and second, to prescribe state policies, planning objectives and regulations for land conservation and development by cities, counties and regional planning agencies in areas of critical concern; and to limit permissible uses of land with respect to areas of "critical state concern."

"Hector's Thoughts I" had suggested that the goals

should all be written into the proposed legislation, particularly as they related to "areas of critical concern." However Brian Freeman, a Portland attorney associated with the Oregon Environmental Council, felt that a local citizen group needed to be enabled to petition to have an area designated as an "area of critical concern." Senator Macpherson disagreed, saying, that these areas needed to be broadly defined in the statute, subject to applying particular circumstances during adjudication of the decision.⁴

It was suggested by a Committee member that such critical areas needed to be looked at from three perspectives as matters of state interest "without more discussion" -- by its ecology, by its size or magnitude alone, or by its very nature; i.e., function, such as airports, highways, public utilities or transmission lines, which were invariably matters of state or regional concern.⁵

By April the LUPC, guided by Chairman Macpherson through his choice of guest speakers and his "Hector's Thoughts," agreed that the participation of a state agency in land use decisions was to be limited to three development considerations: 1.) Where the scale of the proposed development was regional or state-wide in impact, 2.) Where the type of development (highways, airports, etc.) was of regional or state concern, and 3.) Where the location of development (beaches, wilderness, etc.) was of common interest.⁶

The Conception

The areas of critical concern concept was derived from the ALI Model Code. While several people had previously mentioned the phrase, Dr. Russell Beaton, did an in depth analysis of the concept at the April LUPC meeting. He said that the three bases for determining an area of critical state concern (scale, type and location of the proposed development) needed to be examined and tightly defined in any Committee proposal. It was noted that Vermont had trimmed its definition of an area of critical concern to two specific areas -- those above 3500 feet and those within a designated distance of the shoreline.⁷

The Model Code proposed that certain areas of a state needed to be designated "District of Critical State Concern." The Model Code's authors said that some land development proposals had a state or regional input because of the nature of the land on which they were located.

By June, 1972, when the first draft of LC 100 was presented to the LUPC, the areas of critical concern concept had been accepted by the Committee. However, while the concept had been accepted, the first draft used the word "objectives" rather than goals. Unfortunately, this draft also utilized primarily the verb "may" in referring to "areas of state critical concern" in the draft, as follows:

The Department may designate an area of critical concern for --

Described geographic areas within which any development of the land would have a regional or state

Impact, including, but not limited to, lands within one-half of one mile easterly from the vegetation line described in Oregon Revised Statutes (ORS) 390.770, lands within one-fourth of one mile from the rights-of-way of freeways and freeway interchanges in the state, lands that are uniquely important for historical, geographical or ecological reasons, and lands immediately surrounding any airport facility within this state. . . .

The LUPC members questioned the wisdom of limiting the state's scope in designating areas of critical concern. They said that the proposed department needed to be able to designate without legislative sanction.⁸

At the July meeting, the LUPC discussed the second draft of LC 100, which was essentially the same as the first draft on critical areas. While several comments alluded in passing to areas of critical concern, LUPC member Dean Brice, from Pacific Power and Light, speaking on behalf of the Associated Oregon Industries (AOI), made several recommendations. Two related specifically to areas of critical state concern. They were:⁹

1. Guidelines adopted by the Commission for local planning needed to be advisory in nature; only in cases involving areas of critical state concern were Commission objectives and regulations to be mandatory upon cities and counties.
2. Areas of critical state concern needed to be precisely identified in the proposed bill.

During the Committee discussion of the AOI recommendations, LUPC Chairman Macpherson, asked Mr. Brice which and how many areas needed to be identified in the bill?¹⁰

Dean Brice answered that he was worried about how many areas were to be identified by the Commission if it were

given carte blanche. He said that, consequently, the legislature needed to be given a role in approving what the Commission had identified. Senator Macpherson corrected Dean Brice, pointing out that, according to LC 100, the Commission was to identify critical areas in its final report, which was to be presented to and approved by the 1975 Legislature. It became a question of the Legislature approving the areas via the current proposal or via the final report.¹¹

Representative Sam Johnson of Redmond, Oregon, asked Martin Davis, OEC, concerning Davis' thinking on how far the state needed to go in identifying the critical areas; for example, it was possible to identify only a few areas initially, but, as the concept received more popular acceptance, to have the state identify more areas while becoming more stringent in its objectives and regulations for those areas.

Mr. Davis replied:¹²

The critical areas provision is the most important feature of the proposal. It is imperative for the state to act quickly to discourage 'misdevelopment,' especially in areas of great environmental concern. If forced to make a half-step, I recommend compromising the review function of districts and the Commission, before reducing the critical areas designation authority of the Commission.

Chairman Macpherson's letter of July 14, 1972, was sent to a select list of people, together with a copy of the third draft of LC 100. In inviting their comments on the proposed legislation, he wrote:

Probably the most controversial concept in the bill is that of critical areas of state-wide concern. It gives to the state the power to overrule local decisions in critical areas of state-wide concern; Safe-

guards are provided in the bill to prevent the abuse of power. The Legislature is required to approve the creation of these critical areas, and the Commission rules on conflicts which arise in their application.

Third draft sections on areas of critical concern were still as originally written in the earlier drafts. The LUPC staff had prepared a discussion outline of the third draft for the August and September work sessions. Two of the topics discussed in August pertained to critical areas:

Functions of District Significance

Following considerable discussion on the unworkable character of some of the proposed functions of the Commission, the Committee voted to divide the planning areas into only two classifications: 'Special' (areas of critical state concern), and 'Standard' (which were subject to local management, with no area of exclusive district interest).

Areas of Critical State Concern

The Committee accepted a list of areas which had been drawn up by a subcommittee of the LUPC at the meeting held July 28, 1972, with the list (coastal regions, interchanges on interstate freeways, state parks, gravel pits, and the Columbia Gorge) to be inserted into the bill. Subsequently, the Committee discussed the other categories of critical areas (type and magnitude of development), but final action was postponed until work session II.

The LUPC's acceptance of the concept of areas of critical concern led the members into the designation of specific areas.

The Designations

The fourth draft of LC 100 said of planning for areas of critical concern that the 1973 Legislature, with passage of the bill, was to designate certain geographic areas to be of critical state-wide concern. For these critical

areas, the state was to assume a major planning responsibility, drafting objectives and regulations to assist local planning efforts. Development in a critical geographic area had to conform with the objectives and regulations.

"Areas of critical state concern" were defined in the fourth draft as "a geographic area of the state designated pursuant to Section 23 of this Act."

In Section 23 of the fourth draft of LC 100, the following geographic areas in Oregon were designated as areas of critical state concern:

- (1) Any scenic waterway designated as such in accordance with ORS 390.805 to 390.925, including any related adjacent land.
- (2) Any waterway in this state designated as a wild and scenic river pursuant to the Federal Wild and Scenic Rivers Act, Public Law 90-542, including any adjacent lands regulated thereunder.
- (3) Any lands subject to the regulations of the Federal Bureau of Sport Fisheries or the Wild Life Refuge Division of the United States Department of Interior.
- (4) Lands situated within a radius of one-half of one mile from the center of the right-of-way of a state highway that is a part of the National System of Interstate and Defense Highways established pursuant to Section 703 (d), Title 23, United States Code, at the point of its intersection with any other public highway.
- (5) All lands within 1000 feet from the Eastern boundary of the Oregon Coast Highway as described in ORS 366.235.
- (6) All lands west of the Oregon Coast Highway, as described in ORS 366.235, except that in Tillamook County, Oregon, only the lands west of the line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips

Drive (County Road 915) northerly from Pacific City to its junction with Sand Lake Road (County Road 871), Sand Lake-Cape Lookout Road (County Road 871), northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665), northerly from its junction with the Sand Lake-Cape Lookout Road (County Road 871) to its junction at Netarts with State Highway 131, and northerly along State Highway to its junction with the Oregon Coast Highway near Tillamook.

- (7) All estuaries including all land extending 1000 feet on a horizontal plane from the mean higher high tide mark as located by reference to the tidal benchmark data prepared by the United States Coast and Geodetic Survey. As used in this paragraph, 'Estuaries' means partially enclosed bodies of water where the tide ebbs and flows, and where fresh water from the land meets the salt waters of the Pacific Ocean, from the Pacific Ocean on the west to a point on the east where there exists a bottom salinity of five parts per thousand as measured at the time of the lowest water in summer.
- (8) All lands within the area bounded on the west by the mouth of the Sandy River, on the north by the ordinary high waterline of the Columbia River, on the east by the western boundary of the City of The Dalles, Oregon, and on the south by the ridge of cliffs of the Columbia River Gorge.
- (9) All lands situated within 1000 feet from the exterior right-of-way boundaries of the following highways where such highways are located outside of an incorporated area and all lands situated within 200 feet from the exterior right-of-way boundaries of the following highways where such highways are located within the boundaries of an incorporated area:
- (a) Mt. Hood Highway easterly from Alder Creek to Government Camp.
 - (b) U.S. Highway 26 westerly from Banks to its junction with the Oregon Coast Highway.
 - (c) State Highway 6 westerly from Banks to its junction with the Oregon Coast Highway.
 - (d) State Highway 34 westerly from Philomath to its junction with the Oregon Coast Highway.

- (e) State Highway 38 westerly from Drain to its junction with the Oregon Coast Highway.
- (f) State Highway 35 easterly from Hood River to its junction with the Mt. Hood Highway.
- (g) State Highway 82 easterly from Elgin to Joseph.
- (h) State Highway 58 easterly from Oakridge to its junction with Highway 97.
- (i) Century Drive from Bend to its junction with U.S. Highway 97 and the access spur to Davis Lake from Century Drive to its junction with U.S. Highway 58.
- (j) Salmon River Highway westerly from McMinnville to its junction with the Oregon Coast Highway.
- (k) State Highway 22 easterly from Detroit to Sisters.
- (l) U.S. Highway 20 easterly from Foster to its junction with State Highway 22.
- (m) State Highway 126 easterly from Waterville to Sisters.
- (n) State Highway 242.
- (o) State Highway 224 southeasterly from Estacada to its termination near Oak Grove fork of the Clackamas River.

Steve Hawes, Legislative Counsel, said that one of the LUPC's three meetings in November to discuss the fourth draft, was completely devoted to areas of critical concern. He said further that an argument had developed on economy vs. environment between Martin Davis, Oregon Environmental Council, and Dean Brice, AOI, which became an acrimonious debate.¹³

Martin Davis was speaking for his organization only, and not for all environmentalists, according to Steve Hawes.

However, as a direct result, the five environmental organizations active in Oregon, each with its own ideas and conceptions, worked together to achieve a mutually acceptable compromise that determined the fifth draft of LC 100's specified "areas of critical concern." The five organizations that cooperated were:¹⁴

1. Oregon Student Public Interest Research Group (OSPIRG)
2. Sierra Club
3. Oregon Shores Coastal Coalition
4. Oregon Environmental Council
5. Wild Life Federation

While the definition of an "areas of critical state concern" was unchanged in the fifth draft, Section (31) designating the areas reflected the compromise that the environmentalists had achieved. All Sub-sections (3) and (5) in Section 25 of the fourth draft were deleted, as were the specific highway designations of Sub-section (9). A new Sub-section (3) stated that all of the following lands, including adjacent lands within one-quarter of one mile of such lands' boundaries, were designated as areas of critical state concern:

- (a) State parks and recreation areas administered by the State Highway Division.
- (b) Recreation primitive or wilderness areas on lands administered by the United States Forest Service, the Bureau of Land Management, the National Parks Service and the United States Army Corps of Engineers.
- (c) Lands subject to the regulation of the State Game Commission, Fish Commission of Oregon, Federal Bureau of Sports Fisheries or the Wild Life Refuge Division of the United States Department of Interior.

- (d) Parks or recreation areas outside an incorporated area administered by a unit of local government.
- (e) Parks or recreation areas on lands administered by the State Board of Forestry or the Division of State Lands.

Another exception was added to the Sub-section on all lands west of the Oregon Coast Highway which said:

In Coos County, Oregon, only the lands west of a line formed by connecting the western boundaries of the following described roadways: FAS 263 southerly from its junction with the Oregon Coast Highway to Charleston, Seven Devils Road (No. 33) southerly from its junction with FAS 263 to its junction with the Oregon Coast Highway, near Bandon. . . .

Another Concern -- Critical Activities

Senator Macpherson's utilization of the phrase "critical concern" had almost no connection with the final definition of "activities of critical concern." Senator Macpherson did offer the initial activities concept when he wrote in "Hector's Thoughts II" that one of the ways that the state was to exercise planning control was by reserving to itself, by statute, "control over certain decisions, such as nuclear power plants, major airports, freeway locations, and new cities." In "Hector's Thoughts III," the phrase "regional garbage dumps" was added to the list.

The concept of critical activities was not discussed again until Dr. Russell Beaton, Willamette University Professor, presented the ALI Model Code at the April, 1972, LURC meeting. In Section 7-201 of the ALI Model Code, development of major public facilities excluding those operated by a local government; any street or highway except an interchange

between a limited-access highway and a frontage-access street or highway; any airport that was not to be used for instrument landings; or any educational institution serving primarily the residents of a local community, was to constitute a critical state concern.

Still, however, there was no LUPC discussion of the activities concept. While the first draft of LC 100 did not specifically mention activities of critical concern, one portion in which detailed duties of a regional planning agency were given, stated that the agency was to coordinate land conservation and development of cities and counties within the region with respect to functions of regional significance designated by the governing body of the regional planning agency. Activities of critical concern were referred to obliquely in still another portion, which stated that the state department was to "limit the permissible uses of land with respect to areas of critical state concern."

The second draft of LC 100 was essentially a duplicate of the first draft in which the activities concept was still unspecified. However, at the July LUPC meeting while working on the second draft there was an in depth discussion on areas of critical concern.

LUPC member Dean Brice, in presenting testimony on behalf of the Associated Oregon Industries (AOI) recommended that the review authority of districts and the Commission needed to be restricted to a review of local ordinances for functions of district significance.¹⁵

Later during the discussion, activities were indirectly referred to, when State Representative Sam Johnson, Redmond, remarked that he was puzzled as to the extent of state control in "critical areas" and in "standard areas." He asked, "Would the state, in a gravel pit example, exercise complete control if the pit is, first of all, in a 'critical area,' and secondly, in a 'standard area?'"¹⁶

The question was of no significance, but the example -- the gravel pit -- cited in the question, was. Previously-mentioned activities were called "developments" both in "Hector's Thoughts" and in the first two drafts of LC 100. These "developments" which included transportation and utilities, among other things, were not really defined as activities.

Senator Macpherson appointed a small subcommittee¹⁷ to study the recommendation concerning critical areas by Dean Brice at the July LUPC meeting. During the subcommittee's meeting July 28, 1972, members were to draw up a list of areas and activities of critical concern.¹⁸

In the fourth draft of LC 100, however, the various pieces were finally put together in one section, to form definite activities of critical concern, as follows:

- (1) The following developmental activities are designated activities that, by their nature, are of critical state concern:
 - (a) The siting of airports.
 - (b) The siting and construction of state and Federal Highway Systems, or any portion thereof.
 - (c) The planning, siting, and construction of mass transit systems, or any portion thereof.

- (d) The siting and construction of solid waste disposal sites and facilities.
 - (e) The siting and construction of high-voltage power transmission lines.
 - (f) The planning, siting and construction of sewerage systems and water supply systems.
 - (g) The planning, siting and construction of thermal power plants and nuclear installations.
- (2) The following developmental activities are designated as activities that by, their magnitude, are of critical concern:
- (a) The planning and siting of new communities.
 - (b) The planning and siting of governmental service facilities serving two or more counties in the state.

There was also a provision under Section 25 of LC 100 made to enable the LCDC to add to the list of activities of critical state concern by the Commission fulfilling the requirements of another section, which stated that future additions were to be submitted either to the Legislature or to the proposed Joint Legislative Committee on Land Use for approval.

The only change in the fifth draft was in a new subsection concerning developments based on magnitude wherein new communities and multi-county governmental service facilities were eliminated. The new sub-section also sought to delineate the limitations upon LCDC in relation to the duty, power or responsibility vested by statute in any other state agency relating to the designated activities.

The LUPC developed the activities of critical concern

with great deliberation and care.

The Committee's judiciously chosen words appeared inoffensive, as did the proposed permit system.

THE PERMIT SYSTEM

The permit system applied to activities of critical concern or significance as detailed in SB 100. The concept evolved slowly from both "Hector's Thoughts" and the ALI Model Code. It was devised as a means of controlling activities of critical concern.

Senator Hector Macpherson, as Chairman of the LUPC, felt that unrestrained development was not to be continued in Oregon. He wrote in "Hector's Thoughts I" that a state hearings' officer was needed to review such development. In "Hector's Thoughts II" and "III" he suggested that a state adjudicatory board was to decide the feasibility of such development.

The ALI Model Code, as explained to the LUPC by Dr. Russell Beaton, recommended that state permission needed to be made mandatory for such development. An adjudicatory board to resolve conflicts was also recommended by the Model Code. During the LUPC discussion of the Model Code suggestions, the Committee decided that participation of a state agency in land use decisions involved activities of critical concern. The Committee then tried to resolve who was to have supremacy, the state agency or the local board, in any given development application. Ellen Lowe, Salem LUPC

member, suggested that the local board was to be the final authority, but that a state representative was to be present at the board's meeting.¹⁹

In the first and second drafts of LC 100, the LUPC used the adjudication concept to control future development in Oregon. However, Committee Member Dean Brice, Pacific Power and Light Company, in testifying on behalf of the AOI, said of the second draft in July that the appeals or adjudicatory concept needed to be deleted.²⁰ The third draft of LC 100 still retained the adjudication concept when the draft was discussed at the September work sessions. The changes incorporated into the fourth draft of LC 100 included both the activities of critical concern concept and the permit requirement for those activities. Sections 30 through 35 detailed the permit regulations.

Section 30 said that no proposed development project constituting an activity of critical state concern was to be initiated by any person or public agency without a permit issued by LCDC. Those desiring to begin such a development were to apply to the district planning agency for the project location for a permit. The application was to include project plans and proposals for meeting the state requirements for the activity in question. The LCDC was to review each application for compliance with the state requirements. The Commission was permitted to prescribe such conditions or limitations that it considered necessary to assure compliance by the proposed project with the state-wide objectives and

regulations for activities of critical state concern and the state long-range comprehensive plan for the district.

Section 31 said that if in doubt as to whether a proposed development was such an activity, a determination was to be made by the LCDC with a binding letter of interpretation. All requests and determinations were to be made in writing.

Section 32 detailed the eight criteria for a district agency to consider as to what constituted a critical activity, as follows:

- (1) The location of a proposed development is essential or appropriate in view of the available alternative locations within or outside the district;
- (2) The manner of the proposed development will have a favorable impact upon the environment in comparison to alternative manners of development;
- (3) The proposed development will favorably affect other persons or property in view of any circumstances that are peculiar to the location, size or nature of the development;
- (4) If the proposed development imposes immediate cost burdens on the city or county within which it is to be located, the amount of similar existing development within such city or county is more than an equitable share of that type of development needed within the district;
- (5) The proposed development will favorably affect the ability of people to find adequate housing reasonably accessible to their employment;
- (6) The proposed development will favorably affect the provision for city or county services and the burden of taxpayers in making provisions therefor;
- (7) The proposed development will efficiently use public or public-aided school, transportation or other facilities that are existing or that are to

be furnished within the foreseeable future; and

- (8) The proposed development should be approved in view of other considerations deemed necessary by the district planning agency.

Section 33 said that if all of the above were complied with and the state approved, a permit was to be issued by the district planning agency.

Section 34 said that any development project which constituted an activity of critical concern without a permit was a public nuisance.

Section 35 authorized that said public nuisance under Section 34 was subject to civil court proceedings to be initiated by LCDC.

Steve Hawes, Legislative Counsel, said that one full LUPC November meeting was devoted to areas and activities of critical concern including the incumbent permit system.²¹

Steve Hawes said that the LUPC staff and his office made several "housekeeping" changes and additions to the fifth and final draft of LC 100.²² The sections on permits received many of these changes, including renumbering to Sections 34 through 39.

Section 34 Sub-section (1) was revised to say, "on and after 90 days after the effective date of this act. . . . under Section 32. . . ." A new Sub-section (3) said, "The department shall transmit copies of the application to the appropriate district council and affected state agencies for their review and recommendation."

Sub-sections (5), (6) and (7) were added to Section 34, as follows:

- (5) If the Commission finds after review of the application and the comments submitted by the district council and state agencies that the proposed project complies with the state-wide objectives and regulations for activities of critical state concern and the comprehensive plans within the planning district, it shall approve the application and grant a development permit for the proposed project to the person or public agency applying therefor.
- (6) The Commission may prescribe, and shall include in the development permit such conditions and restrictions that it considers necessary to assure that the proposed development project complies with the state-wide objectives and regulations for activities of critical state concern and the comprehensive plans within the planning district.
- (7) If the activity requiring a development permit under this section also requires any other permit from any state agency the Commission may, with the cooperation and concurrence of the other agency, provide a single joint application form and permit to satisfy both the requirements of the Act and any other requirements set by statute or regulations of the other agency.

The new Sections 35 through 39 were unchanged from Sections 31 through 35 of the fourth draft. While the fifth and final draft of LC 100 usually constituted Senate Bill 100 as it was submitted to the 1973 Oregon Legislature, it did not for the sections on permits. Some time between December 18, 1972, and January 15, 1973, without the benefit of LUPC discussion,²³ there were two additions made to the sections delineating the state permit system for activities of critical state concern. Sub-section (2) was added to Section 38, as follows:

- (2) Any development project that does not constitute an activity of critical state concern, that is being carried out within an area of critical state concern and that does not comply with the state-wide objectives and regulations approved by the Commission for the area of critical state concern is a public nuisance.

The second addition was a new Section 39 with the previous Section 39 shifted to become a new, but unchanged Section 40. The new Section 39 stated that if the Commission determined the existence of an alleged public nuisance under Section 38, it was permitted to:

- (1) Investigate, hold hearings, make orders and take action that it deems appropriate under this Act, as soon as possible.
- (2) For the purpose of investigating conditions relating to the alleged public nuisance, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.
- (3) Conduct public hearings in accordance with ORS, Chapter 183.
- (4) Publish its findings and recommendations as they are formulated relative to the alleged public nuisance.
- (5) Give notice of any order relating to a particular violation of the provisions of this Act by mailing notice to the person or public body conducting or proposing to conduct the development project affected in the manner provided by ORS Chapter 183.
- (6) Take appropriate action for the enforcement of orders promulgated as a result of any hearing. Any violation of an order of the Commission under this section may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. Proceedings thus brought by the Commission, together with the facts giving rise to the violation.

The goals were set. The Areas of Critical Concern were designated geographically. The Activities of Critical Concern were specified, together with their permit requirements. Only the State Comprehensive Plan was yet to be determined for Legislative Counsel Bill 100 (LC 100).

THE STATE COMPREHENSIVE PLAN

Senator Hector Macpherson in his "Charge to the LUPC," specified that one of the primary Committee's objectives was to remedy the lack of a state land use plan. Macpherson wrote that "The Committee was to designate an agency to prepare and coordinate state comprehensive planning.

A state agency had been designated to formulate and promulgate a state comprehensive plan. A state permit system for activities of area-wide significance was authorized, which required that a state comprehensive plan was to be met before the issuance of that permit by the LCDC. But what was a comprehensive plan? Senator Macpherson had foreseen this question in his "Charge" when he wrote, "There needed to be a statutory definition of the elements of a state comprehensive (land use) plan."

Those elements had to be defined, detailed and delineated in statutory form to achieve a state comprehensive plan. Senator Macpherson helped to guage this process with his recommendations in his Outlines ("Hector's Thoughts I" through "IV"). His first Outline established the philosophical approach to planning, saying that the comprehensive

plan was the unit to be defended rather than the zoning ordinance.

The Outline further recommended that the comprehensive plan, subject to state, regional and local goals, was to be prepared at the local or regional level, but with an action program setting forth the various means (including, but not limited to zoning) the local planning body proposed to use to achieve planning objectives. Macpherson wrote:

The state will establish objectives, policies, priorities and guidelines for local and regional government's use in preparing the comprehensive plans. The state would require mandatory elements in local plans, such as open spaces, low income housing areas, school locations, transportation networks, flood plain zoning, urban service boundaries, etc.

In "Hector's Thoughts II" the revised concept of a state comprehensive plan became a pyramid of land use planning. At the highest point was the state plan. The equator was the various regional plans, and the base rested firmly on the local plans.

Chairman Macpherson wrote that the local comprehensive plans needed to be redefined and to be made sufficiently precise so as to serve as a legal bulwark for testing all proposed changes in land use, circulation, public facilities, housing, environmental considerations, and an action program. Each of those elements was to be further subdivided into specific sub-elements -- land for industrial development as provided by proper zoning, new school sites under public facilities category, and provision for open space under the environmental element. The plan required two time frames:

the short-range, three to five years, should be quite precise in the kinds of and places where development needed to occur, and the long-range plan, 20 to 30 years preferably developed at the regional level, which would be more general but still with precise limits for such things as urban service boundaries, land to be left in agriculture, and land for open spaces. The short-range plan required annual review, while the long-range plan should be reviewed at five-year intervals. Senator Macpherson reiterated his earlier proposals for a state plan.

LUPC members heard the first definition of comprehensive planning from Mr. Marvin Gloege, Professor of Urban Planning at the University of Oregon, at their March 31, 1972, meeting, as follows:²⁴

Marvin Gloege defined a comprehensive plan as an official public document adopted by a local government as a policy guide for decisions regarding change in that community. Under the law, according to Mr. Gloege, such a comprehensive plan was not adopted by the local government in two senses: first, it was not adopted -- it was merely used as a guideline, and second, it was used not by the legislative body, but by the planning commission.

Mr. Gloege pointed out three characteristics of a comprehensive plan. First, while it was supposed to be comprehensive, it might, in fact, have been internally contradictory if it advocated low income housing yet placed restraints on urban sprawl. Second, the plan was supposed to be general,

but a general plan could have meant a vague plan. And third, it was supposed to be long-range, but in practice there was a demand to know the short-range goals and to know all that needed to occur between then and 20 years later. Mr. Gloege continued:²⁵

The plan should have built into it an 'action plan' setting forth the intermediate actions that ought to occur toward the fulfillment of the long-range objectives. . . . A review process should be provided for in the comprehensive plan, and might be performed just as the budget is approved every year. But a major problem in reviewing a plan is whether a complete document can be feasibly reviewed every year. How does one provide the ordinary citizen with some meaningful decision-making power over decisions demanding talents of experts to formulate and execute?

"Hector's Thoughts III" revised none of his prior recommendations relating to a state comprehensive plan. However, Hector did add that the state land use plan proposed by the state agency needed to be submitted to the Legislature for adoption.

When Dr. Russell Beaton, Economics Professor at Willamette University, in explaining the ALI Model Code at the April meeting did not refer to the state comprehensive plan, this omission prompted the LUPC's concern. The question was raised as to whether or not there was to be, or needed to be, some kind of a plan for the state. The question was not resolved.²⁶ However, the ALI Model Code, Sections 8-401 and 8-402 detailed the proposed state comprehensive plan statutes. Section 8-401 specified a state and regional land development plan, while Section 8-402 focused on objectives, policies and standards of a state and development plan.

"Hector's Thoughts IV" repeated the concept that direct control of development was a matter for local government as long as that control was consistent with state goals, objectives, policies, priorities and guidelines.

The first draft of LC 100 did not require a state comprehensive plan. That draft only specified that the state was to review regional plans for the above consistency. In the second draft of LC 100 Section 30 (2) stated:

Upon the approval of the plan submitted by a district planning agency, the approved plan shall be considered the state comprehensive land conservation and development plan for the region.

The third draft reiterated the second draft. In the fourth draft of LC 100, however, Section 29, Sub-section (3) was revised to read:

Upon approval . . . such district comprehensive plan shall be considered the state long-range comprehensive plan for land conservation and development for areas or activities of critical state concern within the district.

In the fifth and final draft of LC 100, the phrase, "Comprehensive Plan," was included for the first time in the list of 'Definitions,' Section 3 (3), which follows:

- (3) 'Comprehensive Plan' means generalized, coordinated land use maps and policy statements of the governing body of a state agency, planning district, city, county, or special district interrelating all functional and natural systems and activities relating to the use of lands, such as sewer and water systems, transportation systems, educational systems, recreational facilities, and air and water quality management programs. Comprehensive means all-inclusive, both in terms of the geographic area, covered and functional and natural activities and systems occurring in the area covered by the plan. The general nature summarizes policies and proposals in broad

categories, and does not necessarily indicate specific locations of any area, activity or use. The plan will be coordinated when the needs of all levels of governments, semi-public and private agencies and groups have been considered and accomodated as much as possible. The term 'land' includes the water, both surface and sub-surface, and the air. The policy statements should consider long-range as well as short-range issues and programs, and shall be changed periodically to reflect the needs of the people they are designed to serve.

Part V of the fifth draft contained detailed rules for comprehensive plans. Sections 47 through 52 said that there was to be comprehensive plans for each city, county and district. These sections said further that the local zoning was to reflect the plan. Section 53 amended ORS 215.055, as follows:

- (1) (The) Any plan (and all legislation and regulations) authorized by 215.010 to 215.233 and adopted prior to the expiration of one year following the date of the approval of state-wide planning guidelines under Section 45 of this 1973 Act shall. . . ."

Compliance with state-wide planning guidelines was required by Sub-section (2), while Sub-section (3) set rules for local zoning. The original Sub-section (2) became a revised Sub-section (4), as follows:

- (4) In order to conserve natural resources of the state, any land use plan or zoning, sub-division or other ordinance adopted by a county shall take into consideration lands that are, can or should be utilized for sources or processing mineral aggregates.

Section 54 ordered districts to do a comprehensive plan. Sections 55 through 59 authorized the Governor to plan, if local government did not. Section 57, amending ORS

215.515 constituted the only reference to the state comprehensive plan and its goals. The section actually specifying a state comprehensive plan had been eliminated from the fifth draft.

SUMMARY

The LUPC determined during eleven months of 1972 who was to plan what. A state comprehensive plan was mandated by creating a composite of coordinated regional comprehensive plans. A permit system was initiated for activities of critical concern which provided that the activity was to be in agreement with the comprehensive plan.

The designated geographic areas of critical concern were specified as one means of attaining a set of goals to be determined by the proposed state agency Land Conservation and Development Commission (LCDC).

The LUPC still had to delineate who was to hold the reins of power.

NOTES

¹Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Counsel 100 (LC 100) (Salem: February 4, 1972), p. 4.

²Ibid., March 3, 1972, p. 1.

³Ibid., March 31, 1972, p. 4.

⁴Ibid., p. 2.

⁵Ibid.

⁶Ibid., April 28, 1972, p. 5.

7Ibid., p. 6.

8Ibid., June 9, 1972, p. 7.

9Ibid., July 14, 1972, p. 15.

10Ibid.

11Ibid., p. 16.

12Ibid.

13Personal Interviews with Steve Hawes, Legislative Counsel (Salem: November 30 and December 5, 1973).

14Ibid.

15Minutes of LUPC meeting, July 14, 1972, p. 15.

16Ibid.

17Ibid., p. 16.

18There were no minutes kept of the subcommittee meeting, July 28, 1972, nor was there a copy of the list available.

19Minutes of LUPC meeting, April 28, 1972, p. 5.

20Ibid., July 14, 1972, p. 15.

21Personal interviews with Steve Hawes.

22Ibid.

23Ibid.

24Minutes LUPC meeting, March 31, 1972, p. 3.

25Ibid., p. 4.

26Ibid., April 28, 1972, p. 6.

CHAPTER VI

REINS OF POWER

The Land Use Policy Committee decided that the reins of power were to be held firmly by the Governor, the Legislature and the planners with the advice and consent of an appointed Commission, plus a citizen's advisory board which was to be appointed by the Commission. While the Committee assigned roles to each of these, the LUPC saw no need to directly limit administrative power.

ASSIGNED ROLES

The LUPC assigned roles to the Land Conservation and Development Commission, the Legislature, the Governor and the public, as well as the sub-state governing units.

Role of the Land Conservation and Development Commission

Admittedly state land use planning, to function at all, mandated the power to regulate, but it was a question of what kind of power and how much power was to be authorized to a state agency. LUPC faced the concept of state regulatory power in writing LC 100, beginning in March, 1972, when Ann Squires of Portland, Oregon Shores Coastal Coalition, brought up the subject. Mrs. Squires felt that a top level agency was required from the standpoint of responsibility for coor-

dination and overseeing the land use activities of other state agencies.¹

In April the LUPC tried to decide whether a state agency or a local board needed to have supremacy in any given development application.²

Later the LUPC endorsed three sections of the American Law Institute (ALI) Model Code to help clarify the power to regulate state land use planning. The Committee approved Article 8-201 which allowed a state land planning agency to establish rules and issue orders concerning matters within its jurisdiction, or having to do with its internal organization and affairs.³

In July the Committee discussion on the second draft of LC 100 went as follows, with Chairman Macpherson speaking first:⁴

The principle reason for LC 100 is to give existing city and county plans 'some teeth'. . . . Up to then, very few plans have had any implementation or enforcement capability. Since the commission is to consider existing plans in terms of state-wide guidelines, the net effect of state activity is to give those plans a certain uniformity through state-wide planning policies.

LUPC Member Dean Brice, Association of Oregon Industries (AOI) presented his testimony on the behalf of the AOI which resulted in the following recommendations:

1. Guidelines adopted by the Commission for local planning should be advisory in nature -- only in cases involving areas of critical state concern could Commission objectives and regulations be mandatory upon cities and counties.
2. Review authority of districts and the Commission should be restricted to review of local ordinan-

ces for functions of district significance and for areas of critical state concern.

3. Provisions related to formulation and staffing of district planning agencies should be redrafted to strengthen the decision-making power of the local organizations. Current provisions place unnecessary emphasis on operation of the districts.

Irv Luiten, lobbyist for Weyerhaeuser, said that much of his criticism paralleled Mr. Brice's. To Luiten, planning was an essential function for Oregon's future growth, but it was incumbent upon drafters of planning legislation to carefully sort out the control each level of planners was to have. He added that the drafters needed to scrutinize existing plans and instead of constructing elaborate preliminary timetables, needed to give those plans implementation "teeth" immediately.

The LUPC staff had divided the third draft of LC 100 into topics for discussion purposes at the August and September work sessions. One of these topics in August applied to regulatory power -- the one on "Guidelines, Objectives and Regulations." In discussing the topic, the Committee decided that the proposed land use planning commission was to be required to use existing comprehensive plans of cities and counties in formulating and directing the interim program. As the LC 100 bill read then, the commission was to review existing plans in drafting guidelines, objectives and regulations for the final report. The LUPC agreed that more emphasis needed to be placed on past planning efforts of cities and counties.⁵

Also during the August work session, several questions were raised which were never really answered, for instance, what powers and functions was the Joint Legislative Committee to have? Were the district plans to be subject to minimum standards? Was the bill to include "performance criteria" for the district operations? These questions and others were to be given attention at the September work session.⁶ Of the four topics of the proposed state land use planning bill which had been left for the September session, there was only one topic which pertained to regulatory power; i.e., providing agencies with the necessary implementation and enforcement tools.

The summary of the fourth draft of LC 100 indicated that those aspects of the bill were resolved in September by the LUPC. The fourth draft summary said in relation to regulatory power, in three pertinent sections, as follows:

1. Planning for Areas and Activities of Critical State Concern: the 1973 Legislature, with passage of LC 100, will designate certain geographic areas of the state and certain types of development activities to be of critical state-wide concern. For these critical areas and activities, the state will assume a major planning responsibility, drafting objectives and regulations to assist local planning efforts. While development in a critical geographic area must conform with objectives and regulations, development considered a critical activity must additionally comply with conditions contained in a development permit issued by the state.
3. Administration: the Department of Land Conservation and Development is established to supervise the state-wide planning process. The Department's commission will prepare objectives and regulations (for critical areas and activities) and guidelines (for non-critical areas) for approval by either

the Legislature or, if the Legislature is not in session, by a Joint Committee on Land Use. In addition to its permit-issuing and reviewing functions, the Commission is charged with conducting land use inventories and with making additional designations for critical areas and activities.

4. Enforcement: cities and counties have one year following legislative approval of state-wide planning guidelines to prepare a satisfactory land use plan for non-critical areas. After the expiration of one year, where no satisfactory land use plan has been submitted, the Governor is authorized to grant an extension or to draft the plans, the cost for which will be deducted from revenues to the city or county. Enforcement for critical areas and activities will be the responsibility of the commission which may request an injunction or similar court order to insure compliance with objectives and regulations.

Several additions were made by the LUPC staff to the fifth draft pertaining to regulatory power.⁷ Section 11 delineated the Commission's duties and powers. Sections 46 through 48 covered the rules governing the who, what, when, why and how of comprehensive planning and plans.

Role of the Legislature

The Oregon Legislature reserved the right to review LCDC major policy decisions. The why began with a single statement made before the April LUPC meeting by Lloyd Keefe, Planning Director for the City of Portland. Mr. Keefe said that he believed that the state had to have some say in any policy decision which dealt with the allocation of funds.⁸

Senator Macpherson did not mention the role of the Legislature in any of his Outlines, nor was the subject included in the first, second, or third drafts of LC 100. These

drafts stated that the state land use agency was to submit its final report on the state-wide planning objectives to the Fifty-Eighth Legislative Assembly (1975) for adoption and if an emergency situation occurred between regular legislative sessions, the agency was to submit its proposed revision or amendment to the Emergency Board created under ORS 291.324 for its approval. However, this approval constituted only a temporary adoption until the next Legislative session.

In discussing the third draft of LC 100, the LUPC, during its August work session, recommended that a standing Joint Committee of the Legislature was to be established. The Joint Committee was to oversee the Department (staff and agency) and was to ultimately be charged with approving the interim program. Revisions to the final report by the Joint Committee were to be approved by the 1975 Legislature.⁹

The fourth draft of the bill retained the sections which related to the final report of LCDC to the Legislature. Two Sections, 16 and 17, which pertained directly to the role of the Legislature, were added to the fourth draft of LC 100. Section 16 established the Joint Committee on Land Use as a Joint Committee of the Legislative Assembly. Section 17 stated that the Joint Committee was to consist of four members of the House of Representatives appointed by the Speaker of the House, with no more than three House members of the same political party, and three members of the Senate appointed by the President of the Senate, with no more than two Senate members of the same political party. The Joint

Committee was authorized to act for the Legislature between sessions on matters relating to LCDC.

In the fifth and final draft of LC 100, the original Sections 16 and 17 were expanded and renumbered into Section 28 and Section 29. A new Section 30 delineated the duties and powers of the Joint Legislative Committee as follows:

- (1) Advise the Department (state agency) on all matters under the jurisdiction of the Department.
- (2) Review and make recommendations to the Legislative Assembly on proposals for additions or modifications to areas or activities of critical state concern.
- (3) Review and make recommendations to the Legislative Assembly on objectives, regulations, guidelines and plans adopted by the commission (LCDC); and
- (4) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon.

Role of the Governor

Under Senate Bill 10 (1969), the cities and counties were required to prepare comprehensive land use plans. In the bill, however, the Governor was permitted to extend the time deadline indefinitely, if he so desired. As a result, few, if any, comprehensive plans were completed under SB 10. The LUPC under Senator Macpherson sought, from its inception, to rectify this situation. Beginning with his first Outline, "Hector's Thoughts I," Senator Macpherson proposed a separate state land planning agency, directly responsible to the Governor, with the commission members appointed by the Governor, but with the consent of the Oregon Senate. This concept was

reaffirmed when Dr. Russell Beaton, Professor of Economics at Willamette University, explained Article 8-10 of the ALI Model Code at the LUPC April meeting¹⁰

The first draft of LC 100 gave the Governor the power to compel an area to do planning for itself, or the planning was to be done for the area by the state with state authorized to bill the area for the costs incurred by deducting the amount due the state from the areas' share of the state cigarette and liquor tax monies. There was no Committee discussion at that time of this strongly-worded section when it was presented to the LUPC at the June meeting.¹¹

The second draft of the LC 100 empowered the Governor to establish district agencies, if none were in existence. The concept was not discussed, however, by the LUPC at its July meeting.¹²

When the LUPC met for the August work session to discuss the third draft of LC 100, the Committee members challenged the Governor's role as it related to the role of district planning agencies. The language in the draft allowed the Governor to redesignate districts where he found an existing district was incapable of carrying out the purposes of the bill. The key phrase, which the LUPC members felt needed a little more clarification, was "substantially impair." The phrase had originally been conceived as a club to insure compliance of the district agencies with state land use planning, i.e., when the Governor felt that a district agency was failing to meet its assigned role in such a manner that state

land use planning was substantially impaired. However, the phrase was unfortunately not specifically defined in the proposed bill.¹³

In addition, at this August meeting, the LUPC wanted to see reappointment of district agencies used as a remedy to irresponsible district operations. As such, the Governor was to reappoint where the district had been redesignated, the agency no longer represented a majority, or the agency failed to respond to the commission mandates.¹⁴

The fourth draft of LC 100, retained the Governor's power to appoint with the consent of the Senate, the Commission members who were "to serve at the pleasure of the Governor." The changes relating to the Governor's power made by the LUPC in the third draft were retained. In the fourth draft the Governor was empowered to approve loan and grant applications, which was standard state procedure under the ORS. The powers of the Commission were subject "to the approval of the Governor." The Governor was empowered to recover costs.

The fifth and final draft of LC 100 reaffirmed the section on Commission appointments. The Governor's power concerning district agencies was eliminated completely from the fifth draft. A new section was included in the fifth draft which specifically added to the powers of the Governor. It was an expanded and detailed version of several which had been previously discussed by LUPC, as follows:

- (1) Notwithstanding any other provision of the law, after the expiration of one year after the date of the approval of state-wide planning guidelines under Section 45 of this Act, the Governor shall prescribe, may amend and shall thereafter administer comprehensive plans and zoning ordinances or regulations for lands within the boundaries of a county, whether or not within the boundaries of a city that. . . .
- (2) . . . the Governor may grant a reasonable extension of time after the date set in this section for completion of its plan or ordinances or regulations.

This section returned the powers to the Governor, which he had previously held before the writing of LC 100, in the ORS under SB 10 (1969) in land use planning. This was essentially true. However, the LUPC had earlier proposed to limit the Governor's power in land use planning because the Committee had felt the executive control as previously exercised under SB 10 had been used to delay comprehensive planning.

Role of the Public

During the LUPC's first March meeting, Wes Kvarsten pointed out the danger to the individual citizen losing his identity under the broader authority of a regional agency. He said that if the planning structure was tied to even smaller units than then existed, he felt that was the best of both worlds -- a local involvement and a sense of participation in community decisions plus the broad regional structure necessary to inject order into the planning process.¹⁵

Robert Logan, Local Government Relations Office, said:

The stress needs to be placed on citizen participation combined with area-wide planning and implementation. Such a regional approach is just as necessary

for the planning of rural areas as for urban areas throughout the state.¹⁶

At the second LUPC March, 1972, meeting during a discussion on citizen participation, a recurring problem seemed to be how to provide for expert adjudication of planning decisions of a long-range nature, while keeping for the non-expert public some on-going say in the direction of the planning. One question which echoed throughout the meeting was whether and how to channel citizen access into planning decisions.¹⁷

During the July LUPC meeting, Irv Luiten, Weyerhaeuser lobbyist, stressed the importance of "citizen visibility," when he said that the failure of many past planning efforts was traceable to the lack of citizen input into the formulation of the plans. He continued, saying he felt that the advisory committee concept would guarantee the public a chance to be part of the planning process. He said further that he thought that the use of the existing agencies to carry out the purposes of the Act would be adding more agencies to the current line-up of departments and commissions, which was unacceptable to him, particularly in view of the many which were to be consolidated or remodeled to function as the proposed LCDC. He was concerned that citizens would be lost in the process.¹⁸

The fifth and final draft of LC 100 which became the original Senate Bill 100, said that the LCDC "shall appoint citizen advisory committees." There were no other designa-

tions of citizen participation other than through appeals.

Role of the Sub-state Governing Units

The role of the sub-state governing units was first discussed during a March, 1972, meeting of the LUPC where Senator Macpherson said that the local governments had merely the option to develop a comprehensive plan, and that, in any case, the city or county plan, so formed, was to be reviewed at the regional level for adherence to the regional goals.¹⁹

In summarizing the second draft of LC 100, Steve Hawes, Legislative Counsel, stated that though a certain amount of control had been given to the districts and the state, special effort had been made to insure the continuing participation of local bodies in the planning process. Larry Rice, Executive Director of the Lane County Council of Governments, was worried that with the possible passage of Federal Land Use Legislation, it was essential that the states, particularly Oregon, keep their land use machinery as flexible as possible -- flexibility in terms of planning scope.²⁰

Jerry Barrett, Deschutes County, told the LUPC that he was unable to support the proposed bill until something was done which assured cities and counties that their planning work of the past several years was not to be entirely scrapped. He cited the work of Deschutes County officials who had, along with Jefferson and Crook County planners, spent nearly four years and \$100,000.00 in putting together the beginnings

of a comprehensive plan for that area.²¹

The summary of the fourth draft of LC 100 reflected the LUPC work sessions, as follows:

A State-wide Planning Process: City and county governments will be required to prepare land use plans which comply with state-wide planning guidelines, objectives and regulations. Plans for critical areas and activities will be submitted to the regional or district planning agency, which approves the plan or remands it for necessary revision. Once approved, the district plan cannot be modified unless the modification (a new zoning ordinance, a resolution, etc., of the local government) has been reviewed and approved by the district planning agency. Any conflict between the local and district levels can be appealed for review by a state-level agency.

The fifth and final draft of LC 100 stated that OCC&DC might with LCDC's permission --

. . . carry out, within the coastal zone described in ORS 191.110 and during the time period specified in ORS 191.140, the functions of LCDC in preparing objectives and regulations for areas and activities of critical state concern.

The fifth draft empowered the Councils of Governments to do the regional planning in each of their regions; to coordinate land conservation and development; and "to review the comprehensive plans prepared and proposed by" smaller local governing units and special districts within their regions "with the advice of a district planning committee established by the District Council" in each region.

Cities and counties were to be subservient to LCDC and the District Councils, but they were authorized to retain the "planning and zoning responsibilities vested in them by the ORS." Both special districts and other state agencies, while subject to LCDC's land use programs, kept those planning

duties, powers and responsibilities as vested by statute consistent with the provisions of this Act.

ABUSE OF ADMINISTRATIVE POWER

Abuse of Administrative Power was briefly discussed during the drafting of LUPC's state land use planning law, LC 100.

The seeds for the need to control the potential for abuse of an administrative agency's power were sown early during LUPC's meetings, when Lloyd Anderson, then a Portland City Commissioner, a professional land planner, and now (1977) Director of the Port of Portland, Oregon, shared his conceptions of the administrative role of a state planning agency before the Committee. Anderson sought to define goals and guidelines. He said the state government's role in land use planning should be to coordinate regional planning, to establish controls over planning where there were major public facilities or users, and to identify those areas of the state that were of particular state concern, such as the Oregon caves, the Oregon coast, and the University of Oregon campus. Anderson added that the state should provide policy guidelines for development and act as a source of technical assistance.²²

In April the LUPC discussed without resolution the concepts of what and how much power a state planning agency should be permitted to exercise. Ellen Lowe, Marion County Planning Commissioner, stated that she thought that the

decision-making process, without exceptions, needed to be kept at the local level. The LUPC discussion of the concept of abuse of administrative power ceased with Ellen Lowe's remarks.²³

THE "EMERGENCY CLAUSE"

An emergency clause was added to the fifth and final draft of LC 100 by the LUPC staff as a "housekeeping" amendment, according to Steve Hawes, Legislative Counsel.²⁴

Without the added clause the proposed law would have become effective on or about October 1, 1973, after enactment. With the clause the law would take effect earlier. The Emergency Clause, in Section 73, read as follows:

This Act being necessary for the immediate preservation of the public peace, health and safety, an Emergency is declared to exist, and this Act takes effect on July 1, 1973.

SUMMARY

The Land Use Policy Committee, under the guidance of Chairman Hector Macpherson, assigned specific roles to each of the participants in state land use planning. These participants each held one of the reins of power.

The Land Conservation and Development Commission (LCDC) was superior only over the sub-state governing units, while under the control of the Legislature, the Governor and "the public." The Legislature was accountable to "the public" only, as was the Governor.

The LUPC had touched on the potential for abuse of administrative power, but so lightly that the Committee did not become concerned enough to seek to prevent the possibility of it.

Through the "Emergency Clause," a "housekeeping amendment" added by the LUPC staff in the fifth draft of LC 100, its authors sought to insure immediate compliance with the proposed state land use statute upon Legislative enactment.

The fifth and final draft of LC 100 became Senate Bill 100 on January 12, 1973, upon submission to the Legislature.

NOTES

¹Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Counsel 100 (LC 100) (Salem: March 31, 1972), p. 3.

²Ibid., April 28, 1972, p. 2.

³Ibid., p. 4.

⁴Ibid., July 14, 1972, pp. 15-16.

⁵Ibid., August 14, 1972, p. 2.

⁶Ibid., p. 4.

⁷Personal Interviews with Steve Hawes, Legislative Counsel (Salem: November 30 and December 5, 1973, and March 25, 1974).

⁸Minutes of LUPC meeting, April 28, 1972, p. 4.

⁹Ibid., August 14, 1972, p. 1.

¹⁰Ibid., April 28, 1972, p. 5.

¹¹Ibid., June 9, 1972, p. 11.

¹²Ibid., July 14, 1972, pp. 1-6.

¹³Ibid., August 14, 1972, p. 3.

- 14 Ibid.
- 15 Ibid., March 3, 1972, p. 1.
- 16 Ibid., p. 3.
- 17 Ibid., March 31, 1972, pp. 1-3.
- 18 Ibid., July 14, 1972, p. 16.
- 19 Ibid., March 31, 1972, p. 1.
- 20 Ibid., July 14, 1972, p. 8.
- 21 Ibid., p. 9.
- 22 Ibid., March 3, 1972, p. 6.
- 23 Ibid., April 28, 1972, p. 3.
- 24 Personal Interviews with Steve Hawes.

PART ONE CONCLUSION

The planning bill, Legislative Counsel 100 (LC 100) was the product of eleven months of work during 1972 by a committee of lay planners, the Land Use Policy Committee (LUPC) which was created and lead by State Senator Hector Macpherson. The planning bill was designed to fulfill the need for state-wide land use planning in Oregon. In answering the question, Who Plans -- State?, the LUPC decided that a state agency, The Land Conservation and Development Commission (LCDC) would have a five-member Commission which would lead the agency. The Commission was to hear appeals and appoint a State Citizens' Advisory Committee.

Who Plans -- Sub-state? were to be the Councils of Governments (COGs), said Chairman Macpherson's LUPC staff. All other sub-state units of government, cities, counties and special districts were to be subordinate to the regional units.

Who Plans What? Since a state agency LCDC was to plan, with the help of the COGs, the LUPC decided to retain the then current SB 10 (1969) planning goals in the ORS until the state agency designated a new set of goals which were to require legislative concurrence.

The Committee did designate specific areas and activities of critical concern in the planning bill, with the activ-

ities subject to LCDC approval via a permit system.

The LUPC proposed that a State Comprehensive Plan be created by coordinating all of the state's regional comprehensive plans.

The Committee assigned roles to hold the reins of power. LCDC was to rule the sub-state governing units, but was ruled by the Legislature, the Governor and "the public." The Legislature and the Governor were accountable only to "the public." "The Public" was made accountable to no one, but themselves.

The LUPC staff had added the "Emergency Clause" to the planning bill just before the bill's submission to the Legislative Assembly.

The Land Use Policy Committee (LUPC) submitted the fifth and final draft of the Legislative Council Bill 100 (LC 100) to the 1973 Session of the Oregon Legislature on January 12, 1973, whereupon LC 100 became the original Senate Bill 100 (SB 100).

PART TWO -- WINTER OF 1973:

The Senate Environment and Land Use Committee spent the Winter of 1973 trying to salvage, in a political arena, the state land use planning bill, Senate Bill 100 (SB 100).

After the bill was twice read before the Oregon Senate, on January 12 and January 16, 1973, and approved after each reading by the Oregon Senators, the President of the Senate, Jason Bce, a Democrat, and an optometrist from Reedsport, Oregon, assigned Senate Bill 100 to the Senate Environment and Land Use Committee (SELUC), described in Chapter VII.

SELUC received SB 100 on January 18, 1973, when public reaction to the state land use planning concept in the bill generated heated opposition. SELUC was compelled to compromise the various viewpoints between proponents and opponents to insure Legislative enactment of the bill. To the opponents the concept of need was equated with need vs. want, until SELUC was able to modify the concept to need equals want. Chapter VIII details The Opposing Concepts.

Who Plans What? and who holds the Reins of Power? required three months of the Committee's deliberations for resolution.

Who Plans -- State?, detailed in Chapter IX, Who Plans -- Sub-state?, shown in Chapter X, and Plans What?, discussed in Chapter XI, each produced a battle in Oregon's Legislature

and each had a myriad of mini-skirmishes which had to be resolved by SELUC.

Who was to hold the reins of power became Oregon's Cold War until SELUC reassigned roles, noted in Chapter XII, and created a statement of Legislative Intent, outlined in Chapter XIII.

These compromises helped to insure the enactment of Senate Bill 100.

CHAPTER VII

SENATE ENVIRONMENT AND LAND USE COMMITTEE

In January, 1973, Senator Hallock was named by Senate President Jason Boe as Chairman of the new Senate Environment and Land Use Committee (SELUC), to which Senate Bill 100 (SB 100) was assigned after its second Reading. From this strategic position, Senator Hallock, aided by his Administrative Assistant John Toran, helped to guide the land use planning bill to its legislative enactment.

SELUC MEMBERS

Jason Boe as President of the Senate appointed the members of the SELUC. They were:

Senator Ted Hallock, Committee Chairman, Democrat from Multnomah County, Portland, a public relations man.

Senator John Burns, Committee Vice-Chairman, Democrat from Multnomah County, Portland, lawyer and former (1971) Senate President.

Senator Victor Atiyeh, Senate Minority Leader, Republican from Washington County, 4th District, Portland, business man.

Senator Hector Macpherson, Republican, Linn County, Albany, Oregon, dairy, seed and Christmas tree farmer.

Senator Jack Ripper, Democrat, Coos and Curry Counties 24th District, North Bend, Oregon, teacher

Senator Michael Thorne, Democrat, Umatilla, Union and Wallowa Counties, Pendleton, Oregon, realtor-farmer.

Senator George Wingard, Republican, Lane County,
Eugene, Oregon, builder.

Chairman Hallock was an early proponent of the state land use planning concept. When approached by Senator Hector Macpherson on the concept in mid-1972, Hallock became an enthusiastic supporter of the proposed legislation. Hallock said during SELUC hearings on SB 100, "A state land use planning bill will be enacted in this Legislative Session."¹

State Senator Macpherson as Chairman of the LUPC in 1972 had worked for the creation of the bill from the start and was therefore the bill's principal proponent.

State Senator John Burns of Portland was a proponent of land use planning, who exemplified the "hard-line" viewpoint. When the political compromises were written into the redrafted SB 100, Senator Burns voted against the bill both over SELUC's "do-pass" recommendation, and later against its passage on the Senate floor.²

The other four SELUC members were less than enthusiastic towards Senate Bill 100. Senators Atiyeh and Wingard, as Republicans, while admittedly residents of the rapidly urbanizing Willamette River Valley, were not men to ordinarily expand governmental control. Senators Thorne and Ripper, even though elected as Democrats, were rurally oriented in their outlook as representatives of the less-populous counties. State Senator Thorne, from Eastern Oregon, at one point during the SELUC hearings on SB 100, asked "Since the need for the planning concept is in the urbanized Willamette Val-

ley, why is the planning legislation to be inflicted on the rest of Oregon's residents?"³

For Senator Ripper, a resident of Southwestern Oregon, to support a concept that offered greater unemployment to his area would have been suicidal politically.⁴

So the fifth and final draft of LC 100 became Senate Bill 100 (SB 100) in January, 1973, when it was entered into the Senate "hopper" for its First Reading January 12, 1973,⁵ and Second Reading January 16, 1973,⁶ from whence it was assigned to the Senate Environment and Land Use Committee for hearings.

SELUC MEETINGS ON SB 100

The SELUC held 24 meetings on Senate Bill 100 during the first five months of 1973. There were three Committee meetings in January, 1973, with sessions on January 18, 25 and 30, 1973. SELUC held seven meetings on the bill in February on February 1, 8, 9, 12, 13, 15, and 27, 1973. A meeting was scheduled for February 20th in Salem but it was cancelled at the last minute without notice, much to the outspoken anger of guests who had come from the far-corners of the state to appear before the Committee.

There were six SELUC meetings in March, on March 6, 8, 13, 20, 22, and 27, 1973. The SELUC again met six times in April, on April 3, 5, 10, 11, 12, and 17, 1973. SELUC held two May meetings, on May 3 and on May 15, 1973, on SB 100, after its passage by the Senate to plan strategy for aiding

the survival of the bill in the House of Representatives.

Of the three SELUC January meetings, two were hearings on SB 100 between January 18th and January 30th, when Chairman Hallock appointed two Sub-committees, one on COGs and the other on critical areas.

In early February, after two Critical Areas Subcommittee meetings and three COGs Subcommittee hearings, plus three SELUC meetings, Chairman Hallock was compelled to appoint an Ad Hoc Committee with an appended Drafting Subcommittee.

Despite the redrafting of SB 100 through political compromises, the enactment of the bill was not politically possible. As such, Chairman Hallock spent 45 days in meetings seeking to effect a compromise solution to the power struggle between the City of Portland and Multnomah County.

The SELUC hearing on February 12th, as an open public forum heard 30 differing points of view on SB 100.⁷

The Committee did not discuss SB 100 as originally scheduled at the February 20th meeting, as the meeting was cancelled suddenly without notice, much to the annoyance of out-of-town guests who had come to Salem for the hearing.⁸

Senate Bill 100 was discussed section by section by members of SELUC -- The Oregon Coastal Conservation and Development Commission (OCC&DC); "compacts"; delegation of authority; COGs; administrative districts; Land Conservation and Development Commission (LCDC); power to tax; who sets policy; Commission enforcement powers; and finally the authority of a special Legislative Committee vs. a standing committee for

overseeing and implementing a land use planning organization -- these all sparked controversy.

The questions of delegation of authority; COGs; administrative districts; who sets policy?; and Commission enforcement power brought especially strong discussions, and showed the ideological crevasses among the various viewpoints of the Committee members and the public participants.

SELUC SUBCOMMITTEES

The proponents of need wrote the original Senate Bill 100 in Senator Macpherson's LUPC. The opponents caused the bill to be redrafted by SELUC. Neither viewpoint was completely accepted by the other.

SELUC Chairman Hallock opened the January 30, 1973, meeting with the announcement that he had appointed two subcommittees on SB 100, one on "COGs" and the other to study the "areas and activities of critical state concern."⁹

Since only two people had publically voiced opposition to the "areas of critical concern" concept at the previous SELUC meeting, Senator Hallock and the other Committee members must have been the recipients of considerable privately-expressed opposition.

COGs Subcommittee

The concept of regionalism, as represented by Councils of Governments (COGs) came into being in the fifth draft of LC 100. Then the COG concept made its debut before SELUC.

Public reaction to the whole concept of regionalism and the COGs, in particular, was so strongly opposed that Chairman Hallock felt the need to appoint the COG Subcommittee to study the subject in depth.

Hallock named Senators Macpherson, Ripper and Thorne to the COG Subcommittee, with Hector Macpherson as Chairman.¹⁰

The COG Subcommittee met three times in early February, on February 1, 9, and 12, 1973.¹¹

Critical Areas Subcommittee

Since public reaction had offered no identifiable cause for the creation of the Critical Areas Subcommittee, it was assumed by some observers that the public's private reactions led to Senator Hallock's decision. A letter from Bill Grannell, State Representative from Coos County, to SELUC constituted a prime example of the public's private concern.¹²

Senator Hallock, as Chairman of SELUC, appointed Senators Wingard, Atiyeh and Burns to the Subcommittee with Senator John Burns named as Chairman. Senator Hallock suggested to Senator Atiyeh that Sections 31 and 32 on critical areas of SB 100 were to be studied and evaluated by the Subcommittee.¹³

There were two Critical Areas Subcommittee meetings in February, one February 8, 1973, and one on February 12, 1973.¹⁴

Adverse reaction to SB 100's Section 31 culminated in the appointment of two additional committees by Senator Ted

Hallock, Chairman of SELUC. The two committees appointed to help solve SB 100's problems with public acceptance were: an Ad Hoc Committee under the leadership of Senator Hector Macpherson, and a Drafting Subcommittee, with L. B. Day, former Teamster's Union Representative, as Chairman.¹⁵

Ad Hoc Committee

Chairman Hallock made three important decisions early in 1973. His first decision was that, in its present form, SB 100 would not have been enacted by the Legislature, and therefore the bill had to be changed. His second decision was to appoint an Ad Hoc Committee to solve the problem. His third decision was to appoint a Drafting Subcommittee.

Since Senator Hallock was responsible for the future of SB 100, he, and he alone, made the decision to change the bill prior to February 13th because he specifically invited seven guest speakers to the work session of that date. The speakers were as follows:¹⁶

Ward Armstrong, Portland, Weyerhaeuser Company, and Association of Oregon Industries.

Fred Van Atta, Salem, Oregon State Builders' Association.

Mel Gordon, Portland, Multnomah County Commissioner and 2nd Vice-President of the Association of Oregon Counties.

Dean Brice, Portland, Pacific Power and Light Company, Association of Oregon Industries.

Nan Dewey, Lobbyist for the Oregon Wheat Growers' Association.

Earl Pryor, Executive Director of Oregon Wheat Growers' Association.

Martin Davis, Oregon Environmental Council.

Senator Hallock announced that a committee had been formed to try to discuss ways of resolving SB 100's conflicts. He said that the Committee was to include the seven guest speakers listed above, with Senator Macpherson as Chairman, and that the eight were to find a mutually-satisfactory agreement on legislation which they felt was politically supportable as an Ad Hoc Committee.

In addition Hallock announced the creation of a four-member Drafting Subcommittee consisting of Ward Armstrong, Gordon Fultz and Fred Van Atta, with L. B. Day as Chairman. The Drafting Subcommittee was to be guided by the Ad Hoc Committee.¹⁷ Hal Brauner served as staff to both Committees.

Senator Macpherson, Chairman of the Ad Hoc Committee, stated that the purpose of the February 18th meeting was two-fold:¹⁸

1. To consider the progress made by the Drafting Subcommittee.
2. To provide the Subcommittee with additional policy directions.

Hal Brauner suggested that Senator Hallock needed to be asked to postpone the date of the Ad Hoc Committee's report to the SELUC in order to provide the Subcommittee with more time for studying the bill and writing amendments.¹⁹ The report to SELUC had been set for February 20, 1973.²⁰

Gordon Fultz, speaking later in a personal interview, recalled that there were between 12 and 15 people present at the February 18, 1973, Ad Hoc Committee meeting. He

said, "It was a frustrating meeting... . too many people there! A name-calling donnybrook erupted, polarizing Compensatory Zoning and/or 'critical areas.'"²¹

The Drafting Subcommittee was made acutely aware of the divergence of viewpoints on SB 100 during the February 18th meeting of the Ad Hoc Committee, according to Gordon Fultz. He said that if "grays" existed, they were unspoken!²²

Mr. Fultz added:

A political compromise, which was a very delicate balance, was achieved by the Drafting Subcommittee in rewriting SB 100. . . . This would not have been possible had any other member of the Ad Hoc Committee been appointed to the Drafting Subcommittee. . . . Each of the Subcommittee members wanted a Land Use bill to be enacted by the 1973 Legislature. . . . They were political realists. . . . They knew that they had to compromise to create a bill which would be acceptable to a majority of Oregon's Legislators.²³

At the next Ad Hoc Committee meeting on February 23rd, Chairman Macpherson stated that the purpose of the meeting was to hear the philosophy in the revised language of SB 100.²⁴

Chairman L. B. Day of the Drafting Subcommittee, said to the Ad Hoc Committee, "A clean bill should be ready by February 26th." In discussing the bill's philosophy, Mr. Day told the committee that citizen participation was not only at the county level, but at the state level as well. He said the bill was to take effect January 1, 1975.²⁵

Senator Macpherson said that the purpose of the February meeting of the Ad Hoc Committee, which followed meetings on the 18th and 23rd of February, was to hear an explanation of the revised SB 100 by Hal Brauner, including legal drafts

of amendments. These amendments were to be reviewed by the Ad Hoc Committee before taking SB 100 back to the SELUC.²⁶

Drafting Subcommittee

After appointing the Ad Hoc Committee, Chairman Ted Hallock publically announced Drafting Subcommittee membership, with L. B. Day as Chairman. He named Hal Brauner as Administrative Assistant to both committees. Hallock stated that this group, and only this group, was to set policy with the Ad Hoc Committee. Both committees were instructed to "draft a new land use bill which would pass the Legislature." He invited others to attend the meetings.²⁷

Sometime prior to this meeting, L. B. Day had received telephone calls from both Governor McCall and SELUC Chairman Hallock asking Day to chair the Drafting Subcommittee.²⁸

L. B. Day. L. B. Day, a former Republican Legislator, served as the first Director of the State Department of Environmental Quality (DEQ). He was on leave of absence from the Oregon Joint Council of Teamsters (Union), where he had functioned as an organizer and lobbyist. As the DEQ's first Director, appointed by Governor McCall, he was the initiator of many of Oregon's environmental standards. Day ran the DEQ much as J. Edgar Hoover ran the original FBI. He was both loved and hated, but always respected. He personally favored land use planning for Oregon's future, but he was a political realist first, and a dreamer second. L. B. Day, as Chairman of the Drafting Subcommittee, with three hand-picked Sub-

committee members, all lobbyists, revised and redrafted Senate Bill 100 into a politically acceptable form that could be enacted by the Legislature in the 1973 Session.²⁹

Mr. Day accepted the Subcommittee Chairmanship, subject to certain conditions to which both Hallock and Governor McCall had agreed. L. B. Day answered McCall's and Hallock's request by saying that he was happy to serve under the following conditions:³⁰

1. He was to pick his own Subcommittee members.
2. He was to write a bill that was passable, with teeth in it and conservation still in the bill.
3. The counties were to have more responsibilities and to be forced to implement them.
4. Counties needed more funding for the added responsibilities.
5. If the final bill didn't have enough teeth left in to suit him, then his Union planned to sponsor an initiative petition that would provide teeth.
6. COGs were out, as a matter of political reality.

When Governor McCall and Chairman Hallock agreed to Mr. Day's stipulations, Day said that he wanted as members of his Drafting Subcommittee, Ward Armstrong, Fred Van Atta, and Gordon Fultz, "because they are the people who would have a major say in the passage of SB 100."³¹

Meetings. The Drafting Subcommittee's first meeting, according to both Mr. Day and Mr. Fultz, was devoted to a discussion of the bill, item by item, if necessary, section by section, after the members had previously prepared for the meeting by reading the record of the Senate hearings

testimony. The major controversies were temporarily set aside. The least controversial items were decided upon and modified as necessary, then the drafters returned to the items of major controversy.³²

L. B. Day stated that the Drafting Subcommittee had spent approximately 25 hours in meetings revising Senate Bill 100 between February 19 through February 22, 1973, prior to the meeting of the Ad Hoc Committee on February 23rd. The Drafting Subcommittee had three working sessions, according to Gordon Fultz. Each member of the Subcommittee -- Day, Fultz, Armstrong and Van Atta -- was a paid lobbyist, and it was their job to get out a bill that their organizations could live with in the future.³³

Summary

At the SELUC work session of February 15, 1973, Senator Hallock, Chairman, appointed an Ad Hoc Committee, chaired by Hector Macpherson, and a Drafting Subcommittee under L. B. Day, with the Subcommittee accountable to the Ad Hoc Committee and both committees charged with rewriting and revising SB 100 into a more politically acceptable document.

L. B. Day had agreed to chair the Drafting Subcommittee but only on his own terms. The retention of Areas of Critical Concern was not included among his conditions. One term did involve maintaining "teeth" in SB 100. "Teeth" meant both enforcement power of the state and state goals.³⁴

The Ad Hoc Committee had succeeded with the dedicated

help of the Drafting Subcommittee in changing SB 100 without losing sight of the bill's critical purpose, and without pulling the enforcement teeth of the LCDC. Though accomplished through the combined efforts of special-interest lobbyists, rather than Legislators, the bill, as then written constituted a political compromise. However, there were still several special-interest groups which were not included on the Ad Hoc Committee which were yet to be satisfied.

THE PARTICIPANTS

The proponents of the need for state land use planning in Oregon were dedicated. The opponents were equally dedicated. Both viewpoints were represented by their own able, determined, hard-working, sincere individuals and supportive organizations.

Quite simply, the actors who participated in the creation of Senate Bill 100 were the proponents and the opponents of state land use planning. Many were not heard from until the enactment process was well on its way. There were some persons with strongly-held viewpoints on both sides, who as "hard liners" knew that their concept was "right." There were some who endeavored to be neutral, but their "voices of reason" were usually drowned out by the "hard liners."

The Proponents

The proponents of the state land use planning concept made themselves heard during the LUPC meetings in 1972, par-

ticularly Senator Macpherson, LUPC's Chairman, and Governor Tom McCall.

The proponent organizations' viewpoints, whether governmental, environmental or political, were reflected in the original Senate Bill 100. Five environmental groups -- Sierra Club, OSPIRG, Oregon Shores Coalition, Oregon Environmental Council and Wild Life Federation, all supported the critical areas of concern concept.³⁵ The Councils of Governments (COGs) were legalized and made responsible for local land use planning in SB 100 as written by LUPC. Two interest groups, the League of Women Voters and Tri-County Politics approved the state land use planning concept.

The Opponents

The opponents of land use planning had been ignored in the LUPC's meetings. Various individuals and organizations had been notified in 1972, but Senator Macpherson's failure to hear the opposition viewpoints caused a veritable storm of protest to descend on SELUC's hearings in 1973. The Committee members were surprised by its vehemence.³⁶

Three Individuals. Three individuals made themselves heard in the Senate hearings. Two men, Emigh and Rhodes, were Graduate Planning students at the University of Oregon. The third was Bill Grannell, State Representative from Coos County, Oregon.

Richard Emigh and Ed Rhodes said that they were in favor of Senate Bill 100, but their one small question con-

cerning critical areas of concern became a major factor in the elimination of the critical areas concept from the bill. They became opponents by accident, not design.³⁷

William Grannell's opposition to SB 100 carried not only the voting weight of his one vote among 60 in the Oregon House of Representatives, but it personified the economic viewpoint of the Coastal region and the majority of Southwestern Oregon residents as opposed to that of the environmentalists. Both his written and oral testimony, by design, reflected the power and needs of the Coastal region.³⁸

Organizations opposed to land use planning in Oregon were either political or economic in nature. They had gone unheard in the LUPC's meetings, but they made themselves heard in the SELUC's hearings. Some of the opponent organizations tried to bury the whole concept of state land use planning, while others sought through constructive suggestions and amendments to limit the concept.³⁹

Political Organizations. The political organizations reflected two extremes in viewpoints. The League of Oregon Cities and the Association of Oregon Counties tended to be constructive in their criticisms, while strictly citizen-oriented political organizations were specifically opposed to all planning and all government controls. Two fringe-interest groups, the Oregon Legislative and Research Committee and the Voice of Liberty were particularly outspoken in their opposition to the land use planning concept.

The League of Oregon Cities' Legislative Committee

Chairman, James R. Moore of Beaverton, reviewed each published edition of SB 100, and systematically offered written amendments aimed towards a politically resolved compromise of the land use planning concept in Oregon. Few of the League's recommendations were included until the redrafting of SB 100. However, the League's opposition produced major revisions in the final bill. They made themselves heard.

The Association of Oregon Counties in opposing Senate Bill 100 was fighting for the counties' continued existence as viable, legal, local government units. The original bill proposed to legalize the Councils of Governments (COGs) as specified land use planning agencies for Oregon.

Then Gordon Fultz, Assistant Director of the Association of Oregon Counties, went into action. He utilized county Commissioners from various counties as well as his own best efforts to change the political planning thrust of the bill. Each county commissioner testified on facets of SB 100 which were detrimental to his constituency, in addition to opposing the COGs-as-planners concept.⁴⁰

The Oregon Legislative and Research Committee (OLRC) was opposed to government control of anything, whether people or property. In their testimony they emphasized that they were speaking as individuals, but that they were, in addition, speaking for many other members.⁴¹

The Voice of Liberty organization seemed to exemplify the political complexion of some small citizens' groups. Primarily local in origin, it had been formed to oppose a

local issue, much as had the Save-Silverton-Committee, then, as its political awareness expanded, the organization extended its political horizons geographically. Their viewpoints tended, as did those of the OLRC to oppose all government control, or even natural growth and change. Their spokesmen were predominately concerned with the constitutionality of land use planning and government by "executive fiat."⁴²

Economic Input. Senator Macpherson had notified various economic groups of his LUPC hearings on LC 100. Group representatives spoke before his Committee, but opposition to his land use planning concepts were unheard. Only when SB 100 was given hearings by the SELUC were the economic organizations, which represented the viewpoints of farmers, realtors, industries and home builders, given a real opportunity to express their views. As a result of their testimony, major changes were incorporated into the final draft of SB 100.

While several farm organizations testified during the Senate hearings, only two were really heard by the SELUC -- the Oregon Rural Landowners' Association and the Oregon Wheat Growers' Association.

The Clackamas County Farm Bureau and other organizations, such as the Farmers' Political Action Committee, were so vehemently opposed to SB 100 that they failed to offer constructive suggestions or even amendments.⁴³

James Allison, President and Chief Spokesman for the Oregon Rural Landowners' Association, seemed to be in deadly

fear of land use planning in general and SB 100 in particular. His opposition to the planning concept began during the original drafting of the bill. However, his concerns were unheard until the Senate hearings before SELUC.⁴⁴

Allison's testimony, both oral and written, included not only his opposition to the land use planning concept, but also, when faced with the reality of LCDC, constructive suggestions and actual amendments from Allison to make the bill more palatable to himself and other farmers.⁴⁵

While a representative of the Oregon Wheat Growers' Association, Earl Pryor spoke briefly in opposition to SB 100 during one SELUC hearing. Senator Hallock considered their political power significant enough to appoint their lobbyist, Nan Dewey, to the Ad Hoc Committee for the redrafting of the land use planning bill, SB 100.⁴⁶

Realtors from throughout the State of Oregon appeared before the SELUC to voice their opposition to land use planning in general and SB 100 in particular.

Fred Van Atta was both the President of, and the lobbyist for, the Home Builders Association of Oregon. He quietly opposed SB 100 as originally drafted.

That Van Atta's ability was appreciated was indicated by his appointment to the Ad Hoc Committee by Senator Ted Hallock, and his selection for the Drafting Subcommittee by Chairman L. B. Day.⁴⁷

While the opponents of state land use planning were

ignored during the LUPC meetings, they came to the forefront and were heard by the SELUC. Three individuals, in particular -- Richard Emigh and Ed Rhodes, Urban Planning Graduate Students at the University of Oregon and James Moore, League of Oregon Cities, offered constructive criticisms, suggested possible substitute actions, and even provided alternative sections for Senate Bill 100.

SUMMARY

Senate Bill 100 was heard by the Senate Environment and Land Use Committee (SELUC) in the early months of 1973. The Committee Chairman, Ted Hallock, wanted a land use planning bill enacted during the 1973 Oregon Legislative Session. When SELUC held public hearings on the land use bill, the Committee received the full thrust of the opponents' wrath, wrath which had not been evident when LUPC was drafting the bill. Chairman Hallock of SELUC, sought first, by appointing two Subcommittees, one on critical areas and one on COGs, to hear all opinions, and second, creating an Ad Hoc Committee with a Drafting Subcommittee to revise SB 100 to salvage the bill's concepts.

The opponents made their presence felt as SELUC worked to remedy the philosophical problem of need vs. want, built into SB 100 by LUPC and other planning proponents in 1972.

Planning opponents met planning proponents head on in SELUC meetings where all of the provocations were detailed. Senator Macpherson's compulsion to strengthen the bill's

concepts and enforcement procedures led to an over emphasis on need, which generated the provocations.

NOTES

¹Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 18, 1973) Tape 1, Side 2 and Tape 2, Side 1.

²Ibid., Minutes of SELUC meeting, April 17, 1973, Tape 15, Side 2, and Oregon Senate Journal, April 18, 1973, Tape 13, Side 1 (Salem: 1973)

³Minutes of SELUC meeting (Salem: March 13, 1973) Tape 11, Side 2

⁴Minutes COG Subcommittee meeting (Salem: February 9, 1973) Tape 5, Side 2

⁵Senate Calendar Upon Adjournment. "SB 100" (Salem: State Printing Office, 1973) p. 41.

⁶Ibid.

⁷Minutes of SELUC meeting, February 12, 1973, Tape 6, Side 2 and Tape 7, Side 1.

⁸Ibid., February 27, 1973, Tape 11, Sides 1 and 2.

⁹Ibid., January 30, 1973, 1973, Tape 3, Side 1.

¹⁰Ibid., February 15, 1973, Tape 8, Side 1.

¹¹Minutes of COG Subcommittee meetings (Salem: 1973) Meeting February 1, 1973, Tape 4, Sides 1 and 2; Meeting February 9, 1973, Tape 5, Side 2; and Meeting February 12, 1973, Tape 6, Side 1.

¹²Minutes of SELUC meeting, January 30, 1973, Tape 3, Side 1.

¹³Ibid.

¹⁴Critical Areas Subcommittee meetings (Salem: 1973) Meeting February 8, 1973, Tape 4, Side 2 and Tape 5, Side 1; Meeting February 12, 1973, Tape 5, Side 2 and Tape 6, Side 1.

¹⁵Minutes of SELUC meeting, February 15, 1973, Tape 8, Side 1.

- 16 Ibid., Minutes of SELUC meeting, February 13, 1973, Tape 7, Side 2.
- 17 Ibid., February 15, 1973, Tape 8, Side 2.
- 18 Minutes Ad Hoc Committee meeting (Salem: February 18, 1973) Tape 8, Side 2.
- 19 Ibid., February 23, 1973, Tape 9, Side 1.
- 20 Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.
- 21 Personal Interviews with Gordon Fultz, Assistant Director of Association of Oregon Counties (Salem: December 5, 1973, and March 25, 1974).
- 22 Ibid.
- 23 Ibid.
- 24 Minutes Ad Hoc Committee meeting, February 23, 1973, Tape 9, Side 1.
- 25 Ibid.
- 26 Ibid., February 27, 1973, Tape 9, Side 1.
- 27 Minutes of SELUC meeting, February 15, 1973, Tape 8, Side 1.
- 28 Personal Interview with L. B. Day, Teamsters' Union Representative and former Director of DEQ (Salem: December 3, 1973).
- 29 Ibid.
- 30 Ibid.
- 31 Ibid.
- 32 Personal Interviews with L. B. Day and Gordon Fultz (Salem: December 3, 1973 and December 5, 1973, respectively).
- 33 Personal Interview with L. B. Day.
- 34 Ibid.
- 35 Personal Interview with Steve Hawes, Legislative Counsel (Salem, November 30, 1973 and December 3, 1973).
- 36 Personal Interviews, Gordon Fultz.

- 37 Ibid., Interviews, Gordon Fultz
- 38 Minutes of SELUC, January 30, 1973, Tape 2, Side 1.
- 39 Ibid., January 25, 1973, Tape 2, Side 2 and Tape 3, Side 1.
- 40 Personal Interview with Gordon Fultz.
- 41 Minutes of SELUC meeting, March 8, 1973, Tape 11, Sides 1 and 2.
- 42 Ibid., January 30, 1973, Tape 3, Side 1.
- 43 Ibid., January 25, 1973, Tape 2, Side 2 and Tape 3, Side 1.
- 44 Ibid.
- 45 Ibid.
- 46 Ibid., February 15, 1973, Tape 8, Side 1.
- 47 Ibid.

CHAPTER VIII

OPPOSING CONCEPTS

Opposing concepts relating to the need for state land use planning and the resolution of that need by the Land Use Policy Committee made political mediators of the SELUC.

The over emphasis on need by Senator Macpherson in drafting the original SB 100 incited the problem of need vs. want. In turn, the provocations involving issues, conflicts and efforts to compromise, were embedded in the problem.

THE PROBLEM

The philosophy of state-wide land use planning created the problem -- need versus want -- despite the fact that, according to The Desk Standard Dictionary,¹ the two words are synonyms. The problem had to be resolved in a political arena by the participants who, either as proponents saw the need, or as opponents did not want state-wide planning.

Since few participants held exactly the same or even similar viewpoints, the diverse issues generated additional conflict. All these issues required resolution before SB 100 could be enacted. Need versus want was the foundation for land use planning battles fought in the SELUC and the Oregon State Legislature in 1973, which only a series of astute

political compromises was to finally resolve.

Chairman Macpherson of the LUPC saw the need. However, Senator Macpherson caused the over-emphasis on need to the eventual detriment of SB 100 before the SELUC.

An Over-emphasis on Need

Even though state land use planning as a concept, and the fact that land use planning was needed in Oregon had become an accepted fact, largely through the efforts of the LUPC and Chairman Macpherson, there was an over-emphasis on need.

Always trying to improve the land use bill, Senator Macpherson in July, 1972, had suggested to the LUPC that there was a need for greater uniformity and coordination and for stronger enforcement. The need for uniformity and coordination was between local plans which were to ultimately become the state-wide comprehensive plan. "Without mandatory guidelines and subsequent review," Senator Macpherson said, "state-wide planning would be untenable."² The Committee, on Macpherson's recommendation, sought to strengthen the bill. This over-emphasis on need generated the conflict -- need vs. want.

Need Versus Want

That there was a need for state land use planning had been established; that there was a need for a state-wide organization to do that planning had been recognized; and that, therefore, there was a need for that organization to

plan, had been accepted by some people. The urgency of the need was so compelling to the drafters that the LUPC built in a uniform time schedule which was coupled with the strengthened enforcement powers of the proposed administrative agency.

The stage was set for the airing of individual adverse public opinion, though efforts were made to effect truces. The majority of those who testified against SB 100 did not want any state land use planning. Their opposition was focussed on what they believed were infringements of their constitutional rights -- The "taking issue" wherein the landowner was denied his free choice of what he could do with his own land, amounting to confiscation "without just compensation"; "taxation without representation" -- decisions by others, while he paid the costs; and denial of referral,³ by including the emergency clause to move the effective date forward to avoid a referral as provided for under the Oregon Constitution.

The concept of a need for state land use planning was to be severely tested before the SELUC at its meetings, which began January 18, 1973, even though the Committee members had concurred in principle from the beginning.⁴

The majority of the opponents who spoke against SB 100 in January and early February, testified against the concept of need for any land use planning, and state land use planning in particular. Even some proponents, such as Paul Rudi, Coos County Commissioner, were not fully committed to the

need for state land use planning.

Commissioner Rudi, in testifying for SB 100 stated:

My primary interest is in coastal land use problems. I am not in favor of big government solving local land use problems, either Federal or state. . . . although I recognize the public's right to determine land use. My philosophy of land use is that we, therefore, are custodians for now of the land for future generations.⁵

Who wants state land use planning? became an issue before the SELUC when Lonnie Van Elsberg, Coos County Commissioner, in testifying against SB 100, suggested that the voters should initiate petitions for a state-wide vote on a land use planning law. He added, "In my county there would be a loss of local control. . . . People need both a voice and a choice with a vote."⁶

James Allison, Oregon Rural Landowners' Association, asked permission to ask questions of the Legislative Counsel, Steve Hawes, which Mr. Allison submitted in writing. His questions, which seemed coherent, pertinent and reasonable, focussed on two important issues -- ⁷

1. Public aesthetics vs. private profit
2. SB 100's power to eliminate pre-existing land use

The questions went unanswered. No Committee discussion followed, as to possible answers.

Later, even though SB 100 was redrafted to help insure Legislative passage, the revisions did little to appease opponents on the need for land use planning or to slow them in their desire to express their opposition before SELUC. However, the SELUC had accepted the concept, and Chairman

Hallock reflected this acceptance with his opening remarks to the Committee. Mr. Hallock announced that the opponents of SB 100 were to testify first. However, he said, "No philosophy on either concept of land use policy or politics will be tolerated."⁸

There were, however, those who were quite vehement in their opposition to the concept of a need for state land use planning. Mrs. Grace Lein, Estacada, Oregon, and member of Voice of Liberty, condemned what she termed "big government and all the adherents to, and practitioners of it."⁹

Chairman Hallock of SELUC, showing great restraint, threatened in the early stages of Mrs. Lein's out-pouring to "gavel her out of order," for discussing philosophy, contrary to the conditions of the hearing. However, in an apparent effort to encourage "citizen participation," he let her ramble on.¹⁰

During a later SELUC hearing,¹¹ opponents to the concept were still most vociferous. Specifically, Ruby Nichols, Silverton, Oregon, and a member of Save Silverton Committee, was outspoken in her criticism of the need for state land use planning. Mrs. Lein reappeared, saying she felt that, before the state made land use plans, the citizens of Oregon were entitled to vote on Senate Bill 100. Senator Hallock scolded Mrs. Lein for discussing the concept of land use. The spectators broke into laughter at Hallock's expense, whereupon he threatened to have the spectators cleared from the hearing room.¹²

John Webber, a Canby berry farmer, said that he concurred with Mrs. Lein in that the concept of land use planning needed to be referred to a vote of the people.¹³

The provocations were nested in the problem of need vs. want.

THE PROVOCATIONS

The opponents and proponents of what constituted a state land use planning need in Oregon differed provocatively on the basic philosophy of the concept. The participants in the evolution of Senate Bill 100 held remarkably consistent viewpoints on each of the issues involving the control of private and public properties' land uses. There were essentially four primary issues -- constitutionality, reins of power, dollars and sense, and Councils of Governments (COGs), plus a variety of minor issues within the larger ones. Conflict was inevitable. Most of these issues had a separate battlefield during the SELUC hearings on the bill.

The Issues

The issues developed because Senator Macpherson's LUPC's original draft of SB 100 failed to heed any ideas other than Macpherson's. The Senator believed that statewide land use planning was the only way to save rural land from urban development.

The LUPC did make a feeble attempt to hold some public hearings during 1972 in the formative stages of the bill,

but the hearings were given little, if any, coverage by the press, as the news reporters did not consider LUPC's efforts a serious endeavor at the time. What public was present at LUPC hearings was usually there at Senator Macpherson's invitation. Of these, most again were proponents of land planning. Thus almost no one in Oregon except the LUPC and its staff and a few associates had any knowledge or understanding of the proposed bill prior to its submission to the Legislature.¹⁴

This state of affairs was most unfortunate for the acceptance of the land use planning concept by either the public or its elected representatives, the Legislature. Failure to inform and involve the general public during the bill's planning stages, paved the way for its later rejection. Had the LUPC held even one well-publicised meeting in each of the 14 regional districts in the state, the public's reactions and ideas could have been ascertained and utilized, thus avoiding the later intense criticism.

William Ruckelshaus, former Administrator of the Federal Environmental Protection Agency, said:

The problem facing environmentalists concerned about land use is that government restrictions go against the American grain. Land use planning is perhaps the most critical of the remaining environmental issues in that it will probably require the most fundamental changes in national habits and values. . . . we prize our freedom in this country, and, at first glance, nothing seems less compatible with the American 'credo' than telling a man what he can or cannot do with his land.¹⁵

To summarize briefly, all of the conflicts revolved

around the question of who shall be given, plus where, by whom and for how long, what and how much power to be exercised against what and whom.

The issues -- constitutionality, reins of power, dollars and sense, and Councils of Governments (COGs) -- were fundamental ingredients in the provocations.

Constitutionality. Two constitutional issues generated active citizen participation during the SELUC hearings on SB 100 -- "taking" and "taxation without representation." While each issue constituted political symbolism, each was definitely a Legislative issue which had to be resolved, if any state land use planning law was to be enacted at the 1973 Legislative Session.

Was land use planning a valid regulation or did it constitute a "taking?" The "taking issue" had evolved from a desire on the part of the drafters of SB 100 to achieve uniformity and better enforcement.

The bill constituted a major step forward in land use planning from SB 10 (1969). In the opinion of the environmentalists, it was not a big enough step. Political conservatives, however, feared that the bill was too great a leap forward with a strong potential for infringement on private property rights. This potential for infringement on private property rights, referred to as the "taking issue," constituted a threat to many Oregonians' Puritan traditions of hard work, saving money and owning land.

The "taking issue" derived from the Fifth Amendment to the United States Constitution which stated, ". . . nor shall private property be taken for public use without just compensation."¹⁶

The regulation for public peace, health and safety, termed the "police powers," had been upheld as Constitutional by the United States Supreme Court. Valid land use regulations under the "police powers" had been declared Constitutional by the Court.

Few of the general public testifying against SB 100 were in a position to distinguish between a valid regulation of land use and a "taking" that required compensation. Opponents of planning primarily cited the designated "areas of critical state concern" to emphasize the "taking."¹⁷

However, among political conservatives, there was an attitude that the government was trying to take private property with the imposition of state land use planning. This viewpoint was held by a minority, but an extremely vociferous minority!

Quiet voices held this viewpoint also. Two of them were University of Oregon graduate students in urban planning, Richard Emigh and Ed Rhodes, who, in their appearance before the Critical Areas Subcommittee, asked for a clarification of the quarter-of-a-mile buffer zone around forest and park lands.¹⁸ The SELUC discussion continued as follows:¹⁹

Hal Brauner, Administrative Assistant to Governor Tom

McCall, answered Emigh and Rhodes, by saying:

The drafters did not intend to include the total lands administered by the State Forestry Department, but only those park and recreational areas that they have developed on those lands, which are to be surrounded by buffer strips.

Senator Wingard asked Walter Brown of Clackamas County, who said that he represented 100 residents of his county, and who had testified for SB 100, "Mr. Brown, some people who opposed SB 100 are especially opposed to the areas of critical concern -- 'the taking of land without compensation.'"

Mr. Brown answered Senator Wingard:

From a constitutional standpoint, if the land is vacant and if they (the owners) have not established a use of the land, the zoning can be changed without any deformation of property rights within the Constitution.

"Mr. Brown," asked Senator Burns, "Would you please provide the Subcommittee with some authority on the statement you just made?"

Walter Brown answered that under "police powers" the zoning could be changed. Brown said further that he would like the one-fourth mile buffer zone extended to one-half mile at the interchanges.

Martin Davis, Oregon Environmental Council, after testifying for SB 100, was asked by Senator Macpherson, "Do you really need a one-fourth mile buffer zone around all the different types of parks and recreation areas we have designated?"

"We are giving a blanket one-fourth mile buffer zone within the state," replied Martin Davis.

Opponents of SB 100 were present at the next public hearing of SELUC and in full voice. They were opposed to the bill period. Some, however, were more vociferous than others.²⁰

Shirley Hulegaard, Eugene, said that her group²¹ believed that SB 100 was unconstitutional. She said that they were prepared to get an injunction to take the bill to the United States Supreme Court. She added, "I am very concerned about private property rights."

George Auckland, Portland, in testifying against SB 100 made two specific points. First, he said that SB 100 authorized "taxation without representation" through the projected 14 Administrative Planning Districts. Lastly, he cited the fact that there was no coordination between planners and tax assessors, and that there needed to be.²² Other opponents to the COG concept cited "taxation without representation," briefly in their testimony.

Reins of Power. The opponents also questioned the SELUC as to who held the reins of power to determine policy. Most of their testimony, while forcibly brief, was sharply worded. For example, the testimony of two men was as follows:²³

Irwin S. Adams, a former Vice-President of the North Clackamas Chamber of Commerce, said that he lived in Milwaukie and that he was speaking on behalf of 538 members of the Chamber of Commerce in the North Clackamas area. Adams said, "Government should only be at the local level."

Russ Krueger, Portland, said, "We already have existing laws and should abide by them. . . . zoning hearings are today's Roman Circuses!"

There was also concern for "empire building," control of executive power and citizen participation, at the SELUC meetings.

Several state agency representatives testified favoring state land use planning, "with tongue in cheek," as their approval of the bill hinged on the premise, "only if it were placed under my jurisdiction." This was particularly true of the Department of Environmental Quality (DEQ) and the Water Resources Board. The State Highway Department chose to remain silent.

Political conservatives were the most outspoken on the issue of executive power, although the Association of Oregon Counties and the League of Oregon Cities each had its say. Gordon Fultz, as a member of the Drafting Subcommittee, made a point of helping to limit executive power.

The failure of Senator Macpherson to encourage citizen participation during the creation by the LUPC of the original SB 100, caused repercussions during the SELUC hearings by "progressives," who wanted citizen participation mandated into all facets of the state land use planning process and concept. Joyce Cohen of Tri-County New Politics, was vehement in her concern for citizen inputs into the whole planning process.²⁴

However, the issues -- dollars and sense and the councils of governments, seemed to generate the most politically effective proponents and opponents. These issues were to create the greatest changes in SB 100.

Dollars and Sense. It was a matter of dollars and sense to Oregon's business and community leaders who found Senate Bill 100's basic concept abhorrent, but they were primarily concerned that the bill's thrust was designed to further stifle their areas' economy. People from Southwestern Oregon were "up tight" over their fears for possible consequences of land use planning, particularly since SB 100 termed that portion of the state to be an area of designated critical concern. The area, already suffering from massive unemployment in the forest industry, was to lose even more jobs under the original SB 100.

Councils of Governments. The councils of governments (COGs) were an illegal millstone seeking to strangle the voters, taxpayers, property owners, and citizens of Oregon, in the opinion of many speakers, including Grace Lein, John Webber and Shirley Hulegaard. Most elected officials from outside the City of Portland were among the opponents of the COGs as designated planners. The City of Portland preferred COGs as an alternative to Multnomah County, in its effort to avoid subservience to the County.²⁵

The Conflicts

The conflicts ignored by LUPC while writing Senate Bill

100 were to assume crisis proportions during the 1973 Legislative Session. Major sources of criticism and disagreement stemmed from the following issues:

1. Lack of "citizen participation"
2. Constitutional guarantee to "property rights"
3. Government without representation --
 - a. By executive order (fiat)
 - b. Without popular election control
 - c. By regional interstate compacts
4. Economic deprivation
5. State control over local matters, state vs. local authority
6. Non-residents and non-taxpayers seeking to impose their will on others
7. Power struggles between state agencies
8. Power struggles between state agencies and public over who controls whom
9. Power struggles between Legislative and administrative controls
10. Effective date for Bill

Three major conflicts appeared -- political power struggles, localism versus regionalism, and economics versus environment. All three conflicts plus the above-listed ten problem sources had to be resolved, if SB 100 was to become law in Oregon.

Political Power Struggles. There were at least four separate struggles for power during the SELUC's hearings. They occurred between state agencies; between the executive department and the legislative bodies; between the public and legislative units; and between the public and the executive.

There was a basic philosophy of "give an inch, take a mile" in effect between most of the participants which the SELUC sought to mediate, to assure the legislative enactment of Senate Bill 100.

The struggles between state agencies evolved because of the efforts of one agency to become bigger and more important at the expense of another in the game of "empire building." An interesting intramural struggle developed between an existing state agency and the proposed new state land use planning organization, namely the Department of Environmental Quality (DEQ) versus the Land Conservation and Development Commission (LCDC). The eventual winner was LCDC.

In the public's mind, the Governor had advocated regional planning and therefore he was responsible for the COG designation as planners under SB 100, and must carry the blame for them. One SELUC hearing produced testimony as follows:²⁶

Dan Dority, Lake Oswego resident and farmer who owned and operated a 600-acre farm in Marion County, said that SB 100 was the beginning of the Government takeover of all private land. Chairman Hallock of the SELUC became angry when opponents of the bill clapped approval of Mr. Dority's statement. Hallock told those present that the Oregon State Police were there and prepared to clear the hall, if necessary.

Ruby Nichols, Silverton and the Save Silverton Committee presented several petitions containing over 1000 sig-

natures of people who questioned the constitutionality of the Governor's right to form 14 Administrative Districts, and to set up 14 Administrative Councils of Governments, which were not elected by the people. Mrs. Nichols said, "This is rule without representation -- a power grab by elected and appointed officials."

"During what period were the signatures on the petitions gathered," asked Senator Hallock?

"November and December, 1972," replied Mrs. Nichols.

Don Darling, in saying that he agreed with what Ruby Nichols had said previously, added, "Section 55 of SB 100 is 'locking the fox in the hen house.'"

The conflict between executive and legislative branches of government centered on the "areas of critical concern." The LUPC had added minimum planning standards to the third draft of LC 100 during the Committee's August and September work sessions at Chairman Macpherson's insistence. Although various provisions in the proposal required locals to comply with state guidelines and objectives (context), nothing had been said concerning what the locals were to include in their plans (content).²⁷

Governor McCall sought to strengthen SB 100 to give LCDC absolute power to determine land use planning in Oregon. The Governor's Office had encouraged the designation of "areas of critical concern" and of the regional planning agencies during the writing of SB 100. The Executive Office supported bureaucratic planning with its inherent technical

expertise to provide a "first best" solution to avoid California's urban development problems.²⁸

During a meeting on the designation of critical areas, Dean Brice, legislative lobbyist for the AOI, said that he supported the listing of general, "unspecified areas, such as flood plains, wet lands, coastal areas, etc., rather than specific geographic areas as described in the bill."²⁹ The designation of regional planning agencies was perceived by opponents as a potential taking of legislative power to determine policy.³⁰

The collective battles involving areas of critical concern and regional planning reached World War III status.

Both proponents and opponents of land use planning in Oregon saw the Legislature as the enemy. Those favoring the concept wanted it strengthened, while those opposed, wanted it weakened, if not eliminated. Areas of critical concern and regional planning also provided battlefields.

An early SELUC discussion went as follows:³¹

Senator Atiyeh asked Steve Schell, attorney and Director of Oregon Shores Coastal Coalition (OSCC), "Are there cities in the set-back area and, if there are, what is the home rule aspect?" Steve Schell replied:

There are incorporated areas, and we think these should remain in there. The home rule aspect seems to me to be what we are talking about in the areas of state-wide critical concern. The state has a valid interest that is contrasted with local interests. If there is a state interest, and it is justifiable, the state should take precedence and should be able to sustain its regulations in that area.

So the battle was joined by the issue of what was to be planned? Still another conflict, localism versus regionalism, required definition.

Localism vs. Regionalism. While the Executive Department and the planning experts favored the regional planning concept to provide a broader picture of land use planning and its various externalities, the Oregon Association of Counties and the League of Oregon Cities vehemently opposed the regionalism concept. "Taxation without representation," and "one man, one vote!" were their battle cries. "Who Plans -- Sub-state?" was to be their battlefield.

There was yet another conflict to be faced -- Economics versus environment.

Economics vs. Environment. People vs. planners, or government vs. property owners, or jobs vs. survival of man and his environment -- each had its adherents and spokesmen.

"Plans What?" was their battlefield, with the Oregon Legislature occupying "no-man's-land."

So the battles were joined, and passage of Senate Bill 100 mandated compromises.

Efforts to Compromise

The conflicts were barely visible during LUPC's drafting of LC 100, but they became the dominant theme of the SELUC hearings on SB 100. Solutions had to be found by political compromises, one by one.

Senator Macpherson had not heard any opposition ideas during the drafting of the original land use planning bill by his LUPC. His Committee staff had made changes in the fifth and final draft in efforts to improve the bill's chances of legislative acceptance, but it was SELUC that was forced to generate most of the requisite political compromises.³²

SELUC listened and heard both sides of the testimony presented before it at the Committee's hearings on SB 100, and then made the changes through political compromises, which were necessary to garner enough votes to assure the bill's passage in the Senate. In the process the Committee satisfied very few, either individuals or organizations, proponents or opponents.

Senator Macpherson's concept of a need for a state land use planning law was alive and making progress. While the original proponents won some of the skirmishes, they lost most of the battles in the redrafting of SB 100.

SUMMARY

The problem -- need versus want -- was to travel with Senate Bill 100 until final enactment. All of the provocations had to be resolved through political compromise, before enactment.

In the end, when need equaled want, Oregon would have its state land use planning law.

The "taking issue" and the taxation without represen-

tation issue took back seats among the Legislative issues, when compared politically to "reins of power," "Dollars and Sense," and the Councils of Governments (COGs).

In "Economics vs. Environment," the public's and the Senators' questions revolved around "jobs" and "property rights" versus the planners and the executive branch. "Localism vs. Regionalism" was in reality anti-COGs vs. pro-COGs, plus the executive branch. The power struggles in the development of the state land use policy were between the public, the Executive branch and the Legislative branch, in all combinations.

"Who Plans What?" furnished the stage for some of the political compromises required to enact Senate Bill 100.

NOTES

¹The Desk Standard Dictionary (New York: Funk and Wagnalls Company, 1920). s.v. "want."

²Minutes of Land Use Policy Committee (LUPC) meeting on Legislative Council 100 (LC 100) (Salem: July 14, 1972) p. 4.

³Oregon Constitution, Art. IV, Sec. 1.

⁴Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 18, 1973) Tape 1, Side 2 and Tape 2, Side 1.

⁵*Ibid.*, January 25, 1973, Tape 2, Side 2 and Tape 3, Side 1.

⁶*Ibid.* ⁷*Ibid.*

⁸*Ibid.*, January 30, 1973, Tape 3, Side 1.

⁹*Ibid.* ¹⁰*Ibid.*

¹¹*Ibid.*, April 3, 1973, Tape 14, Side 1.

12Ibid., March 8, 1973, Tape 11, Side 1 and Side 2.

13Ibid.

14Personal Interviews with Gordon Fultz, Assistant Director of Association of Oregon Counties (Salem: December 5, 1973, and March 25, 1974).

15William Ruckelshaus, "Nation Today," Oregon Journal, (Portland, Oregon: February 13, 1973) sec. 1, p. 6.

16United States Constitution, Amendment V.

17Minutes of SELUC meeting, January 25, 1973, Tape 2, Side 2, and Tape 3, Side 1.

18Minutes of Critical Areas Subcommittee, February 12, 1973, Tape 5, Side 2, and Tape 6, Side 1.

19Ibid.

20Minutes of SELUC meeting, February 12, 1973, Tape 6, Side 2, and Tape 7, Side 1.

21Ibid.

22Ibid., January 30, 1973, Tape 3, Side 1.

23Ibid., February 12, 1973, Tape 6, Side 2.

24Ibid., January 25, 1973, Tape 2, Side 2.

25Personal Interviews with Gordon Fultz.

26Minutes of SELUC meeting February 12, 1973, Tape 6, Side 2.

27Minutes of LUPC, August 14, 1973, p. 4.

28Ibid., February 4, 1972, p. 6.

29Minutes of Ad Hoc Committee meeting on February 23, 1973, Tape 8, Side 1.

30Ibid.

31Minutes of Critical Areas Subcommittee, February 12, 1973, Tape 6, Side 1.

32Personal Interviews, with Steve Hawes, Legislative Counsel (Salem: November 30, 1973 and December 3, 1973).

CHAPTER IX

WHO PLANS -- STATE?

INTRODUCTION

That there was a need for a state agency was established by the Land Use Policy Committee (LUPC). The Committee determined an organizational structure for the state agency -- the Land Conservation and Development Commission. Senate Bill 100 (SB 100) said that a state plan required a state agency, which was to be directed by a five-member Commission. This Commission, which was not subject to conflict of interest, was to hear appeals as a board. The Commission was to have a citizen advisory committee in lieu of citizen participation. The Commission was to be directly accountable to the Governor.

There were several facets involved in creating both a workable and a politically feasible state land use planning agency in the Senate committee. The conflict involved technical expertise vs. "the public."

To resolve the conflict, SB 100 became a product of political compromise. There was to be a state agency, but there was to be no Appeals Board, which was replaced by state field officers. State agency leadership generated two minor skirmishes on Commission membership and conflict-of-interest.

Advisory committees provided for direct citizen participation.

STATE AGENCY ORGANIZATIONAL STRUCTURE

The Senate Environment and Land Use Committee (SELUC) accepted the state agency organizational structure as proposed by LUPC. Neither the Senate Committee nor those who testified before it questioned the state agency concept as conceived in SB 100.

An agency had been created to oversee land use planning in Oregon, but there remained an unanswered question -- who would mediate the planning conflicts between the diverse planning viewpoints after the enactment of SB 100? the Appeals Board?

APPEALS BOARD

The Senate Committee did not discuss the appeals concept until March, after the redrafting of SB 100, when Chairman Hallock said, "According to ORS 183.310 to 183.500, a built-in hearing procedure must be specified. It is not in the bill at present. I am concerned about costs to the state on appeals."¹

Committee discussion on the appeals concept went as follows:²

Senator Burns said that if you wanted to make your notice provisions of sub-section (2) of Section 52 consistent with your notice provisions on goal hearings, you were going

to have to specify it in the statute.

Senator Hallock asked Kathleen Beaufait, Legislative Counsel's Office, "Will you check the definition of 'affected person' or possibly 'aggrieved person'?"

L. B. Day added the comment that the Drafting Subcommittee did not mean the appeals provisions in the bill for "carpet baggers."

Senator Macpherson, speaking concerning Section 45, said that he wanted a better notification system. Senator Hallock suggested that Kathleen Beaufait, Legislative Counsel, look at the section pertaining to "public hearings" after 90 days and also, after 30 days. He asked Mrs. Beaufait to apply the same kind of language that appeared in Section 36 to Section 37 to clarify the wording. Senator Burns then asked:

Mr. Day, did you build an appellate procedure for the appeal of a cost function? If a dispute arises between the county and the state with respect to the assessment of the cost, what is the procedure? Can a local government take the state to court over cost charges billed by the state to a local government unit?

Senator Macpherson said that the teeth of the bill were in paragraph (d) of Section 51. He stated that the phrase "this petition by any affected person" meant a request for change, such as a zone change, was being asked. The Senator then asked, "Can it actually be appealed, or can only the ordinance be appealed?"

Hal Brauner answered that, in this case, the ordinance was the action.

Senator Burns was still concerned about the appeal section when he asked:

Mr. Day, Can you use some legal help with the appellate section? . . . I want the language specified on who appeals and for what. How? When? . . . The rules should apply equally to special districts.

The SELUC discussed the appeals concept for the last time late in March, as follows:³

Mrs. Beaufait presented her findings, as required by the Committee, on the semantics of the words "affected" and "aggrieved." She said, "an affected person is a person who is somehow touched, but perhaps not directly. An aggrieved person is a person who has been hurt financially."

The Committee tried to define the phrase "public need" as it was part of the criteria in the section on appeals in SB 100. The discussion evolved around which public? and what need?

Senator Atiyeh moved that Section 52 of SB 100 be amended by the phrase "whose interests are substantially affected." The added words permitted class action suits by others than the immediate neighbors. Atiyeh's motion passed by a 4 to 3 vote, with Senators Macpherson, Wingard and Hallock voting "No."

The appeals concept originated in the LUPC as a referee between planning agencies. In the Engrossed SB 100 the bill permitted class action suits by persons who were substantially affected. To accomplish the arbitration, or avoid it, between planning agencies, District Field Offices

were added to the state agency.

DISTRICT FIELD OFFICES

When the concept of appeals between local planning agencies was eliminated from SB 100, the need for a method of avoiding future conflict and confusion required consideration. The concept of seven separate areas or districts was proposed by Senator Hector Macpherson as a possible alternative to the "mandatory COGs" concept of the original SB 100 when Macpherson reported on his COGs Subcommittee findings to the SELUC. The proposed seven districts were as follows:⁴

- 1st District -- Portland Metropolitan area
- 2nd District -- Oregon Coastal Conservation and Development Commission (OCC&DC)
- 3rd District -- The remainder of the Willamette Valley
- 4th District -- Southern Oregon (Douglas, Jackson and Josephine Counties)
- 5th District -- Deschutes Basin
- 6th District -- Northeastern Oregon
- 7th District -- Southeastern Oregon

The Drafting Subcommittee, chaired by L. B. Day, decided that, after the removal of the "mandatory COGs" (Councils of Governments) concept from the original SB 100, the local governmental units needed to have ready access to the state agency. To accomplish this, the Subcommittee determined that seven field offices were to be opened by LCDC to serve this projected need. The revised SB 100 did not designate where these offices were to be sited by the LCDC, however.⁵

When the Drafting Subcommittee's Chairman, L. B. Day, reported on the revised SB 100 to the Ad Hoc Committee, a dialogue ensued between two Ad Hoc Committee members and L. B. Day as follows:⁶

Senator Thorne, of Pendleton, asked, "Are the goals flexible? Could a freeway interchange be rezoned downward?"

L. B. Day replied, "The goals were not flexible. There were field offices which could have good coordination with the counties."

When L. B. Day reported on the concept to the SELUC, a brief discussion on District Field Offices ensued, as follows:⁷

Mr. Day said, "There would be seven field offices which would have good coordination with the counties."

Senator Burns, Portland, asked, "In setting up the seven field offices, could they be structurally set up paralleling the DEQ, State Highway Department and other agencies involved?"

L. B. Day answered, "Yes, but I would not want it mandated."

Since "big things come in small packages," so it was with the seven District Field Offices concept, which provided state-wide land use planning coordination between local planning agencies and the state agency.

The question of state agency leadership required decisions.

STATE AGENCY LEADERSHIP

The question of state agency leadership, as decided by Senator Macpherson's LUPC and determined by SB 100, which stated that the state agency was to be the Land Conservation and Development Commission (LCDC), to be led by a five-member Commission, and not by a single director. The Commission was to be appointed on a geographical basis by the Governor, and the five Commissioners were to serve "at the Governor's pleasure."

Commission Membership

In the fifth and final draft of LC 100, Commission membership as written by the LUPC, mandated a five-member Commission. Membership provisions for the Commission remained unchanged until February, 1973. During the interim, LC 100 had become Senate Bill 100 (SB 100). The bill was before the SELUC, chaired by Senator Hallock. The Ad Hoc Committee had adopted a significant change when the committee enlarged the Commission to seven members to be appointed by the Governor, but removable only for cause.⁸

At the SELUC work session in March, 1973, Senator John Burns, Portland, moved for the adoption of an amendment to Section 5, (1), of the Engrossed SB 100 -- "after 'of' the deletion of 'seven' and the addition of 'five'." The roll call vote showed five "eyes," with Senator Wingard, Eugene,

voting "no." This action returned SB 100 to the original concept of five LCDC Commission members.⁹

Still another refinement was added to the requirements for Commission membership during the work session. Senator Wingard moved that the membership embraced in the bill needed to be comprised of four -- one from each of the four Congressional Districts, but with no more than two of the entire group from Multnomah County. He added that at least one needed to be from Multnomah County, with the balance of seven at large. The motion on a roll call vote showed six ayes, with Senator Burns casting the lone "no" vote.¹⁰

Conflict of Interest

Conflict of interest, while discussed by LUPC, had not been included in the fifth and final draft of LC 100, which became SB 100. There was no testimony on conflict of interest before the redrafting of the bill. When SB 100 was revised the concept was still not mentioned. It was not mentioned until the Drafting Subcommittee presented the redrafted bill to the Ad Hoc Committee. During that meeting conflict of interest merited a dialogue as follows:¹¹

Martin Davis, Oregon Environmental Council (OEC), asked "Has the Drafting Subcommittee given any consideration to adding a further qualification for Commission membership, i.e., preventing an appointment (to the Commission) where there is a conflict?"

Mr. Van Atta responded that the Subcommittee had not.

He noted that he wouldn't oppose language which would prohibit the participation of a Commissioner who had a "direct financial interest."

Ward Armstrong urged that any language concerning conflict of interest should also be applicable to local planning bodies. Following a brief discussion, it was agreed that further study should be given to the qualification. Martin Davis offered to work on an appropriate amendment.

Hal Brauner, in his explanation of SB 100, pointed out that Sections 4 through 7 made minor changes in the Commission. "The provision that allowed Commission members to be removed by the Governor for any reason was changed to read 'for reasonable cause.'"

Steve Hawes voiced his objection, saying that the language needed to be "for cause," not "for reasonable cause."

Martin Davis expressed concern about conflict of interest on the Commission. He proposed an amendment that was to require a member to disqualify himself from voting on a particular issue if the Commission member had a financial interest.

Steve Hawes said that the Governor's right to remove "for cause" took care of this.

L. B. Day asked, "Are you for a public declaration of financial interest or should the (Commission) member disqualify himself from voting?"

Mr. Day continued by saying that he suggested looking

into this and developing language for the full committee's consideration.

Thus, as finally worked out by the Committee, state land use planning in Oregon was to be led by a seven-member Commission, which was to be geographically representative of the state as a whole. Commission members were to serve four-year terms, but could be removed by the Governor for cause. All Commission appointments were to be made by the Governor, but no Commission member was to serve more than two full terms. While possible conflict of interest had been discussed, the subject was not included in the Enrolled SB 100. The drafters of the bill had been particularly concerned that LCDC would face a true perspective of land use planning in Oregon, so a Citizen's Advisory Committee concept was added.

ADVISORY COMMITTEE

In January, 1973, LC 100 became SB 100. In testimony before SELUC, Joyce Cohen, Tri-County New Politics Land Use Task Force, said that she wanted citizen input rights protected by being directly into the bill.¹²

Mr. Armstrong said that the Drafting Subcommittee had considered, but not really refined its thinking on advisory groups at both state and local levels, which guaranteed maximum public input. Kenneth Bonnem, Corvallis, was invited

to share his views on local advisory committees relating to their impact on planning programs in the Benton County area. Mr. Bonnem said that the citizens groups were an asset.¹³

When L. B. Day reported on the work of his Drafting Subcommittee to the Ad Hoc Committee on the redrafted SB 100 he said that there was "a plan for public involvement." He quoted from the printed new SB 100 --

To assure widespread citizen participation in all phases of the planning process, the Commission shall appoint a State Citizen Advisory Committee, broadly representative of geographic areas of the state and of interest relating to land use . . . ¹⁴

The Advisory Committee at the state level was to become law. In fact, the matter was never discussed again by anyone -- not by the SELUC, not by the Senate nor the House of Representatives.

SUMMARY

State Land use Planning was to be in Oregon, but just how it was to be organized resulted from a series of political compromises in the SELUC. The state planning agency was titled Land Conservation and Development Commission (LCDC) with state field offices to resolve minor disputes between local planning organizations and the State of Oregon. The Leadership question, which generated two minor skirmishes involving commission membership and potential conflicts of interest, was solved with yet more political compromises.

Commission members were to be geographically representative, with at least one and no more than two from Multno-

mah County. There was no mandate against conflict of interest in the Enrolled SB 100.

To insure direct citizen participation in state-wide land use planning, Advisory Committees were mandated in Senate Bill 100.

The state agency was now provided for, but there was a major battle in the offing -- "Who Plans -- COGs?" -- yet to be fought.

NOTES

¹Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: March 6, 1973) Tape 11, Side 1.

²Ibid.

³Ibid., March 20, 1973, Tape 18, Side 1.

⁴Ibid., February 12, 1973, Tape 6, Side 1, and Tape 7, Side 1.

⁵Minutes of Ad Hoc Committee meeting (Salem: February 23, 1973) Tape 9, Side 1.

⁶Ibid., February 27, 1973, Tape 9, Side 2.

⁷Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.

⁸Minutes of Ad Hoc Committee meeting, February 27, 1973, Tape 9, Side 2.

⁹Minutes of SELUC meeting, March 6, 1973, Tape 11, Side 1.

¹⁰Ibid., March 20, 1973, Tape 12, Side 1.

¹¹Minutes of Ad Hoc Committee meeting, February 27, 1973, Tape 9, Side 2.

¹²Minutes of SELUC meeting, January 30, 1973, Tape 3, Side 1.

¹³Minutes of Ad Hoc Committee meeting, February 23, 1973, Tape 9, Side 1.

¹⁴Ibid., February 27, 1973, Tape 9, Side 2.

CHAPTER X

"WHO PLANS -- SUBSTATE?"

The question, who plans -- substate? to be answered by the various participants was whether there was to be a regional agency between the state agency and the local governmental units, and if there was, which agency was to be designated to carry the burden?

The basic conflict, "localism" versus "regionalism" was delineated. The LUPC tried two different regional organizations in drafting LC 100 -- Administrative Regions and Administrative Districts, before the Councils of Governments (COGs), which were authorized in SB 100.

The SELUC, after hearing public testimony on SB 100, found that there was no guarantee of the bill's legislative enactment. To remedy this, the SELUC had to find an acceptable solution to the conflict between "localism" and "regionalism". The SELUC Chairman appointed an Ad Hoc Committee and a Drafting Subcommittee to provide the necessary revisions to SB 100. The "37th County" dealt with another local problem, the power struggle between Portland and Multnomah County.

"LOCALISM" VERSUS "REGIONALISM"

The conflict "localism" vs. "regionalism" was generated as the LUPC sought to devise a chain-of-command for land use planning in Oregon. From the beginning the LUPC discussed the need for a buffer unit between the local governmental units and the state. The yet-to-be-resolved question of what or which unit was to be the buffer necessitated the definition of "localism" and regionalism".

The dictionary¹ says that localism's genetic roots are derived from the Latin word, locus, which is a "place, locality, area." The word regionalism was not in my dictionary. However, regional is defined as "of or pertaining to a region; sectional; local," in Roget's Thesaurus in Dictionary Form,² which also uses region as a synonym for locus.

Therefore, it is assumed that all of the participants in this conflict, "localism" vs. "regionalism," were talking about the same thing. Utilizing law as a basis for judgment rather than semantics for the two words, it is possible to clarify the situation.

The State of Oregon's Constitution³ permits smaller units of government to be formed at the request of the residents of the area in question with the consent of the Legislature. These units are known as local governments: cities, counties and special districts. Regions are usually composed of two or more units of these local governments.

Regional governmental units are, however, seldom legally formed under the Oregon Constitution.

The lack of legal sanction is, in essence, the crux of the conflict between "localism" and "regionalism".

With "localism" and "regionalism" defined, the concepts were assigned their designated roles in the projected state planning organization by SELUC.

The Senate Environment and Land Use Committee

The proposed organizational sub-structure for the Land Conservation and Development Commission (LCDC) created a furor before and for the Senate Environment and Land Use Committee.

The statement was made, during the discussion on COGs, that COGs boundaries were equal to district planning organization boundaries, which were in turn equal to the boundaries of the administrative districts, and that therefore the 14 planning districts were equal to the 14 administrative districts. Senator Atiyeh suggested that an "umbrella plan" needed to be developed to cover the numerous problems. He offered no explanation of his "umbrella plan."

Senator Thorne stated that "there are no COGs in Wheeler-Umatilla Counties. . . . SB 100 forced joining into regional state districts. . . 36 counties vs. 14 districts."⁵

Pertinent committee dialogue was as follows:⁶

"COG boundaries are by Federal edict."

"It was a two-hour drive," stated Senator Ripper, "for public meetings of COGs in some parts of the state This was particularly bad at night."

"Public meetings are required by the ORS."

"Public meetings equal public participation."

"Local control with local election of COG members by direct vote should be an option."

"Another layer of Government."

At SELUC's first public hearing on SB 100, opponents of the "COG" concept were quite specific in their criticism. Lonnie Van Elsberg, Coos County Commissioner, suggested that the voters could initiate petitions for a whole planning district vote since, without such a vote, the people would have no local control or a voice in the planning.⁷

The testimony before the SELUC did not fully reflect the public's aversion to regionalism, except for two of 20 questions asked by James Allison, President of the Oregon Rural Landowners' Association, as follows:

15. On page 10, Section 22, Lines 24 through 27:

May we have an explanation of precisely what powers are granted by the statement:

'Each District Council shall Coordinate land conservation and development by the cities, counties and special districts within the planning district.'

16. Does this bill propose to grant to this regional government the authority to approve or disapprove the comprehensive plan of development for Clackamas County?

The committee hearing's dialogue continued as follows:

SELUC Member John Burns, of Portland, an ardent supporter of SB 100, disagreed sharply with Van Elsberg's position. Chairman Hallock asked Van Elsberg, "If a county wanted to coalesce with another county, it could do -- 13 counties have already done so; what if this concept were in this bill, would you like it better than the COG's?"

"Yes," answered Commissioner Van Elsberg.

Kenneth Brown, Executive Director of Farmers' Political Action Committee from Gervais, spoke against the bill. When questioned, he declined to give the number of members that he represented. Brown said:

I am in favor of the purpose of SB 100, but it is too Utopian. . . police action bureaucracy. I am anti the COG proposal and anti the whole "metro" concept. SB 100 represents a land steal of farm land.

Harold Gates, City Attorney for Lincoln City, said that if Lincoln County was within a planning organization it would be "swallowed up" in any vote in the district by a ratio of 3 to 1. "Therefore," he continued, "this would constitute a lack of representation."

Bud Svalberg, Oregon Water Resources Board, said that he was concerned about the power and authority that were to be given the district COGs that might affect the present jurisdiction of his agency. He said that his agency was best equipped to run LCDC.

Eldon Hout, Washington County Commissioner, testified first for the proponents of SB 100. Hout said, among other

things, "CRAG works on political compromise . . . not well, but it works.

Chairman Hallock asked Hout:

If there were only two choices--if we were to make the governing bodies of the COGs elective, or there was an option instead, where counties could be autonomous and get together voluntarily, which of the two would you choose?

"Getting together voluntarily," Hout replied. He further said that a regional organization was best in the metropolitan area, but it was a poor solution in non-urban areas. Hout said that "the Lane COG was the best in Oregon, followed by the Mid-Willamette Valley COG."

Adverse public opinion of the concept of "regionalism" vs. "localism" in general, and the COGs in particular, dominated the initial meetings of the SELUC. Citizen reaction was so strong that Chairman Hallock appointed a COGs Subcommittee.⁹

The COGs Subcommittee

Chairman Hallock suggested that the Subcommittee, when looking at the whole intermediate government bodies' concept, needed to make a serious effort to resolve potential conflicts between Sections 22, Subsection (5), where the imperative "shall" was used, and Section 23, Subsection (3), where the permissive "may" was used. Hallock suggested that the Subcommittee consider an amendment to the appropriate section.¹⁰

Senator Macpherson's COG Subcommittee heard from both

opponents and proponents at its first meeting, as follows:¹¹

Robert Logan, Local Government Relations Office, presented a general picture as to the function of the COGs as they existed. Logan said that county boundaries were imperfect boundaries; therefore, the 14 administrative districts were created to correct the imperfections. Logan explained that in counties where COGs were not functioning, there would be no Federal moneys available. He said further, "If the economic development program is dropped, the money will probably revert to HUD. . . . There are 800 units of local government in the Willamette Valley alone."

"The Governor's Office," Logan continued, "has done a major study of each COG with a complete breakdown of each, what each does, numbers of staff, and number of dollars each has."

Mickey Moffit, Coos County Commissioner, said that his county was not a member of a COG. He said that Coos County was opposed to a council that takes over the authority of county or city government. He said he thought that a council should be a voluntary thing.

David McGrath said:

As only a Clatsop County Commissioner, the District I COG was very successful for which I credit the Director. . . . However, I cannot support SB 100's proposed authority to COGs. . . any regional authority should be established by constitutional amendment, or by a vote of the people. . . . We support COGs as we now understand them. . . . Voluntary membership should have its own set of by-laws.

Chairman Macpherson then asked, "Commissioner McGrath,

what if all the volunteers decide to leave?"

McGrath answered:

By making it mandatory it would certainly precipitate a negative reaction on the part of the members. The authority of COG should be limited to review and comment, and in the absence of COG, the state should deal with existing government bodies. . . . State and Federal assistance should not be denied in the absence of COG.

There was no response at that time to Mr. McGrath's statement. However, on a later occasion one of the Senators made a similar statement.

Testimony continued before the COG Subcommittee, as follows:¹²

Lane County Commissioner Frank Elliot said:

I have been active in county government for eleven years. I believe in land use planning. . . . COG is not that satisfactory as cities are afraid to pull out for fear of losing funds (Federal). . . . I see no need for COGs, except in an advisory position . . . average people have no voice in the COGs.

"Commissioner Elliot, are you opposing COG?" asked Senator Macpherson, Chairman.

Commissioner Elliot replied:

Only if they are mandated. . . . You can qualify for Federal money if you have an advisory-type council I would challenge any state office to shut off Lane County funds just because they by-pass COG.

Senator Ripper said:

I am speaking for my own region. I feel that SB 100 is directed to the poor job being done in the Willamette Valley and the Portland area, and now we are trying to do it state-wide. . . . OCC&DC has done a tremendous job.

Tillamook County Commissioner Bud Bailey said:

I oppose SB 100. . . it is too all-emcompassing. I would rather see COGs be more neighborly than for someone to say 'Come on and do something together, or you are not going to get any money.'

Lincoln County Commissioner Albert Strand, said that COGs would function so much better if we could be a separate entity, each in our own county. He added that he would like Lincoln County to be considered for District 15, rather than be included in the 14 Districts.

"Commissioner Strand, if there could be a new grouping," asked Chairman Macpherson, "would you like to be grouped with Tillamook, Clatsop and the Coastal counties?"

"It would be better with the Coastal area," replied Commissioner Strand.

Senator Macpherson said, "If we are going to use any kind of regional setup to go with SB 100 between cities and counties and the state, then this is one of the decisions that we have to make."

"We have had a tremendous amount of objection to COG in some areas of the state," Chairman Macpherson pointed out.

"I'm searching for something beyond the COG concept," replied Senator Thorne.

Senator Macpherson then asked, "Do we agree that we need something between the state and the locals?"

Neither Senator Ripper nor Senator Thorne answered Chairman Macpherson's summary question on the necessity for a regional concept. The testimony before the COGs Subcom-

mittee continued on, as follows:

Senator Ripper said:

I'm concerned about the distance in some COGs, plus the fact that most city councilmen are non-salaried. They have to travel so far for meetings which take both time and money. Counties equal reasonable travel time. Crossing county lines equals problems. Lane and Douglas COGs are within county lines and they are the most successful in the state. . . . We should plan regions that have something in common-- smaller regions which would be closer to the people. . . . At least 90 percent of the planning problems in the state are in the urbanized Willamette Valley.

Senator Thorne then posed a series of pertinent questions:

What if the COGs get into the picture and they have become a vehicle only designed to get money (from state and Federal governments)? Do we ignore that and go back to counties with the comprehensive plan? What are the models currently used to deal with problems that exist in local areas which are of statewide concern and may also have some national implications?

Robert Logan replied to Thorne's questions:

Most all states, when sub-districting is the consideration, have common geographical points in natural boundaries where Federal, state and local units can all develop their own interests and can bring the programs closer together.

Chairman Macpherson told the Subcommittee:

We now have two direct suggestions we might want to look into further:

1. A direct county-state relationship
2. A state area-county relationship

Maybe we could tie OCC&DC in as a planning organization for the Coast, as we now have, and devise something for the valley (Willamette), Eastern Oregon and other sections, as sub-unital areas, while the planning would be done by the counties.

Pertinent excerpts from the next COGs Subcommittee meetings dialogue were as follows:¹⁴

"The intent of the original guidelines of SB 100 in 1971 was to reflect a community of interests for planning areas."

"Shouldn't the state have priority over the OCC&DC in areas of concern. . . for example, the state level of transportation in relationship to land use?"

"COGs have had planning grants, but have not used them. CRAG has not used theirs."

"There has to be coordination between the adjacent plans, whether between cities and cities, cities and counties, or counties and counties."

"The counties, the State Highway Department, and the National Bureau of Land Management need to plan on a common ground."

"We are trying to solve Portland's planning problems-- the planning problems of urban areas--at the state level with SB 100."

"I suggest that we add a clause in SB 100 to the effect that counties 'shall' coordinate all plans within counties."

Then, Senator Thorne said, "COG could be created and then could be destroyed, changed or altered at some point."

"We have two different concepts, plus what's in the bill," stated Subcommittee Chairman Macpherson. "Let's explore all three."

At the COG's Subcommittee's final meeting, the discussion went as follows:

Bob Logan, Local Government Relations Office, suggested that the county ought to be the agency for blending the planning together. Mr. Logan said further:

Instead of the state dealing with 237 cities, we could attempt to have the county coordinate the planning and give the county the statutory power needed. It might require a vote of the people as you get into the Constitutional question.

The state is cut into seven areas. This is what Senator Ripper was speaking about at the Subcommittee meeting on February 9th. Portland Metropolitan area is a separate area. There are about 400 units of local government in that four-county area. This would be the 1st District. The 3rd District would be the remainder of the Willamette Valley. The Southern Oregon group, the 4th District, would be made up of Douglas, Jackson and Josephine Counties. The Deschutes Basin would be the 5th District. Wheeler, Gilliam, Moro, Umatilla, Wallowa and Union Counties would be the 6th District, while Lake, Harney, Malheur, Grant and Baker would make up the 7th District. The present OCC&DC would be the 2nd District.

The Need To Change the Concept

That the substate concept need to be changed was made apparent at the next SELUC hearing, when four of nineteen speakers testified against the regional planning concept. Senator Hallock announced that, to insure brevity, all speakers were limited to eight minutes apiece. He utilized a stop-watch. The four were B. J. Rogers of Springfield, Chairman of the Planning and Zoning Committee of the Association of Oregon Realtors; James Moore, Executive Director of the League of Oregon Cities and Beaver-

ton's former Mayor; Mary Kangas, Scappose farm wife; and Paul Brown of Wilsonville, each of whom testified as follows:¹⁶

Mr. Rogers, Springfield realtor, said that he was representing 3500 plus Association members. He said, "Sections 18 through 23 of SB 100 should be deleted."

Mr. Moore said that members of the League of Oregon Cities believed that the policy position of SB 100 was acceptable to the cities, but that the League was still opposed, after an in depth study, to SB 100 and to COGs. However, Mr. Moore's testimony did not reflect the viewpoint of the City of Portland.

Mrs. Kangas, a Columbia County farmer's wife, said that she was representing her family and herself in opposing the Columbia Region Association of Governments (CRAG). She claimed that CRAG was illegally formed. She questioned the use of Federal funds for CRAG, the Housing and Urban Development (HUD) had said that CRAG included Clark County (Washington), or CRAG was not to receive Federal funds. Mrs. Kangas added, "The State of Oregon can not make laws for the State of Washington."

Paul Brown, of Wilsonville, said, "If certain areas in SB 100 could be revamped and reworked, the concept could be very useful."

During a later SELUC work session, Senator Macpherson summarized his COGs Subcommittee findings as follows:¹⁷

The Committee has met three times with one full hearing. Robert Logan informed the committee why we had COGs and what went into the COG's creation, the three Federal planning requirements, the designated state sub-districts in which an area-wide planning organization was proposed. Mr. Logan said that two-thirds of the voting membership of these sub-districts must be elected officials of cities and counties. This voting membership was to constitute the policy-making body of the planning organization. These sub-districts would do adequate long-range area-wide comprehensive plans. They were to insure consistency between functional planning and programming involving water supply and distribution, sewers, open spaces and the area-wide comprehensive plan.

While informative, Macpherson's report seemed almost out-of-place, since Senator Hallock had already recognized the problem, and had proposed yet another committee. However, as Senator Macpherson continued his findings, he offered two alternatives to the mandatory COG's concept:¹⁸

1. The County could be the agency for blending some of the planning, if given statutory power.
2. Seven geographic areas of the state (with similar community interests), could be created for planning purposes.

Committee discussion of the alternatives centered around the COGs and Federal funding. However, at the close of the work session, Senator Hallock asked the Committee, almost as an afterthought, "If we only have 36 counties and there is only one Oregon Coastal Conservation and Development Commission (OCC&DC) does anyone object to OCC&DC being in as a buffer?"¹⁹

No objections were voiced by the SELUC members.

REDRAFTING THE CONCEPT

The Drafting Subcommittee met twice during the week prior to the Ad Hoc Committee meeting of February 18, 1973, working through Section 30, the section which mandated regional planning in SB 100.²⁰

Mr. Hal Brauner, Administrative Assistant to the Ad Hoc Committee, outlined the comments and recommendations of the Drafting Subcommittee for the Ad Hoc Committee, on the substate concept, as follows:²¹

Throughout the bill (SB 100), it should be emphasized that local government should retain the planning authority, with the county governing bodies serving as coordinators of plans for areas within their respective boundaries.

The discussion and reports of the Drafting Subcommittee members continued as follows:²²

Fred Van Atta said,

There has been quite a bit of confusion and misunderstanding because of the language in the structure of SB 100. . . . The work of the Drafting Subcommittee has been directed at clarification and not much towards the development of new concepts and philosophy.

Ward Armstrong added that the bill really said a lot less than many people thought, and that any revision at this time needed to be aimed at restoring the critical intent of Senator Macpherson's LUPC.

L. B. Day said that one of the major problems that faced the Drafting Subcommittee was how to cope with the fact that DEQ was presently utilizing 12 of the 14 Admin-

istrative Districts to provide for "safe" sewage disposal. He said that the group had to have an organizational structure which controlled at all levels of government the various governmental agencies.

Mr. Day said to the Ad Hoc Committee:

Once all 36 counties have submitted their plans to the state, these become a state plan. . . . The county will have a leadership role under SB. 100 The counties retain permit systems--not a building permit--but a planning and siting permit for 'critical' activities. These permits would be subject to review by the LCDC prior to issuance by the counties.

The discussion continued between L. B. Day and Don Barney. Don Barney, lobbyist for the City of Portland, asked L. B. Day, "What is the difference between counties and the existing COGs?"

L. B. Day said, "It would be well to encourage whatever various cities and counties want to join together on a 'voluntary' basis, to perform that service."

The next Ad Hoc Committee meeting discussion on the substate concept was as follows:²³

Hal Brauner said:

Reference to COGs in Section 2, and several definitions--areas of state-wide significance, development and planning districts--are deleted. . . . In Section 11 the word 'regional', since the COGs have been removed from the bill, now refer to 'a community of interest', either the OCC&DC or other voluntary associations of counties. The smallest unit for reviewing and issuing permits now recognized by SB 100 is the county. In Section 19, counties are mandated, as regional planning bodies, but the voluntary association of counties are permitted.

L. B. Day stated, "Counties must accept leadership.

Cities must cooperate with counties and vice versa."

Hal Brauner said:

Sections 27 through 31 provided for the permit system for area of state-wide significance, wherein, the county issued the permit which was then reviewed by the state. The state may veto--back to the county for review and appeal.

The conflict, "localism" vs. "regionalism", was ostensibly over with the redrafting of SB 100. Mandatory COGs had been deleted. The counties which were permitted voluntary associations, had assumed the substate planning assignment with control over the cities' efforts. A hint of the City of Portland's pending reaction was given by Don Barney's question of L. B. Day on the difference between the counties and the existing COGs. Officials of the City of Portland were most unhappy contemplating a secondary planning role under Multnomah County. Portland was so dissatisfied that the City felt compelled to rectify the situation. Thus the "37th County" was born.

"THE 37th COUNTY"

The 37th County was created to compromise a compromise. As stated in the previous section "regionalism" was a dead issue after the rewriting of SB 100. However, the City of Portland was to spend the months of March and April, 1973, trying to breathe new life into the concept. After a month-and-a-half of "bickering and bombast", Portland finally achieved the "37th County" amendment to SB 100 to salve its

wounded ego.

By March, the City of Portland had begun to react to the changes, particularly in Section 19, initiated by the Drafting Subcommittee. In the revised SB 100, rather than the cities and the counties both being subservient to a regional governmental unit, as proposed in the original bill, the cities were to report to the counties. There was an option providing for voluntary associations of counties in lieu of "mandatory COGs".

To counteract this development, the City of Portland asked the SELUC to amend Section 19, sub-section (2). The City asked that either CRAG be specifically designated as regional planning agency for Portland Metropolitan Area or that a COG be voted into existence as the designated regional planning agency, at the request of an area's largest governmental unit, based on population.²⁴

Senator Hallock, in introducing the amendments to the SELUC said: "The Mayor of Portland wants to make sure that the Tri-County Government comes about by a vote of the people, and that Portland is not under Multnomah County."²⁵

The City of Portland continued its campaign for CRAG and against Multnomah County at the SELUC March 8, 1973 meeting, as follows:²⁶

Lloyd Anderson, Portland City Commissioner said,

The county staff is neither equipped nor able to make judgments on issues of concern to the City. I agree with the previous amendments submitted by the City of Portland. I would, however, add two other amendments

to Section 19, as follows:

- A. Portland wants CRAG in charge on the basis of 'one man - one vote'
- B. Even with no voting privileges, Portland still wants CRAG.

Senator Macpherson asked, "Mr. Anderson, what if the bill is not amended?"

Lloyd Anderson answered,

I don't think that CRAG is 'voluntary' to the extent that, if it did not exist, there would be a substantial reduction of Federal grant money into the areas If the amendments suggested here pass, and if the Legislation (SB 769), which has been submitted and which would authorize CRAG to do the comprehensive planning for the Tri-County Metropolitan area, also passes. . . with both of these together it would work.

Bud Kramer, a representative of the Multnomah County Commissioners, answered Lloyd Anderson, saying that Multnomah County was one of the 36 counties being designated to carry out the state-wide plan. Kramer continued, "As to Multnomah County's planning capabilities, the Committee should know that Lloyd Anderson was Multnomah County's first Planning Director."

During a SELUC meeting five days later, the Committee members were still trying to effect a compromise between the City of Portland and Multnomah County. Senator Macpherson, Ad Hoc Committee Chairman, said, "My Committee offered four options for Section 19 in an attempt to resolve the power struggle between two units of local government. The options were as follows:²⁷

Option 1 - 'Permissive Councils of Governments,' as subsection (3) to Section 19: This allows counties to select a planning agency in lieu of doing the planning themselves.

Option 2 - 'A variation of the CRAG amendment:' This specified that CRAG is to do the planning for Tri-County Metropolitan area.

Option 3 - 'Requiring an election of petition for a regional planning agency:' This states that if a petition representing 51 percent of the population of an area was filed with LCDC requesting a regional planning agency, the LCDC could refer the matter to the electorate of the area involved.

Option 4 - 'Permissive Councils of Governments:' This specifically defined CRAG as a voluntary association, and stated that it applied only to CRAG.

The discussion of possible solutions for the City of Portland v. Multnomah County power struggle resumed, as follows: 28

Senator Burns immediately after the options were introduced, complained that CRAG was not responsible to all of the voters. He added, "CRAG studies are money spent, but there are no results."

After considerable non-productive discussion between several senators, notably Hallock and Wingard, Senator Ripper said, "I feel that 90 percent of the bill spoke to the Willamette Valley." He wondered if the Willamette Authority was set up by law, or by the Governor of the State.

Hal Brauner, Ad Hoc Committee Administrative Assistant in answering Senator Ripper said, "There are presently four COGs in the Valley. These four had joined together to contract with the state."

Senator Ripper moved that the four Willamette COGs needed to be added to the language of Option 2. The motion failed. With the death of Senator Ripper's motion, "mandatory COGs" received yet another "nail in its coffin." The SELUC was not prepared to legalize regional planning at that time.

At the SELUC March 20, 1973, meeting, the Committee was still attempting to resolve the power struggle, which had been initiated by Portland, between Multnomah County and the City of Portland, when Senator Macpherson moved for the adoption of Option 3 as proposed at the earlier SELUC meeting. Option 3 said that a COG was to be a regional planning agency if voted thusly by the people. As amended, Option 3 was passed four to three in a roll call vote to become subsection (3) under Section 19 in the Engrossed SB 100.²⁹

The Committee also adopted Option 1, as amended previously, which became sub-section (4) of Section 19 in the Engrossed SB 100.³⁰ Options 2 and 4 were not adopted by the SELUC.

After the Engrossed SB 100 was printed by the State Printing Office, and reviewed by the City of Portland, Don Barney, lobbyist for Portland, proposed yet another amendment to Section 19.³¹ According to Gordon Fultz, Assistant Director of the Association of Oregon Counties, Portland suddenly became concerned about the future implications of Option 3.³² To be specific, Option 3 "scared the hell"

out of Portland. The plan was originally proposed by Mayor Goldschmidt of Portland. The Mayor and his lobbyist, Don Barney, had supported the concept of Option 3 with its permission for a vote of the people on a COG as the regional planning agency, during the preceding 30 days, when they first realized that the COGs were to be deleted from SB 100. It had now, so said Gordon Fultz, suddenly dawned upon the Mayor that, while in Portland with a population exceeding 385,000 had enough "clout" to request an election, "the Portland voters might not have given a regional planning concept an affirmative vote."³³

A separate bill, Senate Bill 769, which was designed to install CRAG as the regional planning agency for the Tri-County Metropolitan area, and thus provide an insurance policy against subservience of Portland to Multnomah County as the area planner had been proposed, but since the enactment of SB 769 was not guaranteed, the City of Portland prepared yet another amendment to Section 19, which Don Barney, Portland's lobbyist, presented to the SELUC in April. Mr. Barney said that he had talked with Kathleen Beaufait, Legislative Counsel, and that with her help, they had prepared the new amendment to be added to Section 19, subsection (1) of the Engrossed SB 100, line 29 after the period.

For the purposes of this subsection, the responsibility of the county described in this subsection shall not apply to cities having a population of 300,000 or more; and such cities shall exercise, within the incorporated limits thereof, the authority vested in counties by this subsection.³⁴

The discussions and maneuvering continued before the SELUC, follows:³⁵

Senator Macpherson moved for the adoption of Portland's newest amendment. The motion carried on a roll call vote, with five "ayes" and two "no" votes, Senators Burns and Thorne. This addition to Section 19, subsection (1), was henceforth referred to as the "37th County Amendment."

The City of Portland and Multnomah County were still in a power struggle, either despite the "37th County Amendment," or because of it. Senator Hallock tried many times to achieve a workable solution to the problems created by the revised Section 19. Since the City of Portland and Multnomah County were unable to agree to compromise on Section 19, SB 100 was delayed in its third and final reading before the Oregon Senate until April 18, 1973. Despite the SELUC's delaying efforts during the continuing power struggle, there were no further changes made in Oregon's organizational sub-structure for land use planning prior to Legislative enactment.³⁶

SUMMARY

When LC 100 became Senate Bill 100 in early 1973, the regional concept for land use planning was knocked out of SB 100 by strongly expressed public opinion at the SELUC open meetings. "The public" made it clear that they would accept land use planning only at the local level, with state review and supervision winning approval.

As finally resolved, SB 100 authorized the counties to carry the burden in substate land use planning, either by themselves, or in voluntary associations of counties, with the exception of the City of Portland and Multnomah County.

Since the power struggle to control land use planning in Portland Metropolitan area could not be resolved by compromise, legislation was amended to make the City of Portland the "37th County" under SB 100, and as such empowered to take care of its own land use planning.

In general, "localism" triumphed over "regionalism," when the regional concept was eliminated from the redrafted SB 100. Counties, not COGs, were mandated to coordinate and do substate land use planning, but still to be determined was "Plans What?"

NOTES

¹The Desk Standard Dictionary (New York: Funk and Wagnalls Company, 1920). s.v. "localism."

²C. O. Sylvester Mawson, ed. Roget's Thesaurus in Dictionary Form (Garden City, N.Y.: Garden City Books, 1963). s.v. "region."

³Oregon Constitution, art. XI, sec. 2.

⁴Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 18, 1973) Tape 1, Side 2 and Tape 2, Side 1.

⁵Ibid.

⁶Ibid.

⁷Ibid., January 25, 1973, Tape 2, Side 2 and Tape 3, Side 1. It is worthy of note that this hearing was the first time that citizens had been given the opportunity to voice their opinions of, or to ask questions about SB 100.

⁸Ibid.

- ⁹Ibid., Minutes of SELUC meeting, January 30, 1973,
Tape 3, Side 1.
- ¹⁰Ibid.
- ¹¹Minutes of COGs Subcommittee meeting, February 1, 1973
Tape 4, Sides 1 and 2.
- ¹²Ibid. ¹³Ibid.
- ¹⁴Ibid., February 9, 1973, Tape 5, Side 2.
- ¹⁵Ibid., February 12, 1973, Tape 6, Side 1.
- ¹⁶Minutes of SELUC meeting, February 12, 1973,
Tape 7, Side 2.
- ¹⁷Ibid., February 15, 1973, Tape 8, Side 1.
- ¹⁸Ibid. ¹⁹Ibid.
- ²⁰Minutes Ad Hoc Committee meeting, February 18, 1973,
Tape 8, Side 2.
- ²¹Ibid., February 23, 1973, Tape 9, Side 1.
- ²²Ibid.
- ²³Ibid., February 27, 1973, Tape 9, Side 2.
- ²⁴Minutes of SELUC meeting on March 6, 1973, Tape 11,
Side 1, and Personal interview with Gordon Fultz, Assistant
Director of Association of Oregon Counties (Salem: March 25,
1974).
- ²⁵Ibid.
- ²⁶Ibid., March 8, 1973, Tape 11, Sides 1 and 2.
- ²⁷Ibid., March 13, 1973, Tape 11, Side 2.
- ²⁸Ibid.
- ²⁹Ibid., March 30, 1973, Tape 12, Side 1.
- ³⁰Ibid. ³¹Ibid.
- ³²Personal Interview with Gordon Fultz, December 5,
1973 and March 25, 1974.
- ³³Ibid.
- ³⁴Ibid. Fultz Interviews, plus Minutes SELUC meeting

on April 5, 1973, Tape 14, Sides 1 and 2, plus details on Senate Bill 769, as follows:

The enactment of Senate Bill 769, which authorized CRAG to do the land use planning for the Tri-County area was to end the lengthy conflict between the City of Portland and Multnomah County.

Senate Bill 769 was written to legalize the existence of the Columbia Region Association of Governments (CRAG)/ It was prepared by and for CRAG. SB 769 authorized CRAG to do the land use planning for the Portland Metropolitan Region, excluding Clark County, Washington. Proponents of the bill claimed that it would solve the problems created by the "37th County Amendment," while opponents said, with equal vehemence, that it would destroy the political creditability of the compromises involved in the creation of SB 100.

The Senate Calendar for SB 769 was as follows:

March 22, 1973 - First Reading.

March 23, 1973 - Second Reading
Bill referred to Local Government and Urban Affairs Committee, then to Ways and Means Committee.

April 25, 1973 - Recommendation: Do-Pass as amended.
Prior reference to Ways & Means Committee rescinded.

April 30, 1973 - SB 769 taken from today's Calendar and placed on May 1 Calendar.

May 1, 1973 - Third Reading. SB 769 passed, Ayes 17 - nays 10. Senators Rivers, Groener, Heard, Hoyt, Mahoney, Meeker, Ouderkirk, Ripper, Smith, Thorne voted "no."

³⁵Minutes of SELUC meeting on April 5, 1973, Tape 14, Sides 1 and 2.

³⁶Personal Interview with Senator Ted Hallock, SELUC Chairman, December 5, 1973.

CHAPTER XI

PLANS WHAT?

INTRODUCTION

Since a proper organization with a reason for being requires a goal, so too did the proposed state land use planning agency. A need for state land use planning had been accepted, and a state agency had been organized on paper to handle that need. However, while the need was there, and an organization was designed, the goals were as yet unacceptable to the SELUC. In trying to set the goals, the Committee members reopened an old conflict between the economy and the environment, as to which should have first consideration. It was not something new. The conflict had begun years before, and the opponents were battle-hardened veterans. Three separate battles developed, centered on the stating of the goals, particularly "areas of critical concern." The first of the then current goals' struggles, need vs. want, began in Chapter VII, SELUC, and ended in a draw with the enactment of SB 100. The environmentalists met the economists as represented by individuals who felt that such planning constituted a "taking of their property without just compensation," which, if proved, would be unconstitutional. The second major goals' battle ensued when the environmental-

ists wanted to preserve the beauties of nature at the cost of jobs for people, especially in the "areas of critical concern." The third battle on planning, particularly concerning power as related to goals, is delineated in Chapters XII and XIII.

The need for goals led to the stated goals by LUPC. The conflict, economy vs. environment, was generated by the "areas and activities of critical concern." The change in SB 100 to unstated goals and the utilization of SB 10's (1969) goals provided a truce. Fortunately, neither the state comprehensive land use plan, nor state permits, were subjected to serious disagreements, for critical activities.

ONE CONCERN -- CRITICAL AREAS

The areas of critical concern were conceived in the American Law Institute (ALI) Model Code. However, the LUPC went a step further and designated specific areas in LC 100. By so designating these areas in the bill, a major conflict ensued -- Economy vs. Environment. As a result, the revisionists were forced to seek a way to salvage the state land use planning legislation.

The Point of Conflict

The point of conflict, the economy vs. environment, was generated by Section 31, "areas of critical concern," of SB 100. The coalition of five environmental organizations, in achieving a mutually acceptable compromise, had created

Section 31 as a reflection of their own environmental conceptions. The "areas of critical state concern," when exposed to the public, sparked a major conflict. There were two battlefields, one in the SELUC and the other in the Critical Areas Subcommittee. Two young men, Richard Emigh and Ed Rhodes, became potential candidates for the Medal of Honor during the conflict.

Senate Environment and Land Use Committee. When SB 100 was first discussed section by section, none of the SELUC members questioned the designated "areas of critical concern." The public was invited to attend and give their reactions the next week. They came and reacted quite vociferously, with a variety of citizens there in full voice, as follows:¹

James Allison, President of the Oregon Rural Landowner's Association, upon receiving permission from SELUC Chairman Hallock, asked Steve Hawes, Legislative Counsel, a series of questions, some of which pertained to "areas of critical concern," as follows:

3. On page 15, starting on line 22 sub-section (8), the bill seems to state that all lands situated within 200 feet of the right-of-way, declared scenic highway under ORS 377.530, shall be considered as an area of critical state concern -- if this land is within the boundaries of an incorporated area. Am I correct?
4. If 'Yes,' then is not this in direct conflict with ORS 377.530, paragraph (2) (a) which states that the Scenic Area Board shall not have the power to establish as a scenic area in any area along a public highway within the boundaries of an incorporated municipality?

5. It is possible that, if SB 100 were to become law in its present form, a stock farmer owning 80 acres currently zoned F-1 in Washington County could be forbidden to add onto his barn because of state critical concern -- yet be permitted to build a brand-new barn just 100 feet from the one he wished to enlarge?
6. Does the bill grant authority to the Commission to regulate the cutting or harvesting of timber on land within an area of critical state concern?

There was no SELUC discussion of Mr. Allison's questions.

Lonnie Van Elsberg, Chairman of the Coos County Board of Commissioners, in testifying against SB 100 in general, was particularly incensed by the designation of the "areas of critical concern" which he said was designed to destroy the already-sagging economy of Coos County.

Kessler Cannon, Administrative Assistant to Governor McCall, testified for SB 100 on behalf of the Governor. He proposed an amendment to exclude land under the control of the State Land Board from jurisdiction of LCDC, and thus avoid any possible Constitutional conflict. Mr. Cannon said that the State Land Board was still required to do comprehensive plans under the amendment, but the LCDC was not to be permitted to veto the decisions of the State Land Board.

Senator Hallock called the proposed amendment a "cop-out."

Someone on the Committee said that there were 800,000 acres presently under State Land Board control, including the Boardman, Oregon, former bombing range.

A Powerful Argument. A powerful argument was offered by State Representative Bill Grannell, Coos County. His written testimony,² while long and detailed, reflected the general public's reaction to the "areas of critical state concern," in Section 31, as follows:

Gentlemen: I would like to refer you to an exhibit which I have included. This chart was prepared for me by the Harbormaster of the Port of Coos Bay. It indicates the number of local, state and Federal agencies one must go through regarding siting, planning and construction if a person were to construct any facility adjacent to Coos Bay. You will note not only the number of agencies, but also the approximate number of days it takes to proceed through the agencies to gain approval. This would apply to not only to new construction, but also to repair and improvements. You will note there are currently eight agencies, any of which may appeal, ask for an extension of time, or delay the project while assessing environmental impact. Needless to say, there has been very little recent construction around Coos Bay.

Conversely so, if I were to carry out the same project in a town in Washington or Clackamas County, both of which are impacted by extensive population growth, I would encounter very little, or no difficulty at all.

In the City of Mulino, only eight miles from Oregon City in Clackamas County, there are no city or county zoning ordinances that apply. The only agency that must be contacted is the County Health Department to prove that the toilet facility empties into an approved septic tank.

In Washington County, the City of Forest Grove, the only entanglements to such a development is approval by the City Planning Commission and again the County Health Department.

With the creation of a Land Conservation and Development Commission there would be added to all three of the above-mentioned projects another agency involved in planning. In the case of Coos Bay, the Commission would also be responsible for promulgating rules and regulations concerning any proposed project.

In addition to that, another Commission, the Oregon

Coastal Conservation and Development Commission, will also be involved in any function, not specifically defined in the bill, as allowed by the Land Conservation and Development Commission.

A general presumption from reading SB 100 is that the areas defined under critical state concern, are areas of particular concern where inadequate planning had resulted in the need for crucial and decisive action, crucial and decisive being synonymous with Webster's definition of 'critical.'

I would submit that wild and scenic waterways, state parks and recreation areas, primitive and wilderness areas, wildlife refuge areas, estuaries and Oregon's beaches have, by prior statute, both Federal and state, by their very designation, been set aside and their use planned and regulated by either the Legislative or special agency. Therefore, they are not areas of critical concern by definition.

Furthermore, I would submit that areas, such as I mentioned, in my illustration in Washington and Clackamas Counties, areas that are choked with growth lack inter-related planning and land use coordination and are therefore by definition, more crucial and deserving of critical state concern. Senate Bill 100 treats these areas in only an ordinary and cursory manner.

Critical Areas Subcommittee. It was, surprisingly, during the first meeting of the COGs Subcommittee that serious expression was made about the "areas of critical concern," when Mickey Moffit, Coos County Commissioner, concluded his presentation on COGs with the comment, "seventy percent of Coos County's livable area was in SB 100's designated critical area."³

During the Critical Areas Subcommittee hearings, Earl Sykes, Reedsport, asked a specific question --⁴

"If my area is designated as an area of critical concern, why is the rest of the state not so designated?"

Unfortunately, there was neither an answer to nor a

discussion of Mr. Sykes' question.

However, two diametrically opposed concepts did surface during the Critical Areas Subcommittee's hearings -- one that there was a need for more designations of areas of critical concern, and the other that there was a need for fewer designations.

Several of those testifying before the Subcommittee felt that additional areas needed to be designated as "areas of critical concern." The two major ones were certain portions of the Clackamas River and some added sections of the Oregon Coast. In addition, a man from Sandy recommended that the Barlow Trail needed to be included, while yet another speaker wanted the Buffer Zones around freeway interchanges enlarged to a half mile.⁵

The apparent failure of the Clackamas County Commissioners to heed the election results of Clackamas County residents upset many of the people. They were so upset that, in fact, a few felt compelled to plead their cause before their elected State Legislators.

Walter Brown of Lake Oswego, President of the Clackamas County Citizens Association, in testifying at the Subcommittee's first hearing, said that voters of Clackamas County had voted in the 1972 General Elections to designate a certain part of the Clackamas River as a natural river area. He added that, while the Planning Commission had the jurisdiction to implement the designation, the County Commissioners had thus far not permitted the Planning Commission to

do so.⁶

The environmentalists wanted to designate still more areas, particularly additional areas along the Oregon Coast.

The Oregon Shores Conservation Coalition (OSCC), one of the environmental organizations which had participated in the compromise to designate the areas of critical concern, wanted still more areas of the Oregon Coast closed to public development. Representatives of the group appeared before the Critical Areas Subcommittee to request the expansion. They were Steve Schell, a Portland attorney and Director of OSCC, and George Diehl, a Tillamook County resident and Secretary of OSCC.

Steve Schell said that he represented approximately 300 people directly, and that, indirectly, he was in contact with an additional 1000 people through other cooperating coastal organizations. Mr. Schell recommended that the whole Oregon coastline, with a deeper set-back, needed to be designated as areas of critical concern.⁷

Later, in answer to questions, Mr. Schell replied:

My proposal is neither a plan nor an action taken by a district council, but is something that occurs in the area of critical concern -- where there is no permit procedure. I am concerned that some particular activity that does occur in an area of critical concern may not be properly reviewed.⁸

While the environmentalists were pressing for more designations of critical concerns, equally informed individuals were urging less designations, particularly areas of critical concern.

In the Subcommittee hearings, the opposition to designated areas of critical concern centered primarily on the quarter-mile Buffer Zone around parks and forest lands. Two graduate students in Urban Planning at the University of Oregon, Richard Emigh and Ed Rhodes, presented testimony in favor of SB 100, but they asked for clarification of Section 31, subsection (3) (e), line 13, page 14 of the bill, "wherein the one-fourth mile of additional border area eliminated four percent more land in the state from public use (in an economic sense) by their rough calculations."⁹

Hal Brauner, from the State Executive Department, answered Emigh and Rhodes, as follows:

The drafters do not intend to include the total lands administered by the State Forestry Department, but only those park and recreation areas that they have developed on those lands which are to be surrounded by the buffer strips.¹⁰

Section 31, subsection (3) (e) began: "Parks or recreation areas situated on lands under the jurisdiction of the State Board of Forestry or the Division of State Lands. . . ."

Testimony continued before the Critical Areas Subcommittee, as follows:¹¹

As Martin Davis, Oregon Environmental Council, concluded his testimony favoring SB 100, Senator Macpherson asked Davis, "Do you really need a one-fourth mile buffer zone around all the different types of parks and recreation areas we have designated?"

Davis, who as an environmentalist had helped to determine the designated areas of critical concern, replied "We

are giving a blanket one-fourth mile buffer within the state."

Returning at the Subcommittee's request, Richard Emigh and Ed Rhodes presented their specific findings on the areas of critical concern detailed in Section 31 of SB 100. Their graphs showed that 10 percent additional land in Oregon was to be under the state's direct control, if the bill passed as written. They said:

The United States Forest Service, the National Park Service, the Bureau of Land Management, and other parks, state, city and county already cover 54 percent of the State of Oregon. With the enactment of SB 100, 64.65 percent of all the land in Oregon is to be cut off the tax rolls.

The Critical Areas Subcommittee's hearings were adjourned, but the public's reaction to the critical areas was not. During a SELUC meeting later in the same day, Ken Omlid, Lane County Commissioner, recommended that more hearings on Section 31 were needed because the Subcommittee had dealt only superficially with the Areas of Critical Concern.¹²

The Revisionists

Three men, L. B. Day and Senators Hallock and Macpherson, were the primary revisionists of SB 100. Another equally important revisionist was James Moore, Legislative Committee Chairman of the League of Oregon Cities. Mr. Moore's testimony before SELUC, with his proposed substitute draft of the bill provided a working model for the needed changes in SB 100.¹³

Chairman Hallock. Each of the invited SELUC guests testified against the proposed bill as written, including Martin Davis, OEC. Mr. Davis wanted, however, the bill strengthened, not weakened, particularly in the areas of critical concern. Senator Hallock asked Mr. Davis if the opinion was his own or the OEC's? Davis replied that the opinion was to be ratified at the OEC meeting that night.¹⁴

Later in the SELUC work session, Senator Hallock asked Senator Burns to report on the Critical Areas Subcommittee hearings. When Senator Burns said that he was unprepared to do so, Senator Hallock reprimanded him publically for failure to meet his assigned responsibilities.¹⁵

As a direct result of the public's testimony, Chairman Hallock commanded that Senate Bill 100's sections on "Areas of Critical Concern" were to be revised so as to assure legislative passage of a state land use bill in the 1973 Legislative Session.¹⁶

James Moore. James Moore, Beaverton, testified against 100 as originally drafted, on behalf of the 25-member League of Oregon Cities' Legislative Committee. To the SELUC he said:¹⁷

. . . we finally conclude that perhaps the basic plan in SB 100 is that it establishes a very complex procedural relationship among state and local governments before the basic goals have been established; in effect, the bill puts the cart before the horse! Experience at the city level in developing, adapting and revising comprehensive plans and implementing regulations has taught us that the first step in developing a plan is to spell out the basic goals and objectives for the development of the community. Without the goals, no plan can be developed and no

implementing regulations can be enacted.

Thus we have decided to prepare, and are submitting for your consideration a substitute bill draft. It proposes to establish a Land Conservation and Development Commission (LCDC) that would inventory present land uses, establish state planning goals, develop criteria for selecting areas and activities, and develop a procedure for coordinating land use planning and regulations of state, regional and local agencies. This would be done in consultation with all affected units of government in the state, and with adequate opportunity for hearings and citizen participation in the development of this state comprehensive planning program. Final adoption of the plan by the 1975 Legislature would be required.

We share the sense of urgency on the part of those who feel that something more must be done quickly about land use regulation in Oregon. But we think it unrealistic to believe that establishing an elaborate procedure, such as suggested in SB 100, without any notion of where we are going, or of what the basic land use goals in Oregon actually are, will result in great confusion and frustration, and not really provide a solution to the problems all of us are trying to solve.

In Moore's proposed revision of SB 100, Sections 10 and 14 pertained directly to what was to be planned in Oregon. Section 10 specified the Commission's duties, while Section 14 detailed the duties, criteria, areas and activities of critical state concern, objectives, regulations and state-wide guidelines.

L. B. Day. After Chairman L. B. Day's Drafting Subcommittee had met twice, Hal Brauner, the Committee's Administrative Assistant, reported on the Subcommittee's findings to the Ad Hoc Committee for their directions. Two of the findings pertained to Areas of Critical Concern:¹⁸

- A. Although the concept of 'critical' or 'priority' areas should be kept, the role of local governments in these areas should be more clearly

defined.

- B. Any form of LCDC planning directives (objectives, guidelines, etc.,) should be applied to all lands, and such directives for critical areas would be merely more intensively and more immediately developed.

Senator Macpherson opened the discussion on the designation of critical areas, which went as follows:¹⁹

Dean Brice, AOI, said that he supported the listing of general "unspecified" areas, such as flood plains, wet lands, coastal areas, etc., rather than specific geographic areas as detailed in Section 31 of SB 100.

Hal Brauner gave the Ad Hoc Committee members copies of a study being conducted in relation to "environmental concerns of critical priority." He explained that the study listed various general areas of the state which had critical, short-range, or long-range priority status.

Mr. Brice responded that, whatever route was taken, areas needed to be properly designated and detailed, whether in the bill or via the "planning guidelines," to sufficiently assist the local officials charged with preparing the comprehensive plans.

Utilizing the Ad Hoc Committee's options on areas of critical concern, the Drafting Subcommittee spent the next five days seeking to provide a politically acceptable land use planning bill. Then, the designated critical areas concept was eliminated from SB 100 as a matter of political reality, according to L. B. Day, its Chairman.

Senator Hector Macpherson. When the Drafting Subcom-

mittee presented its revisions to SB 100 to the Ad Hoc Committee, with Senator Hector Macpherson as Chairman, Fred Van Atta said that critical areas had been rephrased to priority considerations that applied to both the Commission in adopting goals and guidelines and to the local jurisdictions in preparing and revising their comprehensive plans.²⁰

The redrafted SB 100's original concept of stating specifically the state-wide land use planning goals had been eliminated with the elimination of the designated areas of critical concern. The priority areas were to be as follows:²¹

- (a) Land adjacent to freeway interchanges
- (b) Estuaries areas
- (c) Tide, marsh and wet land areas
- (d) Lakes and lakeshore areas
- (e) Wilderness, recreational, and outstanding scenic areas
- (f) Beaches, dunes, coastal headlands and related areas
- (g) Wild and scenic rivers and related lands
- (h) Flood plains and areas of geologic hazard
- (i) Unique wild life habitats
- (j) Agricultural land

The Ad Hoc Committee discussion was as follows:²²

Martin Davis, OEC, summed up the projected revision when he said, "There is no distinction between those areas we have moved into a lower level. . . . we have moved into the regulation level rather than the goal level."

The discussion of the proposed changes centered on the diminishment of environmental safeguards for land use in Oregon. Martin Davis, the only environmentalist on the Ad Hoc Committee, was particularly incensed by the elimination of designated areas of critical concern. Mr. Davis said:

The point of critical areas is more than of local concern because of their nature. Therefore, the state needs to have some power in these areas, and these are the areas which required concentration.

Hal Brauner, Administrative Assistant to the Committee, said that in Section 25 of the bill, "areas of critical state concern" were retitled, "Areas of state-wide significance," and, rather than being designated specifically, were spelled out very generally.

Dean Erice objected to the fact in Section 34 that "prime agricultural land" was the only economic consideration listed as a priority item.²³

While the Ad Hoc Committee had softened the "areas of critical concern" concept in SB 100, there was still another concern -- critical activities.

ANOTHER CONCERN -- CRITICAL ACTIVITIES

When SB 100 was assigned to the SELUC, the critical concerns concept was so controversial that Senator Halllock, Chairman, appointed a Subcommittee, while the Critical Areas Subcommittee's primary focus was on areas of critical concern, there was some testimony on critical activities also.

Earl Sykes, Reedsport, said that he felt that the whole of Douglas County was an area of critical concern, but that Section 32 on critical activities did not reflect enough local input. Mr. Sykes asked the Subcommittee, "Can or will the state push the Federal government on activities of

critical concern?"²⁴

Mr. Sykes' questions went unanswered.

At a SELUC public hearing in February, James Moore, Legislative Committee Chairman of the League of Oregon Cities, in testifying for the League, reaffirmed Mr. Sykes' previous testimony before the Subcommittee, as well as testimony given by Randolph Kester and Roger Yost, both of whom spoke on behalf of the Portland Chamber of Commerce. Mr. Moore offered a proposed new draft on SB 100, in which the Commission was to identify and designate the activities of critical concern after an in depth study.²⁵

The Drafting Subcommittee revised and retitled, among other changes, the section on activities of critical concern. The redrafted SB 100 stated that the planning and siting of certain types of development or "activities of state-wide significance," were to be subject to state-wide goals and were to be given priority consideration by LCDC.²⁶

During an Ad Hoc Committee discussion on the proposed goals as they related to comprehensive planning, Senator Macpherson asked the Drafting Subcommittee members, L. B. Day, Teamsters' Union, Fred Van Atta, Oregon Home Builders' Association, and Ward Armstrong, AOI, "What are the areas of high priority Critical activities?"²⁷

Fred Van Atta replied:

Critical activities have been set aside differently; planning and siting permits are required, i.e., planning and siting of public transportation facilities, public sewage systems, water supply systems, solid waste disposal site facilities, energy generating and

transmission facilities, and public schools.²⁸

The Ad Hoc Committee discussion on critical areas and activities went as follows:²⁹

Senator Macpherson asked, "If I wanted to build a school, how would I go about it? Where would I begin?"

Dean Brice, Pacific Power and Light Company, said that the agency or person responsible for the planning and siting was to submit a plan to the county, and that the county was to review the plan, subject to its comprehensive plan, and then it was to be forwarded to the state agency. Mr. Brice continued:

The state agency would have the power to veto the plan if it was not in compliance with the state goals or plan. . . . On approval of the state agency, the county would issue the permit. . . . Therefore, the counties have teeth.

Senator Macpherson then asked to be taken through the steps of getting a nuclear power plant. Dean Brice answered that a nuclear power plant involved another consideration, because there was a state agency responsible for siting of nuclear power plants.

Martin Davis asked, "Does the county have the veto power on a nuclear power plant?"

"If it violates the plan, it does," answered Brice.

Senator Macpherson asked, "Are plans made with nuclear plants in mind?"

L. B. Day said that he thought that we needed power plants, but the counties had a right to determine what they did and did not want in certain areas.

Four days later at another Ad Hoc meeting, L. B. Day reversed his statement, as follows:³⁰

I wish to correct a statement that I made during the February 23rd meeting. . . . Counties do not have the power to override the state in the matter of nuclear plant siting. . . . In such matters the counties act in an advisory capacity only. . . . The state agency issues the permit and has veto power, subject to appeal procedures. . . . The state has veto power on critical activities. . . . Therefore, the state would give those permits, subject to review and appeal from the county. . . . The effort of the Drafting Subcommittee was to recognize the role of the counties as much as possible.

When the redrafted Senate Bill 100 was presented by Senator Macpherson and L. B. Day before the SELUC a discussion took place, as follows:³¹

Doug Heider, Portland General Electric Company, said that his company was not opposed to SB 100 as revised. He said:

However, we are concerned with Section 25, Subsection (1), Paragraph (c). . . . Counties are not capable of planning nuclear sites. Siting is now under the Nuclear Thermal Energy Council. SB 100 requires a siting permit from LCDC.

Senator Wingard said that he wanted to check on the ORS references to nuclear thermal energy, then he would talk with Mr. Heider.

Jack McTease, Pacific Power and Light Company, said that his firm had a few arguments with the revised SB 100, specifically paragraphs (a), (b) and (d), Section 25, Subsection (1), which are not subject to any of the state-wide Planning Commission's comprehensive goals.

Senator Wingard said to Doug Heider of PGE, that

Section 2 of the revised bill relates to the statute already written, "except that a state agency may neither implement any such activity, nor adopt any plan relating to such activity without prior approval of the Commission." Senator Wingard asked Heider, "How do you think that would operate in the field of nuclear thermal energy?"

Doug Heider replied that he was not sure. He said, "The Nuclear Thermal Energy Council would not approve an application, (for a plant site) until we got a permit from LCDC."

Senator Wingard said:

I think the legal counsel for the Nuclear Thermal Energy Council is also mistaken on this particular area, for the statute is very specific. . . . I quote, 'You shall include all eight of these in your siting and in the site study, one of which is land use. ORS 453.455' I feel that we really need a check on siting plans.

The discussion on activities of critical concern³² was renewed about two weeks later before the SELUC, when Senator Macpherson offered three possible options for Section 25, as follows:

- Option 1 - To retain as presently written.
- Option 2 - To omit the "activities"
- Option 3 - To include a list of activities which were to be designated by LCDC after reviewing each

Senator Hallock moved that subsection (c) of Section 25 be deleted -- "The planning and siting of energy generation and transmission facilities for public purposes." The motion passed with five "aye" votes and Wingard's "no."

Senator Macpherson then moved to insert a new subsection (c):

. . . the siting and construction of high voltage and power transmission lines, except lines subject to regulation by Nuclear Thermal Energy Council under ORS 543.305 to 553.575 and ORS 453.994.

Hal Brauner explained the amendment to the Committee. Jack McIsaac, Pacific Power and Light Company, spoke on the motion. Roll call produced four "no" and two "aye" votes, by Senators Macpherson and Wingard. The motion thus failed to pass.

Immediately following this vote, Senator Macpherson moved for the adoption of Option 3 to Section 25. On a roll call vote, the motion carried unanimously.

Later in the same SELUC meeting, Senator Atiyeh asked the Committee to look at Section 25, Subsection (2). He moved that the word "approval" should be deleted and the word "review" should be substituted. The motion carried 4 to 3 on a roll call vote, with Senators Macpherson, Wingard and Hallock casting the three negative votes.

Unfortunately, this action resolved only a portion of the political conflicts. Yet to be compromised was a new set of goals.

A NEW SET OF GOALS

The revisionists in redrafting Senate Bill 100 had changed the original goals format involving specifically designed state land use planning goals. The revised bill

provided that the goals enacted under SB 10 (1969) were to be used until the LCDC, utilizing a series of 10 public hearings to be held throughout the state, developed a new set of goals. The LCDC had to present the new goals to the Legislature by January 1, 1975, for Legislative approval.

Dean Brice, AOI, in expressing his concern before the Ad Hoc Committee asked, "If SB 10's goals (then in effect) are not reiterated, would not a change be assumed?"³³

The Ad Hoc Committee in discussing Mr. Brice's question felt that three points required resolution, as follows:³⁴

- A. Goals set in SB 10 would serve as a basis for any future goals, and would remain in effect until they were supplemented by new goals; the Commission would "mold and perfect" SB 10.
- B. What of the conflict between "conserve" and "preserve?"
- C. LCDC needs flexibility in setting future goals vs. specificity in SB 100.

L. B. Day, Teamster's Union representative, as an Ad Hoc Committee Member, and as Chairman of the Drafting Subcommittee, in presenting the revised SB 100 to the SELUC, told the Committee that the redrafters had been advised by planners that the goals needed to be set from the beginning. He said:

That set of goals is the direction taken by county governments in the development of their overall comprehensive plans, with special consideration for priority areas that might fall within their counties, such as lakes and lakeshore areas.³⁵

Senator Thorne asked, "Are the goals flexible?"

L. B. Day answered that the goals were not flexible.

At the next SELUC meeting, during a discussion on

public hearing requirements, Senator John Burns said: "It is important not only to have notice of hearings, but to give notice of what the goals are -- I wonder if the Ad Hoc Committee considered publication of the goals."³⁶

L. B. Day replied, "We did not, but we would not object to that."³⁷

Senator Burns offered his services as a lawyer.

And then the SELUC held a public hearing on the revised SB 100. Testimony was as follows:³⁸

James Allison, President of the Oregon Rural Landowners' Association, attacked the revisions with "gusto." Mr. Allison said that "prime land" needed to be defined, that the "goals" were undefined, and that the Legislature needed to establish the density of units in the Willamette Valley.

New amendments to the revised SB 100 were presented to the SELUC March 20th meeting by Senator Macpherson during the Committee's section-by-section discussion of the bill. Designated "areas of critical concern" was one of the subjects discussed, but no motion was made. However, in a discussion of Section 34's list of priority considerations, Senator Macpherson moved for deletion of the word "prime" as an adjective preceding "agricultural land." The motion, on roll call vote, carried unanimously. Senator Burns then moved for the addition of the phrase "in the Willamette Valley" following "agricultural land." The motion failed by a 4 to 3 vote.³⁹

THE PERMIT SYSTEM

The permit system was not mentioned during the January SELUC meeting. However, when the Critical Areas Subcommittee under the Chairmanship of Senator John Burns, held in-depth hearings on all facets of areas and activities of critical state concern, the subject was discussed.

At the Subcommittee's first hearing, Roger Emmons, Legal Counsel for the Oregon Sanitary Service Institute, in testifying against SB 100, said that he represented a total of seven trade associations in the refuse collection field. In referring to the activities pertaining to solid waste disposal for which permits were mandated, Mr. Emmons said:

I feel that the regulations covering the requirements for obtaining a permit under SB 100 are too time-consuming and therefore, are financially detrimental. Kessler Cannon of the Governor's Office has suggested to me that the then present concept utilized by the State of Oregon on hazardous waste disposal sites, where the state owns the property which is then franchised out to private operators, might be equally valid for SB 100's permit regulations.⁴⁰

In appearing before the last hearing of the Critical Areas Subcommittee, Steve Schell, a Portland Attorney and member of the Oregon Shores Conservation Coalition (OSCC), testified for a strengthening of the sections on critical areas and activities. Under Subcommittee questioning about abatement of a public nuisance as defined by SB 100, relating to DEQ and logs in Coos Bay, Mr. Schell,

replied:

LCDC needs to make such a determination. . . . This is neither a plan nor an action to be taken by a district council. This is something that occurs in the area of critical concern. SB 100 does not have any permit procedure in the areas of critical concern, just in activities. If, in fact, some particular activity occurs in an area of critical concern, it might not fall into the definition of 'activities'. There is a great outcry about subdivisions or other kinds of smaller developments. It would be in the best interests of the state to resolve the potential conflicts.⁴¹

Senator Macpherson, a SELUC member, but not a Critical Areas Subcommittee member, suggested that SB 100's language needed to be broadened.⁴²

At the SELUC's February 12th public hearing, two men testified against SB 100, State Representative Bill Grannell, North Bend, and James Moore, Legislative Committee Chairman for the League of Oregon Cities. Both men spoke, in particular, of their displeasure with the proposed permit system for activities of critical state concern. State Representative Grannell testified against the designation of areas of critical state concern, and particularly against adding yet another agency to the list of agencies requiring either a permit or their permission to do any construction in or around Coos Bay.⁴³

James Moore, League of Oregon Cities, offered a substitute state land use bill, in which permits for activities of critical state concern were eliminated. Mr. Moore's League Committee had prepared a section-by-section commentary on SB 100, as written. Of Section 34 on permits, the League

stated that no city or county was required for issuance of a permit. The League in commenting on Section 36, setting forth eight considerations to be used by the Commission in reviewing applications for permits said, as follows:⁴⁴

Under Subsection (5) of Section 34, the Commission is to grant a permit if the project complies with the state regulations and pertinent plans. However, Section 36 required the Commission to 'consider' circumstances, but no indication of the significance of this consideration is set forth in Section 34. In view of the nature of the activities that are listed as critical activities in Section 32, most of the provisions of Section 36 seem to be off the subject.

In reporting the changes in SB 100 to the Ad Hoc Committee, L. B. Day said that the counties were to have control of the permit system, which was to be retained in the bill -- not a building permit, however, but a planning and siting permit for critical activities. Mr. Day said, "These permits would be subject to review by LCDC prior to issuance by the counties."⁴⁵

Later during a discussion of critical activities by the Ad Hoc Committee,⁴⁶ Senator Macpherson asked the Drafting Subcommittee to explain the areas of high priority critical activities. He said that he wasn't sure that he understood them.

Fred Van Atta answered Chairman Macpherson that "critical activities had been set aside differently -- that the bill required planning and siting permits. . . ."

Hal Brauner, Administrative Assistant to both the Ad Hoc Committee and the Drafting Subcommittee, said:

Sections 27 through 31 provide for the permit system

for activities of state-wide significance, wherein the county issues the permit which is then reviewed by the state. The state may veto -- back to the county for review and appeal.⁴⁷

When the Ad Hoc Committee reported back to the SELUC, Hal Brauner told the Committee that, "Planning and siting of public schools has been added to the list of articles of state-wide significance."⁴⁸

As a result of opposition by the power companies, among others, planning and siting and construction of high-voltage power, gas and oil transmission lines and thermal power plants and nuclear installations were removed from the revised list of activities of state-wide significance, therefore, these activities were to be omitted from the permit system.⁴⁹

The district concept was deleted in the Engrossed SB 100, and the counties were named their replacements to receive the applications for permits for activities of state-wide significance. The permit-sections 34 through 40 of the original bill became Sections 27 through 31 in the redrafted bill. The old Section 34 (1) now 27 (1) was rewritten, as follows:

- (1) On or after the date the Commission has approved state-wide planning goals and guidelines for activities of state-wide significance designated under Section 25 of this Act, no proposed project constituting such an activity may be initiated by any person or public agency without a planning and siting permit issued by the Commission therefor.

The new Section 30 of SB 100 said:

- (1) No project constituting an activity of state-wide

significance shall be undertaken without a planning and siting permit issued under Section 27 of this Act.

- (2) Any person or agency acting in violation of Subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon.

Applicants for planning and siting permits were required to meet both the yet-to-be-determined state-wide comprehensive plan concept was to evolve during the drafting of SB 100.

THE STATE-WIDE COMPREHENSIVE PLAN

Senate Bill 100 (SB 100) was explained section-by-section to the SELUC by Senator Macpherson at its first meeting, January 18, 1973, which was closed to the public. During Committee discussion, the point was made that, in the bill as proposed, a comprehensive plan was required for both cities and counties. John Toran, SELUC Administrative Assistant, was directed by Chairman Hallock to draft a letter to the Attorney General for his opinion as to whether the LCDC constitutionally, by itself, was empowered to approve a comprehensive plan.⁵⁰

During a SELUC February public hearing, Mike Miksche of Prineville, asked the Committee, "Why has not the state done a comprehensive plan itself, beginning from the bottom up?"⁵¹

In reporting on the Subcommittee's progress to the Ad Hoc Committee, L. B. Day said, "Once all 36 counties have

submitted their plans to the state, those become a state plan.⁵²

The Ad Hoc Committee continued its discussion, as follows:⁵³

Senator Macpherson asked, "What happens when the citizens do get involved and develop their plans, then they get different goals from the state and there is a clash?"

Fred Van Atta answered:

Critical areas have been rephrased to priority considerations applying to both the Commission in adopting goals and guidelines, and to the local jurisdictions in preparing and revising and whatever they do to their comprehensive plans. They should give priority consideration to the following areas and activities; Areas first (the list in SB 100); rather than specific geographical features. . . . They shall give priorities to land adjacent to freeway interchanges. . . . When adopting comprehensive plans, these are the most important things to plan for, and you start out by looking at these areas.

Martin Davis said, "There is no distinction between these areas. . . . We moved into a lower level -- we moved into the regulation level rather than the goal level."

L. B. Day said:

Once the goals are adopted and sent from the state to the counties, then the counties are to develop their comprehensive plans and get their approvals from the state. That in effect, is a regulation, if that comprehensive is violated.

Martin Davis asked, "What happens if the state rejects the county plan? . . . What power does the Commission have to review actions?"

L. B. Day answered, "They have no injunction relief, and I have been talking with lawyers to work on the section

with a better relief, which is to stop the action."

Martin Davis asked, "What about amending the comprehensive plan?"

L. B. Day answered, "Approval of the state is required to amend it. They have to come in and review every year, if they have not altered it."

One of the significant changes made in SB 100 by the Ad Hoc Committee on the recommendation of the Drafting Subcommittee was to give the power to take over the planning of a city or county one year after the adoption of state goals and guidelines, if the LCDC found that the planning did not comply with the state-wide planning goals. This power was given to the Commission, rather than the Governor.⁵⁴

Sections 40 through 50 of the Engrossed SB 100 detailed the rules governing comprehensive planning -- the numbering and contents remained the same as and including the Enrolled SB 100.

State-wide comprehensive land use planning was to be a reality. Senate Bill 100 required that each area of the state was to prepare a comprehensive plan which was to be coordinated with each of their adjacent areas to eventually become a comprehensive plan for the state as a whole.

SUMMARY

Land use planning in Oregon was to be done by the people and for the people. The LUPC endeavored to designate the planning goals. However, in the final analysis, the

revised Senate Bill 100 empowered the people to specify their own state-wide goals. Economy vs. environment were the combatants. Designated critical areas and activities of critical concern were their battlefields. While LCDC was permitted to specify areas of critical concern at some future time, the bill's passage required their then present omission. The enrolled SB 100 did not include activities using not-designated "critical concerns," but terms softened by semantics to "significant concerns." These activities were required to have a permit to be issued at the county level, but subject to review by LCDC.

A state-wide comprehensive plan was authorized by SB 100. The "Who Plans What?" was politically resolved. The state LCDC was empowered to plan for the state with the help, not of COGs, but of the counties, and eventually CRAG in the Portland-Tri-County area. Political compromises in the SELUC resolved the conflicts generated by the original bill. Still to be resolved were who was to hold the reins of power and how much power they were to hold.

NOTES

¹Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 25, 1973) Tape 2, Side 2 and Tape 3, Side 1.

²William Grannell, State Representative from Coos County, Oregon (Salem: January 30, 1977) Written Testimony to SELUC.

³Minutes COGs Subcommittee (Salem: February 1, 1973) Tape 4, Side 1.

⁴Minutes Critical Areas Subcommittee meeting
(Salem: February 12, 1973) Tape 5, Side 2.

⁵Ibid.

⁶Ibid.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

¹¹Ibid.

¹²Minutes of SELUC meeting, February 12, 1973, Tape 6,
Side 2 and Tape 7, Side 1.

¹³Personal Interview with L. B. Day, Chairman of the
Drafting Subcommittee and former Director of DEQ, (Salem:
December 3, 1973)

¹⁴Minutes of SELUC meeting, February 12, 1973, Tape 6,
Side 2 and Tape 7, Side 1.

¹⁵Ibid., February 15, 1973, Tape 7, Side 2.

¹⁶Ibid.

¹⁷Ibid., February 12, 1973, Tape 6, Side 2 and Tape 7,
Side 1.

¹⁸Minutes of Ad Hoc Committee meeting (Salem: February
18, 1973) Tape 8, Side 2.

¹⁹Ibid.

²⁰Ibid. February 23, 1973, Tape 9, Side 1.

²¹Ibid.

²²Ibid.

²³Ibid., February 27, 1973, Tape 9, Side 2.

²⁴Minutes Critical Areas Subcommittee meeting, February
12, 1973, Tape 6, Side 2.

²⁵Minutes of SELUC meeting, February 12, 1973,
Tape 6, Side 2 and Tape 7, Side 1.

²⁶Personal Interview with Gordon Fultz, Assistant Dir-
ector of Association of Oregon Counties (Salem: March 25,
1974).

²⁷Minutes of Ad Hoc Committee meeting, February 23,
1973, Tape 9, Side 1.

²⁸Ibid.

²⁹Ibid.

³⁰Ibid., February 27, 1973, Tape 9, Side 2.

31 Minutes of SELUC meeting, March 8, 1973, Tape 11, Side 1.

32 Ibid., March 20, 1973, Tape 12, Side 1.

33 Minutes of Ad Hoc Committee meeting, February 27, 1973, Tape 9, Side 2.

34 Ibid.

35 Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.

36 Ibid., March 6, 1973, Tape 11, Side 1.

37 Ibid.

38 Ibid., March 8, 1973, Tape 11, Side 1.

39 Ibid., March 20, 1973, Tape 12, Side 1.

40 Minutes Critical Areas Subcommittee meeting, February 8, 1973, Tape 4, Side 2 and Tape 5, Side 1.

41 Ibid., February 12, 1973, Tape 5, Side 2 and Tape 6, Side 1.

42 Ibid.

43 Minutes of SELUC meeting, February 12, 1973, Tape 6, Side 2 and Tape 7, Side 1.

44 Ibid.

45 Minutes Ad Hoc Committee meeting, February 23, 1973, Tape 9, Side 1.

46 Ibid.

47 Ibid., February 27, 1973, Tape 9, Side 2.

48 Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.

49 Ibid., March 20, 1973, Tape 12, Side 1.

50 Ibid., January 18, 1973, Tape 1, Side 2 and Tape 2, Side 1.

51 Ibid., February 12, 1973, Tape 6, Side 2.

52 Minutes Ad Hoc Committee meeting, February 23, 1973, Tape 9, Side 1.

⁵³Ibid., Ad Hoc Committee meeting.

⁵⁴Minutes of SELUC Meeting, Debruary 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.

CHAPTER XII

REASSIGNED ROLES

As written by the Land Use Policy Committee (LUPC) Senate Bill 100 (SB 100) assigned specific roles to the Land Conservation and Development Commission, the Governor, the Legislature, the public, and the substate organizations, but the Senate Environment and Land Use Committee (SELUC) was compelled to reassign the roles to assure acceptance and enactment.

Since the gift of power by Oregon's voters to their Legislature was to be guarded judiciously by that elected governing body, the Legislature, through SELUC, endeavored to delegate the public's power wisely and carefully. SELUC, as a surrogate guardian of the public's power, reassigned the roles to the future participants in state land use planning.

The roles were discussed separately, for each was a political creation to ensure both the enactment of the bill and the survival of the state land use planning law in Oregon.

ROLE OF THE LAND CONSERVATION AND DEVELOPMENT COMMISSION

The regulatory powers of SB 100 went unmentioned until the SELUC Chairman, Senator Ted Hallock, did so obliquely, when he said, "SB 100 will solve the land use problem

because it has teeth."¹

Despite the fact that Chairman Hallock of the SELUC had specifically charged the COGs Subcommittee with determining the viability of the regional planning concept under LCDC's authority, regulatory power per se concerning LCDC was never mentioned during the Subcommittee's three meetings.²

When the Ad Hoc Committee received the redrafted SB 100, areas of critical concern and regional planning had been eliminated from the bill with counties given the power to plan. Each of these changes constituted a switch in handling regulatory power. In critical areas the goals had been mandated in the bill; in the future the goals were to be derived with citizen participation in a year's time. Again direct responsibility to the people of Oregon was a primary factor in the change from COGs to counties as planning agencies, since counties had elected officials and the COGs did not.³

The Ad Hoc Committee devoted some time to a discussion of regulatory power as proposed in the rewritten SB 100. The verbal exchange began when L. B. Day said that the LCDC, with ten public hearings throughout the state, was to determine the state land use planning goals. Senator Macpherson and Martin Davis, OEC, both wanted to know the schedule for the goals. L. B. Day said that the deadline for goals setting was January 1, 1975.⁴

The Ad Hoc Committee's discussion went as follows:⁵

Hal Brauner, Administrative Assistant to the Drafting

Subcommittee, in reply to Martin Davis, said that the goals had to be implemented a year after adoption by the Joint Legislative Committee, which was to adopt the goals prior to the January 1, 1975, deadline, as the counties' plans were to be reviewed after the goals had been adopted. L. B. Day said that if a county was able to justify a need for a time extension, then the extension was to be granted by the LCDC. He added, "However, the counties must show just where they are and exactly what they plan to do."

Senator Macpherson said that each county was to submit its plan to the state for determining its compliance with the state goals. He then asked, "If each county will be submitting its regulations to implement each plan, whenever the (county's) zoning fits the plan, then how does this happen?"

L. B. Day replied that the state had an opportunity for review. Day said that if the state had reason to believe that there was a series of activities that were transpiring that showed that the ordinance-making power or activities were beginning to violate the comprehensive plan, there were going to be seven district offices of the LCDC that were supposed to work closely with each one of these counties and to review the counties' actions.

Senator Macpherson reminded the Ad Hoc Committee members that 90 days had been mandated in SB 100 with another year and a half after that before they (the counties) were to get the goals and guidelines down from the state and to know what they were supposed to do with them.

Martin Davis, OEC, asked "What happens if the state rejects the county plan? What power does the LCDC have to review actions?"

L. B. Day answered that they (the county) had no injunctive relief.

Martin Davis then asked, "What about amending the comprehensive plan?"

L. B. Day replied that it was to be amended with LCDC's approval. Day added that the comprehensive plans had to be reviewed every year, even if they have not been altered.

The Ad Hoc Committee continued its discussion of regulatory power at its next meeting, when Hal Brauner, Administrative Assistant to the Drafting Subcommittee, presented the permit system for areas of state-wide significance, wherein the county issued the permit, which was then reviewed by the state.⁶

In discussing Section 44, Martin Davis suggested that the words "ordinances and regulations" needed to be inserted after the phrase "comprehensive plans." Committee discussion decided this was too broad. Senator Macpherson and Ward Armstrong, AOI, suggested that the words inserted needed to be "zoning and subdivision ordinances." The full Committee concurred on these words.⁷

Steve Hawes, Legislative Counsel, recommended that Section 53 needed to be amended by a new subsection (6) which stated that "The commission may enforce orders issued under subsection (3), Section 53, in appropriate judicial proceed-

ings brought by the commission." His proposal was adopted by the Ad Hoc Committee.⁸

This revision constituted the last discussion of state land use planning's regulatory power.

The Role of the Land Conservation and Development Commission (LCDC) was finally authorized in the Enrolled SB 100, Section 11, required that "LCDC shall:

- (1) Establish state-wide planning goals consistent with regional, county and city concerns;
- (2) Issue permits for activities of state-wide significance;
- (3) Prepare inventories of land uses;
- (4) Prepare state-wide planning guidelines;
- (5) Review comprehensive plans for conformance with state-wide planning goals;
- (6) Coordinate planning efforts of state agencies to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans;
- (7) Insure widespread citizen involvement and input in all phases of the process;
- (8) Prepare model zoning, subdivision and other ordinances and regulations to guide state agencies, counties and special districts in implementing state-wide planning goals, particularly those for the areas listed in subsection (2) of Section 34 of this Act;
- (9) Review and recommend to the Legislative Assembly the designations of areas of critical state concern;
- (10) Report periodically to the Legislative Assembly and to the Committee; and
- (11) Perform other duties required by law.

Senator Macpherson and his LUPC originally conceived

their proposed legislation as a state-wide land use planning bill, but in the final SB 100 a state-wide comprehensive plan was authorized. The original SB 100 gave LCDC the power to plan and the power to regulate state planning, but the power was held by the Governor to enforce regulation.

The Enrolled SB 100 had delegated to the LCDC specific power for specific things with the consent of the Legislature.

ROLE OF THE LEGISLATURE

Ward Armstrong, AOI representative and a Drafting Subcommittee member, in requesting policy direction from the Ad Hoc Committee, asked if there was any feeling as to whether the Joint Legislative Committee was to be kept in an amended bill. Nan Dewey, Oregon Wheat Growers' Association, said that she favored having an "advisory body," such as the State Land Board. Senator Macpherson countered that the role was not really to be determined until the powers and functions of LCDC had been clearly spelled out.⁹

Then Hal Brauner, Administrative Assistant to both the Ad Hoc Committee and the Drafting Subcommittee, reported on the redrafted SB 100 to the Ad Hoc Committee, he said that Section 23 mandated that for the next interim (1973-75), the Chairman of both the House and Senate Environment and Land Use Committees were to be two of the members of the Joint Legislative Interim Committee.¹⁰

L. B. Day said, "This insures continuity."¹¹

When the Ad Hoc Committee reported back to the SELUC,

Senator Hallock asked that committee to draft a bill to create an interim committee. Senator Macpherson pointed out that "An Interim Committee would cost \$100,000, while a Standing Committee would have a minimum cost." This was pursued further at that SELUC meeting, as follows:¹²

In responding to a SELUC discussion to insure that public hearings were to be held as required by the redrafted SB 100, L. B. Day said, "Section 45 requires that LCDC must report to the Interim Committee every 30 days."

The SELUC discussion insuring LCDC compliance continued for some time without further mention of the role of the Legislature, until Senator Burns, Portland, suddenly interjected that they needed to use the language in the Emergency Board Statute (ORS) regarding monthly review with the Legislative Committee on the progress of the Department, to help with any problems as they arose.

In Senate Bill 100's final form the role of the Legislature was designated specifically. A Joint Legislative Committee on Land Use was to be established to do Legislative review on all of the activities of LCDC. In addition the Joint Committee was to study and make recommendations on any other thing relating to land use planning in Oregon.

The Enrolled SB 100 authorizes a Joint Legislative Committee on Land Use in Sections 22, 23 and 24. Section 24 reads as follows:

Section 24. The Committee shall:

(1) Advise the department on all matters under the

- jurisdiction of the department;
- (2) Review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of designations of activities of state-wide significance, and for designations of areas of critical state concern;
 - (3) Review and make recommendations to the Legislative Assembly on state-wide planning goals and guidelines approved by the commission;
 - (4) Study and make recommendations to the Legislative Assembly on the implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision or other ordinance or regulations regulating or restricting the use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use; and
 - (5) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon.

The Enrolled SB 100, Part VII, Sections 55 and 56 provide for Legislative Review, as follows:

Section 55. The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, counties and other agencies in carrying out the provisions of this Act.

Section 56.

- (1) Prior to the end of each even-numbered year, the department shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, commission, state agencies, cities, counties and special districts in carrying out the provisions of this Act.
- (2) A draft of the report required by Subsection (1) of this section shall be submitted to the committee for its review and comment at least 60 days

prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

- (3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly, submitted under Subsection (1) of this section.

The LUPC created the vehicle, the Joint Committee, to insure Legislative review. The SELUC did not seriously revise the concept since there seemed to be no serious opposition during the Committee's hearings. The same was not true for the role of the Governor.

ROLE OF THE GOVERNOR

At the SELUC's first meeting on SB 100, which was closed to the public, the Committee members discussed the bill's concepts of state land use planning. The Governor's power versus Commission power emerged as a potential area of conflict during the Committee's discussion on enforcement. Senator Macpherson referred to the new section as "the ultimate club," i.e., the section stated that if the Commission did not meet its responsibilities, the Governor was empowered to do so. The SELUC was further told by Senator Macpherson that the section, also phrased SB 10 (1969) into SB 100 (1973).¹³

Unfortunately, this legal authorization of power to the Governor helped to create an adverse political climate in the SELUC hearings. While the testimony primarily opposed SB 100 as an unnecessary and arbitrary exercise of power, there were

some who were vehemently vociferous in their reaction to the proposed increase in the Governor's power.

Ruby Nichols, Silverton, and Don Darling, Linn County, spoke against Gubernatorial power.¹⁴ Mrs. Nichols presented several petitions containing over 1000 signatures of people who question the constitutionality of the Governor's right to form 14 Administrative Districts, and to set up 14 Administrative Councils of Governments, which were not elected by the people. Mrs. Nichols was referring to the Executive Order of 1970, but she was primarily concerned about the extension of executive power. Mrs. Nichols said, in closing, "This is rule without representation -- a power grab between elected and appointed."

The Drafting Subcommittee rewrote SB 100. When they reported on their revisions to the Ad Hoc Committee, Hal Brauner said, in replying to a question of the Commission's power under the redrafted bill, "The Governor's power under SB 10 has been repealed and replaced by the Commission's authority.¹⁵

One of the significant changes in SB 10 adopted by the Ad Hoc Committee said, as follows:

The power to take over the planning of a city or county one year after the adoption of state goals and guidelines, if the LCDC finds that the planning does not comply with the state-wide planning goals, was given to the Commission, rather than the Governor.

A second change adopted by the Ad Hoc Committee at the February 27, 1973, meeting did not speak directly to the

Governor's power, but, since counties were mandated to coordinate the land use and related plans of cities, special districts and state agencies, the district agencies were no longer under the jurisdiction of the Governor.

With these two changes, the Governor's remaining power in SB 100 was the authority to appoint the seven LCDC members with the consent of the Senate, of course. Despite the limits to executive power, Jane Button, Eugene, at the SELUC public hearing said, "I am opposed to the Governor's appointed power."¹⁷

However, Senate Bill 100 was enacted into Oregon law with only the Governor's appointive power retained for that office. It was to satisfy people that led to the assigning of a role to the public in SB 100.

ROLE OF "THE PUBLIC"

During a February SELUC hearing, Monty Anderson, member of the Josephine County Planning Commission, said that the bill's authors had failed to include fully the concept of public participation in all facets of SB 100.¹⁸

At the first meeting of the Ad Hoc Committee, chaired by Senator Macpherson, Gordon Fultz, Executive Director of the Association of Oregon Counties, said, "I am concerned about citizen participation during the initial stages of guideline making."¹⁹

The Drafting Subcommittee of the Ad Hoc Committee, with L. B. Day as chairman, had heeded the testimony

regarding the need for citizen participation in land use planning. When L. B. Day presented the redrafted SB 100 to the Ad Hoc Committee, he told the members that citizen participation was mandated at all levels of land use planning including both state and county levels. Hal Brauner, Administrative Assistant to the Ad Hoc Committee, said that within 90 days after January 1, 1975, the plan for citizens' participation was to be submitted to the LCDC for approval, but this did not mean that the involvement process was going to be implemented on that day.²⁰

The Ad Hoc Committee discussion on the public's role in land use planning continued, as follows:²¹

Senator Macpherson asked, "What about the citizen inputs from lower levels meeting the state-level inputs, i.e., how do we get the two inputs together?"

Martin Davis, OEC, then asked, "What about the criteria for citizen participation?"

L. B. Day answered:

First of all, a minimum of ten public hearings is required. The citizens will assist the state through these public hearings. Once the state goals are adopted, how do we mesh what has been done so far? The state would be placed in the position of reviewing each one of the comprehensive plans that come up from the counties to find out if they conform with the goals, and if there are conflicts with other counties, and if not, eventually adopt the plans. Our 36 counties are going to have to help resolve the conflicts! In essence, we will merge 36 county comprehensive plans to achieve the state plan.

One of the significant changes adopted by the Ad Hoc Committee was that public participation was mandated prior

to the formulation of the state goals and guidelines.²² This was important, since the designated state-wide goals had been deleted from the bill and the public was to determine the permanent state-wide goals.

The subject of "public involvement" arose before the reconvened SELUC during a Committee discussion of the re-drafted SB 100 with the following dialogue.²³

Senator Burns expressed concern about the phrase "public involvement." He said he would have to suggest some amendatory language later.

In discussing Section 36, L. B. Day said, "The bill requires the holding of public hearings, and the implementation of other suggestions from public involvement."

Chairman Hallock interrupted with, "for, not from."

L. B. Day said, "The point is there. There is better language to say it, but that was our intent."

Where the original SB 100 had made the public essen-
tially spectators to land use planning, the final SB 100 had made the public true participants at all levels in the planning process including the formulation of the state-wide land use planning goals.

ROLE OF SUBSTATE UNITS

Where the Councils of Governments had originally been mandated by Senate Bill 100 to do the comprehensive plans at the regional level, Sections 17, 18 and 19 of the Enrolled SB 100 delegated this responsibility to plan primarily to

the counties, and temporarily to the Oregon Coastal Conservation and Development Commission. The City of Portland, as the "37th County," was excluded from Multnomah County's authority in Section 19. While all cities and counties were to do a comprehensive land use plan as provided by the Act, the counties were empowered to coordinate all comprehensive plans within their legal jurisdictions. Section 19 read as follows:

- (1) . . . each county through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including those of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. For purposes of this subsection, the responsibility of the county described in this subsection shall not apply to cities having a population of 300,000 or more, and such cities shall exercise, within the incorporated limits thereof, the authority vested in counties by this subsection.
- (2) For the purposes of carrying out the provisions of this Act, counties may voluntarily join together with adjacent counties as authorized in ORS Chapter 190.
- (3) Whenever counties and cities representing 51 percent of the population in their area petition the commission for an election in their area to form a regional planning agency to exercise the authority of the counties under Subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area to form a regional planning agency. The election shall be conducted in the manner provided in ORS Chapter 259. The County Clerk shall be considered the elections officer and the commission shall be considered the district election authority. The agency shall be considered established if the majority of voters favor the establishment.

- (4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties.

SUMMARY

The roles of the participants in state-wide land use planning were specifically assigned in the Enrolled SB 100.

The Land Conservation and Development Commission (LCDC) was empowered to determine state-wide land use planning goals with citizen participation. The Commission was authorized to establish a state-wide Citizen's Advisory Committee and to review permits for critical activities. The LCDC was to coordinate area plans into a state-wide comprehensive plan. The agency was empowered to do an area's comprehensive plan when an area failed to do so for itself, and to deduct the accrued costs from the area's share of the state liquor and cigarette revenues. Lastly, LCDC was permitted to designate areas of critical concern in the future with the consent of the Legislature to whom the agency was to report regularly on the state-wide planning program.

The Legislature established a standing Joint Committee of the Legislature to oversee LCDC. The Governor was authorized to appoint LCDC members and to remove them only "for cause."

Citizen participation was mandated by the Enrolled

SB 100 at all levels in the planning process. LCDC was to appoint a state-wide citizen's advisory board. Citizens in 10 public hearings held throughout Oregon were to determine LCDC's state-wide planning goals. All units of local government were compelled in the bill to utilize citizen participation in their separate planning processes.

NOTES

¹Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 25, 1973), Tape 2, Side 2 and Tape 3, Side 1.

²Minutes of COGs Subcommittee meetings (Salem: February, 1973) for February 1, Tape 4, Sides 1 and 2; for February 9, Tape 5 side 2; and for February 12, Tape 6, Side 1.

³Minutes of Ad Hoc Committee meeting on February 23, 1973 (Salem: February, 1973) Tape 9, Side 1.

⁴Ibid.

⁵Ibid.

⁶Ibid., February 27, 1973, Tape 9, Side 2.

⁷Ibid.

⁸Ibid.

⁹Ibid., February 18, 1973, Tape 8, Side 2.

¹⁰Ibid., February 23, 1973, Tape 9, Side 1.

¹¹Ibid.

¹²Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1 and Tape 10, Side 1.

¹³Ibid., January 18, 1973, Tape 1, Side 2 and Tape 2, Side 1.

¹⁴Ibid.

¹⁵Minutes Ad Hoc Committee meeting, February 27, 1973, Tape 9, Side 2.

¹⁶Ibid.

¹⁷Minutes of SELUC, March 8, 1973, Tape 11, Side 1.

18 Minutes of SELUC meeting, February 12, 1973, Tape 6,
Side 2.

19 Minutes Ad Hoc Committee meeting, February 18, 1973,
Tape 8, Side 2.

20 Ibid., February 23, 1973, Tape 9, Side 1.

21 Ibid.

22 Ibid.

23 Minutes of SELUC meeting, March 6, 1973, Tape 11,
Side 1.

CHAPTER XIII

LEGISLATIVE INTENT

LUPC conceptual decisions in drafting SB 100 forced the SELUC to reassign roles to each participating group to be involved in Oregon's land use planning. Unfortunately, this failed to limit LCDC's administrative powers. While specifically assigning LCDC a role in state-wide planning in redrafting SB 100, SELUC, while reserving the policy-making role for the Legislature, did not limit the agency's power. Several individuals, therefore, continued to express concern for potential abuse by LCDC of their administrative power.

To satisfy these individuals and to avoid the potential for abuse of power, a remedy had to be found. Therefore, the Committee offered a Statement of Legislative Intent.

THE CONCERNS

Several people, who testified during the SELUC hearings on SB 100, expressed their concerns relating to the possible abuse of administrative power. This same concern was voiced during the redrafting of the bill before the Ad Hoc Committee. When the revised SB 100 was reviewed by the SELUC, the same concerns were still present.

The SELUC

It was not until SB 100 was before the SELUC that serious discussion took place on the possible abuse of power. During the SELUC organizational meeting, the broad question, 'Who sets policy?' began with yet another question--"Did the sovereign rights of the State of Oregon have precedence over Federal impact statements?" Neither question was resolved by the Committee at that time.¹

Other SELUC testimony on power went as follows:²

The Committee was told that the Land Conservation and Development Commission would recommend to the Legislature that "policy" belonged to the Legislature. This gave rise to two more questions--legislative power vs. state public administrative power and the department's enforcement powers.

In Senate Bill 100, as proposed, a comprehensive plan was required for both cities and counties. John Toran, SELUC Administrative Assistant, was directed by Chairman Hallock to draft a letter to the Attorney General for his opinion as to whether the Land Conservation and Development Commission constitutionally, by itself, could approve a comprehensive plan; e.g., was the power of the LCDC the same as the power conferred upon the Emergency Board concerning Gubernatorial appointments?

The Committee discussed enforcement, including the Governor's power vs. Commission power. Senator Macpherson called Section 55 in the original SB 100 "the ultimate club"

as this section stated that if the Commission did not fulfill its responsibilities, the Governor was legally to do so.

The first meeting of the SELUC adjourned in the midst of an intra-legislative squabble as to whether an interim committee or a standing committee was to function as an overseer of LCDC.

Bud Svalberg, Oregon Water Resources Board Director, during a SELUC hearing, stated that while he was in complete agreement with the objectives of SB 100, he feared that another state agency's power and authority of it (proposed LCDC) was in possible competition with his agency.³

Mayor Phil Balsiger, Wilsonville, in testifying on the bill, made a suggestion for a change in SB 100 which brought immediate, strong opposition from his listeners. The Mayor suggested that, "no such action shall be deemed necessary unless the Commission shall present evidence of its needs," should be added to Section 48, page 24, line 11 after the word "Act." He said, further, that SB 100 gave "LCDC unbridled powers and that this wasn't to be allowed."⁴

The testimony before the SELUC continued as follows:⁵

Gene Magee, manager of the Oregon Coast Association, volunteered that he represented 400 members in the seven coastal counties. He said that his organization was dedicated to highway improvement and development, plus tourist promotion. Mr. Magee testified for SB 100 but said that he favored local planning.

Chairman Hallock asked Mr. Magee, "If all 400 members had come to a consensus of opinion on SB 100?"

"No," answered Magee.

Magee then quizzed Chairman Hallock concerning a press release in which Hallock was quoted as saying that he, Mr. Hallock, wanted a "super agency." Magee received no answer.

Art Dummer and Eldon Austin both testified against SB 100. Mr. Dummer said that he was speaking as an ordinary and individual citizen. He said that he was afraid of "big" government, government planners and government experts. Mr. Austin further stated that "SB 100 provided no control over the selection, actions or removal of the state planner by the people."

During one of the "Critical Areas" meetings, a brief dialogue alluding to abuse of power ensued as follows:⁶

Senator Burns asked Mr. Schell that, if DEQ mandated getting logs out of Coos Bay and if DEQ had jurisdiction over log rafting and was enforcing it in some places, why, then, was it necessary to particularize that kind of authority to another agency?

Mr. Schell answered that it was a matter of DEQ saying, "get the logs out of the water" and that was the limit of DEQ's jurisdiction. He said, "What is needed, is to be able to look at the whole concept and to provide guidelines on the overall use. LCDC was able to do that."

Senator Burns stated that he didn't agree with vesting

authority over discharge permits with another agency. He asked Mr. Schell, "Should we propose guidelines in respect to discharge, or would you leave that with DEQ?"

"No," answered Mr. Schell.

When the SELUC met again, abuse of power was not specifically discussed. However, Randall Kester, President of the Portland Chamber of Commerce, saying that he was speaking in behalf of the Chamber, made the following remarks which led to an oblique discussion on administrative power as follows:⁷

Mr. Kester said:

The status quo should be maintained until the 1975 Legislative Session. . . . During the interim, the policies and guidelines should be prepared by an especially created department. In 1975, the Legislature would add the necessary teeth to the bill.

Roger Yost, Portland, also testifying on behalf of the Portland Chamber of Commerce, said, "I second Randall Kester's testimony."

Senator Atiyeh asked Mr. Yost, "Is it your recommendation that the guidelines be put into statute or that the new Department (LCDC) be given rule-making authority to set these guidelines?"

Mr. Yost answered,

During the interim, the process would be from the local to the regional to the state level. The people would be working together to evolve policy-making statements and planning guidelines for presentation to the 1975 Legislature. During that period of time, other than advising and coordinating with these statements and guidelines, they would have no authority.

Senator Burns asked Mr. Yost, "Would we put them into statute in the 1975 Legislative Session?"

Mr. Yost replied,

In the 1975 session, if based on a considerable amount of evidence, the Legislature and the people of Oregon would be able to see what this Department was really going to do, and could then make a more definitive decision. . . . Under SB 100, as set up now, the Land Conservation and Development Commission and its staff will have a full time job just coordinating the various state agencies.

The SELUC continued the previous day's discussion during their February work session as follows:⁸

Senator Hallock suggested to Senator Macpherson that the Ad Hoc Committee could look at the concept in the development of guidelines by LCDC. Hallock ordered that the 19 state agencies which were involved either directly or indirectly in any facet of state-wide land use to be included in the LCDC's jurisdiction and should be utilized as resource entities in helping to develop these guidelines. The 19 state agencies, while not named, would have included the State Department of Transportation, DEQ, State Land and Water Resources Boards, Nuclear Siting Council and the Department of Geology.

Senator Wingard asked Senator Macpherson, "If the development of an area comprehensive plan embraces city and county lines, how do you propose to implement the program?"

Senator Macpherson answered that each city and county was to develop a comprehensive plan and then the two of them would work on a coordinated plan.

Senator Wingard reminded the Committee that "the only reason for creating the COG's was for the Federal money, not for solving problems."

Senator Wingard asked, "Was it possible for the governing body to be all elected officials?"

Senator Macpherson replied that it was possible.

Senator Ripper said, "I don't think the Federal Government is going to cut out funds to the State of Oregon just because we want to run our state the way we want to do it."

Senator Wingard then expressed his concern about holding the people together other than through the threat of money (loss).

Senator Hallock answered, "LCDC is how we do it. Let's call it the overview parent body that has developed a state-wide plan and guidelines. LCDC holds the hammer."

Senator Burns said, "As long as we have 36 counties we should give their planning commissions complete authority for all planning decisions. These decisions must be in the hands of the elected officials."

The Ad Hoc Committee

That control over the controllers was an accepted concept was borne out by L. B. Day's report to the Ad Hoc Committee on the revised SB 100.⁹

L. B. Day stated:

A legislative committee should be made up of seven

members--the chairman of both the Senate and the House Environment Committees with the other members to be appointed jointly by the President of the Senate and the Speaker of the House. This committee would 'plug' into the situation to review how things are moving. . . . They would not have veto power over the action of the Commission.

The Ad Hoc Committee's discussions went as follows:¹⁰

Fred Van Atta said, "There are three magic words throughout the bill--planning, goals, and guidelines."

Senator Macpherson asked:

Are the goals defined? We have goals in the statutes now. The bill calls for taking the goals already in the statutes and applying them to comprehensive planning. Do you accept this?

L. B. Day answered, "Yes, but there would be additional goals in SB 100. The idea of referring to guidelines should be abolished. . . . There are no guidelines for achieving the state goals."

Fred Van Atta remarked:

The goals we are talking about are in ORS 215.515. These goals were part of SB 10 (1969). These remain the goals for comprehensive planning until the Commission supplements, replaces, amends or adds to them.

L. B. Day replied that, first, the department was going to develop a set of goals, then they had to hold at least 10 public hearings throughout the state on the goals.

Senator Macpherson asked, "Mr. Day, what is the timetable on these goals?"

L. B. Day answered:

The date is January 1, 1975. . . . What they have had to do by January 1975 is not only have a set of goals adopted, but also they have to say why they did or did

not have a comprehensive plan.

Mr. Brauner said:

Planning efforts are going on now with goals that are in the statutes, which became effective under SB 100 immediately, until the Commission approves the goals and guidelines that may modify them. . . . The planning effort is still continuing all the time until the point is reached when they start bringing up and revising to bring their planning up to within these goals. They have one year after that in which to bring planning into compliance.

Senator Macpherson asked, "What happens when the citizens do get involved and develop their plans, then they get different goals from the state and there is a clash?"

Fred Van Atta said:

Critical areas have been rephrased to priority considerations that apply to both the Commission in preparing and revising and whatever they do to their comprehensive plans. They should give priority consideration to the following areas and activities. Areas first, rather than specific geographical features. . . they shall give priority to land adjacent to freeway interchanges. . . . When adopting comprehensive plans, these are the most important things to plan for, and you start out by looking at these areas.

Martin Davis said, "There is no distinction between these areas. . . . We moved into a lower level, we moved into the regulation level rather than the goal level."

The Drafting Subcommittee utilized a February work session to continue their explanation of the revised SB 100 to the Ad Hoc Committee.¹¹

As a result of the changes written into the redrafted bill, Martin Davis, Oregon Environmental Council (OEC), recommended:

An amendment be added to the bill, a direction to the Commission that it is to recommend areas of state-wide significance, going through the same process, to the Committee for the approval of the next session of the Legislature.

A lengthy discussion ensued as follows:¹³

L. B. Day concurred with Mr. Davis' recommendation and commented that the concept still kept decisions in the Legislative area.

Ward Armstrong said, "With direction for the state agency, this is best done at the local level."

Gordon Fultz concurred, "Yes."

Ward Armstrong said, "It is okay to charge the Commission to study areas and make their recommendations on those areas."

Senator Macpherson said, "Add the language to the section 'develop criteria and then recommend.'"

Gordon Fultz said, "It needs to go through the local process with the state agency submitting its recommendations to proper local authorities."

Steve Hawes said:

The Committee built determination into one of the last sections of SB 100 as well. The Commission shall be directed to study and develop criteria, and then recommend.

L. B. Day commented, "You need to be redundant to make the bill clearer."

There was general agreement among the Ad Hoc Committee members that language in this vein should be incorporated into SB 100.

Dean Brice objected to the fact that "prime agricultural land" was the only economic consideration among the list of those criteria to be given priority consideration. He expressed his concern about the present goals in SB 10 versus possible future goals. Mr. Brice then asked, "If SB 10 goals (now in effect) are not reiterated, would not a change be assumed?"

Pertinent excerpts from the Ad Hoc Committee's discussion of Mr. Brice's question were as follows:¹⁴

Goals set in SB 10 serve as a basis for any future goals, and are to remain in effect until they were supplanted by new goals: the Commission is to 'mold and perfect' SB 10. . . .

What of the Conflict between 'conserve' and 'pre-serve'?

The requirements of the comprehensive plan should be expanded. . . .

LCDC needs flexibility in setting future goals vs. specificity in SB 100.

Martin Davis suggested that the Commission needed to model ordinances as bench marks for critical areas for counties' optional use and guidance.

Gordon Fultz said, "I agree with Mr. Davis."

Since the Ad Hoc Committee generally concurred on this, Senator Macpherson recommended that the concept be added to Section 11.

Steve Hawes, Legislative Counsel, objected to the fact that Section 45 amended the existing ORS rather than repealing the items. Hal Brauner explained that there had not been

time enough to research the statutes. Mr. Brauner said, "The Governor's power under SB 10 has been repealed and replaced by the Commission's authority."

Mr. Brauner continued, saying that Section 51 said that the appeals process went through the county governing body instead of COGs, making compliance with goals, not guidelines, subject to appeal. He said, "If goals are achieved by a different route, that is permitted by the bill."

L. B. Day suggested that "goals" and "guidelines" be defined for clarity.

The SELUC Again

The SELUC heard the Ad Hoc Committee's report on the revised SB 100 during which Chairman Hallock said that the Governor's power in Section 11 of the original bill was "hated by opponents."

Chairman Hallock asked L. B. Day:

Does Section 12 contain the same language as in the printed bill? If the subsection was deleted, would this prevent Oregon's sovereignty from being surrendered to some interstate group? Could Section 12 be eliminated from the bill?¹⁵

The SELUC discussion on the redrafted SB 100 continued as follows:¹⁶

L. B. Day said that deletion of Section 12 was to preclude the state from arriving at certain agreements in a compact. Senator Hallock then asked, "Since it was there now, would it throw the state into a compact the state did

not want to join?"

L. B. Day answered, "No. Section 12, as written, will permit the Commission to ratify a compact, but would not mandate membership."

Senator Hallock directed John Toran, the SELUC's Administrative Assistant, to draft a letter to the President of the Senate asking his permission to ask the Attorney General (AG) for the AG's opinion about removing from the bill the language that would compel joining a compact on the word of the Commission.

Hal Brauner, referring to areas of state-wide concern (originally called areas of "critical concern"), said that planning and siting of public schools had been written into the bill.

L. B. Day said:

The Commission does not expand the list of critical activities--only the Legislature shall do so. . . . This is a political reality. . . . The state agencies are subject to LCDC as well as to local plans. . . . There are, however, some things which could have priority, energy needs, for example.

L. B. Day told the Committee that the Drafting Subcommittee had been advised by planners that the goals needed to be set in the beginning. He said:

A set of goals was needed by county government to give direction in the development of their overall comprehensive plans with special consideration for priority areas that might have fallen within their counties, such as lakes and lake shore areas.

Senator Atiyeh said, "I am trying to understand the difference between areas. . . . In activities, are cities and

counties involved?"

Hal Brauner answered, "The relationship to the goal-getting process by the Commission applies to the activities as well as to the priority areas."

During a later SELUC public hearing, both Jim Allison, President, Oregon Rural Land Owners' Association and Phil Balsiger, Mayor of Wilsonville, expressed concern relating to Legislative power delegated through SB 100 to a state agency. Mr. Allison said that the "guidelines" were undefined, that all the county voters needed to vote on the plans, that "prime land" needed to be defined, that the "goals" were undefined, and that the Legislature needed to establish the density of units in the Willamette Valley.¹⁷

Senator Macpherson sought to clarify the concerns expressed March 8, 1973, when he moved during the March work session for the adoption of an amendment to Section 36, "goals and guidelines adopted by the Commission shall be included in the report to the Legislative Assembly required by subsection (1) of the section." The motion carried on a roll call vote of seven "ayes."¹⁸

James Allison was invited again to testify before the SELUC, where upon Mr. Allison reaffirmed his concerns relating to the definition of goals and guidelines. He said that he felt that they should either be definitely defined or limited in scope with the goals determined preferably by the Legislature. Senator Thorne asked Mr. Allison to submit his definition of goals and guidelines to the Committee. Mr.

Allison, in answering Senator Thorne, said that he particularly wanted compensation for regulated land use; i.e., no rural rezones, destroyed developmental rights, or excessive property taxes. Senator Hallock suggested that he review pages 11 and 12 of SB 100 on the matter. Mr. Allison said that he already had, and that he was not satisfied that the projected LCDC study of compensation would be sufficient.

Mr. Allison was expressing in his own way the fear that any administrative agency was capable of abusing power. Jim Allison's fervent concern had a recognized parallel in both theoretical literature and law concerning potential power abuse.

POTENTIAL POWER ABUSE

Both public administration literature and the Oregon Courts have faced the issue of abuse of administrative power.

Herman Finer, in an article titled "Administrative Responsibility,"¹⁹ wrote an extremely timely and pointed study of the obligations of public administrators. He said:

Democratic government had demonstrated that sooner or later there is an abuse of power when external punitive controls are lacking. This abuse of power manifests itself in roughly three ways: nonfeasance, malfeasance, or over-feasance. The latter is where a duty is undertaken beyond what law and custom oblige or empower. The constitutional doctrine of the separation of powers as developed by Montesquieu was as much concerned with the aberrations of public-spirited zeal on the part of the executive as with the other classes of the abuse of power. His phrase, 'virtue itself hath need of limits,' deserves to be put into the center of a discussion of administrative responsibility.²⁰

Mr. Finer was even more definite when he wrote:

Democratic governments, in attempting to secure the responsibility of the politicians and office holders to the people, have founded themselves broadly upon the recognition of three doctrines. First, the mastership of the public, in the sense that politicians and employees are working not for the good of the public in the sense of what the public needs, but of the wants of the public as expressed by the public. Second, recognition that this mastership needs institutions, and particularly the centrality of an elected organ for its expression and the exertion of its authority. More important than these two is the third notion, namely, that the function of the public and of its elected institutions is not merely the exhibition of its mastership by informing governments and officials of what it wants, but the authority and power to exercise an effect upon the course which the latter are to pursue, the power to exact obedience to orders.²¹

Carl Joachin Friedrich, in an article titled "Public Policy and Administrative Responsibility,"²² in discussing abuse of power by administrative agencies and departments wrote:

. . . autocratic and arbitrary abuse of power had characterized the officialdom of a government service bound only by the dictates of conscience. Nor has the political responsibility based upon the election of legislatures and chief executives succeeded in permeating a highly technical, differentiated government service any more than the religious responsibility of well-intentioned kings. Even a good and pious king would be discredited by arbitrary "bureaucrats": even a high-minded legislature or an aspiring chief executive pursuing the public interest would be thwarted by a restive officialdom.²³

This concern relating to administrative abuse of power was tested twice in Oregon's courts. The first decision was in 1949, Gouge vs. David,²⁴ and the second verdict was handed down in 1949, McLain vs. Lafferty.²⁵

In Gogue vs. David, the Court stated:

A statute which creates an administrative agency and invests it with its powers restricts the agency to powers granted, and the statute is not a mere outline of policy which agency is at liberty to disregard or put into effect according to its own ideas of the public welfare. . . . Administrative rules and regulations can go no further than fill in the interstices of the dominant act.²⁶

The court in McLain vs. Lafferty was even more definite in its decision when it said, "An administrative agency can not authorize by regulation, performance of act which is prohibited by statute."²⁷

A legal footnote should be added on the rules of evidence in American Jurisprudence,²⁸ which said:

The printed journals of either house of a legislature, published in obedience to law, and the copies of such journals certified by the Secretary of State were competent evidence of the proceedings of the Legislature, that the Clerks of the Senate and House of Representatives were the keepers of their respective records; and an extract from the journals of either house to be used as evidence was to be certified by the Clerk, and that the record kept by the Secretary of State, as required by the State Constitution was competent evidence to contradict official endorsement of bills by the Secretary of the Senate and the Clerk of the House of Delegates.²⁹

So the public's concern of the abuse of administrative power was very real. The potential for this abuse called for a remedy.

THE REMEDY

The remedy, a Statement of Legislative Intent was offered by the SELUC to quiet the concerns of abuse of administrative power.

The concern of individuals such as James Allison expressed before the SELUC was a very real concern. During the April 12, 1973, SELUC meeting, Senator Hallock said, "Senator Macpherson feels that a Statement of Legislative Intent should be made regarding SB 100 as to Goals and Guidelines."³⁰

Senator Atiyeh offered his assistance to Senator Macpherson in drawing up a Statement of Intent. Senator Hallock said that he wanted the statement to reflect the concept of SB 100 as it was passed out of the Committee. Senator Hallock asked Senator Macpherson to accept input from any of the Committee members and to poll the members as to their vote on the statement, before SB 100 went before the Senate.³¹

The Statement of Legislative Intent was a direct outgrowth of Senator Thorne's statement for the record at the April 5, 1973, meeting, wherein he expressed his concern that the purpose and policies, as originally stated by the consensus of the Senate Environment and Land Use Committee members, might possibly be either watered-down or ignored before the final enactment of SB 100.³²

The SELUC's Statement of Legislative Intent was, as follows:

'Goals' are intended to achieve the purposes expressed in the preamble and policy statement of SB 100. No effort is made to further define 'Goals'--preferring the definition to be refined in the process of citizen input, Commission approval and Legislative review.

'Guidelines' are suggested directions that would aid local governments in activating the 'Goals'. They are intended to be instructive, directional and positive and not limiting local government to a single course of action when some other locally conceived course would achieve the same result. 'Guidelines' are not intended to be a grant of power to the state to carry out zoning from the state level.

On April 17, 1973, SELUC Chairman Hallock moved that the Statement of Intent signed by all the Committee members, was to be formally entered into the Committee's records and in the Senate Journal. The motion carried on a roll call vote with four "ayes."³³

SB 100 with its appended Statement of Intent had its third reading before the Oregon Senate on April 18, 1973.

SUMMARY

Senator Macphersons' LUPC saw the need for a strong state-wide land use planning bill. Unfortunately, the original SB 100 gave what several individuals believed was too much discretion to LCDC's administrators.

This potential for abuse of administrative power was expressed quite effectively before the SELUC. Since the Ad Hoc Committee which redrafted SB 100 failed to satisfy their concerns, the SELUC heard additional testimony on the projected abuse of administrative power. The SELUC offered a Statement of Legislative Intent to be included in the Senate Journal, but not in SB 100, as a remedy for these voiced concerns.

NOTES

¹Minutes of Senate Environment and Land Use Committee (SELUC) meeting on Senate Bill 100 (SB 100) (Salem: January 18, 1973) Tape 1, Side 2 and Tape 2, Side 1.

²Ibid.

³Ibid., January 25, 1973, Tape 2, Side 2 and Tape 3, Side 1.

⁴Ibid.

⁵Ibid.

⁶Minutes Critical Areas Subcommittee meeting (Salem: February 12, 1973) Tape 6, Side 1.

⁷Minutes of SELUC meeting, February 12, 1973, Tape 6, Side 2 and Tape 7, Side 1.

⁸Ibid., February 13, 1973, Tape 7, Side 2.

⁹Minutes of Ad Hoc Committee meeting, February 23, 1973, Tape 9, Side 1.

¹⁰Ibid.

¹¹Ibid., February 27, 1973, Tape 9, Side 2.

¹²Ibid.

¹³Ibid.

¹⁴Ibid.

¹⁵Minutes of SELUC meeting, February 27, 1973, Tape 9, Side 1, and Tape 10, Side 1.

¹⁶Ibid.

¹⁷Ibid., March 8, 1973, Tape 11, Sides 1 and 2.

¹⁸Ibid., March 20, 1973, Tape 12, Side 1.

¹⁹Herman Finer, "Administrative Responsibility," in Public Administration and Policy, ed. Peter Wall (New York: Harper and Row, 1966).

²⁰Ibid., p. 252.

²¹Ibid., p. 251.

²²Carl Joëchin Friedrich, "Public Policy and Administrative Responsibility," in Public Administration and Policy, ed. Peter Wall, (New York: Harper and Row, 1966).

²³Ibid., p. 227.

²⁴Gouge v. David, 202 P. 2d 489, 185 Oregon 437.

²⁵McLain v. Lafferty, 480 P. 2d 430, 257 Oregon 553.

²⁶Gouge v. David, 202 P. 2d 489, 185 Oregon 437.

²⁷McLain v. Lafferty, 480 P. 2d 430, 257 Oregon 553.

²⁸George S. Gulick and Robert T. Kimbrough, ed. American Jurisprudence, 2d Edition, 82 Vol. (San Francisco: Bancroft-Whitney Company, 1967) 30 Am Jur 2d "Evidence," Sec. 969, pp. 97-99.

²⁹Ibid., pp. 837-838.

³⁰Minutes of SELUC, April 12, 1973, Tape 14, Side 2.

³¹Ibid.

³²Ibid.

³³Ibid.

PART THREE -- SPRING OF 1973

The enactment of Senate Bill 100 (SB 100) in the Spring of 1973 required final passage of the bill in both the Oregon Senate and the House of Representatives, plus the signature of the Governor.

LUPC had drafted the original SB 100. The SELUC had modified the bill's land use planning concept to reflect political realities. Proponents and opponents of the need for any state-wide land use planning were yet to vote on SB 100. The battle lines were drawn; the first gun went off in the Senate on April 18, 1973, like a "shot heard 'round the world."

CHAPTER XIV

THE ENACTMENT OF SB 100

The actual enactment of SB 100 required passage of the bill in both houses of the Oregon Legislature -- the Senate and the House of Representatives -- plus the Governor's signature.

THE SENATE

The Senate Floor Debate on SB 100 became a reality as of April 18, 1973, almost two hundred years after Paul Revere's famous ride. Just as Paul Revere sounded a warning to his neighbors that "the British are coming," so, too, did the SELUC's meetings offer a prelude of things to come politically to the Oregon Senate.

The SELUC had redrafted SB 100 using the art of political compromise. Debate on the Senate Floor focussed on three concepts of the bill -- the basic need concept, the Statement of Legislative Intent, and the "Emergency Clause." Each initiated a skirmish in the Senate's vocal battle.

Senate Members

The list of State Senate Members of the 57th Legislative Assembly (1973) included 18 Democrats and 12 Republicans.

In addition to the seven members of the Senate Environment and Land Use Committee, there were 23 other Senators. Since Senate passage of SB 100 required a majority of one vote, Senate proponents of the state land use planning concept were carefully counting their supporters on the Senate Floor.

Senators Hallock, Atiyeh, Burns, Macpherson, Ripper, Thorne and Wingard were members of the SELUC and, as such, were strong supporters of SB 100. The balance of the Senate Members were as follows:

W. H. "Bill" Holmstrom, Democrat, Columbia and Clatsop Counties, Automobile dealer;

W. Stan Ouderkirk, Republican, Lincoln, Tillamook, and portions of Benton, Lane, Polk, Washington and Yamhill Counties, Lumberman;

Tom Hartung, Republican, Washington and Yamhill Counties, Businessman;

Keith Burns, Democrat, Portion of Multnomah County, District #6, Attorney;

Norman R. Howard, Democrat, Portion of Multnomah County, District #7, Insurance and retired fireman;

Bill Stevenson, Democrat, Portion of Multnomah County, District #8, Real Estate and Insurance;

Thomas R. Mahoney, Democrat, Multnomah County;

Betty Roberts, Democrat, Portion of Multnomah County, District #10, Attorney;

Vernon D. Cook, Democrat, Portion of Multnomah County, District #12, Attorney;

George Eivers, Republican, Clackamas County, Attorney;

Dick Groener, Democrat, Clackamas County, Insurance;

Anthony "Tony" Meeker, Republican, Portions of Clackamas, Marion and Yamhill Counties, District #15, Businessman;

Wallace P. Carson, Jr., Republican, Marion County, Attorney;

Keith A. Burbidge, Democrat, Marion County, Engineer;

C. R. "Dick" Hoyt, Republican, Benton and Polk Counties, Businessman;

Edward N. Fadeley, Democrat, Lane County, Attorney;

Elizabeth W. "Betty" Browne, Democrat, Lane County, Attorney;

Jason Boe, Democrat, portions of Douglas and Josephine Counties, District #23, Optometrist;

E. D. "Debbs" Potts, Democrat, portions of Jackson and Josephine Counties, District #25;

L. W. "Lynn" Newbry, Republican, Jackson County, Farmer;

Fred W. Heard, Democrat, Deschutes and a portion of Klamath Counties, District #27, Teacher;

Kenneth A. Jernstedt, Republican, Gilliam, Hood River, Morrow, Sherman, Wasco, and portions of Clackamas, Linn and Marion Counties, Dist #28, Businessman;

Robert F. Smith, Republican, Baker, Crook, Grant, Harney, Lake, Malheur and Wheeler Counties, District #30, Rancher, Businessman.

Those Senators without a District number were elected prior to reapportionment.

The Need Concept

Senator Hector Macpherson and his LUPC members saw a need for state-wide land use planning in Oregon. They drafted the original concept into the original IC 100, which finally, as amended, became Senate Bill 100 (SB 100) before

the legislature. Since no member of the LUPC opposed the planning concept, the Committee created a strong, uniform, effective and equitable land use policy for the state in their LC 100.

Oregon had had a state planning law since 1969, but it lacked "teeth" for effectiveness. As a result, "teeth" were included in SB 100, "teeth" being the accepted term for the power to enforce the law. The LUPC in over-emphasizing the need concept caused adverse reactions to develop among the opponents to the state land use planning philosophy.

In the legislative political arena, passage of SB 100 hinged on a victory in the battle of need versus want. Only astute political compromises to appease the opposition were to make victory possible. Without such compromises, legislative enactment of the state-wide land use planning law was an impossibility.

Both the Land Use Policy Committee (LUPC) and the Senate Environment and Land Use Committee (SELUC) members had accepted the concept of the need for state land use planning. The public was not completely sold on the concept, nor were all the Oregon State Senators. After the revised SB 100 made its debut before the Oregon Senate on April 18, 1973, the Senate Floor Debate on the need concept, went as follows:¹

While each opponent to SB 100 endeavored to appear neutral, each was opposing a facet of the concept. Senators Holmstrom of Clatsop County and River of Clackamas County

said, "Yes, but . . ."

Senator Newbry said:

I am opposed to SB 100. I realize that there is a growing awareness of the need for land use planning by the people of Oregon. 'Let's not Californicate Oregon' on bumper strips reflects this awareness SB 100 is a cop-out, since no decisions were made on goals and guidelines Go ye forth on a bureaucratic approach to land use planning. I do not like delegating policy-making to a government bureaucracy, LCDC Owning land is like having a baby -- neither are really owned. We have only the right to use land during our lifetimes property rights SB 100 means Commission dictation to people, not legislative dictation. People do not have the right to refer LCDC Administrative Regulations The loss of property rights is equal to the loss of personal freedom I recommend that SB 100 be referred to the people, particularly since Subsections (1) and (5) of Section 11 are in conflict with one another Under the Fasano Decision, which requires a quasi-judicial hearing in a formal setting, there may be a conflict with SB 100's requirements for LCDC. LCDC could be bound by similar legal constraints, also People supposedly can have contact with legislators. Administrators are something else I recommend that the Senate authorize an Interim Study for a better bill. It would only be a two-year delay and then we could do it right.

There was applause for Senator Newbry from the spectators. Senate President Jason Boe said that no applause was to be tolerated from the audience.

Discussion on the Senate Floor continued on Senate Bill 100 (SB 100).²

Senator Wingard, in seeking to rebut Senator Newbry, said:

Senate Bill 100 does not take away property rights. It only makes changes. The law is not really new Of particular importance is the arbitration factor by the LCDC. This provides fairness to all concerned Now is the time for land use plan-

ning. We are on a downhill road.

Because Senator John Burns, Portland, felt that the concept expressed in the Re-Engrossed Senate Bill 100 did not go far enough, he was, and continued to be, opposed to SB 100 on the Senate Floor.

Senator Burns had many kind words to say for Senator Hallock, but he said:

I'll vote 'no' on SB 100, just as I did on the final SELUC vote. I don't think that the bill is tough enough. It has no real teeth in it. I feel that the 'watering down' was due to fear caused by outsiders, and the lack of communications within the state. I want critical areas back in SB 100, citing specifically the Oregon Coast, wet lands, Mt. Hood Corridor, and 'prime' agricultural land. This is the failure of the bill I am annoyed about the revisions made by the Ad Hoc Committee The City-County Consolidation bill (1971) was passed despite heavy opposition. A better SB 100 would be the right thing to do, also, despite opposition. I am anti-compromise on something as important as land use planning Land use planning should be under the Administration of DEQ. I am opposed to set up a new Commission, even though I favor Commissions I am completely opposed to the 37th County Amendment. I favor state planning, period.

Senator Hallock summarized the viewpoint of his fellow SELUC members when he said:

The original SB 100 was voted down 4 to 3 in SELUC Senator Newbry wants more study on SB 100, claiming that the bill wasn't studied enough, while Senator Burns claims the bill was justly studied, but is not strong enough in the areas of critical concern Senator Burns spoke unhappily of the 'political art of compromise.' I, too, am concerned about the critical areas of concern. However, without the 'political art of compromise,' there would have been no SB 100 before the Senate today.

Senator Hoyt, Corvallis businessman, said:

I offer my compliments to Chairman Hallock on the

handling of the debate SB 10 of 1969 was a timid step. SB 10 is ready to be strengthened by SB 100. It is the next step . . . a bold step forward. SB 100 is the best possible at this time. I favor the creation of a joint legislative Committee on land use. This political, but now a partisan political question to protect the people.

The Oregon Legislature, almost as an after-thought, on SELUC's recommendation, included a Statement of Legislative Intent in the Senate Journal.

Legislative Intent

A Statement of Legislative Intent was to be entered into the Senate Journal, since the original SB 100 gave, what several individuals believed, was too much discretion to LCDC's Administrators. This potential for abuse of administrative power was expressed quite effectively before the SELUC. Since the Ad Hoc Committee, which redrafted SB 100, did not satisfy their concerns, the SELUC heard additional testimony on the projected abuse of administrative power.

The SELUC offered a Statement of Legislative Intent to be entered into the Senate Journal, but not in SB 100, as a remedy for these voiced concerns.

The Debate. Senator Macpherson moved that the Statement of Legislative Intent, defining goals, was to be entered into the Senate Journal, and that it was to be included in the official transmittal forwarded to the Oregon House of Representatives. In discussing the reasoning behind the "goals" statement, he said that during the Committee hearings so much controversy over goals and guidelines had been

generated that the members were unable to define them and the guidelines were not meant to be a grant of power.³

With Senator Macpherson's motion, the Senate Floor discussion of Legislative Intent began as follows:⁴

Senator Stevenson moved unanimous consent on Macpherson's motion. Senator Newbry objected to the unanimous consent motion. He asked, "Why weren't the goals and guidelines in the bill itself?"

Senator Macpherson answered, "The Statement is the intent of the bill It sets wide limits for the people and the courts."

Senate opponents of the state land use planning concept sought to utilize the Statement of Intent to ship the bill back to the SELUC where it could possibly be buried.

There was a minor Floor disagreement with Senator Newbry objecting both to unanimous consent and the procedure recommended by the Committee for legitimatizing the Statement of Intent. He said that he thought the intent needed to be written into the bill. He utilized Robert's Rules of Order to reinforce his viewpoint, when he requested a roll call vote. Senator Eivers seconded his request.

Senator Hallock said that his conception of the intent of SB 100 differed slightly from SELUC's, but the purpose was the same. He said:

The Legislature is not a land planning body. The Legislature endows the Commission to do the job Just as the Legislature does for highways, fish and comprehensive health planning. The Legislature sets policy, but not how the policy is implemented

The goals are enunciated, but the Committee did not spell out the specific dicta to reach these goals This is a democracy.

Senator Holmstrom said that he was opposed to the goals and guidelines "Statement of Legislative Intent," saying that he felt that goals and guidelines should be in SB 100 itself to really guide the people of Oregon. He said:

The intent is just a preamble which does not mean anything SB 100 gives the bureaucratic LCDC too free a hand, and therefore it is bad legislation. Oregon Law is the ORS period -- right, wrong or indifferant.

Senator Burns said, "One point needs to be made clear -- the Committee voted on the inclusion of the 'goals and guidelines' definition in SB 100."

Senator Wingard interrupted here, when he said, "It is against Senate rules to discuss Committee action before the Senate."

Chairman Hallock ruled, "No. Senator Burns is making a point of information."

Senator Burns continued, "but the motion did not pass."

Senator Smith recommended that, "The Intent be referred from whence it came. I recommend that both the Intent and the SB 100 be referred back to the SELUC, so that the SELUC can finish its job."

Senator Cook said that he supported Smith's motion. He told the following story about a bootlegger, to illustrate his point of view that the Intent should be included in SB 100. He said:

It seems that this bootlegger decided to file and

and pay his income tax for the first time in 50 years of operation. He couldn't make up his mind as to how much income he should base his tax upon, so he called his lawyer, asking whether he should be over or under. His lawyer said, 'Why not be exact?' The bootlegger answered, 'I hadn't thought of that!'"

Senator Hallock countered Senator Cook's story with what he called an equally funny story. He said that it was about a legislature which sat on its "can," and did nothing about land use planning.

Then Senator Hallock asked Senator Atiyeh if he would answer some questions. "My first question -- did the SELUC try to define goals and guidelines?"

Senator Atiyeh answered:

The implication was made that the Committee had done no work in trying to define goals and guidelines. This is erroneous. The SELUC spent many hours on SB 100 going into some detail on land use planning.

Senator Hallock asked his second question -- "Did the SELUC seek to evolve a philosophy of goals and guidelines?"

Senator Atiyeh answered:

The Committee went into fair depth on the philosophy of goals and guidelines. This bill before the Senate is not the same bill referred to the SELUC.

Senator Hallock asked his third question -- "What was the philosophical viewpoint of the SELUC?"

Senator Atiyeh answered:

The Committee concurred from the beginning on the need for land planning. The difference was on how fast the planning should be accomplished The Committee was philosophically balanced as to viewpoint. SB 100 is a product of that balance.

Senator Hallock asked his fourth question -- "Could the Committee have gone further in merging the philosophies?"

Senator Atiyeh answered, "No."

Senator Ouderkirk, as a point of information, asked Senator Atiyeh, "Did the Committee try to write the goals and guidelines?"

Senator Atiyeh said that the basic goals were in SB 100, but that the SELUC found it very difficult to write what guidelines were. He said, "The Intent is what the guidelines are not. This was the best that could be done."

Senator Macpherson said, "The Statement of Intent was passed by unanimous vote of the SELUC."

The motion, however, to refer the Statement of Intent, failed to pass the Senate on a roll call vote.

Senate President Jason Boe said that they were to vote on Senator Macpherson's original motion to enter the Statement of Intent on goals and guidelines in the Senate Journal and to transmit a copy with SB 100 to the House. Senator Hallock moved for a call of the Senate. Senator Stevenson was found to be missing and was called to the Floor, after which Senate President Boe ordered the Sargent-at-Arms to bar the doors. Senator Hallock then asked that his motion be withdrawn.

The Vote. The roll call vote started on Macpherson's motion. Senator Mahoney asked the chair what the vote was about, then voted "no." The motion to enter the Statement of Intent into the Senate Journal and transmit it to the House carried with 17 "aye" votes over 10 "nos" with three Senators excused.

The "Emergency Clause"

The final political compromise concerned a motion made during the Senate Floor debate by Senator Tom Mahoney, Democrat of Portland, seeking unanimous consent to delete Section 59, the "emergency clause," from SB 100. It was so moved.⁵

Even the Drafting Subcommittee's Chairman, L. B. Day, approved of the use of the "emergency clause," for when Senator Macpherson, as Chairman of the Ad Hoc Committee, asked L. B. Day if he could develop a time table for LCDC, and if the "emergency" was to be used, Day answered, as follows:⁶

Yes, if you are going to have a department starting the biennium, you have to use the "emergency clause" so that the statute will take effect on July 1, 1975. First, the department is created, the staff is hired, and then the counties are required in 90 days to submit an action plan to develop citizen participation to the department through the LCDC.

However, it was the elimination of the "emergency clause" which provided the incentive needed to overcome some of the Senators' reluctance. The clause's deletion gave SB 100's opponents 90 days in which to gather the signatures required to refer the bill to a vote of the people. Therefore, one segment of the opposition was quieted enough to permit Senate passage of SB 100.

Senator Eivers, Clackamas County, in saying that he was undecided, was representative of the swing votes needed for enactment of SB 100. Eivers was questioning the state need concept during the Senate Floor debate, with a "yes, but" attitude. Eivers said:

I favor planning, but who does this planning? . . . I favor, personally, another Interim Committee study Just who makes decisions? . . . Why in Section 19 a special exception for the people of Portland? Are not the people of Lake Oswego, Medford or Salem just as smart as the people of Portland? Clackamas and Washington County voters are swallowed up by the voters of Multnomah County Section 45 says that comprehensive plans 'shall be in conformity.' This does not permit enough local control. I am opposed to the "emergency clause." Why is there fear of a possible referral of SB 100 to the people of Oregon?

Passage of Senate Bill 100 in the Senate hinged on the acceptance of the concept of the need for state land use planning. Senate critics of the bill felt that including an "emergency clause" was deliberately ignoring the expressed wishes of the people of Oregon. As a result, after considerable Senate discussion, which tended at times to be almost vicious, there was a motion made to delete the clause.

Section 59, the "Emergency Clause" stated, "This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Act takes effect on July 1, 1973."

Senator Macpherson, speaking in favor of the deletion of the "emergency clause," cited testimony heard by him during the SELUC hearings. Senator Mahoney's motion to delete Section 59 passed on a roll call vote, with 22 "ayes" to 6 "nays." Senators Burns, Holmstrom, Newbry, Ouderkirk, Potts and Thorne voted "no." Senator Burns stated for the record that he favored the "emergency clause" and was, therefore, anti-deletion. He said, further, that he was anti-floor-amendment period.⁸

The Vote on SB 100

The Senate voted on several separate motions concerning SB 100 during the Third Reading, April 18, 1973.

The first such motion sought to re-refer the bill to SELUC, but it was defeated by a Senate vote of 10 "ayes" to 16 "nays." The second motion on the inclusion of the Statement of the Legislative Intent in the Senate Journal carried.

The third motion to refer SB 100 to the Joint Ways and Means Committee failed to pass, with 9 "ayes" to 18 "nays," and three Senators excused. Senators Atiyeh, Browne, Burbidge, J. Burns, K. Burns, Carson, Hallock, Hartung, Howard, Hoyt, Jernstedt, Macpherson, Mahoney, Meeker, Ripper, Thorne and Wingard and President Boe providing the 18 "no" votes, and Senators Fadeley, Groener and Roberts being excused.

After the deletion of the "Emergency Clause," the Senate voted to pass Senate Bill 100 with 18 "ayes" and 10 "nos" with Senators J. Burns, Cook, Eivers, Heard, Holmstrom, Meeker, Newbry, Ouderkirk, Potts and Smith furnishing the 10 "no" votes, and Senators Fadeley and Groener excused.

THE HOUSE OF REPRESENTATIVES

The action of the House of Representatives on the Engrossed Re-Engrossed Senate Bill 100 (SB 100) included three House Committee meetings and two House Floor Debates on the Third Reading before the state land use planning bill was passed by the House.

After both SB 100 and the Statement of Legislative Intent were passed by the Oregon Senate, the Statement of Legislative Intent was entered into the Senate Journal, and a copy of the Statement was forwarded along with SB 100 to the House of Representatives. Since the Statement was a Senate action only and not an actual section of the state land use bill, the Statement of Intent was not even mentioned publically during the First, Second and Third Readings of, nor during the House Environment and Land Use Committee (HELUC) meetings on SB 100.

After the First, April 19, 1973,⁹ and Second, April 20, 1973,¹⁰ Readings of SB 100, the bill was referred to the House Environment and Land Use Committee (HELUC) by Speaker Richard Eymann.

The HELUC

Members of the House Environment and Land Use Committee were as follows:

Representative Nancie Fadeley, Chairman, Democrat, District 24, Eugene, Housewife and Free Lance writer.

Representative Mary Burrows, Republican District 41, Eugene, Housewife.

Representative Ralph Groener, Democrat, District 27, Oregon City, Public Relations.

Representative William Gwinn, Republican, Albany, Real Estate and Investment Securities.

Representative Paul Hanneman, Republican, District 3 Cloverdale, Sport Fishing operations, and Commercial Artist.

Representative Stephen Kafoury, Democrat, District 13, Portland, manufacturer.

Representative Vera Katz, Democrat, District 8, Portland, Housewife.

Representative Norma Paulus, Republican, District 31, Salem, Lawyer.

Representative David Stults, Republican, District 43, Junction City, Millworker and student.

Representative Pat Whiting, Democrat, District 7, Tigard, Lecturer and teacher.

Representative Martin Wolfer, Democrat, District 33, Salem, Painting Contractor.

The HELUC held only four meetings on SB 100 on May 3, 1973, May 8, 1973, May 10, 1973, and May 14, 1973.¹¹

When the House Environment and Land Use Committee (HELUC) began its hearings on May 3, 1973, the discussion went as follows:¹²

Senator Hallock appeared before the HELUC, saying "Senator Macpherson was the Father of Land Use Planning, L. B. Day was the Godfather, and I myself was the Obstetrician." He said, further:

I am here as a political mechanic SB 100 Engrossed Re-Engrossed, bears little resemblance to SB 100. It does not go far enough, having critical areas left out, and also relying on the archaic institution of the County rather than COGs SB 100 is bi-partisan, bi-economic and bi-government The Governor concurs with this evaluation of the bill, but he has accepted SB 100 as a beginning SB 100, if tampered with too much, would not pass.

L. B. Day also addressing the HELUC at its first meeting, said:

I am testifying as Chairman of the Drafting Subcommittee of the Ad Hoc Committee, which was responsible for the present SB 100. Some form of regional government within the state will emerge in the future, possibly as a by-product of this bill

I offer my help to this Committee If you tamper with SB 100 too much, it will not pass . . .

Representative Vera Katz asked L. B. Day, "Why, if this is a bicameral legislature, cannot the House tinker with SB 100?"

L. B. Day answered by saying that to tinker equals no SB 100 in this Session.

Senator Macpherson gave a short history and explanation of SB 100, saying that the non-controversial rather than the controversial aspects need emphasizing. He said that the policy statement (Section 2) was the most important part, where it stressed the need for a living and constantly updated policy. He said:

The bill sets up a planning process and a state comprehensive plan. There was no controversy about these COGs do not have political clout to get things done. . . . I am unhappy concerning the 37th County amendment. There are a good many areas of the state where COGs do not make sense Areas of critical concern can not be included in SB 100. The Coastal Legislators will not vote for it. . . . The emergency clause was removed on the Senate Floor. The changes in the bill made people less happy. My mail at present reflects a complete change in attitude. It says that the people of the state would vote for SB 100. Economic interests, however, might stall such a vote for four years. . . . The bill mandates hearings, i.e., citizen involvement at every level of government. There is no way that land use planning can go out ahead of the people. . . . The legislative process is tied directly to the LCDC through the Legislative Committee. The LCDC is to coordinate the other state agencies without infringing upon the duly authorized duties of the other state agencies.

The HELUC's second hearing on SB 100 went as follows.¹³

James Redden, State Treasurer, said that SB 100 may not be ideal, but that it was possible. James Moore said that

in the existing bill counties have taken over the planning role of cities.

Kessler Cannon, Assistant to the Governor, told the HELUC that Governor McCall was committed to land use planning. He spoke of the pending Federal legislation and the interest of many agencies and organizations at all levels in such planning. He said "I would like quick approval of SB 100."

Jim Allison, President of the Oregon Rural Landowners' Association, in opposing SB 100, said that changes in the bill represented improvements, but that one more version is needed. He said:

The goals should be established by the Legislature. The word 'guidelines' should be defined SB 849 should be inserted in SB 100 to provide compensation and other provisions This Committee should not vote on SB 100 until the Senate acts on SB 769.

George Bell, speaking for Secretary of State Clay Myers, said that at the present time neither the purists nor the opponents are happy with SB 100, but that it is the best bill that could have come out of the Senate. Joyce Cohen, favoring the bill, asked that the emergency clause be reinstated.

Ten concerned individuals spoke on SB 100 at the House Environment and Land Use Committee's meeting on May 10, 1973. The testimony went as follows:

Lloyd Anderson, City of Portland Commissioner and member of CRAG's Board of Directors, in testifying for SB 100, emphasized the need for regional planning in the Portland

area. He said:

Since urban problems have a state-wide impact and counties have had little experience with urban problems, the state rather than the counties should have jurisdiction The review procedures at the local level should involve both counties and cities, with neither having jurisdiction over the other¹⁴

John Nielson, Oregon Environmental Council, reminded the HELUC that other needs could be taken care of later, and added, "even minor changes may cause problems."¹⁵

During a HELUC work session, May 14, 1973, the Committee voted SB 100, on Representative Kafoury's motion, a do-pass recommendation. There was no Committee discussion on the motion which passed with eight "aye" votes over three "nay" votes. Representatives Hanneman, Stults and Wolfer cast the "no" votes.¹⁶

The House Vote on SB 100

The House Environment and Land Use Committee (HELUC) report was distributed to members of the House of Representatives when Senate Bill 100 was returned to the House Floor with a do-pass recommendation on May 17, 1973. Originally set on the House Calendar for May 21, SB 100 was carried over to the May 22 Calendar, when it was made a Special Order of Business at 10:30 a.m. on May 23, 1973. A motion to re-refer SB 100 to the Environment and Land Use Committee on May 23, 1973, failed with 25 "aye" to 34 "nay" votes.¹⁷

Senate Bill 100 then passed the Oregon House of Representatives on May 23, 1973, on the Third Reading, with 40

"aye" and 20 "nay" votes.¹⁸

In one last final parliamentary maneuver, Representative Gordon Macpherson moved to reconsider Senate Bill 100. The motion to reconsider failed on May 24, 1973, with 25 "aye" to 33 "nay" votes, thus ending this final effort to keep SB 100 from becoming law.¹⁹

The President of the Senate, Jason Boe, and the Speaker of the House, Richard Eymann, signed Senate Bill 100 on May 28, 1973. The next day Senate Bill 100 was signed into Oregon law by Governor McCall.

THE GOVERNOR

Governor Tom McCall signed the Engrossed Re-Engrossed Senate Bill 100 on May 29, 1973, which made the bill, henceforth, Chapter 80, 1973 Laws, as Enrolled Senate Bill 100, enacted under the ORS and the Oregon Constitution.

Governor McCall chose the first seven members of the newly created Land Conservation and Development Commission (LCDC). One of his selections was thoroughly checked for conflict of interest, but was finally seated. The Governor selected L. B. Day as the Chairman of LCDC.

The Commission was created in Senate Bill 100 to carry the tremendous responsibilities of establishing and implementing Oregon's new environment and land use policy law.²⁰

LCDC's first seven Commission members were²¹ L. B. Day, Chairman, Salem; Dorothy Anderson, Eugene; Albert Bullier, Jr., Portland; Richard Gervais, Bend; Paul Rudi, Charleston;

Steve Schell, Portland; and Jim Smart, Polk County.

LCDC's first Staff Director was Arnold Cogan, a professional planner and previously Commission Chairman of the Department of Environmental Quality (DEQ).²²

The 15 members of the Citizens' Advisory Committee, chaired by Jerry Brewster, Portland Architect, were appointed jointly by the LCDC Chairman and Governor McCall.

SUMMARY

The Oregon Senate held the Third Reading on SB 100 on April 18, 1973, after the SELUC had given the bill a do-pass recommendation to the Senate.

Three concepts in the bill came "under fire" in the Senate Floor Debate -- the need, the Statement of Legislative Intent, and the "Emergency Clause." All three were finally resolved to the satisfaction of a majority of the Senate.

The Statement of Legislative Intent was undoubtedly the most far-reaching political compromise generated by SB 100. The Statement, a legal limit of administrative power, even though it was not actually in the Enrolled SB 100, set an interesting precedence in Oregon's legislative history by its very enactment.

Fortunately, enough compromises were eventually achieved to assure Legislative passage of SB 100. However, one truce, Senate Bill 849 on Compensible Zoning was tabled during the 1973 Legislative Sessions.²³ The compromise, when the "emergency clause" was deleted, was a product of

the Senate Floor debate immediately prior to final passage of SB 100.

The House of Representatives was coerced by the sponsors and proponents of the state land use planning concept into "rubberstamping" the Senate's version of SB 100. House members were told that it was "SB 100, as is" or nothing. The House was told that they were to make no changes in the bill because there was no guarantee of Senate passage again.

The Governor signed the Engrossed Re-Engrossed Senate Bill 100 on May 29, 1973, following its passage by both the Senate and House of Representatives, plus its signing by the leaders of both houses, Senate President Jason Boe and Speaker of the House, Representative Richard Eymann.

Governor Tom McCall promptly appointed the first seven members of the new Land Conservation and Development Commission (LCDC) with L. B. Day as the LCDC's first Chairman.

NOTES

¹Minutes Oregon Senate Floor Debate, April 18, 1973, (Salem: 1973) Tape 13, Side 1.

²Ibid.

³Ibid.

⁴Ibid.

⁵Ibid.

⁶Minutes of Ad Hoc Committee meeting on Senate Bill 100 (Salem: February 27, 1973) Tape 9, Side 2.

⁷Minutes Oregon Senate Floor Debate, April 18, 1973, Tape 13, Side 1.

⁸Ibid.

⁹Senate Legislative Calendar Upon Adjournment, "SB 100," (Salem: State Printing Office, 1973) p. 42.

¹⁰Senate Legislative Calendar Upon Adjournment, 1973,
p. 42.

¹¹House Environment and Land Use Committee (HELUC) meetings (Salem: May, 1973) Minutes of May 3, 1973, Tape 18, Side 1; Minutes of May 8, 1973, Tape 18, Side 2; Minutes of May 10, 1973, Tape 19, Sides 1 and 2; Minutes of May 14, 1973, Tape 19, Side 2.

¹²Ibid., May 3, 1973, Tape 18, Side 1.

¹³Ibid., May 8, 1973, Tape 18, Side 2.

¹⁴Ibid.

¹⁵Ibid.

¹⁶Minutes HELUC meeting May 14, 1973, Tape 19, Side 1.

¹⁷Senate Calendar, p. 42.

¹⁸Ibid.

¹⁹Ibid.

²⁰Personal Interview with Gordon Fultz, Assistant Director Association of Oregon Counties (Salem: March 25, 1974)

²¹Ibid.

²²Ibid.

²³Senate Bill 849-- Relating to Land Use regulation, including but not limited to compensation for regulation of land use; and appropriating money. The bill's concept was referred to as the "Compensible Zoning" bill.

SB 849 was written and sponsored by the Senate Environment and Land Use Committee (SELUC) as a direct result of the Committee's public hearings on SB 100.

James Allison, Oregon Rural Landowners' Association, was one of the first, last and most vehement to testify on the compensatory land use theme.

The bill's basic concept recommended financial payment for reimbursement for zone changes. In addition, the bill authorized a surcharge to be payable to the State of Oregon on windfall profits accrued by a property owner, on Highway frontages, for example.

After SB 849's, First Reading, April 11, 1973 and Second Reading, April 12, 1973, the bill was first referred to SELUC and then to the Joint Ways and Means Committee, where it was buried.

CHAPTER XV

CONCLUSIONS

The saga of Senate Bill 100 (SB 100) was the story of the politics of land use. The writing of SB 100 provides a showcase for the conflicts between ideologies, philosophies, concepts and timing which, since people held these viewpoints, and in varying intensities, had to be resolved. Such resolution in a political democracy was achieved through compromise.

Senate Bill 100 was written in an attempt to protect Oregon's scenic landscape and environment from human abuse and misuse. Senator Hector Macpherson, Chairman, and his Land Use Policy Committee (LUPC) and its staff, while not professional planners, gave of themselves unstintingly over many months to create a workable land use planning bill with enforcement power.

Senator Macpherson was one man who had accepted the philosophy of land use planning. He stood alone. His beliefs and his leadership carried him and his LUPC through the writing of the original SB 100. His success stemmed largely from his ability to select committee members who tended to hold his concepts of land use planning. He also was endowed with a great capacity for hard work and complete

dedication to the task in hand. While some of his guests, however, did differ in some concepts and ideologies, Senator Macpherson chose to ignore this opposition. After all, it was his committee.

The LUPC members, were completely dedicated to their project of turning out a good land use bill, but, they seemed to be wholly oblivious to the need for involving the public in plans, discussions, and decisions on the terms of the bill, as a means of gaining popular support and approval. Without public understanding, cooperation, and support, SB 100 could not survive in the 1973 Session of the Oregon Legislature.

The results obtained by Chairman Macpherson and his Committee were surprisingly successful. They drafted a total of eight planning bills which were entered in the Senate "Hopper" in the 1973 Session of the Oregon Legislature. Six of the eight Macpherson bills were enacted into law during the session.

Thus the foresight, dedication and perseverance of Senator Macpherson resulted in the formation of his LUPC and SB 100 resulted from the Committee's study and work. The Enrolled SB 100 was the product of sixteen months at hard, dedicated labor by those who believed that a state land use policy, under law, was a necessity for the future protection of land and environment for the people of Oregon.

THE CONFLICTS

Because SB 100 was conceived in a political vacuum by the LUPC, the conflicts generated by its debut in the SELUC loomed large and seemed, at first, to sound a death knell for state land use planning in Oregon. Initially, not even the need concept had majority support among the SELUC members who were ill-prepared to cope with the issues put forward in the public's testimony before the Committee, involving such conflicts as need vs. want, economics vs. environment, localism vs. regionalism in planning, reins of power, control of that power, and citizen participation.

Senate Bill 100's birth was in a political arena, the Oregon State Legislature. The bill had used 11 months from its conception early in 1972. Its birthing, which required 5 months in the Legislature, was a period of political turmoil. While it was born of need, state land use planning was initially unwanted at birth.

As a result of the conflicts, six significant changes were made in redrafting SB 100 by the Ad Hoc Committee.

SIX SIGNIFICANT CHANGES

Six significant changes in SB 100 were recommended by the Ad Hoc Committee and were incorporated by the SELUC into the bill as passed.

1. Counties were mandated to coordinate the land use and related plans of cities, counties, special districts and state agencies.
2. The Commission (LCDC) was enlarged to seven members, removable only for cause.
3. Public participation was mandated before the state goals and guidelines were formulated.
4. Since no 'areas of critical state concern' were provided in the bill, the revised SB 100 stated that priority consideration would be given to certain types of areas in their comprehensive planning process. The bill asked that LCDC study the need for 'areas of critical state concern.'
5. The power to take over the planning of a city or county one year after the adoption of state goals and guidelines, if the LCDC finds that the planning does not comply with state-wide planning goals, was given to the Commission, rather than the Governor.
6. Adequate funding, while not a part of SB 100, was recommended as a companion measure.

These changes were the product of purely political compromises.

THE COMPROMISES

Political compromises were made to insure Legislative passage of the state land use planning bill, SB 100. The compromises involved equating need to want; mandatory citizen participation; eliminating mandatory regionalism; the stating of legislative intent; the creation of Oregon's "37th County" to avoid Portland's subservience to Multnomah County in planning; and the removal of the "emergency clause" from SB 100.

Need vs. Want

Senate Bill 100 was enacted into law only when the need was equated with the want in the minds of the people and their representatives in the Oregon Legislature. When initially drafted the bill reflected only the need, but when the bill entered the political arena of the Oregon Senate, the public made it clear that they did not want the state to do the planning for land use.

The primary conflict to be resolved was need vs. want. Passage of SB 100 mandated the conflict's solution since passage of the bill required a voting majority in both houses of the Legislature. Neither political party, Republican or Democratic, could guarantee a majority, even though the Democrats held an actual political majority in both houses of the Oregon Legislature.

Citizen Participation

The LUPC did make a half-hearted attempt to hold some so-called "public hearings" during 1972, but they were given little, if any, coverage by the news media, for, as was stated elsewhere, the media did not take LUPC's effort at land planning seriously. What public was present at the "hearings" was usually there at Senator Macpherson's invitation. Of these, most again were proponents of land use planning. Thus almost no one in Oregon except members of the

LUPC, its staff and a few associates had any knowledge or understanding of the proposed bill prior to its submission to the Legislature.¹

Concern for citizen participation was repeatedly expressed by various LUPC members. However, none of these "citizens" were invited to LUPC meetings, or, if present, were permitted to address the Committee. Even Senator Macpherson wrote a brief paragraph in "Hector's Thoughts I" favoring citizen participation. The LUPC worked totally insulated from citizen inputs. This lack of participation, even though the LUPC paid lip-service to citizen participation, was an important issue in land use planning which had to be resolved.

This state of affairs was most unfortunate for the acceptance of the new land use planning bill by either the public or its elected representatives in the Legislature. Failure to inform and involve the general public during the bill's early formative stages paved the way for its possible rejection. Had the LUPC held even one well-publicized hearing in each of the proposed 14 regional districts in the state, the public's reactions and ideas could have been ascertained and utilized, and their intense criticisms avoided later.

Senate Bill 100 found its way through proper Legislative channels to the Senate Environment and Land Use Committee (SELUC). SELUC Chairman, Senator Hallock,

concurred on the need for the land use planning philosophy of Senator Macpherson. However, the majority of the other SELUC members did not, in the beginning. By mid-February, 1973, the SELUC had accepted the land use planning philosophy, but the public had not. Rather, the SELUC members differed on the concepts of the implementation. The SELUC was joined in this by some of "the public" who had accepted land use planning, but sought to have their own concepts insured.

Councils of Governments

Just as with the acceptance of the concepts of the need for state land use planning and of a state land use planning process, the acceptance of the concept of regional planning districts, specifically "mandatory COGs" as land use planners, had to be gained. However, the SELUC's initial hearings had shown Chairman Hallock that such acceptance was not readily available.

While Senator Macpherson's report on SB 100 to SELUC's first meeting, January 18, 1973, on SB 100 seemed to lead directly to the COG's question, it was not voiced. However, the question had been formed in Senator Hallock's mind immediately after the SELUC's first public hearing on January 25, 1973, the question being, whether the public would accept the regional planning concept at all, and if so, would they accept the COGs as the planners? Hallock appoin-

ted a COGs Subcommittee, to buy some time and then appointed the Ad Hoc Committee, headed by Senator Macpherson with a Drafting Subcommittee chaired by L. B. Day to try to provide a politically acceptable version of SB 100.

The Ad Hoc Committee had succeeded, with the dedicated help of the politically talented Drafting Subcommittee, in eliminating or softening parts of SB 100 without losing sight of the bill's original purpose, and without pulling the enforcement teeth of LCDC. Though accomplished through the combined efforts of special interest lobbyists on the two committees, rather than the Legislators, the bill as redrafted, constituted a successful political compromise. It should be noted that there were still several special interest groups not included on the Ad Hoc and Drafting Committees who still had to be satisfied. Their reactions were given before the SELUC.

The Drafting Subcommittee was made acutely aware of the divergence of viewpoints on SB 100 during the February 18, 1973, meeting of the Ad Hoc Committee, according to Gordon Fultz.² He said if "grays" existed, they were unspoken.

Mr. Fultz said:

A political compromise, which was in a very delicate balance, was achieved by the Drafting Subcommittee in rewriting SB 100. . . . This would not have been possible had any other member of the Ad Hoc Committee been appointed to the Drafting Subcommittee. . . . Each of the Subcommittee members wanted a land use bill to be enacted by the 1973 Legislature. . . . They were political realists. . . . They knew that

they had to compromise to create a bill which would be acceptable to a majority of Oregon's Legislature.³

The concept of "mandatory COGs" was eliminated from SB 100 by L. B. Day's Drafting Subcommittee. While the COG concept was politically dead, it was not embalmed until the SELUC's March 20th meeting. Burial took place when the redrafted SB 100 became law. Enactment of SB 769⁴ exhumed the concept for the Portland Metropolitan area only, when CRAG became the authorized planner.

The political compromise which removed the regional planning concept from SB 100, led to the designation of Portland as the "37th County" and thus free to do its own planning.

The "37th County Amendment

The "37th County Amendment" was offered to quiet the vehement opposition from the City of Portland to the removal of the COGs as designated planners in SB 100 and the substitution of the counties as the planners. Since the redrafted SB 100's Section 19, made the City subservient to Multnomah County in planning, it offended the City's pride. The City asked initially for a subsection that would permit a public vote, based on an election, to have the Columbia Region Association of Governments (CRAG) as its not-so-voluntary association in the Metropolitan Tri-County area. This in turn, offended the other local governmental organizations in the Tri-County area.⁵

Then suddenly, it dawned on the City officials, that Portland voters might not vote to have CRAG do the region's comprehensive planning.⁶ To protect themselves from that contingency, the City of Portland asked for and received still another amendment to Section 19 which exempted cities with over 300,000 population from county domination. Thus, the "37th County" was born in Oregon.

Legislative Intent

It can only be assumed that Senators Hallock and Macpherson were cognizant of the ORS annotations relating to abuse of administrative power, portions of which were quite applicable to the problem before the SELUC members. They wanted state-wide land use planning for Oregon, and more particularly, they wanted SB 100 to survive any possible later court tests. Therefore, as a last political compromise devised by SELUC, a Statement of Legislative Intent was passed unanimously out of the Committee.

The Statement of Legislative Intent, signed by each SELUC member, had been transmitted to Jason Boe, President of the Senate. Then Senate Bill 100 was put before the Senate for consideration. Thus ended the work of the SELUC on SB 100.

Despite the Statement of Legislative Intent, SB 100 still lacked a majority of political votes in the Oregon Senate. To assure its passage, therefore, the "Emergency

clause" was deleted on the Senate Floor.

"Emergency Clause"

The "Emergency Clause" had been added to the fifth and final draft of LC 100, which became the original SB 100. The clause which was added as a "housekeeping amendment" by the LUPC's Administrative Assistants, according to Steve Hawes, Legislative Counsel, was not discussed by the LUPC members prior to the Senate's public hearings.

The public repeatedly testified against the bill's proponents' efforts to avoid an election on the state land use planning concept. While the public's opinions usually went unheard in the SELUC, the "emergency clause" was deleted from SB 100, during the Senate Floor Debate on the bill's Third Reading, in deference to public opinion.

The Mini-Conclusion

On April 18, 1973, Senate Bill 100 was given its Third and final Reading by the Oregon Senate. Senator Hallock, in summarizing the SELUC's final organizational sub-structure problem said, during the Senate Floor Debate on SB 100, in answer to voiced criticism of the amended Section 19,

Senator Burns is also unhappy about the '37th County Amendment'. . . . I am annoyed with both Multnomah County and the City of Portland. However, the passage of time required the '37th County Amendment' due to failure of the two to reach an agreement. I pulled SB 100 back from the Senate Calendar twice in seeking to effect a compromise between them. A five-member commission, made up of representatives from

both the City and the County was suggested by the City, with the fifth member appointed by both. They could not agree. Therefore, that compromise failed also.⁷

The LUPC legalized regional land use planning in LC 100. The public crucified the concept in the SELUC hearings. The Drafting Subcommittee sought a compromise between "localism" and "regionalism" in its redrafted version. The Ad Hoc Committee endeavored to pacify the City of Portland with the "37th County Amendment" to SB 100, but Portland was not satisfied until SB 769 was enacted into law as a "companion-piece" to SB 100.

So the Statement of Intent on "goals" and "guidelines" was forwarded to the Oregon House of Representatives along with SB 100. It was neither voted upon nor discussed in the House, although SB 100 was heard, discussed and voted upon by the Representatives.

The HELUC did not make any changes in SB 100 as the word from the concept's sponsors was that SB 100 was enactable only as it was and if changed by the House in any way, there was no guarantee that enough votes in the Senate could be gathered to insure Senate passage a second time.

Only State Representative Vera Katz asked a question in one HELUC meeting.⁸ Publically the bill's proponents' reasoning for not changing SB 100 were not questioned in the House Committee. House reaction to this outside authority was almost passive. As a House Legislative Assistant, I had heard SB 100 "cussed" and discussed both publically

and privately throughout the winter of 1973. This passiveness of the House, as such, seemed out-of-character.

ENROLLED SB 100

Even after Senate passage of SB 100, opponents who objected to something in the bill tried to insure their special viewpoints with new legislation designed to overturn the political compromises. In the vernacular of children, some of these adult opponents would be called "sore losers." However, these opponents became an unwitting force that helped insure SB 100's passage in the House of Representatives without additional compromises.

Even after SB 100's enactment into Oregon law, there were some who were unable or unwilling to accept the philosophy of land use planning. The "emergency clause" was deleted on the Senate Floor to help satisfy them, but still they were not satisfied. They tried to secure the required number of signatures within the time available to refer SB 100 to a vote of the people at the next election, but they were then unsuccessful in their try for a referendum.

The Legislature, in SB 100, seems to have produced an Environmental and Land Use Policy Law with which most Oregonians could live.

Senate Bill 100 was a product of consensus, compromise and conflict. It was politics at its best, and at its worst, but it was politics The politics of people

vs. people, people's property vs. other people's philosophies, and elected politicians of the people who refereed the whole thing.

Senator Macpherson and Senator Hallock wanted a land use planning bill, not really a specific bill, just a better bill than SB 10 (1969). They came prepared to work hard and to compromise. Others were unprepared for either.

It should be noted that the future of LCDC and state-wide land use planning depended wholly on the accomplishments of the LCDC in meeting their defined responsibilities. This was particularly true in relation to the goals that were to be presented to the 1975 Session of the Oregon Legislature. If, despite citizen participation in defining the state-wide goals, the LCDC failed to recognize some political realities, they would find the LCDC voted out of existence either by the Legislature, or by a vote of the people.

Prior efforts to include approximately 70 percent of Coos County as an area of critical concern proved politically unfeasible. The Louis Harris Poll,⁹ done for Pacific Northwest Bell, on the reaction to environmental concerns proved that when there was either a conflict or confrontation between environment and economy, there was "no contest" The economy was the primary concern at all times. Without a doubt, it shall be so with land use planning under SB 100.

In the final analysis, Enrolled SB 100 became the State Land Use Planning Law in the ORS.

IN THE FINAL ANALYSIS

When need equaled want, when localism triumphed over regionalism, when economics and environment signed a truce, when citizen participation was mandated, when the reins of power were held by the public or their chosen representatives, when the City of Portland was quieted with the "37th County Amendment," and when the Legislature acknowledged the potential for abuse of administrative power with a Statement of Legislative Intent, when all of these conflicts, which had been generated by the original SB 100, were compromised, the state land use planning bill was enacted into law by the Oregon Legislature and received Governor McCall's signature.

NOTES

¹Personal interviews with Gordon Fultz, Assistant Director of Association of Oregon Counties (Salem: December 5, 1973, and March 25, 1974).

²Ibid.

³Ibid.

⁴Senate Bill 769 empowered the Columbia Region Association of Governments (CRAG) to be a regional planning organization with minimal legal ties to the limits and requirements of the Enrolled SB 100. For example, citizen participation, while mandated in SB 100 was omitted from SB 769.

The role of sub-state governing units was specified in the Enrolled SB 100. The counties, either individually or in "voluntary associations," except for the City of Portland, which became in SB 100 the 37th County, were to coordinate their areas' comprehensive plans. CRAG was authorized in SB 769 to coordinate the comprehensive plans for the Tri-County area which included the City of Portland and Multnomah, Clackamas and Washington Counties. Unfortunately, SB 769 failed to state that CRAG was subject to all of the requirements of the Enrolled SB 100.

⁵Personal Interviews with Gordon Fultz (Salem: December 5, 1973, and March 25, 1974).

⁶Ibid.

⁷Minutes Senate Floor Debate (Salem: April 18, 1973) Tape 13, Side 1.

⁸Minutes of House Environment and Land Use Committee (HELUC) on SB 100 (Salem: May 3, 1973) Tape 18, Side 1.

⁹Louis Harris and Associates, Inc., The Public's View of Environmental Problems in the State of Oregon, Louis Harris and Associates, Inc., New York, 1970.

The Participants

- A -

- Adams, Irwin S., North Clackamas Chamber of Commerce
- Akeson, Harry, State Representative, Democrat, District
22, Portland.
- Allison, James, Washington County farmer, President of the
Oregon Rural Landowners' Association
- Anderson, Dorothy, Legislative Chairman for the League of
Women Voters
- Anderson, Lloyd, City of Portland Commissioner
- Anderson, Monty, Josephine County Planning Commission
- Anunsen, Jack, State Representative, Marion County Planning
Commission
- Armstrong, Ward, AOI, Portland, member of the LUPC, the
Ad Hoc Committee and the Drafting Subcommittee
- Atiyeh, Victor, State Senator, Republican. Businessman.
Portland, member of the SELUC and the Critical
Areas Subcommittee
- Auckland, George, Portland Businessman
- Au Coin, Les, State Representative, Democrat, Forest
Grove, Public Relations
- Austin, Eldon, Molalla

- B -

- Bailey, Bud, Tillamook County Commissioner
- Balsiger, Phil, Mayor of Wilsonville, Architect
- Barnett, Jerry, Deschutes County Commissioner

- B - (Con't.)

Barney, Don, Lobbyist for the City of Portland

Bazett, Sidney, State Representative, Republican,
District 49, Grants Pass

Beaton, Dr. Russell, Professor of Economics at Willamette
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Beaufait, Kathleen, Legislative Counsels' Office, Salem

Becker, Mike, Keep and Bear Arms

Bell, George, Oregon's Assistant Secretary of State

Biles, Stan, Beaverton

Bluhm, Wilbur, Salem, Marion County Extension Service

Blumenauer, Earl, State Representative, Democrat, District
11, Portland Administrative Assistant to the Presi-
dent of Portland State University

Boe, Jason, State Senator, Democrat, Reedsport, optom-
etrists, President of the Oregon Senate

Bonnem, Ken, Corvallis, Director of Feedback (a citizens'
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Brashears, Dave, Planning Director for Josephine County

Brauner, Hal, Administrative Assistant to the Ad Hoc
Committee and the Drafting Subcommittee

Brennan, Jeff, Tillamook County Commissioner

Brewster, Jerry, Portland, Skidmore, Owings and Merrill,
consulting Architects and Engineers

Brice, Dean, AOI, Portland, PP&L

Brown, Bill, Clackamas County Citizens' Association

Brown, Ken, Gervais, Executive Director of the Farmers'
Political Action Committee

Brown, Lyndon, LUPC staff

Brown, Paul, Wilsonville

- B - (Con't)

- Brown, Walter, Lake Oswego, President of the Clackamas County Citizens' Association
- Browne, Elizabeth W., State Senator, Democrat, Oakridge, Lane County
- Bunn, Stan, State Representative, Republican, District 29, Dayton
- Burbidge, Keith A. State Senator, Democrat, Salem, Marion County
- Burns, John, State Senator, Democrat, Portland, Multnomah County, former (1971) president of the Oregon Senate, vice chairman of SELUC and Chairman of the Critical Areas Subcommittee, an attorney
- Burns, Keith, State Senator, Democrat, District 6, Portland, an attorney.
- Burrows, Mary, State Representative, Republican, District 41, Eugene, member of the HELUC, housewife
- Button, Jane L., Eugene, Oregon Legislative and Research Committee

- C -

- Cannon, Kessler, Assistant to Governor McCall for Natural Resources
- Carson, Harry
- Carson, Wallace P., Jr., State Senator, Republican, Salem, Marion County
- Cherry, Howard L., State Representative, Democrat, District 14, Portland
- Church, Stan
- Cohen, Joyce, Lake Oswego, Tri-County New Politics, Land Use Task Force
- Cole, George F., State Representative, Democrat, District 2, Seaside.

- C - (Con't.)

Cook, Vern, State Senator, Democrat, District 12, Gresham
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 Couch, Steve, OSPIRG

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 State Legislator, Salem, former Director of DEQ, and
 Chairman of the Drafting Subcommittee
 Densmore, Albert H., State Representative, Democrat, District
 50, Medford
 Dereli, Margaret U., State Representative, Democrat,
 District 32, Salem
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 of the Ad Hoc Committee
 Diehl, George, Tillamook County, Secretary of OSCC
 Dority, Dan, Lake Oswego, and Marion County farmer
 Dority, Mrs. Dan
 Dummer, Art, Forest Grove

- E -

Eivers, George, State Senator, Republican, Clackamas County,
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 District 17, Portland

- E - (Con't)

Emigh, Richard, Eugene, U of O graduate student in Urban Planning

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Fadeley, Nancie, State Representative, Democrat, District 24, Eugene, Chairman of HELUC, housewife

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Fultz, Gordon, Assistant Director of the Association of Oregon Counties, Salem

- G -

Gates, Harold, City attorney, Lincoln City

Gilmour, Jeffry L., State Representative, Democrat, District 30

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- G - (Con't.)

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member of HELUC and Real Estate and Investment
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- H -

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Relations, Chairman of SELUC

Hampton, Lewis, State Representative, Republican, District
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#3, Cloverdale, member of HELUC, sport fishing opera-
tions and commercial artist

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Hilton, Norman, Hilton Engineering Company, Portland

Holmstrom, W. H., State Senator, Democrat, District #7,
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- H -(Con't)

Howard, Norman R., State Senator, Democrat, District 7,
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- I -

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28, Hood River

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Johnson, Lee, Oregon Attorney General, Salem

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52, Ashland

Johnson, Sam, State Representative, Republican, District 54
Redmond

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Portland, member of HELUC, housewife

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Krueger, Russ, Portland (Washington County)

Kvarsten, Wes, Executive Director of the Mid-Willamette
Valley COG, Salem

- L -

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10, Portland

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- M -(Con't.)

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- Markham, William E., State Representative, Republican,
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- Martin, Roger, State Representative, Republican, District
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- Marx, Robert, State Representative, Democrat, District 34,
Philomath
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- McCall, Thomas, Salem, Governor of Oregon
- McCoy, William, State Representative, Democrat, District 15,
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- McGrath, David, Clatsop County Commission, Chairman of the
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- McIsaac, Jack, Portland, PP&L
- McKinney, Ernest, representative for Lakeview County
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- M - (Con't.)

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Miksche, Mike, Crook County, Prineville realtor

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Moore, James, Salem, League of Oregon Cities

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51, Medford

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Myers, Clay, Salem, Oregon's Secretary of State

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Women for Constitutional Government, Oregon Legis-
lative and Research Committee

Nielsen, John, OEC

Norris, Joan, Tri-County New Politics

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15, Ironside

Omlid, Ken, Lane County Commissioner

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- O - (Con't.)

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- Q -

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- R -

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Roberts, Mary, State Representative, Democrat, District 20,
Portland

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Rudi, Paul, Coos County Commissioner

- S -

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Skelton, Keith D., State Representative, Democrat, District
19, Portland, attorney

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Burns

Spenner, Joseph, Silverton

Sprecher, Larry, Beaverton, City Manager

Squires, Ann, Portland, OSCC

Stevenson, Bill, State Senator, Democrat, District 3,
Portland

- S - (Con't.)

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48, Coquille

Strand, Albert, Lincoln County Commissioner

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43, Junction City, millworker and student, member of
HELUC

Stults, Robert, State Representative, Republican, District
45, Roseburg

Sulzbach, Wilford, Sandy

Sumner, Jack, State Representative, Democrat, District 55,
Heppner

Svalberg, Bud, Salem, Oregon Water Resources Board

Sykes, Earl, Reedsport

- T -

Ternyik, Wilbur, Chairman of OCC & DC

Thorne, Micheal, State Senator, Democrat, District 29
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farmer and realtor, member of SELUC and COGs Subcom-
mittee

Tippens, Jerry, Portland Metropolitan Boundary Commission

Toran, John, Salem, Administrative Assistant to SELUC

- U -

- V -

Van Atta, Fred, Salem, Oregon Home Builders' Association

Van Elsberg, Lonnie, Coos County Commissioner

- W -

Waggoner, Don, President of OEC

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56, Hood River

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Growers, Clackamas County Farm Bureau

Whallon, Glenn, State Representative, Democrat, District
25, Milwaukie

Whitehead, Wayne, State Representative, Republican,
District 39, Eugene

Whiting, Pat, State Representative, Democrat, District 7,
Tigard, lecturer and teacher, member of HELUC

Wilhelms, Gary, State Representative, Republican, District
53, Klamath Falls

Willits, Howard, State Representative, Democrat, District
21, Portland

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Wingard, George, State Senator, Republican, Lane County,
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Areas Subcommittee

Wolfer, Curt, State Representative, Democrat, District 28,
Silverton

Wolfer, Martin, State Representative, Democrat, District
33, Salem, painting contractor, member of HELUC

- X -

- Y -

Yost, Roger, Portland, Campbell and Yost architects

Young, William, Mayor of Beaverton, Chairman of CRAG
Executive Board

- Z -

Zachary, Joan, Portland, Legislative Assistant to State
Representative Vera Katz

Zedwick, Andy, Lincoln County Commissioner

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Enrolled Senate Bill 100

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12 February 1973. (Typewritten).

Allison, James, Oregon Rural Landowners' Association,
Washington County to SELUC. 25 January 1973.
(Typewritten).

Auckland, George, Portland, to SELUC. 29 January 1973.
(Hand written).

Grannell, William, State Representative, Coos County, to
SELUC. 30 January 1973. (Typewritten).

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Environment and Land Use Committee (HELUC). 3 May 1973.
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Moore, James, League of Oregon Cities to HELUC. 8 May 1973. (Mimeographed).

_____, to HELUC. 14 May 1973. (Mimeographed).

_____, to SELUC. 12 February 1973. (Mimeographed).

_____, to SELUC. 8 March 1973. (Mimeographed).

_____, to SELUC. 3 April 1973. (Mimeographed).

_____, to SELUC. 16 April 1973. (Mimeographed).

Rice, Larry, Lane County Council of Governments, to SELUC. 1 February 1973. (Typewritten).

Webber, John C., Canby, Oregon, berry farmer, to SELUC. 30 January 1973. (Hand written).

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Macpherson, Hector, State Senator, Linn County, as Chairman of the Land Use Policy Committee to "those interested in land use planning". 15 January 1972. (Mimeographed)

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COGs Subcommittee of the Senate Environment and Land Use Committee. Salem, Oregon. Minutes of Meetings of the Subcommittee, 1973. (Taped).

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House Environment and Land Use Committee. Salem, Oregon. Minutes of Meetings of the Committee, 1973. (Taped).

Land Use Policy Committee. Salem, Oregon. Minutes of the Committee, 1972. (Mimeographed).

Senate Environment and Land Use Committee. Salem, Oregon. Minutes of Meetings of the Committee, 1973. (Taped).

Personal Interviews:

Armstrong, Ward, Association of Oregon Industries and Weyerhaeuser Corporation in Portland, Oregon on December 4, 1973.

Beaton, Dr. Russell, Economist, Willamette University and LUPC member in Salem on January 12, 1973.

Brice, Dean, Ad Hoc Committee and Drafting Subcommittee, Association of Oregon Industries and Pacific Power and Light Company in Portland, Oregon on December 10, 1973.

Day, L. B., Ad Hoc Committee and Drafting Subcommittee, Teamsters' Union, in Salem, Oregon on December 3, 1973.

Fultz, Gordon, Assistant Director of the Association of Oregon Counties, in Salem, Oregon on December 5, 1973 and March 25, 1974.

Hallock, State Senator Ted, SELUC Chairman in Salem, Oregon on June 1, 1973 and in Portland, Oregon on December 6, 1973.

Hawes, Steve, Legislative Counsel, in Salem, Oregon on November 30, 1973, December 3, 1973 and March 25, 1974.

Katz, State Representative Vera, HELUC member in Salem, Oregon on May 4, 1973.

Logan, Robert, Oregon Local Governmental Relations in Salem, Oregon on December 5, 1973.

Macpherson, State Senator Hector, Chairman of LUPC and Ad Hoc Committees, and of COGs Subcommittee, plus SELUC member, in Salem, Oregon on January 31, 1973 and June 1, 1973.

Macpherson, Kitty, LUPC secretary, in Salem, Oregon on January 31, 1973 and June 1, 1973.

Maudlin, Gene, Executive Assistant to Governor McCall,
in Salem, Oregon on December 3, 1973.

Van Atta, Fred, member of Ad Hoc Committee and Drafting
Subcommittee, Oregon Homebuilders' Association, in
Salem, Oregon on March 21, 1974.

APPENDIX A

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SENATE CALENDAR UPON ADJOURNMENT

OREGON 1973

SB 100. By Senators MACPHERSON, HALLOCK---Relating to land use; creating new provisions; amending ORS 215.055, 215.510, 215.515, 215.535 and 453.345; appropriating money.

1-12(S) First Reading.

1-16 Second reading. Referred to Environment and Land Use.

3-23 Recommendation: Be amended, printed engrossed and rereferred to Environment and Land Use for further study. Rereferred.

4-9 Recommendation: Do pass with amendments to the printed engrossed measure.

4-10 Taken from April 12 calendar and rereferred to Environment and Land Use.

4-12 Recommendation: Do pass.

4-16 Taken from today's calendar and placed on April 18 calendar as a Special Order of Business at 10:15 a.m.

4-18 Third reading. Motion to rerefer to Environment and Land Use with statement of legislative intent failed.

Ayes, 10--Nays, 16, Atiyeh, Browne, Burbidge, J. Burns, K. Burns, Carson, Hallock, Hartung, Howard, Hoyt, Jernstedt, Macpherson, Ripper, Thorne, Wingard, President Boe--Excused, 2, Fadeley, Groener--Excused for Business of Senate, 2, Roberts, Stevenson.

Motion to insert statement of legislative intent in Journal carried.

Ayes, 17--Nays, 10, Browne, Cook, Eivers, Heard, Holmstrom, Mahoney, Newbry, Ouderkirk, Potts, Smith--Excused, 2, Fadeley, Groener--Excused for business of Senate, 1, Roberts.

Motion to refer to Ways and Means failed.

Ayes, 9--Nays, 18, Atiyeh, Browne, Burbidge, J. Burns, Carson, Hallock, Hartung, Howard, Hoyt, Jernstedt, Macpherson, Mahoney, Meeker, Ripper, Thorne, Wingard, President Boe--Excused, 2, Fadeley, Groener--Excused for business of Senate, 1, Roberts.

Rules suspended, emergency clause deleted.

Ayes, 22--Nays, 6, J. Burns, Holmstrom, Newbry, Ouder Kirk, Potts, Thorne--Excused, 2, Fadeley, Groener.

Passed.

Ayes, 18--Nays, 10, J. Burns, Cook, Eivers, Heard, Holmstrom, Meeker, Newbry, Ouder Kirk, Potts, Smith--Excused, 2, Fadeley, Groener.

4-19(H) First reading.

4-20 Second reading. Referred to Environment and Land Use.

5-17 Committee Report distributed.
Recommendation: Do pass.

5-21 Carried over to May 22 calendar.

5-22 Made a special order of business at 10:30 a.m. on May 23.

5-23 Motion to rerefer to Environment and Land Use failed.

Ayes, 25--Nays, 34, AuCoin, Blumenauer, Bunn, Burrows, Cherry, Densmore, Dereli, Elliott, Fadeley, Grannell, Croener, Gwinn, Ingals, Kafoury, Katz, Kinsey, Lang, Lindquist, Macpherson, Marx, McCoy, Patterson, Paulus, Peck, Perry, Priestley, Rieke, Roberts, Skelton, Whitehead, Whiting, Willits, M. Wolfer, Mr. Speaker--Excused, 1, Sumner.

Third reading. Passed.

Ayes, 40--Nays, 20, Bazett, Byers, Cole, Gilmour, Hanneman, Hansell, L. Johnson, Jones, Macpherson, Magruder, Markham, Oakes, Otto, Stevenson, D. Stults, R. Stults, Sumner, Walden, Wilhelms, C. Wolfer.

(Macpherson moved to reconsider.)

5-24 Vote reconsideration failed.

Ayes, 25--Nays, 33, Akeson, AuCoin, Blumenauer, Bunn, Burrows, Cherry, Densmore, Dereli, Elliott, Fadeley, Groener, Gwinn, Ingals, Kafoury, Katz, Kinsey, Lang, Lindquist, Marx, McCoy, Morris,

Patterson, Paulus, Peck, Perry, Priestley,
Rieke, Roberts, Skelton, Whitehead, Whiting,
Willits, Mr. Speaker--Excused, 2, S. Johnson,
M. Wolfer.

5-28 President signed.

5-28 Speaker signed.

5-29 Governor signed.
(Chapter 80, 1973 Laws) Effective date, May 29, 1973.

January 25, 1973

Questions to the Senate Environment and Land Use Committee on Senate Bill 100 from Jim Allison, President, Oregon Rural Landowners Association:

1. Are the regulations to be adopted by the Commission (section 44, page 23, line 7) governing land conservation and development proposals to be carried out within area of critical state concern to be approved by the Legislature before they are implemented?
2. If the answer is "no," then isn't the summary on the bill which reads: (8th line down) "Requires commission, subject to approval of the Legislative Assembly, to promulgate and implement state-wide objectives and regulations for such areas..." incorrect?
3. On page 15, starting on line 22, section (8), the bill seems to state that all lands situated within 200 feet of the right of way of a highway declared a scenic highway under ORS 377.530 shall be considered as an area of critical state concern--if this land is within the boundaries of an incorporated area. Am I correct?
4. If "yes" then is not this in direct conflict with ORS 377.530, paragraph (2) (a) which states that the Scenic Area Board shall not have the power to establish as a scenic area in any area along a public highway within the boundaries of an incorporated municipality?
5. Is it possible, that if SB 100 were to become law in its present form that a stock farmer owning 80 acres currently zoned F-1 in Washington County could be forbidden to add onto his barn because of a prohibition on building in an area of state critical concern--yet be permitted to build a brand new one just 100 feet from the one he wished to enlarge?
6. Does the bill grant authority to the commission to regulate the cutting or harvesting of timber on land within an area of critical concern?

7. If the Commission did enact such rules and the landowner were to be forbidden to harvest his timber or was permitted to cut only a portion of it when good forest management called for clear cutting, it follows that a serious loss of net worth would occur. Has Legislative Counsel asked the Attorney General if it violates the U.S. Constitution for the legislature to give the Governor the power through an appointive board to destroy the net worth of a rural landowner by creating a Scenic Park for tourists to look at as they drive by?
8. On page 14, line 11, what does "recreation area" mean? Could this be construed to include the "Tualatin Hills Park and Recreation District" in the Beaverton area?
9. On the subject of state-wide planning guidelines (section 46, page 23) may the Commission in adopting state-wide guidelines provide different guidelines in different portions of the state? May the guidelines for constructing a new comprehensive plan for the development of District 2 be different than the guidelines for the development of District #11?
10. May the state-wide planning guidelines adopted by the Commission be made applicable to a single county? In other words, could the Commission adopt guidelines that would only effect Lincoln County?
11. Is it legally possible for the Commission to adopt the following state-wide planning guidelines:

"In areas where no approved public sewerage system exists, the density of single family dwellings shall not be increased to exceed an average of one per each 40 acres?"
12. Assume SB 100 is adopted in its present form. Could the Commission adopt rules that would prevent a landowner located within the city limits of downtown Coos Bay and within 1000 feet of the Coos River estuary from continuing to use his land adjacent to the estuary and the estuary as a log dump?
13. Again referring to downtown Coos Bay, could the Commission enact rules that would prevent a landowner whose land is currently being used as a site

for a warehouse from tearing down the building and constructing a marina?

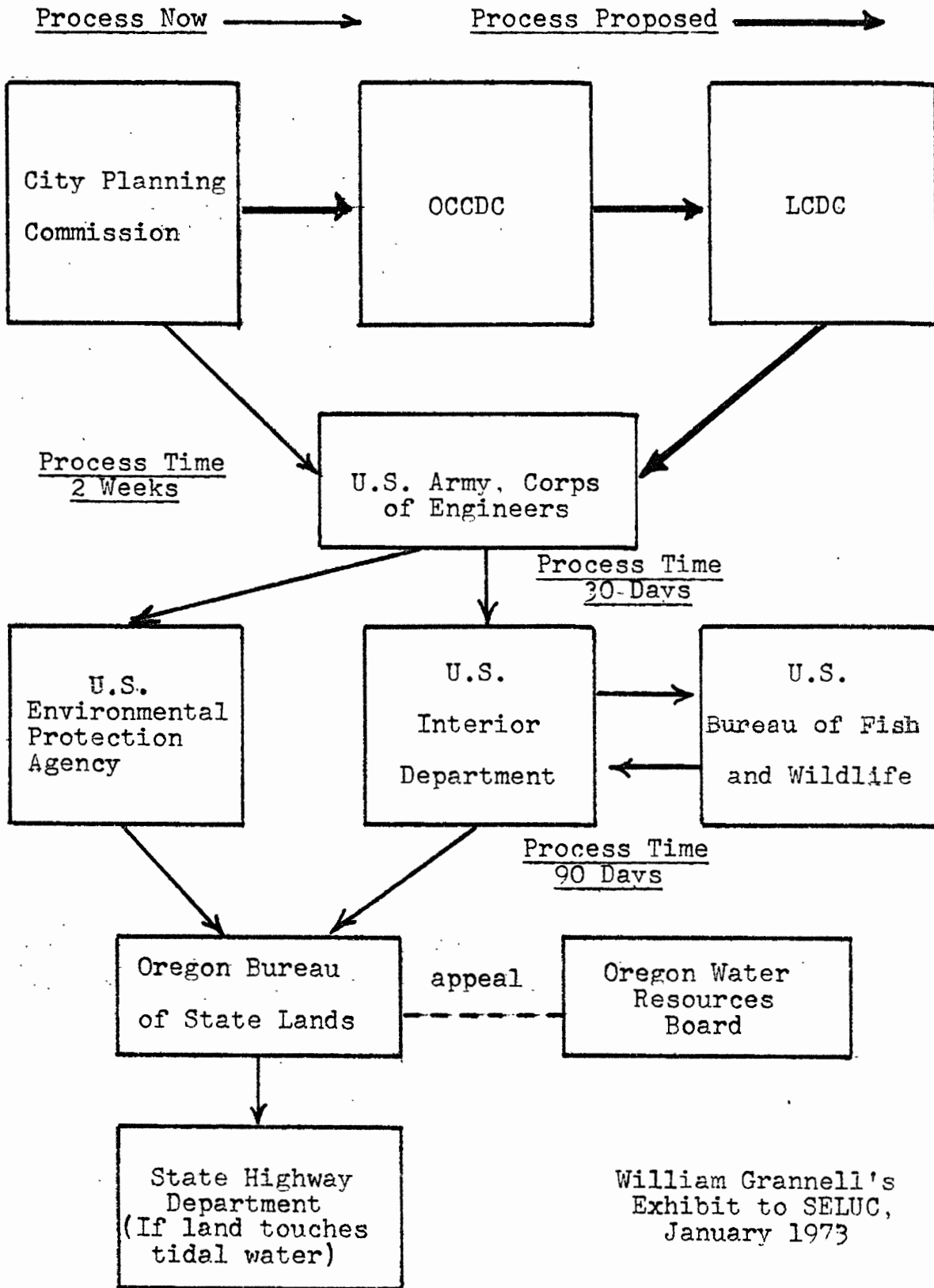
14. Am I correct in my interpretation of lines 14 and 15 on page 5 of the bill that if it appears to the Governor that the five members he has appointed to the Land Conservation and Development Commission weren't going to enact the type of regulations he wanted, he could fire all five and start over with a new commission?
15. On page 10, section 22, lines 24 thru 27:

A--May we have an explanation of precisely what powers are granted by the statement:

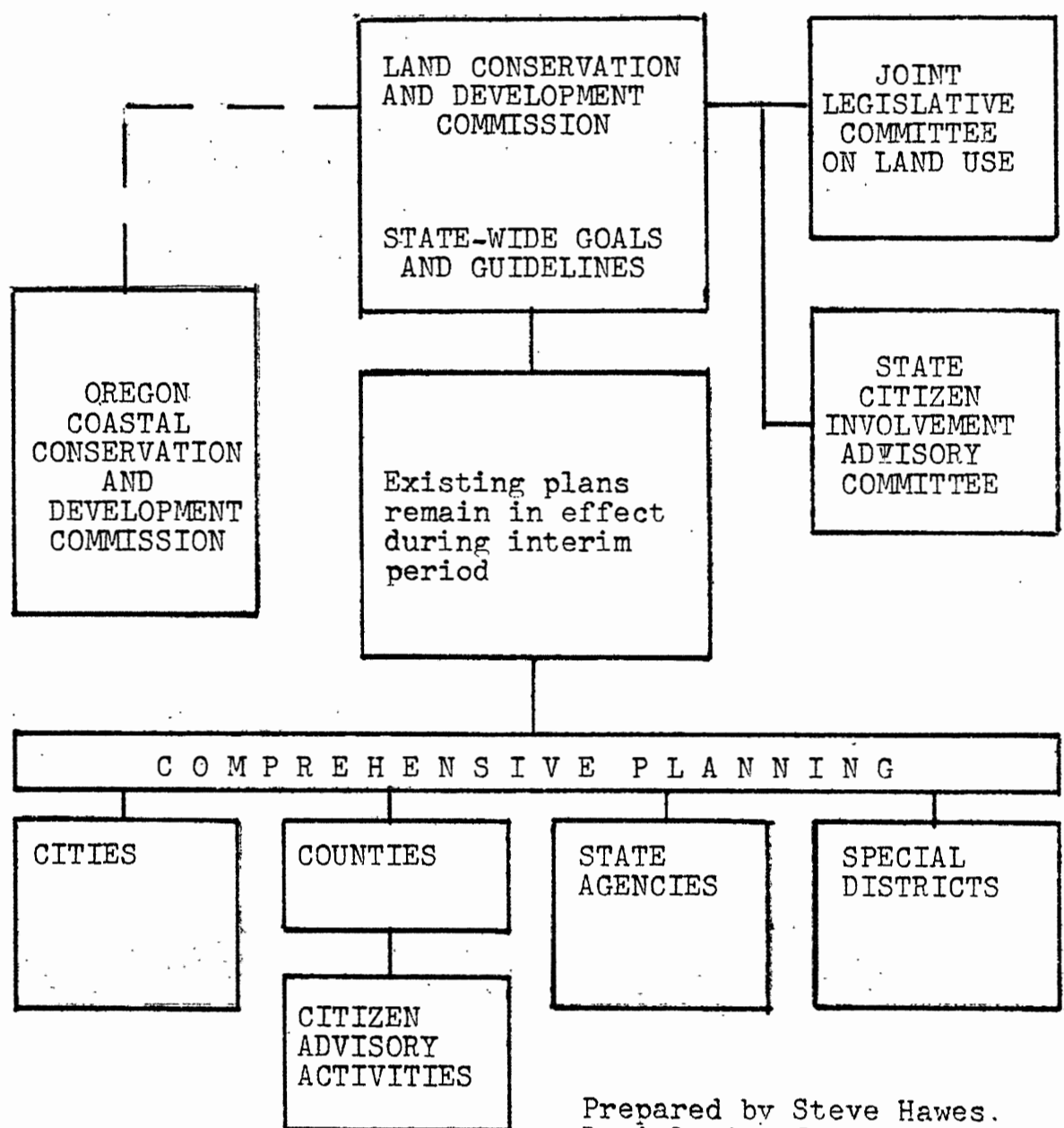
"Each District Council shall COORDINATE land conservation and development by the cities, counties and special districts within the planning district.
16. Does this bill propose to grant to this regional government the authority to approve or disapprove the comprehensive plan of development for Clackamas County?
17. Will this regional government have the authority to change the boundaries between urban and rural development? Will it supercede the Metropolitan Boundary Commission?
18. Is it possible that the Mayor of St. Helens could cast the deciding vote involving some land use in the extreme southern part of Clackamas County?
19. On page 10, lines 14 to 18, assume the voters in Klamath Falls decided they would like to initiate a measure to change the number, qualifications and manner of selection the district council for District #11. Let's further assume that their proposal called for the District Council to consist of three people--the Mayor of Klamath County and Agricultural County Agent for Klamath County. Would the voters of Lake County be permitted to vote on this initiative measure? Assume it was adopted by a two-county vote with Klamath County outvoting Lake County. What recourse, if any, does Lake County have?

20. It is not possible under this bill for the City of Portland to take over complete control of all planning in the four-county area comprising District #2?

AGENCIES FOR FACILITY ON COOS BAY

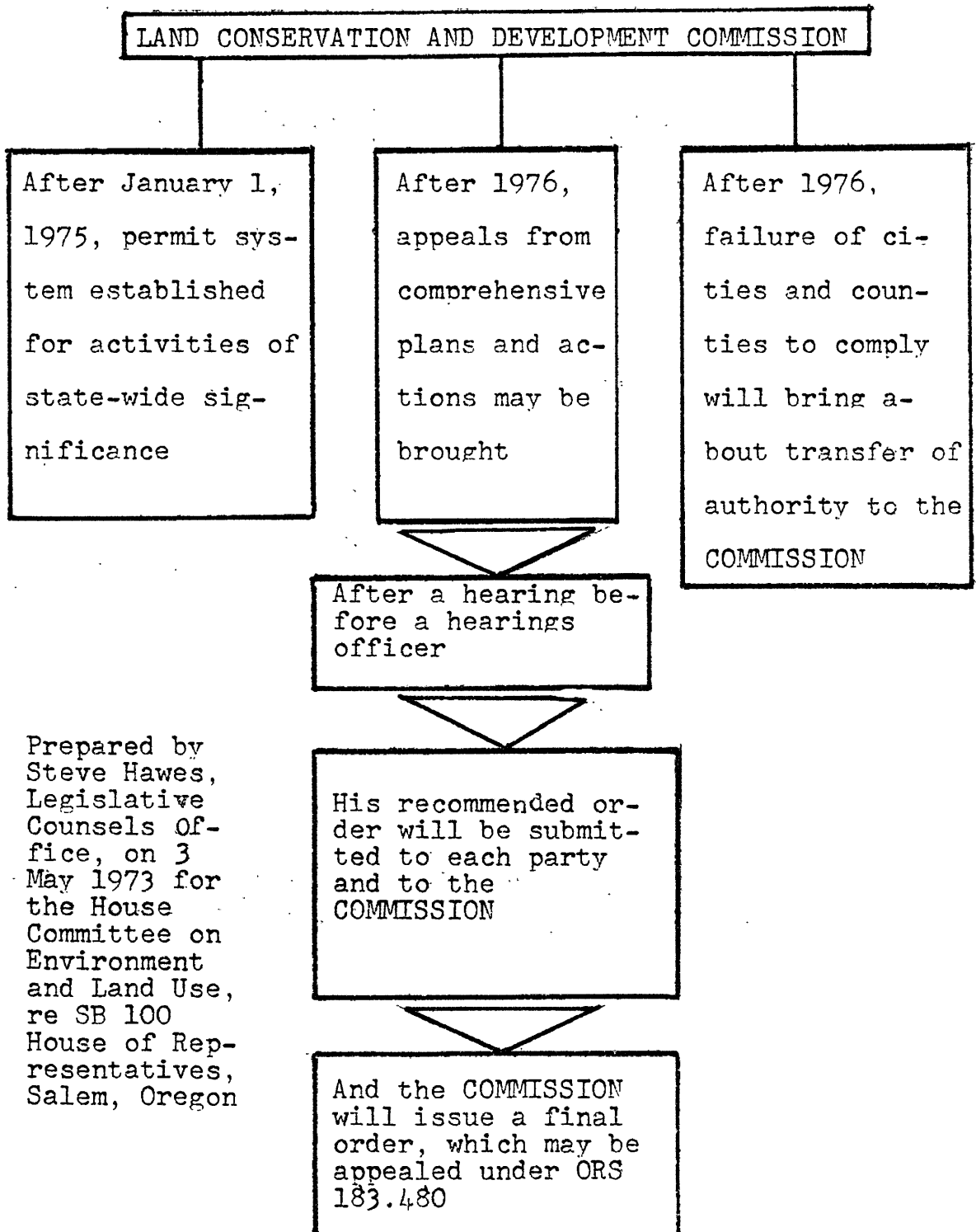


WHO PLANS...

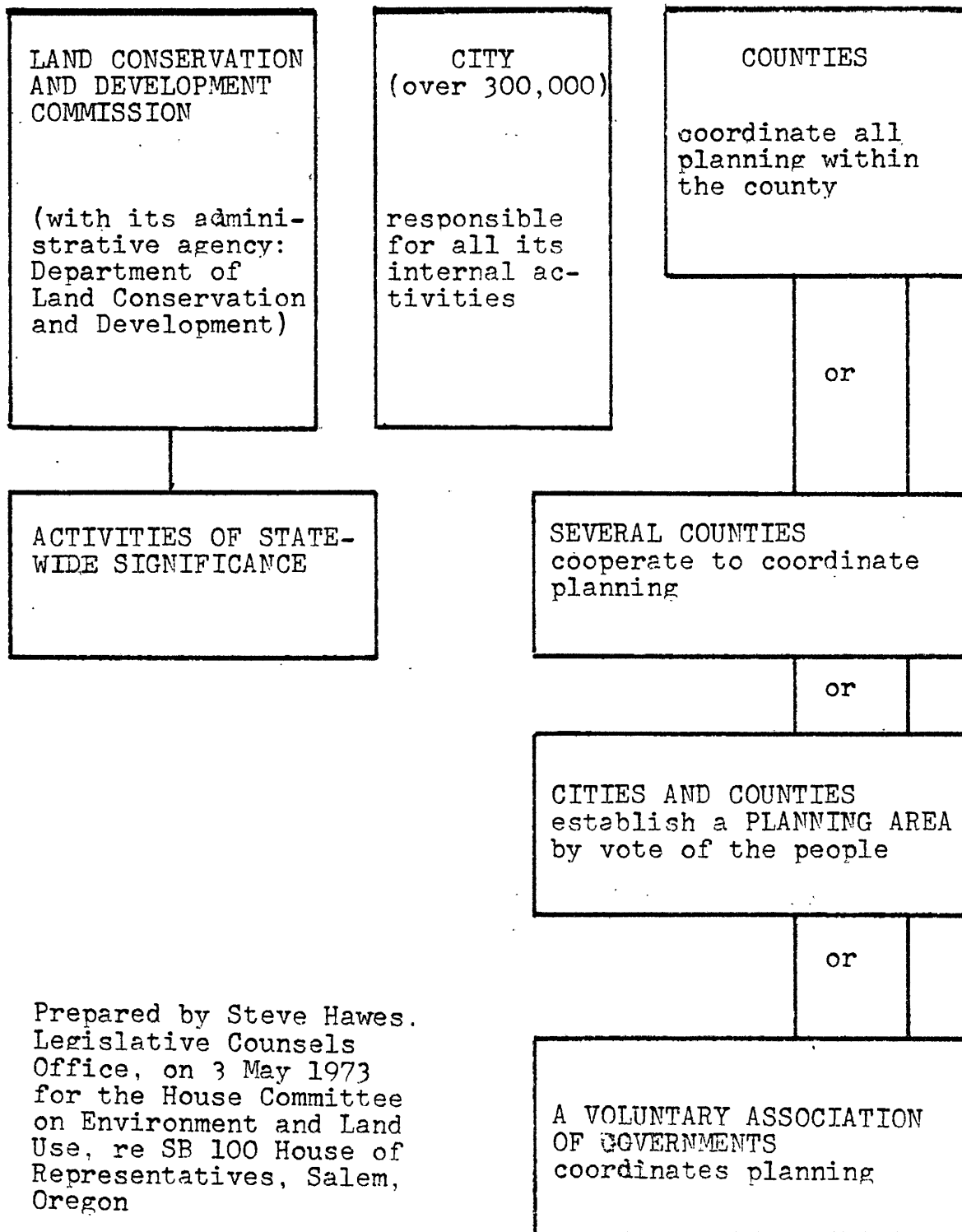


Prepared by Steve Hawes.
Legislative Counsels Office
on 3 May 1973 for the
House Committee on Environ-
ment and Land Use. re SB
100 House of Representa-
tives, Salem, Oregon

WHO ENFORCES ... AND HOW



WHO ADMINISTERS PLANNING...



Prepared by Steve Hawes.
Legislative Counsels
Office, on 3 May 1973
for the House Committee
on Environment and Land
Use, re SB 100 House of
Representatives, Salem,
Oregon

A
STATEMENT
OF
LEGISLATIVE
INTENT

"GOALS" ARE INTENDED TO ACHIEVE THE PURPOSES EXPRESSED IN THE PREAMBLE AND POLICY STATEMENT OF SB 100. NO EFFORT IS MADE TO FURTHER DEFINE "GOALS" - PREFERRING THE DEFINITION TO BE REFINED IN THE PROCESS OF CITIZEN INPUT, COMMISSION APPROVAL AND LEGISLATIVE REVIEW.

"GUIDELINES" ARE SUGGESTED DIRECTIONS THAT WOULD AID LOCAL GOVERNMENTS IN ACTIVATING THE "GOALS". THEY ARE INTENDED TO BE INSTRUCTIVE, DIRECTIONAL AND POSITIVE AND NOT LIMITING LOCAL GOVERNMENT TO A SINGLE COURSE OF ACTION WHEN SOME OTHER LOCALLY CONCEIVED COURSE WOULD ACHIEVE THE SAME RESULT. "GUIDELINES" ARE NOT INTENDED TO BE A GRANT OF POWER TO THE STATE TO CARRY OUT ZONING FROM THE STATE LEVEL.

Senator Hallock, Chairman TH

Senator J. Burns, Vice Chairman JB

Senator Atiyeh WA

Senator Macpherson AM

Senator Ripper J.R.

Senator Thorne HT

Senator Wingard WD

APPENDIX B

Senate Bill 100

Page

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Senate Bill 100

Sponsored by Senators MACPHERSON, HALLOCK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Creates Department of Land Conservation and Development, composed of Land Conservation and Development Commission, director and employees. Establishes Joint Legislative Committee on Land Use, as standing committee, to advise and assist department in carrying out its duties.

Designates areas and activities of critical state concern and provides for additional designations, subject to approval of Legislative Assembly. Requires commission, subject to approval of Legislative Assembly, to promulgate and implement state-wide objectives and regulations for such areas and activities and state-wide planning guidelines for all land use planning in state. Requires state agencies, planning districts, cities, counties and special districts to comply with state-wide planning guidelines and state-wide objectives and regulations in adoption of comprehensive plans and zoning, subdivision or other ordinances and regulations.

Requires development permit to be issued by commission for development projects constituting activities of critical state concern. Provides for enforcement of permit requirements. Declares certain development projects to be public nuisances, subject to civil abatement proceedings by commission.

Establishes 14 planning districts in state to advise, assist and review actions and comprehensive plans of state agencies, cities, counties and special districts with respect to such districts.

Requires, within one year after approval of state-wide planning guidelines, all comprehensive plans and zoning, subdivision or other ordinances or regulations to comply with such guidelines. Authorizes Governor to prescribe comprehensive plans and such ordinances and regulations where none exist or to revise existing noncomplying plans, ordinances and regulations. Permits Governor to charge for his services. Provides, in case of nonpayment by city or county, for reimbursement of Governor from city or county share of state liquor and cigarette revenues.

Provides for review by commission of specified land conservation and development actions and plans. Establishes Land Conservation and Development Account in General Fund for use by department.

Declares emergency and takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted; complete new sections begin with SECTION.

1

A BILL FOR AN ACT

2 Relating to land use; creating new provisions; amending ORS 215.055,
3 215.510, 215.515, 215.535 and 227.240; appropriating money; and declar-
4 ing an emergency.

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

6

PART I INTRODUCTION

7

PREAMBLE

8 **SECTION 1.** (1) Uncoordinated use of lands within this state threaten
9 the orderly development, the environment of this state and the health,
10 safety, order, convenience, prosperity and welfare of the people of this
11 state.

12 (2) To promote coordinated administration of land uses consistent
13 with comprehensive plans adopted throughout the state, it is necessary to
14 establish a process for the review of state agency, planning district, city,
15 county and special district land conservation and development plans for
16 compliance with state-wide planning guidelines.

17 (3) Except as otherwise provided in subsection (5) of this section,
18 cities and counties should remain as the agencies to consider, promote
19 and manage the local aspects of land conservation and development for
20 the best interests of the people within their jurisdictions.

21 (4) To promote coordinated conservation and development of all land
22 uses within geographic areas of this state, it is necessary to establish
23 planning districts and district councils to coordinate efforts of state agen-
24 cies, cities, counties and special districts within each planning district.

25 (5) The promotion of coordinated state-wide land conservation and
26 development in areas and for activities of critical state concern requires
27 the creation of a state-wide planning agency to prescribe planning ob-
28 jectives and regulations to be applied by state agencies, cities, counties,
29 district councils and special districts within areas of critical state concern
30 throughout the state.

31 (6) The impact of proposed development projects, constituting activi-
32 ties of critical state concern, upon the public health, safety and welfare
33 requires a system of permits issued by a state-wide agency to carry out

1 state-wide objectives and regulations prescribed for application for activi-
2 ties of state-wide concern throughout this state.

3 **POLICY STATEMENT**

4 **SECTION 2.** In order to assure the highest possible level of live-
5 ability in Oregon, it is necessary to provide for properly prepared and
6 coordinated comprehensive plans for cities and counties, regional areas
7 and the state as a whole. These comprehensive plans:

8 (1) Must be adopted by the appropriate governing body at the local,
9 regional and state levels;

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

12 (3) Shall be the basis for more specific rules, regulations and ordi-
13 nances which implement the policies expressed through the comprehensive
14 plans;

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

18 (5) Shall be regularly reviewed and, if necessary, revised to keep
19 them consistent with the changing needs and desires of the public they
20 are designed to serve.

21 **DEFINITIONS**

22 **SECTION 3.** As used in this Act, unless the context requires other-
23 wise:

24 (1) "Activity of critical state concern" means a land conservation and
25 development project designated pursuant to section 32 of this Act.

26 (2) "Area of critical state concern" means a geographic area of the
27 state designated pursuant to section 31 of this Act.

28 (3) "Commission" means the Land Conservation and Development
29 Commission.

30 (4) "Committee" means the Joint Legislative Committee on Land Use.

31 (5) "Comprehensive plan" means a generalized, coordinated land use
32 map and policy statement of the governing body of a state agency, plan-
33 ning district, city, county or special district that interrelates all functional
34 and natural systems and activities relating to the use of lands, including

1 but not limited to sewer and water systems, transportation systems, edu-
2 cational systems, recreational facilities, and air and water quality manage-
3 ment programs. "Comprehensive" means all-inclusive, both in terms of
4 the geographic area covered and functional and natural activities and
5 systems occurring in the area covered by the plan. "General nature" means
6 a summary of policies and proposals in broad categories and does not
7 necessarily indicate specific locations of any area, activity or use. A plan
8 is "coordinated" when the needs of all levels of governments, semi-public
9 and private agencies and groups have been considered and accommodated
10 as much as possible. "Land" includes water, both surface and sub-surface,
11 and the air.

12 (6) "Department " means the Department of Land Conservation and
13 Development.

14 (7) "Development" means the carrying out of any building or mining
15 operation, or the material change in the use or appearance of any structure
16 or land, or the change in the intensity of the use of land, or the departure
17 from the normal use of land for which permission has been granted.
18 "Development," as designated in an ordinance, rule or development permit,
19 includes all associated building, mining, changes and departures, unless
20 otherwise specified. When appropriate to the context, "development"
21 also includes the act of developing and the result of development.

22 (8) "Director" means the Director of the Department of Land Con-
23 servation and Development.

24 (9) "District Council" means the district council of local governments
25 established for an association of local governments pursuant to section
26 19 of this Act.

27 (10) "Planning district" means a geographic area of the state designated
28 pursuant to section 18 of this Act.

29 (11) "Special district" means any unit of local government, other than
30 a city or county, authorized and regulated by statute and includes, but
31 is not limited to: Water control districts, irrigation districts, port districts,
32 air pollution control districts, fire districts, school districts, hospital dis-
33 tricts, mass transit districts and sanitary districts.

1 **PART II ORGANIZATION, ROLES AND RESPONSIBILITIES**

2 **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

3 **SECTION 4.** The Department of Land Conservation and Development
4 is established. The department shall consist of the Land Conservation and
5 Development Commission, the director and their subordinate officers
6 and employes.

7 **SECTION 5.** (1) There is established a Land Conservation and De-
8 velopment Commission consisting of five members appointed by the Gov-
9 ernor, subject to confirmation by the Senate in the manner provided in
10 ORS 171.560 and 171.570.

11 (2) In making appointments under subsection (1) of this section, the
12 Governor shall select from residents of this state one member from each
13 congressional district and one member from the state at large.

14 (3) The term of office of each member of the commission is four
15 years, but a member serves at the pleasure of the Governor. Before the
16 expiration of the term of a member, the Governor shall appoint a successor.
17 No person shall serve more than two full terms as a member of the com-
18 mission.

19 (4) If there is a vacancy for any cause the Governor shall make an
20 appointment to become immediately effective for the unexpired term.

21 **SECTION 6.** Notwithstanding the term of office specified in section
22 5 of this Act, of the members first appointed to the commission:

23 (1) Two shall serve for a term ending June 30, 1974.

24 (2) One shall serve for a term ending June 30, 1975.

25 (3) One shall serve for a term ending June 30, 1976.

26 (4) One shall serve for a term ending June 30, 1977.

27 **SECTION 7.** (1) The commission shall select one of its members as
28 chairman and another member as vice chairman, for such terms and with
29 duties and powers necessary for the performance of the functions of such
30 offices as the commission determines. The vice chairman of the commission
31 shall act as the chairman of the commission in the absence of the chairman.

32 (2) A majority of the members of the commission constitutes a quorum
33 for the transaction of business.

1 **SECTION 8.** Members of the commission are entitled to compensa-
2 tion and expenses as provided in ORS 292.495.

3 **SECTION 9.** The commission shall:

4 (1) Direct the performance by the director and his staff of their
5 functions under this Act.

6 (2) In accordance with the provisions of ORS chapter 183, promulgate
7 rules and regulations that it considers necessary in carrying out this Act.

8 (3) Cooperate with the appropriate agencies of the United States, this
9 state, any other state, any interstate agency, any person or groups of
10 persons with respect to land conservation and development.

11 (4) Appoint advisory committees to aid it in carrying out this Act
12 and provide technical and other assistance, as it considers necessary, to
13 each such committee.

14 (5) Consult with advisory committees, appointed by each district
15 council pursuant to subsection (5) of section 22 of this Act, in carrying out
16 its duties under this Act.

17 **SECTION 10.** The commission may:

18 (1) Apply for and receive moneys from the Federal Government
19 and from this state or any of its agencies or departments.

20 (2) Subject to the approval of the Governor, contract with any public
21 agency for the performance of services or the exchange of employes or
22 services by one to the other necessary in carrying out this Act.

23 (3) Contract for the services of and consultation with professional
24 persons or organizations, not otherwise available through federal, state and
25 local governmental agencies, in carrying out its duties under this Act.

26 (4) Perform any other functions that it considers necessary to carry
27 out this Act.

28 **SECTION 11.** Pursuant to the provisions of this Act, the commission
29 shall be responsible for:

30 (1) Establishing state-wide planning goals;

31 (2) Issuing permits for activities of critical state concern;

32 (3) Preparing state-wide objectives and regulations for areas and
33 activities of critical state concern;

34 (4) Preparing inventories of land uses;

1 (5) Preparing state-wide planning guidelines;

2 (6) Reviewing comprehensive plans for conformance with state-wide
3 objectives and regulations and state-wide planning guidelines.

4 (7) Reporting to the legislature as provided in sections 64 and 68 of
5 this Act; and

6 (8) Performing any other duty required by law.

7 **SECTION 12.** If an interstate land conservation and development
8 planning agency is created by an interstate agreement or compact entered
9 into by this state, the commission shall perform the functions of this
10 state with respect to the agreement or compact. If the functions of the
11 interstate planning agency duplicate any of the functions of the commission
12 under this Act, the commission may:

13 (1) Negotiate with the interstate agency in defining the areas of
14 responsibility of the commission and the interstate planning agency;

15 (2) Suspend by rule the performance of any functions granted to the
16 commission under this Act that duplicates a function of the interstate
17 planning agency; and

18 (3) Cooperate with the interstate planning agency in the performance
19 of its functions.

20 **SECTION 13.** (1) The commission shall appoint a person to serve
21 as the Director of the Department of Land Conservation and Development.
22 The director shall hold his office at the pleasure of the commission and his
23 salary shall be fixed by the commission unless otherwise provided by law.

24 (2) In addition to his salary, the director shall be reimbursed, subject
25 to any applicable law regulating travel and other expenses of state of-
26 ficers and employes, for actual and necessary expenses incurred by him
27 in the performance of his official duties.

28 **SECTION 14.** Subject to policies adopted by the commission, the di-
29 rector shall:

30 (1) Be the administrative head of the department.

31 (2) Coordinate the activities of the department in its land conserva-
32 tion and development functions with such functions of federal agencies,
33 other state agencies, district councils, cities, counties and special districts.

34 (3) Appoint, reappoint, assign and reassign all subordinate officers and

1 employes of the department, prescribe their duties and fix their compensa-
2 tion, subject to the State Merit System Law.

3 (4) Represent this state before any agency of this state, any other
4 state or the United States with respect to land conservation and develop-
5 ment within this state.

6 **SECTION 15.** (1) There is established in the General Fund in the
7 State Treasury the Land Conservation and Development Account. Moneys
8 in the account are continuously appropriated for the purpose of carrying
9 out the provisions of this Act.

10 (2) All fees, moneys and other revenue received by the department
11 or the committee shall be deposited in the Land Conservation and Develop-
12 ment Account.

13 **OREGON COASTAL CONSERVATION AND**
14 **DEVELOPMENT COMMISSION**

15 **SECTION 16.** (1) The Land Conservation and Development Commis-
16 sion may delegate, by agreement, to the Oregon Coastal Conservation and
17 Development Commission, created by ORS 191.120, any of its functions;
18 however, the Land Conservation and Development Commission shall review
19 and grant prior approval for any action taken by the Oregon Coastal Con-
20 servation and Development Commission with respect to a delegated
21 function.

22 (2) The Land Conservation and Development Commission may provide
23 staff and financial assistance to the Oregon Coastal Conservation and De-
24 velopment Commission.

25 **SECTION 17.** Pursuant to subsection (1) of section 16, the Oregon
26 Coastal Conservation and Development Commission may carry out, within
27 the coastal zone described in subsection (4) of ORS 191.110 and during the
28 time period specified in subsection (2) of ORS 191.140, the functions of
29 the Land Conservation and Development Commission in preparing state-
30 wide objectives and regulations for areas and activities of critical state
31 concern.

32 **DISTRICT COUNCILS OF LOCAL GOVERNMENT**

33 **SECTION 18.** To assure the orderly development and conservation of
34 the state through the encouragement of coordinated federal, state, regional

1 and local land use planning, the following planning districts are created:

- 2 (1) District 1 which is composed of Clatsop and Tillamook Counties.
- 3 (2) District 2 which is composed of Columbia, Washington, Multnomah
4 and Clackamas Counties.
- 5 (3) District 3 which is composed of Yamhill, Polk and Marion Counties.
- 6 (4) District 4 which is composed of Lincoln, Benton and Linn Counties.
- 7 (5) District 5 which is composed of Lane County.
- 8 (6) District 6 which is composed of Douglas County.
- 9 (7) District 7 which is composed of Coos and Curry Counties.
- 10 (8) District 8 which is composed of Jackson and Josephine Counties.
- 11 (9) District 9 which is composed of Hood River, Sherman and Wasco
12 Counties.
- 13 (10) District 10 which is composed of Deschutes, Jefferson and Crook
14 Counties.
- 15 (11) District 11 which is composed of Klamath and Lake Counties.
- 16 (12) District 12 which is composed of Gilliam, Morrow, Umatilla,
17 Wheeler and Grant Counties.
- 18 (13) District 13 which is composed of Wallowa, Union and Baker
19 Counties.
- 20 (14) District 14 which is composed of Harney and Malheur Counties.

21 **SECTION 19.** (1) There is created a district association of local gov-
22 ernments in each planning district of this state. Each association shall be
23 comprised of all cities, counties and special districts situated within the
24 planning district.

25 (2) There is created for each association a district council of local gov-
26 ernments with a membership as provided in section 20 of this Act. Not later
27 than the expiration of 10 days after the effective date of this Act, the
28 chairman of the county governing body of the most populous county in each
29 planning district shall call a meeting of the members of the council for the
30 planning district described in section 20 of this Act.

31 **SECTION 20.** (1) The membership of a district council of local gov-
32 ernments for a planning district shall consist of:

33 (a) The chairman of the board of commissioners, or in his stead, a

1 member of the county commission selected by the county commission, for
2 each county within the planning district;

3 (b) The mayor of the most populous city in each county, or, in his
4 stead, a member of the city council selected by the mayor and city council
5 of the most populous city in each county; and

6 (c) Such other members representing the remaining cities and special
7 districts in the planning district as shall be deemed appropriate in the
8 bylaws adopted by the district council.

9 (2)(a) Representatives from cities and counties described in subsection
10 (1) of this section shall comprise at least two-thirds of the district council
11 membership.

12 (b) The term of a member of a district council described in subsection
13 (1) of this section shall be limited to two years.

14 (3) The voters of a planning district, from time to time and in the exer-
15 cise of their power of the initiative or by approving a measure referred to
16 them by the district council, may alter or revise the number, qualifications
17 and manner of selecting members of the district council provided in sub-
18 sections (1) and (2) of this section.

19 **SECTION 21.** Each district council shall establish a district planning
20 committee with a membership as determined by the council; however, at
21 least 50 percent of the membership of the committee shall be composed of
22 representatives of city and county planning commissions within the plan-
23 ning district.

24 **SECTION 22.** Each district council, with the advice of its district plan-
25 ning committee, shall:

26 (1) Coordinate land conservation and development by the cities, coun-
27 ties and special districts within the planning district.

28 (2) Review the comprehensive plans prepared and proposed by cities,
29 counties and special districts within the planning district for compliance
30 with state-wide planning guidelines prescribed by the commission or ap-
31 proved by the Legislative Assembly.

32 (3) Review other comprehensive plans and zoning, subdivision and
33 other ordinances or regulations prepared, proposed or adopted by cities,
34 counties and special districts within the planning district for compliance
with state-wide objectives and regulations prescribed by the commission

1 with respect to land conservation and development in areas and activities
2 of critical state concern within the planning district.

3 (4) Cooperate with the department, other state agencies, other district
4 councils, special districts, cities and counties outside the planning district
5 to coordinate land conservation and development within the state.

6 (5) Appoint advisory committees within the planning district, as neces-
7 sary, to aid it in carrying out its land conservation and development func-
8 tions within the planning district; provide technical and other assistance
9 for such committees and consult with; and consider the recommendations
10 of such committees in carrying out its duties under this Act.

11 **SECTION 23.** A district council, with the advice of its district planning
12 committee, may:

13 (1) Provide land conservation and development planning, advisory and
14 technical services to each special district, city or county engaged in land
15 conservation and development within the planning district upon request
16 and subject to payment therefor.

17 (2) Provide information, maps and other data pertinent to its duties
18 to the commission or other agency of the state, other district councils,
19 special districts, cities and counties within or without the planning district.

20 (3) Conduct, arrange or assist in the promotion of educational programs
21 relating to land conservation and development in the state or planning
22 district and the need for the coordinated planning thereof.

23 (4) Subject to the prior approval of the commission, join with any
24 similar council or planning agency with jurisdiction over contiguous land
25 situated in another state to form an interstate district council.

26 (5) Provide any other services or perform any other functions that it
27 considers necessary in carrying out its duties under this Act.

28

CITIES AND COUNTIES

29 **SECTION 24.** Cities and counties shall exercise their planning and
30 zoning responsibilities under ORS chapters 92, 215 and 227 in accordance
31 with this Act and the state-wide objectives and regulations and the state-
32 wide planning guidelines approved under this Act.

33 **SECTION 25.** Pursuant to this Act, each city and county in this state
34 shall:

(1) Prepare and adopt comprehensive plans consistent with the state-

1 wide objectives and regulations for areas and activities of state concern
2 and state-wide planning guidelines approved by the commission; and

3 (2) Enact zoning, subdivision and other ordinances or regulations to
4 implement their comprehensive plans.

5 **SPECIAL DISTRICTS AND STATE AGENCIES**

6 **SECTION 26.** Special districts shall exercise their planning duties,
7 powers and responsibilities that are authorized by law with respect to
8 programs affecting land use in accordance with state-wide planning guide-
9 lines and state-wide objectives and regulations approved pursuant to this
10 Act.

11 **SECTION 27.** State agencies shall carry out their planning duties,
12 powers and responsibilities that are authorized by law with respect to
13 programs affecting land use in accordance with state-wide planning guide-
14 lines and state-wide objectives and regulations approved pursuant to this
15 Act.

16 **JOINT LEGISLATIVE COMMITTEE ON LAND USE**

17 **SECTION 28.** The Joint Legislative Committee on Land Use is estab-
18 lished as a joint committee of the Legislative Assembly. The committee
19 shall select an executive secretary who shall serve at the pleasure of the
20 committee and under its direction.

21 **SECTION 29.** (1) The Joint Legislative Committee on Land Use
22 shall consist of four members of the House appointed by the Speaker and
23 three members of the Senate appointed by the President. No more than
24 three House members of the committee shall be of the same political
25 party. No more than two Senate members of the committee shall be of
26 the same political party.

27 (2) The committee has a continuing existence and may meet, act and
28 conduct its business during sessions of the Legislative Assembly or any
29 recess thereof, and in the interim period between sessions.

30 (3) The term of a member shall expire upon the convening of the
31 Legislative Assembly in regular session next following the commencement
32 of the member's term. When a vacancy occurs in the membership of the

1 committee in the interim between sessions, until such vacancy is filled,
2 the membership of the committee shall be deemed not to include the
3 vacant position for the purpose of determining whether a quorum is pres-
4 ent and a quorum is the majority of the remaining members.

5 (4) Members of the committee shall be reimbursed for actual and
6 necessary expenses incurred or paid in the performance of their duties as
7 members of the committee, such reimbursement to be made from funds
8 appropriated for such purposes, after submission of approved voucher
9 claims.

10 (5) The committee shall select a chairman. The chairman may, in
11 addition to his other authorized duties, approve voucher claims.

12 (6) Action of the committee shall be taken only upon the affirmative
13 vote of the majority of the members of the committee.

14 **SECTION 30.** The committee shall:

15 (1) Advise the department on all matters under the jurisdiction of
16 the department;

17 (2) Review and make recommendations to the Legislative Assembly
18 on proposals for additions to or modifications of designations of areas
19 or activities of critical state concern;

20 (3) Review and make recommendations to the Legislative Assembly
21 on state-wide objectives and regulations and state-wide planning guide-
22 lines approved by the commission; and

23 (4) Make recommendations to the Legislative Assembly on any other
24 matter relating to land use planning in Oregon.

25 **PART III AREAS AND ACTIVITIES OF STATE CONCERN**

26 **DESIGNATION**

27 **SECTION 31.** The following geographic areas in this state are desig-
28 nated as areas of critical state concern:

29 (1) Any scenic waterway designated as such in accordance with ORS
30 390.805 to 390.925, including any related adjacent land.

31 (2) Any waterway in this state designated as a wild and scenic river
32 pursuant to the federal Wild and Scenic Rivers Act, Public Law 90-542,
33 including any adjacent lands regulated thereunder.

1 (3) All of the following lands, including adjacent lands situated within
2 one-quarter of one mile of such lands' boundaries:

3 (a) State parks and recreation areas administered by the Highway
4 Division of the Department of Transportation.

5 (b) Recreation, primitive or wilderness areas on lands administered
6 by the U.S. Forest Service, the Bureau of Land Management, the National
7 Parks Service and U.S. Army Corps of Engineers.

8 (c) Lands subject to the regulation of the State Game Commission,
9 Fish Commission of the State of Oregon, Federal Bureau of Sport Fisheries
10 or the Wildlife Refuge Division of the U.S. Department of Interior.

11 (d) Parks or recreation areas situated outside an incorporated area
12 and administered by a unit of local government.

13 (e) Parks or recreation areas on lands under the jurisdiction of the
14 State Board of Forestry or the Division of State Lands.

15 (4) Lands situated within a radius of one-half of one mile from the
16 center of the right of way of a state highway that is a part of the National
17 System of Interstate and Defense Highways established pursuant to sec-
18 tion 103 (d), title 23, United States Code, at the point of its interchange
19 with any other public highway where such point of interchange is not
20 located within an incorporated area and such lands situated within a
21 radius of one-quarter of one mile where such point of interchange is located
22 within an incorporated area.

23 (5) All lands west of the Oregon Coast Highway as described in
24 ORS 366.235, except that:

25 (a) In Tillamook County, Oregon, only the lands west of a line
26 formed by connecting the western boundaries of the following described
27 roadways: Brooten Road (County Road 887) northerly from its junction
28 with the Oregon Coast Highway to Pacific City, McPhillips Drive (County
29 Road 915) northerly from Pacific City to its junction with Sandlake Road
30 (County Road 871), Sandlake-Cape Lookout Road, (County Road 871)
31 northerly to its junction with Cape Lookout Park, Netarts Bay Drive
32 (County Road 665) northerly from its junction with the Sandlake-Cape
33 Lookout Road (County Road 871) to its junction at Netarts with State

1 Highway 131, and northerly along State Highway 131 to its junction with
2 the Oregon Coast Highway near Tillamook.

3 (b) In Coos County, Oregon, only the lands west of a line formed by
4 connecting the western boundaries of the following described roadways:
5 FAS 263 southerly from its junction with the Oregon Coast Highway to
6 Charleston; Seven Devils Road (No. 33) southerly from its junction with
7 FAS 263 to its junction with the Oregon Coast Highway, near Bandon.

8 (6) All estuaries including all land extending 1,000 feet on a horizontal
9 plane from the mean higher high-tide mark as located by reference to
10 the tidal bench mark data prepared by the United States Coast and
11 Geodetic Survey. As used in this subsection, "estuaries" means partially
12 enclosed bodies of water where the tide ebbs and flows and where fresh
13 water from the land meets the salt waters of the Pacific Ocean from the
14 Pacific Ocean on the west to a point on the east where there exists a
15 bottom salinity of five parts per thousand as measured at the time of the
16 lowest water flow in summer.

17 (7) All lands within the area bounded on the west by the mouth of
18 the Sandy River, on the north by the ordinary high water line of the
19 Columbia River, on the east by the western boundary of the City of The
20 Dalles, Oregon, and on the south by the ridge of the cliffs of the Columbia
21 River Gorge.

22 (8) All lands situated within 1,000 feet from the right of way bound-
23 aries of highways designated under ORS 377.530 as scenic highways if
24 such highways are not located within an incorporated area and all lands
25 situated within 200 feet from the right of way boundaries of such high-
26 ways if such highways are located within the boundaries of an incorpo-
27 rated area.

28 **SECTION 32.** (1) The following developmental activities are desig-
29 nated as activities that by their nature or magnitude are of critical state
30 concern:

31 (a) The planning, siting and construction of airports.

32 (b) The planning, siting and construction of state and federal high-
33 way systems or any portion thereof.

1 (c) The planning, siting and construction of mass transit systems or
2 any portion thereof.

3 (d) The planning, siting and construction of solid waste disposal sites
4 and facilities.

5 (e) The planning, siting and construction of high-voltage power, gas
6 and oil transmission lines.

7 (f) The planning, siting and construction of sewerage systems and
8 water supply systems.

9 (g) The planning, siting and construction of thermal power plants and
10 nuclear installations.

11 (2) Nothing in this Act supersedes any duty, power or responsibility
12 vested by statute in any state agency relating to its activities described in
13 subsection (1) of this section; except that, a state agency may neither im-
14 plement any such activity nor adopt any plan relating to such an activity
15 without the prior approval of the commission.

16 **SECTION 33.** (1) In addition to the areas of critical state concern
17 designated in section 31 of this Act and the activities of critical state con-
18 cern designated in section 32 of this Act, the commission may recommend
19 to the committee the designation of additional areas or activities of critical
20 state concern. Each such recommendation shall specify the reasons for the
21 proposed designation of the area or activity of critical state concern, the
22 dangers that would result from uncontrolled development within the area
23 or by the activity, the reasons for the implementation of state-wide plan-
24 ning objectives and regulations for the proposed area or activity, and the
25 suggested state-wide planning objectives and regulations to be applied
26 within the proposed area or for the proposed activity.

27 (2) The commission may act under subsection (1) of this section on
28 its own motion or upon the recommendation of a state agency, district
29 council, city, county or special district. If the commission receives a recom-
30 mendation from a state agency, district council, city, county or special
31 district and finds the proposed area or activity to be unsuitable for desig-
32 nation, it shall notify the state agency, district council, city, council or
33 special district of its decision and its reasons therefor.

1 (3) Immediately following its decision to favorably recommend to the
2 Legislative Assembly the designation of an additional area or activity of
3 critical state concern, the commission shall submit the proposed designa-
4 tion accompanied by the supporting materials described in subsection (1)
5 of this section to the committee for its review.

6 PERMITS FOR ACTIVITIES OF STATE CONCERN

7 SECTION 34. (1) On and after 90 days after the effective date of
8 this Act, no proposed development project constituting an activity of critical
9 state concern designated under section 32 of this Act may be initiated by
10 any person or public agency without a development permit issued by the
11 commission therefor.

12 (2) Any person or public agency desiring to initiate a development
13 constituting an activity of critical state concern shall apply to the depart-
14 ment for a development permit for such project. The application shall
15 contain the plans for the project and the manner in which such project
16 has been designed to meet the objectives and regulations for activities of
17 critical state concern and the comprehensive plans for the state and the
18 planning district within which the development is proposed, and any other
19 information required by the commission as prescribed by rule of the com-
20 mission.

21 (3) The department shall transmit copies of the application to the
22 appropriate district council and affected state agencies for their review
23 and recommendation.

24 (4) The district council and the state agencies shall review an appli-
25 cation transmitted to it under subsection (3) of this section and shall,
26 within 30 days after the date of the receipt of the application, submit their
27 recommendations on the application to the commission.

28 (5) If the commission finds after review of the application and the
29 comments submitted by the district council and state agencies that the
30 proposed project complies with the state-wide objectives and regulations
31 for activities of critical state concern and the comprehensive plans within
32 the planning district, it shall approve the application and issue a develop-
33 ment permit for the proposed project to the person or public agency apply-
34 ing therefor.

1 (6) The commission may prescribe and shall include in the develop-
2 ment permit such conditions or restrictions that it considers necessary to
3 assure that the proposed development project complies with the state-
4 wide objectives and regulations for activities of critical state concern and
5 the comprehensive plans within the planning district.

6 (7) If the activity requiring a development permit under this section
7 also requires any other permit from any state agency, the commission,
8 with the cooperation and concurrence of the other agency, may provide a
9 joint application form and permit to satisfy both the requirements of this
10 Act and any other requirements set by statute or by rule or regulations
11 of the state agency.

12 **SECTION 35.** (1) If an application for a proposed development project
13 constituting an activity of critical state concern designated by section 32
14 of this Act is received by the department prior to the adoption of state-
15 wide objectives and regulations for activities of critical state concern, the
16 commission shall approve the application and issue a development permit
17 for the proposed development project if such development project is in
18 compliance with the comprehensive plans of a state agency, planning dis-
19 trict, city or county and with zoning, subdivision and other ordinances and
20 regulations adopted to carry out such comprehensive plans that are in
21 effect on the date of the receipt of the application by the commission.

22 (2) If there are no state agency, planning district, city, or county com-
23 prehensive plans in effect within the area in which a development project
24 described in subsection (1) of this section is to be located, the commission
25 may issue a development permit and prescribe in the development permit
26 reasonable conditions for the protection of the public health, welfare and
27 safety.

28 **SECTION 36.** In reviewing under subsection (5) of section 34 of this
29 Act an application for a development permit for a proposed development
30 project constituting an activity of critical state concern, the commission
31 shall consider whether or not:

32 (1) The location of a proposed development is essential or appropriate
33 in view of the available alternative locations within or outside the district;

1 (2) The proposed development will have a favorable impact upon the
2 environment in comparison to alternative manners of development;

3 (3) The proposed development will favorably affect other persons or
4 property in view of any circumstances that are peculiar to the location, size
5 or nature of the development;

6 (4) If the proposed development imposes immediate cost burdens on
7 the city or county within which it is to be located, the amount of similar
8 existing development within such city or county is more than an equitable
9 share of that type of development needed within the planning district;

10 (5) The proposed development will favorably affect the ability of
11 people to find adequate housing reasonably accessible to their employment;

12 (6) The proposed development will favorably affect the provision for
13 city or county services and the burden of taxpayers in making provision
14 therefor;

15 (7) The proposed development will efficiently use public or public-
16 aided school, transportation or other facilities that are existing or that are
17 to be furnished within the foreseeable future; and

18 (8) The proposed development should be approved in view of other
19 considerations deemed necessary by the district council.

20 **SECTION 37.** (1) If any person or public agency is in doubt whether
21 a proposed development project constitutes an activity of critical state
22 concern, the person or public agency may request a determination from
23 the commission on the question. Within 60 days after the date of the receipt
24 by it of such a request, the commission, with the advice of the committee
25 and of the district council for the planning district in which such activity
26 is proposed, shall issue a binding letter of interpretation with respect to
27 the proposed development project.

28 (2) Requests for determinations under this section shall be made to the
29 commission in writing and in such form and contain such information as
30 may be prescribed by the commission.

31 **SECTION 38.** (1) Any development project constituting an activity
32 of critical state concern that is being carried out without a development
33 permit issued under section 34 of this Act or in a manner contrary to the

1 conditions set out in a development permit issued therefor under section
2 34 of this Act is a public nuisance.

3 (2) Any development project that does not constitute an activity
4 of critical state concern, that is being carried out within an area of critical
5 state concern and that does not comply with the state-wide objectives and
6 regulations approved by the commission for the area of critical state con-
7 cern is a public nuisance.

8 **SECTION 39.** If the commission determines the existence of an alleged
9 public nuisance under section 38 of this Act, it may:

10 (1) Investigate, hold hearings, make orders and take action that it
11 deems appropriate under this Act, as soon as possible.

12 (2) For the purpose of investigating conditions relating to the alleged
13 public nuisance, through its members or its duly authorized representa-
14 tives enter at reasonable times upon any private or public property.

15 (3) Conduct public hearings in accordance with ORS chapter 183.

16 (4) Publish its findings and recommendations as they are formulated
17 relative to the alleged public nuisance.

18 (5) Give notice of any order relating to a particular violation of its
19 state-wide objectives and regulations, a particular violation of the terms
20 or conditions of a development permit or a particular violation of the pro-
21 visions of this Act by mailing notice to the person or public body conduct-
22 ing or proposing to conduct the development project affected in the manner
23 provided by ORS chapter 183.

24 (6) Take appropriate action for the enforcement of orders promulgated
25 as a result of any hearing. Any violation of an order of the commission
26 under this section may be enjoined in civil abatement proceedings brought
27 in the name of the State of Oregon. Proceedings thus brought by the
28 commission shall set forth the dates of notice and hearing and the
29 specific order of the commission, together with the facts giving rise to
30 the violation.

31 **SECTION 40.** (1) Proceedings to abate alleged public nuisances under
32 section 38 of this Act may be instituted at law or in equity, in the name
33 of the State of Oregon upon relation of the Land Conservation and De-
34 velopment Commission.

1 (2) However, notwithstanding any other provisions of law, the com-
2 mission, without the necessity of prior administrative proceedings or
3 hearing and entry of an order, may institute a suit at law or in equity
4 in the name of the State of Oregon to abate or restrain threatened or
5 existing nuisances under section 38 of this Act, whenever such nuisances
6 create an emergency that requires immediate action to protect the public
7 health, safety or welfare. No temporary restraining order or temporary
8 injunction or abatement order shall be granted unless the defendant is
9 accorded an opportunity to be heard thereon at a time and place set by
10 the court in an order directing the defendant to appear at such time and
11 place, and to then and there show cause, if any he has, why a temporary
12 restraining order or temporary injunction or abatement order should not
13 be granted. The order to show cause, together with affidavits supporting
14 the application for such temporary injunction or abatement order, shall
15 be served on the defendant as a summons. The defendant may submit
16 counteraffidavits at such time and place. The commission shall not be
17 required to furnish any bond in such proceeding. Neither members of the
18 commission nor the director or members of their staffs shall be liable
19 for any damages the defendant may sustain by reason of an injunction or
20 restraining order or abatement order issued after such hearing.

21 (3) Cases filed under this section shall be given preference on the
22 docket over all other civil cases except those given an equal preference
23 by statute.

24 PART IV STATE-WIDE GUIDELINES, OBJECTIVES

25 AND REGULATIONS

26 SECTION 41. All comprehensive plans and any zoning, subdivision
27 and other ordinances and regulations adopted by a state agency, planning
28 district, city, county or special district to carry out such plans shall be
29 in conformity with the state-wide planning guidelines, and the state-wide
30 objectives and regulations approved by the commission or the Legislative
31 Assembly.

32 SECTION 42. (1) Not later than the expiration of one year following
33 the effective date of this Act, the department shall prepare state-wide
34 objectives and regulations to be applied by state agencies, district councils,

1 cities, counties and special districts in planning for, regulating, reviewing
2 and passing upon land conservation and development proposals to be
3 carried out within areas of critical state concern designated in section 31
4 of this Act. Within such period the department shall also prepare state-
5 wide objectives and regulations to be applied by itself, state agencies,
6 district councils, counties, cities and special districts in planning for, regu-
7 lating, reviewing and passing upon applications for development permits
8 for development projects constituting activities of critical state concern
9 designated in section 32 of this Act.

10 (2) Upon completion of the preparation of the proposed state-wide
11 objectives and regulations pursuant to subsection (1) of this section, the
12 department shall submit them to the commission for approval.

13 **SECTION 43.** In preparing state-wide objectives and regulations for
14 areas and activities of critical state concern designated under sections
15 31 and 32 of this Act, the department shall consider the comprehensive
16 plans of state agencies, planning districts, cities, counties and special
17 districts in the state in order to preserve functional and local aspects of
18 land conservation and development.

19 **SECTION 44.** (1) Upon receipt of the proposed state-wide objectives
20 and regulations prepared and submitted to it by the department pursuant
21 to section 42 of this Act, the commission shall:

22 (a) Hold at least one public hearing within each district on the pro-
23 posed state-wide planning objectives and regulations for areas and activi-
24 ties of critical state concern. The commission shall cause notice of the
25 time and place of each such hearing to be published in a newspaper of
26 general circulation within the district where the hearing is to be conducted
27 not later than 30 days prior to the date of the hearing. The department
28 shall supply a copy of its proposed state-wide objectives and regulations
29 for areas and activities of critical state concern to the Governor, the
30 committee, affected state agencies and special districts and to each city,
31 county and district council upon request and without charge. The depart-
32 ment shall provide copies of such proposed state-wide objectives and regula-

1 tions to other public agencies or persons upon request and payment of the
2 cost of preparing the copies of the materials requested.

3 (b) Consider the recommendations and comments received from each
4 of the public hearings conducted under paragraph (a) of this subsection,
5 make any revisions in the proposed state-wide objectives and regulations
6 for areas and activities of critical state concern that it considers necessary
7 and approve the proposed objectives and regulations, as they may be
8 revised by the commission.

9 (2) After the date of the approval by the commission of state-wide
10 objectives and regulations for areas and activities of critical state concern
11 designated in sections 31 and 32 of this Act, all planning, regulation, re-
12 view and action upon land development proposals by the state, district
13 councils, cities, counties or special districts shall be revised, if necessary,
14 to comply with such objectives and regulations. The preparation of new
15 comprehensive plans and any revision of any comprehensive plan of any
16 special district, city, county, planning district or state agency shall comply
17 with such objectives and regulations.

18 **SECTION 45.** Following the approval by the commission of state-
19 wide objectives and regulations for areas and activities of critical state
20 concern under section 44 of this Act, each district council shall review
21 the comprehensive plans for land conservation and development within
22 the planning district to assure that state-wide objectives and regulations
23 approved by the commission for designated areas and activities of critical
24 state concern within the planning district are implemented.

25 **SECTION 46.** (1) Not later than January 1, 1975, the department shall
26 prepare state-wide planning guidelines for use by state agencies, cities,
27 counties, district councils and special districts in preparing, adopting, re-
28 vising and implementing existing and future comprehensive plans.

29 (2) Following the preparation of the proposed state-wide planning
30 guidelines pursuant to subsection (1) of this section, the department shall
31 submit the proposed state-wide planning guidelines for review and ap-
32 proval by the commission in the manner provided in section 44 of this Act
33 for the approval of state-wide objectives and regulations for areas and
34 activities of critical state concern.

1 **SECTION 47.** Following the approval by the commission of state-wide
2 planning guidelines, each district council shall review all comprehensive
3 plans for land conservation and development within the planning district,
4 both those adopted and those being prepared. The district council shall
5 advise the state agency, city, county or special district preparing the com-
6 prehensive plans whether or not the comprehensive plans are in conformity
7 with the state-wide planning guidelines.

8 **PART V COMPREHENSIVE PLANS**

9 **SECTION 48.** Comprehensive plans and zoning, subdivision, and other
10 ordinances and regulations adopted prior to the effective date of this Act
11 shall remain in effect until revised, if necessary, under this Act.

12 **SECTION 49.** Prior to approval by the commission of its state-wide
13 planning guidelines under section 46 of this Act, the goals listed in ORS
14 215.515 shall be used in the preparation, revision, adoption or implementa-
15 tion of any comprehensive plan.

16 **SECTION 50.** Any zoning, subdivision or other ordinance or regula-
17 tion adopted by a state agency, district council, city, county or special
18 district after the effective date of this Act shall be based upon its compre-
19 hensive plan and a finding by it that:

20 (1) The designation of land use zones is reasonably related to the
21 effects of permitted land uses upon public facilities and other services, in-
22 cluding but not limited to, transportation systems, public schools, health
23 care facilities, fire and police facilities and the impact of such uses upon
24 the state's finite natural resources.

25 (2) Agricultural zones relate to the need to conserve prime farm lands
26 and provide for a blocking of agricultural lands in order to minimize con-
27 flicts between farm and nonfarm uses.

28 (3) Development of urban and nonfarm uses is conditioned upon the
29 provision for the public facilities necessary to protect the public health,
30 safety and welfare.

31 (4) Business, commercial and industrial zones relate to the needs of
32 the area and that the location of such zones and the uses permitted therein

1 are based upon the effect of such land uses upon the adjacent lands and
2 the community as a whole.

3 (5) Residential zones are located with respect to their respective re-
4 quirements for public facilities and services and provide adequate regu-
5 lations for varying densities of development.

6 (6) If substantial differences exist between adjacent land uses, transi-
7 tional land uses are established between such conflicting land uses or that
8 the development regulations for the more intensive land use provide ade-
9 quate protection for adjacent property.

10 (7) Zoning regulations and ordinances do not prevent:

11 (a) The preservation of unique land uses and characteristics;

12 (b) The protection of life and property involved in the use of lands
13 situated within flood plains; and

14 (c) Adequate housing for persons of low income within the area.

15 Section 51. ORS 227.240 is amended to read:

16 227.240. (1) For each district provided for by subsection (1) of ORS
17 227.230, regulations may be imposed designating the class of use that shall
18 be excluded or subjected to special regulations and designating the uses
19 for which buildings may not be erected or altered, or designating the
20 class of use which only shall be permitted. These regulations shall be
21 designed to [*promote the public health, safety and general welfare. The*
22 *council shall give reasonable consideration, among other things, to the*
23 *character of the district, its peculiar suitability for particular uses, the*
24 *conservation of property values and the direction of building development*
25 *in accord with a well considered plan*] **comply with the considerations speci-**
26 **fied therefor in section 50 of this 1973 Act .**

27 (2) The regulations provided for by subsection (2) of ORS 227.230 shall
28 be uniform for each class of buildings throughout each district. The regu-
29 lations in one or more districts may differ from those in other districts. The
30 regulations shall be designed to secure safety from fire and other dangers
31 and to promote the public health and welfare, and to secure provision for
32 adequate light, air and reasonable access. The council shall pay reasonable
33 regard to the character of buildings erected before May 29, 1919, in each

1 district, the value of the land, and the use to which it may be put to the
2 end that the regulations may promote public health, safety and welfare.

3 **SECTION 52.** Each city or county shall prepare and the city council or
4 the county governing body shall adopt the comprehensive plans required
5 by ORS 215.505 to 215.535 and 215.990 in accordance with section 49 of this
6 Act for those plans adopted prior to the expiration of one year following
7 the date the commission approves its state-wide planning guidelines under
8 section 46 of this Act. Plans adopted by cities after the expiration of one
9 year following the date of approval of such guidelines by the commission
10 shall be designed to comply with such guidelines and any subsequent
11 amendments thereto.

12 Section 53. ORS 215.055 is amended to read:

13 215.055. (1) [*The*] **Any comprehensive plan** [*and all legislation and*
14 *regulations*] **and all zoning, subdivision or other ordinances and regula-**
15 **tions authorized by ORS 215.010 to 215.233 and adopted prior to the ex-**
16 **piration of one year following the date of the approval of state-wide plan-**
17 **ning guidelines under section 46 of this 1973 Act shall be designed to pro-**
18 **mote the public health, safety and general welfare and shall be based on**
19 **the following considerations, among others: The various characteristics of**
20 **the various areas in the county, the suitability of the areas for particular**
21 **land uses and improvements, the land uses and improvements in the areas,**
22 **trends in land improvement, density of development, property values, the**
23 **needs of economic enterprises in the future development of the areas,**
24 **needed access to particular sites in the areas, natural resources of the**
25 **county and prospective needs for development thereof, and the public need**
26 **for healthful, safe, aesthetic surroundings and conditions.**

27 **(2) Any plan and all zoning, subdivision or other ordinances and regu-**
28 **lations authorized by ORS 215.010 to 215.233 and adopted after the expira-**
29 **tion of one year after the date of the approval of state-wide planning**
30 **guidelines under section 46 of this 1973 Act shall be designed to comply**
31 **with such state-wide planning guidelines and any subsequent revisions or**
32 **amendments thereof.**

33 **(3) Any zoning, subdivisions or other ordinances or regulation author-**
34 **ized by ORS 215.010 to 215.233 and adopted after the effective date of this**

1 1973 Act shall be based upon the considerations specified in section 50 of
2 this 1973 Act.

3 [(2)] (4) In order to conserve natural resources of the state, any land
4 use plan or zoning, subdivision or other ordinance adopted by a county
5 shall take into consideration lands that are, can or should be utilized for
6 sources or processing of mineral aggregates.

7 **SECTION 54.** (1) Following the approval by the commission of state-
8 wide planning guidelines under section 46 of this Act, each district council
9 shall review the comprehensive plans and all revisions thereof of state
10 agencies, special districts, cities and counties within the planning district
11 for compliance with state-wide planning guidelines and state-wide objec-
12 tives and regulations approved by the commission.

13 (2) The district council shall approve comprehensive plans and re-
14 visions thereof that comply with the state-wide planning guidelines and
15 state-wide objectives and regulations approved by the commission.

16 (3) Upon the expiration of one year after the date of the approval of
17 state-wide planning guidelines and annually thereafter, each district coun-
18 cil shall report to the commission on the status of comprehensive plans
19 within each planning district. Each such report shall include:

20 (a) Copies of comprehensive plans reviewed by the district council.

21 (b) For those areas or jurisdiction within the planning district without
22 comprehensive plans, a statement and review of the progress made toward
23 compliance with the state-wide planning guidelines and the state-wide
24 objectives and regulations.

25 **SECTION 55.** (1) Notwithstanding any other provision of law, after
26 the expiration of one year after the date of the approval of the initial state-
27 wide planning guidelines under section 46 of this Act, the Governor shall
28 prescribe, may amend and shall thereafter administer comprehensive plans
29 and zoning, subdivision or other ordinances and regulations for lands
30 within the boundaries of a county, whether or not within the boundaries
31 of a city that:

32 (a) Are not subject to ORS 390.640 or to a comprehensive plan and
33 zoning, subdivision or other ordinances and regulations adopted pursuant

1 to ORS 215.010 to 215.233 and subsections (1) and (2) of ORS 215.990 or
2 zoned pursuant to any other state law or city ordinance; or

3 (b) Are subject to a comprehensive plan or a zoning, subdivision or
4 other ordinance or regulation, that does not comply with the state-wide
5 planning guidelines or state-wide objectives and regulations approved under
6 this Act and any subsequent revisions or amendments thereof.

7 (2) If the city or county shall have under consideration a comprehen-
8 sive plan or zoning, subdivision or other ordinances or regulations for lands
9 described in subsection (1) of this section, and shall have shown satisfactory
10 progress toward the adoption of such comprehensive plan or such ordi-
11 nances or regulations, the Governor may grant a reasonable extension of
12 time after the date set in this section for completion of such plan or such
13 ordinances or regulations.

14 (3) Any comprehensive plan or zoning, subdivision or other ordinance
15 or regulation adopted by the Governor under subsection (1) of this section
16 shall comply with the state-wide planning guidelines and state-wide ob-
17 jectives and regulations approved under this Act and all subsequent revi-
18 sions or amendments thereof.

19 (4) The department shall cooperate with and assist the Governor in the
20 preparation and administration of any comprehensive plan or zoning, sub-
21 division or ordinances or regulations prescribed by him under subsection
22 (1) of this section.

23 Section 56. ORS 215.510 is amended to read:

24 215.510. (1) Any comprehensive [*land use plans*] **plan for any city or**
25 **county** prescribed or amended by the Governor pursuant to ORS 215.505
26 **or section 55 of this 1973 Act** shall be in accordance with the standards
27 provided in ORS 215.515 and the notice and hearing requirements provided
28 in ORS 215.060.

29 (2) Any zoning, subdivision or other ordinances and regulations for
30 any city or county prescribed or amended by the Governor pursuant to
31 ORS 215.505 or section 55 of this 1973 Act shall be in accordance with the
32 standards provided in ORS 215.055 and the notice and hearing require-
33 ments provided in ORS 215.223.

1 (3) A comprehensive [*land use*] plan or zoning, **subdivision or other**
2 **ordinance or regulation for any city or county** prescribed or amended by
3 the Governor pursuant to ORS 215.505 or **section 55 of this 1973 Act** may be
4 for any purpose provided in ORS 215.010 to 215.233 and subsections (1)
5 and (2) of 215.990, except that the Governor may not prescribe build-
6 ing regulations. The Governor may, however, cause to be instituted an
7 appropriate proceeding to enjoin the construction of buildings or perform-
8 ance of any other acts which would constitute a land use that does not con-
9 form to the applicable [*land use*] **comprehensive plan or zoning, subdivi-**
10 **sion or other ordinance or regulation.**

11 (4) Any hearings required by this section may be held by the Governor,
12 or by a person designated by the Governor, and all such hearings shall be
13 held in the county seat of the county **or in the city** in which said compre-
14 hensive [*land use*] plan or zoning, **subdivision or other ordinance or regu-**
15 **lation is to be prescribed.**

16 Section 57. ORS 215.515 is amended to read:

17 215.515. (1) Comprehensive physical planning, **adopted by the Gov-**
18 **ernor prior to the expiration of one year following the date of the approval**
19 **of state-wide planning guidelines under section 46 of this 1973 Act,** should
20 provide guidance for physical development within the state responsive to
21 economic development, human resource development, natural resource
22 development and regional and metropolitan area development. It should
23 assist in attainment of the optimum living environment for the state's citi-
24 zenry and assure sound housing, employment opportunities, educational
25 fulfillment and sound health facilities. State plans should relate to inter-
26 mediate and long-range growth objectives. The plans should set a pattern
27 upon which state agencies and local government may base their programs
28 and local area plans. Goals for comprehensive physical planning are:

29 [(1)] (a) To preserve the quality of the air [*and*], **water and land**
30 **resources of the state.**

31 [(2)] (b) To conserve open space and protect natural and scenic re-
32 **sources.**

33 [(3)] (c) To provide for the recreational needs of citizens of the state
34 **and visitors.**

1 [(4)] (d) To conserve prime farm lands for the production of crops
2 [and].

3 (e) To provide for an orderly and efficient transition from rural to
4 urban land use.

5 [(5)] (f) To protect life and property in areas subject to floods, land-
6 slides and other natural disasters.

7 [(6)] (g) To provide and encourage a safe, convenient and economic
8 transportation system including all modes of transportation: Air, water,
9 rail, highway and mass transit, and recognizing differences in the social
10 costs in the various modes of transportation.

11 [(7)] (h) To develop a timely, orderly and efficient arrangement of
12 public facilities and services to serve as a framework for urban and rural
13 development.

14 [(8)] (i) To diversify and improve the economy of the state.

15 [(9)] (j) To ensure that the development of properties within the
16 state is commensurate with the character and the physical limitations of
17 the land.

18 (2) **Comprehensive physical planning adopted by the Governor after**
19 **the expiration of one year after the date of the approval of state-wide plan-**
20 **ning guidelines under section 46 of this 1973 Act shall be designed to**
21 **comply with such state-wide planning guidelines and any subsequent**
22 **revisions or amendments thereof.**

23 Section 58. ORS 215.535 is amended to read:

24 215.535. In addition to the remedy prescribed in subsection (3) of ORS
25 215.510, the Governor may cause to be instituted any civil action or suit he
26 considers appropriate to remedy violations of any comprehensive [land
27 use] plan or zoning, subdivision or other ordinance or regulation pre-
28 scribed by the Governor pursuant to ORS 215.505 of section 55 of this 1973
29 Act.

30 **SECTION 59.** Whenever the Governor prescribes a comprehensive plan
31 or zoning, subdivision or other ordinances or regulations for lands des-
32 cribed in subsection (1) of section 55 of this Act, the costs incurred by the
33 Governor and the department in the preparation and administration of

1 such plan or ordinances or regulations shall be borne by the city or county
2 for which the Governor has proposed such plan or ordinances or regula-
3 tions. Upon presentation by the Governor to the governing body of the city
4 or county of a certified, itemized statement of costs, the governing body
5 shall order payment to the Governor out of any available funds. With re-
6 spect to a city or county, if no payment is made by the governing body with-
7 in 30 days thereafter, the Governor shall submit to the Secretary of State his
8 certified, itemized statement of such costs and the Governor shall be re-
9 imbursed upon the order of the Secretary of State to the State Treasurer,
10 from the city's or county's share of the state's cigarette and liquor revenues.

11 **PART VI APPEALS**

12 **SECTION 60.** (1) In the manner provided in sections 61 to 63 of this
13 Act, the commission shall review upon:

14 (a) Petition by a district council, a comprehensive plan provision
15 of a state agency, city, county or special district that the district council
16 considers to be in conflict with approved state-wide planning guidelines
17 or approved state-wide objectives or regulations.

18 (b) Petition by a district council, a land conservation and development
19 action taken by a state agency, city, county or special district with respect
20 to an area or activity of critical state concern that the district council
21 considers to be in conflict with approved state-wide planning guide-
22 lines or approved state-wide objectives or regulations.

23 (c) Petition by a state agency, city, county or special district, any dis-
24 trict council action that the state agency, city, county, or special district
25 considers to be improperly taken or outside the scope of the district
26 council's authority under this Act.

27 (d) Petition by any person or group of persons, a provision of an
28 adopted comprehensive plan or an action taken by a district council.

29 (2) A petition filed with the commission pursuant to subsection (1)
30 of this section must be filed not later than 60 days (excluding Saturdays
31 and holidays) after the date of the final adoption or approval of the
32 action or comprehensive plan upon which the petition is based.

33 **SECTION 61.** (1) All review proceedings conducted by the com-
34 mission pursuant to section 60 of this Act shall be based on the admini-

1 strative record, if any, prepared with respect to the proceedings for the
2 adoption or approval of the comprehensive plan provision or action that
3 is the subject of the review proceeding.

4 (2) The commission shall adopt such rules, procedures and regulations
5 for the conduct of review proceedings held pursuant to section 60 of this
6 Act, in accordance with the provisions of ORS 183.310 to 183.500 for
7 hearings and notice in contested cases.

8 (3) A district council, city, county, state agency, special district or
9 any person or group of persons may intervene in and be made a party
10 to any review proceeding conducted by the commission with the approval
11 of the commission upon the request of the hearings officer appointed to
12 conduct such proceeding or upon the approval by the hearings officer
13 of a request by such agency, person or group of persons for intervention
14 in the review proceeding.

15 **SECTION 62.** (1) In carrying out its duties under section 60 of
16 this Act, the chairman of the commission shall assign each petition to be
17 reviewed by the commission to a hearings officer who shall conduct the
18 review proceeding.

19 (2) A hearings officer shall conduct a review proceeding in accord-
20 ance with the rules, procedures and regulations adopted by the commission.
21 Upon the conclusion of a hearing, the hearings officer shall promptly
22 determine the matter, prepare a recommendation for commission action
23 upon the matter and submit a copy of his recommendation to the com-
24 mission and to each party to the proceeding.

25 (3) The commission shall review the recommendation of the hearings
26 officer and the record of the proceeding and issue its order with respect to
27 the review proceeding within 60 days following the date of the filing of
28 the petition upon which such review proceeding is based. The commission
29 may adopt, reject or amend the recommendation of the hearings officer
30 in any matter.

31 (4) No order of the commission issued under subsection (3) of this
32 section is valid unless all members of the commission have received the
33 recommendation of the hearings officer in the matter and at least three
34 members of the commission concur in its action in the matter.

1 (5) Any party to a review proceeding before the commission who is
2 aggrieved by the order issued by the commission in the matter may appeal
3 the order of the commission in the manner provided in ORS 183.480 to
4 183.500 for appeals from final orders in contested cases.

5 **SECTION 63.** (1) If, upon its review of the recommendation of a
6 hearings officer and the record of the review proceeding prepared follow-
7 ing a review proceeding before the commission, the commission is unable
8 to reach a decision in the matter without further information or evidence
9 not contained in the record of the proceeding, it may refer the matter back
10 to the hearings officer and request that the additional information or evi-
11 dence be acquired by him or that he correct any errors or deficiencies
12 found by the commission to exist in his recommendation or record of
13 the proceeding.

14 (2) In case of a referral of a matter back to the hearings officer pur-
15 suant to subsection (1) of this section, the 60-day period referred to in
16 subsection (3) of section 62 of this Act is suspended during the period
17 beginning on the date of the commission's referral to the hearings officer
18 and ending on the date that the hearings officer submits the revised
19 recommendation or record as requested by the commission.

20 **PART VII LEGISLATIVE REVIEW**

21 **SECTION 64.** (1) Prior to the expiration of 60 days after the date
22 of the convening of the Fifty-eighth Legislative Assembly of the State
23 of Oregon, the commission shall prepare and submit a report to the
24 Legislative Assembly. Such report shall include:

25 (a) The modifications of and additions to areas or activities of critical
26 state concern as recommended by the commission under section 33 of this
27 Act.

28 (b) State-wide planning guidelines approved by the commission under
29 section 46 of this Act.

30 (c) State-wide objectives and regulations for areas and activities of
31 critical concern approved by the commission under section 44 of this Act.

32 (d) A summary of the orders issued by the commission following
33 review proceedings conducted pursuant to section 60 of this Act; and

1 (e) A summary of the activities of the department, district councils,
2 cities and counties in land conservation and development in the state.

3 (2) In addition to the contents of the report required under subsection
4 (1) of this section, the commission may also submit proposed legislation
5 that it considers necessary in furthering the purposes of this Act.

6 **SECTION 65.** The committee shall submit to the Legislative Assembly
7 its comments and recommendations on the contents and provisions of the
8 report required by section 64.

9 **SECTION 66.** (1) The report submitted by the commission to the
10 Legislative Assembly pursuant to subsection (1) of section 64 of this Act
11 shall be considered approved by the Legislative Assembly upon:

12 (a) The passage by both Houses of the Legislative Assembly of a joint
13 resolution approving the report; or

14 (b) The expiration of 90 days after the date of the submission of the
15 report to the Legislative Assembly, or the date of the adjournment of
16 such legislative session, whichever occurs first.

17 (2) The Legislative Assembly may amend or revise the contents of
18 the report or may refer the report back to the commission for further
19 study with a statement of the provisions of the report that it finds unsuit-
20 able, accompanied by the reasons for each such finding, and its suggestions
21 for the amendment or revision by the commission of the report.

22 (3) Upon the date of the completion and publication by the commission
23 of the revision of its report in conformity with the directions of the
24 Legislative Assembly, the report shall be considered approved by the
25 Legislative Assembly under this section.

26 (4) The committee shall determine whether or not the report, if
27 revised by the commission under subsection (2) of this section, is in con-
28 formity with the directions of the Legislative Assembly.

29 **SECTION 67.** (1) Following the approval under section 66 of this
30 Act by the Legislative Assembly of the report, the commission may
31 revise the state-wide planning guidelines and its state-wide objectives
32 and regulations for areas and activities of critical state concern in the
33 manner provided in sections 44 and 46 of this Act for the initial adoption
34 of such guidelines, objectives and regulations.

1 (2) Any revision or amendment approved by the commission under
2 subsection (1) of this section shall be submitted to the next following regu-
3 lar session of the Legislative Assembly for final approval.

4 (3) Any action that is taken by any agency of this state, the commis-
5 sion, a district council, a city or county of this state in reliance upon a
6 state-wide planning guideline or a state-wide objective or regulation or
7 any amendment thereof that has been approved by the commission shall
8 not be invalidated by subsequent refusal by the Legislative Assembly
9 to approve or by any subsequent amendment thereof by the Legislative
10 Assembly.

11 **SECTION 68.** During each biennium following July 1, 1975, the com-
12 mission shall review its activities under this Act and submit a report to
13 the Legislative Assembly. Such report shall include:

14 (1) Modifications of and additions to designations of areas or activities
15 of critical state concern in the state;

16 (2) Modifications of and additions to state-wide objectives and regu-
17 lations for areas and activities of critical state concern;

18 (3) Modifications of and additions to state-wide planning guidelines;

19 (4) A summary of the orders issued under section 60 of this Act since
20 the date of the previous report by the commission to the Legislative
21 Assembly; and

22 (5) A summary of the activities of the department, district councils,
23 cities and counties in land conservation and development in the state
24 since the date of the previous report by the commission to the Legislative
25 Assembly.

26 **SECTION 69.** The committee shall submit to each legislative session
27 its comments and recommendations on the contents and provisions of
28 each report submitted by the commission under section 68 of this Act.

29 **SECTION 70.** Each report submitted to the Legislative Assembly pur-
30 suant to section 68 of this Act shall be considered approved in the same
31 manner and under the same conditions provided for the approval of the
32 report described in section 66 of this Act.

1

PART VIII MISCELLANEOUS

2 **SECTION 71.** The part designations and unit captions used in this Act
3 are provided only for the convenience of locating provisions of this Act,
4 and are not part of the statutory law of this state.

5 **SECTION 72.** This Act being necessary for the immediate preserva-
6 tion of the public peace, health and safety, an emergency is declared to
7 exist, and this Act takes effect on July 1, 1973.



APPENDIX C

Engrossed Senate Bill 100

Page

379

ENGROSSED

(amendment not printed March 23)

Senate Bill 100

Ordered by the Senate March 23
(Including Amendments by Senate March 23)

Sponsored by Senators MACPHERSON, HALLOCK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates Department of Land Conservation and Development, composed of Land Conservation and Development Commission, director and employes. Establishes Joint Legislative Committee on Land Use, as standing committee, to advise and assist department in carrying out its duties.

[Designates areas and] **Authorizes commission to designate activities of [critical state concern and provides for] state-wide significance in public transportation, public sewerage systems and public schools and to make recommendation for additional designations, subject to approval of Legislative Assembly. Requires commission, subject to approval of Legislative Assembly, to promulgate and implement state-wide [objectives and regulations] planning goals consistent with regional, county and city concerns for such [areas and] activities and state-wide planning guidelines for [all] land use planning in state. Requires state agencies, planning districts, cities, counties and special districts to comply with state-wide planning guidelines and state-wide [objectives and regulations] planning goals in adoption of comprehensive plans and zoning, subdivision or other ordinances and regulations.**

Requires *[development]* permit to be issued by commission for development projects constituting activities of *[critical state concern]* **state-wide significance. Provides for enforcement of permit requirements. [Declares certain development projects to be public nuisances, subject to civil abatement proceedings by commission.] Authorizes injunction of activities of state-wide significance carried on without permit.**

[Establishes 14 planning districts in state to advise, assist and review actions and comprehensive plans of state agencies, cities, counties and special districts with respect to such districts.] Permits voluntary association

Continued on Page 2

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION.**

Continued from Page 1

of counties for planning purposes. Provides for establishment of regional planning agency composed of cities and counties, subject to approval of voters in proposed region. Authorizes voluntary association of local governments to perform coordinative planning functions of counties under Act.

Requires, within one year after approval of state-wide planning guidelines, all comprehensive plans and zoning, subdivision or other ordinances or regulations to comply with such guidelines. [*Authorizes Governor to prescribe comprehensive plans and such ordinances and regulations where none exist or to revise existing noncomplying plans, ordinances and regulations. Permits Governor to charge for his services.*] **Authorizes commission to perform planning and zoning functions of noncomplying governmental units.** Provides, in case of nonpayment by city or county, for reimbursement of [*Governor*] **commission** from city or county share of state liquor and cigarette revenues. **Establishes appeal procedures.**

Provides for review by commission of specified land conservation and development actions and plans. Establishes Land Conservation and Development Account in General Fund for use by department.

Declares emergency and takes effect July 1, 1973.

1

A BILL FOR AN ACT

2 Relating to land use; creating new provisions; amending ORS 215.055,
3 215.510, 215.515, 215.535 and 453.345; appropriating money; and declar-
4 ing an emergency.

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

6

PART I INTRODUCTION

7

PREAMBLE

8

SECTION 1. The Legislative Assembly finds that:

9 (1) Uncoordinated use of lands within this state threaten the orderly
10 development, the environment of this state and the health, safety, order,
11 convenience, prosperity and welfare of the people of this state.

12 (2) To promote coordinated administration of land uses consistent with
13 comprehensive plans adopted throughout the state, it is necessary to
14 establish a process for the review of state agency, city, county and special
15 district land conservation and development plans for compliance with
16 state-wide planning goals and guidelines.

17 (3) Except as otherwise provided in subsection (4) of this section,
18 cities and counties should remain as the agencies to consider, promote and
19 manage the local aspects of land conservation and development for the
20 best interests of the people within their jurisdictions.

21 (4) The promotion of coordinated state-wide land conservation and
22 development requires the creation of a state-wide planning agency to
23 prescribe planning goals and objectives to be applied by state agencies,
24 cities, counties and special districts throughout the state.

25 (5) The impact of proposed development projects, constituting activities
26 of state-wide significance upon the public health, safety and welfare,
27 requires a system of permits reviewed by a state-wide agency to carry out
28 state-wide planning goals and guidelines prescribed for application for
29 activities of state-wide significance throughout this state.

30

POLICY STATEMENT

31 **SECTION 2.** The Legislative Assembly declares that, in order to assure
32 the highest possible level of liveability in Oregon, it is necessary to provide
33 for properly prepared and coordinated comprehensive plans for cities and

1 counties, regional areas and the state as a whole. These comprehensive plans:

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

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

6 (3) Shall be the basis for more specific rules, regulations and ordinances
7 which implement the policies expressed through the comprehensive plans;

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

11 (5) Shall be regularly reviewed and, if necessary, revised to keep them
12 consistent with the changing needs and desires of the public they are
13 designed to serve.

14 **DEFINITIONS**

15 **SECTION 3.** As used in this Act, unless the context requires otherwise:

16 (1) "Activity of state-wide significance" means a land conservation and
17 development activity designated pursuant to section 25 of this Act.

18 (2) "Commission" means the Land Conservation and Development
19 Commission.

20 (3) "Committee" means the Joint Legislative Committee on Land Use.

21 (4) "Comprehensive plan" means a generalized, coordinated land use
22 map and policy statement of the governing body of a state agency, city,
23 county or special district that interrelates all functional and natural sys-
24 tems and activities relating to the use of lands, including but not limited
25 to sewer and water systems, transportation systems, educational systems,
26 recreational facilities, and natural resources and air and water quality
27 management programs. "Comprehensive" means all-inclusive, both in terms
28 of the geographic area covered and functional and natural activities and
29 systems occurring in the area covered by the plan. "General nature" means
30 a summary of policies and proposals in broad categories and does not neces-
31 sarily indicate specific locations of any area, activity or use. A plan is "co-
32 ordinated" when the needs of all levels of governments, semipublic and
33 private agencies and the citizens of Oregon have been considered and
34 accommodated as much as possible. "Land" includes water, both surface
and subsurface, and the air.

1 (5) "Department" means the Department of Land Conservation and
2 Development.

3 (6) "Director" means the Director of the Department of Land Con-
4 servation and Development.

5 (7) "Special district" means any unit of local government, other than
6 a city or county, authorized and regulated by statute and includes, but is
7 not limited to: Water control districts, irrigation districts, port districts,
8 regional air quality control authorities, fire districts, school districts, hos-
9 pital districts, mass transit districts and sanitary districts.

10 (8) "Voluntary association of local governments" means a regional
11 planning agency in this state officially designated by the Governor pur-
12 suant to the federal Office of Management and Budget Circular A-95 as
13 a regional clearinghouse.

14 **PART II ORGANIZATION, ROLES AND RESPONSIBILITIES**

15 **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

16 **SECTION 4.** The Department of Land Conservation and Development
17 is established. The department shall consist of the Land Conservation and
18 Development Commission, the director and their subordinate officers and
19 employes.

20 **SECTION 5.** (1) There is established a Land Conservation and De-
21 velopment Commission consisting of seven members appointed by the
22 Governor, subject to confirmation by the Senate in the manner provided
23 in ORS 171.560 and 171.570.

24 (2) In making appointments under subsection (1) of this section, the
25 Governor shall select from residents of this state one member from each
26 congressional district and the remaining members from the state at large.
27 At least one and no more than two members shall be from Multnomah
28 County.

29 (3) The term of office of each member of the commission is four years,
30 but a member may be removed by the Governor for cause. Before the ex-
31 piration of the term of a member, the Governor shall appoint a successor.
32 No person shall serve more than two full terms as a member of the com-
33 mission.

1 (4) If there is a vacancy for any cause, the Governor shall make an
2 appointment to become immediately effective for the unexpired term.

3 **SECTION 6.** Notwithstanding the term of office specified in section 5
4 of this Act, of the members first appointed to the commission:

5 (1) Two shall serve for a term ending June 30, 1974.

6 (2) Two shall serve for a term ending June 30, 1975.

7 (3) Two shall serve for a term ending June 30, 1976.

8 (4) One shall serve for a term ending June 30, 1977.

9 **SECTION 7.** (1) The commission shall select one of its members as
10 chairman and another member as vice chairman, for such terms and with
11 duties and powers necessary for the performance of the functions of such
12 offices as the commission determines. The vice chairman of the commission
13 shall act as the chairman of the commission in the absence of the chairman.

14 (2) A majority of the members of the commission constitutes a quorum
15 for the transaction of business.

16 **SECTION 8.** Members of the commission are entitled to compensation
17 and expenses as provided in ORS 292.495.

18 **SECTION 9.** The commission shall:

19 (1) Direct the performance by the director and his staff of their
20 functions under this Act.

21 (2) In accordance with the provisions of ORS chapter 183, promulgate
22 rules that it considers necessary in carrying out this Act.

23 (3) Cooperate with the appropriate agencies of the United States, this
24 state and its political subdivisions, any other state, any interstate agency,
25 any person or groups of persons with respect to land conservation and
26 development.

27 (4) Appoint advisory committees to aid it in carrying out this Act and
28 provide technical and other assistance, as it considers necessary, to each
29 such committee.

30 **SECTION 10.** The commission may:

31 (1) Apply for and receive moneys from the Federal Government and
32 from this state or any of its agencies or departments.

33 (2) Contract with any public agency for the performance of services or

1 the exchange of employes or services by one to the other necessary in
2 carrying out this Act.

3 (3) Contract for the services of and consultation with professional
4 persons or organizations, not otherwise available through federal, state and
5 local governmental agencies, in carrying out its duties under this Act.

6 (4) Perform other functions required to carry out this Act.

7 **SECTION 11.** Pursuant to the provisions of this Act, the commission
8 shall:

9 (1) Establish state-wide planning goals consistent with regional, county
10 and city concerns;

11 (2) Issue permits for activities of state-wide significance;

12 (3) Prepare inventories of land uses;

13 (4) Prepare state-wide planning guidelines;

14 (5) Review comprehensive plans for conformance with state-wide plan-
15 ning goals;

16 (6) Coordinate planning efforts of state agencies to assure conformance
17 with state-wide planning goals and compatability with city and county
18 comprehensive plans;

19 (7) Insure widespread citizen involvement and input in all phases of
20 the process;

21 (8) Prepare model zoning, subdivision and other ordinances and regu-
22 lations to guide state agencies, cities, counties and special districts in imple-
23 menting state-wide planning goals, particularly those for the areas listed in
24 subsection (2) of section 34 of this Act;

25 (9) Review and recommend to the Legislative Assembly the designation
26 of areas of critical state concern;

27 (10) Report periodically to the Legislative Assembly and to the com-
28 mittee; and

29 (11) Perform other duties required by law.

30 **SECTION 12.** If an interstate land conservation and development plan-
31 ning agency is created by an interstate agreement or compact entered into
32 by this state, the commission shall perform the functions of this state with
33 respect to the agreement or compact. If the functions of the interstate plan-

1 ning agency duplicate any of the functions of the commission under this
2 Act, the commission may:

3 (1) Negotiate with the interstate agency in defining the areas of
4 responsibility of the commission and the interstate planning agency; and

5 (2) Cooperate with the interstate planning agency in the performance
6 of its functions.

7 **SECTION 13.** (1) The commission shall appoint a person to serve as
8 the Director of the Department of Land Conservation and Development.
9 The director shall hold his office at the pleasure of the commission and his
10 salary shall be fixed by the commission unless otherwise provided by law.

11 (2) In addition to his salary, the director shall be reimbursed, subject
12 to any applicable law regulating travel and other expenses of state officers
13 and employes, for actual and necessary expenses incurred by him in the
14 performance of his official duties.

15 **SECTION 14.** Subject to policies adopted by the commission, the di-
16 rector shall:

17 (1) Be the administrative head of the department.

18 (2) Coordinate the activities of the department in its land conservation
19 and development functions with such functions of federal agencies, other
20 state agencies, cities, counties and special districts.

21 (3) Appoint, reappoint, assign and reassign all subordinate officers and
22 employes of the department, prescribe their duties and fix their compen-
23 sation, subject to the State Merit System Law.

24 (4) Represent this state before any agency of this state, any other state
25 or the United States with respect to land conservation and development
26 within this state.

27 **SECTION 15.** (1) There is established in the General Fund in the
28 State Treasury the Land Conservation and Development Account. Moneys
29 in the account are continuously appropriated for the purpose of carrying
30 out the provisions of this Act.

31 (2) All fees, moneys and other revenue received by the department
32 or the committee shall be deposited in the Land Conservation and Develop-
33 ment Account.

1 **OREGON COASTAL CONSERVATION AND**
2 **DEVELOPMENT COMMISSION**

3 **SECTION 16.** (1) The Land Conservation and Development Commis-
4 sion, by agreement with the Oregon Coastal Conservation and Development
5 Commission created by ORS 191.120 may delegate to the Oregon Coastal
6 Conservation and Development Commission, any of the functions of the
7 Land Conservation and Development Commission. However, the Land
8 Conservation and Development Commission must review and grant ap-
9 proval prior to any action taken by the Oregon Coastal Conservation and
10 Development Commission with respect to a delegated function.

11 (2) The Land Conservation and Development Commission may provide
12 staff and financial assistance to the Oregon Coastal Conservation and
13 Development Commission in carrying out duties under this section.

14 **CITIES AND COUNTIES**

15 **SECTION 17.** Cities and counties shall exercise their planning and
16 zoning responsibilities in accordance with this Act and the state-wide plan-
17 ning goals and guidelines approved under this Act.

18 **SECTION 18.** Pursuant to this Act, each city and county in this state
19 shall:

20 (1) Prepare and adopt comprehensive plans consistent with state-wide
21 planning goals and guidelines approved by the commission; and

22 (2) Enact zoning, subdivision and other ordinances or regulations to
23 implement their comprehensive plans.

24 **SECTION 19.** (1) In addition to the responsibilities stated in sections
25 17 and 18 of this Act, each county through its governing body, shall be
26 responsible for coordinating all planning activities affecting land uses
27 within the county, including those of the county, cities, special districts and
28 state agencies, to assure an integrated comprehensive plan for the entire
29 area of the county.

30 (2) For the purposes of carrying out the provisions of this Act, counties
31 may voluntarily join together with adjacent counties as authorized in ORS
32 chapter 190.

33 (3) Whenever counties and cities representing 51 percent of the popu-
34 lation in their area petition the commission for an election in their area to

1 form a regional planning agency to exercise the authority of the counties
2 under subsection (1) of this section in the area, the commission shall
3 review the petition. If it finds that the area described in the petition forms
4 a reasonable planning unit, it shall call an election in the area to form a
5 regional planning agency. The election shall be conducted in the manner
6 provided in ORS chapter 259. The county clerk shall be considered the
7 election officer and the commission shall be considered the district election
8 authority. The agency shall be considered established if the majority of
9 votes favor the establishment.

10 (4) If a voluntary association of local governments adopts a resolution
11 ratified by each participating county and a majority of the participating
12 cities therein which authorizes the association to perform the review, ad-
13 visory and coordination functions assigned to the counties under sub-
14 section (1) of this section, the association may perform such duties.

15 SPECIAL DISTRICTS AND STATE AGENCIES

16 SECTION 20. Special districts shall exercise their planning duties,
17 powers and responsibilities and take actions that are authorized by law
18 with respect to programs affecting land use in accordance with state-wide
19 planning goals and guidelines approved pursuant to this Act.

20 SECTION 21. State agencies shall carry out their planning duties,
21 powers and responsibilities and take actions that are authorized by law
22 with respect to programs affecting land use in accordance with state-wide
23 planning goals and guidelines approved pursuant to this Act.

24 JOINT LEGISLATIVE COMMITTEE ON LAND USE

25 SECTION 22. The Joint Legislative Committee on Land Use is estab-
26 lished as a joint committee of the Legislative Assembly. The committee
27 shall select an executive secretary who shall serve at the pleasure of the
28 committee and under its direction.

29 SECTION 23. (1) The Joint Legislative Committee on Land Use shall
30 consist of four members of the House of Representatives appointed by the
31 Speaker and three members of the Senate appointed by the President. No
32 more than three House members of the committee shall be of the same
33 political party. No more than two Senate members of the committee shall
34 be of the same political party.

1 (2) The chairman of the House and Senate Environment and Land
2 Use Committees of the Fifty-seventh Legislative Assembly of the State of
3 Oregon shall be two of the members appointed under subsection (1) of
4 this section for the period beginning with the effective date of this Act.

5 (3) The committee has a continuing existence and may meet, act and
6 conduct its business during sessions of the Legislative Assembly or any
7 recess thereof, and in the interim period between sessions.

8 (4) The term of a member shall expire upon the convening of the Legis-
9 lative Assembly in regular session next following the commencement of
10 the member's term. When a vacancy occurs in the membership of the
11 committee in the interim between sessions, until such vacancy is filled, the
12 membership of the committee shall be deemed not to include the vacant
13 position for the purpose of determining whether a quorum is present and
14 a quorum is the majority of the remaining members.

15 (5) Members of the committee shall be reimbursed for actual and
16 necessary expenses incurred or paid in the performance of their duties as
17 members of the committee, such reimbursement to be made from funds
18 appropriated for such purposes, after submission of approved voucher
19 claims.

20 (6) The committee shall select a chairman. The chairman may, in addi-
21 tion to his other authorized duties, approve voucher claims.

22 (7) Action of the committee shall be taken only upon the affirmative
23 vote of the majority of the members of the committee.

24 **SECTION 24.** The committee shall:

25 (1) Advise the department on all matters under the jurisdiction of the
26 department;

27 (2) Review and make recommendations to the Legislative Assembly
28 on proposals for additions to or modifications of designations of activities of
29 state-wide significance, and for designations of areas of critical state
30 concern;

31 (3) Review and make recommendations to the Legislative Assembly
32 on state-wide planning goals and guidelines approved by the commission;

33 (4) Study and make recommendations to the Legislative Assembly

1 on the implementation of a program for compensation by the public to
2 owners of lands within this state for the value of any loss of use of such
3 lands resulting directly from the imposition of any zoning, subdivision or
4 other ordinance or regulation regulating or restricting the use of such
5 lands. Such recommendations shall include, but not be limited to, proposed
6 methods for the valuation of such loss of use and proposed limits, if any,
7 to be imposed upon the amount of compensation to be paid by the public
8 for any such loss of use; and

9 (5) Make recommendations to the Legislative Assembly on any other
10 matter relating to land use planning in Oregon.

11 PART III ACTIVITIES OF STATE-WIDE SIGNIFICANCE

12 DESIGNATION

13 SECTION 25. (1) The following activities may be designated by the
14 commission as activities of state-wide significance if the commission deter-
15 mines that by their nature or magnitude they should be so considered:

16 (a) The planning and siting of public transportation facilities.

17 (b) The planning and siting of public sewerage systems, water supply
18 systems and solid waste disposal sites and facilities.

19 (c) The planning and siting of public schools.

20 (2) Nothing in this Act supersedes any duty, power or responsibility
21 vested by statute in any state agency relating to its activities described in
22 subsection (1) of this section; except that, a state agency may neither
23 implement any such activity nor adopt any plan relating to such an activity
24 without the prior review and comment of the commission.

25 SECTION 26. (1) In addition to the activities of state-wide signifi-
26 cance that are designated by the commission under section 25 of this Act,
27 the commission may recommend to the committee the designation of addi-
28 tional activities of state-wide significance. Each such recommendation shall
29 specify the reasons for the proposed designation of the activity of state-
30 wide significance, the dangers that would result from such activity being
31 uncontrolled and the suggested state-wide planning goals and guidelines
32 to be applied for the proposed activity.

33 (2) The commission may recommend to the committee the designation
34 of areas of critical state concern. Each such recommendation shall specify

1 the criteria developed and reasons for the proposed designation, the damages
2 that would result from uncontrolled development within the area, the
3 reasons for the implementation of state regulations for the proposed area
4 and the suggested state regulations to be applied within the proposed area.

5 (3) The commission may act under subsections (1) and (2) of this sec-
6 tion on its own motion or upon the recommendation of a state agency, city,
7 county or special district. If the commission receives a recommendation
8 from a state agency, city, county or special district and finds the proposed
9 activity or area to be unsuitable for designation, it shall notify the state
10 agency, city, county or special district of its decision and its reasons there-
11 for.

12 (4) Immediately following its decision to favorably recommend to
13 the Legislative Assembly the designation of an additional activity of state-
14 wide significance or the designation of an area of critical state concern,
15 the commission shall submit the proposed designation accompanied by the
16 supporting materials described in subsections (1) and (2) of this section to
17 the committee for its review.

18 PERMITS FOR ACTIVITIES OF STATE-WIDE SIGNIFICANCE

19 SECTION 27. (1) On and after the date the commission has approved
20 state-wide planning goals and guidelines for activities of state-wide sig-
21 nificance designated under section 25 of this Act, no proposed project con-
22 stituting such an activity may be initiated by any person or public agency
23 without a planning and siting permit issued by the commission therefor.

24 (2) Any person or public agency desiring to initiate a project consti-
25 tuting an activity of state-wide significance shall apply to the department
26 for a planning and siting permit for such project. The application shall
27 contain the plans for the project and the manner in which such project
28 has been designed to meet the goals and guidelines for activities of state-
29 wide significance and the comprehensive plans for the county within
30 which the project is proposed, and any other information required by the
31 commission as prescribed by rule of the commission.

32 (3) The department shall transmit copies of the application to affected
33 county and state agencies for their review and recommendation.

34 (4) The county governing body and the state agencies shall review

1 an application transmitted to it under subsection (3) of this section and
2 shall, within 30 days after the date of the receipt of the application, sub-
3 mit their recommendations on the application to the commission.

4 (5) If the commission finds after review of the application and the
5 comments submitted by the county governing body and state agencies that
6 the proposed project complies with the state-wide goals and guidelines for
7 activities of state-wide significance and the comprehensive plans within
8 the county, it shall approve the application and issue a planning and siting
9 permit for the proposed project to the person or public agency applying
10 therefor. Action shall be taken by the commission within 30 days of the
11 receipt of the recommendation of the county and state agencies.

12 (6) The commission may prescribe and include in the planning and
13 siting permit such conditions or restrictions that it considers necessary
14 to assure that the proposed project complies with the state-wide goals and
15 guidelines for activities of state-wide significance and the comprehensive
16 plans within the county.

17 **SECTION 28.** If the activity requiring a planning and siting permit
18 under section 27 of this Act also requires any other permit from any state
19 agency, the commission, with the cooperation and concurrence of the other
20 agency, may provide a joint application form and permit to satisfy both
21 the requirements of this Act and any other requirements set by statute or
22 by rule of the state agency.

23 **SECTION 29.** (1) If any person or public agency is in doubt whether
24 a proposed development project constitutes an activity of state-wide sig-
25 nificance, the person or public agency may request a determination from
26 the commission on the question. Within 60 days after the date of the receipt
27 by it of such a request, the commission, with the advice of the committee
28 and of the county governing body for the county in which such activity is
29 proposed, shall issue a binding letter of interpretation with respect to the
30 proposed project.

31 (2) Requests for determinations under this section shall be made to the
32 commission in writing and in such form and contain such information as
33 may be prescribed by the commission.

1 **SECTION 30.** (1) No project constituting an activity of state-wide
2 significance shall be undertaken without a planning and siting permit is-
3 sued under section 27 of this Act.

4 (2) Any person or agency acting in violation of subsection (1) of this
5 section may be enjoined in civil proceedings brought in the name of the
6 county or the State of Oregon.

7 **SECTION 31.** If the county governing body or the commission de-
8 termines the existence of an alleged violation under section 30 of this Act,
9 it may:

10 (1) Investigate, hold hearings, enter orders and take action that it
11 deems appropriate under this Act, as soon as possible.

12 (2) For the purpose of investigating conditions relating to the violation,
13 through its members or its duly authorized representatives, enter at rea-
14 sonable times upon any private or public property.

15 (3) Conduct public hearings.

16 (4) Publish its findings and recommendations as they are formulated
17 relative to the violation.

18 (5) Give notice of any order relating to a particular violation of its
19 state-wide goals, a particular violation of the terms or conditions of a plan-
20 ning and siting permit or a particular violation of the provisions of this
21 Act by mailing notice to the person or public body conducting or proposing
22 to conduct the project affected in the manner provided by ORS chapter 183.

23 **PART IV STATE-WIDE PLANNING GOALS AND GUIDELINES**

24 **SECTION 32.** All comprehensive plans and any zoning, subdivision and
25 other ordinances and regulations adopted by a state agency, city, county
26 or special district to carry out such plans shall be in conformity with the
27 state-wide planning goals within one year from the date such goals are
28 approved by the commission,

29 **SECTION 33.** Not later than January 1, 1975, the department shall pre-
30 pare and the commission shall adopt state-wide planning goals and guide-
31 lines for use by state agencies, cities, counties and special districts in pre-
32 paring, adopting, revising and implementing existing and future compre-
33 hensive plans.

1 **SECTION 34.** In preparing and adopting state-wide planning goals and
2 guidelines, the department and the commission shall:

3 (1) Consider the existing comprehensive plans of state agencies, cities,
4 counties and special districts in order to preserve functional and local
5 aspects of land conservation and development.

6 (2) Give priority consideration to the following areas and activities:

- 7 (a) Those activities listed in section 25 of this Act;
8 (b) Land adjacent to freeway interchanges;
9 (c) Estuarine areas;
10 (d) Tide, marsh and wetland areas;
11 (e) Lakes and lakeshore areas;
12 (f) Wilderness, recreational and outstanding scenic areas;
13 (g) Beaches, dunes, coastal headlands and related areas;
14 (h) Wild and scenic rivers and related lands;
15 (i) Flood plains and areas of geologic hazard;
16 (j) Unique wildlife habitats; and
17 (k) Agricultural land.

18 **SECTION 35.** To assure widespread citizen involvement in all phases
19 of the planning process:

20 (1) The commission shall appoint a State Citizen Involvement Advis-
21 ory Committee, broadly representative of geographic areas of the state and
22 of interests relating to land uses and land use decisions, to develop a pro-
23 gram for the commission that promotes and enhances public participation
24 in the development of state-wide planning goals and guidelines.

25 (2) Within 90 days after the effective date of this Act, each county
26 governing body shall submit to the commission a program for citizen in-
27 volvement in preparing, adopting and revising comprehensive plans with-
28 in the county. Such program shall at least contain provision for a citizen
29 advisory committee or committees broadly representative of geographic
30 areas and of interests relating to land uses and land use decisions.

31 (3) The state advisory committee appointed under subsection (1) of this
32 section shall review the proposed programs submitted by each county and
33 recommend to the commission whether or not the proposed program ade-
34 quately provides for public involvement in the planning process.

1 **SECTION 36.** (1) In preparing the state-wide planning goals and
2 guidelines, the department shall:

3 (a) Hold at least 10 public hearings throughout the state, causing no-
4 tice of the time, place and purpose of each such hearing to be published in
5 a newspaper of general circulation within the area where the hearing is
6 to be conducted not later than 30 days prior to the date of the hearing.

7 (b) Implement any other provision for public involvement developed
8 by the state advisory committee under subsection (1) of section 35 of this
9 Act and approved by the commission.

10 (2) Upon completion of the preparation of the proposed state-wide
11 planning goals and guidelines, the department shall submit them to the
12 commission for approval.

13 **SECTION 37.** Upon receipt of the proposed state-wide planning goals
14 and guidelines prepared and submitted to it by the department, the com-
15 mission shall:

16 (1) Hold at least one public hearing on the proposed state-wide plan-
17 ning goals and guidelines. The commission shall cause notice of the time,
18 place and purpose of the hearings and the place where copies of the
19 proposed goals and guidelines are available before the hearings with the
20 cost thereof to be published in a newspaper of general circulation in the
21 state not later than 30 days prior to the date of the hearing. The department
22 shall supply a copy of its proposed state-wide planning goals and guide-
23 lines to the Governor, the committee, affected state agencies and special
24 districts and to each city and county without charge. The department shall
25 provide copies of such proposed goals and guidelines to other public agen-
26 cies or persons upon request and payment of the cost of preparing the
27 copies of the materials requested.

28 (2) Consider the recommendations and comments received from the
29 public hearings conducted under subsection (1) of this section, make any
30 revisions in the proposed state-wide planning goals and guidelines that it
31 considers necessary and approve the proposed goals and guidelines as they
32 may be revised by the commission.

33 **SECTION 38.** The commission may periodically revise, update and ex-
34 pand the initial state-wide planning goals and guidelines adopted under

1 section 37 of this Act. Such revisions, updatings or expansions shall be made
2 in the manner provided in sections 36 and 37 of this Act.

3 **SECTION 39.** Following the approval by the commission of state-wide
4 planning goals and guidelines, each county governing body shall review all
5 comprehensive plans for land conservation and development within the
6 county, both those adopted and those being prepared. The county gov-
7 erning body shall advise the state agency, city, county or special district
8 preparing the comprehensive plans whether or not the comprehensive plans
9 are in conformity with the state-wide planning goals.

10 **PART V COMPREHENSIVE PLANS**

11 **SECTION 40.** Comprehensive plans and zoning, subdivision, and other
12 ordinances and regulations adopted prior to the effective date of this Act
13 shall remain in effect until revised under this Act. It is intended that exist-
14 ing planning efforts and activities shall continue and that such efforts be
15 utilized in achieving the purposes of this Act.

16 **SECTION 41.** Prior to approval by the commission of its state-wide
17 planning goals and guidelines under section 37 of this Act, the goals listed
18 in ORS 215.515 shall be applied by state agencies, cities, counties and spe-
19 cial districts in the preparation, revision, adoption or implementation of
20 any comprehensive plan.

21 **SECTION 42.** Each city or county shall prepare and the city council or
22 the county governing body shall adopt the comprehensive plans required
23 under this Act or by any other law in accordance with section 41 of this
24 Act for those plans adopted prior to the expiration of one year following
25 the date the commission approves its state-wide planning goals and guide-
26 lines under section 37 of this Act. Plans adopted by cities and counties
27 after the expiration of one year following the date of approval of such
28 goals and guidelines by the commission shall be designed to comply with
29 such goals and any subsequent amendments thereto.

30 Section 43. ORS 215.055 is amended to read:

31 215.055. (1) *[The]* Any comprehensive plan *[and all legislation and*
32 *regulations]* and all zoning, subdivision or other ordinances and regula-
33 tions authorized by ORS 215.010 to 215.233 and adopted prior to the expira-

1 tion of one year following the date of the approval of state-wide planning
2 goals and guidelines under section 37 of this 1973 Act shall be designed to
3 promote the public health, safety and general welfare and shall be based on
4 the following considerations, among others: The various characteristics
5 of the various areas in the county, the suitability of the areas for par-
6 ticular land uses and improvements, the land uses and improvements in
7 the areas, trends in land improvement, density of development, property
8 values, the needs of economic enterprises in the future development of the
9 areas, needed access to particular sites in the areas, natural resources of the
10 county and prospective needs for development thereof, and the public
11 need for healthful, safe, aesthetic surroundings and conditions.

12 (2) Any plan and all zoning, subdivision or other ordinances and regu-
13 lations authorized by ORS 215.010 to 215.233 and adopted after the expira-
14 tion of one year after the date of the approval of state-wide planning goals
15 and guidelines under section 37 of this 1973 Act shall be designed to comply
16 with such state-wide planning goals and any subsequent revisions or
17 amendments thereof.

18 [(2)] (3) In order to conserve natural resources of the state, any land
19 use plan or zoning, subdivision or other ordinance adopted by a county
20 shall take into consideration lands that are, can or should be utilized for
21 sources or processing of mineral aggregates.

22 SECTION 44. Upon the expiration of one year after the date of the
23 approval of state-wide planning goals and guidelines and annually there-
24 after, each county governing body shall report to the commission on the
25 status of comprehensive plans within each county. Each such report shall
26 include:

27 (1) Copies of comprehensive plans reviewed by the county governing
28 body and copies of zoning and subdivision ordinances and regulations ap-
29 plied to those areas within the county listed in subsection (2) of section
30 34 of this Act.

31 (2) For those areas or jurisdictions within the county without com-
32 prehensive plans, a statement and review of the progress made toward
33 compliance with the state-wide planning goals.

34 SECTION 45. (1) Notwithstanding any other provision of law, after the

1 expiration of one year after the date of the approval of the initial state-
2 wide planning goals and guidelines under section 37 of this Act, upon 90
3 days' notice to the affected governing body or bodies, and upon public
4 hearings held within 30 days thereafter, the commission shall prescribe and
5 may amend and administer comprehensive plans and zoning, subdivision
6 or other ordinances and regulations necessary to develop and implement a
7 comprehensive plan within the boundaries of a county, whether or not
8 within the boundaries of a city, that do not comply with the state-wide
9 planning goals approved under this Act and any subsequent revisions or
10 amendments thereof.

11 (2) If the city or county has under consideration a comprehensive
12 plan or zoning, subdivision or other ordinances or regulations for lands
13 described in subsection (1) of this section, and shows satisfactory progress
14 toward the adoption of such comprehensive plan or such ordinances or
15 regulations, the commission may grant a reasonable extension of time
16 after the date set in this section for completion of such plan or such
17 ordinances or regulations.

18 (3) Any comprehensive plan or zoning, subdivision or other ordinance
19 or regulation adopted by the commission under subsection (1) of this
20 section shall comply with the state-wide planning goals approved under
21 this Act and all subsequent revisions or amendments thereof.

22 **SECTION 46.** (1) There is transferred to and vested in the commission
23 those duties, powers and functions vested in the Governor by ORS 215.505
24 to 215.535. After the effective date of this Act, the commission shall
25 exercise such duties, powers and functions.

26 (2) For the purpose of harmonizing and clarifying Oregon Revised
27 Statutes, the Legislative Counsel may substitute for words designating
28 the Governor, where such words occur in ORS 215.505 to 215.535, words
29 designating the Land Conservation and Development Commission.

30 Section 47. ORS 215.510 is amended to read:

31 215.510. (1) Any comprehensive [*land use plans*] **plan for any city**
32 **or county** prescribed or amended by the [*Governor*] **commission** pursuant
33 to ORS 215.505 or section 45 of this 1973 Act shall be in accordance with

1 the standards provided in ORS 215.515 and the notice and hearing re-
2 quirements provided in ORS 215.060.

3 (2) Any zoning, subdivision or other ordinances and regulations for any
4 city or county prescribed or amended by the [Governor] commission pur-
5 suant to ORS 215.505 or section 45 of this 1973 Act shall be in accordance
6 with the standards provided in ORS 215.055 and the notice and hearing
7 requirements provided in ORS 215.223.

8 (3) A comprehensive [land use] plan or zoning, subdivision or other
9 ordinance or regulation for any city or county prescribed or amended by
10 the [Governor] commission pursuant to ORS 215.505 or section 45 of this
11 1973 Act may be for any purpose provided in ORS 215.010 to 215.233 and
12 subsections (1) and (2) of 215.990; except that the [Governor] commission
13 may not prescribe building regulations. The [Governor] commission may,
14 however, cause to be instituted an appropriate proceeding to enjoin the
15 construction of buildings or performance of any other acts which would
16 constitute a land use that does not conform to the applicable [land use]
17 comprehensive plan or zoning, subdivision or other ordinance or regula-
18 tion.

19 (4) Any hearings required by this section may be held by the [Gov-
20 ernor] commission, or by a person designated by the [Governor] com-
21 mission, and all such hearings shall be held in the county seat of the
22 county or in the city in which said comprehensive [land use] plan or zon-
23 ing, subdivision or other ordinance or regulation is to be prescribed.

24 Section 48. ORS 215.515 is amended to read:

25 215.515. (1) Comprehensive physical planning, adopted by the com-
26 mission prior to the expiration of one year following the date of the
27 approval of state-wide planning goals and guidelines under section 37
28 of this 1973 Act, should provide guidance for physical development within
29 the state responsive to economic development, human resource develop-
30 ment, natural resource development and regional and metropolitan area
31 development. It should assist in attainment of the optimum living environ-
32 ment for the state's citizenry and assure sound housing, employment
33 opportunities, educational fulfillment and sound health facilities. State
34 plans should relate to intermediate and long-range growth objectives. The

1 plans should set a pattern upon which state agencies and local government
2 may base their programs and local area plans. Goals for comprehensive
3 physical planning are:

4 [(1)] (a) To preserve the quality of the air [and] , water and land
5 resources of the state.

6 [(2)] (b) To conserve open space and protect natural and scenic re-
7 sources.

8 [(3)] (c) To provide for the recreational needs of citizens of the
9 state and visitors.

10 [(4)] (d) To conserve prime farm lands for the production of crops
11 [and].

12 (e) To provide for an orderly and efficient transition from rural
13 to urban land use.

14 [(5)] (f) To protect life and property in areas subject to floods,
15 landslides and other natural disasters.

16 [(6)] (g) To provide and encourage a safe, convenient and economic
17 transportation system including all modes of transportation: Air, water,
18 rail, highway and mass transit, and recognizing differences in the social
19 costs in the various modes of transportation.

20 [(7)] (h) To develop a timely, orderly and efficient arrangement of
21 public facilities and services to serve as a framework for urban and rural
22 development.

23 [(8)] (i) To diversify and improve the economy of the state.

24 [(9)] (j) To ensure that the development of properties within the state
25 is commensurate with the character and the physical limitations of the land.

26 (2) Comprehensive plans adopted by the commission after the expira-
27 tion of one year after the date of the approval of state-wide planning
28 goals and guidelines under section 37 of this 1973 Act shall be designed
29 to comply with such state-wide planning goals and any subsequent re-
30 visions or amendments thereof.

31 Section 49. ORS 215.535 is amended to read:

32 215.535. In addition to the remedy prescribed in subsection (3) of
33 ORS 215.510, the [Governor] commission may cause to be instituted any
34 civil action or suit [he] it considers appropriate to remedy violations of

1 any comprehensive [*land use*] plan or zoning, subdivision or other ordi-
2 nance or regulation prescribed by the [*Governor*] commission pursuant
3 to ORS 215.505 or section 45 of this 1973 Act.

4 **SECTION 50.** (1) Whenever the commission prescribes a comprehen-
5 sive plan or zoning, subdivision or other ordinances or regulations for lands
6 described in subsection (1) of section 45 of this Act, the costs incurred by
7 the commission and the department in the preparation and administration
8 of such plan or ordinances or regulations shall be borne by the city or
9 county for which the commission has proposed such plan or ordinances
10 or regulations. Upon presentation by the commission to the governing
11 body of the city or county of a certified, itemized statement of costs, the
12 governing body shall order payment to the commission out of any avail-
13 able funds. With respect to a city or county, if no payment is made
14 by the governing body within 30 days thereafter, the commission shall
15 submit to the Secretary of State its certified, itemized statement of such
16 costs and the commission shall be reimbursed upon the order of the Secre-
17 tary of State to the State Treasurer, from the city's or county's share of the
18 state's cigarette and liquor revenues.

19 (2) Within 10 days of receipt of the certified, itemized statement of costs
20 under subsection (1) of this section, any city or county aggrieved by
21 the statement may appeal to the Court of Appeals. The appeal shall
22 be taken as from a contested case under ORS 183.480. Notice of the appeal
23 shall operate as a stay in the commissioner's right to reimbursement
24 under subsection (1) of this section until the decision is made on the appeal.

25 **PART VI APPEALS**

26 **SECTION 51.** (1) In the manner provided in sections 52 to 54 of this
27 Act, the commission shall review upon:

28 (a) Petition by a county governing body, a comprehensive plan pro-
29 vision or any zoning, subdivision or other ordinance or regulation adopted
30 by a state agency, city, county or special district that the governing body
31 considers to be in conflict with state-wide planning goals approved under
32 section 37 of this Act or interim goals specified in ORS 215.515.

33 (b) Petition by a city or county governing body, a land conservation
34 and development action taken by a state agency, city, county or special

1 district that the governing body considers to be in conflict with state-
2 wide planning goals approved under section 37 of this Act or interim
3 goals specified in ORS 215.515.

4 (c) Petition by a state agency, city, county or special district, any
5 county governing body action that the state agency, city, county or special
6 district considers to be improperly taken or outside the scope of the gov-
7 erning body's authority under this Act.

8 (d) Petition by any person or group of persons whose interests are
9 substantially affected, a comprehensive plan provision or any zoning, sub-
10 division or other ordinance or regulation alleged to be in violation of
11 state-wide planning goals approved under section 37 of this Act or interim
12 goals specified in ORS 215.515.

13 (2) A petition filed with the commission pursuant to subsection (1)
14 of this section must be filed not later than 60 days (excluding Saturdays
15 and holidays) after the date of the final adoption or approval of the
16 action or comprehensive plan upon which the petition is based.

17 **SECTION 52.** (1) All review proceedings conducted by the commis-
18 sion pursuant to section 51 of this Act shall be based on the administra-
19 tive record, if any, prepared with respect to the proceedings for the adop-
20 tion or approval of the comprehensive plan provision or action that is
21 the subject of the review proceeding.

22 (2) The commission shall adopt such rules, procedures and regulations
23 for the conduct of review proceedings held pursuant to section 51 of
24 this Act, in accordance with the provisions of ORS 183.310 to 183.500 for
25 hearings and notice in contested cases.

26 (3) A city, county, state agency, special district or any person or
27 group of persons whose interests are substantially affected may intervene
28 in and be made a party to any review proceeding conducted by the com-
29 mission with the approval of the commission, upon the request of the
30 hearings officer appointed to conduct such proceeding or upon the ap-
31 proval by the hearings officer of a request by such agency, person or
32 group of persons for intervention in the review proceeding.

33 **SECTION 53.** (1) In carrying out its duties under section 51 of this

1 Act, the chairman of the commission shall assign each petition to be
2 reviewed by the commission to a hearings officer who shall conduct the
3 review proceeding.

4 (2) A hearings officer shall conduct a review proceeding in accordance
5 with the rules, procedures and regulations adopted by the commission.
6 Upon the conclusion of a hearing, the hearings officer shall promptly
7 determine the matter, prepare a recommendation for commission action
8 upon the matter and submit a copy of his recommendation to the com-
9 mission and to each party to the proceeding.

10 (3) The commission shall review the recommendation of the hearings
11 officer and the record of the proceeding and issue its order with respect
12 to the review proceeding within 60 days following the date of the filing
13 of the petition upon which such review proceeding is based. The com-
14 mission may adopt, reject or amend the recommendation of the hearings
15 officer in any matter.

16 (4) No order of the commission issued under subsection (3) of this
17 section is valid unless all members of the commission have received
18 the recommendation of the hearings officer in the matter and at least
19 four members of the commission concur in its action in the matter.

20 (5) Any party to a review proceeding before the commission who
21 is adversely affected or aggrieved by the order issued by the commis-
22 sion in the matter may appeal the order of the commission in the manner
23 provided in ORS 183.480 for appeals from final orders in contested cases.

24 (6) The commission may enforce orders issued under subsection (3) of
25 this section in appropriate judicial proceedings brought by the com-
26 mission therefor.

27 **SECTION 54.** (1) If, upon its review of the recommendation of a
28 hearings officer and the record of the review proceeding prepared follow-
29 ing a review proceeding before the commission, the commission is unable
30 to reach a decision in the matter without further information or evidence
31 not contained in the record of the proceeding, it may refer the matter back
32 to the hearings officer and request that the additional information or evi-
33 dence be acquired by him or that he correct any errors or deficiencies

1 found by the commission to exist in his recommendation or record of
2 the proceeding.

3 (2) In case of a referral of a matter back to the hearings officer
4 pursuant to subsection (1) of this section, the 60-day period referred
5 to in subsection (3) of section 53 of this Act is suspended during the
6 period beginning on the date of the commission's referral to the hearings
7 officer and ending on the date that the hearings officer submits the
8 revised recommendation or record as requested by the commission.

9 **PART VII LEGISLATIVE REVIEW**

10 **SECTION 55.** The department shall report monthly to the committee
11 in order to keep the committee informed on progress made by the depart-
12 ment, commission, counties and other agencies in carrying out the pro-
13 visions of this Act.

14 **SECTION 56.** (1) Prior to the end of each even-numbered year, the
15 department shall prepare a written report for submission to the Legisla-
16 tive Assembly of the State of Oregon describing activities and accomp-
17 lishments of the department, commission, state agencies, cities, counties
18 and special districts in carrying out the provisions of this Act.

19 (2) A draft of the report required by subsection (1) of this section
20 shall be submitted to the committee for its review and comment at least
21 60 days prior to submission of the report to the Legislative Assembly. Com-
22 ments of the committee shall be incorporated into the final report.

23 (3) Goals and guidelines adopted by the commission shall be included
24 in the report to the Legislative Assembly submitted under subsection
25 (1) of this section.

26 **PART VIII MISCELLANEOUS**

27 **Section 57.** ORS 453.345 is amended to read:

28 453.345. (1) Applications for site certificates shall be made to the
29 Nuclear and Thermal Energy Council on a form prescribed by the council
30 and accompanied by the fee required by ORS 453.405. The application may
31 be filed not sooner than 12 months after filing of the notice of intent.

32 (2) Proposed use of a site within an area designated by the council
33 as suitable for location of thermal power plants or nuclear installations
34 does not preclude the necessity of the applicant obtaining a site certificate

1 for the specific site.

2 (3) Copies of the notice of intent and of the application shall be sent
3 for comment and recommendation within specified deadlines established
4 by the council to the Department of Environmental Quality, the State Water
5 Resources Board, the Fish Commission of the State of Oregon, the State
6 Game Commission, the State Board of Health, the State Engineer, the
7 State Geologist, the State Forestry Department, the Public Utility Commis-
8 sioner of Oregon, the State Department of Agriculture, the Department
9 of Transportation, the **Department of Land Conservation and Develop-**
10 **ment** and the Economic Development Division.

11 **SECTION 58.** The part designations and unit captions used in this
12 Act are provided only for the convenience of locating provisions of this Act,
13 and are not part of the statutory law of this state.

14 **SECTION 59.** This Act being necessary for the immediate preservation
15 of the public peace, health and safety, an emergency is declared to exist,
16 and this Act takes effect on July 1, 1973.



APPENDIX D

Re-Engrossed Senate Bill 100

Page

407

RE-ENGROSSED

(March 23 amendments not printed)

Senate Bill 100

Ordered by the Senate April 9
(Including Amendments by Senate March 23 and April 9)

Sponsored by Senators MACPHERSON, HALLOCK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates Department of Land Conservation and Development, composed of Land Conservation and Development Commission, director and employees. Establishes Joint Legislative Committee on Land Use, as standing committee to advise and assist department in carrying out its duties.

Authorizes commission to designate activities of state-wide significance in public transportation, public sewerage systems and public schools and to make recommendation for additional designations, subject to approval of Legislative Assembly. Requires commission, subject to approval of Legislative Assembly, to promulgate and implement state-wide planning goals consistent with regional, county and city concerns for such activities and state-wide planning guidelines for land use planning in state. Requires state agencies, planning districts, cities, counties and special districts to comply with state-wide planning guidelines and state-wide planning goals in adoption of comprehensive plans and zoning, subdivision or other ordinances and regulations. **Makes counties responsible for coordinating all land use planning activities within counties, except for cities having population of 300,000 or more.**

Requires permit to be issued by commission for development projects constituting activities of state-wide significance. provides for enforcement of permit requirements. Authorizes injunction of activities of state-wide significance carried on without permit.

Permits voluntary association of counties for planning purposes. Provides for establishment of regional planning agency composed of cities and counties, subject to approval of voters in proposed region. Authorizes voluntary association of local governments to perform coordinative planning functions of counties under Act.

Continued on Page 2

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted; complete new sections begin with **SECTION**.

Continued from Page 1

Requires, within one year after approval of state-wide planning guidelines, all comprehensive plans and zoning, subdivision or other ordinances or regulations to comply with such guidelines. Authorizes commission to perform planning and zoning functions of noncomplying governmental units. Provides, in case of nonpayment by city or county, for reimbursement of commission from city or county share of state liquor and cigarette revenues. Establishes appeal procedures.

Provides for review by commission of specified land conservation and development actions and plans. Establishes Land Conservation and Development Account in General Fund for use by department.

Declares emergency and takes effect July 1, 1973.

1

A BILL FOR AN ACT

2 Relating to land use; creating new provisions; amending ORS 215.055,
3 215.510, 215.515, 215.535 and 453.345; appropriating money; and declar-
4 ing an emergency.

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

6

PART I INTRODUCTION

7

PREAMBLE

8 **SECTION 1.** The Legislative Assembly finds that:

9 (1) Uncoordinated use of lands within this state threaten the orderly
10 development, the environment of this state and the health, safety, order,
11 convenience, prosperity and welfare of the people of this state.

12 (2) To promote coordinated administration of land uses consistent with
13 comprehensive plans adopted throughout the state, it is necessary to
14 establish a process for the review of state agency, city, county and special
15 district land conservation and development plans for compliance with
16 state-wide planning goals and guidelines.

17 (3) Except as otherwise provided in subsection (4) of this section,
18 cities and counties should remain as the agencies to consider, promote and
19 manage the local aspects of land conservation and development for the
20 best interests of the people within their jurisdictions.

21 (4) The promotion of coordinated state-wide land conservation and
22 development requires the creation of a state-wide planning agency to
23 prescribe planning goals and objectives to be applied by state agencies,
24 cities, counties and special districts throughout the state.

25 (5) The impact of proposed development projects, constituting activities
26 of state-wide significance upon the public health, safety and welfare,
27 requires a system of permits reviewed by a state-wide agency to carry out
28 state-wide planning goals and guidelines prescribed for application for
29 activities of state-wide significance throughout this state.

30

POLICY STATEMENT

31

SECTION 2. The Legislative Assembly declares that, in order to assure
32 the highest possible level of liveability in Oregon, it is necessary to provide
33 for properly prepared and coordinated comprehensive plans for cities and

1 counties, regional areas and the state as a whole. These comprehensive plans:

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

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

6 (3) Shall be the basis for more specific rules, regulations and ordinances
7 which implement the policies expressed through the comprehensive plans;

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

11 (5) Shall be regularly reviewed and, if necessary, revised to keep them
12 consistent with the changing needs and desires of the public they are
13 designed to serve.

14 DEFINITIONS

15 **SECTION 3.** As used in this Act, unless the context requires otherwise:

16 (1) "Activity of state-wide significance" means a land conservation and
17 development activity designated pursuant to section 25 of this Act.

18 (2) "Commission" means the Land Conservation and Development
19 Commission.

20 (3) "Committee" means the Joint Legislative Committee on Land Use.

21 (4) "Comprehensive plan" means a generalized, coordinated land use
22 map and policy statement of the governing body of a state agency, city,
23 county or special district that interrelates all functional and natural sys-
24 tems and activities relating to the use of lands, including but not limited
25 to sewer and water systems, transportation systems, educational systems,
26 recreational facilities, and natural resources and air and water quality
27 management programs. "Comprehensive" means all-inclusive, both in terms
28 of the geographic area covered and functional and natural activities and
29 systems occurring in the area covered by the plan. "General nature" means
30 a summary of policies and proposals in broad categories and does not neces-
31 sarily indicate specific locations of any area, activity or use. A plan is "co-
32 ordinated" when the needs of all levels of governments, semipublic and
33 private agencies and the citizens of Oregon have been considered and
34 accommodated as much as possible. "Land" includes water, both surface
and subsurface, and the air.

1 (5) "Department" means the Department of Land Conservation and
2 Development.

3 (6) "Director" means the Director of the Department of Land Con-
4 servation and Development.

5 (7) "Special district" means any unit of local government, other than
6 a city or county, authorized and regulated by statute and includes, but is
7 not limited to: Water control districts, irrigation districts, port districts,
8 regional air quality control authorities, fire districts, school districts, hos-
9 pital districts, mass transit districts and sanitary districts.

10 (8) "Voluntary association of local governments" means a regional
11 planning agency in this state officially designated by the Governor pur-
12 suant to the federal Office of Management and Budget Circular A-95 as
13 a regional clearinghouse.

14 **PART II ORGANIZATION, ROLES AND RESPONSIBILITIES**

15 **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

16 **SECTION 4.** The Department of Land Conservation and Development
17 is established. The department shall consist of the Land Conservation and
18 Development Commission, the director and their subordinate officers and
19 employes.

20 **SECTION 5.** (1) There is established a Land Conservation and De-
21 velopment Commission consisting of seven members appointed by the
22 Governor, subject to confirmation by the Senate in the manner provided
23 in ORS 171.560 and 171.570.

24 (2) In making appointments under subsection (1) of this section, the
25 Governor shall select from residents of this state one member from each
26 congressional district and the remaining members from the state at large.
27 At least one and no more than two members shall be from Multnomah
28 County.

29 (3) The term of office of each member of the commission is four years,
30 but a member may be removed by the Governor for cause. Before the ex-
31 piration of the term of a member, the Governor shall appoint a successor.
32 No person shall serve more than two full terms as a member of the com-
33 mission.

1 (4) If there is a vacancy for any cause, the Governor shall make an
2 appointment to become immediately effective for the unexpired term.

3 **SECTION 6.** Notwithstanding the term of office specified in section 5
4 of this Act, of the members first appointed to the commission:

5 (1) Two shall serve for a term ending June 30, 1974.

6 (2) Two shall serve for a term ending June 30, 1975.

7 (3) Two shall serve for a term ending June 30, 1976.

8 (4) One shall serve for a term ending June 30, 1977.

9 **SECTION 7.** (1) The commission shall select one of its members as
10 chairman and another member as vice chairman, for such terms and with
11 duties and powers necessary for the performance of the functions of such
12 offices as the commission determines. The vice chairman of the commission
13 shall act as the chairman of the commission in the absence of the chairman.

14 (2) A majority of the members of the commission constitutes a quorum
15 for the transaction of business.

16 **SECTION 8.** Members of the commission are entitled to compensation
17 and expenses as provided in ORS 292.495.

18 **SECTION 9.** The commission shall:

19 (1) Direct the performance by the director and his staff of their
20 functions under this Act.

21 (2) In accordance with the provisions of ORS chapter 183, promulgate
22 rules that it considers necessary in carrying out this Act.

23 (3) Cooperate with the appropriate agencies of the United States, this
24 state and its political subdivisions, any other state, any interstate agency,
25 any person or groups of persons with respect to land conservation and
26 development.

27 (4) Appoint advisory committees to aid it in carrying out this Act and
28 provide technical and other assistance, as it considers necessary, to each
29 such committee.

30 **SECTION 10.** The commission may:

31 (1) Apply for and receive moneys from the Federal Government and
32 from this state or any of its agencies or departments.

33 (2) Contract with any public agency for the performance of services or

1 the exchange of employes or services by one to the other necessary in
2 carrying out this Act.

3 (3) Contract for the services of and consultation with professional
4 persons or organizations, not otherwise available through federal, state and
5 local governmental agencies, in carrying out its duties under this Act.

6 (4) Perform other functions required to carry out this Act.

7 **SECTION 11.** Pursuant to the provisions of this Act, the commission
8 shall:

9 (1) Establish state-wide planning goals consistent with regional, county
10 and city concerns;

11 (2) Issue permits for activities of state-wide significance;

12 (3) Prepare inventories of land uses;

13 (4) Prepare state-wide planning guidelines;

14 (5) Review comprehensive plans for conformance with state-wide plan-
15 ning goals;

16 (6) Coordinate planning efforts of state agencies to assure conformance
17 with state-wide planning goals and compatability with city and county
18 comprehensive plans;

19 (7) Insure widespread citizen involvement and input in all phases of
20 the process;

21 (8) Prepare model zoning, subdivision and other ordinances and regu-
22 lations to guide state agencies, cities, counties and special districts in imple-
23 menting state-wide planning goals, particularly those for the areas listed in
24 subsection (2) of section 34 of this Act;

25 (9) Review and recommend to the Legislative Assembly the designation
26 of areas of critical state concern;

27 (10) Report periodically to the Legislative Assembly and to the com-
28 mittee; and

29 (11) Perform other duties required by law.

30 **SECTION 12.** If an interstate land conservation and development plan-
31 ning agency is created by an interstate agreement or compact entered into
32 by this state, the commission shall perform the functions of this state with
33 respect to the agreement or compact. If the functions of the interstate plan-

1 ning agency duplicate any of the functions of the commission under this
2 Act, the commission may:

3 (1) Negotiate with the interstate agency in defining the areas of
4 responsibility of the commission and the interstate planning agency; and

5 (2) Cooperate with the interstate planning agency in the performance
6 of its functions.

7 **SECTION 13.** (1) The commission shall appoint a person to serve as
8 the Director of the Department of Land Conservation and Development.
9 The director shall hold his office at the pleasure of the commission and his
10 salary shall be fixed by the commission unless otherwise provided by law.

11 (2) In addition to his salary, the director shall be reimbursed, subject
12 to any applicable law regulating travel and other expenses of state officers
13 and employes, for actual and necessary expenses incurred by him in the
14 performance of his official duties.

15 **SECTION 14.** Subject to policies adopted by the commission, the di-
16 rector shall:

17 (1) Be the administrative head of the department.

18 (2) Coordinate the activities of the department in its land conservation
19 and development functions with such functions of federal agencies, other
20 state agencies, cities, counties and special districts.

21 (3) Appoint, reappoint, assign and reassign all subordinate officers and
22 employes of the department, prescribe their duties and fix their compen-
23 sation, subject to the State Merit System Law.

24 (4) Represent this state before any agency of this state, any other state
25 or the United States with respect to land conservation and development
26 within this state.

27 **SECTION 15.** (1) There is established in the General Fund in the
28 State Treasury the Land Conservation and Development Account. Moneys
29 in the account are continuously appropriated for the purpose of carrying
30 out the provisions of this Act.

31 (2) All fees, moneys and other revenue received by the department
32 or the committee shall be deposited in the Land Conservation and Develop-
33 ment Account.

OREGON COASTAL CONSERVATION AND**DEVELOPMENT COMMISSION**

1
2
3 **SECTION 16.** (1) The Land Conservation and Development Commis-
4 sion, by agreement with the Oregon Coastal Conservation and Development
5 Commission created by ORS 191.120 may delegate to the Oregon Coastal
6 Conservation and Development Commission, any of the functions of the
7 Land Conservation and Development Commission. However, the Land
8 Conservation and Development Commission must review and grant ap-
9 proval prior to any action taken by the Oregon Coastal Conservation and
10 Development Commission with respect to a delegated function.

11 (2) The Land Conservation and Development Commission may provide
12 staff and financial assistance to the Oregon Coastal Conservation and
13 Development Commission in carrying out duties under this section.

CITIES AND COUNTIES

14
15 **SECTION 17.** Cities and counties shall exercise their planning and
16 zoning responsibilities in accordance with this Act and the state-wide plan-
17 ning goals and guidelines approved under this Act.

18 **SECTION 18.** Pursuant to this Act, each city and county in this state
19 shall:

20 (1) Prepare and adopt comprehensive plans consistent with state-wide
21 planning goals and guidelines approved by the commission; and

22 (2) Enact zoning, subdivision and other ordinances or regulations to
23 implement their comprehensive plans.

24 **SECTION 19.** (1) In addition to the responsibilities stated in sections
25 17 and 18 of this Act, each county through its governing body, shall be
26 responsible for coordinating all planning activities affecting land uses
27 within the county, including those of the county, cities, special districts and
28 state agencies, to assure an integrated comprehensive plan for the entire
29 area of the county. For purposes of this subsection, the responsibility of
30 the county described in this subsection shall not apply to cities having a
31 population of 300,000 or more, and such cities shall exercise, within the
32 incorporated limits thereof, the authority vested in counties by this sub-
33 section.

34 (2) For the purposes of carrying out the provisions of this Act, counties

1 may voluntarily join together with adjacent counties as authorized in ORS
2 chapter 190.

3 (3) Whenever counties and cities representing 51 percent of the popu-
4 lation in their area petition the commission for an election in their area to
5 form a regional planning agency to exercise the authority of the counties
6 under subsection (1) of this section in the area, the commission shall
7 review the petition. If it finds that the area described in the petition forms
8 a reasonable planning unit, it shall call an election in the area to form a
9 regional planning agency. The election shall be conducted in the manner
10 provided in ORS chapter 259. The county clerk shall be considered the
11 election officer and the commission shall be considered the district election
12 authority. The agency shall be considered established if the majority of
13 votes favor the establishment.

14 (4) If a voluntary association of local governments adopts a resolution
15 ratified by each participating county and a majority of the participating
16 cities therein which authorizes the association to perform the review, ad-
17 visory and coordination functions assigned to the counties under sub-
18 section (1) of this section, the association may perform such duties.

19 SPECIAL DISTRICTS AND STATE AGENCIES

20 SECTION 20. Special districts shall exercise their planning duties,
21 powers and responsibilities and take actions that are authorized by law
22 with respect to programs affecting land use in accordance with state-wide
23 planning goals and guidelines approved pursuant to this Act.

24 SECTION 21. State agencies shall carry out their planning duties,
25 powers and responsibilities and take actions that are authorized by law
26 with respect to programs affecting land use in accordance with state-wide
27 planning goals and guidelines approved pursuant to this Act.

28 JOINT LEGISLATIVE COMMITTEE ON LAND USE

29 SECTION 22. The Joint Legislative Committee on Land Use is estab-
30 lished as a joint committee of the Legislative Assembly. The committee
31 shall select an executive secretary who shall serve at the pleasure of the
32 committee and under its direction.

33 SECTION 23. (1) The Joint Legislative Committee on Land Use shall
34 consist of four members of the House of Representatives appointed by the

1 Speaker and three members of the Senate appointed by the President. No
2 more than three House members of the committee shall be of the same
3 political party. No more than two Senate members of the committee shall
4 be of the same political party.

5 (2) The chairman of the House and Senate Environment and Land
6 Use Committees of the Fifty-seventh Legislative Assembly of the State of
7 Oregon shall be two of the members appointed under subsection (1) of
8 this section for the period beginning with the effective date of this Act.

9 (3) The committee has a continuing existence and may meet, act and
10 conduct its business during sessions of the Legislative Assembly or any
11 recess thereof, and in the interim period between sessions.

12 (4) The term of a member shall expire upon the convening of the Legis-
13 lative Assembly in regular session next following the commencement of
14 the member's term. When a vacancy occurs in the membership of the
15 committee in the interim between sessions, until such vacancy is filled, the
16 membership of the committee shall be deemed not to include the vacant
17 position for the purpose of determining whether a quorum is present and
18 a quorum is the majority of the remaining members.

19 (5) Members of the committee shall be reimbursed for actual and
20 necessary expenses incurred or paid in the performance of their duties as
21 members of the committee, such reimbursement to be made from funds
22 appropriated for such purposes, after submission of approved voucher
23 claims.

24 (6) The committee shall select a chairman. The chairman may, in addi-
25 tion to his other authorized duties, approve voucher claims.

26 (7) Action of the committee shall be taken only upon the affirmative
27 vote of the majority of the members of the committee.

28 **SECTION 24.** The committee shall:

29 (1) Advise the department on all matters under the jurisdiction of the
30 department;

31 (2) Review and make recommendations to the Legislative Assembly
32 on proposals for additions to or modifications of designations of activities of

1 state-wide significance, and for designations of areas of critical state
2 concern;

3 (3) Review and make recommendations to the Legislative Assembly
4 on state-wide planning goals and guidelines approved by the commission;

5 (4) Study and make recommendations to the Legislative Assembly
6 on the implementation of a program for compensation by the public to
7 owners of lands within this state for the value of any loss of use of such
8 lands resulting directly from the imposition of any zoning, subdivision or
9 other ordinance or regulation regulating or restricting the use of such
10 lands. Such recommendations shall include, but not be limited to, proposed
11 methods for the valuation of such loss of use and proposed limits, if any,
12 to be imposed upon the amount of compensation to be paid by the public
13 for any such loss of use; and

14 (5) Make recommendations to the Legislative Assembly on any other
15 matter relating to land use planning in Oregon.

16 PART III ACTIVITIES OF STATE-WIDE SIGNIFICANCE

17 DESIGNATION

18 SECTION 25. (1) The following activities may be designated by the
19 commission as activities of state-wide significance if the commission deter-
20 mines that by their nature or magnitude they should be so considered:

21 (a) The planning and siting of public transportation facilities.

22 (b) The planning and siting of public sewerage systems, water supply
23 systems and solid waste disposal sites and facilities.

24 (c) The planning and siting of public schools.

25 (2) Nothing in this Act supersedes any duty, power or responsibility
26 vested by statute in any state agency relating to its activities described in
27 subsection (1) of this section; except that, a state agency may neither
28 implement any such activity nor adopt any plan relating to such an activity
29 without the prior review and comment of the commission.

30 SECTION 26. (1) In addition to the activities of state-wide signifi-
31 cance that are designated by the commission under section 25 of this Act,
32 the commission may recommend to the committee the designation of addi-
33 tional activities of state-wide significance. Each such recommendation shall
34 specify the reasons for the proposed designation of the activity of state-

1 wide significance, the dangers that would result from such activity being
2 uncontrolled and the suggested state-wide planning goals and guidelines
3 to be applied for the proposed activity.

4 (2) The commission may recommend to the committee the designation
5 of areas of critical state concern. Each such recommendation shall specify
6 the criteria developed and reasons for the proposed designation, the damages
7 that would result from uncontrolled development within the area, the
8 reasons for the implementation of state regulations for the proposed area
9 and the suggested state regulations to be applied within the proposed area.

10 (3) The commission may act under subsections (1) and (2) of this sec-
11 tion on its own motion or upon the recommendation of a state agency, city,
12 county or special district. If the commission receives a recommendation
13 from a state agency, city, county or special district and finds the proposed
14 activity or area to be unsuitable for designation, it shall notify the state
15 agency, city, county or special district of its decision and its reasons there-
16 for.

17 (4) Immediately following its decision to favorably recommend to
18 the Legislative Assembly the designation of an additional activity of state-
19 wide significance or the designation of an area of critical state concern,
20 the commission shall submit the proposed designation accompanied by the
21 supporting materials described in subsections (1) and (2) of this section to
22 the committee for its review.

23 **PERMITS FOR ACTIVITIES OF STATE-WIDE SIGNIFICANCE**

24 **SECTION 27.** (1) On and after the date the commission has approved
25 state-wide planning goals and guidelines for activities of state-wide sig-
26 nificance designated under section 25 of this Act, no proposed project con-
27 stituting such an activity may be initiated by any person or public agency
28 without a planning and siting permit issued by the commission therefor.

29 (2) Any person or public agency desiring to initiate a project consti-
30 tuting an activity of state-wide significance shall apply to the department
31 for a planning and siting permit for such project. The application shall
32 contain the plans for the project and the manner in which such project
33 has been designed to meet the goals and guidelines for activities of state-
34 wide significance and the comprehensive plans for the county within

1 which the project is proposed, and any other information required by the
2 commission as prescribed by rule of the commission.

3 (3) The department shall transmit copies of the application to affected
4 county and state agencies for their review and recommendation.

5 (4) The county governing body and the state agencies shall review
6 an application transmitted to it under subsection (3) of this section and
7 shall, within 30 days after the date of the receipt of the application, sub-
8 mit their recommendations on the application to the commission.

9 (5) If the commission finds after review of the application and the
10 comments submitted by the county governing body and state agencies that
11 the proposed project complies with the state-wide goals and guidelines for
12 activities of state-wide significance and the comprehensive plans within
13 the county, it shall approve the application and issue a planning and siting
14 permit for the proposed project to the person or public agency applying
15 therefor. Action shall be taken by the commission within 30 days of the
16 receipt of the recommendation of the county and state agencies.

17 (6) The commission may prescribe and include in the planning and
18 siting permit such conditions or restrictions that it considers necessary
19 to assure that the proposed project complies with the state-wide goals and
20 guidelines for activities of state-wide significance and the comprehensive
21 plans within the county.

22 **SECTION 28.** If the activity requiring a planning and siting permit
23 under section 27 of this Act also requires any other permit from any state
24 agency, the commission, with the cooperation and concurrence of the other
25 agency, may provide a joint application form and permit to satisfy both
26 the requirements of this Act and any other requirements set by statute or
27 by rule of the state agency.

28 **SECTION 29.** (1) If any person or public agency is in doubt whether
29 a proposed development project constitutes an activity of state-wide sig-
30 nificance, the person or public agency may request a determination from
31 the commission on the question. Within 60 days after the date of the receipt
32 by it of such a request, the commission, with the advice of the committee
33 and of the county governing body for the county in which such activity is

1 proposed, shall issue a binding letter of interpretation with respect to the
2 proposed project.

3 (2) Requests for determinations under this section shall be made to the
4 commission in writing and in such form and contain such information as
5 may be prescribed by the commission.

6 **SECTION 30.** (1) No project constituting an activity of state-wide
7 significance shall be undertaken without a planning and siting permit is-
8 sued under section 27 of this Act.

9 (2) Any person or agency acting in violation of subsection (1) of this
10 section may be enjoined in civil proceedings brought in the name of the
11 county or the State of Oregon.

12 **SECTION 31.** If the county governing body or the commission de-
13 termines the existence of an alleged violation under section 30 of this Act,
14 it may:

15 (1) Investigate, hold hearings, enter orders and take action that it
16 deems appropriate under this Act, as soon as possible.

17 (2) For the purpose of investigating conditions relating to the violation,
18 through its members or its duly authorized representatives, enter at rea-
19 sonable times upon any private or public property.

20 (3) Conduct public hearings.

21 (4) Publish its findings and recommendations as they are formulated
22 relative to the violation.

23 (5) Give notice of any order relating to a particular violation of its
24 state-wide goals, a particular violation of the terms or conditions of a plan-
25 ning and siting permit or a particular violation of the provisions of this
26 Act by mailing notice to the person or public body conducting or proposing
27 to conduct the project affected in the manner provided by ORS chapter 183.

28 **PART IV STATE-WIDE PLANNING GOALS AND GUIDELINES**

29 **SECTION 32.** All comprehensive plans and any zoning, subdivision and
30 other ordinances and regulations adopted by a state agency, city, county
31 or special district to carry out such plans shall be in conformity with the
32 state-wide planning goals within one year from the date such goals are
33 approved by the commission.

34 **SECTION 33.** Not later than January 1, 1975, the department shall pre-

1 pare and the commission shall adopt state-wide planning goals and guide-
2 lines for use by state agencies, cities, counties and special districts in pre-
3 paring, adopting, revising and implementing existing and future compre-
4 hensive plans.

5 **SECTION 34.** In preparing and adopting state-wide planning goals and
6 guidelines, the department and the commission shall:

7 (1) Consider the existing comprehensive plans of state agencies, cities,
8 counties and special districts in order to preserve functional and local
9 aspects of land conservation and development.

10 (2) Give priority consideration to the following areas and activities:

- 11 (a) Those activities listed in section 25 of this Act;
- 12 (b) Lands adjacent to freeway interchanges;
- 13 (c) Estuarine areas;
- 14 (d) Tide, marsh and wetland areas;
- 15 (e) Lakes and lakeshore areas;
- 16 (f) Wilderness, recreational and outstanding scenic areas;
- 17 (g) Beaches, dunes, coastal headlands and related areas;
- 18 (h) Wild and scenic rivers and related lands;
- 19 (i) Flood plains and areas of geologic hazard;
- 20 (j) Unique wildlife habitats; and
- 21 (k) Agricultural land.

22 **SECTION 35.** To assure widespread citizen involvement in all phases
23 of the planning process:

24 (1) The commission shall appoint a State Citizen Involvement Advis-
25 ory Committee, broadly representative of geographic areas of the state and
26 of interests relating to land uses and land use decisions, to develop a pro-
27 gram for the commission that promotes and enhances public participation
28 in the development of state-wide planning goals and guidelines.

29 (2) Within 90 days after the effective date of this Act, each county
30 governing body shall submit to the commission a program for citizen in-
31 volvement in preparing, adopting and revising comprehensive plans with-
32 in the county. Such program shall at least contain provision for a citizen
33 advisory committee or committees broadly representative of geographic
34 areas and of interests relating to land uses and land use decisions.

1 (3) The state advisory committee appointed under subsection (1) of this
2 section shall review the proposed programs submitted by each county and
3 recommend to the commission whether or not the proposed program ade-
4 quately provides for public involvement in the planning process.

5 **SECTION 36.** (1) In preparing the state-wide planning goals and
6 guidelines, the department shall:

7 (a) Hold at least 10 public hearings throughout the state, causing no-
8 tice of the time, place and purpose of each such hearing to be published in
9 a newspaper of general circulation within the area where the hearing is
10 to be conducted not later than 30 days prior to the date of the hearing.

11 (b) Implement any other provision for public involvement developed
12 by the state advisory committee under subsection (1) of section 35 of this
13 Act and approved by the commission.

14 (2) Upon completion of the preparation of the proposed state-wide
15 planning goals and guidelines, the department shall submit them to the
16 commission for approval.

17 **SECTION 37.** Upon receipt of the proposed state-wide planning goals
18 and guidelines prepared and submitted to it by the department, the com-
19 mission shall:

20 (1) Hold at least one public hearing on the proposed state-wide plan-
21 ning goals and guidelines. The commission shall cause notice of the time,
22 place and purpose of the hearings and the place where copies of the
23 proposed goals and guidelines are available before the hearings with the
24 cost thereof to be published in a newspaper of general circulation in the
25 state not later than 30 days prior to the date of the hearing. The department
26 shall supply a copy of its proposed state-wide planning goals and guide-
27 lines to the Governor, the committee, affected state agencies and special
28 districts and to each city and county without charge. The department shall
29 provide copies of such proposed goals and guidelines to other public agen-
30 cies or persons upon request and payment of the cost of preparing the
31 copies of the materials requested.

32 (2) Consider the recommendations and comments received from the
33 public hearings conducted under subsection (1) of this section, make any
34 revisions in the proposed state-wide planning goals and guidelines that it

1 considers necessary and approve the proposed goals and guidelines as they
2 may be revised by the commission.

3 **SECTION 38.** The commission may periodically revise, update and ex-
4 pand the initial state-wide planning goals and guidelines adopted under
5 section 37 of this Act. Such revisions, updating or expansions shall be made
6 in the manner provided in sections 36 and 37 of this Act.

7 **SECTION 39.** Following the approval by the commission of state-wide
8 planning goals and guidelines, each county governing body shall review all
9 comprehensive plans for land conservation and development within the
10 county, both those adopted and those being prepared. The county gov-
11 erning body shall advise the state agency, city, county or special district
12 preparing the comprehensive plans whether or not the comprehensive plans
13 are in conformity with the state-wide planning goals.

14 **PART V COMPREHENSIVE PLANS**

15 **SECTION 40.** Comprehensive plans and zoning, subdivision, and other
16 ordinances and regulations adopted prior to the effective date of this Act
17 shall remain in effect until revised under this Act. It is intended that exist-
18 ing planning efforts and activities shall continue and that such efforts be
19 utilized in achieving the purposes of this Act.

20 **SECTION 41.** Prior to approval by the commission of its state-wide
21 planning goals and guidelines under section 37 of this Act, the goals listed
22 in ORS 215.515 shall be applied by state agencies, cities, counties and spe-
23 cial districts in the preparation, revision, adoption or implementation of
24 any comprehensive plan.

25 **SECTION 42.** Each city or county shall prepare and the city council or
26 the county governing body shall adopt the comprehensive plans required
27 under this Act or by any other law in accordance with section 41 of this
28 Act for those plans adopted prior to the expiration of one year following
29 the date the commission approves its state-wide planning goals and guide-
30 lines under section 37 of this Act. Plans adopted by cities and counties
31 after the expiration of one year following the date of approval of such
32 goals and guidelines by the commission shall be designed to comply with
33 such goals and any subsequent amendments thereto.

1 Section 43. ORS 215.055 is amended to read:

2 215.055. (1) [*The*] **Any comprehensive plan** [*and all legislation and*
3 *regulations*] **and all zoning, subdivision or other ordinances and regula-**
4 **tions authorized by ORS 215.010 to 215.233 and adopted prior to the expira-**
5 **tion of one year following the date of the approval of state-wide planning**
6 **goals and guidelines under section 37 of this 1973 Act shall be designed to**
7 **promote the public health, safety and general welfare and shall be based on**
8 **the following considerations, among others: The various characteristics**
9 **of the various areas in the county, the suitability of the areas for par-**
10 **ticular land uses and improvements, the land uses and improvements in**
11 **the areas, trends in land improvement, density of development, property**
12 **values, the needs of economic enterprises in the future development of the**
13 **areas, needed access to particular sites in the areas, natural resources of the**
14 **county and prospective needs for development thereof, and the public**
15 **need for healthful, safe, aesthetic surroundings and conditions.**

16 **(2) Any plan and all zoning, subdivision or other ordinances and regu-**
17 **lations authorized by ORS 215.010 to 215.233 and adopted after the expira-**
18 **tion of one year after the date of the approval of state-wide planning goals**
19 **and guidelines under section 37 of this 1973 Act shall be designed to comply**
20 **with such state-wide planning goals and any subsequent revisions or**
21 **amendments thereof.**

22 [(2)] (3) In order to conserve natural resources of the state, any land
23 use plan or zoning, subdivision or other ordinance adopted by a county
24 shall take into consideration lands that are, can or should be utilized for
25 sources or processing of mineral aggregates.

26 **SECTION 44.** Upon the expiration of one year after the date of the
27 approval of state-wide planning goals and guidelines and annually there-
28 after, each county governing body shall report to the commission on the
29 status of comprehensive plans within each county. Each such report shall
30 include:

31 (1) Copies of comprehensive plans reviewed by the county governing
32 body and copies of zoning and subdivision ordinances and regulations ap-
33 plied to those areas within the county listed in subsection (2) of section
34 34 of this Act.

1 (2) For those areas or jurisdictions within the county without com-
2 prehensive plans, a statement and review of the progress made toward
3 compliance with the state-wide planning goals.

4 **SECTION 45.** (1) Notwithstanding any other provision of law, after the
5 expiration of one year after the date of the approval of the initial state-
6 wide planning goals and guidelines under section 37 of this Act, upon 90
7 days' notice to the affected governing body or bodies, and upon public
8 hearings held within 30 days thereafter, the commission shall prescribe and
9 may amend and administer comprehensive plans and zoning, subdivision
10 or other ordinances and regulations necessary to develop and implement a
11 comprehensive plan within the boundaries of a county, whether or not
12 within the boundaries of a city, that do not comply with the state-wide
13 planning goals approved under this Act and any subsequent revisions or
14 amendments thereof.

15 (2) If the city or county has under consideration a comprehensive
16 plan or zoning, subdivision or other ordinances or regulations for lands
17 described in subsection (1) of this section, and shows satisfactory progress
18 toward the adoption of such comprehensive plan or such ordinances or
19 regulations, the commission may grant a reasonable extension of time
20 after the date set in this section for completion of such plan or such
21 ordinances or regulations.

22 (3) Any comprehensive plan or zoning, subdivision or other ordinance
23 or regulation adopted by the commission under subsection (1) of this
24 section shall comply with the state-wide planning goals approved under
25 this Act and all subsequent revisions or amendments thereof.

26 **SECTION 46.** (1) There is transferred to and vested in the commission
27 those duties, powers and functions vested in the Governor by ORS 215.505
28 to 215.535. After the effective date of this Act, the commission shall
29 exercise such duties, powers and functions.

30 (2) For the purpose of harmonizing and clarifying Oregon Revised
31 Statutes, the Legislative Counsel may substitute for words designating
32 the Governor, where such words occur in ORS 215.505 to 215.535, words
33 designating the Land Conservation and Development Commission.

1 Section 47. ORS 215.510 is amended to read:

2 215.510. (1) Any comprehensive [*land use plans*] plan for any city
3 or county prescribed or amended by the [*Governor*] commission pursuant
4 to ORS 215.505 or section 45 of this 1973 Act shall be in accordance with
5 the standards provided in ORS 215.515 and the notice and hearing re-
6 quirements provided in ORS 215.060.

7 (2) Any zoning, subdivision or other ordinances and regulations for any
8 city or county prescribed or amended by the [*Governor*] commission pur-
9 suant to ORS 215.505 or section 45 of this 1973 Act shall be in accordance
10 with the standards provided in ORS 215.055 and the notice and hearing
11 requirements provided in ORS 215.223.

12 (3) A comprehensive [*land use*] plan or zoning, subdivision or other
13 ordinance or regulation for any city or county prescribed or amended by
14 the [*Governor*] commission pursuant to ORS 215.505 or section 45 of this
15 1973 Act may be for any purpose provided in ORS 215.010 to 215.233 and
16 subsections (1) and (2) of 215.990, except that the [*Governor*] commission
17 may not prescribe building regulations. The [*Governor*] commission may,
18 however, cause to be instituted an appropriate proceeding to enjoin the
19 construction of buildings or performance of any other acts which would
20 constitute a land use that does not conform to the applicable [*land use*]
21 comprehensive plan or zoning, subdivision or other ordinance or regula-
22 tion.

23 (4) Any hearings required by this section may be held by the [*Gov-*
24 *ernor*] commission, or by a person designated by the [*Governor*] com-
25 mission, and all such hearings shall be held in the county seat of the
26 county or in the city in which said comprehensive [*land use*] plan or zon-
27 ing, subdivision or other ordinance or regulation is to be prescribed.

28 Section 48. ORS 215.515 is amended to read:

29 215.515. (1) Comprehensive physical planning, adopted by the com-
30 mission prior to the expiration of one year following the date of the
31 approval of state-wide planning goals and guidelines under section 37
32 of this 1973 Act, should provide guidance for physical development within
33 the state responsive to economic development, human resource develop-
34 ment, natural resource development and regional and metropolitan area

1 development. It should assist in attainment of the optimum living environ-
2 ment for the state's citizenry and assure sound housing, employment
3 opportunities, educational fulfillment and sound health facilities. State
4 plans should relate to intermediate and long-range growth objectives. The
5 plans should set a pattern upon which state agencies and local government
6 may base their programs and local area plans. Goals for comprehensive
7 physical planning are:

8 [(1)] (a) To preserve the quality of the air [and] , water and land
9 resources of the state.

10 [(2)] (b) To conserve open space and protect natural and scenic re-
11 sources.

12 [(3)] (c) To provide for the recreational needs of citizens of the
13 state and visitors.

14 [(4)] (d) To conserve prime farm lands for the production of crops
15 [and].

16 (e) To provide for an orderly and efficient transition from rural
17 to urban land use.

18 [(5)] (f) To protect life and property in areas subject to floods,
19 landslides and other natural disasters.

20 [(6)] (g) To provide and encourage a safe, convenient and economic
21 transportation system including all modes of transportation: Air, water,
22 rail, highway and mass transit, and recognizing differences in the social
23 costs in the various modes of transportation.

24 [(7)] (h) To develop a timely, orderly and efficient arrangement of
25 public facilities and services to serve as a framework for urban and rural
26 development.

27 [(8)] (i) To diversify and improve the economy of the state.

28 [(9)] (j) To ensure that the development of properties within the state
29 is commensurate with the character and the physical limitations of the land.

30 (2) Comprehensive plans adopted by the commission after the expira-
31 tion of one year after the date of the approval of state-wide planning
32 goals and guidelines under section 37 of this 1973 Act shall be designed
33 to comply with such state-wide planning goals and any subsequent re-
34 visions or amendments thereof.

1 Section 49. ORS 215.535 is amended to read:

2 215.535. In addition to the remedy prescribed in subsection (3) of
 3 ORS 215.510, the [Governor] commission may cause to be instituted any
 4 civil action or suit [he] it considers appropriate to remedy violations of
 5 any comprehensive [land use] plan or zoning, subdivision or other ordi-
 6 nance or regulation prescribed by the [Governor] commission pursuant
 7 to ORS 215.505 or section 45 of this 1973 Act .

8 **SECTION 50.** (1) Whenever the commission prescribes a comprehen-
 9 sive plan or zoning, subdivision or other ordinances or regulations for lands
 10 described in subsection (1) of section 45 of this Act, the costs incurred by
 11 the commission and the department in the preparation and administration
 12 of such plan or ordinances or regulations shall be borne by the city or
 13 county for which the commission has proposed such plan or ordinances
 14 or regulations. Upon presentation by the commission to the governing
 15 body of the city or county of a certified, itemized statement of costs, the
 16 governing body shall order payment to the commission out of any avail-
 17 able funds. With respect to a city or county, if no payment is made
 18 by the governing body within 30 days thereafter, the commission shall
 19 submit to the Secretary of State its certified, itemized statement of such
 20 costs and the commission shall be reimbursed upon the order of the Secre-
 21 tary of State to the State Treasurer, from the city's or county's share of the
 22 state's cigarette and liquor revenues.

23 (2) Within 10 days of receipt of the certified, itemized statement of costs
 24 under subsection (1) of this section, any city or county aggrieved by
 25 the statement may appeal to the Court of Appeals. The appeal shall
 26 be taken as from a contested case under ORS 183.480. Notice of the appeal
 27 shall operate as a stay in the commissioner's right to reimbursement
 28 under subsection (1) of this section until the decision is made on the appeal.

29 **PART VI APPEALS**

30 **SECTION 51.** (1) In the manner provided in sections 52 to 54 of this
 31 Act, the commission shall review upon:

32 (a) Petition by a county governing body, a comprehensive plan pro-
 33 vision or any zoning, subdivision or other ordinance or regulation adopted
 34 by a state agency, city, county or special district that the governing body

1 considers to be in conflict with state-wide planning goals approved under
2 section 37 of this Act or interim goals specified in ORS 215.515.

3 (b) Petition by a city or county governing body, a land conservation
4 and development action taken by a state agency, city, county or special
5 district that the governing body considers to be in conflict with state-
6 wide planning goals approved under section 37 of this Act or interim
7 goals specified in ORS 215.515.

8 (c) Petition by a state agency, city, county or special district, any
9 county governing body action that the state agency, city, county or special
10 district considers to be improperly taken or outside the scope of the gov-
11 erning body's authority under this Act.

12 (d) Petition by any person or group of persons whose interests are
13 substantially affected, a comprehensive plan provision or any zoning, sub-
14 division or other ordinance or regulation alleged to be in violation of
15 state-wide planning goals approved under section 37 of this Act or interim
16 goals specified in ORS 215.515.

17 (2) A petition filed with the commission pursuant to subsection (1)
18 of this section must be filed not later than 60 days (excluding Saturdays
19 and holidays) after the date of the final adoption or approval of the
20 action or comprehensive plan upon which the petition is based.

21 **SECTION 52.** (1) All review proceedings conducted by the commis-
22 sion pursuant to section 51 of this Act shall be based on the administra-
23 tive record, if any, prepared with respect to the proceedings for the adop-
24 tion or approval of the comprehensive plan provision or action that is
25 the subject of the review proceeding.

26 (2) The commission shall adopt such rules, procedures and regulations
27 for the conduct of review proceedings held pursuant to section 51 of
28 this Act, in accordance with the provisions of ORS 183.310 to 183.500 for
29 hearings and notice in contested cases.

30 (3) A city, county, state agency, special district or any person or
31 group of persons whose interests are substantially affected may intervene
32 in and be made a party to any review proceeding conducted by the com-
33 mission with the approval of the commission, upon the request of the
34 hearings officer appointed to conduct such proceeding or upon the ap-

1 proval by the hearings officer of a request by such agency, person or
2 group of persons for intervention in the review proceeding.

3 **SECTION 53.** (1) In carrying out its duties under section 51 of this
4 Act, the chairman of the commission shall assign each petition to be
5 reviewed by the commission to a hearings officer who shall conduct the
6 review proceeding.

7 (2) A hearings officer shall conduct a review proceeding in accordance
8 with the rules, procedures and regulations adopted by the commission.
9 Upon the conclusion of a hearing, the hearings officer shall promptly
10 determine the matter, prepare a recommendation for commission action
11 upon the matter and submit a copy of his recommendation to the com-
12 mission and to each party to the proceeding.

13 (3) The commission shall review the recommendation of the hearings
14 officer and the record of the proceeding and issue its order with respect
15 to the review proceeding within 60 days following the date of the filing
16 of the petition upon which such review proceeding is based. The com-
17 mission may adopt, reject or amend the recommendation of the hearings
18 officer in any matter.

19 (4) No order of the commission issued under subsection (3) of this
20 section is valid unless all members of the commission have received
21 the recommendation of the hearings officer in the matter and at least
22 four members of the commission concur in its action in the matter.

23 (5) Any party to a review proceeding before the commission who
24 is adversely affected or aggrieved by the order issued by the commis-
25 sion in the matter may appeal the order of the commission in the manner
26 provided in ORS 183.480 for appeals from final orders in contested cases.

27 (6) The commission may enforce orders issued under subsection (3) of
28 this section in appropriate judicial proceedings brought by the com-
29 mission therefor.

30 **SECTION 54.** (1) If, upon its review of the recommendation of a
31 hearings officer and the record of the review proceeding prepared follow-
32 ing a review proceeding before the commission, the commission is unable
33 to reach a decision in the matter without further information or evidence
34 not contained in the record of the proceeding, it may refer the matter back

1 to the hearings officer and request that the additional information or evi-
2 dence be acquired by him or that he correct any errors or deficiencies
3 found by the commission to exist in his recommendation or record of
4 the proceeding.

5 (2) In case of a referral of a matter back to the hearings officer
6 pursuant to subsection (1) of this section, the 60-day period referred
7 to in subsection (3) of section 53 of this Act is suspended for a reasonable
8 interval not to exceed 60 days.

9 **PART VII LEGISLATIVE REVIEW**

10 **SECTION 55.** The department shall report monthly to the committee
11 in order to keep the committee informed on progress made by the depart-
12 ment, commission, counties and other agencies in carrying out the pro-
13 visions of this Act.

14 **SECTION 56.** (1) Prior to the end of each even-numbered year, the
15 department shall prepare a written report for submission to the Legisla-
16 tive Assembly of the State of Oregon describing activities and accomp-
17 lishments of the department, commission, state agencies, cities, counties
18 and special districts in carrying out the provisions of this Act.

19 (2) A draft of the report required by subsection (1) of this section
20 shall be submitted to the committee for its review and comment at least
21 60 days prior to submission of the report to the Legislative Assembly. Com-
22 ments of the committee shall be incorporated into the final report.

23 (3) Goals and guidelines adopted by the commission shall be included
24 in the report to the Legislative Assembly submitted under subsection
25 (1) of this section.

26 **PART VIII MISCELLANEOUS**

27 Section 57. ORS 453.345 is amended to read:

28 453.345. (1) Applications for site certificates shall be made to the
29 Nuclear and Thermal Energy Council on a form prescribed by the council
30 and accompanied by the fee required by ORS 453.405. The application may
31 be filed not sooner than 12 months after filing of the notice of intent.

32 (2) Proposed use of a site within an area designated by the council
33 as suitable for location of thermal power plants or nuclear installations

1 does not preclude the necessity of the applicant obtaining a site certificate
2 for the specific site.

3 (3) Copies of the notice of intent and of the application shall be sent
4 for comment and recommendation within specified deadlines established
5 by the council to the Department of Environmental Quality, the State Water
6 Resources Board, the Fish Commission of the State of Oregon, the State
7 Game Commission, the State Board of Health, the State Engineer, the
8 State Geologist, the State Forestry Department, the Public Utility Commis-
9 sioner of Oregon, the State Department of Agriculture, the Department
10 of Transportation, the **Department of Land Conservation and Develop-**
11 **ment** and the Economic Development Division.

12 **SECTION 58.** The part designations and unit captions used in this
13 Act are provided only for the convenience of locating provisions of this Act,
14 and are not part of the statutory law of this state.

15 **SECTION 59.** This Act being necessary for the immediate preservation
16 of the public peace, health and safety, an emergency is declared to exist,
17 and this Act takes effect on July 1, 1973.



APPENDIX E

Engrossed Re-Engrossed
Senate Bill 100

Page

435

ENG.-RE-ENGROSSED

(March 23 amendments not printed)

Senate Bill 100

Ordered by the Senate April 9
(Including Amendments by Senate March 23, April 9 and April 18)

Sponsored by Senators MACPHERSON, HALLOCK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates Department of Land Conservation and Development, composed of Land Conservation and Development Commission, director and employees. Establishes Joint Legislative Committee on Land Use, as standing committee, to advise and assist department in carrying out its duties.

Authorizes commission to designate activities of state-wide significance in public transportation, public sewerage systems and public schools and to make recommendation for additional designations, subject to approval of Legislative Assembly. Requires commission, subject to approval of Legislative Assembly, to promulgate and implement state-wide planning goals consistent with regional, county and city concerns for such activities and state-wide planning guidelines for land use planning in state. Requires state agencies, planning districts, cities, counties and special districts to comply with state-wide planning guidelines and state-wide planning goals in adoption of comprehensive plans and zoning, subdivision or other ordinances and regulations. Makes counties responsible for coordinating all land use planning activities within counties, except for cities having population of 300,000 or more.

Requires permit to be issued by commission for development projects constituting activities of state-wide significance. Provides for enforcement of permit requirements. Authorizes injunction of activities of state-wide significance carried on without permit.

Permits voluntary association of counties for planning purposes. Provides for establishment of regional planning agency composed of cities and counties, subject to approval of voters in proposed region. Authorizes voluntary association of local governments to perform coordinative planning functions of counties under Act.

Continued on Page 2

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

Continued from Page 1

Requires, within one year after approval of state-wide planning guidelines, all comprehensive plans and zoning, subdivision or other ordinances or regulations to comply with such guidelines. Authorizes commission to perform planning and zoning functions of noncomplying governmental units. Provides, in case of nonpayment by city or county, for reimbursement of commission from city or county share of state liquor and cigarette revenues. Establishes appeal procedures.

Provides for review by commission of specified land conservation and development actions and plans. Establishes Land Conservation and Development Account in General Fund for use by department.

1

A BILL FOR AN ACT

2 Relating to land use; creating new provisions; amending ORS 215.055,
3 215.510, 215.515, 215.535 and 453.345; and appropriating money.

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

5

PART I INTRODUCTION

6

PREAMBLE

7 **SECTION 1.** The Legislative Assembly finds that:

8 (1) Uncoordinated use of lands within this state threaten the orderly
9 development, the environment of this state and the health, safety, order,
10 convenience, prosperity and welfare of the people of this state.

11 (2) To promote coordinated administration of land uses consistent with
12 comprehensive plans adopted throughout the state, it is necessary to
13 establish a process for the review of state agency, city, county and special
14 district land conservation and development plans for compliance with
15 state-wide planning goals and guidelines.

16 (3) Except as otherwise provided in subsection (4) of this section,
17 cities and counties should remain as the agencies to consider, promote and
18 manage the local aspects of land conservation and development for the
19 best interests of the people within their jurisdictions.

20 (4) The promotion of coordinated state-wide land conservation and
21 development requires the creation of a state-wide planning agency to
22 prescribe planning goals and objectives to be applied by state agencies,
23 cities, counties and special districts throughout the state.

24 (5) The impact of proposed development projects, constituting activities
25 of state-wide significance upon the public health, safety and welfare,
26 requires a system of permits reviewed by a state-wide agency to carry out
27 state-wide planning goals and guidelines prescribed for application for
28 activities of state-wide significance throughout this state.

29

POLICY STATEMENT

30 **SECTION 2.** The Legislative Assembly declares that, in order to assure
31 the highest possible level of liveability in Oregon, it is necessary to provide
32 for properly prepared and coordinated comprehensive plans for cities and
33 counties, regional areas and the state as a whole. These comprehensive plans:

- 1 (1) Must be adopted by the appropriate governing body at the local
2 and state levels;
- 3 (2) Are expressions of public policy in the form of policy statements,
4 generalized maps and standards and guidelines;
- 5 (3) Shall be the basis for more specific rules, regulations and ordinances
6 which implement the policies expressed through the comprehensive plans;
- 7 (4) Shall be prepared to assure that all public actions are consistent
8 and coordinated with the policies expressed through the comprehensive
9 plans; and
- 10 (5) Shall be regularly reviewed and, if necessary, revised to keep them
11 consistent with the changing needs and desires of the public they are
12 designed to serve.

13 DEFINITIONS

14 **SECTION 3.** As used in this Act, unless the context requires otherwise:

- 15 (1) "Activity of state-wide significance" means a land conservation and
16 development activity designated pursuant to section 25 of this Act.
- 17 (2) "Commission" means the Land Conservation and Development
18 Commission.
- 19 (3) "Committee" means the Joint Legislative Committee on Land Use.
- 20 (4) "Comprehensive plan" means a generalized, coordinated land use
21 map and policy statement of the governing body of a state agency, city,
22 county or special district that interrelates all functional and natural sys-
23 tems and activities relating to the use of lands, including but not limited
24 to sewer and water systems, transportation systems, educational systems,
25 recreational facilities, and natural resources and air and water quality
26 management programs. "Comprehensive" means all-inclusive, both in terms
27 of the geographic area covered and functional and natural activities and
28 systems occurring in the area covered by the plan. "General nature" means
29 a summary of policies and proposals in broad categories and does not neces-
30 sarily indicate specific locations of any area, activity or use. A plan is "co-
31 ordinated" when the needs of all levels of governments, semipublic and
32 private agencies and the citizens of Oregon have been considered and
33 accommodated as much as possible. "Land" includes water, both surface
34 and subsurface, and the air.

1 (5) "Department" means the Department of Land Conservation and
2 Development.

3 (6) "Director" means the Director of the Department of Land Con-
4 servation and Development.

5 (7) "Special district" means any unit of local government, other than
6 a city or county, authorized and regulated by statute and includes, but is
7 not limited to: Water control districts, irrigation districts, port districts,
8 regional air quality control authorities, fire districts, school districts, hos-
9 pital districts, mass transit districts and sanitary districts.

10 (8) "Voluntary association of local governments" means a regional
11 planning agency in this state officially designated by the Governor pur-
12 suant to the federal Office of Management and Budget Circular A-95 as
13 a regional clearinghouse.

14 **PART II ORGANIZATION, ROLES AND RESPONSIBILITIES**

15 **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

16 **SECTION 4.** The Department of Land Conservation and Development
17 is established. The department shall consist of the Land Conservation and
18 Development Commission, the director and their subordinate officers and
19 employes.

20 **SECTION 5.** (1) There is established a Land Conservation and De-
21 velopment Commission consisting of seven members appointed by the
22 Governor, subject to confirmation by the Senate in the manner provided
23 in ORS 171.560 and 171.570.

24 (2) In making appointments under subsection (1) of this section, the
25 Governor shall select from residents of this state one member from each
26 congressional district and the remaining members from the state at large.
27 At least one and no more than two members shall be from Multnomah
28 County.

29 (3) The term of office of each member of the commission is four years,
30 but a member may be removed by the Governor for cause. Before the ex-
31 piration of the term of a member, the Governor shall appoint a successor.
32 No person shall serve more than two full terms as a member of the com-
33 mission.

34 (4) If there is a vacancy for any cause, the Governor shall make an

1 appointment to become immediately effective for the unexpired term.

2 **SECTION 6.** Notwithstanding the term of office specified in section 5
3 of this Act, of the members first appointed to the commission:

4 (1) Two shall serve for a term ending June 30, 1974.

5 (2) Two shall serve for a term ending June 30, 1975.

6 (3) Two shall serve for a term ending June 30, 1976.

7 (4) One shall serve for a term ending June 30, 1977.

8 **SECTION 7.** (1) The commission shall select one of its members as
9 chairman and another member as vice chairman, for such terms and with
10 duties and powers necessary for the performance of the functions of such
11 offices as the commission determines. The vice chairman of the commission
12 shall act as the chairman of the commission in the absence of the chairman.

13 (2) A majority of the members of the commission constitutes a quorum
14 for the transaction of business.

15 **SECTION 8.** Members of the commission are entitled to compensation
16 and expenses as provided in ORS 292.495.

17 **SECTION 9.** The commission shall:

18 (1) Direct the performance by the director and his staff of their
19 functions under this Act.

20 (2) In accordance with the provisions of ORS chapter 183, promulgate
21 rules that it considers necessary in carrying out this Act.

22 (3) Cooperate with the appropriate agencies of the United States, this
23 state and its political subdivisions, any other state, any interstate agency,
24 any person or groups of persons with respect to land conservation and
25 development.

26 (4) Appoint advisory committees to aid it in carrying out this Act and
27 provide technical and other assistance, as it considers necessary, to each
28 such committee.

29 **SECTION 10.** The commission may:

30 (1) Apply for and receive moneys from the Federal Government and
31 from this state or any of its agencies or departments.

32 (2) Contract with any public agency for the performance of services or
33 the exchange of employes or services by one to the other necessary in
34 carrying out this Act.

1 (3) Contract for the services of and consultation with professional
2 persons or organizations, not otherwise available through federal, state and
3 local governmental agencies, in carrying out its duties under this Act.

4 (4) Perform other functions required to carry out this Act.

5 **SECTION 11.** Pursuant to the provisions of this Act, the commission
6 shall:

7 (1) Establish state-wide planning goals consistent with regional, county
8 and city concerns;

9 (2) Issue permits for activities of state-wide significance;

10 (3) Prepare inventories of land uses;

11 (4) Prepare state-wide planning guidelines;

12 (5) Review comprehensive plans for conformance with state-wide plan-
13 ning goals;

14 (6) Coordinate planning efforts of state agencies to assure conformance
15 with state-wide planning goals and compatability with city and county
16 comprehensive plans;

17 (7) Insure widespread citizen involvement and input in all phases of
18 the process;

19 (8) Prepare model zoning, subdivision and other ordinances and regu-
20 lations to guide state agencies, cities, counties and special districts in imple-
21 menting state-wide planning goals, particularly those for the areas listed in
22 subsection (2) of section 34 of this Act;

23 (9) Review and recommend to the Legislative Assembly the designation
24 of areas of critical state concern;

25 (10) Report periodically to the Legislative Assembly and to the com-
26 mittee; and

27 (11) Perform other duties required by law.

28 **SECTION 12.** If an interstate land conservation and development plan-
29 ning agency is created by an interstate agreement or compact entered into
30 by this state, the commission shall perform the functions of this state with
31 respect to the agreement or compact. If the functions of the interstate plan-
32 ning agency duplicate any of the functions of the commission under this
33 Act, the commission may:

34 (1) Negotiate with the interstate agency in defining the areas of

1 responsibility of the commission and the interstate planning agency; and
2 (2) Cooperate with the interstate planning agency in the performance
3 of its functions.

4 **SECTION 13.** (1) The commission shall appoint a person to serve as
5 the Director of the Department of Land Conservation and Development.
6 The director shall hold his office at the pleasure of the commission and his
7 salary shall be fixed by the commission unless otherwise provided by law.

8 (2) In addition to his salary, the director shall be reimbursed, subject
9 to any applicable law regulating travel and other expenses of state officers
10 and employes, for actual and necessary expenses incurred by him in the
11 performance of his official duties.

12 **SECTION 14.** Subject to policies adopted by the commission, the di-
13 rector shall:

14 (1) Be the administrative head of the department.

15 (2) Coordinate the activities of the department in its land conservation
16 and development functions with such functions of federal agencies, other
17 state agencies, cities, counties and special districts.

18 (3) Appoint, reappoint, assign and reassign all subordinate officers and
19 employes of the department, prescribe their duties and fix their compen-
20 sation, subject to the State Merit System Law.

21 (4) Represent this state before any agency of this state, any other state
22 or the United States with respect to land conservation and development
23 within this state.

24 **SECTION 15.** (1) There is established in the General Fund in the
25 State Treasury the Land Conservation and Development Account. Moneys
26 in the account are continuously appropriated for the purpose of carrying
27 out the provisions of this Act.

28 (2) All fees, moneys and other revenue received by the department
29 or the committee shall be deposited in the Land Conservation and Develop-
30 ment Account.

31 **OREGON COASTAL CONSERVATION AND**
32 **DEVELOPMENT COMMISSION**

33 **SECTION 16.** (1) The Land Conservation and Development Commis-
34 sion, by agreement with the Oregon Coastal Conservation and Development

1 Commission created by ORS 191.120 may delegate to the Oregon Coastal
2 Conservation and Development Commission, any of the functions of the
3 Land Conservation and Development Commission. However, the Land
4 Conservation and Development Commission must review and grant ap-
5 proval prior to any action taken by the Oregon Coastal Conservation and
6 Development Commission with respect to a delegated function.

7 (2) The Land Conservation and Development Commission may provide
8 staff and financial assistance to the Oregon Coastal Conservation and
9 Development Commission in carrying out duties under this section.

10 CITIES AND COUNTIES

11 **SECTION 17.** Cities and counties shall exercise their planning and
12 zoning responsibilities in accordance with this Act and the state-wide plan-
13 ning goals and guidelines approved under this Act.

14 **SECTION 18.** Pursuant to this Act, each city and county in this state
15 shall:

16 (1) Prepare and adopt comprehensive plans consistent with state-wide
17 planning goals and guidelines approved by the commission; and

18 (2) Enact zoning, subdivision and other ordinances or regulations to
19 implement their comprehensive plans.

20 **SECTION 19.** (1) In addition to the responsibilities stated in sections
21 17 and 18 of this Act, each county through its governing body, shall be
22 responsible for coordinating all planning activities affecting land uses
23 within the county, including those of the county, cities, special districts and
24 state agencies, to assure an integrated comprehensive plan for the entire
25 area of the county. For purposes of this subsection, the responsibility of
26 the county described in this subsection shall not apply to cities having a
27 population of 300,000 or more, and such cities shall exercise, within the
28 incorporated limits thereof, the authority vested in counties by this sub-
29 section.

30 (2) For the purposes of carrying out the provisions of this Act, counties
31 may voluntarily join together with adjacent counties as authorized in ORS
32 chapter 190.

33 (3) Whenever counties and cities representing 51 percent of the popu-
34 lation in their area petition the commission for an election in their area to

1 form a regional planning agency to exercise the authority of the counties
2 under subsection (1) of this section in the area, the commission shall
3 review the petition. If it finds that the area described in the petition forms
4 a reasonable planning unit, it shall call an election in the area to form a
5 regional planning agency. The election shall be conducted in the manner
6 provided in ORS chapter 259. The county clerk shall be considered the
7 election officer and the commission shall be considered the district election
8 authority. The agency shall be considered established if the majority of
9 votes favor the establishment.

10 (4) If a voluntary association of local governments adopts a resolution
11 ratified by each participating county and a majority of the participating
12 cities therein which authorizes the association to perform the review, ad-
13 visory and coordination functions assigned to the counties under sub-
14 section (1) of this section, the association may perform such duties.

15 SPECIAL DISTRICTS AND STATE AGENCIES

16 SECTION 20. Special districts shall exercise their planning duties,
17 powers and responsibilities and take actions that are authorized by law
18 with respect to programs affecting land use in accordance with state-wide
19 planning goals and guidelines approved pursuant to this Act.

20 SECTION 21. State agencies shall carry out their planning duties,
21 powers and responsibilities and take actions that are authorized by law
22 with respect to programs affecting land use in accordance with state-wide
23 planning goals and guidelines approved pursuant to this Act.

24 JOINT LEGISLATIVE COMMITTEE ON LAND USE

25 SECTION 22. The Joint Legislative Committee on Land Use is estab-
26 lished as a joint committee of the Legislative Assembly. The committee
27 shall select an executive secretary who shall serve at the pleasure of the
28 committee and under its direction.

29 SECTION 23. (1) The Joint Legislative Committee on Land Use shall
30 consist of four members of the House of Representatives appointed by the
31 Speaker and three members of the Senate appointed by the President. No
32 more than three House members of the committee shall be of the same
33 political party. No more than two Senate members of the committee shall
34 be of the same political party.

1 (2) The chairman of the House and Senate Environment and Land
2 Use Committees of the Fifty-seventh Legislative Assembly of the State of
3 Oregon shall be two of the members appointed under subsection (1) of
4 this section for the period beginning with the effective date of this Act.

5 (3) The committee has a continuing existence and may meet, act and
6 conduct its business during sessions of the Legislative Assembly or any
7 recess thereof, and in the interim period between sessions.

8 (4) The term of a member shall expire upon the convening of the Legis-
9 lative Assembly in regular session next following the commencement of
10 the member's term. When a vacancy occurs in the membership of the
11 committee in the interim between sessions, until such vacancy is filled, the
12 membership of the committee shall be deemed not to include the vacant
13 position for the purpose of determining whether a quorum is present and
14 a quorum is the majority of the remaining members.

15 (5) Members of the committee shall be reimbursed for actual and
16 necessary expenses incurred or paid in the performance of their duties as
17 members of the committee, such reimbursement to be made from funds
18 appropriated for such purposes, after submission of approved voucher
19 claims.

20 (6) The committee shall select a chairman. The chairman may, in addi-
21 tion to his other authorized duties, approve voucher claims.

22 (7) Action of the committee shall be taken only upon the affirmative
23 vote of the majority of the members of the committee.

24 **SECTION 24.** The committee shall:

25 (1) Advise the department on all matters under the jurisdiction of the
26 department;

27 (2) Review and make recommendations to the Legislative Assembly
28 on proposals for additions to or modifications of designations of activities of
29 state-wide significance, and for designations of areas of critical state
30 concern;

31 (3) Review and make recommendations to the Legislative Assembly
32 on state-wide planning goals and guidelines approved by the commission;

33 (4) Study and make recommendations to the Legislative Assembly
34 on the implementation of a program for compensation by the public to

1 owners of lands within this state for the value of any loss of use of such
2 lands resulting directly from the imposition of any zoning, subdivision or
3 other ordinance or regulation regulating or restricting the use of such
4 lands. Such recommendations shall include, but not be limited to, proposed
5 methods for the valuation of such loss of use and proposed limits, if any,
6 to be imposed upon the amount of compensation to be paid by the public
7 for any such loss of use; and

8 (5) Make recommendations to the Legislative Assembly on any other
9 matter relating to land use planning in Oregon.

10 PART III ACTIVITIES OF STATE-WIDE SIGNIFICANCE

11 DESIGNATION

12 SECTION 25. (1) The following activities may be designated by the
13 commission as activities of state-wide significance if the commission deter-
14 mines that by their nature or magnitude they should be so considered:

15 (a) The planning and siting of public transportation facilities.

16 (b) The planning and siting of public sewerage systems, water supply
17 systems and solid waste disposal sites and facilities.

18 (c) The planning and siting of public schools.

19 (2) Nothing in this Act supersedes any duty, power or responsibility
20 vested by statute in any state agency relating to its activities described in
21 subsection (1) of this section; except that, a state agency may neither
22 implement any such activity nor adopt any plan relating to such an activity
23 without the prior review and comment of the commission.

24 SECTION 26. (1) In addition to the activities of state-wide signifi-
25 cance that are designated by the commission under section 25 of this Act,
26 the commission may recommend to the committee the designation of addi-
27 tional activities of state-wide significance. Each such recommendation shall
28 specify the reasons for the proposed designation of the activity of state-
29 wide significance, the dangers that would result from such activity being
30 uncontrolled and the suggested state-wide planning goals and guidelines
31 to be applied for the proposed activity.

32 (2) The commission may recommend to the committee the designation
33 of areas of critical state concern. Each such recommendation shall specify
34 the criteria developed and reasons for the proposed designation, the damages

1 that would result from uncontrolled development within the area, the
2 reasons for the implementation of state regulations for the proposed area
3 and the suggested state regulations to be applied within the proposed area.

4 (3) The commission may act under subsections (1) and (2) of this sec-
5 tion on its own motion or upon the recommendation of a state agency, city,
6 county or special district. If the commission receives a recommendation
7 from a state agency, city, county or special district and finds the proposed
8 activity or area to be unsuitable for designation, it shall notify the state
9 agency, city, county or special district of its decision and its reasons there-
10 for.

11 (4) Immediately following its decision to favorably recommend to
12 the Legislative Assembly the designation of an additional activity of state-
13 wide significance or the designation of an area of critical state concern,
14 the commission shall submit the proposed designation accompanied by the
15 supporting materials described in subsections (1) and (2) of this section to
16 the committee for its review.

17 **PERMITS FOR ACTIVITIES OF STATE-WIDE SIGNIFICANCE**

18 **SECTION 27.** (1) On and after the date the commission has approved
19 state-wide planning goals and guidelines for activities of state-wide sig-
20 nificance designated under section 25 of this Act, no proposed project con-
21 stituting such an activity may be initiated by any person or public agency
22 without a planning and siting permit issued by the commission therefor.

23 (2) Any person or public agency desiring to initiate a project consti-
24 tuting an activity of state-wide significance shall apply to the department
25 for a planning and siting permit for such project. The application shall
26 contain the plans for the project and the manner in which such project
27 has been designed to meet the goals and guidelines for activities of state-
28 wide significance and the comprehensive plans for the county within
29 which the project is proposed, and any other information required by the
30 commission as prescribed by rule of the commission.

31 (3) The department shall transmit copies of the application to affected
32 county and state agencies for their review and recommendation.

33 (4) The county governing body and the state agencies shall review
34 an application transmitted to it under subsection (3) of this section and

1 shall, within 30 days after the date of the receipt of the application, sub-
2 mit their recommendations on the application to the commission.

3 (5) If the commission finds after review of the application and the
4 comments submitted by the county governing body and state agencies that
5 the proposed project complies with the state-wide goals and guidelines for
6 activities of state-wide significance and the comprehensive plans within
7 the county, it shall approve the application and issue a planning and siting
8 permit for the proposed project to the person or public agency applying
9 therefor. Action shall be taken by the commission within 30 days of the
10 receipt of the recommendation of the county and state agencies.

11 (6) The commission may prescribe and include in the planning and
12 siting permit such conditions or restrictions that it considers necessary
13 to assure that the proposed project complies with the state-wide goals and
14 guidelines for activities of state-wide significance and the comprehensive
15 plans within the county.

16 **SECTION 28.** If the activity requiring a planning and siting permit
17 under section 27 of this Act also requires any other permit from any state
18 agency, the commission, with the cooperation and concurrence of the other
19 agency, may provide a joint application form and permit to satisfy both
20 the requirements of this Act and any other requirements set by statute or
21 by rule of the state agency.

22 **SECTION 29.** (1) If any person or public agency is in doubt whether
23 a proposed development project constitutes an activity of state-wide sig-
24 nificance, the person or public agency may request a determination from
25 the commission on the question. Within 60 days after the date of the receipt
26 by it of such a request, the commission, with the advice of the committee
27 and of the county governing body for the county in which such activity is
28 proposed, shall issue a binding letter of interpretation with respect to the
29 proposed project.

30 (2) Requests for determinations under this section shall be made to the
31 commission in writing and in such form and contain such information as
32 may be prescribed by the commission.

33 **SECTION 30.** (1) No project constituting an activity of state-wide

1 significance shall be undertaken without a planning and siting permit is-
2 sued under section 27 of this Act.

3 (2) Any person or agency acting in violation of subsection (1) of this
4 section may be enjoined in civil proceedings brought in the name of the
5 county or the State of Oregon.

6 **SECTION 31.** If the county governing body or the commission de-
7 termines the existence of an alleged violation under section 30 of this Act,
8 it may:

9 (1) Investigate, hold hearings, enter orders and take action that it
10 deems appropriate under this Act, as soon as possible.

11 (2) For the purpose of investigating conditions relating to the violation,
12 through its members or its duly authorized representatives, enter at rea-
13 sonable times upon any private or public property.

14 (3) Conduct public hearings.

15 (4) Publish its findings and recommendations as they are formulated
16 relative to the violation.

17 (5) Give notice of any order relating to a particular violation of its
18 state-wide goals, a particular violation of the terms or conditions of a plan-
19 ning and siting permit or a particular violation of the provisions of this
20 Act by mailing notice to the person or public body conducting or proposing
21 to conduct the project affected in the manner provided by ORS chapter 183.

22 **PART IV STATE-WIDE PLANNING GOALS AND GUIDELINES**

23 **SECTION 32.** All comprehensive plans and any zoning, subdivision and
24 other ordinances and regulations adopted by a state agency, city, county
25 or special district to carry out such plans shall be in conformity with the
26 state-wide planning goals within one year from the date such goals are
27 approved by the commission.

28 **SECTION 33.** Not later than January 1, 1975, the department shall pre-
29 pare and the commission shall adopt state-wide planning goals and guide-
30 lines for use by state agencies, cities, counties and special districts in pre-
31 paring, adopting, revising and implementing existing and future compre-
32 hensive plans.

1 **SECTION 34.** In preparing and adopting state-wide planning goals and
2 guidelines, the department and the commission shall:

3 (1) Consider the existing comprehensive plans of state agencies, cities,
4 counties and special districts in order to preserve functional and local
5 aspects of land conservation and development.

6 (2) Give priority consideration to the following areas and activities:

7 (a) Those activities listed in section 25 of this Act;

8 (b) Lands adjacent to freeway interchanges;

9 (c) Estuarine areas;

10 (d) Tide, marsh and wetland areas;

11 (e) Lakes and lakeshore areas;

12 (f) Wilderness, recreational and outstanding scenic areas;

13 (g) Beaches, dunes, coastal headlands and related areas;

14 (h) Wild and scenic rivers and related lands;

15 (i) Flood plains and areas of geologic hazard;

16 (j) Unique wildlife habitats; and

17 (k) Agricultural land.

18 **SECTION 35.** To assure widespread citizen involvement in all phases
19 of the planning process:

20 (1) The commission shall appoint a State Citizen Involvement Advis-
21 ory Committee, broadly representative of geographic areas of the state and
22 of interests relating to land uses and land use decisions, to develop a pro-
23 gram for the commission that promotes and enhances public participation
24 in the development of state-wide planning goals and guidelines.

25 (2) Within 90 days after the effective date of this Act, each county
26 governing body shall submit to the commission a program for citizen in-
27 volvement in preparing, adopting and revising comprehensive plans with-
28 in the county. Such program shall at least contain provision for a citizen
29 advisory committee or committees broadly representative of geographic
30 areas and of interests relating to land uses and land use decisions.

31 (3) The state advisory committee appointed under subsection (1) of this
32 section shall review the proposed programs submitted by each county and
33 recommend to the commission whether or not the proposed program ade-
34 quately provides for public involvement in the planning process.

1 **SECTION 36.** (i) In preparing the state-wide planning goals and
2 guidelines, the department shall:

3 (a) Hold at least 10 public hearings throughout the state, causing no-
4 tice of the time, place and purpose of each such hearing to be published in
5 a newspaper of general circulation within the area where the hearing is
6 to be conducted not later than 30 days prior to the date of the hearing.

7 (b) Implement any other provision for public involvement developed
8 by the state advisory committee under subsection (1) of section 35 of this
9 Act and approved by the commission.

10 (2) Upon completion of the preparation of the proposed state-wide
11 planning goals and guidelines, the department shall submit them to the
12 commission for approval.

13 **SECTION 37.** Upon receipt of the proposed state-wide planning goals
14 and guidelines prepared and submitted to it by the department, the com-
15 mission shall:

16 (1) Hold at least one public hearing on the proposed state-wide plan-
17 ning goals and guidelines. The commission shall cause notice of the time,
18 place and purpose of the hearings and the place where copies of the
19 proposed goals and guidelines are available before the hearings with the
20 cost thereof to be published in a newspaper of general circulation in the
21 state not later than 30 days prior to the date of the hearing. The department
22 shall supply a copy of its proposed state-wide planning goals and guide-
23 lines to the Governor, the committee, affected state agencies and special
24 districts and to each city and county without charge. The department shall
25 provide copies of such proposed goals and guidelines to other public agen-
26 cies or persons upon request and payment of the cost of preparing the
27 copies of the materials requested.

28 (2) Consider the recommendations and comments received from the
29 public hearings conducted under subsection (1) of this section, make any
30 revisions in the proposed state-wide planning goals and guidelines that it
31 considers necessary and approve the proposed goals and guidelines as they
32 may be revised by the commission.

33 **SECTION 38.** The commission may periodically revise, update and ex-
34 pand the initial state-wide planning goals and guidelines adopted under

1 section 37 of this Act. Such revisions, updatings or expansions shall be made
2 in the manner provided in sections 36 and 37 of this Act.

3 **SECTION 39.** Following the approval by the commission of state-wide
4 planning goals and guidelines, each county governing body shall review all
5 comprehensive plans for land conservation and development within the
6 county, both those adopted and those being prepared. The county gov-
7 erning body shall advise the state agency, city, county or special district
8 preparing the comprehensive plans whether or not the comprehensive plans
9 are in conformity with the state-wide planning goals.

10 **PART V COMPREHENSIVE PLANS**

11 **SECTION 40.** Comprehensive plans and zoning, subdivision, and other
12 ordinances and regulations adopted prior to the effective date of this Act
13 shall remain in effect until revised under this Act. It is intended that exist-
14 ing planning efforts and activities shall continue and that such efforts be
15 utilized in achieving the purposes of this Act.

16 **SECTION 41.** Prior to approval by the commission of its state-wide
17 planning goals and guidelines under section 37 of this Act, the goals listed
18 in ORS 215.515 shall be applied by state agencies, cities, counties and spe-
19 cial districts in the preparation, revision, adoption or implementation of
20 any comprehensive plan.

21 **SECTION 42.** Each city or county shall prepare and the city council or
22 the county governing body shall adopt the comprehensive plans required
23 under this Act or by any other law in accordance with section 41 of this
24 Act for those plans adopted prior to the expiration of one year following
25 the date the commission approves its state-wide planning goals and guide-
26 lines under section 37 of this Act. Plans adopted by cities and counties
27 after the expiration of one year following the date of approval of such
28 goals and guidelines by the commission shall be designed to comply with
29 such goals and any subsequent amendments thereto.

30 **Section 43.** ORS 215.055 is amended to read:

31 215.055. (1) *[The]* Any comprehensive plan *[and all legislation and*
32 *regulations]* and all zoning, subdivision or other ordinances and regula-
33 tions authorized by ORS 215.010 to 215.233 and adopted prior to the expira-
34 tion of one year following the date of the approval of state-wide planning

1 goals and guidelines under section 37 of this 1973 Act shall be designed to
2 promote the public health, safety and general welfare and shall be based on
3 the following considerations, among others: The various characteristics
4 of the various areas in the county, the suitability of the areas for par-
5 ticular land uses and improvements, the land uses and improvements in
6 the areas, trends in land improvement, density of development, property
7 values, the needs of economic enterprises in the future development of the
8 areas, needed access to particular sites in the areas, natural resources of the
9 county and prospective needs for development thereof, and the public
10 need for healthful, safe, aesthetic surroundings and conditions.

11 (2) Any plan and all zoning, subdivision or other ordinances and regu-
12 lations authorized by ORS 215.010 to 215.233 and adopted after the expira-
13 tion of one year after the date of the approval of state-wide planning goals
14 and guidelines under section 37 of this 1973 Act shall be designed to comply
15 with such state-wide planning goals and any subsequent revisions or
16 amendments thereof.

17 [(2)] (3) In order to conserve natural resources of the state, any land
18 use plan or zoning, subdivision or other ordinance adopted by a county
19 shall take into consideration lands that are, can or should be utilized for
20 sources or processing of mineral aggregates.

21 **SECTION 44.** Upon the expiration of one year after the date of the
22 approval of state-wide planning goals and guidelines and annually there-
23 after, each county governing body shall report to the commission on the
24 status of comprehensive plans within each county. Each such report shall
25 include:

26 (1) Copies of comprehensive plans reviewed by the county governing
27 body and copies of zoning and subdivision ordinances and regulations ap-
28 plied to those areas within the county listed in subsection (2) of section
29 34 of this Act.

30 (2) For those areas or jurisdictions within the county without com-
31 prehensive plans, a statement and review of the progress made toward
32 compliance with the state-wide planning goals.

33 **SECTION 45.** (1) Notwithstanding any other provision of law, after the
34 expiration of one year after the date of the approval of the initial state-

1 wide planning goals and guidelines under section 37 of this Act, upon 90
2 days' notice to the affected governing body or bodies, and upon public
3 hearings held within 30 days thereafter, the commission shall prescribe and
4 may amend and administer comprehensive plans and zoning, subdivision
5 or other ordinances and regulations necessary to develop and implement a
6 comprehensive plan within the boundaries of a county, whether or not
7 within the boundaries of a city, that do not comply with the state-wide
8 planning goals approved under this Act and any subsequent revisions or
9 amendments thereof.

10 (2) If the city or county has under consideration a comprehensive
11 plan or zoning, subdivision or other ordinances or regulations for lands
12 described in subsection (1) of this section, and shows satisfactory progress
13 toward the adoption of such comprehensive plan or such ordinances or
14 regulations, the commission may grant a reasonable extension of time
15 after the date set in this section for completion of such plan or such
16 ordinances or regulations.

17 (3) Any comprehensive plan or zoning, subdivision or other ordinance
18 or regulation adopted by the commission under subsection (1) of this
19 section shall comply with the state-wide planning goals approved under
20 this Act and all subsequent revisions or amendments thereof.

21 **SECTION 46.** (1) There is transferred to and vested in the commission
22 those duties, powers and functions vested in the Governor by ORS 215.505
23 to 215.535. After the effective date of this Act, the commission shall
24 exercise such duties, powers and functions.

25 (2) For the purpose of harmonizing and clarifying Oregon Revised
26 Statutes, the Legislative Counsel may substitute for words designating
27 the Governor, where such words occur in ORS 215.505 to 215.535, words
28 designating the Land Conservation and Development Commission.

29 Section 47. ORS 215.510 is amended to read:

30 215.510. (1) Any comprehensive [*land use plans*] **plan for any city**
31 **or county** prescribed or amended by the [*Governor*] commission pursuant
32 to ORS 215.505 or section 45 of this 1973 Act shall be in accordance with
33 the standards provided in ORS 215.515 and the notice and hearing re-
34 quirements provided in ORS 215.060.

1 (2) Any zoning, subdivision or other ordinances and regulations for any
2 city or county prescribed or amended by the [Governor] commission pur-
3 suant to ORS 215.505 or section 45 of this 1973 Act shall be in accordance
4 with the standards provided in ORS 215.055 and the notice and hearing
5 requirements provided in ORS 215.223.

6 (3) A comprehensive [land use] plan or zoning, subdivision or other
7 ordinance or regulation for any city or county prescribed or amended by
8 the [Governor] commission pursuant to ORS 215.505 or section 45 of this
9 1973 Act may be for any purpose provided in ORS 215.010 to 215.233 and
10 subsections (1) and (2) of 215.990, except that the [Governor] commission
11 may not prescribe building regulations. The [Governor] commission may,
12 however, cause to be instituted an appropriate proceeding to enjoin the
13 construction of buildings or performance of any other acts which would
14 constitute a land use that does not conform to the applicable [land use]
15 comprehensive plan or zoning, subdivision or other ordinance or regula-
16 tion.

17 (4) Any hearings required by this section may be held by the [Gov-
18 ernor] commission, or by a person designated by the [Governor] com-
19 mission, and all such hearings shall be held in the county seat of the
20 county or in the city in which said comprehensive [land use] plan or zon-
21 ing, subdivision or other ordinance or regulation is to be prescribed.

22 Section 48. ORS 215.515 is amended to read:

23 215.515. (1) Comprehensive physical planning, adopted by the com-
24 mission prior to the expiration of one year following the date of the
25 approval of state-wide planning goals and guidelines under section 37
26 of this 1973 Act, should provide guidance for physical development within
27 the state responsive to economic development, human resource develop-
28 ment, natural resource development and regional and metropolitan area
29 development. It should assist in attainment of the optimum living environ-
30 ment for the state's citizenry and assure sound housing, employment
31 opportunities, educational fulfillment and sound health facilities. State
32 plans should relate to intermediate and long-range growth objectives. The
33 plans should set a pattern upon which state agencies and local government

1 may base their programs and local area plans. Goals for comprehensive
2 physical planning are:

3 [(1)] (a) To preserve the quality of the air [and] , water and land
4 resources of the state.

5 [(2)] (b) To conserve open space and protect natural and scenic re-
6 sources.

7 [(3)] (c) To provide for the recreational needs of citizens of the
8 state and visitors.

9 [(4)] (d) To conserve prime farm lands for the production of crops
10 [and].

11 (e) To provide for an orderly and efficient transition from rural
12 to urban land use.

13 [(5)] (f) To protect life and property in areas subject to floods,
14 landslides and other natural disasters.

15 [(6)] (g) To provide and encourage a safe, convenient and economic
16 transportation system including all modes of transportation: Air, water,
17 rail, highway and mass transit, and recognizing differences in the social
18 costs in the various modes of transportation.

19 [(7)] (h) To develop a timely, orderly and efficient arrangement of
20 public facilities and services to serve as a framework for urban and rural
21 development.

22 [(8)] (i) To diversify and improve the economy of the state.

23 [(9)] (j) To ensure that the development of properties within the state
24 is commensurate with the character and the physical limitations of the land.

25 (2) Comprehensive plans adopted by the commission after the expira-
26 tion of one year after the date of the approval of state-wide planning
27 goals and guidelines under section 37 of this 1973 Act shall be designed
28 to comply with such state-wide planning goals and any subsequent re-
29 visions or amendments thereof.

30 Section 49. ORS 215.535 is amended to read:

31 215.535. In addition to the remedy prescribed in subsection (3) of
32 ORS 215.510, the [Governor] commission may cause to be instituted any
33 civil action or suit [he] it considers appropriate to remedy violations of
34 any comprehensive [land use] plan or zoning, subdivision or other ordi-

1 nance or regulation prescribed by the [Governor] commission pursuant
2 to ORS 215.505 or section 45 of this 1973 Act .

3 **SECTION 50.** (1) Whenever the commission prescribes a comprehen-
4 sive plan or zoning, subdivision or other ordinances or regulations for lands
5 described in subsection (1) of section 45 of this Act, the costs incurred by
6 the commission and the department in the preparation and administration
7 of such plan or ordinances or regulations shall be borne by the city or
8 county for which the commission has proposed such plan or ordinances
9 or regulations. Upon presentation by the commission to the governing
10 body of the city or county of a certified, itemized statement of costs, the
11 governing body shall order payment to the commission out of any avail-
12 able funds. With respect to a city or county, if no payment is made
13 by the governing body within 30 days thereafter, the commission shall
14 submit to the Secretary of State its certified, itemized statement of such
15 costs and the commission shall be reimbursed upon the order of the Secre-
16 tary of State to the State Treasurer, from the city's or county's share of the
17 state's cigarette and liquor revenues.

18 (2) Within 10 days of receipt of the certified, itemized statement of costs
19 under subsection (1) of this section, any city or county aggrieved by
20 the statement may appeal to the Court of Appeals. The appeal shall
21 be taken as from a contested case under ORS 183.480. Notice of the appeal
22 shall operate as a stay in the commissioner's right to reimbursement
23 under subsection (1) of this section until the decision is made on the appeal.

24 **PART VI APPEALS**

25 **SECTION 51.** (1) In the manner provided in sections 52 to 54 of this
26 Act, the commission shall review upon:

27 (a) Petition by a county governing body, a comprehensive plan pro-
28 vision or any zoning, subdivision or other ordinance or regulation adopted
29 by a state agency, city, county or special district that the governing body
30 considers to be in conflict with state-wide planning goals approved under
31 section 37 of this Act or interim goals specified in ORS 215.515.

32 (b) Petition by a city or county governing body, a land conservation
33 and development action taken by a state agency, city, county or special
34 district that the governing body considers to be in conflict with state-

1 wide planning goals approved under section 37 of this Act or interim
2 goals specified in ORS 215.515.

3 (c) Petition by a state agency, city, county or special district, any
4 county governing body action that the state agency, city, county or special
5 district considers to be improperly taken or outside the scope of the gov-
6 erning body's authority under this Act.

7 (d) Petition by any person or group of persons whose interests are
8 substantially affected, a comprehensive plan provision or any zoning, sub-
9 division or other ordinance or regulation alleged to be in violation of
10 state-wide planning goals approved under section 37 of this Act or interim
11 goals specified in ORS 215.515.

12 (2) A petition filed with the commission pursuant to subsection (1)
13 of this section must be filed not later than 60 days (excluding Saturdays
14 and holidays) after the date of the final adoption or approval of the
15 action or comprehensive plan upon which the petition is based.

16 **SECTION 52.** (1) All review proceedings conducted by the commis-
17 sion pursuant to section 51 of this Act shall be based on the administra-
18 tive record, if any, prepared with respect to the proceedings for the adop-
19 tion or approval of the comprehensive plan provision or action that is
20 the subject of the review proceeding.

21 (2) The commission shall adopt such rules, procedures and regulations
22 for the conduct of review proceedings held pursuant to section 51 of
23 this Act, in accordance with the provisions of ORS 183.310 to 183.500 for
24 hearings and notice in contested cases.

25 (3) A city, county, state agency, special district or any person or
26 group of persons whose interests are substantially affected may intervene
27 in and be made a party to any review proceeding conducted by the com-
28 mission with the approval of the commission, upon the request of the
29 hearings officer appointed to conduct such proceeding or upon the ap-
30 proval by the hearings officer of a request by such agency, person or
31 group of persons for intervention in the review proceeding.

32 **SECTION 53.** (1) In carrying out its duties under section 51 of this
33 Act, the chairman of the commission shall assign each petition to be

1 reviewed by the commission to a hearings officer who shall conduct the
2 review proceeding.

3 (2) A hearings officer shall conduct a review proceeding in accordance
4 with the rules, procedures and regulations adopted by the commission.
5 Upon the conclusion of a hearing, the hearings officer shall promptly
6 determine the matter, prepare a recommendation for commission action
7 upon the matter and submit a copy of his recommendation to the com-
8 mission and to each party to the proceeding.

9 (3) The commission shall review the recommendation of the hearings
10 officer and the record of the proceeding and issue its order with respect
11 to the review proceeding within 60 days following the date of the filing
12 of the petition upon which such review proceeding is based. The com-
13 mission may adopt, reject or amend the recommendation of the hearings
14 officer in any matter.

15 (4) No order of the commission issued under subsection (3) of this
16 section is valid unless all members of the commission have received
17 the recommendation of the hearings officer in the matter and at least
18 four members of the commission concur in its action in the matter.

19 (5) Any party to a review proceeding before the commission who
20 is adversely affected or aggrieved by the order issued by the commis-
21 sion in the matter may appeal the order of the commission in the manner
22 provided in ORS 183.480 for appeals from final orders in contested cases.

23 (6) The commission may enforce orders issued under subsection (3) of
24 this section in appropriate judicial proceedings brought by the com-
25 mission therefor.

26 **SECTION 54.** (1) If, upon its review of the recommendation of a
27 hearings officer and the record of the review proceeding prepared follow-
28 ing a review proceeding before the commission, the commission is unable
29 to reach a decision in the matter without further information or evidence
30 not contained in the record of the proceeding, it may refer the matter back
31 to the hearings officer and request that the additional information or evi-
32 dence be acquired by him or that he correct any errors or deficiencies
33 found by the commission to exist in his recommendation or record of
34 the proceeding.

1 (2) In case of a referral of a matter back to the hearings officer
2 pursuant to subsection (1) of this section, the 60-day period referred
3 to in subsection (3) of section 53 of this Act is suspended for a reasonable
4 interval not to exceed 60 days.

5 PART VII LEGISLATIVE REVIEW

6 SECTION 55. The department shall report monthly to the committee
7 in order to keep the committee informed on progress made by the depart-
8 ment, commission, counties and other agencies in carrying out the pro-
9 visions of this Act.

10 SECTION 56. (1) Prior to the end of each even-numbered year, the
11 department shall prepare a written report for submission to the Legisla-
12 tive Assembly of the State of Oregon describing activities and accomp-
13 lishments of the department, commission, state agencies, cities, counties
14 and special districts in carrying out the provisions of this Act.

15 (2) A draft of the report required by subsection (1) of this section
16 shall be submitted to the committee for its review and comment at least
17 60 days prior to submission of the report to the Legislative Assembly. Com-
18 ments of the committee shall be incorporated into the final report.

19 (3) Goals and guidelines adopted by the commission shall be included
20 in the report to the Legislative Assembly submitted under subsection
21 (1) of this section.

22 PART VIII MISCELLANEOUS

23 Section 57. ORS 453.345 is amended to read:

24 453.345. (1) Applications for site certificates shall be made to the
25 Nuclear and Thermal Energy Council on a form prescribed by the council
26 and accompanied by the fee required by ORS 453.405. The application may
27 be filed not sooner than 12 months after filing of the notice of intent.

28 (2) Proposed use of a site within an area designated by the council
29 as suitable for location of thermal power plants or nuclear installations
30 does not preclude the necessity of the applicant obtaining a site certificate
31 for the specific site.

32 (3) Copies of the notice of intent and of the application shall be sent
33 for comment and recommendation within specified deadlines established
34 by the council to the Department of Environmental Quality, the State Water

1 Resources Board, the Fish Commission of the State of Oregon, the State
2 Game Commission, the State Board of Health, the State Engineer, the
3 State Geologist, the State Forestry Department, the Public Utility Commis-
4 sioner of Oregon, the State Department of Agriculture, the Department
5 of Transportation, the **Department of Land Conservation and Develop-**
6 **ment** and the Economic Development Division.

7 **SECTION 58.** The part designations and unit captions used in this
8 Act are provided only for the convenience of locating provisions of this Act,
9 and are not part of the statutory law of this state.



APPENDIX F

Enrolled Senate Bill 100

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Enrolled
Senate Bill 100

Sponsored by Senators MACPHERSON, HALLOCK

CHAPTER.....

AN ACT

Relating to land use; creating new provisions; amending ORS 215.055, 215.510, 215.515, 215.535 and 453.345; and appropriating money.

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

PART I INTRODUCTION
PREAMBLE

SECTION 1. The Legislative Assembly finds that:

(1) 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.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with state-wide planning goals and guidelines.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.

(5) The impact of proposed development projects, constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state-wide planning goals and guidelines prescribed for application for activities of state-wide significance throughout this state.

POLICY STATEMENT

SECTION 2. The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

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

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

(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans;

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

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

DEFINITIONS

SECTION 3. As used in this Act, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to section 25 of this Act.

(2) "Commission" means the Land Conservation and Development Commission.

(3) "Committee" means the Joint Legislative Committee on Land Use.

(4) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(5) "Department" means the Department of Land Conservation and Development.

(6) "Director" means the Director of the Department of Land Conservation and Development.

(7) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(8) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

PART II ORGANIZATION, ROLES AND RESPONSIBILITIES DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

SECTION 4. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the director and their subordinate officers and employes.

SECTION 5. (1) There is established a Land Conservation and Development Commission consisting of seven members appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(2) In making appointments under subsection (1) of this section, the Governor shall select from residents of this state one member from each congressional district and the remaining members from the state at large. At least one and no more than two members shall be from Multnomah County.

(3) The term of office of each member of the commission is four years, but a member may be removed by the Governor for cause. Before the expiration of the term of a member, the Governor shall appoint a successor.

No person shall serve more than two full terms as a member of the commission.

(4) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

SECTION 6. Notwithstanding the term of office specified in section 5 of this Act, of the members first appointed to the commission:

(1) Two shall serve for a term ending June 30, 1974.

(2) Two shall serve for a term ending June 30, 1975.

(3) Two shall serve for a term ending June 30, 1976.

(4) One shall serve for a term ending June 30, 1977.

SECTION 7. (1) The commission shall select one of its members as chairman and another member as vice chairman, for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the commission shall act as the chairman of the commission in the absence of the chairman.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

SECTION 8. Members of the commission are entitled to compensation and expenses as provided in ORS 292.495.

SECTION 9. The commission shall:

(1) Direct the performance by the director and his staff of their functions under this Act.

(2) In accordance with the provisions of ORS chapter 183, promulgate rules that it considers necessary in carrying out this Act.

(3) Cooperate with the appropriate agencies of the United States, this state and its political subdivisions, any other state, any interstate agency, any person or groups of persons with respect to land conservation and development.

(4) Appoint advisory committees to aid it in carrying out this Act and provide technical and other assistance, as it considers necessary, to each such committee.

SECTION 10. The commission may:

(1) Apply for and receive moneys from the Federal Government and from this state or any of its agencies or departments.

(2) Contract with any public agency for the performance of services or the exchange of employees or services by one to the other necessary in carrying out this Act.

(3) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carrying out its duties under this Act.

(4) Perform other functions required to carry out this Act.

SECTION 11. Pursuant to the provisions of this Act, the commission shall:

(1) Establish state-wide planning goals consistent with regional, county and city concerns;

(2) Issue permits for activities of state-wide significance;

(3) Prepare inventories of land uses;

(4) Prepare state-wide planning guidelines;

(5) Review comprehensive plans for conformance with state-wide planning goals;

(6) Coordinate planning efforts of state agencies to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans;

(7) Insure widespread citizen involvement and input in all phases of the process;

(8) Prepare model zoning, subdivision and other ordinances and regulations to guide state agencies, cities, counties and special districts in imple-

menting state-wide planning goals, particularly those for the areas listed in subsection (2) of section 34 of this Act;

(9) Review and recommend to the Legislative Assembly the designation of areas of critical state concern;

(10) Report periodically to the Legislative Assembly and to the committee; and

(11) Perform other duties required by law.

SECTION 12. If an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under this Act, the commission may:

(1) Negotiate with the interstate agency in defining the areas of responsibility of the commission and the interstate planning agency; and

(2) Cooperate with the interstate planning agency in the performance of its functions.

SECTION 13. (1) The commission shall appoint a person to serve as the Director of the Department of Land Conservation and Development. The director shall hold his office at the pleasure of the commission and his salary shall be fixed by the commission unless otherwise provided by law.

(2) In addition to his salary, the director shall be reimbursed, subject to any applicable law regulating travel and other expenses of state officers and employes, for actual and necessary expenses incurred by him in the performance of his official duties.

SECTION 14. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employes of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

SECTION 15. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out the provisions of this Act.

(2) All fees, moneys and other revenue received by the department or the committee shall be deposited in the Land Conservation and Development Account.

OREGON COASTAL CONSERVATION AND DEVELOPMENT COMMISSION

SECTION 16. (1) The Land Conservation and Development Commission, by agreement with the Oregon Coastal Conservation and Development Commission created by ORS 191.120, may delegate to the Oregon Coastal Conservation and Development Commission any of the functions of the Land Conservation and Development Commission. However, the Land Conservation and Development Commission must review and grant approval prior to any action taken by the Oregon Coastal Conservation and Development Commission with respect to a delegated function.

(2) The Land Conservation and Development Commission may provide

staff and financial assistance to the Oregon Coastal Conservation and Development Commission in carrying out duties under this section.

CITIES AND COUNTIES

SECTION 17. Cities and counties shall exercise their planning and zoning responsibilities in accordance with this Act and the state-wide planning goals and guidelines approved under this Act.

SECTION 18. Pursuant to this Act, each city and county in this state shall:

(1) Prepare and adopt comprehensive plans consistent with state-wide planning goals and guidelines approved by the commission; and

(2) Enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans.

SECTION 19. (1) In addition to the responsibilities stated in sections 17 and 18 of this Act, each county through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including those of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. For purposes of this subsection, the responsibility of the county described in this subsection shall not apply to cities having a population of 300,000 or more, and such cities shall exercise, within the incorporated limits thereof, the authority vested in counties by this subsection.

(2) For the purposes of carrying out the provisions of this Act, counties may voluntarily join together with adjacent counties as authorized in ORS chapter 190.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 259. The county clerk shall be considered the election officer and the commission shall be considered the district election authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties.

SPECIAL DISTRICTS AND STATE AGENCIES

SECTION 20. Special districts shall exercise their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use in accordance with state-wide planning goals and guidelines approved pursuant to this Act.

SECTION 21. State agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use in accordance with state-wide planning goals and guidelines approved pursuant to this Act.

JOINT LEGISLATIVE COMMITTEE ON LAND USE

SECTION 22. The Joint Legislative Committee on Land Use is established as a joint committee of the Legislative Assembly. The committee shall select an executive secretary who shall serve at the pleasure of the committee and under its direction.

SECTION 23. (1) The Joint Legislative Committee on Land Use shall consist of four members of the House of Representatives appointed by the

Speaker and three members of the Senate appointed by the President. No more than three House members of the committee shall be of the same political party. No more than two Senate members of the committee shall be of the same political party.

(2) The chairman of the House and Senate Environment and Land Use Committees of the Fifty-seventh Legislative Assembly of the State of Oregon shall be two of the members appointed under subsection (1) of this section for the period beginning with the effective date of this Act.

(3) The committee has a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions.

(4) The term of a member shall expire upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. When a vacancy occurs in the membership of the committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum is the majority of the remaining members.

(5) Members of the committee shall be reimbursed for actual and necessary expenses incurred or paid in the performance of their duties as members of the committee, such reimbursement to be made from funds appropriated for such purposes, after submission of approved voucher claims.

(6) The committee shall select a chairman. The chairman may, in addition to his other authorized duties, approve voucher claims.

(7) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee.

SECTION 24. The committee shall:

(1) Advise the department on all matters under the jurisdiction of the department;

(2) Review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of designations of activities of state-wide significance, and for designations of areas of critical state concern;

(3) Review and make recommendations to the Legislative Assembly on state-wide planning goals and guidelines approved by the commission;

(4) Study and make recommendations to the Legislative Assembly on the implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision or other ordinance or regulation regulating or restricting the use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use; and

(5) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon.

PART III ACTIVITIES OF STATE-WIDE SIGNIFICANCE DESIGNATION

SECTION 25. (1) The following activities may be designated by the commission as activities of state-wide significance if the commission determines that by their nature or magnitude they should be so considered:

(a) The planning and siting of public transportation facilities.

(b) The planning and siting of public sewerage systems, water supply systems and solid waste disposal sites and facilities.

(c) The planning and siting of public schools.

(2) Nothing in this Act supersedes any duty, power or responsibility

vested by statute in any state agency relating to its activities described in subsection (1) of this section; except that, a state agency may neither implement any such activity nor adopt any plan relating to such an activity without the prior review and comment of the commission.

SECTION 26. (1) In addition to the activities of state-wide significance that are designated by the commission under section 25 of this Act, the commission may recommend to the committee the designation of additional activities of state-wide significance. Each such recommendation shall specify the reasons for the proposed designation of the activity of state-wide significance, the dangers that would result from such activity being uncontrolled and the suggested state-wide planning goals and guidelines to be applied for the proposed activity.

(2) The commission may recommend to the committee the designation of areas of critical state concern. Each such recommendation shall specify the criteria developed and reasons for the proposed designation, the damages that would result from uncontrolled development within the area, the reasons for the implementation of state regulations for the proposed area and the suggested state regulations to be applied within the proposed area.

(3) The commission may act under subsections (1) and (2) of this section on its own motion or upon the recommendation of a state agency, city, county or special district. If the commission receives a recommendation from a state agency, city, county or special district and finds the proposed activity or area to be unsuitable for designation, it shall notify the state agency, city, county or special district of its decision and its reasons therefor.

(4) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an additional activity of state-wide significance or the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsections (1) and (2) of this section to the committee for its review.

PERMITS FOR ACTIVITIES OF STATE-WIDE SIGNIFICANCE

SECTION 27. (1) On and after the date the commission has approved state-wide planning goals and guidelines for activities of state-wide significance designated under section 25 of this Act, no proposed project constituting such an activity may be initiated by any person or public agency without a planning and siting permit issued by the commission therefor.

(2) Any person or public agency desiring to initiate a project constituting an activity of state-wide significance shall apply to the department for a planning and siting permit for such project. The application shall contain the plans for the project and the manner in which such project has been designed to meet the goals and guidelines for activities of state-wide significance and the comprehensive plans for the county within which the project is proposed, and any other information required by the commission as prescribed by rule of the commission.

(3) The department shall transmit copies of the application to affected county and state agencies for their review and recommendation.

(4) The county governing body and the state agencies shall review an application transmitted to it under subsection (3) of this section and shall, within 30 days after the date of the receipt of the application, submit their recommendations on the application to the commission.

(5) If the commission finds after review of the application and the comments submitted by the county governing body and state agencies that the proposed project complies with the state-wide goals and guidelines for activities of state-wide significance and the comprehensive plans within the county, it shall approve the application and issue a planning and siting permit for the proposed project to the person or public agency applying

therefor. Action shall be taken by the commission within 30 days of the receipt of the recommendation of the county and state agencies.

(6) The commission may prescribe and include in the planning and siting permit such conditions or restrictions that it considers necessary to assure that the proposed project complies with the state-wide goals and guidelines for activities of state-wide significance and the comprehensive plans within the county.

SECTION 28. If the activity requiring a planning and siting permit under section 27 of this Act also requires any other permit from any state agency, the commission, with the cooperation and concurrence of the other agency, may provide a joint application form and permit to satisfy both the requirements of this Act and any other requirements set by statute or by rule of the state agency.

SECTION 29. (1) If any person or public agency is in doubt whether a proposed development project constitutes an activity of state-wide significance, the person or public agency may request a determination from the commission on the question. Within 60 days after the date of the receipt by it of such a request, the commission, with the advice of the committee and of the county governing body for the county in which such activity is proposed, shall issue a binding letter of interpretation with respect to the proposed project.

(2) Requests for determinations under this section shall be made to the commission in writing and in such form and contain such information as may be prescribed by the commission.

SECTION 30. (1) No project constituting an activity of state-wide significance shall be undertaken without a planning and siting permit issued under section 27 of this Act.

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon.

SECTION 31. If the county governing body or the commission determines the existence of an alleged violation under section 30 of this Act, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under this Act, as soon as possible.

(2) For the purpose of investigating conditions relating to the violation, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.

(3) Conduct public hearings.

(4) Publish its findings and recommendations as they are formulated relative to the violation.

(5) Give notice of any order relating to a particular violation of its state-wide goals, a particular violation of the terms or conditions of a planning and siting permit or a particular violation of the provisions of this Act by mailing notice to the person or public body conducting or proposing to conduct the project affected in the manner provided by ORS chapter 183.

PART IV STATE-WIDE PLANNING GOALS AND GUIDELINES

SECTION 32. All comprehensive plans and any zoning, subdivision and other ordinances and regulations adopted by a state agency, city, county or special district to carry out such plans shall be in conformity with the state-wide planning goals within one year from the date such goals are approved by the commission.

SECTION 33. Not later than January 1, 1975, the department shall prepare and the commission shall adopt state-wide planning goals and guidelines for use by state agencies, cities, counties and special districts in preparing, adopting, revising and implementing existing and future comprehensive plans.

SECTION 34. In preparing and adopting state-wide planning goals and guidelines, the department and the commission shall:

(1) Consider the existing comprehensive plans of state agencies, cities, counties and special districts in order to preserve functional and local aspects of land conservation and development.

(2) Give priority consideration to the following areas and activities:

- (a) Those activities listed in section 25 of this Act;
- (b) Lands adjacent to freeway interchanges;
- (c) Estuarine areas;
- (d) Tide, marsh and wetland areas;
- (e) Lakes and lakeshore areas;
- (f) Wilderness, recreational and outstanding scenic areas;
- (g) Beaches, dunes, coastal headlands and related areas;
- (h) Wild and scenic rivers and related lands;
- (i) Flood plains and areas of geologic hazard;
- (j) Unique wildlife habitats; and
- (k) Agricultural land.

SECTION 35. To assure widespread citizen involvement in all phases of the planning process:

(1) The commission shall appoint a State Citizen Involvement Advisory Committee, broadly representative of geographic areas of the state and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the development of state-wide planning goals and guidelines.

(2) Within 90 days after the effective date of this Act, each county governing body shall submit to the commission a program for citizen involvement in preparing, adopting and revising comprehensive plans within the county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(3) The state advisory committee appointed under subsection (1) of this section shall review the proposed programs submitted by each county and recommend to the commission whether or not the proposed program adequately provides for public involvement in the planning process.

SECTION 36. (1) In preparing the state-wide planning goals and guidelines, the department shall:

(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each such hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing.

(b) Implement any other provision for public involvement developed by the state advisory committee under subsection (1) of section 35 of this Act and approved by the commission.

(2) Upon completion of the preparation of the proposed state-wide planning goals and guidelines, the department shall submit them to the commission for approval.

SECTION 37. Upon receipt of the proposed state-wide planning goals and guidelines prepared and submitted to it by the department, the commission shall:

(1) Hold at least one public hearing on the proposed state-wide planning goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed state-wide planning goals and guidelines to the Governor, the committee, affected state agencies and special

districts and to each city and county without charge. The department shall provide copies of such proposed goals and guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any revisions in the proposed state-wide planning goals and guidelines that it considers necessary and approve the proposed goals and guidelines as they may be revised by the commission.

SECTION 38. The commission may periodically revise, update and expand the initial state-wide planning goals and guidelines adopted under section 37 of this Act. Such revisions, updates or expansions shall be made in the manner provided in sections 36 and 37 of this Act.

SECTION 39. Following the approval by the commission of state-wide planning goals and guidelines, each county governing body shall review all comprehensive plans for land conservation and development within the county, both those adopted and those being prepared. The county governing body shall advise the state agency, city, county or special district preparing the comprehensive plans whether or not the comprehensive plans are in conformity with the state-wide planning goals.

PART V COMPREHENSIVE PLANS

SECTION 40. Comprehensive plans and zoning, subdivision, and other ordinances and regulations adopted prior to the effective date of this Act shall remain in effect until revised under this Act. It is intended that existing planning efforts and activities shall continue and that such efforts be utilized in achieving the purposes of this Act.

SECTION 41. Prior to approval by the commission of its state-wide planning goals and guidelines under section 37 of this Act, the goals listed in ORS 215.515 shall be applied by state agencies, cities, counties and special districts in the preparation, revision, adoption or implementation of any comprehensive plan.

SECTION 42. Each city or county shall prepare and the city council or the county governing body shall adopt the comprehensive plans required under this Act or by any other law in accordance with section 41 of this Act for those plans adopted prior to the expiration of one year following the date the commission approves its state-wide planning goals and guidelines under section 37 of this Act. Plans adopted by cities and counties after the expiration of one year following the date of approval of such goals and guidelines by the commission shall be designed to comply with such goals and any subsequent amendments thereto.

Section 43. ORS 215.055 is amended to read:

215.055. (1) *[The] Any comprehensive plan [and all legislation and regulations] and all zoning, subdivision or other ordinances and regulations authorized by ORS 215.010 to 215.233 and adopted prior to the expiration of one year following the date of the approval of state-wide planning goals and guidelines under section 37 of this 1973 Act shall be designed to promote the public health, safety and general welfare and shall be based on the following considerations, among others: The various characteristics of the various areas in the county, the suitability of the areas for particular land uses and improvements, the land uses and improvements in the areas, trends in land improvement, density of development, property values, the needs of economic enterprises in the future development of the areas, needed access to particular sites in the areas, natural resources of the county and prospective needs for development thereof, and the public need for healthful, safe, aesthetic surroundings and conditions.*

(2) *Any plan and all zoning, subdivision or other ordinances and regulations authorized by ORS 215.010 to 215.233 and adopted after the expira-*

tion of one year after the date of the approval of state-wide planning goals and guidelines under section 37 of this 1973 Act shall be designed to comply with such state-wide planning goals and any subsequent revisions or amendments thereof.

[(2)] (3) In order to conserve natural resources of the state, any land use plan or zoning, subdivision or other ordinance adopted by a county shall take into consideration lands that are, can or should be utilized for sources or processing of mineral aggregates.

SECTION 44. Upon the expiration of one year after the date of the approval of state-wide planning goals and guidelines and annually thereafter, each county governing body shall report to the commission on the status of comprehensive plans within each county. Each such report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of zoning and subdivision ordinances and regulations applied to those areas within the county listed in subsection (2) of section 34 of this Act.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the state-wide planning goals.

SECTION 45. (1) Notwithstanding any other provision of law, after the expiration of one year after the date of the approval of the initial state-wide planning goals and guidelines under section 37 of this Act, upon 90 days' notice to the affected governing body or bodies, and upon public hearings held within 30 days thereafter, the commission shall prescribe and may amend and administer comprehensive plans and zoning, subdivision or other ordinances and regulations necessary to develop and implement a comprehensive plan within the boundaries of a county, whether or not within the boundaries of a city, that do not comply with the state-wide planning goals approved under this Act and any subsequent revisions or amendments thereof.

(2) If the city or county has under consideration a comprehensive plan or zoning, subdivision or other ordinances or regulations for lands described in subsection (1) of this section, and shows satisfactory progress toward the adoption of such comprehensive plan or such ordinances or regulations, the commission may grant a reasonable extension of time after the date set in this section for completion of such plan or such ordinances or regulations.

(3) Any comprehensive plan or zoning, subdivision or other ordinance or regulation adopted by the commission under subsection (1) of this section shall comply with the state-wide planning goals approved under this Act and all subsequent revisions or amendments thereof.

SECTION 46. (1) There is transferred to and vested in the commission those duties, powers and functions vested in the Governor by ORS 215.505 to 215.535. After the effective date of this Act, the commission shall exercise such duties, powers and functions.

(2) For the purpose of harmonizing and clarifying Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the Governor, where such words occur in ORS 215.505 to 215.535, words designating the Land Conservation and Development Commission.

Section 47. ORS 215.510 is amended to read:

215.510. (1) Any comprehensive [*land use plans*] plan for any city or county prescribed or amended by the [*Governor*] commission pursuant to ORS 215.505 or section 45 of this 1973 Act shall be in accordance with the standards provided in ORS 215.515 and the notice and hearing requirements provided in ORS 215.060.

(2) Any zoning, subdivision or other ordinances and regulations for any

city or county prescribed or amended by the [Governor] commission pursuant to ORS 215.505 or section 45 of this 1973 Act shall be in accordance with the standards provided in ORS 215.055 and the notice and hearing requirements provided in ORS 215.223.

(3) A comprehensive [land use] plan or zoning, subdivision or other ordinance or regulation for any city or county prescribed or amended by the [Governor] commission pursuant to ORS 215.505 or section 45 of this 1973 Act may be for any purpose provided in ORS 215.010 to 215.233 and subsections (1) and (2) of 215.990, except that the [Governor] commission may not prescribe building regulations. The [Governor] commission may, however, cause to be instituted an appropriate proceeding to enjoin the construction of buildings or performance of any other acts which would constitute a land use that does not conform to the applicable [land use] comprehensive plan or zoning, subdivision or other ordinance or regulation.

(4) Any hearings required by this section may be held by the [Governor] commission, or by a person designated by the [Governor] commission, and all such hearings shall be held in the county seat of the county or in the city in which said comprehensive [land use] plan or zoning, subdivision or other ordinance or regulation is to be prescribed.

Section 48. ORS 215.515 is amended to read:

215.515. (1) Comprehensive physical planning, adopted by the commission prior to the expiration of one year following the date of the approval of state-wide planning goals and guidelines under section 37 of this 1973 Act, should provide guidance for physical development within the state responsive to economic development, human resource development, natural resource development and regional and metropolitan area development. It should assist in attainment of the optimum living environment for the state's citizenry and assure sound housing, employment opportunities, educational fulfillment and sound health facilities. State plans should relate to intermediate and long-range growth objectives. The plans should set a pattern upon which state agencies and local government may base their programs and local area plans. Goals for comprehensive physical planning are:

[(1)] (a) To preserve the quality of the air [and] , water and land resources of the state.

[(2)] (b) To conserve open space and protect natural and scenic resources.

[(3)] (c) To provide for the recreational needs of citizens of the state and visitors.

[(4)] (d) To conserve prime farm lands for the production of crops [and].

(e) To provide for an orderly and efficient transition from rural to urban land use.

[(5)] (f) To protect life and property in areas subject to floods, landslides and other natural disasters.

[(6)] (g) To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit, and recognizing differences in the social costs in the various modes of transportation.

[(7)] (h) To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

[(8)] (i) To diversify and improve the economy of the state.

[(9)] (j) To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land.

(2) Comprehensive plans adopted by the commission after the expira-

tion of one year after the date of the approval of state-wide planning goals and guidelines under section 37 of this 1973 Act shall be designed to comply with such state-wide planning goals and any subsequent revisions or amendments thereof.

Section 49. ORS 215.535 is amended to read:

215.535. In addition to the remedy prescribed in subsection (3) of ORS 215.510, the [Governor] commission may cause to be instituted any civil action or suit [he] it considers appropriate to remedy violations of any comprehensive [land use] plan or zoning, subdivision or other ordinance or regulation prescribed by the [Governor] commission pursuant to ORS 215.505 or section 45 of this 1973 Act.

SECTION 50. (1) Whenever the commission prescribes a comprehensive plan or zoning, subdivision or other ordinances or regulations for lands described in subsection (1) of section 45 of this Act, the costs incurred by the commission and the department in the preparation and administration of such plan or ordinances or regulations shall be borne by the city or county for which the commission has proposed such plan or ordinances or regulations. Upon presentation by the commission to the governing body of the city or county of a certified, itemized statement of costs, the governing body shall order payment to the commission out of any available funds. With respect to a city or county, if no payment is made by the governing body within 30 days thereafter, the commission shall submit to the Secretary of State its certified, itemized statement of such costs and the commission shall be reimbursed upon the order of the Secretary of State to the State Treasurer, from the city's or county's share of the state's cigarette and liquor revenues.

(2) Within 10 days of receipt of the certified, itemized statement of costs under subsection (1) of this section, any city or county aggrieved by the statement may appeal to the Court of Appeals. The appeal shall be taken as from a contested case under ORS 183.480. Notice of the appeal shall operate as a stay in the commissioner's right to reimbursement under subsection (1) of this section until the decision is made on the appeal.

PART VI APPEALS

SECTION 51. (1) In the manner provided in sections 52 to 54 of this Act, the commission shall review upon:

(a) Petition by a county governing body, a comprehensive plan provision or any zoning, subdivision or other ordinance or regulation adopted by a state agency, city, county or special district that the governing body considers to be in conflict with state-wide planning goals approved under section 37 of this Act or interim goals specified in ORS 215.515.

(b) Petition by a city or county governing body, a land conservation and development action taken by a state agency, city, county or special district that the governing body considers to be in conflict with state-wide planning goals approved under section 37 of this Act or interim goals specified in ORS 215.515.

(c) Petition by a state agency, city, county or special district, any county governing body action that the state agency, city, county or special district considers to be improperly taken or outside the scope of the governing body's authority under this Act.

(d) Petition by any person or group of persons whose interests are substantially affected, a comprehensive plan provision or any zoning, subdivision or other ordinance or regulation alleged to be in violation of state-wide planning goals approved under section 37 of this Act or interim goals specified in ORS 215.515.

(2) A petition filed with the commission pursuant to subsection (1) of this section must be filed not later than 60 days (excluding Saturdays

and holidays) after the date of the final adoption or approval of the action or comprehensive plan upon which the petition is based.

SECTION 52. (1) All review proceedings conducted by the commission pursuant to section 51 of this Act shall be based on the administrative record, if any, prepared with respect to the proceedings for the adoption or approval of the comprehensive plan provision or action that is the subject of the review proceeding.

(2) The commission shall adopt such rules, procedures and regulations for the conduct of review proceedings held pursuant to section 51 of this Act, in accordance with the provisions of ORS 183.310 to 183.500 for hearings and notice in contested cases.

(3) A city, county, state agency, special district or any person or group of persons whose interests are substantially affected may intervene in and be made a party to any review proceeding conducted by the commission with the approval of the commission, upon the request of the hearings officer appointed to conduct such proceeding or upon the approval by the hearings officer of a request by such agency, person or group of persons for intervention in the review proceeding.

SECTION 53. (1) In carrying out its duties under section 51 of this Act, the chairman of the commission shall assign each petition to be reviewed by the commission to a hearings officer who shall conduct the review proceeding.

(2) A hearings officer shall conduct a review proceeding in accordance with the rules, procedures and regulations adopted by the commission. Upon the conclusion of a hearing, the hearings officer shall promptly determine the matter, prepare a recommendation for commission action upon the matter and submit a copy of his recommendation to the commission and to each party to the proceeding.

(3) The commission shall review the recommendation of the hearings officer and the record of the proceeding and issue its order with respect to the review proceeding within 60 days following the date of the filing of the petition upon which such review proceeding is based. The commission may adopt, reject or amend the recommendation of the hearings officer in any matter.

(4) No order of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the hearings officer in the matter and at least four members of the commission concur in its action in the matter.

(5) Any party to a review proceeding before the commission who is adversely affected or aggrieved by the order issued by the commission in the matter may appeal the order of the commission in the manner provided in ORS 183.480 for appeals from final orders in contested cases.

(6) The commission may enforce orders issued under subsection (3) of this section in appropriate judicial proceedings brought by the commission therefor.

SECTION 54. (1) If, upon its review of the recommendation of a hearings officer and the record of the review proceeding prepared following a review proceeding before the commission, the commission is unable to reach a decision in the matter without further information or evidence not contained in the record of the proceeding, it may refer the matter back to the hearings officer and request that the additional information or evidence be acquired by him or that he correct any errors or deficiencies found by the commission to exist in his recommendation or record of the proceeding.

(2) In case of a referral of a matter back to the hearings officer pursuant to subsection (1) of this section, the 60-day period referred

to in subsection (3) of section 53 of this Act is suspended for a reasonable interval not to exceed 60 days.

PART VII LEGISLATIVE REVIEW

SECTION 55. The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, counties and other agencies in carrying out the provisions of this Act.

SECTION 56. (1) Prior to the end of each even-numbered year, the department shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, commission, state agencies, cities, counties and special districts in carrying out the provisions of this Act.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the committee for its review and comment at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section.

PART VIII MISCELLANEOUS

Section 57. ORS 453.345 is amended to read:

453.345. (1) Applications for site certificates shall be made to the Nuclear and Thermal Energy Council on a form prescribed by the council and accompanied by the fee required by ORS 453.405. The application may be filed not sooner than 12 months after filing of the notice of intent.

(2) Proposed use of a site within an area designated by the council as suitable for location of thermal power plants or nuclear installations does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the State Water Resources Board, the Fish Commission of the State of Oregon, the State Game Commission, the State Board of Health, the State Engineer, the State Geologist, the State Forestry Department, the Public Utility Commissioner of Oregon, the State Department of Agriculture, the Department of Transportation, **the Department of Land Conservation and Development** and the Economic Development Division.

SECTION 58. The part designations and unit captions used in this Act are provided only for the convenience of locating provisions of this Act, and are not part of the statutory law of this state.

