



# Oregon

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## Department of Land Conservation and Development

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DATE: November 16, 2005



TO: Region 2050 Advisory Board

FROM: Lane Shetterly, Director

RE: *Regional Problem Solving process questions*

The Department of Land Conservation and Development (DLCD) has received a series of questions from the City of Springfield as well as additional inquiries from the Region 2050 Policy Advisory Board through your LCOG project manager. This memorandum provides the department's response to these inquiries. We are pleased to provide this response and guidance in the interest of furthering the development of collaborative solutions to issues identified in the region.

While the department has taken care to address the questions presented, it should be noted this memorandum represents the position of the department, and has not been reviewed or adopted by the Land Conservation and Development Commission (LCDC). Also please note that the responses in this memorandum are made with on the assumption that the Advisory Board will go forward with the Urban Growth Management Agreement Option (Option B) from the October 18, 2005 memorandum from the Region 2050 Technical Advisory Committee, or something like it, for their decision-making strategy.

### **Background**

Over the past five years, ten cities, Lane County, utilities, special districts, state agencies, and others have engaged in a collaborative Regional Problem Solving (RPS) process in order to address impacts of anticipated growth in the region. This process originated within the region, and regional problem solving was identified locally as a planning tool that could provide the framework and flexibility to achieve local goals.

The RPS process represents a relatively new approach to planning in the state. As such, the "track record" on regional problem solving is limited in the guidance it offers in sorting through the issues that have been raised. DLCD is a partner in the process largely to assist local participants in assessing the planning and legal issues in developing a "regional strategy" for addressing growth and livability in the Southern Willamette Valley through the RPS process. It is our hope to help facilitate a successful outcome that addresses the needs of the entire region.

## **RPS Generally**

The RPS process is a product of statute, ORS 197.652 through .658. (A complete copy of the RPS statutes is provided at the end of this memorandum.) As such, questions about the RPS process involve statutory interpretation; there are no administrative rules governing the process.

In order to adequately address the series of questions presented to DLCDC regarding the RPS process, some background on the process is needed.

An important feature of RPS is that it allows amendments to comprehensive plans and land use regulations that do not “fully comply” with administrative rules without taking an exception to a statewide planning goal, so long as the amendments are agreed to by all participants and the agreement reached by the participants conforms “on the whole with the purposes of the statewide planning goals.”<sup>1</sup> Through this process, the agreements become the centerpiece of regional problem solving.

The “regional strategy,” referred to in several questions below, is the basis of the agreements referred to in the statute. The statute that explains the process and requirements for deviating from administrative rules, ORS 197.656(2), makes the agreements the centerpiece of the regional strategy. Amendments to local plans and land use regulations are consistently treated in the statute as *implementing* the agreements. This makes the content of the agreements critical. The agreements need to clearly define roles, responsibilities, expectations and expected outcomes.

## **Questions and Answers**

The questions are presented below as they were submitted to DLCDC. They have been grouped in some cases based on similarity of issues.

### **1. Is the adoption of a regional strategy a land use decision?**

A land use decision is defined in ORS 197.015(10) as follows (edited to show only the relevant sections):

“Land use decision” includes a final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

- The goals;
- A comprehensive plan provision;
- A land use regulation; or
- A new land use regulation;

In addition, the RPS statute provides, “[a] local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation *in order to*

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<sup>1</sup> ORS 197.656(2). It should be noted that that ORS 197.747 defines “compliance with the goals” as it relates to acknowledgment of a comprehensive plan and to periodic review. This statute provides: “‘compliance with the goals’ means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.” The standard for goal compliance is the same for amendments made in RPS as it would be in another process.

*implement an agreement reached in a regional problem-solving process* shall submit the amendment or new regulation to the commission..." ORS 197.656(3) (emphasis added).

The "regional strategy" is the basis of the "agreements reached in a regional problem-solving process" and does not generally, by itself, fall under the definition of a land use decision. Any plan amendment adopted by a city or county to *implement* the strategy would, however, be a land use decision.

**2. Does the regional strategy need to be found consistent with applicable land use goals?**

Yes. ORS 197.656(2)(c) specifically provides that, in order to be approved, a regional strategy must "conform, on the whole, with the purposes of the statewide planning goals." This is the same language that appears in the statutory definition of "compliance with the goals" as set forth in ORS 197.747. (See footnote 1, above.)

Regional problem solving authorizes the commission to acknowledge amendments to comprehensive plans and land use regulations "that do not fully comply with the rules of the commission," but does not excuse local governments from consistency with the statewide land use goals. ORS 197.656(2).

**3. What are the consequences of a participating government taking an action inconsistent with the adopted regional strategy and what recourse do other governments have when another government takes action inconsistent with the adopted regional strategy?**

We do not anticipate local governments taking actions that are inconsistent with the agreed-upon regional strategy. That said, the consequences of such action, and the potential recourse of other parties to the agreement will depend on the terms of the agreement implementing the regional strategy. Further, to the extent any local land use action may be inconsistent with the regional strategy, it would not have the special status accorded to actions taken to implement the strategy provided under ORS 197.656(2).

**4. When a government makes a land use decision, will consistency with the adopted regional strategy be a standard of review?**

The answer depends on whether the question refers to a land use decision initially implementing the regional strategy, or a decision made subsequent to implementation. Clearly, actions to implement the strategy must be consistent with the strategy, and will be reviewed for consistency. Land use decisions made subsequent to implementation of the regional strategy will need to comply with the local comprehensive plan (as amended to implement the regional strategy) and statewide planning goals.

5. **(A) When the participating cities and Lane County undergo periodic review, will the adopted strategies be subject to this process?**  
**(B) If the adopted strategies are subject to periodic review, what involvement will the other cities not under periodic review have in this process?**  
**(C) Will the state recognize the Regional Growth Management Strategy and the Preferred Growth Scenario Map as meeting state requirements in the place of other state mandates, such as periodic review?**  
**(D) Is the adopted regional strategy subject to future rules changes, particularly regarding the exception process?**

At the outset, it should be noted that only cities over 10,000 population and cities between 2,500 and 10,000 inside a Metropolitan Planning Organization will be required to complete periodic review. Currently, within the Region 2050 planning area, these criteria only include Eugene and Springfield. Cottage Grove is close to exceeding 10,000 population, and may be subject to periodic review in the near future. None of the other RPS jurisdictions are likely to be subject to periodic review.

Once the adopted agreements and their implementing actions have been approved by LCDC, they will not be subject to further scrutiny at periodic review. "Monitoring progress toward achievement of the goals" is a required element of the RPS agreement (see ORS 197.626(2)(b)(E)), and this monitoring could conceivably result in the identification of needed updates that a city may choose to complete at periodic review.

At periodic review, a comprehensive plan is updated to address needed housing, economic development, public facilities and services, transportation, and urbanization to ensure it continues to satisfy the needs of the community and comply with statewide planning goals and administrative rules (see ORS 197.628 through .650). Periodic review is a *process* while the regional strategy and preferred growth scenario map are *products*. These products do not replace state mandates, but rather guide how the jurisdictions in the region will comply with them. The strategy and intergovernmental agreements could include provisions for update and review on a regional basis, but that would be up to the jurisdictions that are parties to the strategy. Otherwise state statutes require that certain jurisdictions undergo periodic review, and RPS cannot change that.

The strategy itself is not subject to renegotiation during periodic review of an individual city. A city that is subject to periodic review will need to show during periodic review that its plan complies with the statewide planning goals. To the extent that the regional strategy will have already been approved by the commission, the regional strategy will inform the periodic review process and will provide guidance, not an obstacle, to the completion of periodic review.

If an administrative rule gets amended after approval of the regional strategy, a city may be required to comply with it at periodic review, or otherwise, depending on the nature and provisions of the rule.

**6. How is the adopted regional strategy amended? Does this require consensus of the participants and LCDC, just the participants or just LCDC?**

Since a regional strategy can only be adopted and implemented “by agreements reached by *all* local participants, the commission and other participating state agencies,” ORS 197.656(2) (emphasis added) it is safe to say that any material amendment of the regional strategy would constitute a new strategy that would also have to be agreed to and accepted in the same manner.

- 7. (A) The statute says that the Commission “may” acknowledge amendments to comprehensive plans and land use regulations that do not fully comply with the rules of the Commission without taking an exception, if such an action is based upon agreements in the collaborative regional problem-solving process. The statute also says that the Commission has exclusive jurisdiction for review of amendments processed using the periodic review method. How do we know at the time we adopt the regional strategies that we’ll be able to amend our comprehensive plan without taking an exception if the exception process is otherwise required?**
- (B) If we don’t have a pre-commitment from the Commission to an “exception-free” process, what advantage do we gain from adopting a regional strategy?**

If a city waits to adopt plan amendments implementing the regional strategy until after the strategy has been approved by the commission, then any allowed deviations from the administrative rules will be known and can be relied on. If a city adopts the implementing amendments prior to commission approval of the strategy, there will be a degree of uncertainty as to whether the city’s amendments will be acknowledged, pending approval of the strategy.

Once the strategy is approved by the commission, the participating local governments may amend their plans accordingly (ORS 197.656(2)). For example, if the regional strategy includes urban reserve areas that do not fully comply with OAR 660, Division 21 (Urban Reserve Areas), the commission could approve the strategy without requiring an exception to Goal 14 (as long as it conforms “on the whole” with “the purposes of” the statewide planning goals). The cities could then adopt the urban reserve areas knowing that no exception is required.<sup>2</sup>

**8. Will the RPS process streamline the land use planning process at the local and state levels? In what ways? How can the collaborators develop more of a “system of incentives and disincentives to encourage successful implementation of the techniques chosen by the participants to achieve the goals”?**

The RPS process provides opportunities for streamlining of local planning, mostly through completion of background work and certain mapping exercises that will be useful to local jurisdictions in making amendments to implement the strategy. Examples of such streamlining include the inventories completed through Region 2050 that a city would not be required to repeat, and the designation of urban reserve areas. There may be facets of the regional strategy that would require a goal exception if undertaken by an individual jurisdiction that can be avoided through the RPS process.

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<sup>2</sup> Subsequent expansion of the urban growth boundary into the urban reserve area also will not require an exception, as an exception for a UGB expansion is not needed under any circumstances.

Incentives and disincentives are established locally and implemented through the regional strategy agreements.

**9. What level of detail is needed for the land use actions at the local level to be acknowledged by the state with no subsequent state approval required?**

The RPS statute does not provide for a reduced level of findings required to justify that an amendment complied with the goals. In the case of Region 2050, it is worth noting that much of the detail for such findings will have been provided through the ongoing work of the region. That is another example of the streamlining of the process that can be obtained through regional problem solving.

We hope the guidance provided in the memorandum will be useful to Region 2050 as the region moves forward toward a successful completion of its regional problem solving effort. We look forward to working with you as a partner and resource in the continuation of that effort.

*Enclosure*

*lps://sw/region2050.111605*

## COLLABORATIVE REGIONAL PROBLEM SOLVING

**197.652 Establishing regional problem-solving programs.** Programs of the collaborative regional problem-solving process described in ORS 197.654 and 197.656 shall be established in counties or regions geographically distributed throughout the state.

**197.654 Regional problem solving; coordination.** (1) Local governments and those special districts that provide urban services may enter into a collaborative regional problem-solving process. A collaborative regional problem-solving process is a planning process directed toward resolution of land use problems in a region. The process must offer an opportunity to participate with appropriate state agencies and all local governments within the region affected by the problems that are the subject of the problem-solving process. The process must include:

(a) An opportunity for involvement by other stakeholders with an interest in the problem; and

(b) Efforts among the collaborators to agree on goals, objectives and measures of success for steps undertaken to implement the process as set forth in ORS 197.656.

(2) As used in ORS 197.652 to 197.658, "region" means an area of one or more counties, together with the cities within the county, counties, or affected portion of the county.

**197.656 Commission acknowledgment of comprehensive plans not in compliance with goals [*sic*, administrative rules]; participation by state agencies; commission review of implementing regulations and plan amendments; use of resource lands.** (1) Upon invitation by the local governments in a region, the Land Conservation and Development Commission and other state agencies may participate with the local governments in a collaborative regional problem-solving process.

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

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

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

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

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

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

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

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

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

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

(3) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation in order to implement an agreement reached in a regional problem-solving process shall

submit the amendment or new regulation to the commission in the manner set forth in ORS 197.628 to 197.650 for periodic review or set forth in ORS 197.251 for acknowledgment.

(4) The commission shall have exclusive jurisdiction for review of amendments or new regulations described in subsection (3) of this section. A participant or stakeholder in the collaborative regional problem-solving process shall not raise an issue before the commission on review that was not raised at the local level.

(5) If the commission denies an amendment or new regulation submitted pursuant to subsection (3) of this section, the commission shall issue a written statement describing the reasons for the denial and suggesting alternative methods for accomplishing the goals on a timely basis.

(6) If, in order to resolve regional land use problems, the participants in a collaborative regional problem-solving process decide to devote agricultural land or forestland, as defined in the statewide planning goals, to uses not authorized by those goals, the participants shall choose land that is not part of the region's commercial agricultural or forestland base, or take an exception to those goals pursuant to ORS 197.732. To identify land that is not part of the region's commercial agricultural or forestland base, the participants shall consider the recommendation of a committee of persons appointed by the affected county, with expertise in appropriate fields, including but not limited to farmers, ranchers, foresters and soils scientists and representatives of the State Department of Agriculture, the State Department of Forestry and the Department of Land Conservation and Development.

(7) The Governor shall require all appropriate state agencies to participate in the collaborative regional problem-solving process.

**197.658 Modifying local work plan.**

In addition to the provisions of ORS 197.644, the Land Conservation and Development

Commission may modify an approved work program when a local government has agreed to participate in a collaborative regional problem-solving process pursuant to ORS 197.654 and 197.656.