



# **Gaining Competitive Advantage: A Report from the Advisory Committee on Regulatory Permitting**

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**A Report to  
Governor Kulongoski**

And

State Agency Directors:  
Marty Brantley, OECDD  
Katy Coba, ODA  
Stephanie Hallock, DEQ  
Ann Hanus, DSL  
Bob Repine, OHCS  
Lane Shetterly, DLCD  
Cory Streisinger, DCBS  
Bruce Warner, ODOT

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Prepared by the  
Advisory Committee on Regulatory Permitting  
and the  
Economic Revitalization Team



## **Committee Joint Chairs**

Betty Atteberry, Executive Director  
Westside Economic Alliance

Ray Naff, Intergovernmental Relations Director  
Governor's Office

## **Committee Members**

Frank Angelo, Consultant  
Angelo Eaton & Associates

Jon Chandler, CEO  
Oregon Building Industry Assoc.

Dan Cooper, Staff Attorney,  
METRO

John Fregonese, Consultant  
Fregonese Calthorpe Associates

Tom Gallagher, Consultant  
Legislative Advocates, Inc.

Scott Hege, Executive Director  
Port of the Dalles

Linda Ludwig, Senior Staff Associate  
League of Oregon Cities (LOC)

Steve Pfeiffer, Attorney  
Perkins Coie

Art Schlack, Policy Manager  
Association of Oregon Counties (AOC)

Dick Sheehy, Consultant  
Industrial Design & Construction (IDC)

Mark Whitlow, Attorney  
Perkins Coie

## **Committee Staff**

Economic Revitalization Team

Gabrielle Schiffer, Special Projects  
Coordinator

Maryanne Engle, Executive Support

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## Executive Summary

The Oregon Legislature, through House Bill 2011 (Ch. 800 OR Laws 2003), and Governor Kulongoski through executive order (EO 03-01 and EO 03-02), understand the link between regulatory streamlining and economic development. Both recognize that coordinated service delivery and more efficient and effective regulatory permitting processes are critical to gaining competitiveness advantage in the global marketplace.

The Advisory Committee on Regulatory Permitting expands the focus of the Economic Revitalization Team (ERT) from streamlining economic development projects to streamlining processes that impact economic development. The ERT, created by HB 2011, builds on the collaborative problem solving approach piloted by the Community Solutions Team (CST). With a focus on economic development and an emphasis on customer service, state agency coordination, multi-jurisdictional collaboration, and public/private partnership, the ERT has demonstrated that it is among the best tools in Oregon's toolbox for growing the state's economy.

The Advisory Committee, composed of individuals familiar with agency permit procedures, and the eight state agency directors that are part of the 'regulatory efficiency group' (also referred to as the ERT directors) met over the summer and fall of 2004. These joint meetings focused on the following four topic areas identified by the business community as a high priority for streamlining:

- Project permit process
- Transportation infrastructure
- Water related permitting
- Public Appeals process

Work groups prepared short white papers for each of the topic areas that describe the problem from the perspective of the business community and identify 'potential solutions' for addressing the problem. Potential solutions focused on simplifying and expediting existing permitting processes so that they are more responsive to today's business and economic conditions without diminishing protection for the natural environment or compromising community livability.

The committee report contains 17 'ideas that merit further consideration.' These ideas are the synthesis of the four joint topic oriented meetings. The ideas, which are listed below for each of the topic areas, should not be viewed as fully developed recommendations for action. Lack of time did not allow for a thorough examination of the pros and cons of each idea or adequate public and stakeholder involvement.

### **Project Permit Process**

1. Pre-application conferences
2. Exemptions & Exclusions
3. Expedited Approval Process
4. On-line permitting assistance
5. Receipts Authority (fees for services)
6. Staffing assistance

### **Transportation Infrastructure**

7. Reimbursement Districts & System Development Charge (SDC) Credit Transfers
8. Single Property Tax Increment Districts
9. Transportation Planning Rule (TPR) & Transportation System Plans (TSPs)
10. Concurrency
11. ODOT & Local Government Coordination
12. National Environmental Protection Act (NEPA) & Land Use Processes

### **Water Related Permitting**

13. Improve nexus between 404/401 & state removal fill program

### **Public Appeals Process**

14. Limit certain decisions to local level
15. Specific assignment of error in the Notice of Intent to Appeal (NITA)
16. Eliminate Dual Filing
17. Land Use Board of Appeals (LUBA) as Magistrates under Court of Appeals

A side benefit of the series of joint meetings between the representatives of business serving on the advisory committee and the state agency directors was educational. Each group gaining a better understanding of the issues, challenges and constraints faced by the other. In the end they agreed that efficient and effective permit processes should have the following characteristics:

- Simple and easy to access applications
- Clear process whose timelines are aligned with and sensitive to financial and business timelines
- Processes and standards that create a clear, upfront understanding of the requirements for favorable permit decisions.
- Coordinated permit processes when multiple jurisdictions regulate the same public good
- One-stop permit processes that are project oriented across jurisdictional boundaries rather than narrowly focused on a specific area of jurisdiction.
- Provide a single point of contact within state government whenever possible

Helping businesses comply with the laws, coordinating and combining permitting processes when possible, and aligning regulatory processes more closely to business processes will have a positive effect on the state's economy and the state's budget. It remains for the Governor's Office and the ERT directors to decide which of these ideas for permit streamlining should be implemented.

## **Regulatory Permitting Committee Report**

The following committee report is an idea paper. It is a synthesis of four conversations between the Advisory Committee on Regulatory Permitting and the Economic Revitalization Team (ERT) directors (referred to in House Bill 2011 as the 'regulatory efficiency group'<sup>1</sup> agencies). These conversations between the advisory committee, drawn primarily from the business community, and the heads of state regulatory and funding agencies, focused on ways to improve the state's business climate by reducing the regulatory burden on business without compromising protections for the natural environment and community livability.

### **Background**

The Oregon Legislative Assembly through House Bill 2011 (Ch. 800 OR Laws 2003) asked the Governor to establish the Economic Revitalization Team (ERT) "for the purpose of coordinating and streamlining state policies, programs, and procedures and providing coordinated state agency assistance to local governments." The Economic Revitalization Team (ERT), builds on the collaborative problem solving approach piloted by the Community Solutions Team (CST). With a focus on economic development and an emphasis on customer service, state agency coordination, multi-jurisdictional collaboration, and public/private partnership, the ERT is among the best tools in Oregon's toolbox for increasing the state's competitive advantage in the global marketplace.

HB 2011 directs the ERT "to establish an advisory committee of individuals familiar with agency permit procedures to advise the Governor and the 'regulatory efficiency group' agencies on permit issues related to economic development." Creating a more efficient and effective regulatory permitting process is a key component of the Legislature's economic development agenda. Other elements of the Legislature's economic development include:

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<sup>1</sup> The following state agencies are part of the 'regulatory efficiency group' also referred to as the Economic Revitalization Team (ERT) Directors: Oregon Economic and Community Development Department (OECDD), Oregon Department of Transportation (ODOT), the Department of Land Conservation and Development (DLCD), the Department of Environmental Quality (DEQ), the Department of State Lands (DSL), the Oregon Department of Agriculture (ODA), Oregon Housing and Community Services (OHCS) and the Department of Consumer and Business Services (DCBS).

- Refocus the Oregon Economic and Community Development Department (OECDD) to business development and job creation,
- Develop a “project ready” industrial site certification program within OECDD
- Identify 25 industrial sites with statewide significance for job creation and bring those sites to “project ready” status.
- Develop a comprehensive economic development strategy for the state
- Emphasize economic development within the Department of Land Conservation and Development (DLCD)
- Study the conversion of industrial lands to other uses

Governor Kulongoski understands that regulatory streamlining is critical to rebuilding Oregon’s economy and restoring trust in our public institutions. His commitment to economic development and regulatory reform is demonstrated by the actions he initiated shortly after taking office in January 2003. Executive Order 03-01, which established the Office of Regulatory Streamlining within the Department of Business and Consumer Services (DCBS) and Executive Order 03-02, which created the ‘shovel ready’ Industrial Lands Initiative, were signed by the Governor in February 2003. In addition, he established the Advisory Committee on Government Performance and Accountability within the Department of Administrative Services (DAS) to advise the Director of Government Operations and Director of DCBS on improving management and administrative procedures in state government.

## **Committee Composition and Meeting Structure**

The twelve-member Advisory Committee on Regulatory Permitting is composed of eight representatives from the state’s business community and one member each representing the League of Oregon Cities, the Association of Oregon Counties, METRO and 1000 Friends of Oregon.

The Advisory Committee agreed to meet with the Economic Revitalization Team (ERT) directors for a series of topic focused meetings over the summer and fall of 2004. Betty Atteberry, former Executive Director of the Westside Economic Alliance and Ray Naff, Governor Kulongoski’s Intergovernmental Relations Director, jointly chaired the meetings.

## **Purpose, Focus and Goal**

At their May 4, 2004 organizational meeting, the members of the committee agreed that their purpose is to critically evaluate regulatory processes and identify constraints as well as potential solutions to making the permitting process simpler and more coordinated and to speed up the process so that qualified permits can be issued in a shorter time.

In their search for constraints and solutions, the committee agreed to focus not just on the regulatory processes themselves but on the statutes, rules, ordinances that drive these processes and the practice limits and mandates on local projects and permits from state and local jurisdictions.

## **Work Plan**

The following five topics areas were identified by the advisory committee as areas of interest to the business community for regulatory streamlining:

- Project permit process
- Transportation infrastructure
- All water related permits
- Land Use Goal 9 and LCDC balance
- Public appeals process

A Work Group chaired by a member of the advisory committee, and comprised of interested stakeholders from both the public and private sector prepared short white papers on each of the topic areas. Topic white papers adhered to the following format:

- Problem/opportunity statement,
- Situational analysis for context
- List of potential solutions

White papers on the topic areas were presented at joint meetings of the advisory committee and the ERT directors. Discussion at the joint meetings focused primarily on the potential solutions and whether or not, or how, they could simplify and expedite the permit process. The projected budget limitations of the coming legislative session informed the discussion of which solutions to recommend for further action. Stakeholder interest was also taken into consideration.

As the committee work progressed it was recognized that several of the topics were being reviewed/discussed by other committee efforts. In order to avoid duplication of effort, the group agreed to defer discussion on Land Use Goal 9—economic development—to the Economic Development Planning Advisory Committee (EDPAC). EDPAC in turn deferred discussion of the public appeals process to the Advisory Committee on Regulatory Permitting.

## **Ideas that Merit Further Consideration**

The ideas contained in this section are just that, ideas. Some were briefly talked about; others were discussed in more detail. Lack of time did not allow for an in-depth evaluation including a thorough assessment of the pros and cons or adequate public and stakeholder involvement. It remains for the Governor's Office and the ERT directors to decide which, if any, of these ideas for permit streamlining should be implemented.

Each of the ideas is briefly described under each topic area. In those instances where more than one work group supported the same potential solution (i.e. pre-application conferences), that work group's support and contribution is noted. Where available, descriptions of potential solutions include what state agencies are currently doing to implement the identified solution.

All of the ideas that merit further consideration are also listed in a matrix (Appendix A) and identified by the kind of action required for implementation such as:

- Process improvement
- Legislative action
- Budget implication
- Policy issue

### Project permit process

Dick Sheehy, an industrial site selection consultant for Industrial Design and Construction (IDC), chaired the 'project permit process' topic work group. The white paper for this work group (Appendix B) states that the increasing complexity of the permitting process creates unacceptable and costly schedule delays, which can jeopardize the success of a project.

Members of this work group agreed that the complete permit system should be reviewed, but due to time constraints they focused their attention on those ideas that would have the greatest impact in the shortest period of time.

The following project permit ideas merit further consideration:

#### **1. Pre-application conferences for large projects**

There was general agreement by the business community, local government and state agencies that pre-application conferences tend to result in a faster facility siting process and one with fewer surprises and costly delays. Pre-application conferences, defined as a one-time, one place opportunity for an applicant to identify all the costs, requirements

and actions required to obtain authorization for a project, should be encouraged but not mandated.

It should also be noted that while pre-application conferences/meetings can initiate a positive dialog between the developer and government regulators 'pre-application' should not be understood by potential applicants as 'pre-approval' as issues outside of the view of government attendees may exist which can impact potential development.

The Novellus plant siting in the City of Tualatin, however, is great example of how a pre-application conference and subsequent state agency and local government coordination contributed to siting the facility in record time. In this as well as the transportation infrastructure and the water related permit work groups, it was noted that pre-application conferences and ongoing state/local and public/private coordination is critical to a timely siting process.

The transportation infrastructure work group identified OECD and ODOT as key state participants in local pre-application conferences as these agencies are knowledgeable about infrastructure funding and financing options.

The water related permit work group agreed that greater coordination between state agencies as well as federal regulators early in the project development and application process as a way to streamline and expedite the environmental permit process.

At the request of the ERT directors, the Office of Regulatory Streamlining convened a group during August to investigate how pre-application conferences could be improved for "large" projects and how to do a better job of incorporating state agencies into local processes. Recommendation and observations are outlined in a memo (attached as Appendix C) and includes the following:

- Many local jurisdictions make use of some sort of pre-application conference, but quality is uneven.
- Local governments need to develop better local permitting roadmaps that clearly outline what steps need to be taken to move a development forward.
- State agency participation needs to be consistent, timely and accurate.
- Up to date contact information for state agency staff would be very helpful to local government.
- The ERT process should be expanded to reduce disconnects between state agencies and increase coordination.

- Pre-application conferences should be connected to subsequent project development and permit streamlining.

In many instances, regional ERTs already participate in pre-application conferences for large projects that have regional or statewide economic impact. In addition, ERT directors approval of implementation strategies for three of the Industrial Task Force recommendations directs regional ERTs to assist key local jurisdictions interested in increasing the supply and availability of industrial lands and to assist with solving permitting issues for job creation projects of regional or statewide significance.

## **2. Exemptions, Exclusions and Flexible Standards**

While no specific programs were identified, the Advisory Committee generally supports increasing the use of exemptions and exclusions where de minimus impacts or effects prevail. This would reduce the regulatory burden particularly on small businesses.

## **3. Expedited Approval Processes**

Expedited approval processes would allow a permitting agency to accept work done by 'pre-qualified' consultants, and/or signed off by an appropriate corporate entity, rather than doing the work themselves. Using pre-qualified consultants could expedite the permit process by producing higher quality applications, which would require less state agency staff time for review and approval.

The Department of State Lands (DSL) and OECDDD have taken a step in this direction by using pre-qualified consultants to fund and conduct wetlands delineations for industrial sites seeking project ready certification. The two agencies worked together to develop a Request for proposal (RFP) to create a pool of pre-qualified wetlands consultants. For those sites with property owners interested in loan funding from OECDDD for wetlands services, the pre-qualified consultants are invited to submit site-specific cost proposals. Service is then conducted by the least cost, qualified consultant.

This process has contributed to expedited report preparation time by consultants and expedited review and approval time by DSL. Average time for the 12 industrial sites that have used this process is 47 days from receipt of delineation to final concurrence/approval.

## **4. Develop on-line permitting assistance for businesses**

The state of Washington currently has a website (<http://www.ecy.wa.gov/programs/sea/pac/index.html>) to assist business with permitting.

**5. Increase the Use of Receipts Authority (fee for services)**

Give appropriate state agencies 'receipts authority' to allow them to bill applicants for work needed to expedite permits and other regulatory requirements.

**6. Staffing Assistance for Economic Development**

Technical expertise and adequate staffing at the local level is a key ingredient to successful pre-application conferences as well as successful business expansions and company sitings. Creating a pool of flexible funds at the state level that is available to local government and state agencies for hiring temporary staff to help with a large economic development project could create jobs sooner.

## Transportation Infrastructure

Mark Whitlow, a land use attorney with Perkins Coie, chaired the 'transportation infrastructure' topic work group. The white paper for the transportation infrastructure work group (Appendix D) states that a shortage of transportation infrastructure poses a problem for economic development in Oregon. This shortfall exists on both state highways and local roads. It impacts all types of development, including the build out of permitted uses under acknowledged comprehensive plan, redevelopment projects, and new development.

Acknowledging the large gap between revenue resources and the transportation improvement needs, this work group decided to focus on opportunities to increase public/private partnerships to jointly plan and finance the transportation infrastructure shortfall. The following two ideas for increasing transportation financing merit further consideration as legislative concepts.

**7. Grant Statewide Authority to Create Reimbursement Districts and SDC Credit Transfers**

Reimbursement districts and the ability to transfer SDC Credits among property owners and developers have been identified as practical ways to facilitate infrastructure development by the private sector. These financing mechanisms are especially useful when infrastructure improvements are built beyond those needed to mitigate the impacts of a specific development as the developer can be repaid for the improvements through the reimbursement district or SDC Credit transfer mechanisms.

Some cities and counties may not have authority to create reimbursement districts or to allow transfers of System Development Charge (SDC) credits among and between property-owners and developers. Legislation could explicitly grant all cities and counties such authority.

**8. "Single Property Tax Increment Districts**

Right now, in order for a city or county to use tax increment financing, an urban renewal agency must be functioning for the area, and an urban renewal plan must be developed and approved (a process that can easily take more than a year, and then be subject to referendum). However, the Legislature could authorize a city to create a "tax increment district" which could be used to finance transportation infrastructure in newly urbanized areas.

Ideas to streamline how transportation infrastructure is planned and constructed includes:

**9. Amend the Transportation Planning Rule to make Transportation System Plans more realistic and project oriented**

Requirements contained in the Transportation Planning Rule (TPR) should be further studied with respect to the standards and criteria for Transportation System Plans (TSPs). This could be folded into the study project that is currently underway to amend the Transportation Planning Rule. Issues that should be addressed include the following:

- Interrelate/coordinate corridor plans, interchange access management plans and highway segment designations (activities under the Oregon Highway Plan) with local transportation system planning, thereby improving state and local coordination for transportation planning.
- A more detailed examination of any state highway corridors within the urban areas should be conducted.
- TSPs need to be more realistic identifying infrastructure projects which can be placed in the STIP, providing purpose statement for each project, identify order of priority, increasing the related level of traffic analysis, and advancing environmental impact analysis for significant facilities.
- Reduce the current weaknesses in transportation system planning that exist at jurisdictional boundaries. The TPR stipulates that plans must be consistent with respect to shared transportation facilities, but the coordination to obtain this consistency could be vastly improved.
- Need to provide incentives to develop better TSPs.
- The safety component of TSPs should become a more meaningful element, particularly near schools and in downtowns.
- Examine ways to allow amendments to TSPs to be done in increments, either legislatively or through quasi-judicial amendments (or clarify that they may be amended by private, quasi-judicial land use applications), in conjunction with proposed development projects.
- TSPs should also include a separate portion devoted to potential growth and economic development, with related transportation

infrastructure identified as an inducement to such growth and economic development.

- Need to clarify what it means to have a facility listed on a TSP. In other words, make clear that some transportation facilities can be constructed even if they are not listed on a local TSP.

## 10. Concurrency

The *Jaqua* decision brought the issue of concurrency to the attention of the advisory committee. In simple terms, concurrency means that a proposed development cannot proceed until all transportation infrastructure improvements are in place to accommodate the projected impact that the development is likely to create.

In January 2004, the Land Use Board of Appeals issued a decision in the case of *Jaqua v. City of Springfield*, that held that the transportation planning rule (TPR)- which guides the application of concurrency-prohibited new developments requiring amendments to comprehensive plans or zoning ordinances from causing a decrease in the level of service to that roadway or highway. Although there was not consensus as to the interpretation of the language of the decision, it did to a large degree change the interpretation of the concurrency requirement in the TPR for many jurisdictions.

The Oregon Court of Appeals later opined that the Transportation Planning Rule (TPR) does not necessarily require that, before an approved change in land use occurs transportation infrastructure improvements must be in place, and that the rule offers alternatives for the local land use planning body. Alternatives to dealing with this issue are lowering the level of service standard for the facilities that would fail as a result of the change in the comprehensive plan, limiting uses or downzoning.

Many jurisdictions are concerned about the effect transportation concurrency has on development. At best, the *Jaqua* decision created uncertainty in the interpretation of the portion of the TPR that addresses concurrency, and has had an immediate affect on local communities considering development projects. The transportation infrastructure workgroup identified that clarification of the concurrency requirement is needed immediately. To that end, the workgroup requested emergency rulemaking by ODOT and DLCD. This resulted not in an emergency rule but in the identification of a longer-term problem.

The advisory committee supports the joint effort by ODOT and DLCD to review the TPR and the Oregon Highway Plan (OHP). The committee

believes that the review will examine the strengths and weaknesses of the OHP and the TPR and identify possible policy/rule amendments to address the identified issues. The committee further believes that this review will help clarify the potential financial impact on state and local government and the state's business community if concurrency, as defined by the *Jaqua* decision, remains unchanged. It is hoped that this ODOT/DLCD joint study will provide decision makers with the information needed to make an informed policy decision that avoids, through administrative rulemaking or legislative amendments, a state mandated transportation concurrency rule that will negatively impact desired economic development throughout the state.

#### **11. Improved ODOT/Local Government Coordination**

Bruce Warner, the director of ODOT, submitted a list of proposed improvements that could expedite land use decision by local government and ODOT (list of proposed improvements is included at the end of the Transportation Infrastructure white paper - Appendix D).

Improvements ranged from relatively simple coordination improvements such as participation on pre-application conferences to harder to implement improvements such "develop an Intergovernmental agreement to delegate access management on district and regional state highways to specific cities and counties."

#### **12. Better integration of NEPA (National Environmental Protection Act) and Land Use Processes**

The development of transportation facilities could be significantly expedited if environmental and state land use processes were better integrated. The work group recommends that whenever possible state processes should run concurrently with the federal process and timelines and that data requirements should be coordinated.

Even though the Redmond Collaborative Problem Solving Effort (a description of the effort is attached as Appendix E) did not achieve any permanent changes to state and federal processes, the effort does demonstrate the kinds of efficiencies that can be gained by coordinating and combining local, state and federal environmental and land use processes. The effort essentially collapsed four separate processes into one and saved potentially almost \$400,000 and a year in planning time. It resulted in the identification of a general corridor for a new road between South Redmond and Deschutes Junction. The corridor has the support of the Bureau of Land Management, ODOT, DLCD, the Oregon Military Department, the City of Redmond and Deschutes County. It is in the process of being incorporated into local planning documents.

## Water Related Permitting

Jon Chandler, CEO of the Oregon Home Builders, chaired the ‘water related permitting’ topic work group. The white paper for the water related permitting work group (Appendix F) posits that divisions of authority make it difficult for an applicant to know which agencies have jurisdiction and how those agencies interrelate for their project. Some participants in the work group noted that unclear jurisdictional boundaries can create situations where late commenting and dueling expertise can lead to costly delays and redesigns for development projects.

The work group looked at the approach to environmental permitting that ODOT is using for the OTIA III Statewide Bridge Delivery Program. Central to ODOT’s approach is environmental performance standards. ODOT developed these performance standards in conjunction with the permitting agencies. They will be incorporated into bridge design and construction. This will reduce the need for costly redesign later in the development and construction process.

The white paper concluded that a coordinated process for water related permits should explore the following:

- Identify where statutes and policies overlap and amend statutes and rules to avoid duplication.
- Identify which state agency is the primary agency for each different type of permit (i.e. DSL for wetland permits) and delegate authority to the primary agency.
- Create an omnibus permit process that aligns all permit timelines and permit data gathering.
- Conduct pre-application meetings on water related permits
- Make available to applicants a list of pre-qualified consultants - could accomplished through an RFP process
- Develop a “user guide” that provides design information on minimizing the impact to water resources for certain categories of development.

### **13. Continuing effort to improve water related permitting**

State agency staff from DSL, the Department of Environmental Quality (DEQ), Oregon Water Resources (OWR) and the Oregon Department of Fish and Wildlife (ODFW) are continuing the effort to streamline water related permitting initiated by the work group. Immediate focus is on the nexus between the federal Clean Water Act (CWA) Section 404 permit, state of Oregon removal-fill permit and the CWA Section 401 water quality certification.. The group is expected to produce a draft set of recommendations for increasing efficiency and effectiveness by the end of the year. Elements of the redesign should be transferable to other environmental permitting processes.

## Public Appeals Process

Steve Pfeiffer, land use attorney at Perkins Coie, chaired the 'public appeals process' topic work group. The white paper for the work group (Appendix G) recognized that Oregon has created a very open process for the appeal of land use decisions. The process is characterized by (1) very minimal standing requirements, (2) opportunities for participation with little or no legal costs, and (3) a very broad definition of "land use decisions" eligible for appeal.

There was general consensus by the members of the work group that the real or perceived threat of an appeal increases risk and creates uncertainty about whether land is really ready for development. In addition, appeals, even when unsuccessful, result in costly and time consuming delays, which translate to lost economic opportunity.

### **Framing the Issue**

A review of the appeals process should be included in the proposed legislation for a review of the land use system. Such a review should take into consideration the following observations:

- The Land Use Board of Appeals (LUBA) was originally created to expedite the land use appeals process. The number of LUBA referees and the number of judges in the Court of Appeals was last increased in the mid-1970s.
- The complexity of the land use system appears to feed the appeals process. In addition, the nineteen statewide land use planning goals, which range from citizen involvement to urbanization, from transportation to economic development and from energy conservation to coastal shorelands, seems to ensure that virtually everything has the potential of getting funneled through the state's land use system.
- It is preferred that land use policy be made by policymaking bodies through the enactment of statutes and the adoption of rules, rather than by judicial decision making on a case-by-case basis.
- An increasing number of discretionary decisions by local government are being defined as land use decisions. Limiting or better defining what is and is not a land use decision could reduce the number of appeals.
- Often local options/choices and discretion complicate the development process and increase the opportunity for appeals. Local governments should be encouraged to streamline their codes.

Not with standing the difficulty of making technical fixes to a very complex and interconnected system, the following ideas may have potential for simplifying and expediting the appeals process. The Committee does not recommend moving any of these ideas forward without a thorough examination of the pros and cons:

**14. Limit appeal of certain decisions, or categories of decisions, to the local level**

Many local government decisions involve not whether use is allowed but what it looks, such as site or design review. It may be possible to reduce appeals through LUBA and the Court of Appeals from such decisions by limiting review of such decisions to the city or county level.

Under this approach, decisions on design review, variances or similar implementation of existing codes would be subject to appeal only at the local level through final action by the City Council or Board of Commissioners. Presumably, local communities would be given the option to terminate appeal options at a Hearings Officer/Planning Commission level from an earlier Type II decision.

A number of participants in work group process were of the opinion that limiting certain categories of decision to the local level would not necessarily simplify or expedite the process because if you take the decision out of LUBA, it will just come forward as a writ of review to the Circuit Court. In addition, limiting certain decisions to the local level may have negative consequences for the development community since developers/applicants appeals to comply with local requirements would be restricted. And finally, it should be noted that terminating such appeals to a Hearings Officer/planning Commission would cut local elected official out of the decision making process.

**15. Require specific assignments of error in the Notice of Intent to Appeal (NITA)**

Require the NITA that is filed with LUBA to include the specific assignments of error that the petitioner intends to raise in the petition. By including those assignments of error in the NITA, a local government will have an opportunity to quickly withdraw the decision or request a voluntary remand in order to address a possible procedural or substantive defect.

Issues to be addressed with this concept include (1) whether the failure to include a specific assignment of error in the NITA should preclude its inclusion in the brief; and (2) the extent to which a voluntary remand after the filing of the NITA might allow other people to appeal the land use decision.

It should be noted that a number of stakeholder participants in work group meetings did not support this proposal (Comments against this proposal are attached as Appendix H)

## **16. Eliminate Dual Filing**

Eliminate any role of LUBA as a review authority for decisions that are pending before the Land Conservation and Development Commission (LCDC). This concept is particularly applicable to Urban Growth Boundary (UGB) amendments, which may be the subject of parallel review or, at a minimum, require precautionary dual filings under the current system. In addition, LCDC may consider modifying current rules to allow parties who do not object to the decision under review to participate. And finally, the Court of Appeals should be required to hear appeals from LCDC on fast track now used for LUBA appeals.

## **17. Establish LUBA as "Magistrates" under Court of Appeals.**

Transfer LUBA from the executive branch to the judicial branch as "magistrates" under the court of appeals and make review of "LUBA" decisions by the Court of Appeals discretionary. In addition, provide time limits for decision by Court of Appeals on whether to review the "LUBA" decision.

### **Advantages:**

- Allow faster decision by Court of Appeals if they decide not to review.
- By consolidating "LUBA" into Court of Appeals structure and budget, savings may be possible.
- "Judicial" test for standing would apply, however "magistrates" as used in Tax Court do not require parties to use attorneys.

### **Disadvantages:**

- "Judicial" test for standing would apply (this is a major issue and may be insurmountable).

It was suggested that a more effective way to simplify and expedite the public appeals process may be achieved with a policy decision that encourages broad public participation at the planning stage where use is decided and more narrow public participation at the project or implementation stage. This will require very creative public engagement strategies, as the general public is not likely to participate at the planning stage. There must be some mechanism for public participation at the implementation stage, as people care when development occurs in their backyard, their neighborhood or their community.

## Concluding Comments and Observations

A complete review of all permit processes as called for in the first white paper on the project permit process was beyond the scope of this committee. Instead, committee discussions with state agency directors focused on gaining a better understand of the past policy decisions which created our existing processes and go beyond “this a problem and not working” to come up with ideas to improve existing processes so that they can better respond to today’s business expectations and economic conditions. The ideas contained in this report focus primarily on ways to simplify and expedite permitting processes, to increase the number of financing options for infrastructure, particularly transportation infrastructure, and to provide greater certainty for the development process.

While a certain amount of dynamic tension will likely always exist in any relationship between government agencies charged with implementing laws that protect public goods and businesses focused on maximizing private profit, streamlining regulatory permitting processes and helping business comply with the laws is a potential win for both sides of this equation. Permitting processes that are more coordinated and more closely aligned to business processes will have a positive effect on the state’s economy without diminishing protection for the environment.

Efforts to simplify and expedite permitting processes should not only focus on specific permits, but also on how one permit intersects with other permits. Attention should also be given to coordinating and combining permit processes whenever possible to reduce the cumulative regulatory burden which weighs especially heavy on small business. Efficient and effective permit processes should have the following characteristics:

- Simple and easy to access application
- Clear process whose timelines are aligned with and sensitive to financial and business timelines
- Processes and standards that create a clear, upfront understanding of the requirements for favorable permit decisions.
- Coordinated permit processes when multiple jurisdictions regulate the same public good
- One-stop permit processes that are project oriented across jurisdictional boundaries rather than narrowly focused on a specific area of jurisdiction.
- Provide a single point of contact within state government whenever possible

Even as HB 2011 focuses on identifying legislative fixes for streamlining the permit process, other factors independent of the process have a great influence on efficiency and effectiveness such as high-level of management involvement, a customer service ethic and a focus on result rather than process.

It should also be noted that education was a side benefit of the series of joint meetings and the topic work group meetings that led up to the joint meetings. State agencies gained a better understanding of how their processes and actions impact, and in some cases frustrate, the business and development community. In turn, the members of the advisory committee learned about the coordination efforts of the ERT on behalf of economic development and also what individual state agencies are doing to improve processes and service delivery.

The ERT, as created by HB 2011, was not discussed at joint meetings as a discreet idea and therefore not part of the list of “ideas that merit further consideration.” However, its value is well documented. Currently the ERT serves as an effective strategic problem-solving body and as a convener/facilitator/coordinator to efficiently integrate the actions of state agencies on high profile economic development projects. The ERT approach and framework should be expanded and incorporated into agency operations, procedures and permit processes.