



GOVERNOR'S REGULATORY STREAMLINING AND SIMPLIFICATION PROJECT

**Creating a Roadmap To Improve Regulatory Effectiveness:
*Enhancing Timeliness, Certainty and Outcomes
Without Sacrificing the Values of Oregon***

Initial Proposal

December 2011

Governor John A. Kitzhaber, M.D.

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Initial Report

GOVERNOR'S REGULATORY STREAMLINING AND SIMPLIFICATION PROJECT

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I. Executive Summary

Governor Kitzhaber launched this Regulatory Streamlining and Simplification Project on September 15, 2011, with a memorandum calling for a concerted effort to fulfill the 2010 Oregon Business Plan's initiative to simplify and streamline Oregon's regulatory and permitting processes. The Governor's Memorandum embraced the Project Charter adopted by its co-sponsors, Governor Kitzhaber, Attorney General John Kroger, and DAS Director and State Chief Operating Officer Michael Jordan.¹

The Oregon Business Plan

For the past decade, Oregon's business leaders have joined with public officials from across the state to plan for a better business climate and a more robust economy in Oregon. They have worked to promote the complementary goals of developing an environment for additional high-wage jobs while protecting Oregon's core values regarding public, worker and environmental health and safety. In December 2010, these efforts generated the 2010 Oregon Business Plan. One of the Plan's job growth initiatives calls for the state to streamline and simplify its regulatory and permitting processes. The Plan envisions that:

*Oregon will create and maintain an efficient, simple, and streamlined permitting system that makes it easy to start and expand businesses while still protecting public regulatory goals.*²

The Plan recommends that the state take specific steps to fulfill the vision for the streamlining and simplification of Oregon's regulatory and permitting processes through the Oregon Business Plan (OBP) Regulatory Goals:³

- *Review Governor Kulongoski's regulatory streamlining initiative, identify where it has worked well, what issues it has failed to address and why. Make a commitment to continue regulatory streamlining as a top priority.*
- *When considering new regulations and permitting processes, include an assessment of job creation impacts.*
- *Reform the regulatory appeals process to prevent endless or frivolous appeals.*
- *Establish requirements for agencies to act within specific time requirements on permits, pending enforcement actions and development of new regulations.*
- *Separate permits from policy functions in regulatory agencies.*
- *Move toward a one-stop efficient natural resource permit process.*

¹ The Governor's Memorandum and the Project Charter are attached as Exhibit A.

² <http://www.oregonbusinessplan.org/Initiatives/Simplify-and-Streamline-Regulation-and-Permitting.aspx>.

³ The Oregon Business Plan Regulatory Goals are attached as Exhibit B.

- *Require agency rules to meet strict needs standards and robust cost-of-compliance evaluation.*
- *Consider these goals when setting agency budgets.*
- *Establish regulatory streamlining initiatives at the local level, and mechanisms to coordinate between state, local, and federal agencies.*

Project Overview

The Governor's Regulatory and Streamlining Simplification Project is designed to address the OBP Regulatory Goals and "create a roadmap for how Oregon will deliver services with greater efficiency and coherence in the years ahead." This Initial Proposal and the Final Proposal to follow focus on developing a phased, long-term plan. Ultimately, this plan is to be the roadmap that Oregon, its citizens and businesses will use to track improvements in the regulatory processes, achieve better outcomes, and to hold state officials accountable. This project will create a foundation for continual, long-term improvements to Oregon's regulatory climate.

As contemplated by the Governor's Memorandum, the project has been organized so that an Advisory Committee provides guidance to a Working Group comprised of senior governmental and agency officials and the project manager of the Oregon Business Plan. The Advisory Committee, reflecting a broad spectrum of interests, is comprised of delegates from the Oregon Business Plan Steering Committee, members of the Oregon Legislature, a representative of the Attorney General's Business Advisory Council, and representatives from labor, regional economic development associations, business and the environmental community.⁴ The Project Charter anticipates that two proposals will be submitted, the first of which is this Initial Proposal. This proposal identifies specific actions that have been taken toward attaining the OBP Regulatory Goals and provides recommendations for additional actions that may be taken immediately. The recommendations made in this Initial Proposal only address the immediate steps toward fulfilling the OBP Regulatory Goals. The Final Proposal will expand on each of these recommendations and include a comprehensive, long-term strategy to improve regulatory effectiveness. The Final Proposal is to be submitted in May 2012.

The intent of these proposals is to make recommendations that provide greater efficiency and accountability in Oregon's regulatory processes and lead the state to achieve better outcomes. These efforts are about making Oregon a state where businesses thrive, increasing the number of high-wage jobs available for our workers, all the while maintaining our steadfast ideals of safe workplaces and a clean, sustainable environment. The Oregon Business Plan, the Governor's Memorandum, and the Project Charter each reflect respect for Oregon's values and focus these recommendations on this multi-faceted goal. The themes of quality systems, continuous improvement, and performance-based budgets all work to improve how services are delivered and, if approached with genuine commitment, assure better outcomes.

⁴ The project participants are listed in the forward of this Initial Proposal.

The Initial Report and Immediate Recommendations

This Initial Proposal recounts past regulatory streamlining efforts, specifically the work of the Office of Regulatory Streamlining that operated from 2003 to 2008 under Governor Kulongoski's administration. A list of "lessons learned" is provided from that effort and calls for a long-term commitment to making Oregon a place where businesses thrive.

This Initial Proposal highlights some of the ongoing efforts within the state which are working to make regulatory systems more efficient and also proposes specific recommendations that the state may take immediately:

- Build on achievements under Governor Kulongoski's Streamlining Initiative to sustain a long-term commitment to promote a more positive business climate and stimulate job growth within Oregon.
- Initiate benchmarking and conduct a survey of selected states to assess how Oregon might best improve the regulatory process, including regulatory appeals.
- Manage the rule-making practices and the performance of regulatory processes to achieve improvements in timeliness, certainty and outcomes.
- Coordinate and promote ongoing efforts that lead to a one-stop, efficient natural resource permitting process.
- Direct agency leaders to consider regulatory streamlining as budgets are developed and recommended to the governor.
- Continue support for ongoing efforts by the Regional Solutions Centers and process improvement initiatives such as the Dredge/Fill Project.⁵

The following OBP Regulatory Goals will be addressed in the Final Proposal:

- OBP Regulatory Goal #2 -- job creation impacts in new regulations.
- OBP Regulatory Goal #5 -- separate permitting functions from policy functions.
- OBP Regulatory Goal #7 -- require strict needs standards and robust cost of compliance evaluation.

This Initial Proposal also lists some ongoing initiatives that underscore the state's commitment to process improvement.

The Approach for the Final Proposal

This Initial Proposal describes the approach to develop the Final Proposal. The approach includes collecting some "real world" examples of regulatory inefficiencies, performing a "benchmarking" study on the regulatory processes, conducting a survey of "best practices" that may make our systems more effective and categorizing the efficiency and process improvement projects underway in the state. This approach will result in a strategic roadmap that, if followed, is intended to lead these ongoing efforts, along with

⁵ See page 10, Ongoing Process Improvement Initiatives.

the new recommendations to be proposed in the Final Proposal, to achieve a common, coherent plan.

II. Governor Kulongoski's Regulatory Streamlining Initiative

The Oregon Business Plan acknowledges the progress that was made toward improving regulatory streamlining during the early years of Governor Kulongoski's administration. The plan calls for the state to review and assess those efforts. This section reviews those efforts and lists some "lessons learned."

Background

In late 2002 the Oregon economy was in free-fall. Unemployment was at its highest level since the 1981-82 recession. The state budget was in disarray, with five special sessions of the legislature being called to re-balance the state budget with ever-decreasing revenue. A commonly heard theme was that Oregon's regulatory climate was not conducive to business growth and recruitment.

Then Governor John Kitzhaber convened a working group of agencies under the guidance of the Department of Administrative Services to begin identifying ways state agencies could improve their practices to make regulations faster and simpler. At the same time, the Oregon Business Council and others were organizing the first Business Summit to launch the Oregon Business Plan. That plan identified the state's regulatory climate as a barrier to growth, and called on the state to simplify the permitting process. As a result of this input, newly-elected Governor Ted Kulongoski used his first Executive Order to direct agencies to simplify business regulations, to call on agencies to treat those they regulate as customers and develop plans to improve customer service, and to create an Office of Regulatory Streamlining to coordinate these efforts.

Office of Regulatory Streamlining

Housed at the Department of Consumer and Business Services, the Office of Regulatory Streamlining was created to coordinate efforts by state agencies to make business regulations simpler, cheaper, faster and easier to understand and comply with, without reducing protections Oregonians expect for consumers, workers, public health, safety and the environment.⁶ The office was staffed with a single, senior-level manager with the expectation that most actual streamlining activity would be done by staff in the respective agencies.

The office began work by recognizing that many agencies already had regulatory simplification projects underway. An initial survey of these efforts was conducted. Agencies were asked about projects they had recently completed, those they were engaged in, and projects they were about to start. Agencies were also asked for good ideas they had but were not pursuing, and what the barriers were to those efforts.

⁶ Land use processes were specifically not addressed by this streamlining effort, in deference to the "Big Look" task force which was reviewing the same topic.

Streamlining Efforts – Customer Satisfaction

The largest business regulatory agencies (Agriculture, Environmental Quality, Consumer & Business Services, Employment, Revenue, State Lands, Transportation, Fish & Wildlife, among others) were asked to develop customer service improvement plans, and to report on the satisfaction of those they regulate, not in terms of outcomes, but in terms of professionalism, timeliness, consistency, and other factors. This effort was later folded into a statewide-effort under the Department of Administrative Services to standardize customer satisfaction survey methodology. Finally, customer satisfaction plans were required to be included in the mandatory budget narrative for each agency.

Streamlining Efforts – Business Climate

Given the streamlining program's start amid an atmosphere of concern about Oregon's business climate, the office began by trying to assess, in an objective way, the state's regulatory climate. This proved very difficult to do. The assessment began by reviewing third party scorecards, rankings and other numerical assessments of the business climate in Oregon. The results were very discouraging, as virtually all such assessments were badly biased in favor of a desired outcome. As an example, one survey assessed the state's regulatory environment by measuring public employees per capita. The rationale was that if a state was hiring public workers, those workers were likely involved in regulatory activity. Of course, such methodology did not account for public safety workers, teachers, health care workers, and many others. As a result, a state increasing the number of police officers was found to have increased its regulatory burden.

As an alternative to biased third-party rankings, the office conducted its own business climate survey. Nearly 1,000 Oregon employers were surveyed. These businesses identified cost of regulation (both direct and indirect) and lack of flexibility as the areas with which they were least satisfied. Communication from agencies and clarity of regulations were the areas with which they were most satisfied. In narrative comments, employers identified basic regulatory requirements (the need to pay a minimum wage, for example), or federal requirements (e.g., the Endangered Species Act), as significant regulatory barriers.

Streamlining Efforts – Agency Projects

The bulk of the streamlining effort consisted of over 400 specific agency projects to streamline business regulations. These projects ranged in complexity from very simple, single agency efforts, to complex, multi-agency endeavors. Examples of simple projects include the elimination in various agencies of notarization requirements on documents where proof of identity was not required, spreading license expiration dates throughout the year to eliminate a crush of license renewals and improve customer service, and extending annual inspections and licenses to multi-year periods consistent with public health and safety. Complex projects ranged from major online systems to replace paper-based regulation in areas like building permits and weight/mile taxes, to projects to improve permitting for water/wetlands-related work, and a pilot project to issue combined convenience store licenses. In all, agencies reported Oregon businesses benefited from these projects with savings of over \$21 million in direct costs, over

435,000 in hours of regulatory compliance time, and more than 1.9 million sheets of paper saved from filling out forms.

Streamlining Efforts – Legislative Effort

During the 2005 and 2007 legislative sessions, the streamlining effort included a vigorous legislative component, consisting of three elements: (i) bills to simplify specific regulations; (ii) bills to make wholesale changes to groups of statutes or the rulemaking process; and (iii) defensive actions intended to ensure that new legislative proposals improved public health and safety in ways that minimized regulatory impact. Over 100 bills were passed into law during the two legislative sessions, the state Administrative Procedures Act (the “rules” for making rules) was significantly revised, and many regulatory proposals were improved or eliminated.

Lessons Learned

- Executive leadership matters. Whether improving the function of a single program, changing the regulatory culture of an entire agency, or providing direction to all of state government, executive-level commitment is needed to provide organizations the freedom to change the status quo.
- Internal champions for continuous improvement enable long-term effectiveness. While senior executive leadership and commitment is critical, every agency must empower internal “change agents” to achieve lasting success.
- A comprehensive approach is required. Individual small projects, can be, should be, and are being done, but will not be sufficient. Meaningful improvement to the regulatory and permitting system requires a long-term, comprehensive approach.
- Topics governed by multi-agency, multi-jurisdictional authorities pose the greatest challenge to achieving regulatory effectiveness. Biggest problems occur where multi-agency “regulatory systems” cover the same or related topics, but where there is not an “owner” of the system able to manage its improvement. Natural resource and land use regulation are good examples. Whether dealing with multiple state and federal agencies, or the relationship between state and local government, the regulated party sees not multiple agencies, but a single, frequently dysfunctional system operated by “the government.” Weaknesses and gaps that are often apparent and predictable to regulators are not to those who have to follow complex processes.
- Constructive input from the regulators and feedback from “customers” offer focus for improvement. The individuals who “live” in the system (state employees and those applicants, licensees and permittees subject to the regulations) possess valuable insights. Opening lines of communication and feedback on the processes (without fear of retribution) enhances the prospects for improving regulatory effectiveness.
- Transparency enhances the prospects for improvement. Regulatory problems which appear bureaucratic are often caused by underlying policy conflicts which must be addressed legislatively, and which require significant political capital. Frequently, this is compounded by a lack of accurate information available to

policy makers, regulators and the public about how regulations and regulatory systems work in practice.

III. Ongoing Process Improvement Initiatives

Throughout state government, there are a number of projects underway which work to fulfill the OBP Regulatory Goals and otherwise make regulatory processes more efficient. There are also broader efforts to improve state government that will have an impact on state regulatory functions. This Initial Proposal identifies only some of the ongoing work. The Final Proposal will endeavor to identify projects that advance a long-term commitment to simplify and streamline Oregon's regulatory and permitting processes.

10-Year Plan for Oregon

Governor Kitzhaber has launched a 10-Year Plan for Oregon to rebuild Oregon's house by directing "We must stay the course by developing a ten-year reinvestment plan – a clear strategy to guide how we will invest our resources in the future in a way that will continue to move us toward our goal."

The 10-Year Plan for Oregon Project seeks to implement Governor Kitzhaber's vision by creating a strategic statewide plan, and implementing a 10-year outcome-based investment framework and biennial budget process. His vision will be achieved through the following guiding principles:

1. Common Vision. Develop a common statewide vision for the state's deliverables now and in the future.
2. Defined Outcomes. Define specific outcomes with clear accountability to Oregon's citizens.
3. Fiscal Sustainability. Deliver programs and services efficiently within available resources.
4. Innovative Solutions. Prioritize investments in areas of change and innovation.
5. Informed Decision Making. Rely on evidence to inform policy decisions.

This is a common vision shared by Michael Jordan, the Chief Operating Officer, Governor Kitzhaber's policy advisors and state agency directors. These leaders are working in teams to form the foundations of a strategic plan. The following seven policy areas have been identified as the focus of the strategic plan where public investments will be made:

- Education
- Healthy People
- Economy and Jobs
- Healthy Environment
- Livable Communities
- Safety
- Good Government

In addition to engaging the legislature and the citizens of Oregon in achieving his vision, the Governor established a 10-Year Plan Advisory Board that includes leadership from business, local government officials, and statewide elected officials.

Operation: Oregon

“Operation: Oregon” is a broad initiative that seeks to optimize ongoing government operations to identify the operational environment that supports the achievement of unified, inter-connected statewide long- term objectives in an inclusive, efficient manner to best serve the diverse needs of all Oregonians.

Specifically, Operation: Oregon has three parallel tracks of activity:

1. 3-5 years: Identify and implement a statewide operational model that supports the achievement of unified, interconnected long-term objectives and outcomes within a constrained and limited resource model.
2. 1-2 years: Identify and achieve a specific plan for reducing administrative costs in the FY2013-15 biennium consistent with scope and intent as directed in a FY 2011-13 Legislative budget note to DAS.
3. 60-120 days: Identify specific actions that can be taken within the current (FY2011-13) biennium to reduce the cost of administrative services and improve operational efficiency.

One Stop Shop for Oregon Business

Current efforts by the Office of the Secretary of State, in response to House Bill 3247, adopted in the 2011 Session, set the stage for innovative technological tools to further advance the coordination of multi-jurisdiction, multi-agency permitting within Oregon. These efforts will ultimately lead to an online system, to be known as the “One Stop Shop for Oregon Business.” This system will offer a web-based, business portal for the exchange of information with respect to the business registration requirements of participating state agencies and connections to participating agencies from other jurisdictions.

Services offered on this business portal will include:

- Information, services and resources for starting, expanding and operating a business in Oregon.
- Understanding state and local government rules, ordinances and policies.
- Registering, licensing and obtaining needed permits for a business.

With local and state agencies obligated to cooperate in this effort,⁷ the portal has the potential to be a valuable tool to deliver state services with greater efficiency and coherence.

⁷ ORS 56.180 (3)(b) obligates “All agencies of state government, as defined in ORS 174.111, and local government, as defined in ORS 174.116, that have functions related to business registration, licensing, permitting or taxation or that otherwise can provide information for or assist with establishing, expanding, operating or relocating a business are directed to cooperate with and assist the center in performing the center's duties under subsection (3) of this section.”

Regional Solutions Centers

Recent efforts to deploy resources across the state promise substantive progress in coordinating between federal, state and local agencies. Governor Kitzhaber has established Regional Advisory Committees, appointed a Convener for each Economic Development Region in Oregon, and also created Regional Solutions Centers which co-locate state agencies around the state. These Centers are coordinated by a staff person in the Governor's Office.

The Regional Advisory Committees identify economic development priorities for their specific regions and the agency staff members lead projects that address those priorities. Many of the regions have identified regulatory streamlining as a priority and the need to integrate state agency responses to retain or attract new jobs and economic development. To that end, the Regional Solutions Coordinators provide a mechanism to coordinate the work of federal, state and local agencies to develop projects on the ground.

The Centers routinely address the challenges applicants encounter in connection with multi-jurisdiction, multi-agency projects. The Regional Solutions Centers, comprised of representatives from key state agencies with offices established across the state, coordinate state agencies' responses to local and regional economic-development needs. They seek opportunities to help state agencies improve government accountability by focusing on customer service, partnerships and results. These teams act as a liaison among state agencies, local governments and other partners. This affords the teams the opportunity to facilitate communication to identify regulatory barriers and challenges, as well as develop mechanisms to coordinate agencies' overlapping regulatory authority. These efforts provide special insight and substantive contributions to improve the coordination among local, state and federal agencies.

Committee on Performance Excellence

In 2008, Senate Bill 1099 established a nine member Committee on Performance Excellence comprised of executive, legislative and judicial branch, labor, and business members. The Committee is charged with creating a "process that will oversee the journey to excellence and encourage the most vital aspects of Oregon state government to be managed at a world class level." It works to address performance measures, accountability, transparency and leadership within state government.

This committee issued a report in January 2010⁸ which highlights ongoing process improvement projects and other efforts within state government which work to promote continuous improvement and performance excellence. The committee was instrumental in introducing Senate Bill 676. This bill, passed by the legislature in 2011, calls for state budgeting based on performance management and performance measurement.

⁸ http://oregon.gov/DAS/BAM/docs/Perf_Excell_Comm/GovRpt1-2010.pdf

In-Water Permitting Dredge/Fill Project

The Department of Environmental Quality (DEQ), in concert with four other state and four federal natural resource agencies⁹, is working on the permitting processes related to in-water work (dredge and fill), the “Dredge/Fill Project”.

To obtain an in-water (dredge and fill) permit, applicants routinely must seek permits or approvals from as many as nine federal and state agencies. The permitting process for these permits is linear, with each agency having its own needs and special requirements along the way. The applicant often has varying requirements for information within this linear process, making the outcome of the process highly uncertain. These projects are time-sensitive due to in-water work windows and often the regulatory process does not take into consideration these time constraints. The regulatory burden shifts from agency to agency as the linear process proceeds often resulting in inefficiencies, uncertainty and added expense. The Dredge/Fill Project seeks to make this in-water permitting process more efficient to achieve better outcomes.

DEQ, along with state and federal agencies involved in water quality certification, have embarked on the Dredge/Fill Project using a process improvement technique known as Kaizen. Over the past several years, DEQ has been applying the principles of “Lean” or “Kaizen”¹⁰ to a variety of processes internal to DEQ to eliminate waste, improve productivity, and achieve sustained, continual improvement in targeted activities.¹¹

DEQ began the Dredge/Fill Project by inviting leaders from each of the agencies involved to multiple work sessions, using a neutral, Kaizen-trained facilitator to agree on the scope of the project and to identify who from each agency would participate on a “design team” to examine the current dredge/fill permitting process and guide the group to a future that will be both protective of water quality and also be responsive to applicants. In November 2011, the design team conducted its “Kaizen event” to examine the entire dredge/fill permitting process with the express intent to reduce the necessary permitting steps and shift the regulatory process from linear to concurrent. It is also intended to provide clarity of information in the beginning of the process and transparency in regulatory decision making, leading to a more efficient and effective multi-jurisdictional, multi-agency process.

ePermitting

In 2007, the legislature passed House Bill (HB) 2405, which provided direction to the Department of Consumer and Business Services' Building Codes Division (BCD) to

⁹ The federal agencies involved are the U.S. Army Corps of Engineers, the National Oceanographic and Atmospheric Administration (National Marine Fisheries Service), the Department the Interior (U.S. Fish and Wildlife Service), and the Environmental Protection Agency. The state agencies involved are the Department of State Lands, the Department of Environmental Quality, the Department of Geology and Mineral Industries, the Department of Land Conservation and Development, and the Department of Fish & Wildlife.

¹⁰ For more information on “Lean” and “Kaizen,” see <http://www.epa.gov/lean/thinking/kaizen.htm>.

¹¹ Some examples internal to DEQ include DEQ's enforcement protocols, processing samples at its laboratory, records management, and rulemaking procedures.

create a statewide electronic permitting system to be funded by a surcharge on all building permits issued in the State of Oregon.

The goal of the legislation was to create a single, statewide building permitting system that was available 24/7 to online commerce and allowed customers the ability to conduct all activity related to a building permit through a single statewide portal. The portal would be address centric, so only knowing the work location address would be needed to obtain a permit. To implement HB 2405, BCD contracted with a private provider to allow for a single portal while still providing flexibility for participants to customize their permitting practices.

The initial phase was to create the portal through which all transactions would take place and an online application process that could be used by a city or county as a broker. This phase was enacted on June 22, 2009 and is referred to as Basic Services. The second phase was to expand the product to allow for full service permitting to take place through the portal including creating the ability for a customer to submit plans, schedule inspections and follow their permit through the process virtually online. The first city came onto the Full Service product on August 9, 2010. Today, 36 local jurisdictions are utilizing the statewide ePermitting system with nearly a dozen more in the process of coming onto the system.

Implementation of Senate Bill 766

Senate Bill (SB) 766, passed by the Oregon Legislature in 2011, is an invaluable contribution to the regulatory streamlining effort. SB 766 establishes the Economic Recovery Review Council as an independent council that reports directly to the Governor. The council is authorized to perform expedited site reviews for proposed industrial development projects that have statewide significance. The work of the council is supported by funding to pay for expedited site reviews. To integrate the decision making process of local governments into the process, Senate Bill 766 sets timelines and procedures for local government review of an expedited industrial use permit. SB 766 establishes two tools to achieve meaningful progress in the regulatory streamlining effort:

Industrial Development Projects of State Significance

SB 766 creates a path for the state to advance state-significant industrial projects through the implementation of an expedited process, resulting in an immediate short-term economic benefit.

This economic development tool is designed to bring high-wage jobs into the state and provide certainty in the permitting process by getting to a “yes or no” answer within 120 days of filing an application for industrial development. There is recognition that federal or federally delegated permits may take longer and are not addressed by SB 766.

SB 766 is part of a concerted effort to improve the business siting process. The business community has advocated for balancing improving the environment with planned development within the urban growth boundaries. SB 766 allows for expediting the review process and regulatory approvals for sites that are already planned and zoned within industrial areas.

Regionally Significant Industrial Areas

SB 766 addresses regionally significant industrial areas to provide a long-term tool for job creation and the protection of industrial lands. Lands where infrastructure is already in place, such as efforts to rezone areas near interchanges, provide unique advantage for fast tracking an approval process within 120 days. SB 766 also limits local authority over a site and gives appeal authority to a hearings officer. If an appeal is pursued it goes directly to the Court of Appeals. SB 766 includes a directive to designate at least five and not more than 15 regionally significant industrial areas within three years.

Energy Facility Siting Council

Oregon's energy facility siting law originated with formation of the Nuclear and Thermal Energy Council (NTEC) in 1971. The role of NTEC was to regulate the siting of nuclear and coal-fired generating plants that had an electric generating capacity of at least 200 megawatts.

In 1975, Oregon revised its energy facility siting laws. The revisions included the creation of the Energy Facility Siting Council to replace NTEC. The Council has regulatory and siting responsibility for large electric generating facilities, high voltage transmission lines, gas pipelines and radioactive waste disposal sites. State-level oversight of energy facilities helps ensure that Oregon has an adequate energy supply while protecting Oregon's environment and the public. The Energy Facility Siting Council has seven members who are appointed by the governor and confirmed by the Oregon Senate. Oregon Department of Energy employees serve as staff members for the Council, handling the ongoing work required in the regulation of energy facilities.

The Energy Facility Siting Council is unique in Oregon because it provides a "one-stop" process for obtaining the major state permits and land use approvals necessary for the construction and operation of one category of industrial facility. An applicant must demonstrate compliance with the Council's siting standards as well as the substantive standards that apply to the other state and local permits, but it can do so with a single application in a consolidated process instead of proceeding in multiple forums with different processes, timelines and appeal paths.

Oregon's Energy Facility Siting Council is an innovative example of a model that could shape future regulatory streamlining efforts in Oregon.

IV. Immediate Steps Toward Improvement

The Oregon Business Plan recommends specific steps that should be taken to simplify and streamline Oregon's regulatory and permitting processes. The Project Charter contemplates that there may be immediate steps that the state may take to improve the regulatory climate, calling for this Initial Proposal to recommend what those steps may be.

The following recommendations acknowledge those initiatives that are already underway, which serve to fulfill the OBP Regulatory Goals. The recommendations made in this Initial Proposal are only immediate steps that may be taken. The Final Proposal will

expand on each of these recommendations and include a comprehensive, long-term strategy to improve regulatory effectiveness.

OBP Regulatory Goal #1

Goal: Review Governor Kulongoski's regulatory streamlining initiative, identify where it has worked well, what issues it has failed to address and why. Make a commitment to continue regulatory streamlining as a top priority.

Recommendation: Build on achievements under Governor Kulongoski's Streamlining Initiative to sustain a long-term commitment to promote a more positive business climate and stimulate job growth within Oregon.

As noted above in Section II, much was accomplished under Governor Kulongoski's streamlining initiative and the Office of Regulatory Streamlining he organized. Taking the lessons learned from that experience, it is recommended that this administration go beyond those earlier efforts and affirm a long-term commitment to transform Oregon's state government with systems and processes that will create a culture where continuous improvement and better outcomes in the regulatory arena are commonplace.

The first steps have already been taken that demonstrate Governor Kitzhaber's administration's continued commitment to regulatory streamlining. Sponsoring this project and engaging the governor's senior staff is in itself a tangible action demonstrating the commitment. Transformation of state government requires discipline and perseverance. The strategic roadmap called for in the Project Charter will adopt the lessons learned from the prior initiative and set the benchmarks and priorities for achieving the transformation needed in Oregon's regulatory arena.

OBP Regulatory Goal #2

Goal: When considering new regulations and permitting processes, include an assessment of job creation impacts.

Recommendation: Recommendations on this goal are deferred for the Final Proposal.

OBP Regulatory Goal #3

Goal: Reform the regulatory appeals process to prevent endless or frivolous appeals.

Recommendation: Initiate benchmarking and conduct a survey of selected states to assess how Oregon might best improve the regulatory process, including regulatory appeals.

In preparation for the Final Proposal, the state and the Oregon business community will partner to conduct a benchmarking study and "best practices" survey. The study will assess the performance of Oregon's regulatory processes, specifically including

regulatory appeals. The study will also seek to collect data on the time, steps, costs, and desired outcomes of regulatory processes and appeals. The study should segment the data to allow an objective evaluation of the regulatory appeal process. The survey will seek to collect "best practices" from other states.

The information gathered from the benchmarking study and the survey will allow Oregon to consider reforms or improvements that may be undertaken within the state's regulatory appellate process, as well as the regulatory processes as a whole. This information will contribute to the long-term strategies needed to address this Goal #3 and OBP Regulatory Goal #4.

OBP Regulatory Goal #4

Goal: *Establish requirements for agencies to act within specific time requirements on permits, pending enforcement actions and development of new regulations.*

Recommendation: **Manage the rule-making practices and the performance of regulatory processes to achieve improvements in timeliness, certainty and outcomes.**

Currently, state agencies have varying levels of performance metrics related to timeliness in rule-making and regulatory processes. Likewise, standards of certainty and goals for better outcomes are frequently non-existent. A standard set of metrics is needed to assess how well agencies perform related to permitting, pending enforcement actions and development of new regulations. It will then be possible to determine if changes are needed to processes or to requirements in order to meet the needs of the business community and the outcomes envisioned by the respective regulations. Longer term similar measures could be established at the local government level. The data collected from the benchmarking and "best practices" survey contemplated above in Goal #3 will also contribute to the efforts to achieve this goal.

Senate Bill 766, passed by the Oregon Legislature in 2011, also holds promise for contributing to achieving this goal. Senate Bill 766 contributes to the regulatory streamlining effort by establishing expedited review for proposed industrial development projects that have statewide significance. The need for an expedited review process to attract industrial businesses to Oregon was a driving consideration for the passage of this legislation.¹²

OBP Regulatory Goal #5

Goal: *Separate permits from policy functions in regulatory agencies.*

Recommendation: **Recommendations on this goal are deferred for the Final Proposal.**

¹² A more comprehensive summary of SB 766 is on page 11 of this Initial Proposal.

OBP Regulatory Goal #6

Goal: *Move toward a one-stop efficient natural resource permit process.*

Recommendation: **Coordinate and promote the ongoing efforts that lead to a one-stop, efficient natural resource permitting process.**

Oregon's natural resources are critical to Oregon and are at the core of our values. Various state agencies, as well as other local and federal agencies, work to protect the environment, maintain high standards of stewardship for our state lands and waterways, and promote safe, healthy workplaces for Oregon's workers. These efforts often overlap. So, applicants seeking a permit relating to our natural resources often encounter a complex, seemingly unorganized (and occasionally conflicting) set of requirements and regulations. This complexity and disorganization often lead to extended and duplicative processes causing substantial expense and delay without necessarily delivering better outcomes for the environment or for the applicant.

The Oregon Business Plan calls for the state to move toward a one stop, efficient, natural resource permitting process so that better outcomes may be achieved in a more efficient, less expensive manner.

A number of agencies are working to make permitting processes more efficient. The hallmark of progress on this topic is the ongoing work by the Department of Environmental Quality, in concert with other state and federal natural resource agencies on the permitting related to in-water work with the Dredge/Fill Project. This project alone highlights the efforts underway to achieve the goal of a one stop, efficient natural resource permitting process.

Meanwhile, the Office of the Secretary of State, fulfilling the expectations set in HB 3247 (2011), continues to develop a web-based service referred to as a "One Stop Shop for Oregon Business." The foundation created by the Secretary of State's development of this web-based service may be expanded to incorporate online portals for permitting and licensing services by all agencies.

The strategic roadmap in the Final Proposal will work to have such projects converge to fulfill this OBP Regulatory Goal.

OBP Regulatory Goal #7

Goal: *Require agency rules to meet strict needs standards and robust cost-of-compliance evaluation.*

Recommendation: **Recommendations on this goal are deferred for the Final Proposal.**

OBP Regulatory Goal #8

Goal: *Consider these goals when setting agency budgets.*

Recommendation: **Direct agency leaders to consider the Oregon Business Plan Goals when setting agency budgets.**

The 10-Year Plan for Oregon Project seeks to implement Governor Kitzhaber's vision to "Rebuild Oregon's House," by implementing a 10-year, outcome-based investment framework and biennial budget process for the state.

State agencies will develop budgets in support of the strategies outlined in the 10-Year Plan. Currently, a strategy in the Economy and Jobs outcome area of the 10-Year Plan calls for a comprehensive interagency E-Permit Website that will provide a single online location for businesses to obtain any necessary state permit. The Healthy Environment outcome of the 10-year Plan calls for development of new or more efficient means to achieve desired environmental outcomes to complement traditional regulatory approaches. Regulatory streamlining would support both of these strategies.

Beyond the role of agency leaders' active consideration of the Oregon Business Plan Goals in future budgets, members of the Executive Branch and the Legislature will also need to consider these goals and apply them throughout the budget process.

OBP Regulatory Goal #9

Goal: *Establish regulatory streamlining initiatives at the local level, and mechanisms to coordinate between state, local, and federal agencies.*

Recommendation: **Continue support of ongoing efforts by the Regional Solutions Centers and process improvement initiatives such as the Dredge/Fill Project.**

When a business has a proposed project, Oregon's state agencies are only one set of government entities that require approval. Federal, state, and local agencies have different and overlapping requirements and jurisdictions. The multi-jurisdiction, multi-functions of federal, state, and local agencies and their separate rules and processes can overwhelm citizens.

In many cases, applicants appear to struggle to discern which agency needs what materials, when, and in what order. When agencies ask for the same information, businesses can lose patience, time, and resources by trying to follow the rules of each duplicative process. When more than one level of government is involved, the uncertainty of the length and depth of obtaining a permit is amplified. If applicants are able to avoid the "unknown" with government processes, they are more likely to take risks in other arenas, thereby stimulating chances for growth in Oregon's economy.

On the agency end, if agencies are able to obtain complete information earlier in the process, they are more likely to make quicker, more informed decisions. Different federal, state, and local agencies often need the same information from an applicant to make regulatory and permitting decisions. Agencies can lose scarce resources by

duplicating efforts of other agencies. When agencies share information with each other regarding an application, each agency reduces duplicative efforts and is able to improve the quality of their decision. With more eyes focused at one time on one application, any problems with the application could be found earlier in the process, saving both the agencies and the citizen or business precious resources. Furthermore, agencies are able to give a unified and consistent message to applicants. This allows applicants to better plan for their interaction with government.

Recent efforts provide real promise for substantive progress for the state's ability to coordinate between the federal, state and local agencies. Specifically, the Regional Solutions Centers with their multi-agency staffing and focus on working with local and federal agencies highlights the potential for improved services.

As well, the Dredge/Fill Project is a direct engagement between the state and federal agencies. This project is a deliberate, well-planned effort to align federal and state agencies.

On the technological front, the efforts by the Office of the Secretary of State to launch the "One Stop Shop for Oregon Business" offers a state-of-the-art platform for coordinating regulatory practices and permitting processes between federal, state and local agencies. This web portal can be a very useful platform simplifying the complexity of multi-jurisdiction, multi-agency permitting projects and fulfilling the goal called for by the Plan.

These efforts serve a valuable role in the work ahead to streamline processes and facilitate the mechanisms needed to coordinate between state, local, and federal agencies.

V. Approach for the Final Proposal

This Initial Proposal describes the intended approach to develop the Final Proposal. The approach includes collecting some "real world" examples of regulatory inefficiencies, conducting a survey of "best practices" that may make Oregon's systems more effective, categorizing the efficiency and process improvement projects underway in the state. This approach will result in a strategic roadmap that is intended to lead these ongoing efforts, along with the new recommendations to be proposed in the Final Proposal, to achieve a common, coherent plan.

The Final Proposal will expand on each of the recommendations made in this Initial Proposal, set the strategy for achieving the long-term goals necessary to improve regulatory effectiveness, and propose a roadmap with specific timelines and assigned responsibilities for how our state government will deliver services with greater efficiency and coherence in the years ahead. This project will succeed if the Final Proposal delivers a roadmap that not only addresses greater efficiencies and higher levels of service from the regulatory agencies, but also leads to better outcomes from the respective regulations. With that objective, the following approach is recommended to develop the strategic roadmap.

Craft a Vision Statement to Guide the State's Strategy

The strategy needed to truly achieve substantive improvement in regulatory effectiveness¹³ will have to be bold, coherent and inspirational. A vision statement that clearly communicates the purpose and values of the work ahead, can craft a strategy that will lead to achieving the strategic goals. This will enable this project and the resulting strategic roadmap to motivate stakeholders to work toward the vision, establish the standard of excellence required, provide context for the project that will follow, and map the present circumstances to the future.

Collect Real World Cases to Help Guide the Strategic Roadmap

Concrete examples of current inefficiencies in the state's regulatory and permitting processes can help shape a strategy that "fixes what is broken" and set the right priorities on the improvements needed to be made. The wide spectrum of interests that constitute the Advisory Group, as well as other interested parties will be tapped to capture examples and identify fundamental problems in the regulatory arena.

Circumstances where there are process bottlenecks, inexplicable delays, redundant requirements, as well as conflicting standards, will be collected. With this information, a compelling strategy can be crafted that tackles the "real world" issues that, if fixed, will deliver the most improvements to Oregon's regulatory arena.

Perform a "Benchmarking" Study

In concert with the Oregon Business Council (and others who may join in the effort), a benchmarking study will be conducted. The study will seek to capture historical data and current information on the performance of Oregon's regulatory processes, specifically including regulatory appeals. The study will collect data on the time, steps, costs, and desired outcomes of key regulatory processes and appeals. This information will be used to provide a defined baseline of the current processes (including appeals) and to identify topics for improvement in the Final Proposal's strategic roadmap.

Conduct a Survey of "Best Practices" in Other States

The Project Charter calls for work to "[i]dentify the 'best practices' used by Oregon and other state governments that may improve the state's business climate while protecting the values of our state and enforcing the content of its laws." This effort can offer insights into the steps that should be included in the strategic roadmap that are most likely to achieve the lasting, substantive improvement needed to transform Oregon's regulatory processes.

Identify the "Game Changing" Initiatives Underway in Oregon

Throughout Oregon's state government, there are many process improvement projects and initiatives underway. So that the state may better manage those efforts and leverage the benefits they achieve, ongoing efficiency and streamlining efforts within state

¹³ Regulatory effectiveness includes offering timeliness and certainty to each process, as well as an environment where continuous improvement and better outcomes are pursued as a matter of course. The Final Proposal will define these attributes.

government will be identified and those which appear to be “game changers” will be highlighted. The Final Proposal will recommend how these efforts may best be directed so that they collectively contribute to achieving the vision of an effective, efficient, results-oriented government.

Monitor the Dredge/Fill Project and Adopt it as a Model for the Roadmap

The ongoing Dredge/Fill Project promises to be a prime example of the improvements needed in Oregon's regulatory arena. The progress of that project will be monitored, as well as gathering lessons that may be learned from the ongoing efforts. Using this project as a representative model of process improvement, this example will be incorporated into the strategic roadmap.

Develop a Strategic Plan That Improves Permitting and Regulatory Processes and Enhances Timeliness, Certainty and Outcomes Without Sacrificing the Values of Oregon

The ultimate objective of this project is to “create a roadmap for how our state government will deliver services with greater efficiency and coherence in the years ahead.”¹⁴ This, of course, must be accomplished without sacrificing the values of Oregon and, if true progress is to be achieved, should realize better regulatory outcomes by creating approaches, incentives and implementation strategies that encourage those regulating to prevent or avoid problems altogether.

The strategic plan is intended to be delivered by May 31, 2012, as contemplated in the Project Charter.



¹⁴ Governor's Memorandum, attached as Exhibit A.

Exhibit A



JOHN A. KITZHABER, MD
Governor

MEMORANDUM

To: Interested Parties
From: John A. Kitzhaber, M.D.
Date: September 15, 2011
Subject: Regulatory Streamlining and Simplification Project

The 2010 Oregon Business Plan, presented last December, identified ten initiatives to promote high-wage job growth. With the help of the legislature my administration has made significant progress toward nearly every one of these initiatives. However, more work needs to be done. As such, I write this memorandum to initiate a concerted effort on yet one more of the identified areas: streamlining regulatory and permitting processes.

Oregon has a rich and unique approach to protecting its natural resources and its people and I do not intend for this effort to address the underlying substantive decisions and values reflected in our laws. However, I do believe that there are many places in the actual implementation of those laws where, over time, regulatory and permitting structures have been allowed to become sluggish and create unnecessary delays and uncertainty, causing harm to our business environment. In short, this effort will create a roadmap for how our state government will deliver services with greater efficiency and coherence in the years ahead. I believe there is plenty of room to improve several key permitting and regulatory processes to enhance timeliness and certainty without sacrificing the values that we Oregonians hold dear.

With the help of key stakeholders, including the Attorney General, a workgroup and advisory team will make both short-term and long-term recommendations to me. These groups will be made up of agency directors, legislators, local economic development officials, and business owners, and the project will be carried out as outlined in the attached project charter.

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Regulatory Streamlining and Simplification Project

Project Charter

Project Name	Regulatory Streamlining and Simplification Project
Sponsors	John Kitzhaber, M.D., Governor John Kroger, Attorney General Michael Jordan, Chief Operating Officer
Project Manager	Fred Granum, Special Counsel to the Attorney General
Purpose & Expected Results	<p>This project seeks to promote a more positive business climate and to stimulate job growth within Oregon. This will be accomplished by developing a strategic plan to:</p> <ol style="list-style-type: none"> 1. Fulfill the Governor's commitment to the 2010 Oregon Business Plan's regulatory initiative ("simplify and streamline regulatory and permitting processes"); and 2. Identify "best practices" used by Oregon and other state governments that may improve the state's business climate while protecting the values of our state and enforcing the content of its laws. <p>The project will result in two reports to be delivered to the Governor. The first report will propose the immediate steps to achieve the stated goals, including recommending legislative initiatives, if any, and internal modifications to agency practices. A second report will include the results of a "best practices" survey and map the longer term initiatives and future legislation needed to achieve the remaining goals.</p>
Project Organization	<p>The project will be organized so that an Advisory Committee will offer advice and general guidance to a Working Group comprised of senior government and agency officials. The project manager will coordinate the project and serve as moderator at all project meetings.</p> <p>The Advisory Committee will be comprised of delegates from the Oregon Business Plan Steering Committee, members of the Oregon Legislature, a member of the Attorney General's Business Advisory Council, and representatives from labor, regional economic development associations, business, and the environmental community.</p> <p>The Governor will announce the adoption of this Project Charter and, in concert with others, designate the members of the Advisory Committee, the Working Group and the project manager and define the scope of the project.</p>



Regulatory Streamlining and Simplification Project

Project Charter

<p>Project Approach</p>	<p>Relying on the guidance and input from the Advisory Committee, the Working Group will craft a phased, multi-year plan with specific recommendations and a road map for achieving the stated goals. The road map will identify specific goals and categorize the goals as either immediate or long term objectives. To the extent possible, the plan is to complement and align with the ongoing 10 Year Plan for Oregon Project and specifically its "Good Government" initiative.</p> <p>For the immediate goals, the first report (the "Initial Proposal") is to be approved by the project sponsors and submitted to the Governor by November 30, 2011, and will identify the specific steps: (i) to be taken immediately and adopted by operational adjustments; (ii) requiring immediate, specific administrative rule changes, to be initiated as soon as possible; and (iii) requiring legislative action.</p> <p>The strategy for achieving the long term goals will be documented in a second report (the "Final Proposal"), to be approved by the project sponsors and submitted to the Governor by May 31, 2012.</p>
<p>Project Success Metrics</p>	<p>The project will be successful if the Initial and Final Proposals collectively:</p> <ul style="list-style-type: none"> • Provide a clear roadmap as to the immediate and long-term steps Oregon state government should take within the regulatory arena to promote a more positive business climate and to stimulate job growth; • Include the results of a survey of the "best practices" used by Oregon and other state governments within the regulatory arena that improve the respective state's business climate while maintaining core values and enforcing the content of its laws; • Complement the ongoing 10 Year Plan for Oregon Project; • Acknowledge and protect Oregon values regarding public, worker and environmental health and safety; • Merit the endorsement of the Oregon Business Plan Steering Committee and accommodate issues that may be identified by key stakeholders, specifically including organizations representing economic development, private business, labor and the environmental community; • Are adopted by the Advisory Committee and submitted to the Governor by the respective due dates; • Are adopted by the Governor; and • As applicable, lead to operational changes, administrative rule changes, and supporting legislation in the 2013 sessions.



Regulatory Streamlining and Simplification Project

Project Charter

Expected Schedule & Milestones	Milestones	
	Event	Proposed Date
	"Kick Off" Meeting Conducted	September 23, 2011
	Working Group submits draft proposal to Advisory Committee	October 26, 2011
	Advisory Committee issues comments to Working Group	November 4, 2011
	Working Group submits Initial Proposal to Advisory Committee	November 18, 2011
	Initial Proposal adopted and submitted to Governor	November 30, 2011
	Governor adopts Initial Proposal	December 2011
	2012 Legislative Session	February 2012
	Working Group submits draft proposal to Advisory Committee	April 1, 2012
	Advisory Committee issues comments to Working Group	April 15, 2012
	Working Group submits Final Proposal to Advisory Committee	May 15, 2012
	Final Proposal adopted and submitted to Governor	May 30, 2012
	Governor adopts Final Proposal	June 2012
Key Stakeholders	<p>The following stakeholders have a vested interest in the successful outcome of the project:</p> <ul style="list-style-type: none"> • Citizens of Oregon • Governor's Office • Attorney General's Office • State Legislature • State Agency Directors • Agency Employees • Oregon Business Plan Steering Committee • Regional Economic Development Associations • Oregon workers and labor organizations • Business and industrial communities • Environmental communities 	
Major Project Risks	<p>Major project risks include:</p> <ul style="list-style-type: none"> • Ambitious schedule — getting participants and stakeholders invested and energized to meet project timetable. • Potential substantive battles over value and purpose of regulations — ideological prerogatives may pose obstacles to finding common ground and compromise. • Recommendations with inadvertent consequences that might undermine protection of Oregon workers or the environment in the name of economic development. • Implementation failures — proposals may prove too difficult, controversial, or costly. 	



Regulatory Streamlining and Simplification Project

Project Charter

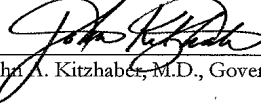
Sponsor Approval Signature	 _____ John A. Kitzhaber, M.D., Governor	September 15, 2011 _____ Date
	_____ John R. Kroger, Attorney General	_____ Date
	_____ Michael Jordan, Chief Operating Officer	_____ Date

Exhibit B



Ten Initiatives to Promote High-Wage Job Growth

There are no magic bullets to get Oregon's economy back in gear. We expect recovery to be slow and uneven – with the timing affected by global events outside of our control. This year, we asked industry clusters, regional groups, and business associations to suggest ideas that will improve the business climate for the long run and help spark immediate job growth. Below are 10.

1. Support the Oregon InC agenda and support and accelerate successful models for improving product and process innovation and technology commercialization.

2. Better structure and align Oregon's business development tools, resources and incentives to address gaps in capital availability and to better support high-wage job growth.

3. Simplify and Streamline Regulatory and Permitting Processes. As Michael Porter said at the 2006 Oregon Leadership Summit "If you can develop a land use system and regulatory environment that is both pro-business and pro-sustainability, that would be "epic." While progress was made during the early years of the current state administration, uncertainty still dominates Oregon's regulatory process. We recommend the following next steps. Others may also be appropriate.

- Review Governor Kulongoski's regulatory streamlining initiative, identify where it has worked well, what issues it has failed to address and why. Make a commitment to continue tackling regulatory streamlining as a top priority.
- When considering new regulations and permitting processes, include an assessment of job creation impacts.
- Reform the regulatory appeals processes to prevent endless or frivolous appeals.
- Establish requirements for agencies to act within specific time requirements on permits, pending enforcement actions and development of new regulations.
- Separate permits from policy functions in regulatory agencies and move toward a one-stop, efficient natural resource permit process.
- Require agency rules to meet strict needs standards and robust cost-of-compliance evaluation.
- Consider these goals when setting agency budgets.
- Establish regulatory streamlining initiatives at the local level, and mechanisms to coordinate between state, local, and federal agencies.

4. Make industrial land ready to support creation of high-wage jobs.

5. Advocate for active forest management of federal and state lands; utilize woody biomass for renewable energy.

6. Accelerate energy efficiency efforts.

7. Advance infrastructure projects that create jobs and strengthen our economic foundation.

8. Train Oregonians for high demand jobs.

9. Authorize water withdrawal from the Columbia River during high flow conditions.

10. Make targeted tax changes to spark growth.

- Excerpt from Plan Summary – Oregon Business Plan