Administrative Guidelines and Procedures Manual for Urban Renewal Agencies in Oregon

Association of Oregon Redevelopment Agencies (AORA)

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Introduction and Purpose

The Association of Oregon Redevelopment Agencies (AORA) represents urban renewal agencies throughout the state of Oregon. A major part of AORA's mission is to provide guidance and information to urban renewal agencies in the planning, administration and implementation of their urban renewal programs. To fulfill part of its mission, AORA has prepared *Urban Renewal Administrative Guidelines and Procedures Manual*. The Administrative Guidelines address substantive issues which commonly arise in the practice of urban renewal. The Procedures Manual presents and explains the procedural requirements pertaining to urban renewal agencies and plans that are contained in Oregon statutes.

Administrative Guidelines

As interest in redevelopment and tax increment financing has spread across the state, the need has increased for detailed written discussion of generally accepted principles and practices of urban renewal. The ability of any urban renewal agency to continue its program depends, in part, on the consistent and responsible practices of urban renewal agencies statewide. Abuses of urban renewal authority or administrative errors by any Oregon agency will affect the ability of all other agencies to maintain public support for their programs. The need for consistency in urban renewal practice became even greater with the passage of 1990's Ballot Measure 5, and 1997's Ballot Measure 50.

The overall impact of these recent events is that urban renewal activities have been subject to a much greater level of public scrutiny. Though statutes provide the regulatory framework for urban renewal, urban renewal agencies in Oregon all benefit from voluntary compliance with administrative guidelines.

The following guidelines represent, in the best judgment of AORA, the currently proper and accepted principles and practices for the administration of urban renewal programs. They are intended to provide urban renewal agencies with administrative guidance. Compliance with these guidelines is voluntary.

As changes occur over time, these guidelines will be reviewed and revised as appropriate. AORA welcomes the comments and suggestions of urban renewal agencies at any time.

The guidelines are organized by major topic. For each topic, there is a discussion of the historical background, the statutory provisions which pertain to the topic and the recommended guidelines.

Procedures Manual

The Procedures Manual which accompanies the Administrative Guidelines includes procedural information on establishing an urban renewal agency; adopting an urban renewal plan, initiating and maintaining tax increment financing, amending an urban renewal plan and preparing the annual financial report.

DISCLAIMER

The information in the *Administrative Guidelines and Procedures Manual* is not intended to be legal advice and should not be relied upon by the user as a substitute for specific legal or other expert opinions. All users are responsible for determining the applicability of these materials for their particular issue.

Section One
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I. AGENCY GOVERNANCE

Who are the members of the agency board? What alternatives exist for agency governance?

A. Background

In Oregon, elected municipal officials wish to have substantial control over urban renewal decisions. Most agency boards consist of the members of the city council or county commission. Of those agencies that have separate agency boards, some require that at least one member of the board be an elected municipal official.

The governing bodies of municipalities just starting an urban renewal program can sometimes find it difficult to decide whether to establish a separate board or retain direct authority. Over time, the municipality may wish to transfer the authority to exercise agency powers to or from a separate agency board. Finally, the agency board may need to decide whether or not to designate an advisory committee, and if so, what functions that committee should serve.

B. Statutory Provisions

ORS 457.045 provides that a municipality's governing body may choose to exercise the powers of an urban renewal agency by (1) the municipality's housing authority, (2) a separate board or commission of not less than three members or (3) by the governing body itself. A housing authority functioning as an urban renewal agency must appoint an advisory board, but otherwise, advisory committees are not required.

C. Guideline 1

The designation of an agency board should reflect the particular circumstances of the municipality. There are advantages and disadvantages to each of the two options that are currently used in Oregon (no housing authorities currently exercise urban renewal powers).

1. City Council or County Commission as Agency Board

The advantages of designating the city council or county commission as the agency board include:

- Direct control is retained by the municipality's elected officials. Given the scope and importance of decisions regarding urban renewal in most communities, this degree of control is sometimes critical.

- Decisions of this type of agency board will tend to be considered final, as opposed to the decisions of a separate board which might be carried to the governing body. (However, the decisions of a separate agency board in undertaking an adopted Urban Renewal Plan are not, strictly speaking, appealable to the municipal governing body.)
- The agency board meetings may be better attended if they are held concurrently with council or commission meetings.

The disadvantages of this alternative include:

- Representation on the agency board is limited to the elected municipal officials. Opportunities for other interested citizens (e.g., residents or business people within the urban renewal area) to directly participate in agency governance are eliminated.
- The membership of the Board is subject to change with each election, potentially resulting in a lack of continuity in agency policy.
- Agency decisions may tend to be based more on political grounds than sound development considerations.
- Agency issues may not receive sufficient attention from agency board members who often have heavy demands placed on them in their roles as city council or county commission members.
- In issues where the interests of the agency and the interests of the municipality differ, it may be more difficult for these interests to be kept separate. The agency board may not be as willing to advocate agency interests where these conflict with municipal interests. In some cases, there may be simple confusion as to which legal body has the authority to make a particular decision.

2. Separate Agency Board

The advantages of designating a separate agency board include:

- The board is more likely to devote its full attention to urban renewal matters.
- The board is more likely to represent the interests of the agency in those circumstances where there may be conflicts with the municipality.
- Agency decisions may be freer of political issues and might be more likely to be made on the basis of sound development considerations. In these cases, the public may find it easier to perceive the differing interests of the agency and the governing body.
- The board membership may include one or more elected officials in order to retain a measure of direct control by the municipal governing body. (An

agency board may, in fact, be composed of a mix of elected officials and citizens, with the elected officials comprising a majority. This allows for direct control by the municipal governing body while allowing for the continuity that can be provided by citizen members.)
- The board membership may represent particular interests in the community and/or within the urban renewal area.

The disadvantages of this form of governance include:

- The municipal governing body may be unwilling to truly delegate authority to a separate board and this may result in "second guessing" of board decisions.
- The board may be less directly accountable to the voters of the municipality.
- Board decisions may not be considered final by the public. They may be carried to the governing body, causing delays or reversals of board decisions.

3. Advisory Committees

Either form of agency board can appoint an advisory committee, although advisory committees are more consistently appointed by boards which consist of the municipal governing body. In fact, appointing such a committee can help mitigate some of the disadvantages of having the city council or county commission serve as the agency board.

Advisory committees can devote their full attention to urban renewal issues, and the agency board can choose to rely to a great extent in many cases on their advice. Advisory committees can also broaden participation in urban renewal decisions and can represent varying particular interests in the community.

Important factors to consider in appointing an advisory committee include:

- Clearly defining the role and authority of the advisory committee. Advisory committees may have a tendency to desire direct decision-making authority, and this can lead to conflicts with the agency board. The agency board can also decide whether the committee is to advise on all urban renewal issues or only on certain types of issues.
- Giving consistent and substantial weight to advisory committee recommendations. Though the agency board is not bound by advisory committee recommendations, if such recommendations are not given a prominent place in board decisions, the advisory committee will lose its motivation and effectiveness.
- Ensuring a balance of representation of business interests and general public interests.

II. PUBLIC INVOLVEMENT

Public involvement is more important than ever. How should agencies include the public in decision making?

A. Background

The need for public involvement in urban renewal planning and project implementation has grown steadily over the years. The passage of Ballot Measures 5 and 50 has raised the awareness of urban renewal and created a greater need for public support.

Of course, public involvement is generally beneficial because it allows the agency to clearly identify critical community issues and areas of confusion or concern. Issues can often be resolved by providing additional information.

Agencies can use a variety of methods to involve the public, including special public meetings, media coverage, newsletters and talks with local groups.

B. Statutory Provisions

ORS 457.085 (1) requires that "an urban renewal agency shall provide for public involvement in all stages of the development of an urban renewal plan." New plans or substantial amendments must be presented to the planning commission of the municipality [ORS 457. 085(4)] and to the governing bodies of taxing districts affected by the plan [ORS 457.085(5)]. The agency is required to meet with the governing body of any municipality affected by the plan (ORS457.437). In addition to the normal notice provisions of a municipality for a public hearing on a new plan or substantial amendments (ORS 457.095), ORS 457.120 requires that direct notice be sent (by a municipality) to individuals or households within certain areas. (See Guideline Chapter XI and Procedures Manual, Chapter V.)

C. Guideline 2

1. Agencies should use a variety of methods to inform and involve the public.

Different methods and media are effective at reaching different audiences. Agencies should take substantial guidance from what methods have worked in past community outreach efforts.

2. In providing the required direct notice to individuals and households for new plans and substantial amendments, agencies should use the alternative that reaches the broadest audience.

Cost, however, is always a consideration, and sometimes the public will appreciate the agency's use of cost-effective ways of providing this notice.

3. Agencies should use the annual report required under ORS 457.460 to inform the public about urban renewal goals and objectives and the status of urban renewal projects. (See Procedures Manual, Chapter IV)

III. ACCOUNTABILITY TO TAXING DISTRICTS

The revenues of "overlapping" taxing districts are affected by tax increment financing and they need to be involved and informed of urban renewal decisions.

A. Background

Taxing districts which levy taxes within an urban renewal area ("overlapping taxing districts") are affected by the collection of tax increment revenues. (See Guidelines Chapter XII and Procedures Manual, Chapter IV.) Decisions which may directly affect these districts include:

- The adoption or amendment of an urban renewal plan which establishes or extends tax increment financing. The division of taxes process for tax increment financing can result in the overlapping taxing districts foregoing tax revenues that would have been generated by growth within the urban renewal area *without the urban renewal plan.* Also, rates for dollar based levies are calculated without including the incremental assessed value in the calculation which may increase tax rates for these levies.

- The annual decision by an agency with an Existing Urban Renewal Plan (see Procedures Manual, Chapter IV) regarding how much of the special levy to certify for collection, which may affect other districts collection taxes subject to the $10.0000 per $1,000 real market value local government tax limit.

In the long run, however, overlapping taxing districts will receive higher tax revenues as a result of a successful urban renewal plan and so there are good reasons for these districts to support an urban renewal program.

B. Statutory Provisions

ORS 457.085 (5) requires that a proposed urban renewal plan or substantial plan amendment (and the accompanying report) be sent to the governing body of an overlapping district, and that the agency must "consult and confer" with the taxing district before moving forward with the adoption process. Any written comments of the taxing district must be formally considered by the municipal governing body.

ORS 457.437 requires that prior to adopting a new urban renewal plan (which must contain a maximum amount of indebtedness that can be issued under the plan) or prior to amending an urban renewal plan to increase the maximum amount of indebtedness, urban renewal agencies meet with the governing body of the municipality that is adopting the

plan or amendment and with the governing bodies of any other municipalities affected by the plan to review the maximum amount of indebtedness figure.

Finally, ORS 457.460 requires the agency to include in its annual report an analysis of the impact on overlapping taxing districts.

C. Guideline 3

1. Forwarding Urban Renewal Plans and Substantial Amendments for Review

Forwarding a proposed plan or amendment and report to the governing body of an overlapping district may be done by mailing the material to the district's highest elected official, board chairperson or executive director. Often, however, the final draft plan material is completed only shortly before the public hearing by the city council or county commission, and the schedule may not allow much time for review by the overlapping taxing district.

In these cases, an agency should consider additional ways of soliciting the recommendations of overlapping taxing districts. These might include:

- If the plan amendment is being reviewed by an urban renewal advisory committee and/or the municipality's planning commission, representatives of the overlapping taxing districts may be invited to these meetings.

- The agency can host a special meeting of staff of overlapping taxing districts to discuss plan impacts. This meeting might result in the need to further discuss the plan with the governing bodies of the affected taxing districts.

- An advance summary of the plan or amendment, along with a general analysis of how the plan or amendment might affect overlapping districts, may be sent to these districts well before the final material is completed.

- Direct individual consultations with the major districts affected. Many agencies have made direct contact with school districts, for example, to inform them of prospective urban renewal plans or plan amendments and to discuss potential impacts.

2. Annual Certification of Special Urban Renewal Levy

Agencies should coordinate their certification of a special levy amount with the local government taxing districts that expect to certify taxes subject to the Measure 5 limit on local government taxes. The need for coordination is

obviously greater if non-exempt local government tax rates are approaching the $10.0000 per $1,000 real market value Measure 5 cap and changes in the special urban renewal levy (see Procedures Manual, Chapter IV) would result in "compression" (the reduction in taxes to meet the constitutional limit).

IV. URBAN RENEWAL PLANS AND REPORTS: INITIAL FEASIBILITY STUDIES

How to find potential "fatal flaws" before proceeding with an urban renewal plan.

A. Background

In some cases, agencies considering preparing a new urban renewal plan will conduct an initial feasibility study of the plan. The contents of such studies depend entirely upon the discretion of the agency. However, in most cases, several issues critically affect the feasibility of a plan. These are discussed below.

B. Statutory Provisions

There are no statutory requirements that an agency prepare a feasibility report separate from the urban renewal report accompanying the plan.

C. Guideline 4

Feasibility studies should focus on the issues that may be "fatal flaws" of a proposed plan. These include:

1. Determination of blight

The feasibility study should outline the major factors that will be cited to demonstrate that the proposed urban renewal area is blighted. Though the feasibility report will likely be less detailed than the urban renewal report, the guidance provided in Chapter X. of these guidelines should apply.

2. Financial feasibility

The feasibility study should include an initial assessment of the financial feasibility of the plan. It should outline the project activities anticipated in the plan, estimate the costs of the projects to be funded and determine that anticipated revenue sources, including tax increment revenues, will be sufficient to cover projected costs. The estimates of tax increment revenues should be based on an informed judgment of the types and levels of development likely to occur within the urban renewal area.

3. Impacts on taxes imposed by overlapping taxing districts

The feasibility report should estimate the taxes that may be foregone by overlapping taxing districts because of the division of taxes for the urban renewal plan. Again, these would be the taxes that would have been generated by growth *without the urban renewal plan.* This will be impossible to do with any precision prior to the preparation of the urban renewal plan, but an effort should be made to estimate "order of magnitude" impacts. The governing body should understand how an urban renewal plan would affect overlapping taxing districts before proceeding.

V. PROJECTS FUNDED WITH TAX INCREMENT REVENUES

What types of projects can be funded by tax increment debt?

A. Background

This guideline concerns the scope and type of projects that are appropriate for urban renewal plans and funding with tax increment revenues. In particular it addresses common questions regarding whether it is proper to use tax increment funds for projects of a city wide or regional scope (including "public buildings" such as city halls or conference centers) or projects located outside the boundaries of the urban renewal area.

B. Statutory Provisions

Statutory provisions govern the types of projects that may be funded with tax increment revenues. Taken together, ORS 457.440(8) and ORS 457.450(2),, state that tax increment revenues must be used to pay indebtedness incurred by the agency in carrying out the "projects" contained in an urban renewal plan. A "project" means any work or undertaking carried out under ORS 457.170 in an urban renewal area. ORS 457.170 lists the following types of projects:

- Housing authority powers
- Rehabilitation or conservation work
- Acquisition of property
- Clearance or rehabilitation of property
- Construction or improvement of streets, utilities and site improvements
- Carry out plans for voluntary repair and rehabilitation of buildings or other improvements in accordance with the plan
- Relocation of persons and property displaced by urban renewal projects
- Sell or lease property
- Neighborhood development programs

ORS 457.085 (2)(j) provides that if an urban renewal plan includes "public buildings" (which term is not defined), the plan must explain how the public building serves or benefits the urban renewal area.

C. Guideline 5

Though Agencies should consult agency counsel on the issues addressed by all the guidelines contained herein, this consultation is especially necessary regarding the decision about what types of projects may be included in an urban renewal plan and funded with tax increment revenues. Nonetheless, there are some principles that should guide these decisions.

1. Projects with City-Wide or Regional Scope

Some urban renewal projects which are located within urban renewal areas provide benefits on a much broader scale. One type of such project would be a city hall, main library or convention center. These "public buildings" are discussed in a separate section below.

Other types of projects with broad benefits might be main trunk sanitary sewer, storm sewer or water lines that connect major parts of the system to a source or outfall. Similarly, transportation projects ranging from freeway interchange improvements to transit facilities can often be city-wide or regional in their benefits.

In these cases, an urban renewal plan should demonstrate the particular benefits of the project to the urban renewal area, and the share of project funding through tax increment financing should relate to the share of the benefit to the urban renewal area. While in some cases the benefits can be quantified and a specific share of benefits that accrue to the urban renewal area can be determined, in other cases the determination of the share of benefit to the urban renewal area will be qualitative and will require a judgment call.

In summary, the same principle of proportionality that is raised in relationship to projects outside the urban renewal area and to public buildings should apply to projects with a scope of benefit beyond the urban renewal area.

2. Projects Outside Urban Renewal Area Boundaries

Generally, projects located outside urban renewal area boundaries should not be undertaken. Agencies seeking to undertake projects located outside of urban renewal area boundaries should demonstrate that such projects are necessary to

achieving the objectives of the plan. If the projects also benefit other areas, the urban renewal funding should reflect the proportionality of the benefit to the urban renewal area. The description of the project in the plan should clearly state that the project is located outside urban renewal area boundaries, explain how it is necessary to achieve the objectives of the plan and state what proportion of the total project serves and benefits the urban renewal area.

(Using *benefits* to the urban renewal area to justify projects is substantially different from justifying such projects on the basis of the *impacts* of growth within the urban renewal area. Projects which mitigate impacts primarily benefit those areas outside the urban renewal area. It is also difficult to specifically define those areas that may be impacted by growth within an urban renewal area.)

Examples of projects located outside urban renewal areas, and their justification, are:

- Expansion of water supply or sewage treatment capacity to support development within the urban renewal area
- Planning studies that directly pertain to the urban renewal area
- Flood control projects that reduce flooding levels and allow increased development within the urban renewal area
- Transportation improvements that are necessary for access to and from the urban renewal area

3. Public Buildings

Public buildings such as fire stations and police substations that directly and primarily serve the urban renewal area are relatively common projects and easily related to the elimination and prevention of blight objectives of an urban renewal plan.

For projects that benefit an area larger than the urban renewal area, the relationship to urban renewal plan objectives may be less clear. Public buildings such as conference centers can be shown to directly stimulate development of private facilities (such as hotels) within an urban renewal area. Other public facilities may also directly stimulate private development within the urban renewal area. The agency should demonstrate clear connections between such projects and the particular objectives of the urban renewal plan. (In terms of funding such projects, the agency should allocate tax increment funds in general proportion to the benefits received.)

The findings in the Plan and Report should provide a solid basis for the undertaking of a public building project and explain how the public building serves or benefits the urban renewal area.

VI. AUXILIARY USES OF TAX INCREMENT FUNDS

How tax increment funds can be used for non-capital expenditures.

A. Background

Agencies are sometimes asked by municipalities to finance operating and maintenance costs associated with capital improvements financed by the agency or even to finance regular on-going municipal service costs.

Another issue is whether tax increment funds can be spent for urban renewal agency staff. These questions include whether staff costs can be funded from tax increment bond proceeds and whether tax increment funds can pay staff for work not related to urban renewal.

Finally, questions sometimes arise regarding the expenditure of tax increment revenues generated within one urban renewal area for the benefit of another urban renewal area within the same municipality.

B. Guideline 6

1. Expenditures on Operation and Maintenance

Expenditures of tax increment revenues on operation and maintenance of agency financed capital facilities and expenditures on municipal services (e.g., police) should be avoided. There are two distinct considerations. First, redevelopment attorneys have stated that such expenditures are not authorized by statute, and the powers cited above from ORS 457.170 do not specifically include operation and maintenance. Second, tax increment revenues are not an ongoing revenue source and should not be used to fund ongoing expenses.

Exceptions to this guideline include expenditures for start-up operational costs of a new capital facility, which are commonly considered part of the capital budget, and for property management costs relating to property acquired by the agency for redevelopment.

Decisions as to what constitutes a capital project and what constitutes a maintenance activity are sometimes difficult to make. An often cited example is the overlaying of street pavement. The agency should use its best judgment in making these determinations.

2. Expenditures on Urban Renewal Agency Staff

The administrative costs of operating an agency, including staff costs, are appropriately funded from tax increment revenues. The tax increment revenues may result from bond proceeds, as tax increment bonds are not limited to use for capital projects. Alternatively, expenditures may be made from annual tax increment revenues, provided that such expenditures are used to repay debt incurred in paying of staff and administrative costs. (See Guidelines Chapter XII.)

In any case, tax increment funds are to be used for costs related to the agency and the carrying out of urban renewal plans. When staff performs a mix of duties including some unrelated to the agency, other funds should be used to pay for the non-urban renewal duties.

3. Expenditure of Tax Increment Funds for Another Urban Renewal Area

Tax increment revenues generated within one urban renewal area of a municipality may not be expended for projects within another urban renewal area of the municipality. Program income funds may be loaned from one urban renewal area to another, for such purposes as preparing feasibility studies and urban renewal plans, but the repayment of such funds should be guaranteed by funds other than or in addition to the tax increment funds of the benefited urban renewal area.

VII. DESCRIPTIONS OF URBAN RENEWAL PROJECTS

How should projects be described in urban renewal plans and reports?

A. Background

Agencies have not been entirely consistent in the specificity with which they describe urban renewal projects to be undertaken in an urban renewal plan. Project descriptions that are excessively detailed and specific may require the agency to amend the plan to make even minor changes to projects. Such specificity is vulnerable to the changes in conditions and priorities that usually occur over the life of an urban renewal plan. If projects are described too generally, on the other hand, the plan and report will not provide the public with a clear enough sense of what projects the urban renewal plan authorizes.

B. Statutory Provisions

ORS 457.085 (2)(a) states that an urban renewal plan shall include "a description of each urban renewal project to be undertaken." ORS 458.085(3) states that the urban renewal report shall contain:

- The estimated total cost of each project and the sources of moneys to pay such costs
- The anticipated completion date for each project

The definition of "project" in ORS 457.010 (13) is "any work or undertaking carried out under ORS 457.170 in an urban renewal area."

C. Guideline 7

Urban renewal projects should be described in sufficient detail so that the costs and schedules required in the report may be prepared and so that a citizen may, by reading the plan, understand what particular projects will or will not be undertaken under the plan. Describing overall categories or types of projects to be undertaken is a useful way of *supplementing* the goals and objectives of the plan, but does not substitute for the required project descriptions.

Project descriptions, however, should avoid being so detailed that any revision to the design or specifications of a capital project, for instance, would require a plan amendment. Quantitative specifications of such project elements as street alignments, right of way widths or water or sewer pipe sizes are not appropriate.

VIII. FINDINGS OF FINANCIAL FEASIBILITY OF URBAN RENEWAL PLANS

Providing financial justification for an urban renewal plan.

A. Background

The financial feasibility of an urban renewal plan is commonly one of the most critical issues faced by the agency. The municipality must find that the projected tax increment revenues will match the projected costs. However, determining the financial feasibility requires informed judgments about future conditions that are difficult or impossible to predict.

Some Agencies have used market analyses to support the premise of the plan – that with proper public investment the urban renewal area will develop well. In some cases, Agencies have attempted to compensate for the difficulty of predicting future conditions by stating in a plan that a project "may" be undertaken, but only "if" funding is secured. This finding of "contingent" financial feasibility has been successfully challenged in court and should not be relied upon in plans or reports or adopting ordinances.

B. Statutory Provisions

ORS 457.085(3)(g) states that an urban renewal report must contain "a financial analysis of the plan with sufficient information to determine feasibility."

ORS 457.095 (6) states that the municipality, in adopting an urban renewal plan (or substantial amendment) must find that "adoption and carrying out of the urban renewal plan is economically sound and feasible."

In *Union Station Business Community Association vs. City of Portland* (15 Or LUBA 4 (1986)), the Land Use Board of Appeals found that the City of Portland's adoption of a substantial amendment to Portland's Downtown Waterfront Urban Renewal Plan did not meet this requirement because qualifying language was added by the council to the effect that if certain funds were not received, certain proposed projects would not be undertaken. LUBA stated that ORS 457.095(6) "requires an unqualified determination that the amendment is economically sound and feasible."

C. Guideline 8

The urban renewal report should provide a solid basis for the findings of financial feasibility required in the ordinance adopting an urban renewal plan. To that end, the financial feasibility analysis included in the report should:

- Be based on the estimates of project costs and anticipated revenues that are also required to be included in the report

- Not contain contingencies regarding funding sources

IX. TERMINATION OF THE URBAN RENEWAL PLAN

How to provide for an end to the urban renewal plan.

A. Background

Most urban renewal plans have termination dates, and most plans are also limited by their maximum amount of indebtedness.

The presence of termination dates in urban renewal plans reflects the concern of citizens and the governing body that the urban renewal plan should have a finite duration. Though termination dates commonly exist, the specific meaning of the termination date (i.e., what exactly ends on the termination date?) is not generally clear. It could refer to the retirement of debt and corresponding termination of collection of tax increment funds, the completion of all projects and the expiration of other provisions in the plan.

B. Statutory Provisions

There are no statutory requirements that plans have termination dates. ORS 457.085(3) requires that urban renewal reports contain the anticipated completion dates for each project and the anticipated year in which debt will be retired. ORS 457.450(2) requires the agency to notify the assessor to terminate the collection of tax increment revenues when all debt is or can be retired. None of these requirements equates to a termination date for a plan.

C. Guideline 9

Although establishing a termination date for an urban renewal plan is optional, it is an important consideration for citizens and should be discussed during the preparation of a new plan or substantial amendment. To clarify the meaning of the termination date, urban renewal plans should specify what actions will end at the termination date. Options include:

- All projects will be completed.
- No new projects will be undertaken.
- No new debt will be issued.
- Tax increment debt will be retired and tax increment collections will cease.

- Land use restrictions and special design guidelines will expire. (It is less common now for urban renewal plans to contain either type of provision.) **Note that an agency can cause covenants and conditions on the use of land purchased from the agency for redevelopment to run with the land and these may continue in effect after the termination date of a plan.**

- Real and other property owned by the agency will be disposed of.

X. DETERMINATION OF BLIGHT

Urban renewal areas are defined on the basis of existing blight. How should blight be determined and documented?

A. Background

The purpose of urban renewal is to cure existing blight and prevent future blight. Blight is thoroughly defined in the statutes but it is up to the municipality to find that an area is blighted and therefore eligible for urban renewal.

With the passage of Ballot Measure 50, the impacts of tax increment financing are greater for the overlapping taxing districts than upon property tax payers (See Guidelines Chapter XII.). Therefore the size of an urban renewal area and its delineation based on well documented blight is a matter of great concern to overlapping taxing districts.*

The analytical methods used to document blight may vary from plan to plan. This is appropriate because conditions of blight vary and different types of analyses are required to document these conditions. However, certain types of analysis are commonly used and accepted.

* Because the assessed value of individual parcels "automatically" increases by 3% annually (provided it does not exceed the real market value), a larger urban renewal area will more likely generate higher revenues than a smaller one. The annual 3% increase is not attributable to the impacts of an urban renewal plan, except if the real market values are the limiting factor. Overlapping taxing districts will be concerned that they will not receive any additional revenues on this "automatic" growth.

B. Statutory Provisions

Urban renewal areas must be found to be "blighted areas" by the governing body. The statutes define blighted areas as areas characterized by one or more of the following conditions:

- Unfit or unsafe structures
- Economic deterioration resulting from faulty planning
- Poor platting
- Disregard of physical characteristics

- Inadequate streets, open spaces and utilities
- Flooding
- Property value depreciation
- Underutilized property
- **Loss of population and assessed value**

The statutes further require that the municipal governing body find such conditions of blight within the urban renewal area [ORS 457.095(1)] and that the urban renewal report accompanying a plan "describe the physical, social and economic conditions in the urban renewal areas of the plan" [ORS 457.085(3)(a)].

C. Guideline 10

1. Conditions of blight within an urban renewal area should be carefully and explicitly documented.

Examples of blight analyses include:

- Building surveys, using an explicit coding system to classify buildings as meeting code, not meeting code but capable of being rehabilitated or not capable of meeting code
- Improvement value to land value ratios, based on assessed value data (Different ratios may be established as representing a healthy level of development, considering the planned land use and the characteristics of property values on similar properties in other locations.)
- Analysis of platting patterns and comparison of lot sizes and configurations that exist in the urban renewal area with typical lot sizes and configurations that are desirable for particular land uses
- Documentation of physical and environmental characteristics and the inadequate response to these conditions in such areas as comprehensive plan designations, zoning, platting and capital improvement plans
- Environmental characteristics may include the presence of wetlands, contaminated soils, air quality issues, water quality issues and other environmental constraints to development.

- Analysis of the transportation and utility requirements of the planned land uses and development and comparison of these requirements with the existing level of such facilities.

- Analysis of flooding problems, including delineation of 100 year flood plains and floodways and analysis of development restrictions imposed in such areas either by local ordinance or Federal Flood Insurance Program requirements.
- Analysis of population, income and housing characteristics of the urban renewal area, using data from the US Census, local housing plans, local community development plans and other sources.

2. Conditions of blight should be defined in light of the particular comprehensive plan, economic development and community development objectives of the community.

Blight is a condition that pertains to the urban renewal area as a whole. Urban renewal area boundaries may include specific properties that are not individually "blighted" but which are geographically or functionally inseparable from the blighted area.

However, the delineation of urban renewal boundaries to include property that is anticipated to develop adequately without urban renewal assistance or to include more area than is necessary for the purpose of increasing the tax increment revenues available to the agency should be avoided.

XI. URBAN RENEWAL PLAN AMENDMENTS

Plans commonly need to be changed over time. How should an urban renewal plan anticipate future changes?

A. Background

Urban renewal plans must contain a description of what amendments to the plan are so "substantial" as to require the same notice, hearing and approval procedure required of the original plan. The definition of substantial plan amendments is a major means of exerting policy direction over the implementation of an urban renewal plan. Local communities often express their sensitivity to particular urban renewal issues by defining changes in those activities as substantial amendments to the plan. Alternatively, the community can allow the agency latitude in dealing with activities on which there is strong community consensus by not defining changes in such activities as substantial amendments.

The statutes define some amendments that must be considered substantial and further require that the hearings on substantial amendments be subject to the direct notice ("supernotice") requirements for the new plans themselves. For all Agencies, the definition of which plan amendments are to be considered substantial is a critical decision.

In light of the supernotice requirements for substantial amendments, some urban renewal plans contain a third category of amendment, requiring a process in between the processes for substantial and minor amendments. Commonly called a "council-approved" amendment (because for a city agency, it would require the approval of the city council by non-emergency ordinance), amendments of this type are processed in the same manner as substantial amendments except there is no supernotice requirement. Many plans use this category for amendments that were formerly, or would otherwise be, substantial amendments.

Minor amendments are commonly approved by action of the agency and are commonly effected through *resolutions* as opposed to *ordinances*. Plans are not required to specify processes for minor amendments.

Where any plan amendment constitutes a land use decision, municipal counsel should be consulted to determine the appropriate procedures to be followed. If the amendment is found to constitute a land use decision, the agency should determine whether such decisions are legislative or quasi-judicial in nature.

A final related issue is what appropriate action should be taken regarding urban renewal reports. Should reports be amended to reflect minor plan amendments? Should reports be entirely revised with substantial amendments or should a separate "stand alone" report be prepared which addresses the specific amendments?

B. Statutory Provisions

The statutes (ORS 457.085(2)(i)(A) and (B)) define two types of amendments that must be considered "substantial" and which, in addition, are subject to special direct notice provisions. These are:

- Increasing the maximum amount of indebtedness that may be issued
- Increasing the size of the urban renewal area by more than 1%.
  (At least one opinion by a redevelopment attorney states that this 1% is a "net" figure. That is, a combination of simultaneous additions and deletions to the boundary resulting in a net change of less than 1% would not be a substantial amendment.)

The statutory requirements for "supernotice" are stated in ORS 457.120. Notice of the public hearing on adoption of the plan or substantial amendment must be sent to individuals or households in one of the following groups: owners of real property that is located in the municipality; electors registered in the municipality; sewer, water, electric or other utility customers in the municipality; or postal patrons in the municipality and any parts of the urban renewal area that extend beyond the municipality. For county plans the individual notice must be provided within the boundaries of any K-12 school district that levies taxes within the urban renewal area.

The statutes require that a plan define what amendments are to be considered "substantial." Such amendments must be adopted in the same manner as adoption of the original plan, including supernotice.

Urban renewal reports must accompany new plans and substantial amendments. Requirements for urban renewal reports are given in detail in ORS 457.085(3).

C. Guideline 11

Substantial amendments must include the statutorily defined items. If the municipality wishes to provide notice of important amendments in their usual manner (i.e., without supernotice), "council-approved" should be defined. These should reflect the particular concerns of the community regarding urban renewal activities and the flexibility to be allowed the agency. Whatever the community's judgment, amendments should be defined in a way that makes it as clear as possible when an amendment is to be considered substantial, "council-approved" or minor. If possible, thresholds should be described that separate substantial, council-approved and minor amendments.

One example discussed below is setting a threshold on the cost of changes in or additions of projects, e.g., changes in projects resulting in increased estimated costs of $500,000 are to be considered substantial or council-approved. Another way of distinguishing substantial or council-approved amendments from minor amendments is to define what changes are to be considered "minor" amendments. For example, a change in the width or alignment of a street improvement or the specifications of an intersection improvement can be defined as minor amendments.

Specific issues related to plan amendments and reports are:

1. Types of Substantial Amendments

Substantial amendments must be defined to include at a minimum those defined in statute. Beyond this requirement, an agency can decide which amendments will require supernotice, which will be "council-approved" and which will be minor. These choices should reflect the particular concerns of the community as they are expressed during the plan/amendment preparation process. Some of the issues that are commonly major concerns of the community and which are also commonly defined as requiring substantial or council-approved plan amendments are discussed below.

a) Land Acquisition for Redevelopment by Eminent Domain

Many communities are concerned about the use of eminent domain to acquire sites for redevelopment purposes. Plans must identify property that will be acquired. Agencies should clearly state in the Plan whether and when eminent domain will be available for such land acquisition. Commonly, when land is acquired for public improvements in the Plan, no specific list of properties is required. When land is acquired for private redevelopment and eminent domain is authorized the plan should list those specific properties. In this situation, an agency should amend the list of parcels so identified - as a substantial or council-approved amendment.

b) Urban Renewal Area Boundaries

Similarly, <u>any</u> significant change in the district boundary - including removing as well as adding area - is usually considered a critical issue and defined as a substantial or council-approved amendment. (Adding more than 1% to urban renewal area boundaries is required by statute to be defined as a substantial amendment.)

c) Changes in Urban Renewal Projects

Communities sometimes include a list of very specifically defined projects in the urban renewal plan, and consider any change to these projects an important amendment of the plan. This policy does not take into account the difficulty of planning future projects in a specific and detailed manner. Conditions and project priorities are likely to change over time.

Where the community understands and supports the goals and objectives of the plan and agrees that the major "project activities" or types of projects listed in the plan are necessary to achieve these objectives, changes to the scope or scale of specific projects should be defined as minor amendments. In many cases, the minor amendment process can be a meaningful way to address these changes without the full process required for a substantial change. Additionally, the financial analysis and schedule information in the urban renewal report can also be updated to reflect the changes, even if the amendment is a minor amendment.

Of course in some cases particular projects are of major concern to the community, and it is appropriate in these cases to define changes to such projects as requiring a substantial or council-approved amendment. Even in these cases, however, it should be made clear that only significant (as defined in cost or scope) changes to these projects will require such amendments.

As discussed above, a plan may state that only changes in projects which cause a change in project expenditures of a certain amount require substantial or council-approved amendments. If this approach is used, the cost threshold figure should be indexed over time to reflect inflation. What is a major project expenditure at the outset of a plan may not be considered a major expenditure midway through the plan duration.

d) Comprehensive Plans and Zoning Ordinances

Plans should also make clear, in cases where the comprehensive plan and the urban renewal plan conflict, that the comprehensive plan takes precedence. Changes to the underlying comprehensive plan and zoning ordinance text or map as they apply within urban renewal areas should not be considered substantial amendments to the plan. State land use law contains specific requirements for consideration of such amendments by the planning commission (if one exists) and the municipal governing body. These requirements will usually suffice for public process, and any such land use changes may be incorporated within the plan by reference

without additional action by the agency or governing body. From time to time, it is advisable to update the plan and report to reflect changes in the underlying comprehensive plan and zoning ordinance.

e) Duration of the Plan (See Guidelines Chapter VIII)

The duration of an urban renewal plan if specified in the plan is usually a very important provision to the community and/or overlapping taxing districts. Extension of the duration of the plan, however it may be defined in the plan, is normally considered a substantial or council-approved amendment.

2. Minor Amendments

Minor amendments should be effected by a resolution of the agency at a properly noticed meeting of the agency. The agency should provide appropriate notice to interested parties and the public and provide for an appropriate opportunity for public comment.

3. Urban Renewal Reports

Urban renewal reports are prepared in their entirety when a new urban renewal plan is proposed. When a substantial amendment of the plan is proposed, such amendment should be accompanied by a report amendment that identifies what sections of the original report are to be amended and what amendments are proposed.

The content of the urban renewal report should be sufficient to provide a solid basis for the findings that will be required of the municipal governing body as part of the ordinance adopting the plan or substantial amendment.

Where minor amendments result in changes to the financial feasibility, impacts on taxing districts, project schedules or project costs, Agencies should update the report to reflect these changes.

The original report together with any subsequent amendments should at all times contain up-to-date background material for the current plan. Of particular importance is that the financial feasibility analysis and the schedule for completion of projects reflect the current project plans of the agency. Agencies should compile changes to the urban renewal report so that a single integrated document exists.

XII. TAX REVENUE, TAX RATE AND FISCAL IMPACTS

Tax increment financing can affect the tax revenues and tax rates of overlapping taxing districts. These impacts need to be projected.

A. Background

The disclosure of tax revenue, tax rate and fiscal impacts of urban renewal plans and of tax increment financing provides citizens and the governing body of the municipality with information necessary to judge the acceptability of an urban renewal plan.

Ballot Measure 50 changed Oregon's property tax system. Prior to Measure 50 most tax levies consisted of a dollar amount, either authorized as part of the allowed 6% annual increase in a tax base or as approved by voters as serial levies or bond levies. For each "dollar-based" levy, the county assessor would calculate a tax rate by dividing the dollar amount of the levy into the assessed value of the taxing district. Where taxing districts contained urban renewal areas within their boundaries, the incremental assessed value within those areas was not included in the total assessed value for the rate calculation. The effect was that tax rates were somewhat higher than they would have been if the increment had been included in the calculation. Generally taxing districts received the taxes they were authorized to levy, and the impact of tax increment financing was on the tax rates paid by taxpayers. Some serial levies were expressed in a given rate, as opposed to a dollar amount. These levies were impacted as described below.

After Ballot Measure 50, the taxing authority of taxing districts was expressed not as a dollar figure but as a maximum "permanent" rate. Each district is authorized to levy up to the permanent rate on all property within the district boundary. Some "local option" levies (serial or temporary levies approved by the voters) are "dollar-based" levies but most property taxes are raised by permanent rate levies. The result of this change is that the bulk of the impacts of tax increment financing now take the form of revenue impacts on overlapping taxing districts as opposed to rate impacts on taxpayers. The revenue impact on overlapping taxing districts is a matter of serious concern to the municipality and to the overlapping taxing districts.

How tax increment financing affects the revenues of overlapping taxing districts depends on whether the urban renewal plan is an "existing urban renewal plan" or not. An existing urban renewal plan is one that was adopted prior to December 5, 1996 and which contains a limit on the amount of indebtedness that can be issued under the plan (the "maximum indebtedness"). For existing urban renewal plans the impacts depend on what

"collection option" was chosen in the aftermath of Measure 50. (See Appendix 1 for an explanation of the collection Options.)

In addition, revenues to overlapping taxing districts and the urban renewal agency are still affected by the Measure 5 limits on property taxes. Measure 5 compression can be affected by the special urban renewal levy (See Appendix 1) and by the rate elevation on dollar-based levies.

Finally, the amount of money that any rate-based local option levy will produce is affected by tax increment financing. The taxes equal to those produced by the application of the special levy rate to incremental assessed value are allocated to the urban renewal agency and not the taxing district.

1. Tax Revenue Impacts

The revenue impacts of tax increment financing depend on the Option selected for existing urban renewal plans. For Option 1 plans and all plans adopted after December 5, 1996, all the tax revenues from the increment are allocated to the urban renewal agency. For the one Option 2 plan in Oregon, none of the tax revenues from the increment are allocated to the agency. For Option 3 plans, tax revenues below a specified limit are allocated to the agency and revenues exceeding this limit are allocated to the taxing districts. (See Appendix 1.)

2. Tax Rate Impacts

Tax increment financing affects tax rates calculated by the assessor for dollar based levies. For such levies, assessors calculate rates by dividing the dollar levy in the assessed value of the taxing district, less incremental assessed value. To show these rate impacts, the agency should calculate each district's tax rates with and without the incremental assessed value and show the rate "elevation" impacts. (Rates calculated without the incremental assessed value are higher than rates calculated with the incremental assessed value.) This impact analysis has the fault of assuming that all the growth in incremental assessed value would have occurred without the urban renewal program.

3. Fiscal Impacts

Another tax rate impact of urban renewal is the rate associated with the special urban renewal levy for existing urban renewal plans (see Appendix 1).

The "fiscal impacts" of urban renewal include more than the tax rate impacts. Urban renewal plans commonly result in acceleration or intensification of the development that may have otherwise occurred without an urban renewal

program. This development will require public facilities and services and have impacts on the community's economic, social and physical environment.

Fiscal impacts can be positive. The same increase in development that results in service costs will result in increased assessed value, which will produce additional tax revenues for local governments that are in compression or that have chosen Option 2 or 3 for urban renewal taxes. (See Procedures Manual, Chapter IV)

B. Statutory Provisions

1. Tax revenue and rate impacts

Tax revenue and rate impacts are projected and analyzed in the urban renewal report as part of the "fiscal impact statement" referenced in ORS 457.085(3)(h): This part of the report "estimates the impact of the tax increment financing, both until and after the indebtedness is repaid, upon all entities levying taxes upon property in the urban renewal area." Analysis of tax revenue and rate impacts for the preceding year is required as part of the annual financial report required under the provisions of ORS 457.460(1)(e)

2. Fiscal impacts

Broader fiscal impacts are required to be described in the urban renewal report which accompanies the urban renewal plan [ORS 457.085(3)(a)] states that "the report must include …a description of physical, social and economic conditions in the urban renewal areas of the plan and the expected impact, including the fiscal impact, of the plan in light of added services or increased population."

C. Guideline 12

1. Fiscal Impact Statements in Urban Renewal Reports for New Plans or Substantial Amendments

a) Tax Revenue Impacts

The revenue impact on any overlapping taxing district should be considered as equal to its permanent rate times the growth in incremental assessed value since FY 97/98* or the adoption of the plan, whichever is later, that is projected to occur *without urban renewal*. Growth in increment that would not have occurred but for urban renewal investment should not be included in this analysis.

(For existing urban renewal plans using Option 3, there may be no growth in increment since FY 97/98 and therefore there would be no revenue impacts.)

* (In FY 97/98 taxing districts were given a permanent rate that, when applied to their assessed value *not including the increment*, would produce their full taxing authority as determined under Measure 50. Therefore in that year tax there was no revenue impact from tax increment financing.)

b) Tax rate impacts

The tax rate impact analysis included in the urban renewal report should include a table showing the impacts of tax increment financing on the property tax rates calculated by the assessor for dollar based levies. The rate impacts consist of the difference between a rate calculated by dividing the dollar amount of the levy into the assessed value of the taxing district less the incremental growth assessed value *that would have occurred without urban renewal* and the rate calculated by dividing the levy amount into the total assessed value *including the increment that would have occurred without urban renewal.* Where future levy amounts are not known, assumptions must be made regarding the dollar amounts of the levy.

If the urban renewal report is being prepared for a substantial plan amendment of an existing urban renewal plan, the tax rate impacts of the projected special urban renewal levy should also be stated.

c) Fiscal Impacts on Public Service Providers

Broader fiscal impacts should be analyzed in light of the community's comprehensive plan. That plan is required to demonstrate how the community will provide public facilities and services to serve the development called for in the plan and to show how the impacts of such development are to be addressed.

The property tax revenue impacts to overlapping taxing districts are especially important if implementation of the urban renewal plan is projected to increase the demand for the services provided by the taxing districts. On the other hand, the projects undertaken under the urban renewal plan can result in service improvements. For example, older buildings may be brought up to fire and life safety codes. Alleviating blight can result in reduced need for police services. Utility projects

commonly include looped water lines that allow for better and more reliable fire service.

In discussing these impacts the report should balance the negative impacts of loss of revenue with the positive impacts of implementing the plan. The detail with which this is analyzed should depend on the degree of the impacts.

2. Fiscal Impact Statements in the Annual Financial Report

a) Tax Revenue Impacts and Tax Rate Impacts

The annual financial report is intended to serve as public disclosure of various aspects of urban renewal finance As of FY 2000/2001, AORA is recommending that these reports also contain information about the divide-the-taxes revenues regarding the divide-the-taxes process. For the annual report, tax revenue impacts should be analyzed as for the urban renewal report though the time frame is limited to the present and previous fiscal years.

The recommended approach is to calculate the rate differentials as described in the paragraph above for each dollar based levy.

b) Additional Information on Divide-The-Taxes

AORA recommends that agencies include information on the divide-the-taxes process consisting of:

- The total taxes levied by each overlapping taxing district, including the taxes levied on the incremental assessed value
- The amount of taxes that are divided and allocated to the urban renewal agency
- The percent of total taxes levied that is divided and allocated to the urban renewal agency

XIII. URBAN RENEWAL DEBT AND MAXIMUM INDEBTEDNESS

Tax increment funds are used to pay off debt, but debt can be in many forms.

A. Background

Tax increment revenues are to be used solely for the payment of principal and interest on indebtedness issued or incurred to carry out the urban renewal plan. There are several forms of indebtedness for which tax increment funds may be spent. Urban renewal "bonds" are formal long term debt (typically over 1 year) with a specific schedule of repayments of principal and interest. Urban renewal "notes" are formal short term debt (typically less than 1 year) with a specific schedule of repayments of principal and interest. Other forms of debt that may or may not have specific schedules of repayment of principal and interest are discussed below.

Urban renewal plans must contain a maximum amount of indebtedness that can be issued or incurred under the plan. This maximum indebtedness figure represents the maximum tax increment funds that can be expended for all costs except interest on debt. Refinancing of previously incurred debt is not subject to the maximum indebtedness figure.

The maximum indebtedness is based on the projected cost of carrying out the urban renewal plan in "year-of-expenditure" dollars (the cost including anticipated inflation).

B. Statutory Provisions

ORS 457.450 (2) states that tax increment funds are to be collected until the agency's indebtedness is fully paid or sufficient funds exist to defease or advance refund such debt.

ORS 310.140 (14) defines (for the purpose of Ballot Measure 5 statutes) bonded indebtedness as "any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future." "Other indebtedness" is not defined in the statutes but "indebtedness" has been defined in case law as an "obligation to pay."

ORS 457.190 requires that plans include a maximum indebtedness amount as follows:

- Plans adopted after July 14, 1997 must include this figure as a pre-condition for issuing or incurring debt that is to be repaid with tax increment funds.

- Plans adopted after December 6, 1996, and before July 14, 1997 must have been amended (by July 1, 2000) to include a maximum amount of indebtedness as a pre-condition for issuing or incurring debt that is to be repaid with tax increment funds.

- Plans adopted prior to December 6, 1996 must have been amended by July 1, 1998 to include a maximum amount of indebtedness in order to collect tax increment funds by means of the special urban renewal levy. If such plans have not been so amended, tax increment revenues are limited to those resulting from the divide-the-taxes process.

C. Guideline 13

1. Types of Indebtedness

Agencies which issue bonds or notes typically do so with the advice of bond counsel and/or a financial advisor and feasibility consultant. Therefore, guidelines for such types of indebtedness are outside the scope of this document. Agencies incurring other less formal types of indebtedness should be prepared to document the amount, term and purpose of such indebtedness. Types of agreements or instruments that may be used for such purposes include:

a) Agreements for Planning and Feasibility Analysis Services with the Municipality.

An agency considering the feasibility of establishing an urban renewal district will commonly borrow funds and services from the municipality or, in some cases, from other sources. This advance of funds and/or services should be documented, along with the specific terms of repayment.

b) Agreements for Staff and Administrative services.

Commonly Agencies contract with the municipality for staff and administrative services. Such contractual agreements should be in writing and demonstrate an expenditure by the municipality which creates a debt of the agency.

c) Agreements with developers for developer financed improvements to be reimbursed at a later date by the agency.

Land disposition and development agreements may contain provisions for a developer to construct public improvements and recover the cost of these improvements at a later date. This contractual obligation constitutes indebtedness.

2. Maximum Indebtedness

The maximum indebtedness figure should equal the anticipated cost of carrying out the urban renewal plan based on the scope and schedule of the projects included in the plan. It should be expressed in dollars and cents and should include anticipated inflation.

On a fiscal year basis, the agency should account for the amount of indebtedness issued or incurred and determine the remaining maximum indebtedness. For this purpose, any expenditure of tax increment funds for other than interest costs on debt should be subtracted from the maximum indebtedness figure.

XIV. METHODS TO BE USED FOR THE DISPOSITION OF LAND

Urban renewal agencies can sell or lease property for less than fair market value under certain circumstances.

A. Background

One of the more significant powers of urban renewal agencies is their ability to acquire land by eminent domain for redevelopment and their ability to dispose of such property for its "fair reuse" value. Fair market value is based on "highest and best use" of a property. Fair reuse value takes into consideration restrictions on the use or type of uses that may be developed or redeveloped on the property and other limitations imposed by the urban renewal plan that may affect the property's value. The fair reuse value of a particular property may be $0 if the plan provisions warrant.

The procedures to be used in land acquisition using eminent domain are well established under statutes; what are less clearly defined are the procedures to be used in disposition of land.

B. Statutory Provisions

ORS 457.230(1) allows an agency to make land available for redevelopment at its fair reuse value, "which represents the value, whether expressed in terms of rental or capital price, at which the urban renewal agency in its discretion determines such land should be made available in order that it may be developed, redeveloped, cleared, conserved or rehabilitated for the purposes specified in such plan." ORS 457.230(2) requires that an agency, upon sale or lease of land for redevelopment, require that the purchaser use the land for purposes called for in the Plan and begin the improvements within a reasonable period of time.

C. Guideline 14

1. Fair reuse value

The fair reuse value of a property is determined by the agency in its discretion. For properties of substantial value, such determination should be based upon an independent appraisal of the property. The appraiser should be instructed to determine the property's fair reuse value and should be asked to thoroughly investigate and take into account any and all restrictions imposed on the property by the Urban Renewal Plan and by the Disposition and Development Agreement

(DDA). The use of an independent expert to determine fair reuse value helps protect the agency against charges that its decision on reuse value is arbitrary.

2. Offering property for purchase

Generally Agencies offer land for sale or lease using a Request for Proposals process, whereby interested purchasers or lessees propose development plans and schedules for the property, which are evaluated by the agency according to criteria established by the agency. Such proposals may or may not include a proposed purchase price for the property. In some cases, agencies solicit statements of qualifications or letters of interest, and based on subsequent evaluation, enter into "exclusive negotiating agreements" with one party to negotiate a disposition and development agreement for the property.

The particular process used by an agency is a matter to be determined by the agency. However, generally, competitive processes, in which any interested party is invited to submit either a proposal or letter of interest are desirable. Such processes can result in a wider range and higher quality of development proposals and higher economic returns for the agency. Competitive processes also help ensure that the agency is treating all potential purchasers or lessees of agency owned property in a fair and equitable manner.

XV. RELOCATION

Helping households and businesses that must move because of urban renewal projects.

A. Background

Agencies which undertake projects which displace residents or businesses are obligated to temporarily or permanently relocate those residents and/or businesses. Though requirements for relocation programs are set out in some detail in ORS, Agencies are sometimes faced with situations in which it is unclear whether residents and businesses are displaced by agency projects or by the anticipation of possible agency projects in the future.

B. Statutory Provisions

ORS 457.085(3)(i) requires that urban renewal reports include a relocation report. The report must analyze the need for relocation of residents and businesses, describe the methods to be used in relocation, which must conform with ORS 281.045 to 281.105, and enumerate by cost range the existing housing units that are to be demolished, altered and/or constructed.

C. Guideline 15

Agencies should adopt formal and complete relocation regulations which conform to statutory requirements and the Uniform Relocation Act. The Oregon Department of Transportation has adopted a set of such regulations which have been used as a model by several agencies.

Agencies should use reasonable efforts to determine whether residents or businesses have been displaced as a result of a property owner anticipating possible future acquisition of the property by the agency. In such cases, the agency should determine to what extent, if any, relocation benefits should be provided to the residents or businesses.