Planning Commission Resources:

Training Information:

- Planning Commission Rules and Procedures – last revised in 2015
- City Attorney memo on quasi-judicial procedures, conflict of interest, etc.
- Why Oregon Plans, by Mitch Rohse
- Oregon's Land Use Planning Program (Department of Land Conservation and Development)
- Oregon's Statewide Land Use Planning (powerpoint slides)
- An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon (DLCD)
- Putting the People in Planning (State citizen involvement committee)
- Statewide Planning Goals
- Planning definitions

Resources on City website (www.lincolncity.org)

- Boards and Committees: Planning Commission page - gives a summary of duties and responsibilities of the commission, plus a listing of current members and terms
- Maps - click on "City Maps" from drop-down at top, then "zoning" map.
- Municipal Code: click on "City Charter and Laws", then on the link for "Municipal Code". Planning Commission focuses on Title 17 (Zoning), but also Title 5 (contains VRD licensing chapter), Title 16 (Subdivisions/Partitioning) and Title 15 (Building and Construction – Chapter 15.16 Flood Damage Prevention).
- The Planning and Community Development page contains:
  - Current Land Use Applications (e.g. site plan review)
  - Draft Land Use Ordinances (if any are pending)
  - Monthly building permit reports
  - Other new or timely information
- Documents and Forms: This link lists, by department, application forms and important documents. Highlights from Planning and Community Development are:
  - Comprehensive Plan and any subsequent amendments
  - Transportation System Plan (2015)
  - Walking and Biking Plan (2012
  - Economic Opportunities, Housing Needs Analysis, Buildable Lands Inventory (2017)
  - Parks and Recreation System Plan (2016)
  - Nelscott Gap Neighborhood Plan (2017)
  - Landscaping Guides

Other Resources:

- Department of Land Conservation and Development (http://www.oregon.gov/lcd/pages/index.aspx)
- Oregon chapter of the American Planning Association (http://www.oregonapa.org/)
- A Planning Commissioner's Guide to Effective Citizen Involvement (http://www.centralpt.com/databaseshowitem.aspx?id=76819) - approximately 62 minutes (start at 3:00). Presenter – Elaine Cogan (2008)

RULES AND PROCEDURES
OF THE
LINCOLN CITY PLANNING COMMISSION

March 2015

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RULES AND PROCEDURES
OF THE
LINCOLN CITY PLANNING COMMISSION

ARTICLE I.

NAME

This Commission shall be known as the Lincoln City Planning Commission, which, hereinafter, the Rules and Procedures shall refer to as the Commission.

ARTICLE II.

MEMBERSHIP

Section 1. The Commission shall consist of seven (7) members appointed by the City Council. Each appointee is to serve for a term of four (4) years or until a successor is appointed and qualified, but in no case more than 90 days past expiration of the term.

Section 2. To be eligible for appointment to and continued service on the Commission, a person at the time of appointment and throughout his or her term of service must be a qualified elector within the meaning of the state constitution and reside in the City of Lincoln City. Notwithstanding the provisions of this section, the City Council may appoint two (2) members to the Commission who are qualified electors and reside in the urban growth boundary of the City of Lincoln City, but do not reside in the City, provided that the other five (5) Commission seats are filled by city residents. No more than two (2) voting members of the Commission may engage principally in the buying, selling, or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling, or developing of real estate for profit. No more than two (2) members shall be engaged in the same kind of occupation, business, trade or profession.

Section 3. Members shall attend all meetings faithfully, except in such cases of illness or when the Chair has approved a request to be absent prior to the meeting.

Section 4. The members of the Commission shall serve at the pleasure of the Council [LCMC 2.08.030]. The City Council may remove a member pursuant to ORS 227.030, following a hearing, for misconduct or nonperformance of duty. The Commission may recommend to Council by majority vote the removal of a member for misconduct or nonperformance. Notwithstanding this rule, removal of a member shall be automatic following a second unexcused absence during any calendar year. Members may resign their appointment at any time and for any reason.

Section 5. The Chair of the Commission may appoint special advisory committees for specific purposes. Any such advisory committee member shall serve without compensation and without vote but may participate in the discussion of all Commission matters related to their appointment. Each advisory committee shall make advisory reports as necessary for use of the Commission. Advisory committee members need not be residents of the City.

ARTICLE III.

OFFICERS

Section 1. The officers of this Commission shall consist of a Chair and Vice-Chair.

Section 2. The Commission shall elect a Chair and Vice-Chair from its membership at its first regular meeting in January of each year. Officers shall assume their offices immediately upon election. The term of office shall be one (1) year. In case of a vacancy occurring in any office, the Commission shall fill the same by an election at its next regular meeting.

ARTICLE IV.

OFFICER'S DUTIES

Section 1. The Chair shall preside at all meetings of the Commission, enforce observance of the rules of procedure, decide all questions of order, offer for consideration all motions regularly made, apportion duties of the members of the Commission and advisory members, call all special meetings with approval of the majority of the Commission, review upcoming agendas, appoint all necessary committees and advisory committees, and perform such other duties as the office may require.

Section 2. In the absence of the Chair, the Vice-Chair shall perform the duties of the Chair.

Section 3. In absence of the Chair and Vice-Chair, the Commission shall elect a temporary chair for the particular meeting in question.

Section 4. The Planning and Community Development Director shall work cooperatively with the Commission and its Chair to provide the Commission information, keep minutes of all meetings, conduct all correspondence, and carry out the duties hereinafter prescribed.

ARTICLE V.

MEETINGS

Section 1. The Commission shall hold its regular meetings on the first and third Tuesday of each month at 6:00 p.m. at the City Hall for Lincoln City. Each Commission meeting will end

by 10:00 p.m. unless the Commission, for a particular meeting, approves a motion to extend the meeting time.

Section 2. The Commission may vote to change the place, hour and date of any meeting, if the city can give adequate notice to the public and all interested parties, in accordance with the public meetings law.

Section 3. A majority of the incumbent members of the Commission constitutes a quorum. Except as otherwise provided by these rules, all actions of the Commission require the affirmative vote of the majority of those members present and voting. A recommendation to adopt or amend the Comprehensive Plan or Zoning Code, however, requires the affirmative vote of at least four (4) members and the recommendation of any zoning ordinance amendment shall require the affirmative vote of at least four (4) members. In the event the Commission does not act on, or does not agree to a recommendation on a Comprehensive Plan or Zoning Ordinance amendment within sixty days of referral, the matter automatically goes to the Council for consideration without a recommendation.

Section 4. The Commission shall vote on all motions by roll call vote and the record of the meeting shall show the vote of each member by name, unless unanimous.

Section 5. Except as otherwise provided to the contrary by these Rules and Procedures, Robert's Rules of Order generally apply to the procedures of all Commission meetings. Failure to follow Roberts Rules of Order, however, shall not invalidate any action of the Planning Commission.

ARTICLE VI.

COMMISSION IMPARTIALITY

Section 1. Member Participation.
Members shall vote on all matters that require a decision, unless a member is excluded by Section 2(b) of this article.

Section 2. Bias and Other Challenges to Participation.

(a) Any Commissioner, proponent, or opponent of a proposal to be heard by the Commission may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts in writing, by affidavit, relied upon by the submitting party relating to a Commissioner's bias, prejudgment, financial conflict of interest, or other facts from which the party has concluded that the Commissioner will not participate and make a decision in an impartial manner.

(1) Such written challenge must be delivered by personal service to the City Recorder and the Commissioner not less than 48 hours preceding the time set for public hearing.

(2) The record of the hearing shall incorporate such challenge.

(b) No Commissioner shall participate in discussion of the proposal or vote on the proposal, if the Commissioner has an actual conflict of interest pursuant to ORS 244.020. An actual conflict of interest means any action or any decision or recommendation by a Commissioner acting in a capacity as a Commissioner, the effect of which would be to the private pecuniary benefit or detriment of the Commissioner or the Commissioner's relative, as defined in paragraph (d) of this section, or any business with which the Commissioner or a relative of the Commissioner is associated, unless the pecuniary benefit or detriment arises out of the following:

1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(2) Any action in the Commissioner's official capacity that would effect to the same degree a class consisting of all inhabitants of the City, or a smaller class consisting of an industry, occupation, or other group including one of which or in which the Commissioner or a Commissioner's relative is associated, is a member, or is engaged, [*Only the Oregon Ethics Commission can make class determinations*];

(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(c) No Commissioner shall participate in discussion of the proposal or vote on the proposal, if the Commissioner is prohibited from participation and voting pursuant to ORS 244.135.

(1) A Commissioner shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:

(a) The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member;

(b) Any business in which the member is then serving or has served within the previous two years; or

(c) Any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

(2) A commissioner shall disclose any actual or potential interest at the meeting of the commission where the action is being taken.

(d) For purposes of this Section, the meanings of the following terms are as follows:

"Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a Commissioner or a relative of the Commissioner is associated only as a member or board director or in a non-remunerative capacity.

"Business with which the person is associated" means:

(1) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;

(2) Any publicly held corporation in which the person or the person's relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(3) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(4) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

"Relative" means:

(1) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;

(2) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;

(3) Any individual for whom the public official or candidate has a legal support obligation;

(4) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or

(5) Any individual from whom the candidate receives benefits arising from that individual's employment.

(e) No Commissioner shall participate in discussion of the proposal or vote on the proposal if the Commissioner has determined that, for any reason, the Commissioner cannot participate in the hearing and decision in an impartial manner.

(f) If the Commissioner has a potential conflict of interest, the Commissioner must disclose the nature and extent of the potential conflict of interest, and the Commission as a whole must make an explicit determination as to whether the Commissioner can participate in the hearing and decision in an impartial manner. For the purposes of this subsection, "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, except for circumstances identified in paragraph (b) above.

(g) Commissioners are appointed public officers. The general public has a right to have Commissioners free from prejudice on matters heard by them and to have the evidence on which they make decisions fully disclosed as part of the public record. Commissioners shall reveal any significant pre-hearing or ex parte contacts or site visits with regard to any matter at the commencement of the public hearing on the matter. If such contacts have impaired the Commissioner's impartiality or the Commissioner's ability to vote on the matter, the Commissioner shall so state and shall abstain from participation and voting.

(h) The remaining members of the Commission, by a 2/3 vote, may exclude a member of the Commission from participation in discussion and vote on a matter, if the Commissioner refuses to abstain and the Commission finds that the Commissioner is not capable of participating in an impartial manner because of a conflict of interest or prejudice.

(i) Notwithstanding any provision of this or any other rule: (1) An abstaining or disqualified Commissioner counts for purposes of forming a quorum; and

(j) A Commissioner may represent him/herself, provided the Commissioner:

a) Abstains from the discussion and vote on the proposal; and

b) Removes him/herself from the Commission area and joins the audience; and

c) Makes full disclosure of the Commissioner's status and position at the time of addressing the Commission.

ARTICLE VII.

PUBLIC HEARINGS

Section 1. The chair shall conduct all public hearings before the Commission, except as otherwise provided in Article IV, Sections 1, 2, and 3, in accordance with the Rules and Procedures for the conduct of hearings on land use matters, as adopted by the City Council. Any interested party may appear for him/herself or be represented by counsel. Any person speaking at a public hearing shall first identify him/herself by name, and, if appearing in a representative capacity, identify the person being represented. To receive notices following the public hearing, any person speaking must give the city a current mailing address or email address verbally or in writing.

Section 2. The applicant for any public hearing shall speak first, followed by:

(a) Testimony in support of the project;
(b) Testimony in opposition of the project;
(c) Neutral testimony;
(d) Testimony from public agencies;
(e) Rebuttal by the applicant of any new testimony presented in opposition of the project.

In the event of a public hearing for an appeal, the appellant shall speak first, followed by:

(a) Testimony in support of the appeal;
(b) Testimony by the applicant, if the applicant is not the appellant. The applicant's presentation time shall be equal to the appellant's presentation time.
(c) Testimony in opposition of the appeal;
(d) Neutral testimony;
(e) Testimony from public agencies;
(f) Rebuttal by the appellant of any new testimony presented in opposition of the appeal.

Section 3. The Chair shall have the right to limit testimony on any public hearing matter when the Chair feels the Commission has received adequate representative testimony of all sides of the matter.

Section 4. Occasionally, the Commission will close a public hearing and continued its deliberations to a future meeting. To avoid receiving public comment following the close of the public hearing, the Chair has the authority to move deliberations up in the agenda of the future meeting to be ahead of opportunity for public comment.

Section 5. A written record of a Commission decision that follows a public hearing shall be in the form of a final order for a conditional use permit, subdivision, planned unit development, variance, and an appeal, and a final recommendation for a zoning map amendment, comprehensive plan amendment, or zoning ordinance amendment. Final orders and final

recommendations shall report the findings of the Commission, explaining how the decision relates to the evaluation criteria. The final order shall include the vote of each member by name and briefly state the basis for any minority vote. The vote on a final order or final recommendation is not meant to be a second vote on the subject of the hearing. If the final order or final recommendation accurately reflects the findings of the majority and the decision, Commissioners should vote to approve.

ARTICLE VIII.

SPECIAL RECORDS

The Planning and Community Development Director shall maintain special records for the following matters:

Section 1. Special Reports

Special reports made by staff or committees of the Commission that are in writing or in Commission minutes shall be filed in a file entitled "Special Reports" and kept on file at the Planning & Community Development Department and made available to the public upon request.

Section 2. Minority Reports

In the case of a division of opinion of the Commission, a commissioner voting in the minority may submit a report, which the planning department will keep in the project file and make available upon request. On matters submitted to the City Council for final action or on appeal, staff will submit a copy of the minority report with the final order and other materials to the City Council, if the Commissioners receive such minority report prior to or at the meeting at which the final order is adopted. Unless the Commission receives a minority report first in accordance with the above-described procedure, the Council shall not receive or consider it.

Section 3. Planning Commission Interpretations

The Planning Commission does not issue advisory opinions or interpretations of City Ordinance provisions. When an application or appeal requires the Commission to make an interpretation of any ordinance, either text or map, such interpretations shall be reduced to writing and included in the Final Order. All such Final Orders shall be placed in a special file entitled "Ordinance Text and Map Interpretations" and shall be made available upon request from files kept at the Planning & Community Development Department. City Council shall receive a copy of such decisions, including interpretations for review, and the Planning Department may recommend code amendments to clarify or correct such interpreted code language.

Section 4. Staff Interpretations In the case of staff administrative interpretations of applicable ordinances, the city attorney shall approve or disapprove such interpretations, and be ,

reduced to writing andforwarded to the Planning Commission and City Council for consideration of clarifying Code amendments to adopt such interpretations as law.

Section 5. Proposed Revisions File

In cases where the Commission, a citizen, or staff suggests future revisions to any of Lincoln City's ordinances or plans, staff shall make note of such revisions and file in the "Proposed Revisions File" at the Planning & Community Development Department, which staff shall make available upon request.

Section 6. Annual Workshop

The Commission shall hold an annual workshop each year to discuss and determine the goals for the Commission for the upcoming year and to review the Commission's Rules and Procedures.

Section 7. Retired Provisions

As the Commission retires provisions of the Commission's Rules and Procedures or City Ordinances by amendment or repeal, staff shall file all such retired provisions in a special file entitled "Retired Provisions" together with appropriate dates of amendment or repeal.

ARTICLE IX.

ADOPTION OR AMENDMENT OF RULES AND PROCEDURES

The adoption or amendment of these Rules and Procedures requires a two-thirds (2/3) vote of the members present and voting at a regular meeting. All Commissioners shall receive proposed rules or amendments five (5) days in advance of the meeting at which the Commission will consider them.

2017 Quasi-Judicial Proceedings Handout.

Oregon law requires the observance of certain procedural safeguards to ensure that quasi-judicial land use decisions are properly and lawfully made by the appropriate City decision maker. The manner in which land use hearings are conducted and the procedural due-process requirements for those hearings are found in ORS 197.763 and Lincoln City Municipal Code Section 17.76.030.

What is Quasi-Judicial.

The Oregon Supreme Court established a list of factors to be weighed to determine whether a land use decision is legislative or quasi-judicial:

> (1) Is the process bound to result in a decision?
> (2) Is the decision bound to apply preexisting criteria to concrete facts?
> (3) Is the action directed at a closely circumscribed factual situation or a relatively small number of persons? [citation omitted]

The more definitely the questions are answered in the negative, the more likely the decision is legislative. Otherwise, the decision is quasi-judicial. No single answer is determinative, but typically, a legislative decision exists if a negative answer is provided to the first and third inquiries.

Apply the Law / Requirement for Findings.

The function of a quasi-judicial land use hearing is to <u>apply existing law</u> (land use regulations) to the facts in the record concerning specific development applications. The application of existing law is the distinction. In legislative proceedings you make law, in quasi-judicial proceedings you are bound to apply existing law.

Every time the City decision maker applies the evidence in the record of a land use hearing to existing law the decision maker should be able to make a finding of <u>compliance</u> or <u>non-compliance</u> with the applicable law.

Quasi-Judicial findings involve the following rote finding procedure which the City decision maker absolutely must perform on each and every quasi-judicial application:

1. Identify the applicable law (regulation).
2. Identify the competent substantial evidence in the record (relevant evidence) which demonstrates compliance or non-compliance with the applicable criterion.
3. Discuss how the facts (evidence in the record) as applied to the applicable law (regulation) result in compliance or non-compliance with the criterion.
4. Clearly state the conclusion: compliance or non-compliance.

In a quasi-judicial proceeding, the Council, Planning Commission or Planning Director is acting like a judge. After performing this routine regulatory task, the decision should be relatively clear. The applicant has the burden to demonstrate with competent substantial evidence in the record that each and every applicable criterion

is satisfied. It is not staff's job to supply the needed information for the applicant. A denial can be supported by a single non-compliance.

A local government's quasi-judicial land use decision can be subjected to review by the Land Use Board of Appeals and by the Courts thereafter. Among other things, LUBA will review local government quasi-judicial land use decisions to determine if: (1) the local government acted within its jurisdiction; (2) provided the parties procedural due process, (*i.e. followed the procedures applicable to the matter*); (3) made a decision supported by substantial evidence; (4) applied and interpreted the law correctly.

Procedural Due Process

Generally speaking, conducting a new hearing (de novo hearing) will eliminate any procedural errors below. Lincoln City does not mandate two de novo hearings, and in fact sets as the default provision, the review of Planning Commission actions by City Council "on the record." Because of this fact it is essential that the Planning Commission avoid procedural error. (The Code reserves to the Council the right to conduct a hearing de novo.)

Procedural due process requires that you follow your own procedures and that you provide notice and the meaningful opportunity to be heard to the participants. Additional due process safeguards include the right to be informed of all the facts upon which the decision is based (ex parte prohibition) and the right to an impartial decision maker (bias prohibition). Ex parte disclosure and bias allegations are addressed below.

Ex Parte Prohibition

It is the City decision maker's responsibility to provide a fair hearing to all participants. A hearing can only be fair if the evidence is known to all parties. Ex Parte communication is the receipt of information by the quasi-judicial decision maker outside of the formal hearing process. Violations of state law concerning ex parte contacts are not mere procedural errors; such violations are serious *substantive* error. That is, no showing of prejudice to a substantive right is required for reversal and remand of the decision. *Horizon Construction Inc. v. City of Newberg,* 114 Or. App 249 (1992); *Brown v. Union County* 32 Or LUBA 168 (1996); *Smith v. City of Phoenix,* 28 Or LUBA 517 (1995); *Angel v. City of Portland* 21 Or LUBA 1, (1991). Accordingly, ex parte communications can waste a significant amount of time and money – and should be avoided.

The best course of action is to avoid all ex parte communications with participants in local land use hearings. **You are acting as a Judge – no one thinks it is proper to supply evidence to a judge about a pending case outside of the courtroom**.

State law creates a process for damage control in the event of inadvertent receipt of ex parte information. The statutory curative process includes two important factors: first**,** the entire substance of the ex parte communication must be disclosed; second, the disclosure must be made as soon as possible, followed by the announcement of the right to rebut the substance of the disclosure.

(1) The substance of any ex-parte contact concerning the subject of a land use hearing must be disclosed. A participant has the right to rebut the evidence you received outside the hearing room. A practical suggestion is to reduce to writing any facts received as soon as is practical. You can provide such written material to the Planning Department for inclusion in the record therefore making such information available for rebuttal prior to the hearing; however, you must still make the required disclosure at the hearing.

Please be specific about facts. Don't just generalize and say, "some guy approached me and we talked about the proposed development." Get the relevant evidentiary material on the record. For example:

> "Joe Environmentalist approached me and told me he saw an endangered rubber boa (*Charina bottae*) on the site last weekend and that under our Code this requires that the entire northwest portion of the site be preserved."

Obviously, proponents and opponents alike will want to investigate and address such factual and legal assertions and submit testimony or evidence to rebut or support such assertions. If, for example, you read a newspaper article or other publication concerning an issue in the hearing, an ex parte contact has occurred and simply stating that you read it is not enough. You must get the substance (if not a copy) of the document into the record as soon as possible. Opponents and proponents can respond to the facts and arguments in the document during the hearing or other evidentiary phase.

This does not mean however that your entire personal life experience, (every book you read in college), is an ex parte contact subject to disclosure. [citation omitted]. Reducing the ex parte contact to writing also helps to remember exactly what was said. The inability to recall the details of an ex parte contact creates additional problems:

> [Commissioner's] … inability to recall the substance of his communication with [an interested party] effectively nullifies petitioner's right to an opportunity to rebut that communication or stated differently, to a decision untainted by undisclosed ex parte communications. [Citation omitted]

In general, the remedy should be "tailored to rectify the evil at which it is directed"; in most cases, that is "providing a fair opportunity for interested persons to develop and present evidentiary and argumentative responses to the matter disclosed by the recipient" [citation omitted]. If the content of the communication cannot be recalled, a full rehearing may be required in the case.

Site visits are unquestionably information obtained outside the hearing, but technically they are not ex parte "communications". *Carrigg v. City of Enterprise*, 48 Or. LUBA 328 (2004). However, as a practical matter case law requires that site visits be disclosed **in the same manner and for the same reason** as ex parte communications. In fact, you will find numerous opinions referring to site visits as ex parte communications. As stated in *Carrigg*:

> The procedural requirements governing site visits are imposed by case law, not statute. … However, the requirements to disclose and offer an opportunity to

> rebut site visits have a similar purpose to the purpose served by the requirements of the ex parte contact statutes: to ensure that land use decisions are based on information or evidence the decision makers receive within the public process, and are not based on information or evidence received outside the public process. *See Opp v. City of Portland*, 38 Or LUBA 251, 263-64, *aff'd* 171 Or App 417, 16 P3d 520 (2000) (ORS 227.180(3) is intended to ensure that land use decisions are based solely on publicly disclosed evidence and testimony that is subject to rebuttal or the opportunity for rebuttal). If such information or evidence is received outside the public process, whether from a site visit or an ex parte communication, the decision maker is obligated to make an adequate disclosure of the substance of the information during the public process, and provide an opportunity for participants to rebut that information. *Angel*, 21 Or LUBA at 8.

(2) The timing of the disclosure is also extremely important. The law requires disclosure and the right to rebut the substance of the communication "at the first hearing following the communication." ORS 227.180(3)(b). In *Horizon Construction Inc. v. City of Newberg,* 114 Or. App 249, 254 (1992) the Court of Appeals stated: *ORS 227.180(3)* does not simply establish a procedure by which a member of a deciding tribunal spreads a fact on the record. It requires that the disclosure be made *at the earliest possible time.* Implicit in that requirement is that the parties to the proceeding must be given the greatest possible opportunity to prepare for and to present the rebuttal that *ORS 227.180(3)(b)* requires that they be allowed to make. The purpose of the statute is to protect the substantive rights of the parties to know the evidence that the deciding body may consider and to present and respond to evidence. (*emphasis added*)

It must be emphasized that staff discussions of the evidence in the record and advice of legal counsel are not ex parte communications. ORS 227.180(4). In fact, a local government decision maker is entitled to consult with its attorney regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues. Parties have no right to rebut the substance of a local government attorney's advice to the local government decision maker. In terms of the order of proceedings, your legal counsel and staff, should be asked questions and interpretative issues after the close of the record. However, when you need facts not in evidence from staff, ask during the hearing, not after the close of the record. [citations above]

Bias and Prejudgment

LUBA described the requirement for impartiality in quasi-judicial proceedings as follows:

> "As we have explained on many occasions, local quasi-judicial decision makers, who frequently are also elected officials, are not expected to be entirely free of any bias." "To the contrary, local officials frequently are elected or appointed in part because they favor or oppose certain types of development." "Local decision makers are only expected to (1) put whatever bias they may have to the side when deciding individual permit applications and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the

facts and law rather than a product of any positive or negative bias the decision maker may bring to the process."

There are two types of bias: (1) prejudgment and (2) actual personal interest. A person challenging a City decision maker for bias has the burden to demonstrate bias or prejudgment in "a clear and unmistakable manner." "The burden of proof that a party must satisfy to demonstrate prejudgment by a local decision maker is substantial." LUBA has stated that the "burden to establish the city council was biased is a heavy one." In order to demonstrate actual bias, a petitioner must show that a "decision maker or body was incapable of making a decision based on the evidence and argument before them." Stated another way, "the standard for determining bias is whether the decision maker prejudged the application, and did not reach the decision by applying relevant standards based on the evidence and argument presented [during the quasi-judicial proceedings]." "An allegation of decision maker bias, accompanied by evidence of that bias, may be the basis for a remand [from LUBA] under ORS 197.835(9)(a)(B)."

Often times public statements made outside the hearing about a matter can lead to a bias challenge (especially quotes to a newspaper). However, how you conduct yourself during the hearing itself can lead to a challenge. Always be respectful of participants, ask questions of participants in a respectful manner. It is not wrong to affirmatively state for the record, after a challenge for bias or after disclosure of ex parte contacts or potential conflict of interest that as a Councilor or Commissioner you are not prejudiced or biased by your prior involvement or ex parte contacts, that you will make the decision based upon application of the facts in the record to the applicable criterion and that you will participate and vote in the matter. For example:

> *I have not prejudged this application and I am not prejudiced or biased by my prior contacts or involvement; I will make this decision based solely on the application of the relevant criteria and standards in the Code to the facts and evidence in the record of this proceeding.*

However, if you cannot set aside your feelings, do not participate. If you cannot articulate why you find the application does meet the criterion or does not meet the criterion, you are probably biased and not making the decision based on the application of the facts to the law. Ultimately, each City decision maker must ask if they can "put whatever bias they may have to the side" and "apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process."

Financial Conflict of Interest

If you believe you have a financial conflict of interest state law mandates disclosure.

ORS 244.020 defines actual conflict of interest [ORS 244.020(1)] and potential conflict of interest. [ORS 244.020(12)] In brief, a public official is met with a conflict of interest when participating in official action which could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either are associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." An actual conflict of interest occurs when the action taken by a public official would affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. If the financial effect of an action is both specific and certain, then that action presents an actual conflict of interest.

What to do if a conflict exists?

> **Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.**
>
> **Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]**

ORS 244.135 specifically addresses Planning Commissioners.

ORS 244.135 Method of handling conflicts by planning commission members

(1) A member of a city or county planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:

> (a) The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member;
>
> (b) Any business in which the member is then serving or has served within the previous two years; or
>
> (c) Any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

(2) Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken.

See the Guide for Public Officials on the Oregon Ethics Commission website.

http://www.oregon.gov/ogec/pages/index.aspx

(You should have received a hard copy from the City Recorder).

You may contact the City Attorney's Office or Contact the Oregon Ethics Commission if you have questions, but only advice from the Ethics Commission can protect you from financial penalty from the Ethics Commission.

.

Substantial Evidence / Apply Criteria

An applicant has the burden of proving, by a preponderance of evidence, that all the applicable approval criteria are met. The applicable criteria are identified in the notice and listed at the commencement of the hearing. During the land use process, the local decision-maker applies the preponderance of evidence standard for determining factual issues. Ultimately, however, the decision must be supported with substantial evidence in the record. The decision maker must identify the evidence upon which the decision maker bases its decision. To be defensible, the evidence used in making its decision must be substantial evidence. Substantial evidence has been defined by the Oregon Supreme Court:

> When reviewing a land use decision, LUBA may reverse or remand if the local government's decision is based on facts that are 'not supported by substantial evidence in the whole record.' ORS 197.835(9)(a)(C). A finding of fact is supported by substantial evidence if the record, viewed as a whole, permits a reasonable person to make that finding. *Younger v. City of Portland,* 305 Or. 346, 360, 752 P.2d 262 (1988)
>
> … Stated another way, LUBA considers all the evidence in the entire record in evaluating whether a factual finding is supported by substantial evidence and determines whether a reasonable person could make that finding. *Younger,* 305 Or. at 356, 752 P.2d 262.

Staff reports and staff oral statements may constitute substantial evidence, in which case, they must be deemed evidence on which a reasonable person could rely. [citations omitted] Expert testimony is deemed substantial evidence if it concerns the subject matter in which the person is expert.

Applicants and opponents alike will often present evidence with **no relevance** to the applicable criteria because they perceive that such evidence will sway the decision maker. (e.g. an applicant may claim that approving the project will support the local economy, or help his/her family with some personal situation; an opponent may claim the applicant has violated the code on another project or that the project will attract "undesirables" to the community). (*Unless these matters are expressly listed as approval criterion for this application, they are irrelevant, some may even violate federal law – e.g. discrimination based on disability*).

Please disregard irrelevant evidence and focus on compliance or noncompliance with the applicable criteria. The worst thing you can do is make the decision based on improper purposes or considerations; focusing on the criteria will ensure a defensible decision. Because the Council or Commission will sometimes be accused of making a decision for improper purposes, it is important to point out what evidence is used in

reaching the decision (and what evidence is specifically rejected as a basis for its decision).

About Deliberations

A local government decision maker is entitled to consult with its attorney and staff regarding evidence submitted during the evidentiary phase of the local proceeding and interpretive issues; parties have no right to rebut the substance of the local government attorney's advice (or staff advice) to the local government decision maker. *Linebarger v. City of Dallas*, 24 Or LUBA 91, 93 (1992); *Dickas v. City of Beaverton*, 92 Or App 168, 172-73, (1988); *Thornton v. St. Helens* 31 Or LUBA 287 (1996).

Similarly, to the extent you discuss among yourselves and with your staff language for your findings and/or conditions, no party has the right to rebut these matters or participate in deliberations. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 560, 566 (2001). (opponents have no right to review or rebut proposed findings prior to their adoption).

(Please keep this in mind at the end of the hearing, assuming the record is closed and the applicant does not want to submit written argument, feel free to ask staff and your attorney to help you apply the facts to the law in your deliberations on the decision.)

See ORS 197.763: https://www.oregonlegislature.gov/bills_laws/ors/ors197.html

See LCMC 17.76.030: http://www.codepublishing.com/OR/LincolnCity/

Why Oregon Plans

Mitch Rohse, AICP
President, Oregon Chapter of the American Planning Association

This year, 2003, marks the 30th anniversary of Senate Bill 100, the legislation that created Oregon's statewide system for land use planning. In 1973, statewide plan-ning was a bold experiment. Today, it has become an essential tool for protecting our economy and environment. Tomorrow, it will be needed even more. Why is land use planning so important to Oregon, and why is its importance growing? Oregon's planners offer the following answers to that question:

Land is a vital resource. It is the foundation of our state's economy, environment, and quality of life. Our housing, industry, commerce, transportation, agriculture, forestry, recreation, wildlife, minerals, and scenery all depend on land. All are affected by the way in which we use it.

Land has its limits. Its supply is finite, its features fragile. Though often thought of as a simple surface, land is in fact a complex combination of natural and man-made systems. The natural systems include groundwater, soils, natural vegetation, and wildlife habitat. The manmade systems include roads, sewers, water pipes, utility lines—the vast infrastructure network needed to serve modern development. Unplanned development may cause irreparable damage to these vital systems.

More of us are using the land. In 1990, our state had 2,842 337 people. By 2000, we had 3,421,399. In each of those years, Oregon added about 58,000 people—a new Corvallis every year, a new Portland every ten. The result of our continuing growth is greater competition for and demands upon the land.

We are using more land. Yesterday's shopping center was a ten-story department store on one acre downtown. Today's is a one-story "big box" store on ten acres in suburbia. The result is clear: more land per shopper is used. Similar changes in development patterns are occurring with our homes, offices, schools and factories, thus using more land per household, more land per worker, and so on. The trend is clear: each of us is consuming more land.

We are using land more. Modern development often brings massive alteration of the landscape. We grade, shape, and excavate our land today with more powerful tools and greater intensity than ever before. This increased intensity of develop-ment causes greater impact on our soils, groundwater, waterways, native plants and wildlife habitats. It brings greater change to the appearance of our landscapes and communities.

The use of one's land affects others. With the trends described above, our society has changed. Today, even the simplest form of development is likely to affect our neighbors. More extensive development may affect an entire community or region. Cumulative effects of land use may bring dramatic change in community, region, and state. For example, development of 100 new homes on rural lots served by one road connected to a busy highway might generate a need for a new interchange costing ten million dollars.

Development of private land requires public services. In the 21st century, almost all new development is a joint public-private venture. Any new house or business today is likely to be served by more than a dozen public service systems and utilities: streets, water, sewers, storm sewers, fire protection, police, school busing, public transit, electricity, telephone, natural gas, cable television, waste disposal, sidewalks, streetlights, and street cleaning. Costs of providing these public services are greatly influenced by our patterns and densities of land development.

Planning protects the billions of dollars we have invested in our land. The extent of our private investment in land is readily seen in homes, office buildings, shopping centers, and factories. Our public investment in infrastructure to serve such development is less visible but equally significant. In Oregon, it amounts to many billions of dollars. The infrastructure needed to serve just one new house today costs tens of thousands of dollars. Land use planning is our main tool for protecting these private and public investments in property and infrastructure.

Issues of property rights have become more complex. Those who own land have certain rights to develop, use, and enjoy their property. But their neighbors have the same rights. Whose rights should prevail when conflicts arise? How are we to balance rights of one person to use his or her property against rights of a neighbor affected by that use? How are we to balance the public's interests in the use of land against those of the private landowner? The more we use our land, the more we need an equitable, efficient way—planning—to resolve such issues.

Oregonians demand and deserve a voice in land use. Our three decades of planning have made Oregonians well-informed about land use issues. They expect to participate in the making of policies and decisions that affect their land, natural resources, and public service systems. Their expectation is fully consistent with the democratic principles that underlie our state and nation. Planning is their forum.

It all comes down to this: The use and development of land affects our economy, environment, and quality of life in increasingly complex ways involving public and private interests. Planning is the process by which we balance competing rights and resolve complex issues of land use. Planning is the forum in which the public and private interests are expressed. Planning is the way in which we set our vision for the future of our community and our state.

It is said that failing to plan is planning to fail. In Oregon, we plan to succeed.

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
FAX (503) 378-5518
Web Address: http://www.oregon.gov/LCD

Oregon's Land Use Planning Program

Providing regional solutions for a diverse state

Oregon's statewide land use planning laws contain many provisions that accommodate the significant geographical, economic, environmental, cultural and political differences across the state. There are four major ways in which the program recognizes local and regional differences.

1. State Law and Local Plans

The most fundamental way that planning laws recognize and account for regional differences is by requiring that comprehensive plans and ordinances be developed, adopted and implemented by each of Oregon's 242 cities and 36 counties. Although those plans must comply with the 19 Statewide Planning Goals, no two plans are identical. Each local plan incorporates the goals in a unique fashion that allows the plan to reflect local conditions.

2. The Issues

The law intends the Statewide Planning Goals to be a broad policy framework that provides flexibility in local application and implementation. As a result, the locally adopted and state-acknowledged plans demonstrate a diversity of planning approaches and chosen solutions to common land use conditions. Those solutions – which are realized through active citizen participation – reflect the unique geographical, economic, social and political setting of each community and demonstrate that there is a difference in land use plans throughout the state. Comprehensive plans are based on information which describes each local community: city and county population; employment trends; soil types; flood plains; unique geographical features; building permit data; inventories of the types of residential, commercial and industrial land; and public facility master plans.

3. The Goals

Another way the program accounts for regional differences is in the Statewide Planning Goals themselves. For instance, Goal 3 (Agricultural Lands) applies different policies to eastern Oregon than western Oregon. Similarly, Goal 4 (Forest Lands) is based on the productivity of lands for forest production, which varies widely among regions such as the high plateaus of Central Oregon, the Oregon Coast, and the foothills of the Cascade Mountains. Goal 15 (Willamette River Greenway) applies only to jurisdictions that border the Willamette River from Eugene to Portland. Another clear regional distinction can be found in three coastal goals: Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands) and Goal 18 (Beaches and Dunes). The Columbia River, Yaquina Bay and Coos Bay estuary management plans all meet the coastal Goal requirements, but in different ways based on the differences of estuaries.

4. The Size of the Jurisdictions

In addition to providing flexibility in the Statewide Planning Goals to account for local conditions, the program recognizes the differences in community size around the state, providing, in effect, a multi-tiered land use system.

- The most detailed planning laws – such as those for transportation – apply only to cities with populations of 25,000 or greater and to cities included in Metropolitan Planning Organizations (MPOs). (Oregon has six MPOs: the metropolitan regions of Portland, Salem, Eugene, Medford, Bend and Corvallis.)
- Less stringent provisions apply to moderate size cities (population 2,500-24,999) such as Dallas, Klamath Falls, Roseburg and La Grande. For example, cities under 25,000 are not required to address specific residential and Urban Growth Boundary (UGB) planning requirements (ORS 197.296), or land use and mass transit planning requirements of LCDC's Transportation Planning Rule (OAR 660-012).
- Periodic Review of local land use plans is only required for cities over 10,000 or cities in an MPO (54 cities). Oregon's counties are exempt from state requirements for Periodic Review, except with regard to a counties' role in Periodic Review for cities over 10,000.
- Oregon's smallest cities (under 2,500) and counties (under 15,000) are exempt from many planning statutes and rules.

Here are some other specific ways in which the Oregon land use program allows for regional differences:

Differences by Area of the State

1. Statutory procedures allow Regional Problem Solving (RPS), whereby state and local interests may create special plans for a specific region, including plans that may be exempt from certain statewide planning requirements (ORS 197.652 to 197.656).

2. There are different planning requirements and procedures that apply to the Portland metropolitan area. Because of the complexity of its urban issues, the Portland Metropolitan Service District (Metro) has unique charter authority for land use planning for the 25 cities in the metropolitan area, including the urban portions of Clackamas, Multnomah and Washington counties. Metro, the only directly elected regional government in the nation, serves more than 1.4 million residents. Its charter (1992) provides for a Regional Framework Plan, which incorporates planning goals, objectives and policies that only apply to the Metro region. Also, LCDC has adopted rules that apply only to Metro regarding housing, and urban and rural reserves.

3. There are different definitions of 'agricultural land' for eastern and western Oregon.

4. There are different definitions of high-value farmland for the Willamette Valley and the Oregon Coast than other areas of the state (ORS 215.710).

5. There are different standards regulating the approval of dwellings on high-value farmland versus non high-value farmland (OAR 660-033-0135(5) and (7).

6. There are different approval criteria for "non-farm dwellings" on farmland in the Willamette Valley than in eastern Oregon and other areas of western Oregon (ORS 215.284).

7. There are different approval criteria for the creation of new parcels for non-farm dwellings

in the Willamette Valley than in eastern Oregon and other areas of western Oregon (ORS 215.263).

8. There are different approval criteria throughout the state for dwellings on forest land based on forest capability standards (ORS 215.705 and 215.750).

9. There are different minimum lot size requirements for the approval of dwellings on forest land in eastern and western Oregon (ORS 215.740).

10. Laws allow for guest ranches as part of livestock operations in eastern Oregon (Chapter 728, Oregon Laws 1997 and Chapter 467, Oregon Laws 2001).

11. There are different criteria allowing "destination resorts" in coastal areas and in eastern Oregon (ORS 197.435, 197.445 and 197.455).

12. There are different standards for allowing aggregate mining on farmland inside and outside the Willamette Valley (OAR 660-023-0180).

13. There are different standards for rural industrial uses inside the Willamette Valley than for those in other regions (Section 1, Chapter 668, Or Laws 2003).

14. The requirements for the Willamette River Greenway apply only in the Willamette Valley and differentiate between urban and rural areas along the river.

15. The coastal goals apply only in seven coastal counties and have different planning requirements depending on the types of resources present.

16. There are different planning requirements for the Columbia River Gorge region as a result of state and federal land use legislation (Columbia River Gorge National Scenic Act).

NOTE: DLCD is also part of the Governor's Economic Revitalization Team (ERT), which emphasizes multi-agency coordination on projects of local and statewide significance. ERT has regional coordinators around the state (Bend, Milton-Freewater, Central Point, Salem and Portland) to help communities and businesses identify and emphasize unique economic strengths and opportunities.

Differences by Size of Jurisdiction

1. There are different requirements for transportation planning for cities with a population of less than 10,000. Those cities may seek an exemption from certain transportation planning requirements (ORS 197.230(4).

2. There are different UGB requirements regarding residential land needs for cities with a population of less than 25,000 (ORS 197.296).

3. There are different planning requirements for providing needed housing for cities with a population of less than 2,500 and counties with a population of less than 15,000 (ORS 197.303).

4. There are different requirements for the Periodic Review of comprehensive plans based on the size and location of cities (ORS 197.629).

5. There are different planning requirements for unincorporated communities depending on the size, location and other characteristics of those communities (OAR 660, Division 22).

6. Cities with a population of less than 2,500 are except from certain planning requirements for the provision of public facilities (OAR 660-011-0000).

7. Cities with a population of less than 2,500 are exempt from certain planning requirements for economic development (OAR 660-009-0020(2).

8. There are different planning requirements for airports based on size (OAR 660-013-0155).

As the foregoing examples show, Oregon's land use planning laws recognize many of the ways in which different parts of the state and different size communities have different needs and interests. One size does not fit all.

Persons interested in more information about any of the matters presented in this paper should contact the Department of Land Conservation and Development, 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540 (503-373-0050), or go to the department's website listed below.

IMPORTANT WEBSITE LINKS:

Department of Land Conservation and Development: http://www.oregon.gov/LCD/index.shtml
Oregon Revised Statutes: http://www.leg.state.or.us/ors/home.html
Oregon Administrative Rules: http://arcweb.sos.state.or.us/banners/rules.htm
The 19 Statewide Planning Goals: http://www.oregon.gov/LCD/goals.shtml
Metro (Portland area): http://www.metro-region.org

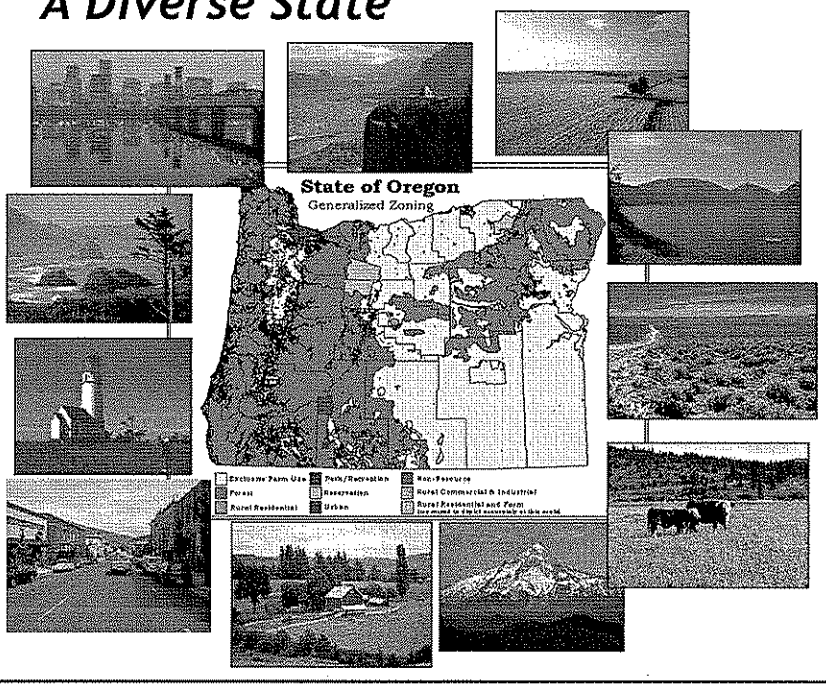
Oregon's Statewide Land Use Planning Program

A Framework for Community Decisions

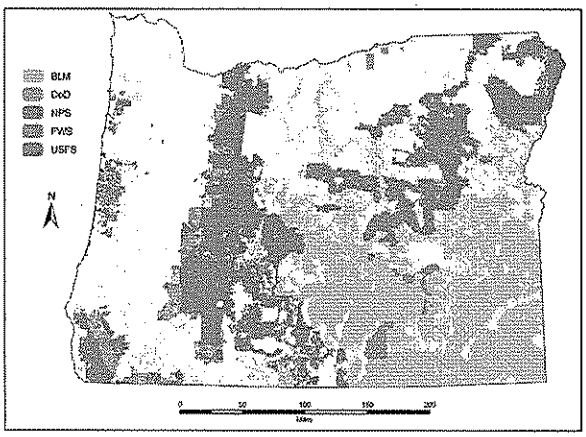
Richard Whitman – Director

Oregon Department of Land Conservation and Development

A Diverse State

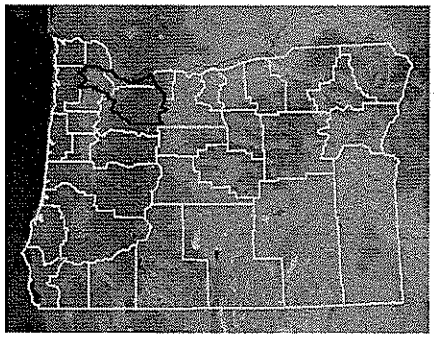


Lots of Federal Land (53%)



Many Local Governments

36 Counties, 242 Cities, 1 Regional



The State Land Use Program

1973 Law (SB 100) Framework

- **Land Conservation and Development Commission (LCDC)**
  7 citizen members appointed by the Governor, confirmed by the Senate
- **Department of Land Conservation and Development (DLCD)**
  State administrative agency
- **Statewide Planning Goals**
  Guide local plans and state agencies

Program Elements Created by 1973 Law

- **State Planning Goals**
- **Cities and counties**
  - Adopt land use plans, and
  - Regulations consistent with state goals.
- **State agencies**
  - Follow statewide goals, and
  - Coordinate programs & permits affecting land use with city and county plans.
- **LCDC reviews**
  - All local plans for compliance with statewide goals, and
  - State agency coordination agreements.

Statewide Planning Goals

Goal 1: Citizen Involvement (December 1974)
Goal 2: Land Use Planning (December 1974)
Goal 3: Agricultural Lands (December 1974)
Goal 4: Forest Lands (December 1974)
Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces (December 1974)
Goal 6: Air, Water, and Land Resources Quality (December 1974)
Goal 7: Areas Subject to Natural Hazards (December 1974)
Goal 8: Recreational Needs (December 1974)
Goal 9: Economic Development (December 1974)
Goal 10: Housing (December 1974)
Goal 11: Public Facilities and Services (December 1974)
Goal 12: Transportation (December 1974)
Goal 13: Energy Conservation (December 1974)
Goal 14: Urbanization (December 1974)
Goal 15: Willamette River Greenway (December 1975)
Goal 16: Estuarine Resources (December 1976)
Goal 17: Coastal Shorelands (December 1976)
Goal 18: Beaches and Dunes (December 1976)
Goal 19: Ocean Resources (December 1976)

Big Ticket Policies:

- **Citizen Involvement**
- **Protect Agricultural Lands**
- **Protect Forest Lands**
- **Protect Coastal Resources**
- **Focus Development in Urban Areas**
- **Link Transportation and Development**
- **Link Economic Development and Land Use**

Who Makes Land Use Decisions?

Single Property Proposal

Applicant

↓

City/County staff review

↓

Planning Commissioner
or Hearings Officer

↓

City Council
or County Commission

Area-wide Proposal

Local Proposal

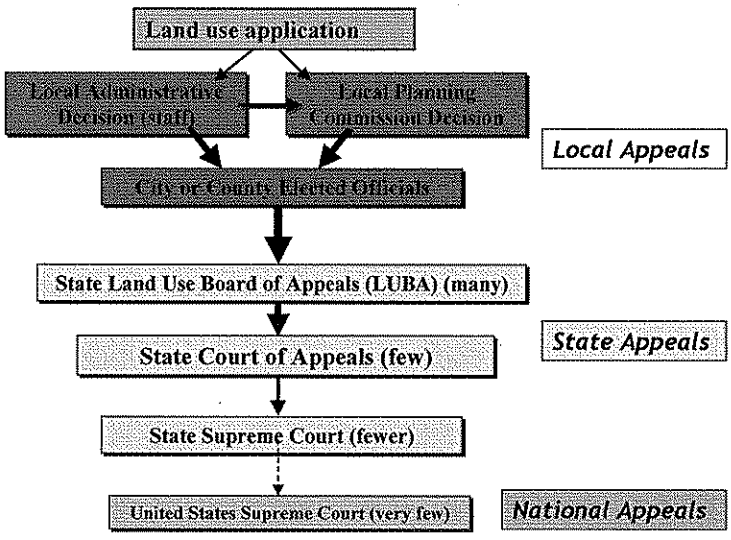
↓

Planning Commission

↓

City Council
or County Commission

Appeals



How We're Organized

Department of Land Conservation and Development

LCDC
Land Conservation and Development Commission

Director's Office
Administration, Policy, Legislative, Communications, Big Look

Community Services
- Community Policy
- Grants Administration
- Plan Amendments

Regional Representatives
- Waldport (2)
- Salem (2)
- Eugene (1)
- Portland (2)
- Bend (2)
- La Grande (1)
- Central Point (1)

Planning Services
- Farm/Forest
- Urban Planning (2)
- Natural Resources
- Economic Development
- Natural Hazards /Floodplain Team (2)
- Transportation and Growth Management Team (5)

Coastal Services
- Coastal Policy
- Shorelands/Hazards
- State-Federal Relations
- Coastal Permits
- Conservation Projects
- Marine Affairs
- Coastal Nonpoint WQ
- Grants Administration
- Coastal GIS
- Oregon Coastal Atlas

Operations Services

Measure 49 Development Services

How We Are Doing?

Oregon Land Base

Total land in Oregon	61.8 million acres
Public land (55%) (Tribal/Federal/State/Local)	34.1 million acres
Private land (45%)	27.7 million acres

Oregon's Private Lands

Farm	15.5 million acres	55.8%
Forest	8.2 million acres	29.7%
Farm/Forest	2.3 million acres	8.1%
Rural Dev.	890,116 acres	3.2%
Other Rural	105,000 acres	.4%
UGBs	781,836 acres	2.8%
TOTAL	**27.7 million acres**	**100%**

The "Big Look"

The 30-year Review of the Statewide Planning Program

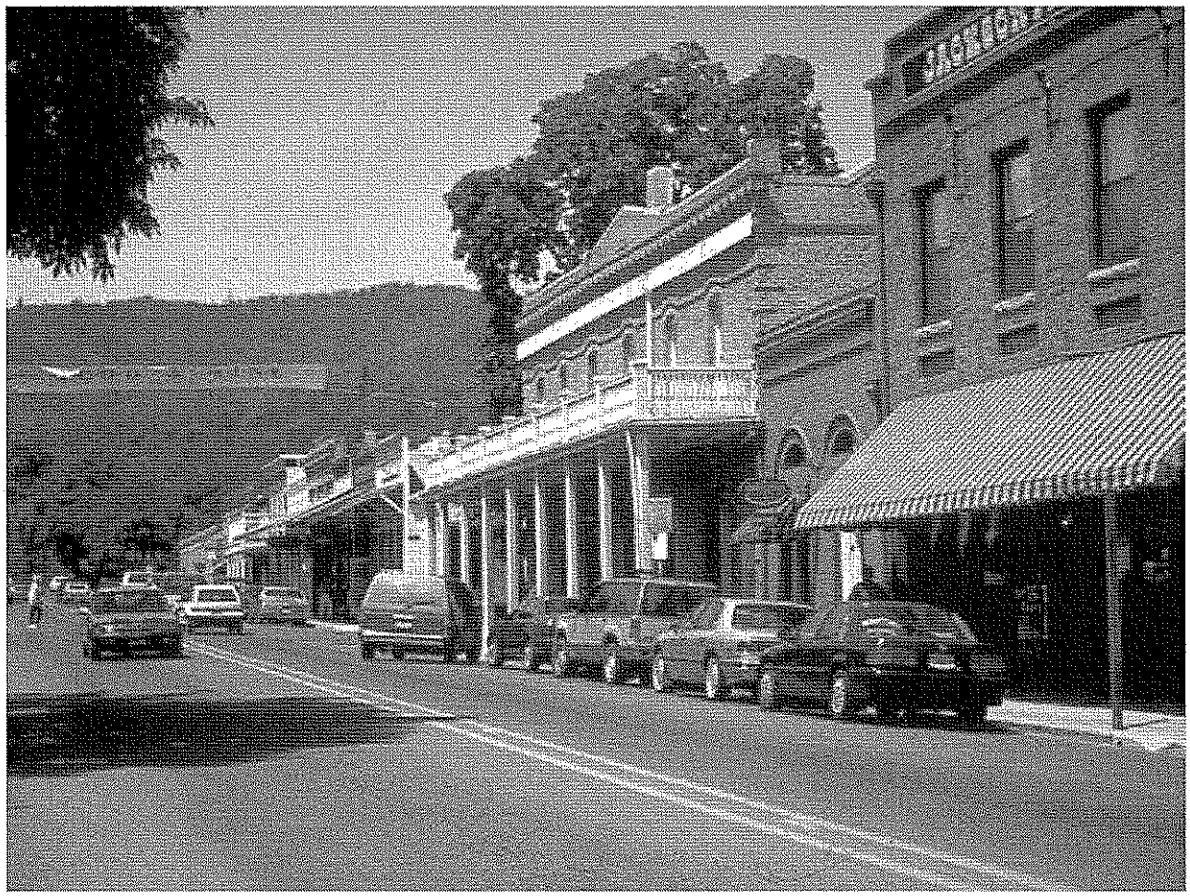
10-member Task Force:

Study and Make Recommendations on

- current and future needs in all parts of the state;
- roles and responsibilities of state and local governments; and
- land use issues related to urban growth boundaries and urban growth areas.

Reports due to 2007 and 2009 legislatures

An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon



Produced by the
Oregon Department of Land Conservation and Development

January 2007

ACKNOWLEDGMENT

This guide is an update of *City Recorder's Guide to Land Use Planning: The Basics* prepared for the Department of Land Conservation and Development by Daniel Meader of Tenneson Engineering Corporation in 1993.

TABLE OF CONTENTS

Chapter 1

Introduction

The purpose of this guide is to provide basic information regarding the land use planning process in Oregon. It is meant for land use planners and government officials in small cities or counties who are new to land use planning or who rarely process land use applications. The guide offers a step-by-step explanation of the various land use actions that take place in small cities and counties.

For those who have been around the land use planning process for some time, this guide may appear oversimplified. However, there should be some tips that will help even the seasoned planner with day-to-day work. The guide includes descriptions of various land use actions, from the simplest building permit signoff to planning commission hearings to comprehensive plan and zoning ordinance amendments.

Other available resources include:

- Department of Land Conservation and Development (DLCD), www.oregon.gov/lcd (503) 373-0050.
- League of Oregon Cities (LOC), www.orcities.org (503) 588-6550.
- Association of Oregon Counties (AOC), www.aocweb.org (503) 585-8351.

Chapter 2

Overview of the Land Use Planning Program

In the late 1960s and early 1970s, Oregonians became increasingly concerned about the effects of population growth and the threat to the quality of life and resources that make Oregon a special place to live.

In response, the Legislature enacted a series of laws to help shape development throughout the state, including the Beach Bill, Senate Bill 100 (creating statewide land use planning), and others. These laws have resulted in land use plans and state regulations that guide how and where new development occurs.

Today, every city and county has a comprehensive land use plan that has been acknowledged by the state. Each plan represents years of effort and a consensus by citizens and officials about the future of their community.

Day-to-day Decisions at the Local Level

In Oregon, state and local governments share the job of planning. The state, through the Land Conservation and Development Commission (LCDC), sets overall rules for planning decisions. DLCD provides technical assistance and grants, and reviews local plan amendments for compliance with the statewide planning goals.

Cities and counties adopt comprehensive plans that meet the applicable statewide planning goals. Local governments make day-to-day land use decisions in conformance with their state-approved plans.

The 19 Statewide Planning Goals

The statewide planning goals are Oregon's standards for comprehensive planning. Goals set requirements for the content of land use plans. Goals 1-14 apply to the entire state, while Goals 15-19 focus on specific geographic areas.

Statewide Planning Goals

1. Citizen Involvement
2. Land Use Planning
3. Agricultural Lands
4. Forest Lands
5. Natural Resources
6. Air, Water and Land Quality
7. Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette Greenway
16. Estuarine Resources
17. Coastal Shore Lands
18. Beaches and Dunes
19. Ocean Resources

For example, the goals require that local governments provide opportunities for citizen involvement. They also set standards for how certain types of land are planned and zoned. The goals also apply to other state agencies when they make decisions affecting land use.

LCDC meets regularly (about every six weeks) and is responsible for adopting rules to interpret the goals and some land-use planning statutes. LCDC has adopted rules interpreting most of the statewide planning goals. DLCD carries out LCDC decisions and administers other parts of the state's land use laws.

Chapter 3

Land Use Planning Documents

Each city and county in the state is required to have a comprehensive land use plan and implementing regulations. The regulations may be contained in a zoning ordinance and a subdivision ordinance or in a combined development code. There may also be supplemental ordinances — for example, a mobile home park development ordinance, a sign ordinance, a floodplain ordinance, or a nuisance abatement ordinance — which may be administered by the planning department or planning commission as a part of the land use process.

A brief discussion of the three most common land use planning documents follows. See also Exhibit C, a summary of common planning documents.

Comprehensive Land Use Plan

The controlling land use document in all Oregon jurisdictions is the comprehensive land use plan, or simply, the comprehensive plan (or even more simply, the "comp plan"). The comprehensive plan generally includes the following three elements:

- An inventory or a "background" document, which includes inventories and descriptions of existing land uses, natural resources, natural hazards, recreational facilities, transportation facilities, and economics. City plans will also include inventories of housing stock, developable lands, and public facilities such as water, sewer, and storm drainage. County plans will also include sections on farm and forest land resources. Background documents may also discuss the adequacy of community services such as education and law enforcement;

- Goal and policy statements, which indicate, in a general way, the objectives of the jurisdiction over a specific planning period — normally 20 years from the date of adoption of the plan — and provide guidance on how to achieve those objectives; and

- A comprehensive plan map, which depicts, in a site-specific nature (*i.e.*, to individual property lines), the desired arrangement of uses for the entire jurisdiction. The designations may be very general, such as residential, forest, and industrial, or they may be specific, such as low- or medium-density residential, neighborhood or downtown commercial, and light or heavy industrial;

The comprehensive plan map is the controlling instrument, directing the future of land use in the jurisdiction. The zoning map must be subordinate to the comprehensive plan map. That is, the zoning map cannot allow a more intensive land use than is shown on the comprehensive plan map for the same area. To take that a step further, if a plan designates a certain area as residential, the zoning map cannot designate the same area as commercial — a more intensive land use. Some jurisdictions may have only one map that serves as

both the comprehensive plan and zoning map.

The goals and policies are generally designed to provide *guidance* to elected and appointed officials over the use of land. They are important when reviewing proposed zone changes, comprehensive plan amendments, and sometimes, conditional use permits.

The inventories, while significant, do not play a major role in the day-to-day administration of the planning program of a city or county. The inventories are most important when developing the goals and policies. The inventories are normally updated during major plan updates, and the updated inventories may lead to changes in policies within the plan. For example, if a policy was adopted in 1988 to provide additional tourist-related housing to further an economic development goal, and by 2005 the city found it had an overabundance of tourist-related housing that had been constructed in the intervening years, it would probably be prudent to consider revising that particular policy.

Note: A comprehensive plan policy can only be used as an approval criterion for a zone change or permit if it is worded to be mandatory. If the policy uses such terms as "should," "encourage," or "consider," it is not to be used as a basis for making a land use decision. On the other hand, if the policy uses "shall" or "must," then you will want to make sure that requests for land use changes comply.

Zoning Ordinance

The zoning ordinance is the most important tool in the day-to-day planning effort. It is used in conjunction with the zoning map. The typical zoning ordinance includes:

- **Definitions.** A word or phrase will have a specific meaning that is not quite the same as in ordinary conversation.

- **Uses.** These will include descriptions of what land uses may occur in each zone. Some uses will be permitted (often referred to as an "outright permitted use"), which means that the approval of the use is not subject to approval-subjective criteria. Other uses will be listed as "conditional" or "special" uses. These are subject to discretionary criteria and a local government may deny the land use or place conditions on approval of the use. The zoning classifications may also include "overlay" zones, which add provisions to the "base" zone, such as special considerations for floodplains, historic sites, or airports. An overlay zone does not replace the requirements of the base zoning district.

- **Development Standards.** Requirements such as minimum lot sizes, yard setbacks, and height requirements are often included in the individual zone chapter. In a county, these would also include standards for development in farm and forest zones. Other types of standards such as natural resource protection, off-street parking and landscaping requirements are often found in their own chapter.

- **Procedures.** Several sections of the zoning ordinance deal with the procedures for processing applications for variances, conditional use permits,

zoning ordinance or map amendments, and the administrative provisions, including enforcement.

Subdivision Ordinance

The subdivision or land division ordinance deals with a different aspect of land use — the division of land. The subdivision ordinance provides the process for subdividing or partitioning lands within the jurisdiction.

In a small jurisdiction that has not faced many requests to divide land, the subdivision ordinance, adopted many years ago, may be difficult to implement. Generally, in small cities, it is wise to take even a minor partition request to the city planning commission (if there is one) or the city council. In many small communities, the elected or appointed officials want to be informed of all land use decisions, even the most mundane.

The subdivision ordinance provides the standards for providing infrastructure such as sewerage, street development, water system improvements, and a host of other design standards. It includes requirements regarding whether and how a new lot must be surveyed. The subdivision ordinance sets forth procedures for approving all types of development actions, including partitions and subdivisions. There is additional information on land divisions in Chapter 10.

There may also be supplemental ordinances — for example, a mobile home park development ordinance, a sign ordinance, a floodplain ordinance, or a nuisance abatement ordinance — which may be administered by the planning department or planning commission as a part of the land use process.

Chapter 4

Typical Land Use Actions

This chapter provides a brief summary of the procedures for processing the most common types of land use applications. You should also consult the specific regulations contained in the zoning and subdivision ordinances or development code.

Building Permits

The simplest land use action is approval of a building permit for a home or an accessory building (*i.e.*, a garage or shed). Before issuing a building permit, be sure to answer the following questions:

- What is the zoning of the property?
- Is the proposed use of the building allowed within that zone?
- Is the use a conditional use? (See conditional use permits below and in Chapter 6.)
- Does the proposed building and site plan comply with all of the development regulations such as setback, height limit, and parking? (Some of these regulations will apply citywide or countywide, some will apply in specific zones, and some will apply to specific types of buildings.)
- Does the proposed building require any special review such as site plan review, floodplain review, hillside review, or historic review?

The building permit applicant must include with the permit application a site plan showing the tentative location of the proposed structure. The building permit application will also include structural plans, which will be reviewed by the local building official.

The site plan will show the property line configurations, the exterior dimensions of the building, and the distance in feet from the property lines to the proposed structure. If there are other structures, subsurface facilities such as water lines or a septic tank, or easements on the property, these should also be identified in the site plan.

Using the site plan, determine whether the setbacks from the exterior property lines are adequate to satisfy the zoning ordinance standards. If off-street parking is required, the number of off-street parking spaces must be shown on the site plan. A key element not always shown on the site plan is the proposed height of the structure, particularly of accessory structures. Almost all jurisdictions have height limitations on single-family dwellings. If this information is not specifically required on the site plan, it should be requested from the applicant.

Remember to keep on file a copy of the site plan with the building permit. If there are subsequent questions concerning the completed structure, that site plan will be the key in determining whether the applicant has followed through with the development as proposed.

Land Use Permits

Even the smallest communities are faced with land use actions, including variances, conditional uses, zone changes, comprehensive plan map amendments, partitions, and subdivisions.

A **variance** is simply a process to allow an applicant to vary from development standards required by the zoning ordinance — normally setbacks, building height, or other physical dimension (See Chapter 5 for additional information.)

Most zoning ordinances list uses permitted outright and uses that *may* be permitted (usually called "conditional uses") in each zone if certain criteria are satisfied. A **conditional use permit** is issued by the city or county when the applicant has shown the criteria have been met. (See Chapter 6 for additional information.)

A **zone change**, also known as a zoning map amendment, is a process by which the applicant seeks to amend the zoning map to change the designation on a specific tract. The process is more detailed than for the other types of permits described here, and requires several steps, which are discussed later in this guide. A comprehensive plan map amendment often accompanies a zone change. (See Chapters 7 and 8 for additional information.)

Partitions and Subdivisions

These applications deal with property division rather than how the property will be used. These procedures allow parcels to be divided into smaller lots or parcels. The subdivision ordinance is used to process these applications.

The subdivision ordinance outlines the process to be followed and in most cases, prescribes specific infrastructure standards such as street width, water, and sewer system requirements, and in some cases, curb, gutter, and sidewalk standards. (See Chapter 9 for additional information.)

Chapter 5

Variances

A variance is a planning term that refers to a permit that allows some deviation from a development standard. An example of the common use of the term is: "You need to get a variance to place your single-family dwelling within 10 feet of the easterly property line instead of the 15 feet required by the zoning ordinance."

The zoning ordinance contains approval criteria against which an application is evaluated. A variance is generally applicable only to physical, measurable requirements such as setbacks, height limitations, or lot width-to-depth ratios.

A variance is generally *not* used to allow a land use that is not a permitted or conditional use in a given zone. For example, if a zone allows only dwellings, churches, and parks, the jurisdiction would not approve a variance to allow a grocery store. This is particularly important in farm and forest zones because permitted uses are prescribed by state regulations; a county cannot approve a variance to allow a use not permitted by state provisions.

TIP: Dealing with the general public over property rights is not always an easy task. Planning staff may be inclined to tell a potential applicant that it is a waste of money to undergo a particular process that is likely to be denied and to take "no" for an answer. However, the applicant has the right to be heard by the appropriate appointed or elected body on a given land use issue. You should be as tactful as possible, indicating that while the request may not be practical and obtaining approval may be difficult, the applicant has the right to go before the planning commission or city council.

Variance Procedures

Normally the process requires the applicant to fill out a variance application form provided by the city or county, and accompany it with a site plan showing the proposed development including the exterior boundaries of the structures, distance from the property lines, access, and other information necessary to support the request. The applicant must describe the nature of the variance sought and explain how it satisfies the approval criteria in the zoning ordinance.

In small jurisdictions, a variance request is often reviewed in a public hearing before the planning commission or elected officials; however, cities and counties may choose to have planning staff administratively make decisions on variances. There are certain procedural steps that must be taken in any case. (See Chapters 11 and 12 on notice procedure and quasi-judicial hearings.)

A request for a variance will be evaluated against the criteria established by the individual city or county. A variance that does not satisfy all of the criteria should not be approved.

There are generally four criteria for approval of a variance. The criteria usually read something like this:

- Exceptional or extraordinary circumstances that apply to the property but do not apply generally to other properties in the same zone or vicinity. These circumstances result from lot size or shape, topography, or other conditions that the property owners cannot control;

- The variance is necessary so that the applicant can enjoy a property right, the nature of which owners of properties in the same zone or vicinity possess;

- The granting of the variance will not be detrimental to public safety, health, or welfare, or injurious to other property; and

- The hardship is not self-imposed, and the variance is the minimum that will alleviate the hardship.

As these criteria imply, a variance should be approved for unusual circumstances. If you find that your city or county receives a significant number of variance applications for a particular standard — the side setback in the R-1 zone, for example — it may be a good idea to consider whether the requirement is too stringent and needs to be amended.

Chapter 6

Conditional Use Permits

A conditional use permit is probably best described as a process rather than a permit. It is a process by which the jurisdiction reviews a proposed land use that is listed in the zoning ordinance as a conditional use in a given zone.

A conditional use permit allows the local government to (1) determine whether the proposed use is appropriate for the site and neighborhood, and (2) attach conditions to an approval to assist in reducing the impact of the proposed use on the surrounding area. Typical conditional use permits in a city are for multi-family dwellings and public and semi-public structures, including churches. In a county, common conditional uses include certain dwellings in farm and forest zones, home occupations, and temporary dwellings for medical hardship situations.

TIP: Always require a site plan for any structure involved in the conditional use permit request, and attach the plan to the findings of fact. For commercial enterprises such as a home occupation or public or semi-public uses, it is normal procedure to ask for a "Statement of Operations." Most ordinances do not require it, but a Statement of Operations is very helpful in setting the parameters of the use. A Statement of Operations is simply an applicant's written statement detailing how the proposed use will be conducted.

In small jurisdictions, conditional use permit requests are often taken to the planning commission or elected officials in a hearing process. A jurisdiction may choose, however, for staff or a hearings officer to make decisions on conditional use permits.

Through the review process, the decision maker can assess neighborhood comments as well as comments from other parties of record (those who respond to the notice or participate in a public hearing). The decision maker can approve the request, deny it, or approve it with conditions, based on criteria in the zoning ordinance.

The city or county will often place conditions in order to reduce or offset the impact of a use on adjoining properties or the general neighborhood. Common conditions placed by a city include:

- Limiting the hours of operation;
- Limiting the size of the use;
- Requiring landscaping or fencing to screen the proposed use;
- Requiring lighting to be directed away from adjoining properties; and
- Setting a time limit to establish the use. If the use is not established within the time limit, the conditional use permit expires.

In a county, the above conditions may be appropriate for some uses. Other conditions include:

- Increasing setbacks to reduce conflicts with farm use;
- Signing an agreement not to object to farm or forest practices on adjacent land; and
- Renewing the permit annually or biennially.

The procedure for processing a conditional use permit varies among communities, but it will generally follow the procedures described in Chapters 11 and 12. An application, including a site plan and frequently, a public hearing, is required.

Conditional use criteria also vary from city to city and county to county, but they are normally contained in the same section of the zoning ordinance as the conditional use review procedures. Typically, the criteria will provide that:

- The proposal be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies of the city or county;
- The proposal have a minimal adverse impact on abutting properties and the surrounding area compared to the impact of development that is permitted outright, taking into account location, size, design, and operation characteristics of the proposed use;
- The proposal preserves assets of particular interest to the community; and
- The applicant has a bona fide intent and capability to develop, use the land as proposed and has some appropriate purpose for submitting the proposal.

Chapter 7

Zoning Map Amendments

This chapter could also be titled "zone changes." Zone changes involve redesignating property from one zone to another (for example, residential to commercial) on the zoning map. Frequently, a request for a zone change will also involve a comprehensive plan map change, which is described in the next chapter. The zoning map amendment and comprehensive plan amendment are generally combined for review and dealt with at the same hearings.

A zone change is normally a two-hearing process, the first before the planning commission and the second before the city council, board of county commissioners, or county court. It requires that post-acknowledgement plan amendment rules be applied, including notifying DLCD at least 45 days before the first public hearing on the application. This gives DLCD the opportunity to evaluate the proposal and participate in the process. The notice of proposed action must include a form provided by DLCD, the text of the proposed amendment and a map of the affected area. Forms are available online at: www.oregon.gov/LCD/forms.shtml, or may be obtained by contacting DLCD.

The remainder of this chapter addresses quasi-judicial zone changes. (To understand the difference between quasi-judicial and legislative hearings, see Chapter 11, Types of Public Hearings.)

A zone change begins when a property owner/applicant submits a completed application (sample in Exhibits) together with a map showing the subject property. It is important that a legal description of the property be provided.

Once city or county staff determines the application is complete, a hearing is scheduled before the planning commission and the city council. As noted previously, the city or county provides DLCD with a notice of the proposal at least 45 days before the hearing. The hearing process is discussed in greater detail in Chapter 11.

Approval criteria for a zone change are provided in the zoning ordinance. Typical criteria include:

- A demonstration that the proposed zone will be compatible with surrounding property uses;
- Public services are adequate to serve the proposed use; and
- The change will comply with the goals and policies of the comprehensive plan.

For the last criterion listed, a review of relevant provisions of the plan is needed. Be aware that different sections of the plan may seem to conflict with each other. This requires the decision makers to balance the policies with the unique circumstances of the request in question.

Note that state rules may apply to a zone change as well. A prime example is the

Transportation Planning Rule, which requires a demonstration that the effects of the zone change on the transportation network have been adequately considered.

There are many nuances to a zone change. Here are a few "dos" and "don'ts:"

- **Do** notify DLCD at least 45 days in advance of the first hearing at which the public can testify. This is usually the hearing before the planning commission. It will generally take two or three days from mailing for DLCD to receive the notice. Add 45 days to the date DLCD will receive the notice. Sending a notice late is better than sending an incomplete notice. Be sure to include the information about the requested zone change.

- **Don't**, as a general rule, rezone a portion of a piece of property without rezoning the whole parcel. This is not always possible because the parcel may cross jurisdiction boundaries.

- **Do** always look at the comprehensive plan map before accepting the zone change application to ensure that the proposed zone will conform to the comprehensive plan map. If not, a comprehensive plan map amendment will be necessary (see Chapter 8).

- **Don't** generally rezone lands to create islands of a special designation in the middle of a different zone. This practice is commonly called "spot zoning." For example, don't drop a single-lot residential rezone in the middle of the downtown commercial district.

A specific application for a zone change should not be processed without signatures from all property owners involved in the subject area. In other words, those whose property is being rezoned should be in favor of the proposed action. However, it is not necessary to have all adjoining property owners support the proposed zone map change.

You must also send DLCD notice of an adopted zone change decision within five days of the decision becoming final. DLCD will provide the appropriate form.

Chapter 8

Comprehensive Plan Map Amendments

A comprehensive plan map amendment is generally reviewed using the same process as for a zoning map amendment. In most cases, a request for a zone change will require a comprehensive plan amendment as well. Many comprehensive plans do not include an amendment procedure within the plan document itself. Therefore, many small cities and counties rely on the amendment process outlined in the zoning ordinance.

The comprehensive plan map amendment is generally a two-hearing process: the first before the planning commission and the second before the city council, board of commissioners, or county court. This is because the comprehensive plan and zoning ordinance must be adopted by ordinance, and therefore, can only be amended by the elected officials.

Comprehensive plan and zoning map amendments can run concurrently, with combined notice to the public and DLCD, one public hearing before the planning commission, and one public hearing before city or county elected officials. The same set of rules that was addressed for zone changes applies to comprehensive plan map amendments.

For cities, an important consideration will be whether the amendment would result in a deficit of land of the designation currently applied to the property. For example, if the application is to change the plan designation and zone from industrial to residential, will there continue to be an adequate supply of industrial land in the city, according to what the comprehensive plan says is needed?

TIP: Unlike a zone change, which is reviewed primarily for compliance with the local comprehensive plan, a plan amendment must be shown to be consistent with the statewide planning goals. The application should include an explanation of how the request complies with the goals.

Plan amendments in counties often include an "exception" to a statewide planning goal. An exception is governed by Goal 2, statutes, and rules, not just local criteria.

As with zone changes, do not re-designate a portion of private property without including the entire property, unless the owner is also partitioning his or her property. Small cities are especially susceptible to "spot zoning" — creating a commercial island in the middle of residentially planned property. While circumstances sometimes warrant a spot zone, it is usually not a desirable situation.

As is done for a zone change, remember to send DLCD notice of an adopted plan amendment decision within five days of the decision becoming final — usually a signed ordinance. DLCD will provide the appropriate form.

Chapter 9

Partitions and Subdivisions

Partitions and subdivisions are governed by the subdivision ordinance or subdivision chapter of the code. The subdivision ordinance primarily does three things:

- Provides a set of standards for improvements to public infrastructure, such as streets (including sidewalks), water, sewer, and drainage system;
- Provides procedures for processing applications; and
- Provides criteria for reviewing applications.

Some ordinances may still include both Major and Minor Partitions, but currently there is no distinction in state law. Similarly, some jurisdictions may still require that partitions and subdivisions go before a public hearing. However, changes to the statutes now allow administrative approval of partitions and subdivisions by staff. This is being done with increasing regularity in the larger jurisdictions of the state.

The elected officials, especially in small cities and counties, should be aware of any development being considered. A public hearing process on a partition or subdivision, although not required, might be beneficial for local decision makers in understanding the proposed development in their community.

When processing a land division proposal, there are a number of other departments, agencies, and organizations that may need to be involved.

Who to involve	**Why to involve them**
Public works director, city/county engineer	Adequacy of existing public infrastructure and necessary improvements
Private utilities	Adequacy of existing infrastructure and necessary improvements
Oregon Department of Transportation	If a state highway adjoins the site
County road department	If a city subdivision adjoins a county road
County sanitarian or Oregon Department of Environmental Quality	Wastewater disposal in rural areas
Fire department	Hydrant locations
Postal service	Mail box locations
County surveyor	Name of the subdivision, preparation of the final plat
Oregon Department of State Lands	If site includes wetlands (or potential wetlands)

Applications also need to be reviewed by the planner. Some of the criteria for a land division are included in the zoning ordinance. For example, minimum lot size, street frontage, and lot width-to-depth ratio requirements vary from zone to zone and are usually included in the

"property development standards" of each zone.

Partition and subdivision applications generally require two steps — preliminary and final approval. The preliminary approval is the stage where the proposal is reviewed and approved, altered, or denied. Approval of the preliminary plat frequently includes conditions of approval that must be satisfied before final plat approval. A common condition is that the applicant must construct the necessary public improvements prior to final plat approval. Final approval is simply a check to see that the preliminary approval process has been followed and all of the conditions have been met. It is commonly handled by staff as an administrative matter.

Chapter 10

Other Land Use Considerations

There are several other types of land use actions that a small city or county may encounter.

Nonconforming Uses

A "nonconforming use" is a use or structure that was legally established but is no longer permitted because zoning regulations have been applied or changed since the use or structure was established. A common example is a residence in a commercial zone.

Nonconforming uses may be created because the local government made a conscious decision to plan for a structure or an area to eventually convert to a different use, such as houses in the downtown. Changes in state regulations regarding farm and forest lands can create nonconforming uses in rural areas, such as a school near a city in a farm zone.

Most zoning ordinances allow continuation of nonconforming uses. Maintenance and repair of nonconforming structures are usually allowed, but expansion and replacement are often limited or prohibited. Different codes treat replacement in the event of a natural hazard or disaster in different ways. There is generally a provision for replacement of a building that has been destroyed by fire or other disaster, often within one year, but not all codes permit it.

A statute guides alteration, restoration, and replacement of nonconforming uses in counties (ORS 215.130). County zoning ordinances must conform to the requirements of the statute. There is no such statute that applies to cities.

If your code has provisions for altering or expanding a nonconforming use, it will likely include approval criteria. As with the other types of permits described in this report, be sure to follow the procedures for notice and decision-making prescribed in your code, and apply the approval criteria rigorously.

Floodplain Development

Many cities are built near streams or water bodies and all Oregon counties have flood hazard areas. Any jurisdiction with a designated floodplain is required to have an adopted floodplain ordinance. It may be part of the zoning ordinance or a separate ordinance.

Before issuing a building permit or any other land use action, you must check the location of the property against the floodplain maps provided by the Federal Emergency Management Agency (FEMA) to determine whether the property is in the designated flood hazard area or local floodplain zone.

Administering floodplain ordinances can be difficult because the floodplain maps are often not site-specific enough to determine the precise location and elevation on the ground. For questions on floodplain development and permitting, DLCD has a full-time

floodplain specialist who is available to help (503-373-0050).

Overlay Zones

Zoning ordinances often contain one or more "overlay zones" (sometimes called "combining zones"). An overlay zone is, as the name implies, a zone that adds requirements or considerations regarding the use of affected land. They do not replace the underlying zone.

Overlay zones are commonly employed to implement requirements of the floodplain or other hazard ordinance, to protect flight paths around airports, and protect significant wildlife habitat. There is a wide variety of overlay zones in addition to these.

Overlay zones may make an otherwise permitted use into a conditional use, alter setback or height requirements, or add other types of approval criteria, depending on the purpose of the zone. Overlay zones must be shown on the official zoning map, and they apply only to the land so designated.

Land Use Compatibility Statements

State agency actions must be completed in a manner that is consistent with the local comprehensive plan. The vehicle through which a city or county (most often a county) confirms that a proposal is consistent with the plan is a land use compatibility statement, or "LUCS."

Common LUCS requests include new or amended water rights, on-site sewage disposal approval, and wetland fill or removal.

Signing a LUCS is generally not a land use decision (*i.e.*, requiring public notice and opportunity for appeal). As long as the proposed use is permitted outright, such as a dwelling in a residential zone, signing a LUCS is usually accomplished with little trouble. Similarly, if the proposed use requires an approval, such as a conditional use permit, and the applicant has received the approval, then signing the LUCS is a "ministerial decision" (see glossary).

In certain unusual circumstances, deciding whether the proposed use is permitted may require discretion. In these cases, notice of the decision and opportunity for appeal must be provided. Many zoning ordinances require a public hearing by the planning commission, much like a variance or conditional use permit, for all discretionary decisions.

Chapter 11

Types of Public Hearings

In processing land use actions in Oregon, there are two types of public hearing procedures: legislative and quasi-judicial. The two-hearing processes differ significantly in the procedural and public notice requirements.

A legislative hearing is a public hearing in which the planning commission, city council, board of commissioners, or county court is acting as a legislator, making new law. A quasi-judicial hearing is a type of land use proceeding in which the decision maker is acting in the capacity of a judge.

When deciding whether a particular matter is legislative or quasi-judicial, ask three questions:

- Does the issue being considered affect only one or a few parcels and a small number of property owners?
- Does the decision have to comply with existing approval criteria?
- Is the jurisdiction required to make a decision on the matter?

If the answers to these questions are yes, then use quasi-judicial procedures. If the answers to all the questions are no, it is a legislative matter. Sometimes the answers are mixed and it is not clear which hearing procedure should be employed. Legal counsel will be able to help decide ambiguous cases.

Legislative Hearings

Legislative hearings typically occur when considering amendments to the goals and policies in the comprehensive plan, to major map amendments, and to changes to the zoning ordinance. They are generally initiated by the local government.

Zoning ordinances usually provide procedures for sending notice of legislative hearings. Procedures generally include providing notice of the hearing in a newspaper of general circulation at least 10 days before the hearing. Local provisions may include additional requirements.

There can be pre-hearing contact between citizens and the decision makers on legislative matters. That is, "*ex parte* contact" is not a concern. Decision makers are seeking all the input they can get on the issues in order to make a reasonable decision on the proposed amendments.

During the process of the hearing, it is appropriate for the presiding officer to explain the nature of the hearing, and ask for a staff report from the planner. Some jurisdictions ask people in favor of the proposed amendment to testify first, followed by those opposed to the amendment. This may not be appropriate for a legislative matter. Rather, it may be advisable simply to ask people to testify in the order they signed up. The proposal may be complex and the issues diverse.

A party may be in favor of parts of the proposal and opposed to others.

It is also advisable for decision makers to prepare a series of findings indicating the rationale for adopting or denying the proposed amendments.

Quasi-Judicial Hearings

A quasi-judicial hearing is a type of land use proceeding in which the decision maker addresses a narrow land use issue, normally related to one or a limited number of parcels, and apply existing criteria.

Typical variance, conditional use permit, and zone change hearings are all quasi-judicial hearings. They are generally initiated by an applicant. Appeals of an administrative decision on these types of applications are also quasi-judicial.

In Oregon, the quasi-judicial hearing has assumed a major importance in the land use arena. There are certain procedural steps that must be taken, including the notice of the hearing, announcements at the beginning of the hearing, testimony during the hearing, and process after the decision. (Public Notice is covered in the next chapter, but some of the state requirements overlap.)

It is suggested that you be familiar with several of the Oregon Revised Statutes. In particular, ORS 197.763, "Conduct of Local Quasi-Judicial Land Use Hearings, Notice Requirements, Hearing Requirements" (see Exhibit B). The requirements of ORS 197.763 mandate a certain procedure at the beginning of a quasi-judicial hearing.

At the outset of the hearing, the chairperson or designee announces the nature of the hearing; indicates the review criteria; and polls the decision-making body for *ex parte* contact, pre-hearing bias, or other factors that would preclude an individual decision maker from sitting in on the case. These are situations in which the individual decision maker is asked to determine whether he or she will be able to render an unbiased decision because of contact with parties outside the hearing (*ex parte* contact), pre-hearing bias, or a conflict of interest.

In many cases, pre-hearing contact is difficult to avoid. It simply should be reported at the outset of the hearing, and the decision maker can remain on the board. It is very important that the report of *ex-parte* contact include a summary of what the person learned from the contact. This gives the other members of the decision-making body access to all of the information, and also allows an opportunity for rebuttal of the information if other parties disagree. For the same reason, if any member of the decision-making body has made a visit to the site, he or she should report on the visit and what was observed on the site.

A pre-hearing bias or conflict of interest, on the other hand, should cause the decision maker to step down from that particular hearing issue. A conflict of interest occurs in cases where a member of the decision-making body, or a member's family, stands to profit from the outcome of the decision.

The chairperson must advise the audience of the provisions of ORS 197.763, including statements that testimony, arguments, and evidence must be directed toward the criteria and that failure to raise an issue with

sufficient specificity to afford the decision maker and other parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue (the so-called "raise it or waive it" requirement).

The hearing normally begins with the staff report, followed by the proponent's case, the opponent's case, and rebuttal from the applicant, if necessary. Public agencies wishing to comment may follow.

The public hearing is then closed and the matter goes to deliberations. During deliberations, the decision-making body has essentially three options:

- Make a decision with findings documenting how the application satisfied or did not satisfy appropriate criteria;
- Determine that there is not enough information to make a decision and continue the hearing to a specified date and time; or
- Schedule deliberations for a specified date and time.

If the hearing or the deliberations are continued to a specified date and time, no additional advertising or notice is necessary. ORS 197.763 includes specific rights regarding who may ask for a continuance or for the record to be left open.

Findings

There are entire books written on preparing findings of fact for decisions. Essentially, what needs to be done in any quasi-judicial land use case is to make findings to support the decision. Basic facts need to be enumerated (facts such as who, what, where, when, and why). The review criteria need to be spelled out and findings evaluating whether the proposal complies with the review criteria must be outlined. These do not have to be lengthy documents in legal jargon. They need to simply state how the facts of the situation relate to the review criteria. These findings need to be included in the files as part of the hearing body's decision.

For variances and conditional use permits, a simple order (such as the sample in Exhibits) is all that is needed. For Zoning Ordinance and Comprehensive Plan Map Amendments, an ordinance approved by the city council or board of commissioners is required.

Tips on Running Public Hearings

- Introduce the body (planning commission, council, board, or court) and staff at the outset of the hearing.
- Use a sign-up sheet that requires names and addresses to keep track of proponents and opponents who wish to speak or receive notice of the decision or both.
- Set a time limit for each speaker, if necessary. Try to keep speakers focused on relevant criteria.
- Keep control of the hearing. There are several short courses available for planning commissioners. New planning commissioners and other elected officials are encouraged to attend.
- Record names and mailing addresses of all hearing participants. These people qualify as "parties" to the hearing and must be notified of the decision.

Final Decision

A final decision is one made by the planning commission or council/board that stands unless appealed. The decision must be put in writing and signed by the appropriate city or county official.

Notice of Decision

Once the final decision has been made, a written notice of the decision must be mailed to the applicant, all parties at the public hearing, and those who requested it. In the case of a comprehensive plan text or map amendment or a zoning change, where the 45-day notice was sent to DLCD, a notice of the decision must be given to DLCD within five working days of the final decision.

Appeals

The zoning ordinance has an appeal process, usually in the administrative provisions section. An appeal of the planning commission decision will generally go to the elected officials, but some jurisdictions use a hearings officer. A final local decision can be appealed to LUBA. LUBA appeals must be filed within 21 days of the final local decision.

Chapter 12

Public Notice

See Chapter 11 for a description of the difference between legislative and quasi-judicial land use decisions.

Legislative Hearing

Legislative hearings are land use procedures in which the decision makers are considering making new law that will have widespread effects.

Notice for a legislative hearing must be published in the local newspaper. This notice is generally just a statement of "who, what, where, why, and when."

"Ballot Measure 56" notice may also be required if the legislative amendment may further restrict the use of property. If this is the case, individual hearing notice to each affected property owner is required (counties see ORS 215.503 and cities see ORS 227.186). Reimbursement of costs for this notice is available if the local government is required to make the amendment due to new legislation or if it is completed as part of a periodic review work program.

Some local ordinances require posting of public hearing notices. Examples of additional means of notice include:

- The local-access cable TV channel;
- The city's water and sewer bills;
- Other utility information; and
- Postings at the city hall, post offices, or other locations where the general public can see it.

Quasi-Judicial Hearing

Prior to conducting a quasi-judicial public hearing on land use issues, there are a number of public notices that need to be prepared and distributed in a variety of ways.

State requirements for quasi-judicial hearing notices are contained in ORS 197.763, "Conduct of Local Quasi-Judicial Land Use Hearings, Notice Requirements, Hearing Requirements" (see copy in Exhibits).

This statute includes a number of requirements for notice, including who must receive notice (it depends on the zone the request is located) and when (generally 20 days before the hearing). In addition to the who, what, where, when, and why information typical of a public notice published in the newspaper, notice to individual property owners must also contain information regarding the "raise it or waive it" rule, the review criteria, the local government contact person, the staff report, and other details.

A word of caution here: If your zoning ordinance has different notice requirements from the statute, the more rigorous requirements apply.

ORS 197.763 also provides that the public notice may be mailed and published **10 days** prior to the public hearing provided there is an opportunity for a second public hearing at the local level. This applies when the initial

decision (usually the planning commission's decision) can be appealed or if a second hearing is required (typical for a comprehensive plan amendment request). However, if there is only one opportunity for an evidentiary hearing, the notices must be published and mailed **20 days** in advance of the public hearing. If a staff report is prepared, it must be available to the public at least **seven days** in advance of the hearing.

NOTE: Many local governments are using the 20-day notice period just to be safe and consistent with other requirements and to give staff ample time to complete the staff report

Glossary

Accessory Structure	A building or structure subordinate to the primary use.
Administrative Decision	A discretionary decision on a land use permit made by city or county staff without a hearing.
Applicant	The person who fills out an application for a permit to develop or divide land (see property owner).
Building Official	The official who administers the building code and issues building permits.
Building Permit	Approval from the local building official to build, alter, or place structures on real property.
Comprehensive Plan	A document adopted by the local government that provides the long-range land use planning goals and policies of a city or county. The plan is composed of text and a map.
Conditional Use	A use that may be allowed, if it meets prescribed conditions in the Zoning Ordinance or additional conditions set forth by the decision-making body.
Complete Application	An application is deemed complete when all the information necessary to process it is provided to the planning official.
Decision-Making Body	The body that has the legal authority to make decisions on requests for development permits and adopt or amend land use ordinances (*i.e.*, planning commission or city council).
DLCD	Department of Land Conservation and Development. (The administrative arm of the Land Conservation and Development Commission.)
Easement	A right to use, for a specified purpose, a particular piece of land owned by another.
Evidentiary Hearing	A hearing in which evidence may be presented.
Findings	A statement of the standards, facts, and conclusions used in making a decision.
Floodplain	Low areas adjacent to rivers, lakes, estuaries, and oceans that are periodically flooded at intervals of varying frequency.

Height Requirements	The maximum distance, from the ground to the highest part of the structure, which is allowed by the Zoning Ordinance.
Land Use Application	A form on which a person requests a land use action.
Land Use Action	A final decision or determination made by a decision-making body affecting land use.
LCDC	Land Conservation and Development Commission. A seven-person volunteer commission appointed by the Governor to develop and administer Oregon's statewide planning goals.
LUBA	Land Use Board of Appeals. An independent, three-person board appointed by the Governor to hear and rule on appeals of land use decisions made by local governments and special districts. LUBA is the only forum that can hear appeals of local land use decisions.
Legislative decision	Decisions that create general rules or policies. A legislative matter affects an entire jurisdiction or a broad area, and a wide range of property owners. Making a decision is generally optional.
Ministerial Decision	A non-discretionary decision on a proposed use of land, often made by staff. An example is a building permit for a structure that is an outright permitted use in the zone (see "outright permitted use").
Nonconforming use	A land use not permitted by current zoning regulations. The term is frequently used to describe a use or structure that was legally established but is no longer permitted. An example may be a house constructed prior to zoning regulations in an area that is now designated industrial.
Nuisance	That which substantially interferes with the enjoyment and use of one's land.
Off-Street Parking	An area on private property designated for the parking of motor vehicles.
Oregon Revised Statutes	The laws passed by the Oregon Legislature (also referred to as "ORS" and "statutes").
Outright Permitted Use	A use permitted by a zoning ordinance that does not require consideration of discretionary approval criteria, special

	permits, or conditions but often requires some type of review by a planning official.
Partition	Either an act of partitioning land or an area or tract of land partitioned. "Partition land" means to divide land into two or three parcels within a calendar year.
Planning Commission	A group of lay persons appointed by the governing body of a city or county to advise the governing body in matters pertaining to land use and comprehensive planning.
Pre-Hearing Contact	Contact between a decision maker and an applicant or citizen on a matter that is to be heard by the decision-making body.
Periodic Review	A formal process by which the local government's land use planning documents is reviewed to address changing circumstances and ensure compliance with new laws and rules.
Public Notice	Information about a land use decision or about a hearing to be held regarding such a decision. Such notice is either published in a newspaper, mailed to property owners of adjacent property, or both.
Quasi-judicial	The application of existing regulations to specific properties. The local government is generally required to make a decision on a quasi-judicial matter.
Residential	Structures intended for or used as living quarters for human beings (single-family dwellings, apartments, manufactured homes, etc.).
Setback	The placement of a building a specified distance away from a property line, other structure, or other feature.
Sign Ordinance	An ordinance that regulates the size, shape, color, and elimination of signs.
Site Plan	A map showing the land and buildings involved in an application for a development permit.
Statewide Planning Goals	The State of Oregon adopted 19 planning goals, 14 of which are applicable to every jurisdiction in the state. The remaining five goals cover the Willamette Greenway (Goal 15) and the coastal area (Goals 16-19).

Structural Plan	A plan describing how a building will be constructed.
Subdivision	Either an act of subdividing land or an area or a tract of land subdivided. "Subdivide land" means to divide land into four or more lots within a calendar year.
Subdivision Ordinance or Land Division Ordinance	An ordinance specifying the standards to be used in developing sewers, streets, water lines, and other infrastructure, and establishing procedures for approving development actions.
Subsurface Facilities	Those facilities installed beneath the earth's surface, such as septic tanks and electrical, sewer, and water lines.
Urban Growth Boundary (UGB)	An imaginary line around cities separating urban from rural land. Upon establishment, an urban growth boundary (UGB) contains sufficient land to accommodate 20 years of growth for residential, commercial, industrial, and public uses.
Variance	A decision to lessen or otherwise modify the requirements of a land use ordinance as it applies to a particular piece of property.
Zoning Ordinance or Zoning Code	An implementing tool of the comprehensive plan. It identifies specific land use zones and provides the regulations affecting uses within each zone. It includes the processes to administer various types of land use actions. Sometimes it is combined with the regulations for dividing land.
Zoning Map	The map that shows parcel-specific zoning districts.

Exhibit A

SAMPLE ORDER

City or County _____

IN THE MATTER OF THE)
PROPOSED HOME OCCUPATION) **O R D E R**
FOR _____)

PREAMBLE
On _____, _____, 20___, the above matter came before a regularly scheduled meeting of the _____ Planning Commission, there being a quorum present. The Public Hearing was opened by Planning Commission Chair _____. The staff report was read and there was no testimony in opposition. At the close of the Public Hearing, after Planning Commission deliberations, the Planning Commission moved to approve the proposed Conditional Use for a Home Occupation to establish a bed and breakfast at _____ in the City/County, subject to the following conditions:

1. The facility will meet all applicable state and county health codes.
2. A sign for the operation will be required to meet standards of the City Sign Ordinance.

The decision and conditions were based upon the following Findings of Fact:

1. The applicants are _____.
2. The property is planned and zoned Medium-density Residential.
3. Legal access is provided by _____ Avenue.
4. Adequate water and sewer services are already available to the house.
5. The applicants have provided a Statement of Operations, which indicated there will be three guest rooms available to guests. The Statement of Operations is herein incorporated into this Order.
6. The Medium-density Residential zone allows as a Conditional Use a Home Occupation. The proposed bed and breakfast meets the definitions and requirements for a Home Occupation.
7. There is enough land available for five off-street parking spaces.

APPROVED by unanimous vote of the Planning Commission this ___ day of _____ _____, 20___.

CITY/COUNTY OF _____ PLANNING COMMISSION

Signed: _____,
Chair
ATTEST: _____,
City or County Official

City or County _____

NOTICE OF DECISION

On _____, 20 ___, the _____ Planning Commission approved a Conditional Use Permit _____ for _____ to _____.

Copies of the Order are available at City Hall/County Offices. Any party of record may appeal this decision to the City Council/County Commission within 10 days of the Order approval date.

_____

City or County Official

City or County _____

APPLICATION FOR BUILDING/MANUFACTURED HOME SIGN-OFF (Zoning Ordinance)

LANDOWNER

Name _____
Address _____
Phone number _____

APPLICANT

Name _____
Address _____
Phone number _____
NOTE: Attach written authorization to represent landowner.

TYPE OF APPLICATION

___ BUILDING: ___ Construct ___ Remodel ___ Other
___ MOBILE HOME: ___ Install ___ Other

Brief description of project: _____
_____
_____
_____
_____

BACKGROUND INFORMATION

Lot No. ____ Block No. ____ Assessor's Map No. _____, with frontage on (name) _____, which is a (check one):
city street ___, county road ___, or state highway ___.

NOTE: If county road or state highway, an access permit shall be required.

In flood hazard area? (yes/no) ____
Fire district? (yes/no) ____
Utilities: City water ____ Well ____ City sewer ____ Septic tank ____
Planning designation _____
Zoning classification _____
Overlay zones _____
Plan policies _____

Intended use of the building/mobile home is _____
Is intended use allowed as an outright use in the zone? (yes/no) _____
If no, is intended use allowed as a Conditional Use in the zone? (yes/no) _____
If yes, a Conditional Use application is necessary.
If neither an outright or Conditional Use, a Zoning Ordinance Amendment will be necessary.
NOTE: All Zoning Ordinance Amendments must be consistent with the comprehensive plan.

ZONING ORDINANCE REQUIREMENTS

TYPE	*REQUIREMENTS
Dimensional Standards (see Article ___)	
Street frontage	_____
Lot depth	_____
Front yard	_____
Side yard (each)	_____
Back yard	_____
Lot area (see Section ____ for exception)	_____
Lot width (at front of building line)	_____
Lot coverage (Building area / Lot area = ____ %)	_____
Building height	_____
Mobile Homes (see Article ___)	_____
Signs (see Article ___)	_____
Additional Requirements (see Section ___)	_____
Clear vision area	_____
Hazard areas	_____
Access	_____

NOTE: Fill in applicable dimensional standard or indicated yes, no, or N/A as appropriate.

Applicant shall prepare and attach to this application a site plan drawn to scale; showing how all applicable requirements of the Zoning Ordinance shall be satisfied.

The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Uniform Building Code as administered by the State of Oregon. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid, except insofar as to the work of use which it authorizes is lawful.

I hereby certify that the above information is correct and understand that issuance of a permit based on this application will not excuse me from complying with effective ordinances of the

City/County of _____ and statutes of Oregon, despite any errors on the part of the issuing authority in checking this application.

_____ _____

Signature of applicant Date

I, _____, City/County Administrator of _____, Oregon, attest that the foregoing application and attachments thereto were received by me on the _____ day of _____, 20___.

_____

City or County Official

City or County _____
(To be filled out by city or county staff)

Applicant's site plan and intended use meet all applicable Zoning Ordinance requirements (yes/no) ____

If yes, the Zoning Sign-off Application may be approved by the City/County.

If no, the Zoning Sign-off Application is not approved for the following reason(s):

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

Signature of City or County Official Date

City or County _____

VARIANCE/CONDITIONAL USE APPLICATION
(Zoning Ordinance)

APPLICANT

Name _____
Address _____
Phone number _____

TYPE OF APPLICANT

Landowner (agent*) _____
Government unit: City _____
County _____
Special district _____
State agency _____
Federal agency _____

**NOTE: If agent, attach written authorization to represent landowner.*

TYPE OF APPLICATION

Zoning classification of property is _____

___ **Variance** Please refer to Article ____ of the Zoning Ordinance for Variance requirements. If lot size, Variance may not be necessary, please refer to ordinance section ____. Briefly describe the type of Variance being requested.

_____
_____
_____
_____

___ **Conditional Use** Please refer to Article ____ of the Zoning Ordinance for Conditional Use requirements and to Article ____ for types of Conditional Uses allowed.

Type of Conditional Use being requested is: _____
_____
_____
_____

ATTACHMENTS

Applicant shall prepare and attach the following to this application:

1. A presentation of facts and reasons which establish need, appropriateness and purpose of the Variance/Conditional Use request, and
2. An 8 ½" x 11" location map of area subject to proposed Variance/Conditional Use drawn to scale, and
3. Either assessor's map, parcel map, or site plan drawn to scale showing proposed Variance/Conditional Use, and
4. A list of names and addresses of property owners** whose property is subject to the proposed Variance/Conditional Use or within 250 feet of the exterior boundary thereof, and
5. Other information specified in Section _____ of the Zoning Ordinance, and
6. Agreement by the property owner to satisfy the requirements of Section ____ of the Zoning Ordinance, if applicable.

** *NOTE: This information available from the county assessor's office.*

FEE

Refer to fee schedule adopted by City Council $_____

I, _____, (circle one: Landowner, Agent, Representative of Governmental Unit) swear that the details and information contained in the above application and attachments thereto are true and correct to the best of my knowledge.

_____ _____
Signature of Applicant Date

I, _____, City/County Official of _____, attest that the foregoing application and attachments thereto were received by me on the _____ day of _____, 20 ____, from _____ accompanied by a fee of $ _____.

_____ _____
City or County Official Date

Schedule and Checklist

VARIANCE/CONDITIONAL USE APPLICATION
(Zoning Ordinance)

		Date
1.	Application submitted by applicant*	_____
2.	Application deemed complete	_____
3.	Planning Commission review date set	_____
4.	Planning Commission review held	_____
5.	Planning Commission recommendation (within 10 days of review)	_____
6.	City Council/County Commission hearing date set	_____
7.	Public Notice of City Council/County Commission hearing:	
	a. Mailed to property owners	_____
	b. Mailed to affected governmental units	_____
	c. Published in local newspaper or posted	_____
8.	City Council/County Commission hearing held	_____
9.	City Council/County Commission decision (within 10 days of hearing)	_____
10.	Applicant notified of decision	_____
11.	Effective date, if request approved by City Council/County Commission	_____

**NOTE: Applications for Variance/Conditional Use for areas within the Urban Growth Boundary outside city limits should be make to the county.*

CITY OR COUNTY RECORDS

1. Application and attachments thereto
2. Schedule and checklist
3. Copies of Public Notices
4. Analysis of applicable plan goals and policies
   NOTE: All Variance/Conditional Use must be consistent with the adopted comprehensive plan
5. Planning Commission review record, findings of fact, and recommendation
6. City Council/County Commission hearing record, findings of fact, conclusions, decision
7. Copy of notice to applicant of decision

City or County _____

APPLICATION TO AMEND ZONING ORDINANCE

APPLICANT

Name _____
Address _____
Phone number _____

TYPE OF APPLICANT (check one)

Landowner (agent*) _____
Resident (renter) _____
Government unit: City _____
County _____
Special district _____
State agency _____
Federal agency _____

**NOTE: If agent, attach written authorization to represent landowner.*

TYPE OF AMENDMENT

Zoning classification of property is _____

___ **Text** Applicant shall prepare and attach a copy of proposed text amendment to this application. Section to be amended: _____

___ **Map** Present zoning classification is: _____
Proposed zoning classification is: _____

Applicant shall prepare and attach the following to this application:

1. An 8 ½" x 11" location map of area subject to proposed map drawn to scale, and
2. Either assessor's map or parcel map drawn to scale showing proposed map amendment, and
3. A list of names and addresses of property owners** whose property is subject to the proposed map amendment or within 250 feet of the exterior boundary thereof, and
4. Other information specified in Section _____ of the Zoning Ordinance, and
5. Agreement by the property owner(s) to satisfy the requirements of Section ____ of the Zoning Ordinance, if applicable.

*** NOTE: This information available from the county assessor's office.*

JUSTIFICATION FOR AMENDMENT

Applicant shall prepare and attach a presentation of facts and reasons which establish need, appropriateness, and purpose of the proposed amendment.

FEE

Refer to fee schedule adopted by City Council/County Commission $_____

I, _____, (circle one: Landowner, Agent, Resident, Representative of Governmental Unit) swear that the details and information contained in the above application and attachments thereto are true and correct to the best of my knowledge.

_____ _____
Date City or County Official

I, _____, City or County Official of _____, attest that the foregoing application and attachments thereto were received by me on the _____ day of _____, 20 ____, from _____ accompanied by a fee of $ _____.

_____ _____
Date City or County Official

Schedule and Checklist

APPLICATION TO AMEND COMPREHENSIVE PLAN ORDINANCE

Date

1. Application submitted by applicant _____
2. Application deemed complete _____
3. Planning Commission hearing date set _____
4. Public Notice of Planning Commission hearing:
   a. Mailed to property owners _____
   b. Mailed to affected governmental units _____
   c. Published in local newspaper or posted _____
5. Planning Commission hearing held _____
6. Planning Commission recommendation (within 10 days of hearing) _____
7. City Council/County Commission hearing date set _____
8. Notice of Intent to DLCD _____
9. Public Notice of City Council/County Commission hearing:
   a. Mailed to property owners _____
   b. Mailed to affected governmental units _____
   c. Published in local newspaper or posted _____
10. City Council/County Commission hearing held _____
11. Applicant notified of decision _____

If plan map amendment for an area within the city limits, then:

12. Effective date, if amendment adopted by City Council _____
13. Amendment set to county and LCDC for their records _____

If plan map amendment for an area within the Urban Growth Boundary but outside city limits or plan policy amendment, then:

14. Applications and hearing record referred to county for action if amendment adopted by City Council _____
15. Effective date, if amendment co-adopted by county _____
16. Amendment sent to LCDC for their records if co-adopted by county _____

If Urban Growth Boundary or plan goal amendment, then:

17. Application and hearing record referred to county for action if amendment adopted by City Council _____
18. Application and hearing record(s) referred to LCDC for review if amendment co-adopted by county _____
19. Effective date, if amendment approved by LCDC _____

CITY OR COUNTY RECORDS

1. Application and attachments thereto
2. Schedule and checklist
3. Copies of Public Notices and DLCD notice
4. Analysis of applicable plan goals and policies
5. Planning Commission hearing record, findings of fact, and recommendation
6. City Council/County Commission hearing record, findings of fact, conclusions, decision
7. Copy of notice to applicant of decision
8. If amendment approved, copies of notice to county and LCDC, as appropriate

Exhibit B

ORS 197.763
Conduct of Local Quasi-judicial Land Use Hearings; Notice Requirements; Hearing Procedures

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the Public Hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

[1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

Exhibit C

Planning Documents

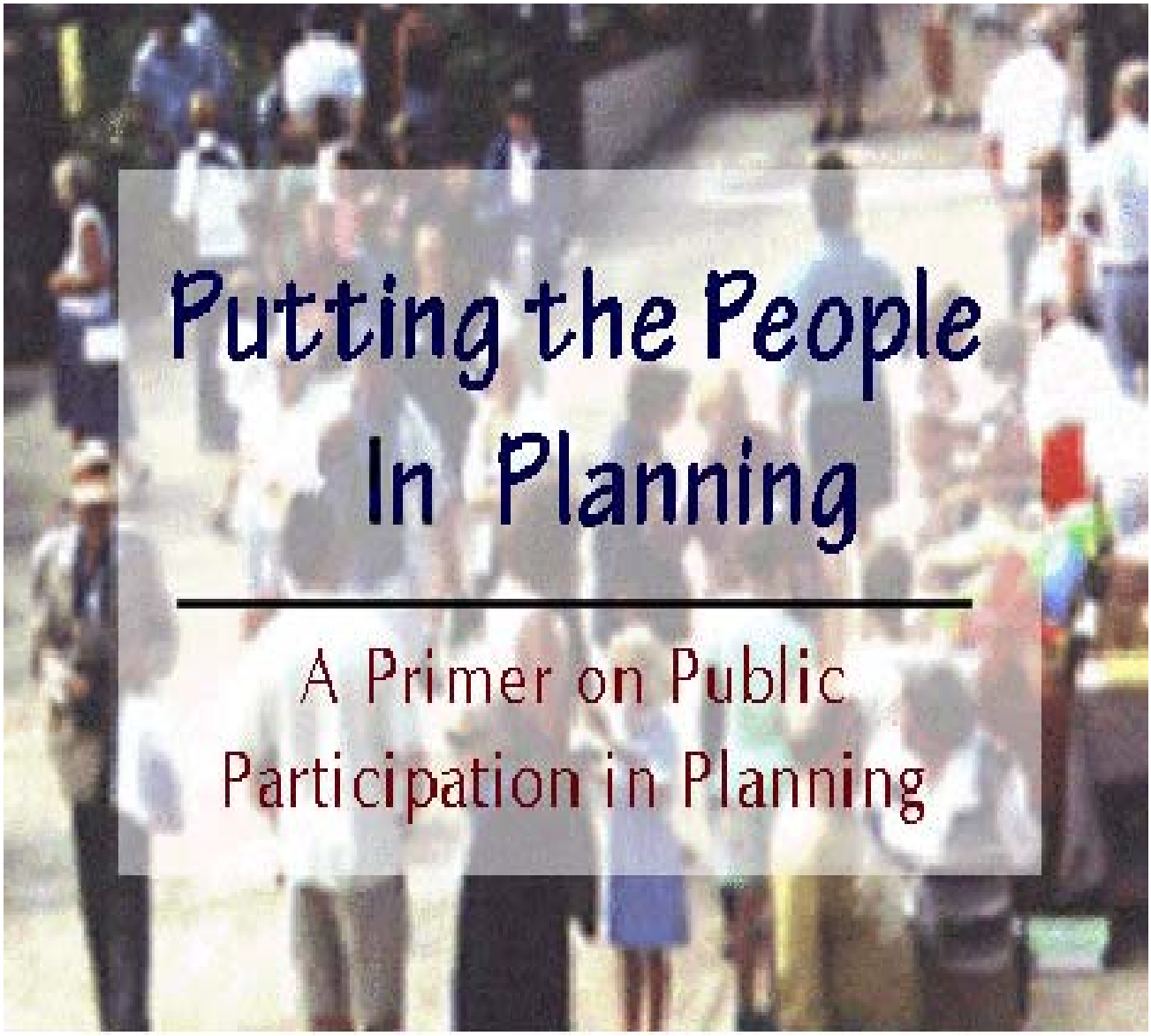
The table below lists key documents from the most general to the most specific:

Document	Created by	Description	Examples
Oregon Revised Statutes (ORS)	Oregon Legislature	Creates the overall planning program. Authorizes and requires local planning.	ORS 197.030 (1) There is established a Land Conservation and Development Commission. . . . ORS 197.175 (2) …each city and county in this state shall prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission. . . .
Oregon Statewide Planning Goals	Oregon Land Conservation and Development Commission (LCDC)	Sets overall goals for what planning should accomplish.	Goal 2 …All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. . . .
Oregon Administrative Rule (OAR)	LCDC	Sets process for planning on specific topics.	OAR 660-012-0020(2) The Transportation System Plan shall include the following elements. . . .
Local comprehensive plan	City Council, County Commission or County Court (usually with recommendations from a planning commission)	Describes current conditions and vision for the future. Generally includes goals and policies.	Vision Statement: …a well-planned city with a safe, healthy, and aesthetically pleasing environment. . . . Transportation Goal: Provide a safe, diversified, economical, and efficient transportation system. . . . Policy: Provide bikeways on arterial and collector streets. . . .
Local ordinances or codes	Same as above	Regulates where specific land uses can occur and how they must be designed.	Permitted uses in the low-density residential zone include: Single-family dwellings. Parks. Landscaping is required in the commercial zone as follows. . . .

Index

List of forms in Exhibit A

- Sample Order
- Notice of Decision
- Application for Building/Manufactured Home Sign-Off (4 pages)
- Variance/Conditional Use Application (2 pages)
- Variance/Conditional Use Applications – Schedule & Checklist
- Application to Amend Zoning Ordinance (2 pages)
- Application to Amend Comprehensive Plan Ordinance – Schedule & Checklist (2 pages)



Produced by Oregon's
Citizen Involvement Advisory Committee (CIAC)
Third Edition – May 2008

Putting the People in Planning

Table of Contents

Introduction

This is a "how-to" manual about public participation in land use planning. It tells how to run a successful program for citizen involvement. This manual has two main purposes:

- To help planners and local officials carry out Oregon's Statewide Planning Goal 1, *Citizen Involvement*; and
- To explain Goal 1 to non-planners, especially those who serve on citizen committees in cities and counties throughout Oregon.

In 1992, the Department of Land Conservation and Development (DLCD) sent a copy of this book's first edition to each city and county planning department in Oregon. Our intent was not only to inform local planners about Goal 1 but also to have the book shared with local officials and citizen groups. We hope for the same today. We'll distribute the book to local planners, but we encourage them to share copies of this third edition with interested groups and citizens.

Thanks to the Internet, that's easier to do today. This handbook is available online at the DLCD website: http://www.oregon.gov/LCD/index.shtml. Comments and questions about this handbook should be directed to the Communications Officer at DLCD (see the staff directory on the "Contact Us" webpage). The mailing address for DLCD is:

Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97301-2540
503-373-0050

DISCLAIMER: This publication is designed to help guide and promote citizen involvement in land use planning throughout Oregon. It is not intended to be a substitute for professional legal advice. Questions about citizen involvement in your area should be referred to the planning or community development department in your city or county.

1

What Is Citizen Involvement?

Oregon's statewide planning program calls for the state, and each city and county, to develop and maintain a "citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."

But what is a citizen involvement program? How does it work? What can planners do to help the public get involved? This handbook answers those questions and many more. It starts by answering the most basic question of all.

What is citizen involvement?

"Citizen involvement" means participation in planning by people who are not professional planners or government officials. It is a process through which everyday people help create local comprehensive plans and land use regulations, and use them to answer day-to-day questions about land use. It is citizens participating in the planning and decision-making which affect their community.

What is a citizen?

Oregon's planning goals define the term "citizen" very broadly. The definition encompasses corporations, government agencies, and interest groups as well as individuals. That's important because today organizations play a big role in land use planning. Thirty years ago, the most common form of citizen involvement was individuals speaking to a city council or writing a letter to a county planning commission. Today, many citizens participate in planning indirectly, by getting involved in an organization that represents their interests.

What is "participation"?

To "participate" is to express one's self at the proper time and in the proper

forum. For example, suppose that two weeks before the city council is to hear a proposal for rezoning a certain piece of property, a citizen writes a letter to the council saying she supports the proposal. That's participation. She has communicated her opinion to the right people at the right time, so it may affect the decision. If the same citizen states her support in a letter to the local newspaper a month after the hearing, that's not participating, at least in a legal sense: the forum and timing are wrong.

A key part of any citizen involvement program is to inform citizens about how, when, and where they may participate.

For some types of planning decisions, the law limits a citizen's right to participate. It's important for citizens to know about such limitations. Therefore, a key part of any local citizen involvement program is to inform citizens about how, when, and where they may participate.

Why get the public involved in planning?

There are several reasons citizens should have the opportunity to participate in planning. The most important is simply that our system of government gives citizens the right to have a strong voice in all matters of public policy, including planning. The law *requires* that citizens get that opportunity.

A second reason is that *only* citizens can provide the information needed to develop, maintain, and implement an effective comprehensive plan. Professional planners and local officials need comments and ideas from those who know the community best: the people who live and work there.

Third, citizen involvement educates the public about planning and land use. It creates an informed community, which in turn leads to better planning.

Fourth, it gives members of the community a sense of ownership. It fosters cooperation among citizens and between them and their government. That leads to fewer conflicts and less litigation.

Finally, citizen involvement is an important means of enforcing our land use laws. Having citizens informed about planning laws and giving them access to the planning process ensures that the laws are applied properly.

What steps in the planning process are open to public involvement?

The short answer is "all of them." But some steps offer more opportunities for involvement than others. For details, see Chapter 4, which explains how to participate in the various "phases of planning."

At this point, the important thing is to know that "planning" is more than just the act of drawing up a plan. It is a process made up of many steps, including:

- Gathering the technical data and facts needed to make sound policies and decisions;
- Evaluating community needs, values, and goals;
- Adding new policies to the plan or amending existing ones;
- Adding items to the plan's inventory of community resources;
- Periodically reviewing and revising the plan;
- Applying the plan's policies to specific land use decisions;
- Developing, maintaining, and applying the ordinances used to carry out the plan; and
- Creating a new element of the comprehensive plan, such as a transportation plan.

Oregon's 242 cities and 36 counties all have adopted comprehensive plans, and the state's Land Conservation and Development Commission (LCDC) has reviewed and approved ("acknowledged") them all – most in the 1980s.[1] But that doesn't mean that planning in Oregon is done. Planning is a *continuing* effort to shape our communities through policies and measures that guide the use of our land. As such, it can never be "done."

The activities that make up this continuing effort are referred to in Goal 1 as "all phases of the planning process." Goal 1 requires that citizens be given opportunities to participate in *all* those phases. Planning doesn't end with adoption of the comprehensive plan – and neither does citizen involvement.

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[1] The two exceptions are the recently-incorporated cities of Damascus and La Pine, which are still developing their comprehensive plans.

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Goal 1 and Its Six Components

The basic standard for citizen involvement in Oregon is Statewide Planning Goal 1, *Citizen Involvement*. The Land Conservation and Development Commission (LCDC) adopted it on December 27, 1974, and it took effect on January 25, 1975. The complete text of the goal is found in Appendix A.

Goal 1 calls for each city and county in Oregon to "develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." The goal cannot assure that every person who gets involved in planning will get what he or she wants: no policy can promise that. Goal 1 can't guarantee the outcome of the game, but it does guarantee that everyone gets a chance to play.

Like all of Oregon's planning goals, Goal 1 is mandatory: its provisions have the force of law. The goal is accompanied by several "guidelines" that are optional. Local governments *may* follow them, but they are not required to.

Unlike many of Oregon's statewide planning goals, Goal 1 is not supplemented by administrative rules that explain or refine its policies. Provisions relating to citizen involvement, however, are found in several statutes and rules on other topics, such as periodic review and open public meetings. See Chapter 5 for information on them.

What is a "citizen involvement program?"

A citizen involvement program (CIP) is a set of policies that explain how citizens are to participate in the local planning process. The CIP may be a separate document, or it may be a chapter in the comprehensive plan. Either way, the CIP is, in a legal sense, part of the local comprehensive plan. Any change to the CIP constitutes a plan amendment and is subject to all state and local regulations that govern such amendments.

Every city and county in Oregon has adopted a citizen involvement program. All the original programs were reviewed by the state's Citizen Involvement Advisory Committee (CIAC) and by LCDC as a part of "acknowledgment" – the process for state review and approval of local plans in Oregon. That all took place in the late 1970s and early 1980s.

Most cities and counties have not amended their CIPs since they were acknowledged. Where changes were made, CIAC typically has *not* reviewed them. That's because the process for plan amendment is different from the process for acknowledging a plan: there's less opportunity for review in amending a plan.

In effect, the CIP is a chart that describes the course for citizen involvement in a particular city or county. It serves as a guide not only to local planners and elected officials but also to state agencies. Goal 1 says state agencies must "make use of existing local citizen involvement programs established by counties and cities."

What are the components of a CIP?

Goal 1 requires that a citizen involvement program contain six "components." The goal also describes certain steps that must be addressed in each of those components. In effect, Goal 1 is a blueprint that shows how to build a citizen involvement program.

That blueprint is outlined on the next page. Local governments may (and often do) build more elaborate programs than the blueprint calls for. But whether the local program is simple or elaborate, it should include all the basic elements required by Goal 1.

Goal One's Blueprint for a CIP

Component 1, *Citizen Involvement* – Provide for widespread citizen involvement.

- Provide for involvement by "a cross-section of affected citizens."
- Establish and maintain a Committee for Citizen Involvement (CCI), with members selected in an "open, well-publicized public process." See Chapter 3 for details on CCIs.
- Specify a system by which the CCI periodically evaluates "the process being used for citizen involvement."

Component 2, *Communication* – Assure effective two-way communications between local officials and citizens.

- Establish "mechanisms" for maintaining communications between citizens and local officials. Such mechanisms include a wide variety of techniques and processes like newsletters, mailings and e-mails, legal ads, display ads, postings.

Component 3, *Citizen Influence* – Provide the opportunity for citizens to be involved in all phases of the planning process.

- Describe the phases of the local planning process.
- Specify how citizens are to be involved in each phase.

Component 4, *Technical Information* – Assure that technical information is available in an understandable form.

- Describe measures for translating technical information into a "simplified, understandable form."
- Help citizens interpret such information.
- Make technical information used to decide policy matters readily available to citizens "at a local public library or other location open to the public."

Component 5, *Feedback Mechanisms* – Assure that citizens get responses from policy makers.

- Describe how citizens who have participated will "receive a response from policy makers."
- Specify that the rationale for policy decisions will be available to the public in "a written record."

Component 6, *Financial Support* – Ensure adequate funding for the citizen involvement program.

- Describe the "human, financial and informational resources" to be used for citizen involvement.
- Specify what levels of staffing and funding will be "adequate."
- Show these resources as "an integral part of the planning budget."

3

The Framework for Citizen Involvement

Goal 1 calls for citizen involvement programs, but who is to design such programs and carry them out? The answer is a combination of local and state committees, commissions, and agencies. The most important committee is the local Committee for Citizen Involvement, or "CCI."

What is a CCI?

Ultimately, the responsibility for any citizen involvement program lies with the local governing body (the city council, board of county commissioners, or county court). The governing body, however, usually delegates that responsibility to several organizations: the local planning department, the planning commission, a variety of committees – and the advisory group known as the Committee for Citizen Involvement.

Goal 1 requires each city and county to maintain a CCI. In a world full of committees, you may wonder why Goal 1 calls for yet another. The answer lies in the fact that all of the organizations mentioned above – except the CCI – have multiple responsibilities. Some of those responsibilities detract from and even conflict with citizen involvement. Having a CCI – a committee with citizen involvement as its *only* responsibility – ensures that citizens are not forgotten in the planning process.

The CCI plays a vital role in citizen involvement. It's a watchdog and an advocate for public participation in planning.

The CCI is a watchdog and an advocate for citizen involvement. Goal 1 states the CCI's duty: to help the governing body develop, implement, and evaluate the local citizen involvement program. A good example of how one of those tasks (evaluation) is performed comes from Clackamas County. There, the CCI evaluates the county's citizen involvement program each year and presents a report to the county board of commissioners. That report gives county officials the information needed to refine the program and resolve any problems that may be occurring.

The CCI should be a separate, independent committee. For many local governments, however, the planning commission has been designated as the CCI because local officials have been unable to find enough people to serve on all the committees and boards necessary to conduct community affairs. A few other counties and cities have had the governing body become the CCI. Still others have used a hybrid organization: the planning commission plus one or more lay advisers serves as the CCI.

An independent CCI is the best choice to ensure widespread public involvement. The hybrid planning commission/CCI is an acceptable but less desirable choice. Finally, the least desirable option is having the governing body or the planning commission act as the CCI. It's likely to work against citizen involvement and should be done only as a last resort.

The makeup of the CCI is specified in the citizen involvement program acknowledged by LCDC. Any change to that program constitutes an amendment of the acknowledged comprehensive plan. Proposals for such amendments must be reviewed by the Department of Land Conservation and Development.

Who carries out the CIP?

Usually, the local planning staff is responsible for carrying out the CIP. The planners manage the citizen involvement budget, staff the program, and decide which citizen involvement tools to use in a particular situation. Some larger cities like Portland and Salem and counties like Multnomah, Clackamas and Washington have a special office or section for citizen involvement. The City of Gresham, for example, has a citizen involvement coordinator who is supervised by the city manager.

Most cities and counties also have a network of citizen groups to help run the CIP. Though they have many names, these groups generally are referred to as

"citizen advisory committees" (CACs). (See Glossary in Appendix G.)

A citizen advisory committee may be organized either on the basis of geography (city neighborhoods, for example) or of function (such as transportation). And CACs may be permanent ("standing committees") or temporary. Thus, there are four basic types of CACs. These are illustrated in Figure 1, which shows examples of the four in a hypothetical community.

FIGURE 1: The 4 Main Types of Citizen Advisory Committee (CAC)	
1. Standing Committees Organized by Geography **Example**: A community planning organization for the city's Westside Neighborhood	**2. Standing Committees Organized by Function** **Example**: A parks committee to advise county commissioners about park acquisitions, development, and maintenance
3. Temporary Committees Organized by Geography **Example**: An ad hoc committee on revitalizing the declining Old Town District	**4. Temporary Committees Organized by Function** **Example**: A task force to oversee development of a new wetlands overlay zone

Of the four main types of CAC, the most common is the standing neighborhood committee. Such groups are known by many different local names and abbreviations, such as CPO (Community Participation Organization), NAC (Neighborhood Association Committee), NPO (Neighborhood Participation Organization), Citizens' Planning Advisory Committee (CPAC), and AAC (Area Advisory Committee).

What's the difference between a CCI and a CAC?

Though their names sound alike, a Committee for Citizen Involvement (CCI) and a Citizen Advisory Committee (CAC) are quite different. A CCI deals mainly with one aspect of planning – citizen involvement – while CACs deal with a variety of planning and land use issues. Each community has only one CCI, but it may have many CACs. Finally, Goal 1 requires cities and counties to have CCIs, but it doesn't require them to have CACs. (ORS 197.160 strongly implies that CACs *are* required, but this needs to be clarified by the legislature or the courts.)

In the early 1990s, Oregon's laws were amended to give a stronger role to citizen advisory committees. ORS 197.763(2)(b) now requires that notice about many types of land use decisions must be provided to "any

neighborhood or community organization recognized by the governing body and whose boundaries include the site." "The site" means the property that is the subject of the decision. (For more information about the different types of land use decisions, see Chapter 5.)

How are other local governments involved?

Oregon's planning laws require that local plans be coordinated with each other. That requirement has important implications for a community's citizen involvement program. It means that neighboring cities, counties, and special districts are, in effect, citizens. They need to be kept informed about local planning activities, and they need to have an opportunity to participate in them.

In many areas of the state, governmental agreements are in place to guide how this participation should occur. See Goal 2, at DLCD's website: http://www.oregon.gov/LCD/docs/goals/goal2.pdf

Example: If a proposal to amend a city's transportation plan might have significant effects on nearby cities, counties, and special districts, all of them should be notified about it. All of them should have an opportunity to comment on the proposal.

What is the local framework for citizen involvement?

The local organizations described above form a framework for citizen involvement. That framework will vary from one community to another. For example, CACs might report to the planning commission in one city and to the city council in another. Figure 2, on the next page, illustrates the framework in a hypothetical city. Note that the four neighborhood committees and the design review board, parks committee, and transportation committee all are CACs.

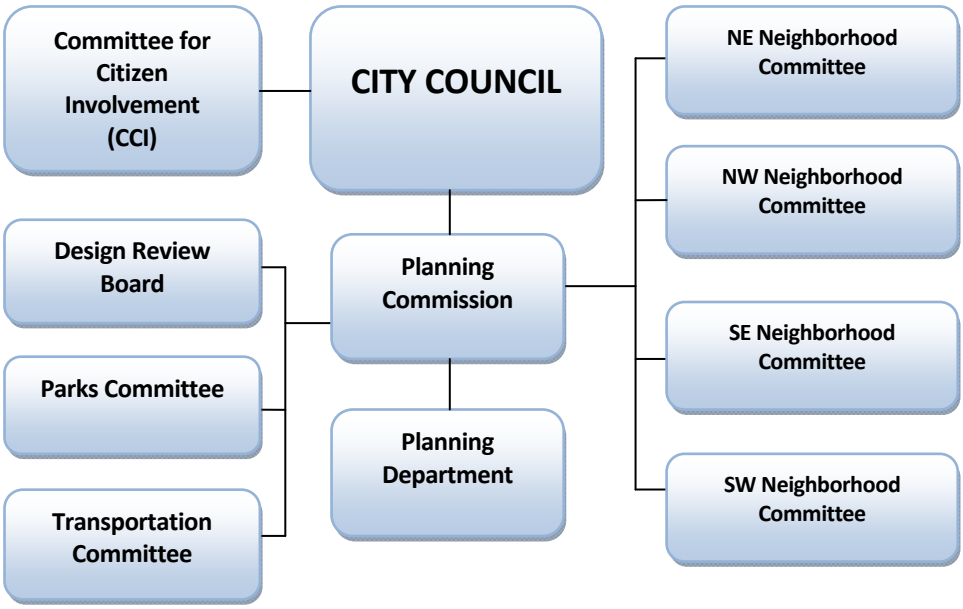

Figure 2: An example of a local framework for citizen involvement

Many communities divide all the land within their boundaries into a mosaic of neighborhood organizations based on geographic features. The resulting pattern may look good on paper, but it takes more than a few lines on a map to create and maintain a viable network of neighborhood organizations. Local staff must ensure that such groups get the information and support necessary to operate effectively. For example, the **City of Sandy** encourages them by offering a "neighborhood association starter kit" that provides information necessary to organize and operate such a group.

What is the state framework for citizen involvement?

Several state agencies and organizations affect citizen involvement in Oregon. They set policy, review plans, decide appeals, or provide technical assistance, as described below. Together, these agencies form a state framework for citizen involvement that complements the local framework.

LCDC: The state's Land Conservation and Development Commission oversees the statewide planning program, including Goal 1. LCDC makes broad policy decisions and sets the general course for citizen involvement. Like cities and counties, LCDC has formally adopted a citizen involvement program. (See Appendix H.)

DLCD: The Department of Land Conservation and Development (LCDC's

staff) has four main roles in citizen involvement:

- It reviews proposals to amend acknowledged plans (including CIPs) to see that the proposed changes comply with Goal 1.
- It communicates information to the public, media, and local governments about statewide planning policies and programs.
- It helps local governments run effective citizen involvement programs.
- It provides staff and funding for the CIAC.

CIAC: The Citizen Involvement Advisory Committee advises LCDC about citizen involvement in planning. The committee may have up to 12 members, with at least one from each of Oregon's five congressional districts. Its members are appointed by LCDC.

CIAC was established by Senate Bill 100 in 1973 to promote "public participation in the adoption and amendment of the goals and guidelines." It continues to have important roles today: working for "widespread citizen involvement in all phases of the planning process" (ORS 197.160), and ensuring statewide involvement in goal and rule amendment adoption. This handbook, for example, is part of CIAC's continuing effort to promote citizen involvement and inform citizens about their opportunities to participate in planning.

CIAC meets every other month and continually monitors citizen involvement programs in the state and counties. It provides a forum where citizens around the state can share their experiences and find information.

LOAC: The Local Officials Advisory Committee, a group of elected officials from cities and counties in Oregon, advises LCDC about local planning issues. LOAC enhances citizen involvement by making LCDC more aware of local issues and concerns in planning.

LUBA: The Land Use Board of Appeals is a three-member state panel that reviews and decides appeals of land use decisions made by local governments. In effect, it's a specialized "court" that hears only land use cases. Appeals to LUBA constitute an important vehicle for citizen involvement in planning.

LUBA's importance to citizen involvement stems from the design of Oregon's statewide planning program. That program relies on citizen appeals as its main enforcement mechanism. Contrary to what many people believe, DLCD does not monitor all of the thousands of local land use decisions made each year in

Oregon. And DLCD has no authority to overturn most local land use decisions. An appeal to LUBA therefore is often the only recourse for a citizen concerned about a local decision that seems to violate the acknowledged local plan or the statewide planning goals.

The relationship among these land use agencies – the state framework for citizen involvement – is shown in Figure 3.

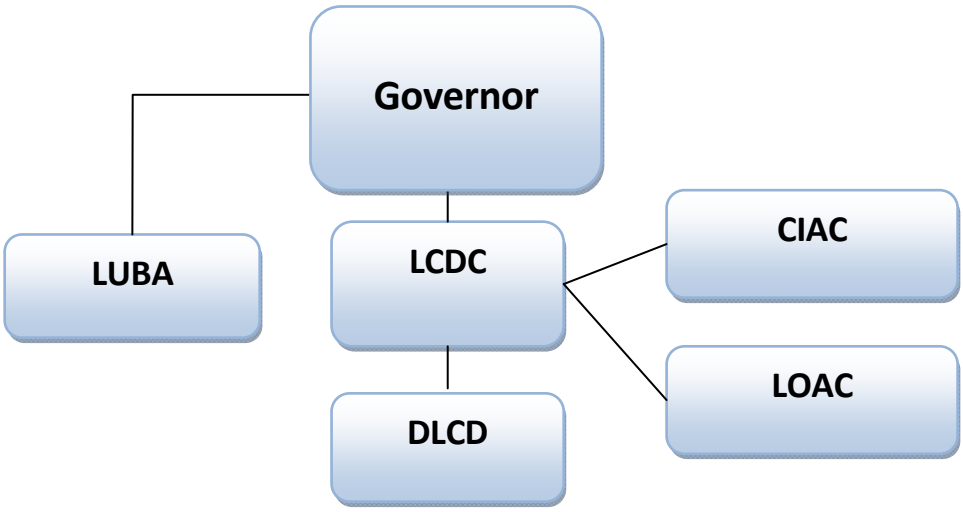

Figure 3: The state framework for citizen involvement

Are Other Agencies Involved?

Other state agencies play an important part in land use planning in Oregon. About two dozen departments (Forestry and Transportation, for example) have programs that affect land use. Such agencies often participate in local planning by commenting on land use decisions and working with local officials to see that the local plan addresses state interests. In effect, the state agencies participate in the local planning process much as any citizen would. These agencies also develop policies and administrative rules and are required to have a citizen participation plan for these decisions.

Although they are not policy-making bodies, the Land Use Board of Appeals, Oregon Court of Appeals, and Oregon Supreme Court also play a role in planning. Their rulings on and interpretations of Oregon's statutes constitute a body of "case law" that has significant effects on Oregon's planning system.

Citizens and local officials also have opportunities to shape state programs. The main opportunity for that occurred in the 1980s, during "certification review." State law (ORS 197.180) calls for state programs that affect land use to be "in compliance" with the statewide planning goals and "compatible" with acknowledged local plans. Agencies with programs that affect land use had to develop coordination plans and submit them to LCDC, which reviewed and certified them. During such review, citizens (including local planners and elected officials) could comment on how a state program affected their community. The Department of Land Conservation and Development provided widespread public notice about these reviews and encouraged comments from interested persons and groups.

The effort to get local, state, and federal agency plans and programs synchronized and working together is known as *coordination*. It is an important part of Oregon's planning program (See Goal 2). Local citizen involvement programs should recognize that importance by treating state and federal agencies as citizens. The CIP should contain provisions for notifying the appropriate agencies and for enabling them to participate in planning activities likely to affect them.

Klamath County's CIP, for example, contains a six-page "Agency Notification Checklist." It lists names and addresses of some 120 local, state, and federal agencies and utilities and special districts. Among them are entries for 28 state agencies and regional offices that might affect or be affected by land use planning in the county.

The CIP should contain provisions to notify key state agencies and to ensure they can participate in planning activities likely to affect them.

What part do interest groups play?

The state and local governmental organizations described above make up a large part of the framework for citizen involvement. There's another element, however, that accounts for much of the citizen involvement in Oregon: an extensive array of active, effective interest groups.

The list of groups that participate in matters related to planning in Oregon is long. It includes the Oregon Home Builders Association, the League of

Women Voters of Oregon and its local chapters, 1000 Friends of Oregon and its local affiliates, Oregonians in Action, the Oregon Manufactured Housing Dealers Association, the Oregon Shores Conservation Coalition, and dozens of other state or regional groups. It also includes numerous community groups, which are active in local planning matters.

Interest groups have played a vital role in planning in Oregon, and their importance is growing. Part of the reason for that, unfortunately, is that many citizens find it too difficult to participate in planning as individuals. Lacking sufficient time, money, or expertise to participate on their own, citizens join or support an interest group to work on their behalf. An effective CIP encourages such representation.

Suppose, for example, that someone applies for a permit to demolish an old house that is on the plan's inventory of historical resources. State and local laws may require only that notice be sent to the adjacent property owners. But those property owners are not necessarily the people in the community who are most interested in historical preservation. A good local CIP would provide for notice to all local groups with such an interest.

The CIP needs to recognize the importance of interest groups and provide for their participation in planning.

4

Participating in the Different "Phases of Planning"

Statewide Planning Goal 1 requires there to be citizen involvement "in all phases of the planning process." But what are those phases, and how does citizen involvement vary from one phase to another? For those who want a voice in planning, it's essential to know the answers to those questions. You'll find those answers in this chapter.

As we noted in Chapter 1, planning has many different aspects that might be considered "phases." The promise of Goal 1 is that citizens get opportunities to participate in all of them. But for convenience' sake, it's useful to lump the different aspects of planning into three main phases:

- *Plan development,*
- *Plan implementation*, and
- *Plan revision.*

Plan development is the first phase, when a plan is being created and adopted. *Plan implementation* comes next: it occurs when an adopted plan is being put into effect and applied to specific issues and questions of land use. *Plan revision* is the changing or altering of an adopted plan and related documents, such as maps or land use regulations. All three phases have to do with planning, but each has different rules for citizen involvement.

Think of the phases as being like social events. All social occasions and activities involve interaction among people, but rules and customs for interaction vary with the event. A wedding reception is different from an office party, a class reunion is different from a tail-gate party, and so on. What

distinguishes these types of events are their purposes and their procedures for interacting. And so it is with the three phases of planning.

Plan Development: Building the Community Plan

Plan development is the creative phase. This is when a community gathers ideas and information about land use, community resources, and public facilities and services, and then puts them all on paper. Once the ideas and information get assembled, reviewed, and adopted, they become the community's plan.[2]

Citizen involvement in this phase has few limits. It's a time of numerous public meetings, free-wheeling discussion, and brain-storming. In this phase all citizens are encouraged to participate freely, so the resulting plan truly will reflect views and values of the entire community.

Lawyers and planners often categorize this phase of planning as the "legislative process." In this phrase, legislative is used broadly to mean "law making," not just by the state legislature but by any governmental body, such as a city council or county board of commissioners. In legislative proceedings, there are few procedural rules: citizens who wish to participate can pretty much say what they want, when they want, and how they want (by writing letters, testifying at hearings, participating in public workshops, and so on).

Plan Implementation: Putting the Plan into Play

A comprehensive plan has little value if it winds up sitting forgotten on some dusty shelf in a city hall or county courthouse. If a plan is to have any effect, it must be used and applied to real-life situations. It must, in the words of planners, be "implemented."

Plan implementation is the continuing process of using the plan (and related ordinances) to answer everyday questions: "Is a shopping center appropriate on that site?" "What's the appropriate density for that subdivision?" "Should a fast-food restaurant be allowed at that intersection?"

Sometimes, a plan will answer a specific land-use question quite directly. In most cases, however, detailed "implementing measures" such as zoning ordinances are needed to flesh out a plan's broad policies. For example, a city

[2] Yes, every city and county in Oregon already has created and adopted a comprehensive plan, but that doesn't mean "plan development" is over. Plans are constantly being updated and amended, and new elements such as "transportation system plans" are being added to them.

plan might contain a policy to "encourage mixed uses in the Riverfront District" and a plan map showing that district in a bright yellow. But those steps merely express intention. To translate such intentions into on-the-ground results, local governments typically use some combination of implementing measures.

For example, to encourage mixed-use development in the Riverfront District, our hypothetical city might use a combination of land use regulations, tax incentives, and infrastructure investments. The regulations would specify that certain types of commercial and residential development are allowed in the Riverfront District, while other types of uses such as industry and large retail outlets are not allowed. The tax incentives would provide reduced property tax rates for the first few years after development of a new mixed use that meets special city standards. And the investment strategy would be to redesign streets and sidewalks in the Riverfront District to make them more "pedestrian friendly," plant street trees, and install a small neighborhood park.

Many people think "plan implementation" equals "regulation," because permits and zoning ordinances are common ways to implement a local plan. Land use regulations are indeed common and perhaps the most visible means of plan implementation. But as the Riverfront District example demonstrates, regulations are not the only way of putting a plan's policies into effect.

Plan implementation tends to be the most difficult phase for citizens active in planning. Participation in this phase is limited by procedural rules on matters such as standing, notice, and appeals, and those rules often are complex and frustrating. Some citizens may feel as if they are forced to become land use lawyers before they can participate in planning. (Reading Chapter 5 of this handbook will help.) Other citizens may think such rules are nothing more than barriers to their involvement. There are, however, some good reasons for the procedural rules.

The most important reason is that such rules protect the plan. The rules ensure that local officials who make land use decisions months or years after the plan was adopted do so in manner consistent with the plan.

Another important reason for procedural rules is efficiency: the procedural rules ensure that decisions about land use get made in a timely, cost-effective way. Such decisions are, after all, the main product of planning. If local officials don't use the plan to arrive at specific decisions about whether to

issue a permit or how to zone a particular parcel of land, the plan will have no effect.

Finally, procedural rules bring fairness. They ensure that interested parties will be notified about proposed developments that might affect them. They ensure that all persons get equal opportunity to participate in the decision-making process. And they provide a means of redress for those who feel that a land-use decision was made improperly.

But procedural rules do cut two ways. On one hand, they do give citizens opportunities to participate in planning that might otherwise be denied to them. On the other hand, they sometimes keep citizens from participating when or to the extent that they might like.

For example, suppose that a citizen reads how Goal 1 encourages citizen involvement. She therefore goes to the local planning department with a letter stating her objections to a proposed subdivision. But she is surprised to hear the planner say that he can't accept her letter: the "comment period" specified in the local zoning ordinance has ended. Her letter is too late. She complains, "The planner wouldn't accept my letter because the comment period had ended; they're discouraging citizen involvement, and that's not consistent with Goal 1!" Well, actually such procedural rules *are* consistent with Goal 1, just as it's consistent with sound transportation planning to have speed limits on highways. To keep traffic flowing safely and efficiently, we need traffic laws. Likewise, to keep land use planning fair and efficient, we need rules and regulations on how the plan is to be implemented.

Plan Revision: A Tale of Two Processes

Plan revision is the process of reviewing, updating, and refining a plan (in whole or in part). It's an essential part of planning. Communities grow, technology changes, economies expand, laws evolve, and values change. The plan that doesn't keep up with those changes soon fails to serve its purpose.

A comprehensive plan is much like a household budget. If you go to the trouble to prepare a detailed budget to guide day-to-day financial decisions in your household but then don't revise it to reflect changes in your income and expenses, it soon becomes worthless. A plan must be revised from time to time for exactly the same reasons. Oregon's planning laws specify two main procedures for revising and updating local comprehensive plans: "periodic review" and "post-acknowledgment plan amendment."

Periodic review is a major overhaul of the plan. For reasons discussed in the next section, now state law only requires Oregon's largest cities and certain counties to conduct a periodic review, but all cities and counties have the option to do so. In some cases, therefore, citizen involvement may start with convincing community leaders that such a review is needed.

In periodic review, a community considers its entire plan, determines what needs to be changed and updated, and then makes the necessary changes. The changes often involve not only the plan itself but also related maps, land use regulations, and background documents.

Appropriately enough, periodic review begins with a review. The community examines its plan and determines which parts need work. It's possible for such a review to end right there, with a conclusion that the current plan is working well and needs no revision. More often, however, the review identifies several areas where changes are needed. These areas are listed as "tasks" in a "work program." The work program is a summary of all the tasks that need to be done and the schedule for completing each one. For example, a city might settle on these three tasks:

1. Update the local inventory of "buildable lands" for residential development.

2. Develop policies and implementing measures to protect and conserve significant resources in the Green River riparian corridor within city limits.

3. Develop and implement a new citizen involvement program.

The state Department of Land Conservation and Development works with local staff to develop the work program. DLCD may require that the plan be revised to reflect changes in state law or to update parts of the plan that have drifted out of compliance with statewide planning goals. The community may identify other areas where work is needed, not because the state requires the work, but because it is important to members of the community.

Once the periodic review work program is approved, the community undertakes the individual tasks. One task may take a year to complete, while another may take two or three years. When a task is completed, the local government adopts the work and submits it to DLCD for review. The agency may approve the work, or it may identify problems. If a problem cannot be resolved at the staff level, the issue may have to be resolved by the Land Conservation and Development Commission.

Throughout periodic review, there are many opportunities for citizens to participate. The main opportunities occur in developing the work program, during work on individual tasks, and in the final adoption of the tasks by the local government. If a task gets appealed to LCDC, there are some opportunities for interested parties to participate at that point, too.

In contrast to periodic review, a plan amendment typically is not a community-wide effort involving the whole plan. Rather, it's a precise change made to one part of a plan or to related land use regulations. Lawyers and planners sometimes refer to such amendments as "post-acknowledgment plan amendments" or PAPAs, because they are changes made to a plan after it has been "acknowledged" (approved) by LCDC.[3]

The term "plan amendment" encompasses not only changes to a comprehensive plan but also to related land use regulations and zoning maps. This often is a source of confusion. For example, you might think that rezoning one parcel of land from R-1 Residential to C-1 Commercial is not a plan amendment. After all, it deals only with the zoning ordinance, not the plan, doesn't it? Well, actually, no. If a city changes the R-1 zoning to C-1 zoning, it has to change the plan map to show that, too. Many "zone changes" do involve the plan as well as the zoning ordinance and thus are subject to state law on plan amendments.

Here's how the plan amendment process generally works: A landowner, community organization, or city officials propose to amend the plan or related ordinances. The local government then must notify DLCD about the proposal at least 45 days before the first public hearing on it. DLCD also maintains a list of interested persons, agencies, and groups and notifies them of the proposal. DLCD and other interested parties may comment on the proposal in writing or in oral testimony at the hearing. Depending on the local government's procedural ordinances and the complexity of the proposal, there may be multiple hearings.

In most cases, a local government may take as much time as it wants to consider a proposed plan amendment. Most such amendments are not considered "land use permits." They therefore are not subject to statutory

[3] See ORS 197.610. ORS Chapter 197 is the main set of state laws on planning. You can view it on web at http://www.leg.state.or.us/ors/197.html

provisions that require applications for permits to be processed within 120 (or in some cases, 150) days. If a local government decides to adopt a proposed plan amendment, it must notify DLCD of that action within five working days.

Some people assume that DLCD can override a plan amendment proposal with which it disagrees. It can't. DLCD's authority is much less direct. Initially, DLCD may comment on a proposal. Ultimately, DLCD may appeal the adopted plan amendment to LUBA. For most plan amendment proposals, DLCD neither comments nor appeals. DLCD's biennial report for 2005-2007 says this:

> DLCD received more than 1,000 notices of PAPAs during the 2005-07 biennium and commented on about 150 proposals. In cases when DLCD provides comments and the local government makes a decision the department believes violates a statewide planning goal, the department can, with LCDC approval, appeal the local decision to the Land Use Board of Appeals (LUBA). As of Dec. 10, 2006, DLCD, with LCDC concurrence, had appealed just two local decisions.

Citizens should be mindful that state law says local governments need not provide the 45-day notice if the statewide planning goals "do not apply to a particular proposed amendment or new regulation."[4] We lack statewide data on how many of these "non-goal" proposals are made each year, but clearly there are some cases, perhaps many, where 45-day notice to DLCD and other interested parties is not provided.

The table on the next page outlines the main differences between the periodic review and plan amendment processes.

[4] ORS 197.610(2).

Figure 4: TWO WAYS TO CHANGE A PLAN Comparing the Periodic Review and Plan Amendment Processes		
	Periodic Review	**Plan Amendment**
Who initiates the process?	**The local government** (per state laws about how often such reviews must be done)	**Anyone** can request a plan amendment. Usually, amendments are sought by individual landowners.
Does state law require this?	**Maybe.** It depends on the community. Larger cities and certain counties are required to conduct periodic review. Smaller cities and counties are mostly exempted.	**No.** State law generally doesn't require communities to propose plan amendments. But the state sometimes passes new laws that require communities to amend plans.
How long does it take?	**Several years.** The time will be specified in a local periodic review "work program."	**Several months at the very least.** A complex proposal might take a year or more.
How broad is the scope of review and revision?	**Broad.** The entire plan may be reviewed. Those parts that most need work are updated.	**Narrow.** Only a small part of the plan is involved. Many plan amendments deal with just one parcel of land.
Do review and revision occur on a regular cycle?	**Yes.** Periodic reviews typically are scheduled every 5 to 15 years.	**No.** Plan amendments occur whenever a person requests one or when a local government initiates one.
Does the process allow for widespread citizen involvement?	**Yes.** There usually are multiple public workshops and hearings over a period of months or even years and few limits on who can participate.	**No.** Citizen involvement is limited, in time and scope. A simple map amendment may have just one hearing. More complex proposals get more review.
Are individual landowners notified of how the change might affect them?	**Usually, no.** Local governments mostly use ads and news media to get out the word. Sometimes, landowners will get a broadly worded "Measure 56 notice."	**Usually, yes.** If the plan amendment is "quasi-judicial," interested parties will be notified by mail. If it's a broader "legislative" proposal, more general forms of notice will be used.
To what extent is the state involved?	**A lot:** DLCD works with the city or county to set a schedule for review and to determine what tasks are needed. DLCD reviews work done on tasks.	**A little:** A city or county must notify DLCD 45 days before the first hearing. It can adopt a proposal without DLCD's approval. DLCD may appeal to LUBA but rarely does.
Who decides appeals?	**LCDC** (Land Conservation and Development Commission)	**LUBA** (Land Use Board of Appeals)
What state laws govern the process?	**ORS 197.610 – 197.625**	**ORS 197.628 – 197.636**
Here's a link to the statutes on periodic review and plan amendment: http://www.leg.state.or.us/ors/197.html		

Periodic Review Today: Less Chance for Involvement

Of the three planning phases described above, plan development has pretty much ended. Each community in Oregon now has a local comprehensive plan. Every plan in Oregon has been reviewed and approved for compliance with state standards by the Land Conservation and Development Commission. And every acre of land in Oregon now is subject to state-approved local planning and zoning. For citizens, then, there's not much opportunity left to participate in the plan development phase: the plans already have been developed.

In theory, citizens still should have many opportunities to participate when the plans get revisited in periodic review. In practice, however, such opportunities have diminished greatly in the past few years. Bills passed by the Oregon Legislature in 1999, 2001, 2003, and 2005 brought dramatic change to periodic review. More than half of Oregon's cities now are exempt from state law requiring periodic review; all counties are exempt (although some must participate in periodic reviews involving urban areas). Because of these changes in the law, plans adopted many years ago may remain in place for decades without any review or updating.

The changes in Oregon's periodic review laws started when the 1999 legislature passed Senate Bill 543. This bill narrowed the basic purpose of periodic review, which had been to ensure that local plans "are achieving the statewide planning goals." Under SB 543, the new purpose was to "ensure that the plans and regulations make adequate provision for needed housing, employment, transportation, and public facilities and services." Adequate provision for other goal topics, such as conservation of natural resources and citizen involvement, was no longer required.

SB 543 exempted most cities under 2,500 from periodic review entirely. Likewise, it exempted the less populous counties. The bill also eliminated statutory provisions calling for a review of the local citizen involvement program at the outset of periodic review to "ensure that there is an adequate process to obtain citizen input in all phases of the periodic review process."

In 2001, the legislature adopted one minor bill on periodic review, Senate Bill 417. It modified some of the previous session's legislation on time extensions and DLCD's review of work programs and tasks.

The 2003 Legislature adopted major legislation on periodic review in the form of Senate Bill 920. The main effect of this bill was to suspend periodic review

until local governments and DLCD could catch up with a backlog of tasks already "in the pipeline." The bill also excused local governments from having to complete certain tasks already in their work programs. And it declared that tasks submitted to DLCD for review would be "deemed approved" if DLCD failed to review them within 120 days and no interested party objected.

Senate Bill 920 also created a special interim committee on periodic review and called for that committee to report to the 2005 Legislature. The committee's report is on the Internet at:
http://www.oregon.gov/LCD/docs/publications/periodicreviewfinalrpt040505.pdf

In 2005, House Bill 3310 further narrowed the scope of periodic review. It did that primarily by changing four statutory criteria that determine whether a local government should initiate a review. The four criteria, at ORS 197.628, all deal with changes that might render a plan obsolete. For example, one of the criteria is "a substantial change in circumstances:" if an unanticipated change has occurred in, say, a city's population, then that city should conduct a periodic review. HB 3310 added to all four criteria this qualifying phrase: "relating to economic development, needed housing, transportation, public facilities and services and urbanization." As a result, a city now might experience substantial changes not anticipated by its plan, but if the changes relate to matters not covered by HB 3310's new phrase, no review is required.

HB 3310 exempted all counties from review, except for unincorporated areas inside urban growth boundaries of large cities. The bill also eliminated any opportunity for citizens to appeal three types of decisions by DLCD: approval of a work program; a decision that no work program is needed; and a decision that the work done on a periodic review task is sufficient.

All four of the above bills aimed to "streamline" or "reform" a periodic review process that had come to be seen by many as slow, costly, and cumbersome. It's too soon to know whether they achieved their aims. But their costs in terms of diminished citizen involvement in planning are apparent:

1. Fewer local governments are conducting periodic reviews. At one time, state law required all 242 cities and 36 counties in Oregon to conduct periodic reviews. Now, only a few dozen of the largest or fastest growing cities must do so. The effect on citizen involvement? Less opportunity for citizens to get involved in making their community plan work better and keeping it up-to-date.

2. Fewer statewide planning goals need to be considered in periodic review. In the past, state law required local governments to consider all 19 goals equally in periodic reviews. Today, they must address only those goals that deal with economic development, housing, public services, transportation, and urban growth. The effect on citizen involvement? Less opportunity for citizens to be heard on land use issues that don't involve "the development goals" (Goals 9, 10, 11, 12 and 14).

3. Fewer opportunities are available in periodic review for creativity, innovation, and discussion. Periodic review now is much more of a by-the-numbers process, with tighter deadlines, narrowed criteria, and reduced opportunity for appeals. The effect on citizen involvement? A narrower window for citizen participation.

At the time of this writing, Oregon's entire statewide planning program is in flux. It is being reviewed by a special task force with a broad mandate to take a "Big Look" at Oregon's statewide planning program and to recommend changes. The recommendations will be presented to the 2009 Legislature.

Meanwhile, Measure 37, the compensation measure passed by Oregon's voters in 2004, has brought great confusion, cost, and delay to many local planning efforts. It also has blocked some forms of citizen involvement by enabling local governments to waive regulations that apply to claimants' lands. The measure allows such waiver decisions to be made without notice to interested parties and without public hearings.

The trend over the past decade, then, is clear: opportunities for citizen involvement in land use planning in Oregon have declined markedly. But in spite of that, two crucial facts remain: every city and county still has a comprehensive plan, and the effectiveness of those plans depends on continuing involvement by the citizens whose lives they affect. It may be harder for citizens to get involved than it was 10 or 20 years ago, but it's still just as important.

Today, the citizen who wants to participate in planning needs to understand basic land use procedures and rules. You might say the price of admission to the planning arena is information – and the price has gone up. The next chapter will help you get your ticket.

5

The Law on Citizen Involvement

Citizens who want to participate effectively in planning need to know a few things about laws that govern planning procedures. That's what this chapter is for: it asks and answers some basic questions about Oregon's land laws. Because it's a summary, it omits many details and nuances. Also, it presents little information about the variety of local ordinances that often complement state laws. This chapter therefore is not intended to provide "legal advice." If you need advice about laws governing a specific procedure or situation, it's best to consult an attorney.

Also, keep in mind that land use laws (like most laws) change fairly often. Oregon's legislature meets annually – it met every two years until 2007 – and it modifies many laws each time it convenes. Some modifications take effect immediately, with an "emergency clause." Most take effect on the first day of the year following the legislative session. A few are phased in over a period of several years, and some contain a "sunset clause," rendering them temporary. It therefore is important to make sure that any statute you rely on is up-to-date.

The statutes quoted here are basically "2005 law." They are taken from the Oregon legislature's website at http://www.leg.state.or.us/ors/home.htm

The statutes listed there at the time of this writing (2007) are from 2005: laws adopted by the 2007 Legislature have not yet been codified and thus are not posted or published as statutes.

We should note here the law specifies only what *must* be done, not necessarily what *should* be done. Choosing to do the minimum may prove to be costly for a local government. With a controversial land use decision, an attempt to save a few hundred dollars of postage and staff time by minimizing citizen involvement may later result in litigation costing tens of thousands of dollars.

In short, a legalistic view of citizen involvement often is too narrow. Factors other than the law need to be considered, too. For all but the most routine planning actions, the following questions should be asked:

- Will the proposed planning action affect a large land area?
- Will it affect many people?
- Will it involve new issues not addressed by the plan or not familiar to the public?
- Will it establish important new policies or precedents?
- Will it involve issues that are likely to be controversial?

The local Committee for Citizen Involvement (CCI) is the best place to ask such questions. If the answer to some or all of them is 'Yes,' a more extensive citizen involvement effort than that required by law is likely to be needed.

Statutory requirements for citizen involvement are minimums: they specify the least that may be done, not necessarily what should be done.

1. What is the main law on citizen involvement?

The easy answer to this question is Statewide Planning Goal 1, *Citizen Involvement*. But as with so many things, the easy answer fails to capture essential nuances. The informed citizen needs to be aware that Goal 1 is not the only state law or rule that may affect his or her participation in planning. Detailed statutes about "notice" and other procedures may greatly affect such participation. Likewise, "case law" (court rulings interpreting the law) strongly influences citizen participation. The most relevant statutes and court rulings are summarized in this chapter.

Also, in considering state law on citizen involvement, it's important to remember the concept of "local implementation." Oregon's planning system relies on cities and counties to implement state law. There's no "state plan" or state planning agency in Oregon. Instead, local governments do the planning in accordance with state law. They fold the state land use law into their local plans and implementing ordinances, which then become the controlling documents for all land use actions. A citizen who wants to know what procedures will be used in a specific land use action therefore should consult his or her community's plan and ordinances first.

For example, state law requires notification of landowners within 100 feet of a subject property for certain types of cases. But a city could choose to use a higher standard. Salem uses 250 feet, for example. The city's requirement, which is greater than the state law, would be the controlling standard in any appeal.

Sometimes, state law does apply directly to local land use issues. This typically occurs when a city or county has failed to update its plan to reflect a recent change in state law. But for the great majority of land use issues, the first question for citizens should be: "What do our *local* plan and land-use ordinances say?"

2. What are main types of planning decisions?

Decisions about land use and planning come in three main flavors: ministerial, quasi-judicial, and legislative. Think "small," "medium" and "large." Ministerial decisions deal with small routine questions about just one property or project. Quasi-judicial decisions involve more complex issues, more people, and, often, more than one parcel of land. Legislative decisions typically involve big policy issues, large groups of people, and larger geographic areas.

Figure 5: Typical Characteristics Of The Three Main Types Of Planning Decisions

Type of Decision	Scope of Issues	Units of Land Affected	People Involved	Decision Makers	Time Needed
MINISTERIAL	Minor and routine	One property	Few: staff and applicant	Staff	days
QUASI-JUDICIAL	More complex and subjective	One or several properties	Several or many: Neighbors, interest groups, etc.	Hearings officer; planning commission	A few months
LEGISLATIVE	Complex and subjective	Many	Many: perhaps whole community	Governing body	Many months, or years

When it comes to citizen involvement, the general rule is this: the bigger the decision, the more opportunities there are (or should be) for citizens to participate. For example, a ministerial decision to issue a building permit for a new house in the "R-1 Residential Zone" usually would take only a few days and involve no public hearings at all. A quasi-judicial decision to rezone a parcel from "Light Industrial" to "Heavy Industrial" might take several months and involve two public hearings. A city's legislative decision to adopt a new transportation system plan might take a year or two and involve a whole series of public hearings and workshops attended by hundreds of people.

Ministerial decisions (also known as administrative actions) are minor day-to-day decisions made by staff, without public notice or review – not because citizen involvement is unnecessary, but because the citizens already have spoken.

Suppose, for example, that a city spends one year refining its zoning ordinance. After numerous hearings and much favorable public comment, the city decides to allow accessory dwellings outright in the R-1 zone. (An accessory dwelling typically is a small apartment attached to a single-family dwelling. It's often created by converting a garage or an attic to living quarters.) A month after the new ordinance is adopted, a homeowner applies for a building permit to modify his house to add an accessory dwelling.

If that proposal satisfies the applicable standards and definition, local officials should approve the permit. To seek further comment from adjoining land owners about the appropriateness of accessory dwellings in the R-1 zone would be wasteful. It could even be considered "anti citizen involvement," for it would imply that opposition from one neighbor could override a policy set by the entire community.

The distinguishing feature of ministerial decisions is that they involve no exercise of discretionary judgment by the person who makes the decision. These "black-and-white" decisions often involve numerical standards, such as setbacks. For example, if the zoning ordinance requires a twenty-foot front-yard setback in an R-1 zone, the planning staff need not exercise any discretionary judgment to determine whether plans for a new house in that zone satisfy the requirement: either the house is shown to be at least 20 feet from the front lot line, or it's not.

With quasi-judicial and legislative decisions, however, decision makers must

exercise discretion and judgment. Here, citizen input is essential. The two types of decisions, however, have their own different rules and procedures for citizen involvement. For a citizen to participate effectively, it's important to understand those differences.

A decision-making body acts in a quasi-judicial manner when it *applies* existing law or policy to specific parcels or people (often in response to a permit application). It acts in a legislative capacity when it *creates* new law or policy applicable to many parcels or people.

Example: If the city planning commission decides to approve an application from Joe Doaks for a variance, the council is acting in a quasi-judicial capacity. Using standards from the local ordinance, the commission is applying the variance law, not creating it. But if the city council amends the city zoning ordinance to adopt new standards for variances, it's acting in a "legislative" capacity. You might say it's creating "variance law."

Usually, it's fairly easy to distinguish the two modes. But sometimes, the line between them blurs. For example, if a city initiates a rezoning of five adjoining lots from medium-density to high-density residential, is it acting legislatively (in effect, creating "new zoning" for an area)? Or is it acting in a quasi-judicial manner, applying existing zoning to specific properties?

The Oregon Supreme Court established guidelines for answering such questions in *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or 591 (1979). LUBA summarizes the resulting doctrine this way:

> The *Strawberry Hill 4 Wheelers* test for determining whether a decision is legislative in nature requires consideration of three factors:
>
> 1. Is "the process bound to result in a decision?"
>
> 2. Is "the decision bound to apply preexisting criteria to concrete facts?"
>
> 3. Is the action "directed at a closely circumscribed factual situation or a relatively small number of persons?"
>
> The more definitely the questions are answered in the negative, the more likely the decision under consideration is a legislative land use decision.

This quotation above is taken from a 2001 case, *DeBell v. Deschutes County*, but LUBA has used almost identical language in many cases that involve this question.

The neat, three-part classification system described above, with all land use actions being ministerial, quasi-judicial or legislative, recently got messier. In

the 1990s, the legislature added two new categories of decisions: the *limited land use decision*, and the *expedited land division*. Both deal mainly with residential subdivisions and partitions in urban areas.

Limited land use decision is defined this way by ORS 197.015(12):

> "Limited land use decision" (a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:
>
> (A) The approval or denial of a subdivision or partition, as described in ORS 92.040 (1).
>
> (B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

ORS 197.195 describes procedures to be used in making such decisions. Basically, this law creates a special category of expedited decision-making for urban issues of how development is to occur, not whether it will be allowed. For example, a proposal for a 20-lot residential subdivision in a city's R-1 (single-family residential) zone usually would be treated as a limited land use decision. There's no question whether houses and residential subdivisions are allowed on land zoned R-1: the ordinance already says they are. The only question to be decided is how the lots for those houses will be configured and served by municipal services such as streets.

The expedited land division is covered by ORS 197.360 - 197.380. This little-used review procedure applies only to land divisions in urban residential zones.

The legislature created the categories of limited land use decision and the expedited land division to increase the speed and efficiency with which certain types of land use permits can be approved. Such legislation may be well intended, but citizens should be aware that efforts to increase speed and efficiency in permitting often bring a significant cost: diminished opportunity for citizen participation.

Indeed, the fastest and most efficient permitting system would be one that allows for no citizen involvement whatsoever. All questions of land use would be answered using clear and objective criteria, and all would be answered by staff in administrative procedures involving no public notice, no public hearing, and no opportunity for appeal. Carried to this extreme, all plan implementation would be a numbers game, played exclusively by planning staff, with little or no citizen involvement.

3. *What is* Fasano *(as in* "Fasano *requirements," "Fasano procedures," "Fasano due process," etc.)?*

These terms derive from what is, hands down, the most significant court ruling on planning in Oregon: *Fasano v. Washington Co. Comm.*, 264 Or 574, 507 P2d 23 (1973). In it, the state's Supreme Court ruled that many common land-use decisions (conditional use permits, variances, rezonings, etc.) are quasi-judicial. That is, officials who make such decisions are applying the law to a particular set of circumstances, and thus acting in much the same way as a court. Until the *Fasano* ruling, most land-use decisions were regarded as legislative actions, which create new law rather than apply existing law.

Quasi-judicial decision making is subject to strict procedural requirements; legislative decision making is not. In *Fasano*, the court described the quasi-judicial procedural requirements thus:

> Parties at the hearing before the county governing body are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter – i.e., having had no pre-hearing or *ex parte* contact concerning the question at issue – and to a record made and adequate findings executed. 264 Or at 588.

The *Fasano* case made a profound difference in local land-use proceedings. It caused local officials to be more rigorous in their decision-making procedures. It increased the burden on permit applicants to show that their proposals satisfy all applicable laws. It increased opportunities for citizens to participate in the making of land-use decisions. And it generally increased the quality of that decision making.

In the years since *Fasano*, many of the requirements quoted above have been turned into statutes. See, for example, ORS 197.763. But neither the legislation nor subsequent court rulings have changed the essential idea from *Fasano*: in making a quasi-judicial decision, the decision makers must provide:

- An opportunity for parties to be heard;
- An opportunity to present and rebut evidence;
- An impartial tribunal;
- A record; and
- Adequate findings.

Note the word "opportunity." It's permissible to make quasi-judicial decisions without having a public hearing, but there must be an opportunity for parties to request a hearing or have some other way to present their views and evidence and rebut others.

4. What is an "ex parte *contact"?*

Ex parte is a Latin phrase that means "from one part or one side." An *ex parte* contact thus is a "one-sided" communication between a decision maker and some person with a stake in the decision.

The issue of *ex parte* contacts by decision makers stems mainly from *Fasano* but also from Oregon's Public Meeting Law (ORS 192.610-192.710, attached). The *Fasano* ruling emphasized that in making quasi-judicial decisions, a decision-making body must be "impartial" and must provide an opportunity for interested parties to rebut evidence. The Public Meeting Law requires public bodies such as planning commissions conduct their business openly, so the public can see how they reach their decisions. That's why it's also called the "Open Meeting Law."

Impartiality, opportunities for rebuttal, and openness may not be achieved if individual decision makers engage in private communications with interested parties. For example, suppose that a permit applicant meets privately with one planning commissioner a few days before a public hearing on that permit. The conversation may influence that commissioner, making her less impartial. If that contact remains a secret, no one has an opportunity to rebut the applicant's comments to the commissioner. And, obviously, the public cannot know whether or how much the conversation influenced the commissioner's vote.

Oregon law does not prohibit *ex parte* contacts, but it does regulate them closely. The key statute on this topic says this:

> (3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:
>
> (a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
>
> (b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.
>
> (4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

The quoted material comes from ORS 215.422 (which applies to counties). ORS 227.180 uses the same wording for cities. The law boils down to three key points:

- *Ex parte* contacts are permissible, but only under prescribed conditions.

- Such contacts must be disclosed publicly and put "on the record."
- Parties to a case must be given an opportunity to rebut "the substance of the communication" in such contacts.

Even with the best of intentions, local officials often find it difficult to (a) know when a conversation amounts to an *ex parte* contact, and (b) to avoid such situations. The following examples from LUBA illustrate the problem.

Three Examples of LUBA Cases Involving *Ex Parte* Contacts

From *Gordon v. Polk County*, LUBA 2005-095

Two county commissioners visited the site of a proposed "template dwelling" in a forest zone, along with the permit applicant's husband and another person (who later filed an appeal). One commissioner engaged in conversations with the applicant's husband while standing apart from the others.

During the subsequent hearing, that commissioner did not disclose the conversations or declare that an *ex parte* contact had occurred. The board of commissioners approved the permit. The other person who participated in the site visit appealed that decision to LUBA on several points, one of which concerned the alleged *ex parte* discussion. LUBA upheld the petitioner on that point (and only that point) and remanded the decision to the county. LUBA ruled that the incident constituted "either an *ex parte* communication or the receipt of new testimony after the evidentiary record had closed:"

> In either case, the county was required to take steps to ensure the integrity of the decision-making process. If the conversation is characterized as an *ex parte* contact, the decision maker receiving that communication is required to disclose the content of the communication and offer other parties the opportunity to rebut the substance of that communication. ORS 215.422(3).
>
> This the county did not do. If the conversation is characterized as new evidence received after the close of the record, the county is required to either explicitly reject the new evidence or offer other parties an opportunity to respond to it. *Tucker v. City of Adair Village*, 31 Or LUBA 382, 389 (1996). The county did neither. Remand is therefore necessary to disclose the contents of the conversation and allow other parties the opportunity for rebuttal.

From *Mattson v. Clackamas County*, LUBA 2003-128

A landowner sought to have his property rezoned for high-density residential use. The county denied that request. The landowner appealed that decision to LUBA on several points. He contended that an illegal *ex parte* contact occurred when the board of commissioners' chair visited the site, along with staff and the landowner. At the board's hearing on the rezoning request, the chair disclosed his site visit and the presence of staff. In spite of that, the landowner later argued that an improper *ex parte* contact had occurred because he was given no opportunity to rebut comments made by staff to the board chair during the site visit. LUBA rejected that argument:

> As the county points out, there are at least two problems with petitioner's second assignment of error.
>
> First, to the extent this assignment of error alleges improper *ex parte* contacts, ORS 215.422(4) specifically provides that "[a] communication between county staff and the planning commission or governing body shall not be considered an *ex parte* contact." *Nehoda v. Coos County*, 29 Or LUBA 251, 257 (1995). Moreover, there is no suggestion that the county planner provided any "testimony" on that site visit.
>
> A second problem with this assignment of error is that petitioner was present when the board of commissioners disclosed the site visit and the board chair disclosed that the county planner accompanied him. Although petitioner testified and presented argument immediately after the board of commissioners disclosed its site visit, petitioner did not inquire whether the county planner provided any evidence to the board of commissioners that it might rely on in making its decision or request an opportunity to rebut such testimony. Neither did petitioner argue the presence of the county planner at that site visit was improper. Having failed to register any objection to the county planner's

presence at the board chair's site visit at the July 23, 2003 hearing, petitioner may not raise that objection for the first at LUBA in this appeal.

From *Crook v. Curry County*, LUBA 2000-077

The Crook family disagreed with a decision by the county board of commissioners that their beach house was "not entitled to recognition as a legally established nonconforming use." The Crook family appealed that decision to LUBA, alleging (among other things) that the board failed to disclose improper *ex parte* contacts. LUBA rejected the argument, saying:

> An *ex parte* communication must be disclosed only if it concerns the decision or action at issue in a land use proceeding. The complaint about contact between intervenor and the county board of commissioners includes no assertion that the contacts were indeed about material issues relevant to the alleged nonconforming use, or otherwise constituted an *ex parte* communication within the meaning of ORS 215.422(3). Absent such a showing, there is no basis to invalidate the decision. *Lane County School Dist. 71 v. Lane County*, 15 Or LUBA 608, 610-12 (1986).
>
> Similarly, petitioners' allegations that county staff sent copies of correspond-dence to intervenor and the board of commissioners are insufficient to allege the existence of undisclosed *ex parte* communications. Such communications must be with a member of the decision making body. ORS 215.422(3). Communications between county staff and the decision making body are not considered *ex parte* contacts. ORS 215.422(4); *Dickas v. City of Beaverton*, 16 Or LUBA 574, 581, *aff'd* 92 Or App 168, 757 P2d 451 (1988).
>
> To the extent petitioners have shown evidence of an *ex parte* communication, we conclude that, having had opportunity to do so, they failed to object below to the lack or inadequacy of disclosure. *Wicks v. City of Reedsport*, 29 Or LUBA 8, 13 (1995) (where a party has the opportunity to object to the inadequacy of disclosure regarding a site visit by the decision makers, but fails to do so, that error cannot be assigned as grounds for reversal or remand).
>
> As noted above, petitioners apparently learned of the possibility of the alleged *ex parte* contact between intervenor and the board of commissioners on May 14, 1999. The county submits partial transcripts of the February 22, 2000, and April 11, 2000 hearings, which show the commissioners were questioned by county counsel about *ex parte* contacts, conflicts of interest and bias.
>
> At the first hearing, one commissioner mentioned that intervenor was a campaign contributor. Respondent's Brief App 3. One commissioner disclosed a contact with the planning director on an issue involving other property where intervenor and his wife testified. *Id.* at 6. There were no other declarations of *ex parte* contact or bias.
>
> On April 11, 2000, the county counsel asked the chair to call for objections on the basis of conflict of interest or personal bias. There were no responses. *Id.* at 8. Petitioners and their counsel attended the hearings below. However, there is no indication that petitioners challenged or objected to the lack of disclosure of these alleged *ex parte* contacts at any time.
>
> Thus, even assuming the alleged contact should have been disclosed, petitioners failed to exercise several opportunities to raise that issue below, and cannot raise it now before LUBA. *Wicks*, 29 Or LUBA at 13; ORS 197.835(3).

5. What are "findings"?

"Finding" is a shorthand expression for "finding of fact." The phrase means an official statement of facts that a hearings body relied on and the conclusions it reached in deciding a land use issue. Findings are important for several reasons.

First, state law requires that all quasi-judicial land use decisions be supported by adequate findings.

Second, findings are essential for land use decisions to withstand legal challenges. If a case gets taken to LUBA or the appellate courts, those findings and the official record of the case provide the "paper trail" necessary to understand how a decision was reached. LUBA board members and judges typically don't have any local knowledge of the site, don't know the people involved, and won't hear or see much of the testimony received by the local decision makers. If the findings and record don't tell a complete and compelling story, the decision is likely to be "remanded" (sent back to the local government).

Third, findings give the public, media, permit applicants, and other interested parties the local government's rationale for each land use decision. This enables everyone to better understand all the issues involved in a case and all the laws that governed it.

Finally, the act of making findings helps decision makers focus on key issues and applicable laws. It enables them to make better decisions and to make them more efficiently.

Findings explain which evidence the decision makers found relevant and how they used that evidence to reach their conclusion. In LUBA's words: "Adequate findings must (1) identify the relevant approval standards, (2) set out the facts relied upon, and (3) explain how the facts lead to the conclusion that the request satisfies the approval standards." (*Krieger v. Wallowa County*, LUBA 98-069)

For example, in a case involving a variance, the permit applicant usually must show that an unusual feature of the subject property justifies some relaxing of the law. If the feature being cited is a steep slope, then an applicant must submit evidence of such a slope. If the planning commission agrees, it must

adopt findings that explain (a) the evidence causing them to believe a steep slope exists, and (b) how that satisfies applicable provisions of the ordinance.

After a planning commission has conducted a long, arduous hearing, certain facts from the event may seem obvious. For example, if 10 people testify about "the steep slopes" and others present maps and photos of such slopes, it may seem unnecessary to write a finding that says, "The evidence demonstrates that the property has steep slopes." But a week or a year after the hearing, all that information may be forgotten or immaterial if it's not officially noted in the findings. A failure to state the obvious – that the commission found evidence of steep slopes – could lead an appellate body to remand the decision.

Planning commissions often hear conflicting testimony in public hearings. In the variance scenario above, for example, the applicant might argue that her property is far steeper than surrounding properties. A person opposing the variance might argue that the subject property is no steeper than others in the area. The findings should make clear which testimony or evidence the commissioners chose to believe and why. If some of the evidence – not necessarily a majority of it – supports that choice, it probably will withstand a legal challenge.

Inadequacy of findings is the main cause of remands from LUBA. No matter how reasonable and proper a decision made by a local government, if the findings on which that decision is based prove to be flawed, LUBA must return the case to the local government for reconsideration. This is frustrating, costly, and time-consuming for permit applicants and for local officials. The problem has diminished over time, however, because local governments have gotten better at preparing adequate findings.

Oregon's statutes specify that quasi-judicial decisions must be supported by findings of fact. ORS 215.416(9) says this about county permitting procedures:

> Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

Similar instruction to cities is found in ORS 227.173:

> (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

> (2) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.
>
> (3) Approval or denial of a permit application or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.
>
> (4) Written notice of the approval or denial shall be given to all parties to the proceeding.

Oregon's statutes are less explicit about a need to write findings in support of legislative decisions. But as a practical matter, local governments should adopt findings for both types of decisions. In the event that a legislative decision is appealed, LUBA and the appellate courts cannot sustain a local government's decision unless they are given some findings in support of that decision. LUBA describes the situation this way (*Manning v. Marion County*, LUBA 2001-195):

> . . . [A]lthough there is no generally applicable requirement that legislative decisions be supported by findings, for LUBA to perform its review function a challenged legislative decision must either be supported by findings demonstrating compliance with applicable standards, or the respondent must provide in its brief argument and citations to facts in the record adequate to demonstrate that the decision complies with applicable standards . . . . [T]o permit LUBA and the court to exercise their review functions, there must be enough in the way of findings or accessible material in the record of a legislative decision to show that applicable criteria were applied and that required considerations were indeed considered.

6. What is "substantial evidence"?

Findings of fact must be supported by "substantial evidence." For example, a statement just asserting that a particular property has steep slopes is, in itself, inadequate as a finding. There must be substantial evidence of such slopes in the record of proceedings for a decision, and the finding must cite it. Such evidence might be an aerial photograph, a report from a soils scientist, an expert's spoken testimony, or a topographic map.

Without evidence to support it, a finding is a groundless conclusion that will not stand up to the challenge of an appeal. Lawyers often call such statements "conclusory findings" (although we have yet to find a dictionary to support the idea that "conclusory" is a real word).

That raises a question: what is "substantial evidence"? LUBA's answer is described in many of its cases. This description comes from *Friends of the Applegate Watershed et al. v. Josephine County* (LUBA 2002-117):

> . . . LUBA does not conduct its own balancing of the evidence, reach its own conclusion about which evidence to believe and substitute that judgment if it differs with the evidentiary judgment of the decision makers. *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 588, 842 P2d 441 (1992). Neither does LUBA remand a land use decision simply because some of the evidence that decision relies on may have some identified shortcomings. The relevant inquiry in considering an evidentiary challenge to a land use decision is whether the evidentiary record, viewed as a whole, includes supporting evidence that a reasonable person could rely upon to adopt the land use decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993) [emphasis added]

"Substantial evidence," then, is that which a reasonable person, considering all of the evidence, may rely on to make a decision. This is a modest standard – one that gives far more discretion to local governments than would some higher evidentiary standard, such as "preponderance of the evidence." Under this modest standard, a hearings body need not show that most of the evidence supports its decision. It only needs to show that some evidence supports it.

7. What is a "conflict of interest"?

People disappointed in the outcome of a land use decision often complain that one or more decision makers had a "conflict of interest." They typically use the term broadly, as a synonym for "unfair" or "biased." Oregon law, however, defines the term much more narrowly. The law in question is ORS chapter 244, "Government Standards and Practices" (on the Web at http://www.leg.state.or.us/ors/244.html).

This law does not address all possible forms of behavior by public officials. Quite the contrary: it deals only with conflicts of interest that would result in personal financial gain to a decision maker. As a result, conflicts of interest rarely cause a land use decision to be overturned at LUBA or in the courts.

The law emphasizes public disclosure of situations involving a conflict of interest. Basically, if a conflict of interest exists, a public official should disclose it and not participate in voting or other official actions related to the conflict.

The statutes on conflicts of interest distinguish "actual" conflicts from those that are "potential." ORS 244.020(1) defines "actual" conflicts this way:

> "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **would** be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (14) of this section. [Emphasis added]

ORS 244.020(14) describes "potential" conflicts thus:

> "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **could** be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
>
> (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
>
> (b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.
>
> (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code. [Emphasis added]

The key difference between an actual conflict and a potential conflict, then, is that the former would bring the public official a pecuniary benefit, while the latter could bring such a benefit. In cases involving an actual conflict, the public official must disclose the conflict and refrain from taking public action. (The lawyerly phrase for declining to participate is "to recuse one's self.") In cases involving a potential conflict, the public official must disclose the potential conflict but may participate in the decision making.

Notice the law's emphasis on "pecuniary benefits." The basic purpose of the law is to keep public officials from using public office for personal financial gain. The law does not bar public officials from acting on land use decisions where they may have non-pecuniary political, business, or familial connections that some might consider a conflict of interest.

For example, in a case appealing a city's approval of a proposal for a planned unit development (PUD), petitioners argued that the mayor should not have participated in that decision. (*McFall v. City of Sherwood*, 2003-018) They alleged a conflict of interest because the mayor and one of the PUD applicants together owned a building not associated with the proposed PUD. LUBA rejected that argument:

> [P]etitioners allege the challenged decision should also be remanded because the mayor has a potential conflict of interest that was not properly resolved.
>
> We reject the third assignment of error for two reasons. First, the statement that petitioners believe establishes that the mayor has a potential conflict of interest does not appear to do so. Second, even if the statement could be understood to suggest there might be a potential conflict of interest, petitioners raised no issue regarding the adequacy of the mayor's disclosure and made no effort to question the mayor concerning the alleged

potential conflict of interest. Accordingly, that issue is waived. ORS 197.763(1); ORS 197.835(3).

Although the law's definition of conflict of interest is narrow, certain other provisions of this law apply very broadly. ORS Chapter 244's definition of "public official" includes not only local elected officials but also planning commissioners, city and county employees, and certain volunteer positions (being a member of a soil and water conservation district board, for example).

Oregon's Government Standards and Practices Commission oversees the law described above. Local officials with questions or concerns about conflicts of interest may contact the commission in Salem at 503-378-5105. The commission's website is http://www.oregon.gov/GSPC/index.shtml The commission publishes *A Guide for Public Officials*, which is widely distributed throughout Oregon and also is available online.[5] Another good source of information on this is the Attorney General's *Public Records and Meetings Manual*. It's not available on-line, but you may order a copy from: Publications Section, Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096

8. What is "standing"?

"Standing" is basically a qualification that a person has to have to assert certain legal rights. In the land use context, a person has to have standing to be entitled (a) to participate in the making of a land use decision by testifying about a proposed land use, and (b) to appeal that decision.

Whether a person has standing to assert a particular legal right depends on the right, and where and when the person wants to assert it. It may help one understand the place of standing in the land use decision making and appeals system by thinking of the system as a sort of ladder. The "rungs" in the ladder are the various public bodies that make or review land use decisions. The lowest rung is the local official or body that makes the initial decision. That could be planning staff, a hearings officer, or a planning commission. The next rung up typically is the governing body – the city council in cities, the county board of commissioners or the county court in counties. The next rung beyond that is the state's Land Use Board of Appeals (LUBA). If a LUBA decision gets appealed, it goes to the state Court of Appeals. From there, any appeals go to the final rung in the ladder, the Oregon Supreme Court. One's standing to appeal a case from one rung to another will vary from one step to

[5] The web address for the guide is http://www.oregon.gov/GSPC/docs/POGUIDE.pdf

the next. Generally, the rules for standing are broadest at the lower levels and get narrower as one climbs the ladder.

At the local level—the first two rungs—the general rule is that two groups of people have standing: (a) those entitled to notice of the proceeding, and (b) anyone who might be "adversely affected or aggrieved" by the end result. As for the first standard, entitlement to notice at the local decision making level is defined by statutory and local ordinance provisions, which require that all landowners within a given distance of the relevant property be given written notice of a proposed land use action. The "adversely affected or aggrieved" standard has not been clearly interpreted by courts. In *Swanson v. Jackson County* (LUBA 2003-198), LUBA stated:

Local governments retain a limited ability to act as a gatekeeper at local land use proceedings, and can, in certain circumstances, deny standing. See *Jefferson Landfill Comm. v. Marion Co.*, 297 Or 280, 284-85, 686 P2d 310 (1984) (stating principle that participants determined by the county to be only disinterested witnesses are not aggrieved by the county's decision and do not have standing to appeal). The extent to which local governments can exercise this gatekeeping function and the potential class of persons that can be denied standing to participate as a party has not been precisely delineated by either this Board [LUBA] or the courts.

Some local governments try to bring greater precision to the phrase by defining it to mean those within either a given distance, or "sight or sound" of subject property, but as LUBA indicated in the paragraph above, "adversely affected or aggrieved" is by no means a definite standard.

In most instances, a person has standing to move to the next rung up the ladder—an appeal to LUBA—if that person "appeared" before the local decision maker either orally or in writing. This requirement comes from ORS 197.830(2). To appeal changes to an acknowledged comprehensive plan or land use regulation to LUBA a person must have "participated" orally or in writing at the local level. This requirement comes from ORS 197.620. The Oregon Court of Appeals has recognized a difference between appearing and participating.

[T]he legislature appears to have drawn a distinction between "appearing" before an agency and actually "participating" in the agency's proceedings. That assumption appears to be supported by the ordinary meaning of each of

the two terms. To "appear" ordinarily means, at least in the sense that is relevant here, "to come formally before an authoritative body *** To "participate," on the other hand, ordinarily means "to take part in something (as an enterprise or activity) usu. in common with others[.]" *** Thus, the ordinary meanings of the terms suggest that a person could "appear" in an action without actually "participating" in it. *Century Properties, LLC v. City of Corvallis*, 207 Or App 8, 13-14 (2006).

The criteria for standing to appeal to LUBA depends on what a person wishes to appeal, whether the person had standing at the local level, and how involved the person was in the local decision making process.

Moving further up the ladder, someone who has standing to appeal a case to LUBA also has standing to appeal the case to the Court of Appeals. Formerly, a citizen who was involved in an appeal to LUBA would not have had standing to take the case to the Court of Appeals if that citizen was not practically affected by the decision. In a 2003 case, *Just v. City of Lebanon* (LUBA 2003-044), LUBA indicated that while standing before LUBA was determined by statutory standards, "[a]n appellant seeking review by the Court of Appeals [had to] demonstrate that the outcome of the proceedings [would] have a practical effect on that party." This former difference between standing before LUBA and standing before the Court of Appeals meant that a representative of an interest group, who did not have a personal stake in a decision, may not have standing to appeal to the Court of Appeals. But, in 2006, the Oregon Supreme Court explained that:

This court's cases *** consistently have held that the legislature can recognize the right of any citizen to initiate a judicial action to enforce matters of public interest. *** The correct question accordingly is not whether [Oregon's Constitution] requires a personal stake in the proceeding. Rather, the question is whether the legislature has empowered citizens to initiate a judicial proceeding to vindicate the public's interest in requiring the government to respect the limits of its authority under law. *Kellas v. Department of Corrections*, 341 Or 471, 484 (Oct. 12, 2006).

The Oregon Supreme Court's *Kellas* decision clarified that the legislature may provide standing before the Court of Appeals by statute. Since Oregon's land use statutes do not base standing on whether someone has a personal stake, an interest group representative may have standing to appeal a land use decision to the Court of Appeals even if that representative doesn't have a personal

interest in the decision.

Neither the courts nor the legislature has clearly defined the criteria for standing at the local levels of land use decision making and appeals. As a result, conflicts over standing often arise, sometimes with odd results. For example, in a 2003 case with the unusual title of *Multnomah County v. Multnomah County*, LUBA had to contend with the strange question of whether the county had standing to appeal a decision it had made. LUBA ruled that the county did not.

A person's right to participate in a land use decision making and appeals process may depend on the nature of the decision, the person's interest in the decision, and the person's past involvement in the decision. The key state law on standing for counties is ORS 215.416(11). The corresponding statute for cities is ORS 227.175(10). If you have questions about standing at the local level, your local planner probably can answer them. Beyond that, it may be best to consult an attorney.

9. What is "notice"?

The noun "notice" is a shorthand expression for "notification to interested parties" about something, such as a public hearing on a land use decision. Some people use the word as a verb, as in "Did you notice [send the notice to] the neighbors?" That usage, however, is likely to be confusing (and perhaps insulting) to some. How would you like to be told "State law doesn't require the city to notice you"?

State law requires a variety of different notices for different kinds of land use actions. In some cases, the notice must be published in the local "newspaper of record." Sometimes, a notice must be posted on or near the property that is subject to the action. For some types of decision, interested parties must be notified by mail before a decision is rendered. In other cases, the parties must be notified of a decision only after it has been made. Also, some of the state laws regarding notice for counties are different from the laws for cities. All this variety in state laws is complicated by further variety at the local level.

For example, state law says notices must be mailed to landowners within 100 feet of urban property subject to a land-use decision. But some cities set a higher standard. Salem, for instance, specifies 250 feet. Given such variety of standards, a detailed description of notice requirements is beyond the scope of this handbook. The state and local notice laws, however, do have several key

points in common.

First, notices are intended to enable interested parties to participate in a land use action, either by coming to a hearing and offering oral testimony, or by submitting written testimony. Second, notices enable interested parties to challenge a decision: a person who has standing to receive notice and testify usually has standing to appeal a decision. Third, Oregon's land use statutes are quite prescriptive about who must get notice and when it must be mailed. For details about the geographic "notice areas" required by state law, see ORS 197.763. Also, ORS 215.416(11) specifies certain notice requirements for counties, while ORS 227.175(10) specifies similar requirements for cities. And, the Public Meeting Law sets forth certain requirements for notice, in ORS 192.640. (All are appended to this handbook.)

The laws governing notification of interested parties apply mostly to quasi-judicial land use decisions and to limited land use decisions. However, notice also is required for legislative actions such as the adoption of new land use regulations. This is the so-called "Measure 56 notice." As the name suggests, the requirement for such notice stems from a statewide initiative, Ballot Measure 56, which was passed by Oregon's voters in 1998. The measure requires local governments to mail notices to landowners advising them of proposed legislative actions that would "rezone" their properties. The measure defines "rezoning" in such a way that mailed notice is required only for "downzonings." That's a change in zoning that limits use of the land more than it is limited under its current zoning.

10. What is the "raise it or waive it" rule?

The basic principle here is simple: a petitioner (the person filing an appeal) may not raise an issue at LUBA unless the petitioner or another participant before the local hearing body raised the same issue during the local proceedings that are being appealed. Under most circumstances, LUBA jurisdiction is limited to issues raised by any participant in the local government decision. ORS 197.835(3) and (4).

This affects both the number and the extent of appeals. Interested parties who fail to testify in the original proceedings on a land use matter are barred from filing an appeal. And those who do testify must limit their appeals to matters that were discussed in the original proceedings.

The operative wording in the statutes is found in ORS 197.763

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

11. What is the "Public Meeting Law"?

Lawyers may argue over fine points of Oregon's Public Meeting Law, but the main features of the law are straightforward.

The intent of the law is simply this: the public's business is to be done in public. In the area of land use, this intent is reinforced by other laws, such as the *Fasano* ruling and Statewide Planning Goal 1, Citizen Involvement. Of course, certain types of public business must be done behind closed doors for good reason, as with cases involving labor negotiations or contract bids. The law allows for that by permitting such types of business to be done in executive session. The provisions for executive sessions are, however, detailed and rigorous, to keep such sessions from being used to evade the intent of this law.

The law applies broadly to a wide range of decision-making bodies, committees, and other public bodies. Locally, it not only covers county boards of commissioners, city councils, and planning commissions, but also applies to many committees and other bodies that recommend actions to those bodies.

There's a strong and vocal constituency for this law: the news media. Reporters are well aware of this law, as it enables them to get the information they need to do their jobs. Public officials should expect to be challenged by the media if they take any action that appears to violate this law.

Many issues about "Public Meeting Law" revolve around an obvious question: what's a "public meeting"? The law answers the question this way:

"Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. ORS 192.610(5).

This definition is perhaps a greater problem for county commissioners than for other officials because most county governing bodies have only three members. Thus, whenever two commissioners are in one place, the occasion

becomes a "public meeting" if they engage in any conversation that amounts to "deliberating toward a decision."

Key excerpts from the Public Meeting Law, ORS 192.610 – 192.690 are found in Appendix E.

NOTE: The Freedom of Information Act (FOIA) applies only to federal agencies, not to state or local government agencies.

12. What is "deference" to local governments?

"Deference" in this context means that when local land use decisions are appealed to LUBA, the Court of Appeals, or the Oregon Supreme Court, the appellate bodies generally will not substitute their own judgment for that of local officials. Instead, they will "defer" to the local decision makers.

Although the concept is simple, its application is complicated. The extent to which LUBA and the courts will defer depends on the type of decision being appealed. Generally, legislative decisions are given more deference than are quasi-judicial ones. For example, if a county overhauls its entire comprehensive plan, that's a legislative decision, and it will get considerable deference. In making such decisions, the board of county commissioners is acting under broad legal authority to protect the public's interests. The appellate bodies will refrain from substituting their judgment for that of policy makers in such broad matters. Furthermore, the making of local legislative decisions is not bound by many procedural constraints. For these reasons, legislative decisions are less likely to be appealed in the first place, and they are more likely to withstand a legal challenge.

Deference was the subject of an important land use case that went to Oregon's Supreme Court: *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). Of that case, LUBA says: "Clark and its progeny establish a highly deferential standard of review that must be applied by LUBA and the appellate courts in reviewing local government interpretations of local land use legislation." (*Arlington Heights v. City of Portland*, LUBA 2001-099) In other words, city and county governing bodies get the benefit of the doubt when it comes to interpreting their own plans and land use regulations.

In reversing a quasi-judicial decision to deny a partition, LUBA summarized the matter of deference this way (*Church v. Grant County*, LUBA 2002-061):

> LUBA must defer to a local governing body's interpretation of its code unless that

> interpretation is inconsistent with the express language, purpose or underlying policy of the provision. ORS 197.829(1)(a)-(c). The pertinent question under ORS 197.829(1) and *Clark* is whether any person could reasonably interpret the provision in the manner the county does here. However, the deference due to a local government's interpretation does not extend to interpretations that depart so profoundly from the text as to constitute, in practical effect, an amendment of the code provision in the guise of interpretation. As we explained in our earlier decision in this case, an interpretation that effectively eliminates a code term or provides it no meaning is not generally entitled to deference under ORS 197.829(1) or *Clark*.

A crucial point about deference is that it usually extends only to the governing body of a local government, not to the planning commission, staff, and others who serve the governing body.

The legislature adopted statutes on deference in the mid 1990s, reflecting the *Clark* ruling. The main provisions are found at ORS 197.829:

> (1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
>
> (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
>
> (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
>
> (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.
>
> (2) If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct.

13. What is the "fixed goal post rule"?

The "fixed goal post rule" is a state law on permit applications. It says local governments must use the ordinances in effect when a permit application is submitted in deciding whether to approve that permit. The law is intended to keep permit applicants from having to deal with "moving goal posts" – that is, having an application reviewed against new ordinances adopted after it was submitted.

LUBA describes the law in *Friends of the Applegate Watershed et al. v. Josephine County* (LUBA 2002-117):

> ORS 215.427(3) establishes a "fixed goal posts" rule for applications for approval of certain types of land use decisions. As we explained in *Rutigliano v. Jackson County*, 42 Or LUBA 565, 571 (2002), the fixed goal posts rule shields "applications for a permit, limited land use

decision or zone change" from changes in applicable land use law that are adopted after an application for one of those kinds of land use decisions is complete.

For counties, the "fixed goal post rule" is found in ORS 215.427(3):

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information, as described iin subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

For cities, similar wording appears in ORS 227.178(3). See Appendix D.

14. What is the "120-day rule"?

The "120-day rule" is a statutory provision that requires local governments to take action on permit applications within a specified period. Originally, the law specified 120 days. That standard later was modified to give counties a longer period – 150 days – to process most types of permit applications. Many people, however, still speak of the "120-day rule" even though 120 days is no longer the universal requirement.

For counties, the relevant provisions are found in ORS 215.427 – 215.429. For cities, similar provisions are found at ORS 227.178. The county and city statutes are quite similar, sharing the main features summarized here.

1. The required processing time for permits in urban areas (areas inside urban growth boundaries) and for permits involving aggregate mining is 120 days. That's true regardless of whether a city or county is reviewing the application. The required processing time for most other areas and types of land use is 150 days.

2. The clock starts ticking only after local officials have deemed the application for a permit to be complete. This sensible provision protects those who must review the application from being penalized for an applicant's tardiness in supplying all information needed to conduct such a review. The reviewing officials have 30 days to determine whether an application is complete and to notify the applicant if additional information is needed.

3. The 120-/150-day statutory schedule for review often is tight: for some types of permits and during busy times of the year, local governments are hard-pressed to complete all the necessary review work, which includes notification of interested parties, writing of staff reports, public hearings, and any local appeals.

4. Time extensions are permissible, but only at the applicant's request. That's not unusual: it may well be in an applicant's best interests to work with local officials to see that his or her application is not acted on in haste.

5. If local officials fail to act on a permit application within the statutory time limits, an applicant may take the matter to circuit court, seeking a writ of mandamus. Such a writ compels the local officials to act on the permit. The court must issue a writ approving the permit unless the local government or an intervenor can show that doing so would "violate a substantive provision" of the local plan or land use regulations.

6

Common Issues and Problems

"The city rammed that rezoning through without listening to the citizens!"

"We tried to get citizens involved, but nobody came to the hearings!"

"That citizens' group had no right to oppose my subdivision!"

"The planning commission had their minds made up before anybody began to testify!"

Such complaints are common. Sometimes they are justified, sometimes not. Either way, they offer dramatic evidence that citizen involvement in planning often is controversial. The main issues that underlie such controversy are described in this chapter. Every citizen involvement program is likely to encounter them. Good programs will anticipate them, using approaches such as those suggested below and the tools in Chapter 7.

Funding

Citizen involvement takes money. A city or county cannot run newspaper ads, mail notices, hold public hearings, have a regularly updated website, or put out a newsletter without some funding.

One funding problem is that some people see the citizen involvement program as a frill. As a result, that program may be the first to get cut when budget problems arise. That is often penny-wise but pound-foolish: weakening the citizen involvement program may lead to costly litigation and plan revisions.

Another problem is that local budgets may not earmark funds specifically for citizen involvement. Rather than having a line item in the budget, citizen involvement gets buried in some larger category – "Long-Range Planning," for example. That makes it impossible to determine whether the funding for citizen involvement is adequate. That also makes it all too easy to siphon funds away from citizen involvement for use in other programs.

SUGGESTIONS: Clearly identify citizen involvement activities in the budget. Specify dollar amounts for the projected costs of staffing, mailing notices, printing documents, holding public hearings, distributing a newsletter, and other activities related to citizen involvement.

Staffing

Just as it takes money, it also takes people to run a citizen involvement program: planners to attend meetings, clerical staff to mail notices, and so on. An extensive citizen involvement effort for overhauling the local plan, for example, might generate hundreds of letters. Reviewing and replying to those letters could take hundreds of hours of staff time.

Unfortunately, some planning agencies do not have detailed work programs. And where such work programs do exist, citizen involvement tasks may not be mentioned. Rather, they are hidden in some larger category, such as "Planning Coordination."

This failure to specify citizen involvement in the work program causes three problems: First, citizen involvement work continually gets set aside as staff members work on more clearly defined tasks. Second, managers remain uninformed about the staffing needed for citizen involvement activities. They thus cannot plan for or manage such activities effectively. Third, managers and staff lack measurable standards and objectives. They therefore cannot evaluate their citizen involvement program nor meet its objectives.

SUGGESTIONS: Recognize that citizen involvement requires a significant commitment of agency staff. Develop and maintain a work program for citizen involvement. Such a work program should identify tasks; project person-hours needed for those tasks; lay out a schedule; and assign to specific staff persons the responsibility for those tasks. Explore alternatives: using volunteer groups; hiring consultants to manage large citizen involvement efforts; soliciting money or labor from businesses and service organizations.

An effective CCI can help with this process. It should prepare an annual report for the review and response of local decision makers.

Time

Effective citizen involvement also takes time – sometimes a great deal of it. To hold a single public hearing on a local land use decision, for example, usually requires more than a month. Notice must be mailed at least 20 days before the hearing. Then there is an appeal period of at least 10 days after the hearing before the decision becomes final.

Concern about time is one of the most potent forces working against citizen involvement. Developers want to get their permits fast. Planners want to keep their projects on schedule. Decision makers want to make decisions and get on with other business. Such wants create strong and never-ending pressures to shorten appeal periods, limit standing, reduce notification, and so on.

SUGGESTIONS: Allocate adequate time for notice, hearings, appeals, and other citizen involvement activities in the agency work program. Inform permit applicants, citizen groups, managers, and elected officials about state and local time limits and deadlines. Remind managers and decision makers that inadequate citizen involvement may lead to litigation, opposition to or misunderstanding of the plan, and bad planning decisions. Those outcomes may cost a great deal more time and money than would a strong citizen involvement effort.

Legal Constraints

Many of the same laws that create opportunities for citizen involvement also limit those opportunities. For example, ORS 197.830 allows concerned citizens to appeal local land use decisions to the state's Land Use Board of Appeals (LUBA). But the same law also sets limits on who can appeal, how much time they have to appeal, and so on. Such laws try to strike a balance between two extremes: a closed planning system that gives citizens little or no access, and a wide-open system that provides unlimited and continuous access.

Both extremes would be unfair and ineffective. The closed system gives citizens no voice in decisions that will affect them, and it leads to short-sighted planning and decision making. The wide-open system fails to protect the rights of land owners and developers. It leads to paralysis in planning and decision making, as there is always one more hearing, appeal, or citizen to be heard.

In trying to maintain an appropriate balance between the extremes described above, the state legislature has adopted laws on hearings, notice, appeals, and other aspects of planning and citizen involvement. The number of those laws and their complexity are greater today than ever before. The citizen who wants access to the planning process in the 21st century faces a more complex set of rules.

Years ago, for example, a citizen could appeal a local land use decision to LUBA simply by showing that he or she would be affected by that decision in some way. Today, citizens must demonstrate that they participated in the local land use decision-making. If they did not oppose it locally, they have no standing to appeal to LUBA. A person unaware of that participation requirement loses the opportunity to be involved in one important phase of the planning process.

SUGGESTIONS: Inform citizens of their rights and obligations through workshops, flyers, newsletter articles, and other means. Train staff so that they know about these rights and obligations and can communicate them to citizens.

Apathy

Government officials sometimes hold well advertised public meetings and send out broad mailings on an important policy issue but then receive little response. Later, they may hear people complain that the officials provided no opportunity for citizen involvement. The officials are likely to reply, with justifiable indignation, "We tried, but nobody showed up!"

It's true that many citizens regard planning as a dull topic. They may not see how an abstract planning policy or issue could affect them. They therefore have little interest in attending a hearing, serving on a committee, or otherwise getting involved – until they hear a bulldozer start to work in the vacant lot next door. By then, it may be too late to get involved.

But all too often, officials blame "apathy" for the failures of a citizen involvement program when the real cause is inadequate funding or management of the program. Citizens will not participate in the planning process if they lack access to it.

SUGGESTIONS: Maintain an effective citizen involvement program, one that communicates issues and information clearly to all interested persons and

groups. Develop educational programs and workshops to inform citizens about policies and issues. Encourage citizens to get into the planning process *early*.

Technocracy

Like law or medicine, planning is a complex, technical field. Citizens who venture into it for the first time are likely to be fearful about "technocracy" – government by technicians. The citizens may see their lack of knowledge about planning and the planner's extensive knowledge as a powerful combination of forces working against them. That puts the citizen on the defensive.

By their actions at the permit counter, in public meetings, and elsewhere, planners can ease such fears – or heighten them. Most planners intend to be helpful and want to put citizens at ease. But sometimes a citizen still feels intimidated. Such intimidation usually grows out of three problems. The first is simply poor communication – a failure by the planner to communicate complex ideas and information clearly. The second is paternalism – an assumption that the planner knows all the answers. The third is impatience, often brought on by inadequate staffing. Planners who are being deluged by permit applications are less likely to be patient and diplomatic with every citizen who comes to the permit counter.

Planners do not purposely try to communicate poorly or to be paternalistic. They don't mean to be impatient. Absence of malice, however, doesn't make the problem of intimidation any less real.

SUGGESTIONS: Give staff members training in effective oral and written communications. Develop and maintain programs to streamline permit processing. Use role-playing exercises to help staff better understand the lay person's view. Maintain adequate levels of staffing at key points of contact with the public, especially the permit counter. Establish a customer service program in which the citizen is the customer and the service is access to all phases of the planning process.

The Need for Predictability

Planning is a process for making decisions about how a community expects to use its land and resources. Citizen involvement *during* that process is vital, but such involvement cannot go on forever. At some point, the governing body must make its decisions and carry them out.

The extent to which developers, land owners, utility firms, and other members of the community can rely on a plan's decisions is generally referred to as *predictability*. Without it, a comprehensive plan has little or no value. But the need for predictability and the need for citizen involvement sometimes clash.

Suppose, for example, that a city is considering rezoning an area from single-family residential to multifamily residential. City officials work hard to get the public involved. They send out mailings and run newspaper ads to explain how the rezoning will allow apartments in the area. They conduct several workshops and public hearings. They receive a great deal of testimony, most of it favorable, and they proceed to rezone the area.

A year later, a developer proposes a new apartment complex in that area. Several neighbors object, but the city rejects their complaints. City officials tell them: "This area has been zoned for multifamily dwellings; the builder is completely within his rights to build apartments there."

The concerned neighbors might argue that the city is failing to provide for adequate citizen involvement. But the city already had extensive public participation. Now city officials are simply standing by the decisions that grew out of that earlier involvement.

The need for predictability doesn't mean that a plan can never be changed or that a decision should never be reconsidered. But the whole idea behind planning is to have the community agree on where certain types of land uses and public facilities like streets and sewers should go. Once such agreements have been reached and adopted in the plan, the plan cannot (or should not) be reopened every time someone objects. This is one of the reasons for periodic review: having a systematic evaluation of the entire plan every few years reduces the tendency to continually amend it in a piecemeal, complaint-driven process.

SUGGESTIONS: Emphasize the need for citizen participation *early*, when the plans and policies are being developed, not after they are being applied. Document the citizen involvement that occurred during the plan's development, so that citizens will know that its policies are based on extensive citizen input.

State and Federal Mandates

Other laws indirectly limit citizen involvement by setting standards or requirements that cannot be changed by local citizen actions. Suppose, for example, that a landowner proposes to rezone his land from Exclusive Farm Use to Heavy Industrial. Even if 100 of his friends come to the hearing and all testify for the rezoning, local officials cannot approve it if it fails to satisfy the state laws that protect farmland.

SUGGESTIONS: Inform citizens about state and federal laws that compel certain policies or actions. Provide information that describes not only the requirements of the law but also its purposes. In other words, explain not only what the law requires but also why the law requires it.

The Overburdened Citizen

Each year, cities and counties in Oregon make thousands of decisions about planning, land use, and development. The precise statewide total isn't known, but it's probably in the range of 10,000 to 20,000 decisions. Neither state nor local officials, however, have the power or resources to review or enforce all of those decisions.

Many cities and counties have few staff for zoning enforcement. Local district attorneys often are reluctant to prosecute land use cases, given the large number of criminal cases they face. The state does not hear about many local decisions: most land use decisions need not be reported to any state agency. And the state does not have as much power to intervene as many people think. For example, the Department of Land Conservation and Development cannot overturn a local land use decision. DLCD can only appeal such a decision to LUBA, just as a citizen could.

The result of all this is that much of the burden for enforcing Oregon's planning laws falls on the shoulders of everyday citizens. The citizen who objects to a local decision may have no recourse but to file an appeal to LUBA. Such an appeal is likely to take four to six months and cost several hundred dollars for appeal fees and several thousand dollars in attorney fees – if one is used. (Individuals may represent themselves at LUBA and not hire an attorney.)

A second and related problem is that local government in general and planning in particular depend on the work of lay citizens in a multitude of committees and groups such as planning commissions. Smaller communities often cannot

find enough civic-minded volunteers to fill all the positions on the planning commission, CCI, parks committee, landmarks committee, and other lay groups. Serving on such committees takes time away from families and jobs. It is often boring or stressful or both, and costs for travel to meetings. A certificate of appreciation when one leaves the committee is hardly attractive "pay."

SUGGESTIONS: Work to empower Oregon's citizens. Strive to give them easy access to all aspects of planning. Provide information, training, and incentives for them to serve on committees and commissions. The success of planning in Oregon's cities and counties depends on the work of such citizens.

7

Ways To Put The People In Planning

The preceding chapters of this manual answer some basic questions about citizen involvement: *Who? What? When? Where?* and *Why?* This chapter deals with *How?* It outlines many specific measures for getting the public involved in planning. They are arranged in five categories:

- Planning for effective citizen involvement
- Getting information *to* the public
- Getting information *from* the public
- Exchanging ideas and information with the public
- Working with the media.

In effect, this chapter is a cookbook full of recipes for citizen involvement. Its purpose is to present a wide variety of recipes to choose from, not to suggest that each city or county should try all of them. A recipe that would be good for a small city, for example, might not work at all in a metropolitan county.

The measures described in this chapter are not just theories. Almost all have been or are being used successfully by communities in Oregon. But the list is by no means complete. Our listing of one community's work therefore does not imply that the example cited is the best or only one of its kind in the state.

Also, the absence of an example with a particular "recipe" doesn't mean that no one in Oregon is using it. In some cases, such an absence just means that *many* cities and counties are using that recipe, so there's no point in singling

out one example. In other cases, the recipe sounded good, but we weren't able to find anyone who had tried it.

If you need greater detail about these measures, check the bibliography in Appendix F. It lists publications and organizations that have more information.

Ways To Plan For Effective Citizen Involvement

The best way to have strong citizen involvement in planning is to have strong planning for citizen involvement. In other words, a successful citizen involvement program must be carefully designed and managed.

Establish objectives. Assign responsibilities. Allocate specific funds and staff. Set a schedule. Monitor performance. These are basic steps to successful management of any program. Yet all too often, these steps are forgotten with citizen involvement. For some reason, citizen involvement often is not seen as a program to be actively managed. Rather, it is treated as a passive process, one that will somehow happen automatically if a few notices are mailed and a hearing is held.

But citizen involvement doesn't just happen. The most widespread public participation in planning is found in communities where citizen involvement is planned and managed carefully and aggressively. Here are some of the techniques those communities are using.

■ Manage citizen involvement in the same way as code administration or long-range planning – that is, as a major element of the planning program.

> Many cities and counties in Oregon do this. For example, the **City of Eugene**'s Planning and Development Department has a division called Neighborhood Services, with its own manager, staff, and program. Learn more about it by visiting the city's website at: http://www.eugene-or.gov/portal/server.pt

■ Draw up a citizen involvement plan for each major legislative action and land use decision that involves important community issues.

> For major planning projects, **Eugene's** planning department assigns a project manager. One of the manager's tasks is to create a work program for citizen involvement for that project. That program must be reviewed and approved by Eugene's Citizen Involvement Committee.

■ Use the CCI! The Committee for Citizen Involvement can (and usually

should):

- Advise on how to manage citizen involvement for specific projects.
- Periodically evaluate the citizen involvement program.
- Work with staff to maintain an effective network of citizen advisory committees.
- Act as a mediator to resolve disputes about public participation.
- Act as an ombudsman for citizens concerned about public participation.

> **Clackamas County**'s CCI is a good example of a committee that's doing all of the above – and more.

■ Separate the citizen involvement program from the planning department. This arrangement has several advantages. It frees planning staff from citizen involvement duties that might conflict with or take second place to other planning tasks, such as code enforcement. It allows for broader community involvement: citizen concerns are not limited to land use. And the coordinator can serve as a mediator if the planning department and citizen advisory committees disagree about a land use issue.

> The **City of Gresham** has an Office of Communications and Outreach that's based in the city manager's office. For details, see the website at http://www.ci.gresham.or.us/departments/ocm/communications/

■ Contract for citizen involvement services. An independent contractor can remain neutral during policy conflicts.

> **Washington County** contracts with the Oregon State University Extension Service to provide support to citizen advisory committees for land use and other community issues.

■ If the planning department runs the citizen involvement program, make sure the responsibility for that is clearly assigned to one or more staff persons. If no one is directly responsible for the CIP, some of that program's tasks are likely to remain undone.

■ Develop and use a citizen involvement checklist for the planning staff.

■ Give planners who deal with the public training in customer relations and communications.

■ Give planning staff and members of citizen boards and committees information and training on key topics.

> **Clackamas County** provides such training for members of its CCI.

■ Use role-playing and simulation exercises to help planners, planning commissioners, and other officials to understand the needs and wants of citizens and interest groups.

> **Hood River County**'s planners have conducted mock permit applications to gain a better idea of the view from the other side of the permit counter.

■ Maintain a registry – including e-mail addresses – of stakeholders, interest groups, and individuals with expertise or interests in important land use topics or areas. Use that registry as a source of contacts when deciding whom to involve in a particular citizen involvement effort. Update the list periodically.

■ Appoint a volunteer ombudsman or citizen involvement coordinator. The CCI may fill this role. But in communities where an independent CCI is not available, a lay ombudsman may be able to facilitate public participation in the planning program.

■ Evaluate the CIP each year, and report the results to the governing body.

> The **Clackamas County** CCI evaluates public participation in the county each year and issues a formal report to the Board of Commissioners.

■ Earmark funding for citizen involvement in the budget. Goal 1 requires this, and for good reason: it helps make people aware that citizen involvement cannot happen without a commitment of resources, and it protects the CIP.

■ Seek grants or in-kind services for citizen involvement from government agencies, businesses, service organizations, and philanthropic institutions.

> For its "Your Community 2000" project, the **City of Bend** raised $32,000 from state, city and county governments, recreation districts, private contributors and school districts. The **City of Springfield** got a $60,000 federal grant to help the city carry out its "Springfield Tomorrow" project.

■ Develop and maintain an active network of neighborhood organizations. Make sure the committees continue to receive information about permit applications, policy issues, and major projects, such as revisions to the plan or development codes.

> For example, **Salem's** Community Development Department routinely notifies its neighborhood associations about all proposals for quasi-judicial land use decisions and legislative zone changes in their areas. (Many other communities do, too.)

■ Encourage developers and permit applicants to meet with key neighborhood organizations and citizen advisory committees *before* filing a permit application. This gives applicants an opportunity to respond to neighborhood concerns before they commit to a specific plan for development. The additional time and effort needed to do this often bring significant benefits, mainly in the form of reduced likelihood of appeals. Some cities (Bandon, for example) *require* a pre-application meeting with the neighborhood organization.

■ Provide basic support for citizen advisory committees (including neighborhood groups). Such support usually includes clerical services (photocopying, mailing, and notification) and a place for meetings. Although planning staff usually do not attend all meetings of all committees, some staff attendance is essential. Without direction and assistance from staff, committees are likely to wither, lose effective communication with local officials, or become loose cannons, arguing with local officials over crucial land use issues.

■ When seeking members for a key committee such as the CCI, use an open process: publish notices, contact local civic groups, and post announcements. Don't rely on word of mouth or the personal contacts of planners, planning commissioners, or elected officials. Such a casual approach suffers from three drawbacks. First, it often does not generate a sufficient number of candidates. Second, it may cause the makeup of the committees to be too narrow. Finally, it smacks of secrecy and favoritism and may lead to public distrust or criticism of the committee.

■ Maintain a list of people who have expressed interest in a particular issue or in serving on a committee. That creates a pool of potential volunteers who can be called when a vacancy on a standing committee needs to be filled or when a new committee needs to be formed.

> **Baker County**'s planning department maintains a list of people who have said they are willing to serve on citizen advisory groups such as the county parks committee.

■ Use the Internet! It's a powerful tool for citizen involvement, making communication with citizen groups and interested persons far easier, less costly, and more effective. Many city and county planning departments have "gone online," putting their plans, development

codes, permit application forms, and publications on a website where citizens can learn about planning from the comfort of their own homes and offices.

■ Give recognition to citizen volunteers.

> **Grants Pass** holds an annual awards dinner to honor leaders and activists from its citizen committees.

The best way to have strong citizen involvement in planning is to have strong planning for citizen involvement.

Ways To Get Information To The Public

Perhaps the most common complaint from citizens about government is: "Nobody told us!" That may frustrate the weary planner who has just spent several weeks and thousands of dollars running legal ads, sending out notices, and organizing a series of public hearings. In spite of such efforts, however, the citizens' complaint may be well-founded. Few people read legal ads. Property owners often overlook or fail to understand formal notices. And public hearings do not impart much information to the public. It takes more than the traditional notice and hearing procedures to truly inform an entire community about a planning issue. Here some ways to make your message heard more widely.

■ Mail or e-mail notices and information *to the people most likely to be affected*. State law (ORS 197.763), of course, requires that notices about proposed land use decisions be mailed to owners of property around the site of a land use proposal. Those land owners, however, are not necessarily the only people or groups who will be affected by the proposal. And that law does not apply to legislative actions, which may affect people throughout the community. So start by deciding who is most likely to be affected. Then decide what message should be communicated – a plain English description of how the proposed planning action might affect the community, for example. Then base your notice on those decisions. Don't overlook the law, but don't use it as the sole standard for your communication effort.

> **Clatsop County** received an application for a major development on the shore of the Columbia River in 2007. The development would be highly visible from properties on the Washington side of the river. State law didn't

require Clatsop County's Community Development to notify people in another state about the proposed development, but county staff went the extra mile and kept interested parties in Washington fully apprised. Staff sent copies of the application to community libraries on the Washington side, notified community officials there about hearings, and posted key documents on the county website during review of the application.

■ Post written notices about important meetings and proposals in conspicuous places: the library, city hall, courthouse, community centers, and on or near affected properties.

■ Post digital notices about important meetings and planning matters on the local government's website. If the planning staff has prepared a report on the subject, provide a link to that report on the local government's website.

■ Create and maintain an up-to-date website for the local planning department, with information on it about meetings, permit applications, the zoning code, and citizen groups. Provide links to county maps and county planning and other staff. Increasingly, cities and counties are finding that their presence on the Web is the most cost effective way of creating and facilitating citizen involvement.

The **City of Salem** posts all its applications for land use permits on its website. Interested persons can check the status of a permit and learn about opportunities to participate in its review just by clicking on: http://www.cityofsalem.net/export/departments/scdev/land_use_applications_database The database of permits is organized in several different ways. One may search for permits chronologically, by neighborhood, and so on.

■ Prepare notices and information in a language other than English when a land use proposal is likely to affect members of the community for whom English is not their first language.

■ Enhance readability of documents that will be distributed to the public. Aim for a readability rating of grade level 10 or lower. Readability software programs are inexpensive and readily available on the Internet. They use various systems such as Flesch Reading Ease or the FOG Index to assess a document's readability. Likewise, popular word-processing programs such as Microsoft *Word* contain readability functions. MS *Word* 2007, for example, will analyze readability as part of its spellchecking feature. (Readability analysis is not enabled in the spellchecker's default mode, however.) Another way to enhance readability is to contract with a writer, editor, or graphics artist

to produce documents that invite a reader's attention and communicate more effectively. Short of that, just having a non-planner friend or colleague – a candid one – review a draft planning document is likely to improve its readability.

> **Example**: The first chapter of this handbook is 10.5 on the Flesch Reading Ease scale.

■ Produce summaries of important documents that are too long or complex to be understood readily by the average citizen.

■ Write periodic bulletins or status reports on big projects that are likely to generate a lot of calls or inquiries from citizens or media. This can save a lot of staff time: rather than tell the same story 20 times in long conversations on the phone or at the counter, staff members can just give the latest bulletin to the person who's making the inquiry.

■ Produce plain-English fact sheets or flyers on important issues, and distribute them to citizen committees, interest groups, students, media, and visitors to the planning department.

> **Douglas County** produced an eight-page flyer on wetlands and distributed it to interested persons and groups throughout the county. The illustrated flyer uses a question-and-answer format to define wetlands and describe how they are managed.

■ Produce flyers or booklets that describe processes and procedures such as hearings and appeals. Many planning departments in Oregon produce such information and display it in their permit centers, so visitors can readily get basic information on such as how to file an application for a land use permit. Increasingly, planning departments are maintaining similar types of information on their websites.

> The **City of Eugene**, for example, offers an interactive guide with links to official zoning maps to answer the question "What's My Zoning?"

■ Arrange for local plans, zoning ordinances, and other planning documents to be made available to the public in the local library, city hall, courthouse, and schools, and update those documents as changes are made.

> Before each meeting of its planning commission, the **City of Bandon** puts a packet of meeting materials in the city library. Anyone can come to the library and see the staff reports and other material that will be considered at the meeting. **Clatsop County** provides copies of major planning documents to all libraries in the county's

library system.

■ Prepare and distribute an annual report that describes the main planning activities and issues of the past year.

Lane County's Land Management Division prepares an annual report to its planning commission.

■ Prepare and distribute a list of publications about planning and important local issues. Make it available to reporters, students, citizen activists, and others who want to learn more about land use and the local planning program. Better yet, post all such publications on the planning department's website.

■ Develop and maintain a newsletter (either in print form or electronically).

Different county planning departments produce a quarterly or periodic newsletter that goes to all citizen advisory committees and to other interested persons and groups. **Clackamas County** produces one monthly newsletter from the board of commissioners' office. Many of its articles deal with issues of planning and citizen involvement.

■ Use the newsletters of other groups and agencies as a vehicle for getting information to certain audiences. Contact such a newsletter's editor to suggest topics for articles or to arrange for you to submit an article of your own.

■ Hold a contest. For example, to stimulate the public's interest in urban wildlife habitats and natural areas, city planners could sponsor a photo contest. Photos would show wildlife or natural scenery, and would have to be taken at sites within the city limits during the past year.

■ Enclose bulletins or fact sheets on planning with local utility billings or other routine mailings made by the city or county.

■ Organize a speakers bureau – a list of planners, local officials, and other well-informed persons willing to speak before service groups, clubs, and classes.

■ Work with local service groups, such as the League of Women Voters, Kiwanis, and Rotary. Arrange speakers for them. Distribute relevant notices and publications to them. Seek their help in communicating with the public about large planning efforts such as periodic review.

The **City of Silverton**'s Chamber of Commerce sponsored a forum where

several hundred citizens prioritized the growing needs of their city.

■ Develop a handbook or pamphlet on citizen involvement, to encourage interested citizens to get involved in planning.

Clackamas County produced a 75-page citizens' guide that explains what the county's citizen involvement program is and how one may participate in it. See Appendix F, "Bibliography." **Salem's** Department of Community Development published a 12-page booklet called "Guide To Working With Neighborhood Associations."

■ Write an issue briefing, "backgrounder," or "white paper" to explain reasons behind a controversial policy proposal. The purpose of such a paper is to answer the question "Why?" – and answer it *early*. That question eventually may be answered in a staff report or a set of findings. But those documents often are too late and too legalistic to be useful to the citizen. The white paper helps to shape and inform public opinion about a decision that's *going* to be made; findings are the defense for a decision already made.

■ Set up a citizens' planning information center or display (permanent or temporary) in a public building, shopping mall, or school.

■ Set up booths or displays at county fairs, trade fairs, and community festivals.

■ Put information on citizen involvement and planning in the material provided by Welcome Wagon, the Chamber of Commerce, and other local service groups.

■ Use graphics and audio-visual aids. Television and sophisticated advertising techniques are making the public expect more than typed text. Moreover, many planning issues have a strong visual component. Drawings, flip charts, maps, slides, overheads, or video tapes thus may often be more effective than a standard typed report.

Ashland's planning department produced an illustrated booklet, *Site Design and Use Guidelines*. The 45-page document uses drawings and diagrams effectively to explain complex material.

■ Develop a video tape to show permit applicants and citizens how to testify at a public hearing. Set up a television and video recorder to play that tape on demand at the planning office or in the lobby of the building where the public hearing will be held. (This idea comes from **Gresham's** CCI.)

■ Use "telephone trees" to announce important meetings and to relay other simple information. In such a system, the first person places a call to, say, five people. Those five each call another five people. Only three or four such cycles will quickly reach hundreds of people. The tree needs careful planning, however. Otherwise, its branches turn inward, as people call others who have already been called.

■ Use computers at the permit counter to make information readily available to citizens and permit applicants.

> **Lane County** has terminals at the main counter in the Land Management Division. With help from a staff person, a permit applicant or interested citizen can key in a few commands and moments later get a screen full of information about a particular piece of land – its size, zoning, permit status, number of dwellings, etc.

■ Arrange site observations, walking tours, or bus tours of key sites and areas for interested citizens and organizations.

> **Eugene** has prepared brochures and maps of historical places, so that citizens can take self-guided walking tours of historical districts. The **Lane Council of Governments** arranged tours for interested persons to see areas proposed for inclusion in a new wetlands conservation plan.

■ Have planners or planning officials teach or guest lecture in local schools, community colleges, or universities.

■ Make and retain a written record not only of findings for quasi-judicial land use decisions (as required by statute) but also for legislative and policy decisions. This enables interested persons to see how and why new regulations or policies were developed.

Ways To Get Information From The Public

If the public's most common complaint is "Nobody told us," then the second most common probably is "You didn't listen." But how can planners and local elected officials listen more effectively? Here are some answers to that question – 13 ways to receive the public's messages more clearly.

1. Hold public hearings. Publicize such hearings widely and mail notices to persons and groups who are likely to have an interest in the topic of the meeting. Note that a public hearing is mainly a way to solicit comment *from* the public. If information needs to be conveyed *to* the public, or if an exchange

of ideas and information between the public and planners is needed, other types of public meetings are more effective – town hall meetings and workshops, for example.

2. Make the meeting place accessible. See that all public meetings are held in places that have adequate parking and seating and are accessible to handicapped persons.

3. Schedule public meetings so as to avoid conflicting events. Such scheduling should take into account traditional vacation months like August, school vacations, local or regional sports events, hunting seasons, and other events that might cause many people to be unable to attend.

4. Use a checklist for all public meetings. The list should encompass the multitude of seemingly minor details that, if forgotten, can turn a meeting into a disaster. Such details include, but are by no means limited to, items such as these: number of chairs, sound system, number and type of microphones, timer, sign-up sheets, easel and flip charts, handouts, and audio-visual equipment. Perhaps the most common problem at public meetings is a combination of poor acoustics and inadequate sound system that leaves dozens of people unable to hear what's going on.

5. Mail surveys to a cross-section of the community.

> The **City of Springfield** sent questionnaires to every fourth registered voter in the city as part of its "Springfield Tomorrow" project. The survey asked respondents for their views and priorities on several dozen land use and community planning issues.

6. Gather information and views through door-to-door canvassing.

> The **City of Milwaukie** used several dozen high-school students (led by chair persons of local neighborhood groups) to carry out a "Block Walk." The students went door to door to survey residents about community issues and resources. The project was preceded by extensive press coverage.

7. Conduct on-site interviews or door-to-door surveys in areas that will be affected by a development proposal, rezoning, or planning decision.

8. Provide a "public comment" period at every public meeting of the local planning commission or governing body. Its purpose is to give citizens a chance to speak on topics *not* already on the agenda.

The state's **Land Conservation and Development Commission** and the **Citizen Involvement Advisory Committee** both have a public comment period at their regular meetings, usually as the first item on the agenda.

9. Conduct "passive surveys" by having questionnaires available in the planning department, public library, city hall, shopping mall, or other public places. Such surveys must be brief, and because their respondents are not selected randomly, the results may not be fully reliable. They may, however, provide some useful information and suggestions.

10. Conduct "online surveys" to learn citizen views on key topics.

The **City of Sandy** recently posted such a survey on the city's website to seek citizen comments on proper design standards for commercial development.

11. Invite guest speakers from interest groups or other agencies to make presentations to the planning staff, planning commission, governing body, or citizen advisory committees.

Wasco County invites officials from state agencies to make presentations about state programs that affect the county. The Oregon Department of Fish and Wildlife, for instance, made an hour-long slide presentation on big-game winter range to the Wasco County planning commission.

12. At town hall meetings, workshops, and brainstorming sessions, use flip charts to build a record. Have someone summarize key points on the charts. Tape each filled-out page on the wall, so the audience can see their comments and ideas. After the meeting, record the notes on 8½-by-11-inch paper, and distribute them to those who attended the meeting.

13. Provide a "clipping service" for planning commissioners, elected officials, and chairs of advisory committees. That is, monitor local and regional newspapers for articles, editorials, and letters to the editor about planning issues and citizen involvement. Clip such pieces out of the newspaper and mail them periodically. This service can be done by local staff or by commercial clipping services.

The **Department of Land Conservation and Development**, through its Communications Officer, monitors newspaper coverage of land use in Oregon. On a weekly basis, the Communications Officer sends an email digest of those articles (with links to the full articles) to subscribers. Anyone can subscribe to the free service on the Internet by filling out a short form at:
http://webhost.osl.state.or.us/mailman/listinfo/landuse-news

Ways To Exchange Ideas And Information With The Public

The most effective communication is more than just sending or receiving messages. It involves an *exchange* of ideas and information. Such exchanges are essential in our day-to-day relations with friends, relatives, and colleagues. They are, however, difficult to achieve on a community-wide scale. Here are some ways to attack that problem:

■ Have the public participate in building a vision of the community's future. Such "visioning" is the subject of the recent *Oregon Visions Trilogy*, written by several Oregon planners. The manual describes the visioning process and explains how Oregon communities can use it. (See Appendix F, "Bibliography.")

> The **City of Corvallis** carried out an extensive visioning process in the late 1980s. Among other things, the city organized workshops, invited a well-known futurist to speak to at a public meeting (attended by some 500 people), and organized a special event called "Children's Visions of the Future." The city also printed and distributed 25,000 copies of a newsprint tabloid containing the Corvallis Vision statement. The visioning work provided the policy foundation for the city's statutorily required periodic review.
>
> For a more recent example of an extensive community visioning process that's now under way, click on the **City of Tualatin's** website, at http://www.tualatintomorrow.org/

■ Encourage developers and permit applicants to bring their proposals to neighborhood groups early in the application process. This keeps the citizens informed about issues that may affect their neighborhood, and it enables the developer to respond to citizen concerns early, before much money has been invested in plans, surveys, and permit fees.

> When the **Kaiser-Permanente Corporation** wanted to build a medical center in south Salem, its executives met with local neighborhood groups and talked to all prospective neighbors. Kaiser-Permanente modified their plans so as to satisfy concerns they heard from the neighbors, and then completed the permit and construction process – without opposition.

■ Hold town hall meetings, community forums, or public workshops on important issues and policy proposals. Be aware of the important differences between these types of meetings and a hearing. A hearing is more formal and has a mostly one-way flow of information (from citizens *to* the hearing officials). The main purpose of a hearing is to reach a decision. In contrast, a

town hall, public forum, or workshop is less formal, involves an exchange of ideas and information, and has that exchange (not a decision) as its main purpose.

> The **City of Coos Bay** followed up a community-wide survey with a town hall meeting. The meeting was broken into smaller working groups, each asked to list the top five goals for the city. The groups' lists were quite consistent with each other, and the turnout for the meeting was good – about 200 people.

■ Conduct a series of informal planning workshops in the homes of volunteers.

> The recently incorporated **City of Damascus** organized a successful series of neighborhood "coffees" and "summer socials" to generate community interest in the city's first comprehensive plan. City staff provided "host kits" for the volunteers and attended the events to answer questions and learn more about citizen ideas and interests.

■ Compile a summary of names and main points of those who participated in public meetings and other activities leading to the development of a new policy. This summary of input will help citizens see how the policy was developed and who contributed to its development. It also may be useful years later if ambiguous wording leads to questions about the intent of the policy.

■ When developing new policies, create an *ad hoc* "task force" or "steering committee." Such a group usually is made up of people knowledgeable about the pertinent issues and with ties to a wide variety of interests. Members thus serve two purposes: they bring information to the process, and they convey information to their network of contacts. An *ad hoc* committee also may serve as a neutral party in a controversy if elected officials or planners are perceived to be on one side or the other.

> **Union County** formed an "Aggregate Advisory Committee" to help county officials develop policies on the controversial topic of aggregate mining. The committee had five members – an "at large" member, and one from each of the following groups: landowners near aggregate sites; aggregate operators; business interests; environmental interests.

■ Maintain a temporary 800 telephone number or a special "hotline" to deal with controversial issues likely to generate a great deal of public comment or inquiry.

■ Conduct briefings or roundtable discussions with key community leaders

and stakeholders. The purpose of such meetings is twofold: to convey ideas and information to community leaders, and to learn their views and interests.

> **LCDC** holds community briefings on large and complex topics such as transportation planning, natural hazards and periodic review. The commission also holds roundtable lunch sessions during most meetings conducted outside of Salem.

■ Conduct a charrette. A charrette is an intensive meeting of a few key stakeholders or community leaders working to iron out an agreement. It is an effective way of "getting to yes," but it requires a big investment of time by participants, and it usually does not represent a cross-section of the community.

■ Strive to provide "procedural satisfaction" to all parties when making decisions. This term comes from the growing literature on dispute resolution. It means the belief that the decision-making process is fair no matter what its outcome.

■ Follow up: send a summary of new policies and regulations to people and groups who testified or otherwise helped to develop them. This serves two purposes: it conveys information about the new material to key people, and it gives them some sense of ownership in the final product.

■ Conduct an open house periodically in the planning department.

■ Mail or e-mail information packets periodically to the chairs of all citizen advisory committees. Such a packet might contain the agendas for coming meetings of boards such as the planning commission, recent applications for development permits, any recent fact sheets or summaries, and clippings of recent planning news.

> Each month, **Newberg's** planning department sends its neighborhood committee chairs a report summarizing key planning issues and activities.

■ Work with local schools and teachers to get students involved in planning. The students learn about land use planning and government; they may produce useful data; and they make their parents more aware of planning issues.

> Teacher Neal Maine (from **Seaside**) has developed a coastal resource planning curriculum for high-school students. It's designed to bring science and civics together as students work on actual planning issues.

■ Introduce commission members and staff at the beginning of every public meeting of a body such as the planning commission. Explain their role and the purpose of the meeting.

> **Baker County's** planning commission begins each of its meetings by having the chair introduce all commissioners and the planning director.

Ways To Work With The Media

The first rule for working with the media is this: treat them as allies. Chances are, you have a story to tell about some important planning program or issue, and the media can help you tell it.

Suppose, for example, that a county is beginning the periodic review of its comprehensive plan. One way to inform citizens about that is to run a legal notice about the periodic review hearings. But a better way is to work with a local reporter to develop a front-page news article about periodic review. Such an article provides more information and is read by more people, and it's free. Seizing the initiative also has this big advantage: it enables you to get information to the media before any inaccurate or unbalanced coverage occurs.

Remember, if you don't tell your own story, someone else will tell it for you. Here are some ways to see that *your* story gets told first.

■ Issue news releases and public service announcements (PSAs). Even small planning agencies can use this technique. News releases can be written and distributed quickly, and the media will often use them almost word for word – *if* they contain something newsworthy and are written in the appropriate style. PSAs are news releases for radio stations, written so that they can read on the air in 15 to 30 seconds. A word of caution: news releases and PSAs must be brief. Many media outlets set firm limits on the total number of words allowed. Word processing software can help here: most programs have a word-count function. In Microsoft *Word 2007*, for example, the number of words in a document is displayed at the bottom of the screen, in the status bar.

■ Designate a staff person to be the planning department's "information officer." Assign to him or her responsibility for working with the media and for trying to generate informative stories about important planning issues and programs.

■ Distribute a "press packet" to local and regional media annually and to new

reporters assigned to the local government beat. Such a packet contains basic information about the planning department and the community's planning program. The packet serves two purposes: it reminds the media about your program and its important work, and it provides background information that the media may need when they do a story about your agency.

■ Have the planning director or other key officials appear on local radio or television talk shows.

■ Hold a news conference. This may sound intimidating, but it doesn't require a great deal of time or special skills. The main requirement is to have something newsworthy as the subject of the conference. If a television station is to be invited, try to arrange a site for the conference that has some visual interest. For example, to announce the start of a new program for protecting historical places, have the news conference in a historical building.

■ Arrange to have important public meetings televised on the local community access cable television channel.

> CCTV "cablecasts" the meetings of the **Salem** and **Keizer** city council live and rebroadcasts them later in the week.

■ Use community access cable television to produce special shows about planning issues.

> The **City of Portland** produced a television show about the Albina Neighborhood Plan, using Portland Cable Access Television.

■ Write guest "op/ed" pieces for the local newspaper.

> The **Springfield** *News* ran a guest editorial from city officials encouraging citizens to participate in the "Springfield Tomorrow" project.

■ Call the editor of the local newspaper and suggest news articles or editorials about important planning issues and activities. Don't assume that the media are fully informed about all planning issues and activities that are important to the community. Without your call, the matter may not be reported, or it may be reported incorrectly.

■ Arrange to have meetings and hearings announced in the local calendar of events maintained by most newspapers and radio stations.

> **Hillsboro's** planning commission meetings are announced in the Hillsboro

Argus's community calendar. The *Argus* publishes its calendar once a week. Information to be published in the calendar must be submitted a week in advance. A typical announcement contains about 30 words. The newspaper does not charge for this service.

■ For issues and activities of community-wide importance, use *display* ads in the local newspaper rather than legal ads. Legal ads are required in some cases, but sometimes the only reason for their use is tradition. Most citizens do not read legal ads, and for good reason: they are printed in small type in an obscure section of the newspaper, and often are written in a legalistic, hard-to-read style. If you really want to reach the public, don't rely on legal ads.

The **City of Coos Bay** produces a quarterly newsletter, which is printed and distributed as an insert in the Coos Bay *World*. **Metro** (the Portland metropolitan area's regional government) places its public meeting agendas in the classified ads in the *Oregonian* every Saturday.

■ Arrange for notices, flyers, or other information to be delivered as an insert in the local newspaper. This "print and deliver" service is useful for getting information to a certain part of the community. The inserts can be placed in only those newspapers to be delivered in the northwest part of a city, for example. In most cases, such inserts will be cheaper than a display ad.

■ Conduct surveys or questionnaires through the local media.

The **City of Springfield** used a clip-and-return questionnaire printed in the Springfield *News* and the Eugene *Register-Guard* to survey citizens as part of the "Springfield Tomorrow" project in 1991.

There you have it – multiple ways to bring the citizens of your community into all phases of the planning process. Yes, the activities described above do cost money and take time. They are, however, sound investments – investments that ultimately facilitate better planning. Effective citizen involvement ensures that planning projects and programs better reflect the needs of the community, are better understood by citizens, and face fewer legal challenges.

We on the Citizen Involvement Advisory Committee wish you much success in your efforts to put the people in planning.

———————

Thanks

This third edition of *Putting The People In Planning* was produced by the 2006-07 state Citizen Involvement Advisory Committee (CIAC):

- Beth Bridges, Eugene
- Peter Frothingham, Odell
- Ann Glaze, Dallas (Vice Chair)
- Jack L. Johnson, Cove
- Ian Maitland, Harbor
- Pat Wheeler, Monmouth
- Chris White, Portland
- Pat Zimmerman, Scappoose (Chair)

Mitch Rohse, a planning consultant and author of the first edition of this handbook, wrote this third edition. Peter Frothingham led CIAC's review and editing team. Cliff Voliva, DLCD's Communications Officer, managed the project.

The first edition of this handbook, under the title *How To Put The People In Planning*, was produced by the 1992 CIAC:

- Ben Boswell, Lostine
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Appendix A:

Goal 1, *Citizen Involvement*

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies, and special- purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

1. Citizen Involvement – To provide for widespread citizen involvement.

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

2. Communication – To assure effective two-way communication with citizens.

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. Citizen Influence – To provide the opportunity for citizens to be involved in all phases of the planning process.

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

4. Technical Information – To assure that technical information is available in an understandable form.

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. Feedback Mechanisms – To assure that citizens will receive a response from policy-makers.

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The rationale used to reach land-use policy decisions shall be available in the form of a written record.

6. Financial Support – To insure funding for the citizen involvement program.

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

GUIDELINES

A. CITIZEN INVOLVEMENT

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and committee appointments should be well publicized.

B. COMMUNICATION

Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

C. CITIZEN INFLUENCE

1. Data Collection - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the

plans.

2. Plan Preparation - The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

3. Adoption Process - The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

4. Implementation - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

5. Evaluation - The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

6. Revision - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

D. TECHNICAL INFORMATION

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

E. FEEDBACK MECHANISM

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

F. FINANCIAL SUPPORT

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

Appendix B: ORS 197.160 and 197.763

"State Citizen Involvement Advisory Committee; city and county citizen advisory committees."

"Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures"

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees. (1) To assure widespread citizen involvement in all phases of the planning process:

(a) The Land Conservation and Development Commission shall appoint a State Citizen Involvement Advisory Committee, broadly representative of geographic areas of the State and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the adoption and amendment of the goals and guidelines.

(b) Each city and county governing body shall submit to the commission, on a periodic basis established by commission rule, a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations within the respective city and county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this subsection shall review the proposed programs submitted by each city and county and report to the commission whether or not the proposed program adequately provides for public involvement in the planning process, and, if it does not so provide, in what respects it is inadequate.

(2) The State Citizen Involvement Advisory Committee is limited to an advisory role to the commission. It has no express or implied authority over any local government or State agency. [1973 c.80 §35; 1981 c.748 §25; 1983 c.740 §49]

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written

evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

Appendix C: ORS 215.416 &.422

"Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing" (for counties)

215.416 Permit application; fees; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Oregon Department of Aviation.

(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing,

the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.552 §§15, 16; 1977 c.654 §2; 1977 c.766 §12; 1979 c.772 §10a; 1983 c.827 §20; 1987 c.106 §2; 1987 c.729 §17; 1991 c.612 §20; 1991 c.817 §5; 1995 c.595 §27; 1995 c.692 §1; 1997 c.844 §4; 1999 c.357 §2; 1999 c.621 §1; 1999 c.935 §23; 2001 c.397 §1]

215.422 Review of decision of hearings officer or other authority; notice of appeal; fees; appeal of final decision. (1)(a) A party aggrieved by the action of a hearings officer or other decision-making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.

(b) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer or other decision-making authority is the final determination of the county.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee there for, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1). [1973 c.522 §§17,18; 1977 c.766 §13; 1979 c.772 §11; 1981 c.748 §42; 1983 c.656 §1; 1983 c.827 §21; 1991 c.817 §9]

Appendix D: ORS 227.175 &.178 &.180

"Application for permit or zone change; fees; consolidated procedure; hearing approval criteria; decision without hearing" (for cities)

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a “public use airport” if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway “approach surface” as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an

applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2]

227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees. (1) Except as provided in subsections (3) and (5) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what

information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application

for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment. [1983 c.827 §27; 1989 c.761 §16; 1991 c.817 §15; 1995 c.812 §3; 1997 c.844 §8; 1999 c.533 §8; 2003 c.150 §1; 2003 c.800 §31]

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee there for, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

Appendix E: ORS 192.610 – 192.690

The Public Meetings Law

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a

person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52]

Note: The amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, take effect January 1, 2008. 192.630, as amended by section 21, chapter 100, Oregon Laws 2007, and including amendments by section 52, chapter 70, Oregon Laws 2007, is set forth for the user's convenience.

192.630. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public

bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed

and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does

not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring

standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134]

Note: The amendments to 192.660 by section 11, chapter 602, Oregon Laws 2007, take effect January 1, 2009. See section 13, chapter 602, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (2) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating

a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23]

Note: The amendments to 192.690 by section 8, chapter 796, Oregon Laws 2007, take effect January 1, 2009. See section 9, chapter 796, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the Health Professionals Program Supervisory Council established under ORS 677.615, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

Appendix F: BIBLIOGRAPHY

Bibliography

Additional Web Information Resources

Key Word Search

The following are suggestions for searching the Internet for web sites related to citizens and land use:

- Public Participation
- Public Participation in Land Use
- Citizen Involvement
- Conflict Resolution
- Citizen Action
- Land Use Planning

For Further Information

Association for Conflict Resolution
Phone: 202-464-9700 (Washington, D.C.)
Fax: 202.464.9720
Email: acr@ACRnet.org
Internet: http://www.acrnet.org

Department of Land Conservation & Development
Current information on meeting dates, agendas, minutes, publications on-line, statutes and administrative rules and other resources
Phone: 503-373-0050
Fax: 503-378-5518
Email: cliff.voliva@state.or.us
Internet: http://www.oregon.gov/LCD

Institute for Local Government
Public participation tips, land use glossary, public hearing checklist, tips for crafting a public participation program
Phone: (916) 658-8208 (Sacramento, CA)
Fax: (916) 444-7535
Email: kjensen@cacities.org
Internet: http://www.cacities.org/index.jsp?zone=ilsg

International Association of Public Participation
Searchable data base of books, articles and websites
Phone: 1-800-644-4273 (Denver, CO)
Fax: 1-303-458-0002
Email: iap2hq@iap2.org
Internet: http://www.iap2.org

http://iap2.civicore.com/index.cfm?fuseaction=resources.main
http://iap2.civicore.com/index.cfm?fuseaction=weblinks.main

Local Government Commission
Center for Livable Communities
Phone: 1-916 448-1198 (Sacramento, CA)
Fax: 1-916 448-8246
Email: center@lgc.org
Internet: http://www.lgc.org
Public participation tools:
http://www.lgc.org/freepub/land_use/participation_tools/landuse_mapping.html

National Conference on Dialogue and Deliberation:
Resources on a host of public participation approaches and literature:
Phone: 1-717-243-5144 (Pennsylvania)
Email: ncdd@thataway.org
Internet: http://www.thataway.org
Dialogue and deliberation models:
http://www.thataway.org/resources/understand/models/models.html

Oregon State Attorney General's Office.
Publishes a helpful guide called the *Public Records and Meetings Manual*. It's not available on-line, but you may order a copy from Publications Section, Department of Justice, 1162 Court Street NE Salem, OR 97301-4096

Portland State University
Center for Public Participation
Phone: 503.725.8290 (Portland, OR)
Fax: 503.725.8250
Email: cpp@pdx.edu
Internet: http://www.cpp.pdx.edu/

Smart Communities Network
National Center for Appropriate Technology
Resource links, tools, and much land use planning information
Internet: http://www.smartcommunities.ncat.org/toolkit/toolkit.shtml

U.S. Environmental Protection Agency
Information on public participation, specific to EPA but many tools and resources are applicable to participation in land use:
Phone: 202-566-2204 (Washington, D.C.)
Fax: 202-566-2220
http://www.epa.gov/publicinvolvement/

University of Wisconsin Center for Land Use Education
Phone: (715) 346-4853 (Madison, WI)

Fax (715) 346-4038
Internet: http://www.uwsp.edu/cnr/landcenter/landcenter.html

A listing of local Oregon non-government land use organizations:
http://www.friends.org/links/affiliates.html

The following website (in about mid page) provides a link to all county websites. Through these, county planning departments and, often, zoning codes can be accessed.
http://www.statelocalgov.net/state-or.cfm

Publications

Citizen Involvement

City of Gresham: Gresham's Neighborhood Associations Guidelines Manual.
http://www.ci.gresham.or.us/departments/ocm/neighborhoods/naguidelines/cover.htm

City of Portland, Environmental Services: *Public Participation Handbook,* 1995
http://www.portlandonline.com/shared/cfm/image.cfm?id=84215

City of Portland, Office of Neighborhood Involvement: *An Outreach and Involvement Handbook for City of Portland Bureaus,* third edition, 2005
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City of Portland, Office of Neighborhood Involvement: *Guidelines for Neighborhood Associations, District Coalitions, Neighborhood Business Associations, Communities Beyond Boundaries, Alternative Service Delivery Structures and the Office of Neighborhood Involvement*, 1998.
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- *How to Testify at Land Use Hearings*, 2006
- *Citizen Involvement Guidelines for Policy Development*, 2004
- *Citizen Initiated Enforcement Orders*, 2000
- *A Legislative History of the Oregon Experience in Limiting SLAPPs*, 1999

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Portland Development Commission, Public Affairs Department: *Public Participation Manual,* 2005
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http://www.acrnet.org/acrlibrary/more.php?id=13_0_1_0_M

Oregon State University: *Good Decision Making,* P. Corcoran, 1998.

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http://seagrant.oregonstate.edu/sgpubs/onlinepubs/g99006.html

U.S. Environmental Protection Agency, Office of Emergency and Remedial Response: *Superfund Community Involvement Handbook,* 2002.
http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf

U.S. Department of the Interior, Bureau of Land Management: *Land Use Planning Handbook*, H-1601-1; March, 2005.
http://www.blm.gov/nhp/200/wo210/landuse_hb.pdf

Vancouver Community Network website: *Serving customers or engaging citizens: What is the future of Local Government?* Frank Benest.
http://www.vcn.bc.ca/citizens-handbook/benest.html

Oregon Department of Land Conservation and Development, Salem, OR.
http://www.oregon.gov/LCD/index.shtml

Tarnow, K., P. Watt, and D. Silverberg. 1996. Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues: A Handbook for Land Use Planners, Resource Managers, and Resource Management Councils. *Describes types and causes of conflict and management of conflict through the collaborative process, fairly detailed.*

Books

Available for sale through the American Planning Association website: www.planning.org or from booksellers.

Citizen's Guide to Planning, Herbert H. Smith, 1993, third edition.
For professionals and laypeople.

Planning Made Easy, Efraim Gil, Enid Lucchesi, William Toner, 1994.
Designed for new members of planning commissions. Includes basics of planning, zoning, subdivisions, etc.

Building Citizen Involvement, Mary L. Walsh, 1997.
A workbook on how to increase citizen participation.

Neighborhood Planning, Bernie Jones, 1990.
Explains planning and the role for citizens.

Appendix G: GLOSSARY

Glossary

Appeal. A legal proceeding in which a decision by one body is reviewed by another, usually as the result of a challenge by some aggrieved person. In many cities and counties, a land-use decision by a hearings officer or planning commission can be appealed to the local governing body. Local land-use decisions can be appealed to the state's Land Use Board of Appeal (LUBA).

Citizen. "Any individual within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens." ("Definitions," Oregon's Statewide Planning Goals) See "person" below.

Citizen Advisory Committee (CAC). "A group of citizens organized to help develop and maintain a comprehensive plan and its land use regulations. Local governments usually establish one such group for each neighborhood in a city or each district in a county. CACs may also be known as neighborhood planning organizations, area advisory committees, or other local terms. CACs convey their advice and concerns on planning issues to the planning commission or governing body. CACs also convey information from local officials to neighborhood and district residents." ("Definitions," Oregon's Statewide Planning Goals)

Citizen Involvement Advisory Committee (CIAC). "A State committee appointed by the Land Conservation and Development Commission to advise that commission on matters of citizen involvement, to promote public participation in the adoption and amendment of the goals and guidelines, and to assure widespread citizen involvement in all phases of the planning process. CIAC is established in accordance with ORS 197.160." ("Definitions," Oregon's Statewide Planning Goals) Some cities and counties call their local committee for citizen involvement by this same name.

Citizen Involvement Program (CIP). "A program established by a city or county to ensure the extensive, ongoing involvement of local citizens in planning. Such programs are required by Goal 1, Citizen Involvement, and contain or address the six components described in that goal." ("Definitions," Oregon's Statewide Planning Goals)

Committee for Citizen Involvement (CCI). "A local group appointed by a governing body for these purposes: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning; assisting in the implementation of the citizen involvement program; and evaluating the process being used for citizen involvement. A CCI differs from a citizen advisory committee (CAC) in that the former advises the local government only on matters pertaining to citizen involvement and Goal 1. A CAC, on the other hand, may deal with a broad range of planning and land use issues. Each city or county has only one CCI, whereas there may be several CACs." ("Definitions," Oregon's Statewide Planning Goals)

Department of Land Conservation and Development (DLCD). The State agency that administers Oregon's Statewide planning program, under the direction of the Land Conservation and Development Commission. DLCD's main office is in Salem. The agency also maintains field offices in La Grande, Central Point, Bend, Newport, Eugene and Portland.

Goals. "The mandatory statewide planning standards adopted by the [Land Conservation and Development] commission pursuant to ORS chapters 195, 196 and 197." (ORS 197.015(8)) Oregon has 19 such goals. A copy of the complete text of the goals is available on the DLCD website at: http://www.oregon.gov/LCD/goals.shtml

Land Conservation and Development Commission (LCDC). The seven member lay commission that oversees Oregon's statewide planning program. LCDC's members are appointed by the governor and confirmed by the senate. LCDC's policies are carried out by the Department of Land Conservation and Development (DLCD). This combination of a State agency overseen by a lay commission is typical of most State government programs in Oregon.

Land Use Board of Appeals (LUBA). A board established by the State legislature in 1979 to hear and decide appeals of local land use decisions. LUBA has three members: a board chair and two board members. All are appointed by the governor and confirmed by the State senate. All must be members of the Oregon State Bar.

Notice; notification. An announcement from a governmental body describing some action to be taken by that body and explaining how interested persons can participate in or appeal that action. ORS 197.763 specifies the notice procedures to be used by cities and counties in making quasi-judicial land use decisions. See appendices for complete text of key laws.

Participate. To express one's self in the proper forum at the proper time. A letter to the governing body about a pending land use decision and oral testimony during a public hearing are two of the most common examples of participation in planning.

Person. "Any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197." (ORS 197.015(18))

Standing. The right to participate in or appeal a planning action or decision. Limits on standing vary with the type of action and the place where it is being considered. Standing to appeal a local land-use decision to the State's Land Use Board of Appeals (LUBA) is defined by ORS 197.830:

> " . . . [A] person may petition the board for review of a land use decision or limited land use decision if the person:
> (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
> (b) Appeared before the local government, special district or state agency orally or in writing."

Appendix H:

LCDC's Citizen Involvement Program

Land Conservation and Development Commission
Citizen Involvement Guidelines for Policy Development

Approved by LCDC on April 23, 2004

I. Purpose

The purpose of these guidelines is to provide and promote clear procedures for public involvement in the development of Commission policy on land use. The Commission values the involvement of the public and interested parties in all phases of planning, including development of Commission policy. These guidelines are intended to provide the Commission and the Department with practical guidance on public involvement during policy development, consistent with and in some cases beyond the legal requirements of the Attorney General's Model Rules of Procedure, state law, and the Commission's administrative rules.

The Commission and the Department shall follow these guidelines to the extent practicable in the development of new or amended statewide planning goals and related administrative rules, and in other significant policy development activities related to the statewide land use program.

II. Public Involvement Objectives in Development of Commission Policy

- To provide meaningful, timely, and accessible information to citizens and interested parties about policy development processes and activities of the Commission and the Department.

- To promote effective communication and working relationships among the Commission, the Department, citizens and interested parties in statewide planning issues.

- To facilitate submittal of testimony and comments to the Commission from citizens and interested parties and the response from the Commission to citizens and interested parties about issues of concern with regard to policy proposals.

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

In order to guide the Commission and the Department in planning for and conducting procedures and activities that will result in a significant new or amended statewide land use policy, such as a new or amended statewide planning goal or an administrative rule, the Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;

2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;

3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and

5. Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.

6. Develop a database of names of citizens interested in participating in LCDC land use policy development on general or on specific issues. The department shall maintain this database. In addition, information should be provided on the department's website to notify the public of opportunities to serve on advisory committees or workgroups."

B. In establishing committees, workgroups, and processes for the development of new or amended goals, rules or policies, the Commission and the Department shall consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest. Depending on these considerations with respect to a particular policy issue, the Commission may:

1. Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions.

2. Authorize the Department to establish an advisory committee that includes affected parties, technical experts and other knowledgeable individuals in order to provide advice and assistance to the Director and the Department on a particular policy issue, prepare options or alternatives, and provide advice and information on the political, practical, technical, and scientific aspects of a potential new or amended policy. Such advisory committees to the Department are referred to as "workgroups" and their meetings shall be open to the public. While these meetings are not necessarily subject to the requirements of the Open Meetings Law, the Department shall strive to comply with the provisions of that law with respect to notice and other requirements. The Department shall report to the Commission when it appoints a workgroup in order to provide an opportunity for the Commission to consider and, if necessary, amend the group;

3. Choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.

C. The Commission, when establishing an advisory committee, or the Department, when establishing a workgroup, shall:

1. Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
2. Assure that Department staff provides adequate support, within the limitations noted below;
3. Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
4. Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup; and
5. Consider geographic representation in appointing committees or workgroups.
6. Provide information to members of advisory committees and workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed: (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
7. In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a

workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal.

D. The Commission shall encourage flexibility and innovative methods of engaging the public in its policy activities and shall seek the assistance and advice of citizens affected by or with an interest in the proposed policy issue. To this end the Commission may convene short -term technical panels or focus groups (real or virtual), hold conferences, conduct on-line surveys, and carry out other means of gathering information. Where a goal, rule or significant policy process primarily affects a certain region, and where advisory committee or workgroup meetings are confined to that region, notice and opportunities to comment shall also be made available to citizens and interested parties in other regions of the state. Where appropriate, the Commission shall consider collaborative rulemaking under ORS 183.502.

E. The Commission is cognizant that the level of public involvement and outreach described in these guidelines will be difficult or impossible without adequate staff support from the Department, and that the scope of efforts to promote and facilitate public participation and outreach will be limited based on the adequacy of staff and funding resources.

F. None of the activities described herein are intended to conflict with or replace any of the public notice or comment opportunities provided under state law or administrative rules.

G. The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.

IV. Communication with Citizens

A. Understandable Information

The Commission and the Department shall provide to citizens information that is essential to understanding the policy issues at hand and shall endeavor to make this information easily understood and readily accessible. The Commission and the Department shall identify Department staff or other experts who shall be available to answer questions and provide information to interested citizens.

B. Notice of Decisions

The Commission and the Department shall provide notice of decisions to citizens who have requested information and/or participated in the development of policy. This notice shall be by e-mail except paper mail when specifically requested. Notice shall direct citizens to the Department's website where the decision, background information, staff reports, rationale for the decision, and other information will be available.

C. Costs

Paper copies of items may be mailed upon request subject to fees that may be established by the Department to recover costs (the Commission has established copy fees under OAR 660-040-0005).

D. Appeal Information

Information on appeals procedures shall be available on the Department's website and shall be referenced, when appropriate, in notices to citizens, above.

E. Electronic Communication

While the Commission and the Department recognize that not all citizens presently have or desire direct home access to electronic communications or the agency website on the Internet, the Commission also recognizes the numerous advantages of electronic communication. The Commission is committed to using this medium as a primary means of communication and distribution of information of interest to citizens and shall encourage the Department to employ web-based communication technologies to provide a broad range of information to citizens and to facilitate communication between the Commission and citizens.

V. Applicability

These guidelines are effective April 26, 2004, and supersede the previously adopted Citizen Involvement Program adopted October 7, 1977 and Public Involvement Policy adopted May 4, 2001. The Department is directed to consult with CIAC with regard to new and ongoing projects, including advisory committees and workgroups appointed for those projects, at the earliest scheduled CIAC meetings. However, in the event the meeting schedule of those committees will not allow timely consultation on policy projects intended to begin in accordance with the schedule adopted by LCDC, the Department is directed to proceed with those projects and to consult with CIAC at the earliest opportunity.

Oregon's Statewide Planning Goals & Guidelines

GOAL 1: CITIZEN INVOLVEMENT

OAR 660-015-0000(1)

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies, and special- purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

1. Citizen Involvement -- To provide for widespread citizen involvement.

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

2. Communication -- To assure effective two-way communication with citizens.

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

4. Technical Information -- To assure that technical information is available in an understandable form.

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. Feedback Mechanisms -- To assure that citizens will receive a response from policy-makers.

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The rationale used to reach land-use policy decisions shall be available in the form of a written record.

6. Financial Support -- To insure funding for the citizen involvement program.

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

A. CITIZEN INVOLVEMENT

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and committee appointments should be well publicized.

B. COMMUNICATION

Newsletters, mailings, posters, mail-back questionnaires, and other

available media should be used in the citizen involvement program.

C. CITIZEN INFLUENCE

1. Data Collection - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the plans.

2. Plan Preparation - The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

3. Adoption Process - The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

4. Implementation - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

5. Evaluation - The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

6. Revision - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

D. TECHNICAL INFORMATION

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

E. FEEDBACK MECHANISM

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

F. FINANCIAL SUPPORT

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

Oregon's Statewide Planning Goals & Guidelines

GOAL 2: LAND USE PLANNING

OAR 660-015-0000(2)

PART I -- PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.

All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Affected Governmental Units -- are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan.

Comprehensive Plan -- as defined in ORS 197.015(5).

Coordinated -- as defined in ORS 197.015(5). Note: It is included in the definition of comprehensive plan.

Implementation Measures -- are the means used to carry out the plan. These are of two general types: (1) management implementation measures such as ordinances, regulations or project plans, and (2) site or area specific implementation measures such as permits and grants for construction, construction of public facilities or provision of services.

Plans -- as used here encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts.

PART II -- EXCEPTIONS

A local government may adopt an exception to a goal when:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(1) Reasons justify why the state policy embodied in the applicable goals should not apply;

(2) Areas which do not require a new exception cannot reasonably accommodate the use;

(3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Compatible, as used in subparagraph (4) is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards for an exception have or have not been met.

Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Upon review of a decision approving or denying an exception:

(a) The commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The commission shall determine whether the local government's findings and reasons demonstrate that the standards for an exception have or have not been met; and

(c) The commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards for an exception have or have not been met.

Exception means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that;

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with standards for an exception.

PART III -- USE OF GUIDELINES

Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the

goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals.

Guidelines -- are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, not limiting local government to a single course of action when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines. (Guidelines or the alternative means selected by governmental bodies will be part of the Land Conservation and Development Commission's process of evaluating plans for compliance with goals.)

GUIDELINES

A. PREPARATION OF PLANS AND IMPLEMENTATION MEASURES

Preparation of plans and implementation measures should be based on a series of broad phases, proceeding from the very general identification of problems and issues to the specific provisions for dealing with these issues and for interrelating the various elements of the plan. During each phase opportunities should be provided for review and comment by citizens and affected governmental units.

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

The number of phases needed will vary with the complexity and size of the area, number of people involved, other governmental units to be consulted, and availability of the necessary information.

Sufficient time should be allotted for:

(1) collection of the necessary factual information

(2) gradual refinement of the problems and issues and the alternative solutions and strategies for development

(3) incorporation of citizen needs and desires and development of broad citizen support

(4) identification and resolution of possible conflicts with plans of affected governmental units.

B. REGIONAL, STATE AND FEDERAL PLAN CONFORMANCE

It is expected that regional, state and federal agency plans will conform to the comprehensive plans of cities and counties. Cities and counties are expected to take into account the regional, state and national needs. Regional, state and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans. During the preparation of their plans, federal, state and regional agencies are expected to create opportunities for review and comment by cities and counties. In the event existing plans are in conflict or an agreement cannot be reached during the plan preparation process, then the Land Conservation and Development Commission expects the affected government units to take steps to resolve the issues. If an agreement cannot be reached, the appeals procedures in ORS Chapter 197 may be used.

C. PLAN CONTENT

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

(a) Natural resources, their capabilities and limitations

(b) Man-made structures and utilities, their location and condition

(c) Population and economic characteristics of the area

(d) Roles and responsibilities of governmental units.

2. Elements of the Plan

The following elements should be included in the plan:

(a) Applicable statewide planning goals

(b) Any critical geographic area designated by the Legislature

(c) Elements that address any special needs or desires of the people in the area

(d) Time periods of the plan, reflecting the anticipated situation at appropriate future intervals.

All of the elements should fit together and relate to one another to form a consistent whole at all times.

D. FILING OF PLANS

City and county plans should be filed, but not recorded, in the Office of the County Recorder. Copies of all plans should be available to the public and to affected governmental units.

E. MAJOR REVISIONS AND MINOR CHANGES IN THE PLAN AND IMPLEMENTATION MEASURES

The citizens in the area and any affected governmental unit should be given an opportunity to review and comment prior to any changes in the plan and implementation ordinances. There should be at least 30 days notice of the public hearing on the proposed change.

1. Major Revisions

Major revisions include land use changes that have widespread and significant impact beyond the immediate area, such as quantitative changes producing large volumes of traffic; a qualitative change in the character of the land use itself, such as conversion of residential to industrial use; or a spatial change that affects large areas or many different ownerships.

The plan and implementation measures should be revised when public needs and desires change and when development occurs at a different rate than contemplated by the plan. Areas experiencing rapid growth and development should provide for a frequent review so needed revisions can be made to keep the plan up to date; however, major revisions should not be made more frequently than every two years, if at all possible.

2. Minor Changes

Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. Minor changes should not be made more frequently than once a year, if at all possible.

F. IMPLEMENTATION MEASURES

The following types of measure should be considered for carrying out plans:

1. Management Implementation Measures

(a) Ordinances controlling the use and construction on the land, such as building codes, sign ordinances, subdivision and zoning ordinances. ORS Chapter 197 requires that the provisions of the zoning and subdivision ordinances conform to the comprehensive plan.

(b) Plans for public facilities that are more specific than those included in the comprehensive plan. They show the size, location, and capacity serving each property but are not as detailed as construction drawings.

(c) Capital improvement budgets which set out the projects to be constructed during the budget period.

(d) State and federal regulations affecting land use.

(e) Annexations, consolidations, mergers and other reorganization measures.

2. Site and Area Specific implementation Measures

(a) Building permits, septic tank permits, driveway permits, etc; the review of subdivisions and land partitioning applications; the changing of zones and granting of conditional uses, etc.

(b) The construction of public facilities (schools, roads, water lines, etc.).

(c) The provision of land-related public services such as fire and police.

(d) The awarding of state and federal grants to local governments to provide these facilities and services.

(e) Leasing of public lands.

G. USE OF GUIDELINES FOR THE STATEWIDE PLANNING GOALS

Guidelines for most statewide planning goals are found in two sections-planning and implementation. Planning guidelines relate primarily to the process of developing plans that incorporate the provisions of the goals. Implementation guidelines should relate primarily to the process of carrying out the goals once they have been incorporated into the plans. Techniques to carry out the goals and plans should be considered during the preparation of the plan.

Oregon's Statewide Planning Goals & Guidelines

GOAL 3: AGRICULTURAL LANDS

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

USES

Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices.

IMPLEMENTATION

Zoning applied to agricultural land shall limit uses which can have significant adverse effects on agricultural and forest land, farm and forest uses or accepted farming or forest practices.

Counties shall establish minimum sizes for new lots or parcels in each agricultural land designation. The minimum parcel size established for farm uses in farmland zones shall be consistent with applicable statutes. If a county proposes a minimum lot or parcel size less than 80 acres, or 160 acres for rangeland, the minimum shall be appropriate to maintain the existing commercial agricultural enterprise within the area and meet the requirements of ORS 215.243.

Counties authorized by ORS 215.316 may designate agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by law.

LCDC shall review and approve plan designations and revisions to land use regulations in the manner provided by ORS Chapter 197.

DEFINITIONS

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

Farm Use -- is as set forth in ORS 215.203.

High-Value Farmlands -- are areas of agricultural land defined by statute and Commission rule.

GUIDELINES

A. PLANNING

1. Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.
2. Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity.
2. Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213 and 215.283.
3. Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203, 215.213, and 215.283, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.
4. Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural growth. The interchange of such lands should not be subject to tax penalties.

Oregon's Statewide Planning Goals & Guidelines

GOAL 4: FOREST LANDS

OAR 660-015-0000(4)

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

USES

Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in ORS 527.722.

Uses which may be allowed subject to standards set forth in this goal and administrative rule are: (1) uses related to and in support of forest operations; (2) uses to conserve soil, water and air quality, and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment; (3) locationally dependent uses; (4) dwellings authorized by law.

IMPLEMENTATION

Comprehensive plans and zoning provide certainty to assure that forest lands will be available now and in the future for the growing and harvesting of trees. Local governments shall inventory, designate and zone forest lands. Local governments shall adopt zones which contain provisions to address the uses allowed by the goal and administrative rule and apply those zones to designated forest lands.

Zoning applied to forest land shall contain provisions which limit, to the extent permitted by ORS 527.722, uses which can have significant adverse effects on forest land, operations or practices. Such zones shall contain numeric standards for land divisions and standards for the review and siting of land uses. Such land divisions and siting standards shall be consistent with the applicable statutes, goal and administrative rule. If a county proposes a minimum lot or parcel size less than 80 acres, the minimum shall meet the requirements of ORS 527.630 and conserve values found on forest lands. Siting standards shall be designed to make allowed uses compatible with forest operations, agriculture and to conserve values found on forest lands.

Local governments authorized by ORS 215.316 may inventory, designate

and zone forest lands as marginal land, and may adopt a zone which contains provisions for those uses and land divisions authorized by law.

GUIDELINES

A. PLANNING

1. Forest lands should be inventoried so as to provide for the preservation of such lands for forest uses.
2. Plans providing for the preservation of forest lands for forest uses should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Before forest land is changed to another use, the productive capacity of the land in each use should be considered and evaluated.
2. Developments that are allowable under the forest lands classification should be limited to those activities for forest production and protection and other land management uses that are compatible with forest production. Forest lands should be available for recreation and other uses that do not hinder growth.
3. Forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use.
4. Road standards should be limited to the minimum width necessary for management and safety.
5. Highways through forest lands should be designed to minimize impact on such lands.
6. Rights-of-way should be designed so as not to preclude forest growth whenever possible.
7. Maximum utilization of utility rights-of-way should be required before permitting new ones.
8. Comprehensive plans should consider other land uses that are adjacent to forest lands so that conflicts with forest harvest and management are avoided.

Oregon's Statewide Planning Goals & Guidelines

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

OAR 660-015-0000(5)
(Please Note: Amendments Effective 08/30/96)

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

The following resources shall be inventoried:

a. Riparian corridors, including water and riparian areas and fish habitat;
b. Wetlands;
c. Wildlife Habitat;
d. Federal Wild and Scenic Rivers;
e. State Scenic Waterways;
f. Groundwater Resources;
g. Approved Oregon Recreation Trails;
h. Natural Areas;
i. Wilderness Areas;
j. Mineral and Aggregate Resources;
k. Energy sources;
l. Cultural areas.

Local governments and state agencies are encouraged to maintain current inventories of the following resources:

a. Historic Resources;
b. Open Space;
c. Scenic Views and Sites.

Following procedures, standards, and definitions contained in commission rules, local governments shall determine significant sites for inventoried resources and develop programs to achieve the goal.

GUIDELINES FOR GOAL 5

A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.

2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.

3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected;

reservoir sites should be identified and protected against irreversible loss.

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.

6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.

7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(23).

B. IMPLEMENTATION

1. Development should be planned and directed so as to conserve the needed amount of open space.

2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.

3. The efficient consumption of energy should be considered when utilizing natural resources.

4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.

5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.

6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.

7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.

8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.

9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim,

transitional and "second use" utilization
as well as for the primary use.

Oregon's Statewide Planning Goals & Guidelines

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

OAR 660-015-0000(6)

To maintain and improve the quality of the air, water and land resources of the state.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Waste and Process Discharges -- refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom. Included here also are indirect sources of air pollution which result in emissions of air contaminants for which the state has established standards.

GUIDELINES

A. PLANNING

1. Plans should designate alternative areas suitable for use in controlling pollution including but not limited to waste water treatment plants, solid waste disposal sites and sludge disposal sites.

2. Plans should designate areas for urban and rural residential use only where approvable sewage disposal alternatives have been clearly identified in such plans.

3. Plans should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources.

4. Plans which provide for the maintenance and improvement of air, land and water resources of the planning area should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. All plans and programs affecting waste and process discharges should be coordinated within the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plan.

6. Plans of state agencies before they are adopted should be coordinated with and reviewed by local agencies with respect to the impact of these plans on the air, water and land resources in the planning area.

7. In all air quality maintenance areas, plans should be based on applicable state rules for reducing indirect pollution and be sufficiently comprehensive to include major transportation, industrial, institutional, commercial recreational and governmental developments and facilities.

B. IMPLEMENTATION

1. Plans should take into account methods and devices for implementing this goal, including but not limited to the following:

(1) tax incentives and disincentives,

(2) land use controls and ordinances,

(3) multiple-use and joint development practices,

(4) capital facility programming,

(5) fee and less-than-fee acquisition techniques, and

(6) enforcement of local health and safety ordinances.

2. A management program that details the respective implementation roles and responsibilities for carrying out this goal in the planning area should be established in the comprehensive plan.

3. Programs should manage land conservation and development activities in a manner that accurately reflects the community's desires for a quality environment and a healthy economy and is consistent with state environmental quality statutes, rules, standards and implementation plans.

Adopted September 28, 2001
Effective June 1, 2002

Oregon's Statewide Planning Goals and Guidelines
GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

A. NATURAL HAZARD PLANNING

1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.

2. Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides,[1] earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards.

B. RESPONSE TO NEW HAZARD INFORMATION

1. New hazard inventory information provided by federal and state agencies shall be reviewed by the Department in consultation with affected state and local government representatives.
2. After such consultation, the Department shall notify local governments if the new hazard information requires a local response.
3. Local governments shall respond to new inventory information on natural hazards within 36 months after being notified by the Department of Land Conservation and Development, unless extended by the Department.

C. IMPLEMENTATION

Upon receiving notice from the Department, a local government shall:

1. Evaluate the risk to people and property based on the new inventory information and an assessment of:
   a. the frequency, severity and location of the hazard;
   b. the effects of the hazard on existing and future development;
   c. the potential for development in the hazard area to increase the frequency and severity of the hazard; and
   d. the types and intensities of land uses to be allowed in the hazard area.
2. Allow an opportunity for citizen review and comment on the new inventory information and the results of the evaluation and incorporate such information into the comprehensive plan, as necessary.
3. Adopt or amend, as necessary, based on the evaluation of risk, plan policies and implementing measures consistent with the following principles:
   a. avoiding development in hazard areas where the risk to people and property cannot be mitigated; and
   b. prohibiting the siting of essential facilities, major structures, hazardous facilities and special occupancy structures, as defined in the state building code (ORS 455.447(1) (a)(b)(c) and (e)), in identified hazard areas, where the risk to public safety cannot be mitigated, unless an essential facility is needed within a hazard area in order to provide essential emergency response services in a timely manner.[2]
4. Local governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and

[1] For "rapidly moving landslides," the requirements of ORS 195.250-195.275 (1999 edition) apply.

[2] For purposes of constructing essential facilities, and special occupancy structures in tsunami inundation zones, the requirements of the state building code - ORS 455.446 and 455.447 (1999 edition) and OAR chapter 632, division 5 apply.

implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements.

D. COORDINATION

1. In accordance with ORS 197.180 and Goal 2, state agencies shall coordinate their natural hazard plans and programs with local governments and provide local governments with hazard inventory information and technical assistance including development of model ordinances and risk evaluation methodologies.

2. Local governments and state agencies shall follow such procedures, standards and definitions as may be contained in statewide planning goals and commission rules in developing programs to achieve this goal.

GUIDELINES

A. PLANNING

1. In adopting plan policies and implementing measures to protect people and property from natural hazards, local governments should consider:

a. the benefits of maintaining natural hazard areas as open space, recreation and other low density uses;

b. the beneficial effects that natural hazards can have on natural resources and the environment; and

c. the effects of development and mitigation measures in identified hazard areas on the management of natural resources.

2. Local governments should coordinate their land use plans and decisions with emergency preparedness, response, recovery and mitigation programs.

B. IMPLEMENTATION

1. Local governments should give special attention to emergency access when considering development in identified hazard areas.

2. Local governments should consider programs to manage stormwater runoff as a means to help address flood and landslide hazards.

3. Local governments should consider nonregulatory approaches to help implement this goal, including but not limited to:

a. providing financial incentives and disincentives;

b. providing public information and education materials;

c. establishing or making use of existing programs to retrofit, relocate, or acquire existing dwellings and structures at risk from natural disasters.

4. When reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties.

5. Local governments should consider measures that exceed the National Flood Insurance Program (NFIP) such as:

a. limiting placement of fill in floodplains;

b. prohibiting the storage of hazardous materials in floodplains or providing for safe storage of such materials; and

c. elevating structures to a level higher than that required by the NFIP and the state building code.

Flood insurance policy holders may be eligible for reduced insurance rates through the NFIP's Community Rating System Program when local governments adopt these and other flood protection measures.

Oregon's Statewide Planning Goals & Guidelines
GOAL 8: RECREATIONAL NEEDS
OAR 660-015-0000(8)

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RECREATION PLANNING

The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions; and (3) in such quantity, quality and locations as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

DESTINATION RESORT SITING

Comprehensive plans may provide for the siting of destination resorts on rural lands subject to the provisions of state law, including ORS 197.435 to 197.467, this and other Statewide Planning Goals, and without an exception to Goals 3, 4, 11, or 14.

Eligible Areas

(1) Destination resorts allowed under the provisions of this goal must be sited on lands mapped as eligible by the affected county. A map adopted by a county may not allow destination resorts approved under the provisions of this goal to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort;

(b) On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the United States Natural Resources Conservation Service or its predecessor agency; or within three miles of a High Value Crop Area except that "small destination resorts" may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof;

(c) On predominantly Cubic Foot Site Class 1 or 2 forest lands, as determined by the State Forestry Department, that are not subject to an approved goal exception;

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663;

(e) In an especially sensitive big game habitat as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plans implementing this requirement.

(2) "Small destination resorts" may be allowed consistent with the siting requirements of section (1), above, in the following areas:

(a) On land that is not defined as agricultural or forest land under Goal 3 or 4; or

(b) On land where there has been an exception to Statewide Planning Goals 3, 4, 11, or 14.

Siting Standards

(1) Counties shall ensure that destination resorts are compatible with the site and adjacent land uses through the following measures:

(a) Important natural features, including habitat of threatened or endangered species, streams, rivers, and significant wetlands shall be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be maintained. Alterations to important natural features, including placement of structures that maintain the overall values of the feature, may be allowed.

(b) Sites designated for protection in an acknowledged comprehensive plan designated pursuant to Goal 5 that are located on the tract used for the destination resort shall be preserved through conservation easements as set forth in ORS 271.715 to 271.795. Conservation easements adopted to implement this requirement shall be sufficient to protect the resource values of the site and shall be recorded with the property records of the tract on which the destination resort is sited.

(c) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(i) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas, and other similar types of buffers.

(ii) Setbacks of structures and other improvements from adjacent land uses.

(iii) Measures that prohibit the use or operation in conjunction with the resort of a portion of a tract that is excluded from the site of a destination resort pursuant to ORS 197.435(7). Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law.

Implementing Measures

(1) Comprehensive plans allowing for destination resorts shall include implementing measures that:

(a) Adopt a map consisting of eligible lands for large destination resorts within the county. The map shall be based on reasonably available information, and shall not be subject to revision or refinement after adoption except in conformance with ORS 197.455, and 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-

month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for siting of large destination resorts under the provisions of this goal and ORS 197.435 to 197.467.

(b) Limit uses and activities to those permitted by this goal.

(c) Assure developed recreational facilities and key facilities intended to serve the entire development and visitor oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

DEFINITIONS

Destination Resort -- A self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities, and that qualifies under the definition of either a "large destination resort" or a "small destination resort" in this goal. Spending required under these definitions is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

Large Destination Resort -- To qualify as a "large destination resort" under this Goal, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated as permanent open space excluding yards, streets and parking areas.

(3) At least $7 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.

(4) Commercial uses allowed are limited to types and levels necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

(5) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for overnight lodging must be provided. Accommodations available for residential use shall not exceed two such units for each unit of overnight lodging, or two and one-half such units on land that is in Eastern Oregon as defined by ORS 321.805. However, the rentable overnight lodging units may be phased in as follows:

(a) On land that is not in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units must be constructed or guaranteed through surety

bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this section.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this section.

(E) The development approval shall provide for the construction of other required overnight lodging units within five years of the initial lot sales.

(b) On lands in Eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.

(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this section.

(F) If the developer of a resort guarantees the overnight lodging units required under paragraphs (C) and (D) of this subsection through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

(6) When making a land use decision authorizing construction of a "large destination resort" in Eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this definition. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in section (5)(b) of this definition.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in section (2) of the definition for "overnight lodgings" in this goal.

Small Destination Resort -- To qualify as a "small destination resort" under Goal 8, a proposed development must meet standards (2) and (4) under the definition of "large destination resort" and the following standards:

(1) The resort must be located on a site of 20 acres or more.

(2) At least $2 million must be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount must be spent on developed recreation facilities.

(3) At least 25 but not more than 75 units of overnight lodging shall be provided.

(4) Restaurant and meeting rooms with at least one seat for each unit of overnight lodging must be provided.

(5) Residential uses must be limited to those necessary for the staff and management of the resort.

(6) The county governing body or its designee must review the proposed resort and determine that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource that can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(7) The resort shall be constructed and located so that it is not designed to attract highway traffic. Resorts shall not use any manner of outdoor advertising signing except:

(a) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(b) Onsite identification and directional signs.

Developed Recreation Facilities -- are improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

High-Value Crop Area -- an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts, or vegetables, dairying, livestock feedlots, or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The High-Value Crop Area Designation is used for the purpose of minimizing conflicting uses in resort siting and is not meant to revise the requirements of Goal 3 or administrative rules interpreting the goal.

Map of Eligible Lands -- a map of the county adopted pursuant to ORS 197.455.

Open Space -- means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or

nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, land preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

Overnight Lodgings -- are permanent, separately rentable accommodations that are not available for residential use. Overnight lodgings include hotel or motel rooms, cabins, and time-share units. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms, and similar accommodations do not qualify as overnight lodgings for the purpose of this definition. Individually owned units may be considered overnight lodgings if:

(1) With respect to lands not in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service, or

(2) With respect to lands in Eastern Oregon, as defined in ORS 321.805, they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

Recreation Areas, Facilities and Opportunities -- provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archaeology and natural science resources; scenic roads and travelers; sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.

Recreation Needs -- refers to existing and future demand by citizens and visitors for recreations areas, facilities and opportunities.

Self-contained Development -- means a development for which community sewer and water facilities are provided onsite and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

Tract -- means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

Visitor-Oriented Accommodations -- are overnight lodging, restaurants, meeting facilities which are designed to and provide for the needs of visitors rather than year-round residents.

GUIDELINES FOR GOAL 8

A. PLANNING

1. An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.

2. An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area that are available to meet recreation needs.

3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.

4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.

5. The *State Comprehensive Outdoor Recreation Plan* could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.

6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible non-motorized types of recreational activities should be preferred over motorized activities.

7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that

(a) Meet recreational needs requirements for high density population centers,

(b) Meet recreational needs of persons of limited mobility and finances,

(c) Meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself,

(d) Minimize environmental deterioration,

(e) Are available to the public at nominal cost, and

(f) Meet needs of visitors to the state.

8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.

9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.

10. Comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways, and Oregon Recreation Trails.

11. Plans that provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

Plans should take into account various techniques in addition to fee acquisition such as easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication that benefits the subdivision, and similar techniques to meet recreation requirements through tax policies, land leases, and similar programs.

C. RESORT SITING

Measures should be adopted to minimize the adverse environmental effects of resort development on the site, particularly in areas subject to natural hazards. Plans and ordinances should prohibit or discourage alterations and structures in the 100 year floodplain and on slopes exceeding 25 percent. Uses and alterations that are appropriate for these areas include:

1. Minor drainage improvements that do not significantly impact important natural features of the site;
2. Roads, bridges and utilities where there are no feasible alternative locations on the site; and
3. Outdoor recreation facilities including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts and runs. Alterations and structures permitted in these areas should be adequately protected from geologic hazards or of minimal value and designed to minimize adverse environmental effects.

Oregon's Statewide Planning Goals & Guidelines

GOAL 9: ECONOMIC DEVELOPMENT

OAR 660-015-0000(9)

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

Comprehensive plans for urban areas shall:

1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;
2. Contain policies concerning the economic development opportunities in the community;
3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;
4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.

In accordance with ORS 197.180 and Goal 2, state agencies that issue permits affecting land use shall identify in their coordination programs how they will coordinate permit issuance with other state agencies, cities and counties.

GUIDELINES

A. PLANNING

1. A principal determinant in planning for major industrial and commercial developments should be the comparative advantage of the region within which the developments would be located. Comparative advantage industries are those economic activities which represent the most efficient use of resources, relative to other geographic areas.
2. The economic development projections and the comprehensive plan which is drawn from the projections should take into account the availability of the necessary natural resources to support the expanded industrial development and associated populations. The plan should also take into account the social, environmental, energy, and economic impacts upon the resident population.

3. Plans should designate the type and level of public facilities and services appropriate to support the degree of economic development being proposed.

4. Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development.

5. Plans directed toward diversification and improvement of the economy of the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Plans should take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, including but not limited to

(1) tax incentives and disincentives;
(2) land use controls and ordinances;
(3) preferential assessments;
(4) capital improvement programming; and
(5) fee and less-than-fee acquisition techniques.

2. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those private and governmental bodies which operate in the planning area and have interests in carrying out this goal and in supporting and coordinating regional and local economic plans and programs.

Oregon's Statewide Planning Goals & Guidelines

GOAL 10: HOUSING

OAR 660-015-0000(10)

To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Buildable Lands -- refers to lands in urban and urbanizable areas that are suitable, available and necessary for residential use.

Government-Assisted Housing -- means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

Household -- refers to one or more persons occupying a single housing unit.

Manufactured Homes -- means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC 5401 et seq.), as amended on August 22, 1981.

Needed Housing Units -- means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, "needed housing units" also includes (but is not limited to) attached and detached single-family housing, multiple-family housing, and manufactured homes, whether occupied by owners or renters.

GUIDELINES

A. PLANNING

1. In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.

2. Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.

3. Plans should provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas presently developed or undergoing development or redevelopment.

4. Plans providing for housing needs should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Plans should provide for a continuing review of housing need projections and should establish a process for accommodating needed revisions.

2. Plans should take into account the effects of utilizing financial incentives and resources to (a) stimulate the rehabilitation of substandard housing without regard to the financial capacity of the owner so long as benefits accrue to the occupants; and (b) bring into compliance with codes adopted to assure safe and sanitary housing the dwellings of individuals who cannot on their own afford to meet such codes.

3. Decisions on housing development proposals should be expedited when such proposals are in accordance with zoning ordinances and with provisions of comprehensive plans.

4. Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities, (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optimal use of existing urban land particularly in sections containing significant amounts of unsound substandard structures.

5. Additional methods and devices for achieving this goal should, after consideration of the impact on lower income households, include, but not be limited to: (1) tax incentives and disincentives; (2) building and construction code revision; (3) zoning and land use controls; (4) subsidies and loans; (5) fee and less-than-fee acquisition techniques; (6) enforcement of local health and safety codes; and (7) coordination of the development of urban facilities and services to disperse low income housing throughout the planning area.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

Oregon's Statewide Planning Goals & Guidelines

GOAL 11: PUBLIC FACILITIES AND SERVICES

OAR 660-015-0000(11)

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served. A provision for key facilities shall be included in each plan. Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

Counties shall develop and adopt community public facility plans regulating facilities and services for certain unincorporated communities outside urban growth boundaries as specified by Commission rules.

Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land.

Local governments may allow residential uses located on certain rural residential lots or parcels inside existing sewer district or sanitary authority boundaries to connect to an existing sewer line under the terms and conditions specified by Commission rules.

Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or unincorporated community boundaries at a density higher than authorized without service from such a system.

In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties.

A Timely, Orderly, and Efficient Arrangement – refers to a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

Rural Facilities and Services – refers to facilities and services suitable and appropriate solely for the needs of rural lands.

Urban Facilities and Services – Refers to key facilities and to appropriate types and levels of at least the following: police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services.

Public Facilities Plan – A public facility plan is a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plan or plans within an urban growth boundary containing a population greater than 2,500.

Community Public Facilities Plan – A support document or documents to a comprehensive plan applicable to specific unincorporated communities outside UGBs. The community public facility plan describes the water and sewer services and facilities which are to support the land uses designated in the plan for the unincorporated community.

Water system – means a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285.

Extension of a sewer or water system – means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer or water system, as defined by Commission rules.

GUIDELINES

A. PLANNING

1. Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, urbanizable land, rural uses and for the transition of rural land to urban uses.

2. Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.

3. Public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses.

4. Public facilities and services in urbanizable areas should be provided at levels necessary and suitable for existing uses. The provision for future public facilities and services in these areas should be based upon: (1) the time required to provide the service; (2) reliability of service; (3) financial cost; and (4) levels of service needed and desired.

5. A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area.

6. All utility lines and facilities should be located on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units.

7. Plans providing for public facilities and services should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land

conservation and development action provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Capital improvement programming and budgeting should be utilized to achieve desired types and levels of public facilities and services in urban, urbanizable and rural areas.

2. Public facilities and services should be appropriate to support sufficient amounts of land to maintain an adequate housing market in areas undergoing development or redevelopment.

3. The level of key facilities that can be provided should be considered as a principal factor in planning for various densities and types of urban and rural land uses.

4. Plans should designate sites of power generation facilities and the location of electric transmission lines in areas intended to support desired levels of urban and rural development.

5. Additional methods and devices for achieving desired types and levels of public facilities and services should include but not be limited to the following: (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) multiple use and joint development practices; (4) fee and less-than-fee acquisition techniques; and (5) enforcement of local health and safety codes.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal

Oregon's Statewide Planning Goals & Guidelines

GOAL 12: TRANSPORTATION

OAR 660-015-0000(12)

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Transportation -- refers to the movement of people and goods.

Transportation Facility -- refers to any physical facility that moves or assists in the movement of people and goods excluding electricity, sewage and water.

Transportation System -- refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

Mass Transit -- refers to any form of passenger transportation which carries members of the public on a regular and continuing basis.

Transportation Disadvantaged -- refers to those individuals who have difficulty in obtaining transportation because of their age, income, physical or mental disability.

GUIDELINES

A. PLANNING

1. All current area-wide transportation studies and plans should be revised in coordination with local and regional comprehensive plans and submitted to local and regional agencies for review and approval.

2. Transportation systems, to the fullest extent possible, should be planned to utilize existing facilities and rights-of-way within the state provided that such use is not inconsistent with the environmental, energy, land-use, economic or social policies of the state.

3. No major transportation facility should be planned or developed outside urban boundaries on Class 1 and II agricultural land, as defined by the U.S. Soil Conservation Service unless no feasible alternative exists.

4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exists.

5. Population densities and peak hour travel patterns of existing and planned developments should be considered in the choice of transportation modes for trips taken by persons. While high density developments with concentrated trip origins and destinations should be designed to be principally served by mass transit,

low-density developments with dispersed origins and destinations should be principally served by the auto.

6. Plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. The number and location of major transportation facilities should conform to applicable state or local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth while providing transportation service necessary to sustain rural and recreational uses in those areas so designated in the comprehensive plan.

2. Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.

3. Lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.

4. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

Oregon's Statewide Planning Goals & Guidelines

GOAL 13: ENERGY CONSERVATION

OAR 660-015-0000(13)

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

GUIDELINES

A. PLANNING

1. Priority consideration in land use planning should be given to methods of analysis and implementation measures that will assure achievement of maximum efficiency in energy utilization.

2. The allocation of land and uses permitted on the land should seek to minimize the depletion of non-renewable sources of energy.

3. Land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land and those uses which are not energy efficient.

4. Land use planning should, to the maximum extent possible, combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency.

5. Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for under such plans should utilize renewable energy sources.

B. IMPLEMENTATION

1. Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:

a. Lot size, dimension, and siting controls;

b. Building height, bulk and surface area;

c. Density of uses, particularly those which relate to housing densities;

d. Availability of light, wind and air;

e. Compatibility of and competition between competing land use activities; and

f. Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.

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GOAL 14: URBANIZATION

OAR 660-015-0000(14)

(Effective April 28, 2006)

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Urban Growth Boundaries

Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments. An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located, consistent with intergovernmental agreements, except for the Metro regional urban growth boundary established pursuant to ORS chapter 268, which shall be adopted or amended by the Metropolitan Service District.

Land Need

Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.

Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;

(2) Orderly and economic provision of public facilities and services;

(3) Comparative environmental, energy, economic and social consequences; and

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

Urbanizable Land

Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

Unincorporated Communities

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest operations and interfere with the efficient functioning of urban growth boundaries.

Single-Family Dwellings in Exception Areas

Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that:

(a) Was lawfully created;

(b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

(c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and

(d) Is planned and zoned primarily for residential use.

Rural Industrial Development

Notwithstanding other provisions of this goal restricting urban uses on rural land, a county may authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, on certain lands outside urban growth boundaries specified in ORS 197.713 and 197.714, consistent with the requirements of those statutes and any applicable administrative rules adopted by the Commission.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area; (2) the needs of the forecast population; (3) the carrying capacity of the planning area; and (4) open space and recreational needs.

2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.

3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

4. Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors

which should be utilized to direct urban expansion.

2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.

3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.

4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.

5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

Oregon's Statewide Planning Goals & Guidelines

GOAL 16: ESTUARINE RESOURCES

OAR 660-015-0010(1)

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Comprehensive management programs to achieve these objectives shall be developed by appropriate local, state, and federal agencies for all estuaries.

To assure diversity among the estuaries of the State, by June 15, 1977, LCDC with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration which may be allowed to occur within each estuary. After completion for all estuaries of the inventories and initial planning efforts, including identification of needs and potential conflicts among needs and goals and upon request of any coastal jurisdiction, the Commission will review the overall Oregon Estuary Classification.

Comprehensive plans and activities for each estuary shall provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification, as well as with the biological economic, recreational, and aesthetic benefits of the estuary. Estuary plans and activities shall protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality.

The general priorities (from highest to lowest) for management and use of estuarine resources as implemented through the management unit designation and permissible use requirements listed below shall be:

1. Uses which maintain the integrity of the estuarine ecosystem;
2. Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification;
3. Water-related uses which do not degrade or reduce the natural estuarine resources and values;
4. Nondependent, nonrelated uses which do not alter, reduce or degrade estuarine resources and values.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for designating estuary uses and policies. These inventories shall provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of exceptional potential for development.

State and federal agencies shall assist in the inventories of estuarine resources. The Department of Land Conservation and Development, with assistance from local government, state and federal agencies, shall establish common inventory standards and techniques, so that inventory data collected by different agencies or units of government, or data between estuaries, will be comparable.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, the limits imposed by the overall Oregon Estuary Classification, and needs identified in the planning process, comprehensive plans for coastal areas shall:

1. Identify each estuarine area:
2. Describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;
3. Classify the estuary into management units; and
4. Establish policies and use priorities for each management unit using the standards and procedures set forth below.
5. Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections.

MANAGEMENT UNITS

Diverse resources, values, and benefits shall be maintained by classifying the estuary into distinct water use management units. When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

1. Adjacent upland characteristics and existing land uses;
2. Compatibility with adjacent uses;
3. Energy costs and benefits; and
4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.

As a minimum, the following kinds of management units shall be established:

1. ***Natural*** -- in all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.

Permissible uses in natural management units shall include the following:

a. undeveloped low-intensity, water-dependent recreation;

b. research and educational observations;

c. navigation aids, such as beacons and buoys;

d. protection of habitat, nutrient, fish, wildlife and aesthetic resources;

e. passive restoration measures;

f. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;

g. riprap for protection of uses existing as of October 7, 1977, unique natural resources, historical and archeological values; and public facilities; and

h. bridge crossings.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

a. aquaculture which does not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;

b. communication facilities;

c. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;

d. boat ramps for public use where no dredging or fill for navigational access is needed; and,

e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation.

f. installation of tidegates in existing functional dikes.

g. temporary alterations.

h. bridge crossing support structures and dredging necessary for their installation.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.

2. ***Conservation*** -- In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above, and recreational or commercial oyster and clam beds not included in (1) above. Areas that are partially altered and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

Permissible uses in conservation management units shall be all uses listed in (1) above except temporary alterations.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

a. High-intensity water-dependent recreation, including boat ramps, marinas and new dredging for boat ramps and marinas;

b. Minor navigational improvements;

c. Mining and mineral extraction, including dredging necessary for mineral extraction;

d. Other water dependent uses requiring occupation of water surface area by means other than dredge or fill;

e. Aquaculture requiring dredge or fill or other alteration of the estuary;

f. Active restoration for purposes other than those listed in 1(d).

g. Temporary alterations.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values and aquaculture.

3. ***Development*** -- in estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alterations of the estuary not included in (1) and (2) above.

Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

As appropriate the following uses shall also be permissible in development management units:

a. Dredge or fill, as allowed elsewhere in the goal;

b. Navigation and water-dependent commercial enterprises and activities;

c. Water transport channels where dredging may be necessary;

d. Flow-lane disposal of dredged material monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

e. Water storage areas where needed for products used in or resulting from industry, commerce, and recreation;

f. Marinas.

Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring dredge or fill; mining and mineral extraction; and activities identified in (1) and (2) above shall also be appropriate.

In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

IMPLEMENTATION REQUIREMENTS

1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake

or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

a. The type and extent of alterations expected;

b. The type of resource(s) affected;

c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and

d. The methods which could be employed to avoid or minimize adverse impacts.

2. Dredging and/or filling shall be allowed only:

a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and,

b. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and

c. If no feasible alternative upland locations exist; and,

d. If adverse impacts are minimized.

Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met. All or portions of these requirements may be applied at the time of plan development for actions identified in the plan. Otherwise, they shall be applied at the time of permit review.

3. State and federal agencies shall review, revise, and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls.

Existing programs which shall be utilized include:

a. The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610-527.730 and 527.990 and the Forest Lands Goal;

b. The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for Agricultural Lands Goal;

c. The nonpoint source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL92-500); and

d. The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 - 541.665.

4. The State Water Policy Review Board, assisted by the staff of the Oregon Department of Water Resources, and the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Division of State Lands, and the U.S. Geological Survey, shall consider establishing minimum fresh-water flow rates and standards so that resources and uses of the estuary, including navigation, fish and wildlife

characteristics, and recreation, will be maintained.

5. When dredge or fill activities are permitted in intertidal or tidal marsh areas, their effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained. Comprehensive plans shall designate and protect specific sites for mitigation which generally correspond to the types and quantity of intertidal area proposed for dredging or filling, or make findings demonstrating that it is not possible to do so.

6. Local government and state and federal agencies shall develop comprehensive programs, including specific sites and procedures for disposal and stock-piling of dredged materials. These programs shall encourage the disposal of dredged material in uplands or ocean waters, and shall permit disposal in estuary waters only where such disposal will clearly be consistent with the objectives of this goal and state and federal law. Dredged material shall not be disposed in intertidal or tidal marsh estuarine areas unless part of an approved fill project.

7. Local government and state and federal agencies shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.

8. State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation.

9. State agencies with planning, permit, or review authorities affected by this goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. In estuarine areas the following authorities are of special concern:

Division of State Lands

Fill and Removal Law ORS 541.605-541.665

Mineral Resources ORS 273.551; ORS 273.775 - 273.780

Submersible and Submerged Lands ORS 274.005 - 274.940

Economic Development Department

Ports Planning ORS 777.835

Water Resources Department

Appropriation of Water ORS 37.010-537.990; ORS 543.010-543.620

Department of Geology and Mineral Industries

Mineral Extraction ORS 520.005-

Oil and Gas Drilling ORS 520.095

Department of Forestry

Forest Practices Act ORS 527.610-527.730

Department of Energy

Regulation of Thermal Power and Nuclear Installation ORS 469.300-469.570

Department of Environmental Quality

Water Quality ORS 468.700-468.775

Sewage Treatment and Disposal Systems ORS 454.010-454.755

GUIDELINES

The requirements of the Estuarine Resources Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to estuarine areas and implementation of the Estuarine Resources Goal.

Because of the strong relationship between estuaries and adjacent coastal shorelands, the inventories and planning requirements for these resources should be closely coordinated. These inventories and plans should also be fully coordinated with the requirements in other state planning goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Recreational Needs; Transportation; and Economy of the State.

A. INVENTORIES

In detail appropriate to the level of development or alteration proposed, the inventories for estuarine features should include:

1. Physical characteristics

a. Size, shape, surface area, and contour, including water depths;

b. Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen. Data should reflect average and extreme values for the months of March, June, September, and December as a minimum; and

c. Substrate mapping showing location and extent of rock, gravel, sand, and mud.

2. Biological characteristic--Location, Description, and Extent of:

a. The common species of benthic (living in or on bottom) flora and fauna;

b. The fish and wildlife species, including part-time residents;

c. The important resting, feeding, and nesting areas for migrating and resident shorebirds, wading birds and wildlife;

d. The areas important for recreational fishing and hunting, including areas used for clam digging and crabbing;

e. Estuarine wetlands;

f. Fish and shellfish spawning areas;

g. Significant natural areas; and

h. Areas presently in commercial aquaculture.

3. Social and economic characteristics--Location, Description, and Extent of:

a. The importance of the estuary to the economy of the area:

b. Existing land uses surrounding the estuary;

c. Man-made alterations of the natural estuarine system;

d. Water-dependent industrial and/or commercial enterprises;

e. Public access;

f. Historical or archaeological sites associated with the estuary; and

g. Existing transportation systems.

B. HISTORIC, UNIQUE, AND SCENIC WATERFRONT COMMUNITIES

Local government comprehensive plans should encourage the maintenance and enhancement of historic, unique, and scenic waterfront communities, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

C. TRANSPORTATION

Local governments and state and federal agencies should closely coordinate and integrate navigation and port needs with shoreland and upland transportation facilities and the requirements of the Transportation Goal. The cumulative effects of such plans and facilities on the estuarine resources and values should be considered.

D. TEMPORARY ALTERATIONS

The provision for temporary alterations in the Goal is intended to allow alterations to areas and resources that the Goal otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal.

Application of the resource capabilities test to temporary alterations should ensure:

1. That the short-term damage to resources is consistent with resource capabilities of the area; and

2. That the area and affected resources can be restored to their original condition.

Oregon s Statewide Planning Goals & Guidelines

GOAL 17: COASTAL SHORELANDS

OAR 660-015-0010(2)
(Please Note: Amended 08/05/99; Effective 08/20/99)

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

Programs to achieve these objectives shall be developed by local, state, and federal agencies having jurisdiction over coastal shorelands.

Land use plans, implementing actions and permit reviews shall include consideration of the critical relationships between coastal shorelands and resources of coastal waters, and of the geologic and hydrologic hazards associated with coastal shorelands. Local, state and federal agencies shall within the limit of their authorities maintain the diverse environmental, economic, and social values of coastal shorelands and water quality in coastal waters. Within those limits, they shall also minimize man-induced sedimentation in estuaries, near shore ocean waters, and coastal lakes.

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

1. Promote uses which maintain the integrity of estuaries and coastal waters;
2. Provide for water-dependent uses;
3. Provide for water-related uses;
4. Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;
5. Provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;
6. Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide information on the nature, location, and extent of geologic and hydrologic hazards and shoreland values, including fish and

wildlife habitat, water-dependent uses, economic resources, recreational uses, and aesthetics in sufficient detail to establish a sound basis for land and water use management.

The inventory requirements shall be applied within an area known as a coastal shorelands planning area. This planning area is not an area within which development or use is prohibited. It is an area for inventory, study, and initial planning for development and use to meet the Coastal Shorelands Goal.

The planning area shall be defined by the following:

1. All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:

(a) In Tillamook County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips Drive (County Road 915) northerly from Pacific City to its junction with Sandlake Road (County Road 871), Sandlake-Cape Lookout Road, (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665) northerly from its junction with the Sandlake-Cape Lookout Road (County Road 871) to its junction at Netarts with State Highway 131, and northerly along State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

(b) In Coos County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Oregon State 240, Cape Arago Secondary (FAS 263) southerly from its junction with the Oregon Coast Highway to Charleston; Seven Devils Road (County Road 33) southerly from its junction with Oregon State 240 (FAS 263) to its junction with the Oregon Coast Highway, near Bandon; and

2. All lands within an area defined by a line measured horizontally

(a) 1000 feet from the shoreline of estuaries; and

(b) 500 feet from the shoreline of coastal lakes.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, comprehensive plans for coastal areas adjacent to the ocean, estuaries, or coastal lakes shall:

1. Identify coastal shorelands;

2. Establish policies and uses of coastal shorelands in accordance with standards set forth below:

Identification of Coastal Shorelands. Lands contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:

1. Areas subject to ocean flooding and lands within 100 feet of the ocean shore or within 50 feet of an estuary or a coastal lake;

2. Adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body;

3. Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas;

4. Areas of significant shoreland and wetland biological habitats whose habitat quality is primarily derived from or related to the association with coastal water areas;

5. Areas necessary for water-dependent and water-related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities, dredge material disposal and mitigation sites, and areas having characteristics suitable for aquaculture;

6. Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or related to the association with coastal water areas; and

7. Coastal headlands.

Coastal Shoreland Uses

1. Major marshes, significant wildlife habitat, coastal headlands, and exceptional aesthetic resources inventoried in the Identification Section, shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting, wild crops, and low intensity water-dependent recreation.

2. Water-Dependent Shorelands.

Location. Shorelands in the following areas that are suitable for water-dependent uses shall be protected for water-dependent recreational, commercial, and industrial uses:

(a) urban or urbanizable areas;

(b) rural areas built upon or irrevocably committed to non-resource use; and

(c) any unincorporated community subject to OAR Chapter 660, Division 022 (Unincorporated Communities).

Minimum Acreage. Within each estuary, the minimum amount of shorelands to be protected shall be equivalent to the following combination of factors as they may exist:

(a) Acreage of estuarine shorelands that are currently being used for water-dependent uses; and

(b) Acreage of estuarine shorelands that at any time were used for water-dependent uses and still possess structures or facilities that provide or provided water-dependent uses with access to the adjacent coastal water body. Examples of such facilities or structures that provide water-dependent access would be wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures, or navigational aids.

Suitability. Any shoreland area within the estuary may be designated to provide the minimum amount of protected shorelands. However, any such designated shoreland area shall be suitable for water dependent uses. At a minimum, such water-dependent shoreland areas shall possess, or be capable of possessing, structures or facilities that provide water-dependent uses with physical access to the adjacent coastal water body. Such designations shall comply with applicable Statewide Planning Goals.

Permissible Nonwater-Dependent Uses. Other uses which may be permitted in these areas are temporary uses which involve minimal capital investment and no permanent

structures, or a use in conjunction with and incidental and subordinate to a water-dependent use.

Applicability. Local cities and counties are not mandated by this requirement to make changes to their acknowledged local comprehensive plans or land use regulations for existing water-dependent shorelands. However, if a local government chooses to revise the boundary of or allowed uses of a designated water-dependent shoreland site, then this requirement shall apply.

3. Local governments shall determine whether there are any existing, developed commercial/industrial waterfront areas which are suitable for redevelopment which are not designated as especially suited for water-dependent uses. Plans shall be prepared for these areas which allow for a mix of water-dependent, water-related, and water oriented nondependent uses and shall provide for public access to the shoreline.

4. Shorelands in rural areas other than those built upon or irrevocably committed to nonresource use and those designated in (1) above shall be used as appropriate for:

(a) farm uses as provided in ORS Chapter 215;

(b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;

(c) private and public water-dependent recreation developments;

(d) aquaculture;

(e) water-dependent commercial and industrial uses, water-related uses and other uses only upon a finding by the county that such uses satisfy a need which cannot be accommodated on uplands or in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

IMPLEMENTATION REQUIREMENTS

1. The Oregon Department of Forestry shall recognize the unique and special values provided by coastal shorelands when developing standards and policies to regulate uses of forest lands within coastal shorelands. With other state and federal agencies, the Department of Forestry shall develop forest management practices and policies including, where necessary, amendments to the FPA rules and programs which protect and maintain the special shoreland values and forest uses especially for natural shorelands and riparian vegetation.

2. Local government, with assistance from state and federal agencies, shall identify coastal shoreland areas which may be used to fulfill the mitigation requirement of the Estuarine Resources Goal. These areas shall be protected from new uses and activities which would prevent their ultimate restoration or addition to the estuarine ecosystem.

3. Coastal shorelands identified under the Estuarine Resources Goal for dredged material disposal shall be protected from new uses and activities which would prevent their ultimate use for dredged material disposal.

4. Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resources, riparian vegetation shall be maintained; and where appropriate ,

restored and enhanced, consistent with water-dependent uses.

5. Land-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective structures; and fill, whether located in the waterways or on shorelands above ordinary high water mark, shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns.

6. Local government in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access. Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

GUIDELINES FOR GOAL 17

The requirements of the Coastal Shorelands Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to coastal shoreland areas and implementation of the Coastal Shorelands Goal.

Because of the strong relation of estuarine shorelands to adjacent estuaries, the inventory and planning requirements for estuaries and estuarine shorelands should also be fully coordinated. Coastal shoreland inventories and planning should also be fully coordinated with those required in other statewide planning goals, supplementing them where necessary. Of special importance are the plan requirements of the Goals for Agricultural Lands; Forest Lands; Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Areas Subject to Natural Disasters and Hazards; Recreational Needs; and Economy of the State.

A. INVENTORIES

In coastal shoreland areas the following inventory needs should be reviewed. The level of detail of information needed will differ depending on the development or alteration proposed and the degree of conflict over the potential designation.

1. Hazard areas, including at least:

(a) Areas the use of which may result in significant hydraulic alteration of other lands or water bodies;

(b) Areas of geological instability in, or adjacent to shorelines; and

(c) The 100-Year Floodplain.

2. Existing land uses and ownership patterns, economic resources, development needs, public facilities, topography, hydrography, and similar information affecting shorelands;

3. Areas of aesthetic and scenic importance;

4. Coastal shoreland and wetland biological habitats which are dependent upon the adjacent water body, plus other coastal shoreland and

adjacent aquatic areas of biological importance (feeding grounds, nesting sites, areas of high productivity, etc.) natural areas and fish and wildlife habitats;

5. Areas of recreational importance;

6. Areas of vegetative cover which are riparian in nature or which function to maintain water quality and to stabilize the shoreline;

7. Sedimentation sources;

8. Areas of present public access and recreational use;

9. The location of archaeological and historical sites; and

10. Coastal headlands.

B. FLOODPLAIN

In the development of comprehensive plans, the management of uses and development in floodplain areas should be expanded beyond the minimal considerations necessary to comply with the National Flood Insurance Program and the requirements of the Flood Disaster Protection Act of 1973. Communities may wish to distinguish between the floodway and floodfringe in developing coastal shoreland plans; development in the floodway should be more strictly controlled. Government projects in coastal shorelands should be examined for their impact on flooding, potential flood damage, and effect on growth patterns in the floodplain. Nonwater-dependent emergency service structures (such as hospitals, police, and fire stations) should not be constructed in the floodplain. Although they may be flood-proofed, access and egress may be prevented during a flood emergency.

C. OPEN SPACE, NATURAL AREAS AND AESTHETIC RESOURCES, AND RECREATION

Coastal shorelands provide many areas of unique or exceptional value and benefit for open space, natural areas, and aesthetic and recreational use. The requirements of the Goals for Open Spaces, Scenic and Historic Areas, and Natural Resources (Goal 5) and Recreational Needs (Goal 8) should be carefully coordinated with the coastal shoreland planning effort. The plan should provide for appropriate public access to and recreational use of coastal waters. Public access through and the use of private property shall require the consent of the owner and is a trespass unless appropriate easements and access have been acquired in accordance with law.

D. DEVELOPMENT NEEDS

In coordination with planning for the Estuarine Resources Goal, coastal shoreland plans should designate appropriate sites for water-dependent activities, and for dredged material disposal.

Historic, unique, and scenic waterfront communities should be maintained and enhanced, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

E. TRANSPORTATION

The requirements of the Transportation Goal should be closely coordinated with the Coastal Shorelands Goal. Coastal transportation systems frequently utilize shoreland areas and may significantly affect the resources and values of coastal shorelands and adjacent waters; they should allow appropriate

access to coastal shorelands and adjacent waters, and be planned in full recognition of the protection needs for the special resources and benefits which shorelands provide.

F. EXAMPLES OF INCIDENTAL USES

Examples of uses that are in conjunction with and incidental to a water-dependent use include a restaurant on the second floor of an existing seafood processing plant and a retail sales room as part of a seafood processing plant. Generally, to be in conjunction with and incidental to a water dependent use, a nonwater-dependent use must be constructed at the same time or after the water-dependent use of the site is established and be carried out together with the water-dependent use. Incidental means that the size of nonwater-dependent use is small in relation to the water-dependent operation and that it does not interfere with conduct of the water-dependent use.

Oregon's Statewide Planning Goals & Guidelines

GOAL 18: BEACHES AND DUNES

OAR 660-015-0010(3)

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of this goal.

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

USES

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat as identified through application of Goals 5 and 17.

IMPLEMENTATION REQUIREMENTS

1. Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:

(a) The type of use proposed and the adverse effects it might have on the site and adjacent areas;

(b) Temporary and permanent stabilization programs and the planned

maintenance of new and existing vegetation;

(c) Methods for protecting the surrounding area from any adverse effects of the development; and

(d) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

2. Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

(a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and

(b) Is designed to minimize adverse environmental effects.

3. Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

4. Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.

5. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

(a) visual impacts are minimized;

(b) necessary access to the beach is maintained;

(c) negative impacts on adjacent property are minimized; and

(d) long-term or recurring costs to the public are avoided.

6. Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if

the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

(a) Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;

(b) Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;

(c) Identify and set priorities for low and narrow dune areas which need to be built up;

(d) Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and

(e) Prohibit removal of sand from the beach-foredune system.

The Commission shall, by January 1, 1987, evaluate plans and actions which implement this requirement and determine whether or not they have interfered with maintaining the integrity of beach and dune areas and minimize flooding and erosion problems. If the Commission determines that these measures have interfered it shall initiate Goal amendment proceedings to revise or repeal these requirements.

GUIDELINES FOR GOAL 18

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Space, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. INVENTORIES

Local government should begin the beach and dune inventory with a review of Beaches and Dunes of the Oregon Coast, USDA Soil Conservation Service and OCCDC, March 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;

2. Patterns of erosion, accretion, and migration;

3. Storm and ocean flood hazards;

4. Existing and projected use, development and economic activity on the beach and dune landforms; and

5. Areas of significant biological importance.

B. EXAMPLES OF MINIMAL DEVELOPMENT

Examples of development activity which are of minimal value and suitable for development of conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. EVALUATING BEACH AND DUNE PLANS AND ACTIONS

Local government should adopt strict controls for carrying out the Implementation Requirements of this goal. The controls could include:

1. Requirement of a site investigation report financed by the developer;

2. Posting of performance bonds to assure that adverse effects can be corrected; and

3. Requirement of re-establishing vegetation within a specific time.

D. SAND BY-PASS

In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. PUBLIC ACCESS

Where appropriate, local government should require new developments to dedicate easements for public access to public beaches, dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. DUNE STABILIZATION

Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. OFF-ROAD VEHICLES

Appropriate levels of government should designate specific areas for the recreational use of off-road vehicles (ORVs). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

H. FOREDUNE GRADING PLANS

Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an area-wide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.

Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;
- Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;
- Identifying appropriate sites for public and emergency access to the beach.

Oregon's Statewide Planning Goals & Guidelines

GOAL 19: OCEAN RESOURCES

OAR 660-015-0010(4)

To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

To carry out this goal, all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon's territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources—i.e., living marine organisms—than to the development of non-renewable ocean resources.

OCEAN STEWARDSHIP AREA

The State of Oregon has interests in the conservation of ocean resources in an Ocean Stewardship Area, an ocean area where natural phenomena and human uses can affect uses and resources of Oregon's territorial sea. The Ocean Stewardship Area includes the state's territorial sea, the continental margin seaward to the toe of the continental slope, and adjacent ocean areas. Within the Ocean Stewardship Area, the State of Oregon will:

- Use all applicable state and federal laws to promote its interests in management and conservation of ocean resources;
- Encourage scientific research on marine ecosystems, ocean resources and uses, and oceanographic conditions to acquire information needed to make ocean and coastal-management decisions;
- Seek co-management arrangements with federal agencies when appropriate to ensure that ocean resources are managed and protected consistent with the policies of Statewide Planning Goal 19, Ocean Resources, and the Territorial Sea Plan; and
- Cooperate with other states and governmental entities directly and through regional mechanisms to manage and protect ocean resources and uses.

The Ocean Stewardship Area is not intended to change the seaward boundary of the State of Oregon, extend the seaward boundaries of the state's federally approved coastal zone under the federal Coastal Zone Management Act, affect the jurisdiction of adjacent coastal states, alter the authority of federal agencies to manage the resources of the United States Exclusive Economic Zone, or limit or otherwise change federal agency responsibilities to comply with the consistency requirements of the federal Coastal Zone Management Act.

INFORMATION AND EFFECTS ASSESSMENT REQUIRED

Prior to taking an action that is likely to affect ocean resources or uses of Oregon's territorial sea, state and federal agencies shall assess the reasonably foreseeable adverse effects of the action as required in the Oregon Territorial Sea Plan. The effects assessment shall also address reasonably foreseeable adverse effects on Oregon's estuaries and shorelands as required by Statewide Planning Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; and Goal 18, Beaches and Dunes.

IMPLEMENTATION REQUIREMENTS

1. Uses of Ocean Resources

State and federal agencies shall carry out actions that are reasonably likely to affect ocean resources and uses of the Oregon territorial sea in such a manner as to:

a. maintain and, where appropriate, restore the long-term benefits derived from renewable marine resources;

b. protect:

1. renewable marine resources—i.e., living marine organisms—from adverse effects of development of non-renewable resources, uses of the ocean floor, or other actions;

2. the biological diversity of marine life and the functional integrity of the marine ecosystem;

3. important marine habitat, including estuarine habitat, which are areas and associated biologic communities that are:

a) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; or

b) needed to assure the survival of threatened or endangered species; or

c) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; or

d) essential to the life-history or behaviors of marine organisms; or

e) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or

f) unique or of limited range within the state; and

4. areas important to fisheries, which are:

a) areas of high catch (e.g., high total pounds landed and high value of landed catch); or

b) areas where highly valued fish are caught even if in low abundance or by few fishers; or

c) areas that are important on a seasonal basis; or

d) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or

e) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.

c. Agencies, through programs, approvals, and other actions, shall

1. protect and encourage the beneficial uses of ocean resources—such as navigation, food production, recreation, aesthetic enjoyment, and uses of the seafloor—provided that such activities do not adversely affect the resources protected in subsection 1.,

above; avoid, to the extent possible, adverse effects on or operational conflicts with other ocean uses and activities; and

2. comply with applicable requirements of the Oregon Territorial Sea Plan.

2. Management Measures

Management measures for ocean resources and uses shall be appropriate to the circumstances and provide flexibility for future actions. Such management measures may include:

a. Adaptive Management: to adapt management programs to account for variable conditions in the marine environment, the changeable status of resources, and individual or cumulative effects of uses;

b. Condition Approvals or Actions: to place conditions or limit actions to protect or shield other uses and resources;

c. Special Management Area Plans: to develop management plans for certain marine areas to address the unique management needs for resource protection, resource utilization, and interagency cooperation in the areas;

d. Intergovernmental Coordination and Cooperation: to coordinate, integrate, and co-manage programs and activities with all levels of government, including Indian tribal governments;

e. Regional Cooperation and Governance: to cooperate with other coastal states, countries, organizations, and federal agencies within the larger marine region to address common or shared ocean resource management issues;

f. Public Involvement: to involve the public and affected groups in the process of protecting ocean resource, especially through public awareness, education, and interpretive programs;

g. Precautionary Approach: to take a precautionary approach to decisions about marine resources and uses when information is limited.

3. Contingency Plans:

State and federal agencies, when approving or taking an action that could, under unforeseen circumstances, result in significant risks to ocean resources and uses, shall, in coordination with any permittee, establish appropriate contingency plans and emergency procedures to be followed in the event that the approved activity results in conditions that threaten to damage the marine or estuarine environment, resources, or uses.

DEFINITIONS

ACCRETION. The build-up of land along a beach or shore by the deposition of waterborne or airborne sand, sediment, or other material

AGRICULTURAL LAND. See definition in Goal 3, "Agricultural Lands."

ANADROMOUS. Referring to fish, such as salmon, which hatch in fresh water, migrate to ocean waters to grow and mature, and return to fresh waters to spawn.

ARCHAEOLOGICAL RESOURCES. Those districts, sites, buildings, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past. (See Historical Resources definition.)

AVULSION. A tearing away or separation by the force of water. Land which is separated from uplands or adjacent properties by the action of a stream or river cutting through the land to form a new stream bed.

BEACH. Gently sloping areas of loose material (e.g., sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or landform, or to the line of vegetation.

BENTHIC. Living on or within the bottom sediments in water bodies.

BRIDGE CROSSINGS. The portion of a bridge spanning a waterway not including supporting structures or fill located in the waterway or adjacent wetlands.

BRIDGE CROSSING SUPPORT STRUCTURES. Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

CARRYING CAPACITY. Level of use which can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land, and water resources.

CITIZEN. Any individual within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens.

CITIZEN ADVISORY COMMITTEE (CAC). A group of citizens organized to help develop and maintain a comprehensive plan and its land use regulations. Local governments usually establish one such group for each neighborhood in a city or each district in a county. CACs may also be known as neighborhood planning organizations, area advisory committees, or other local terms. CACs convey their advice and concerns on planning issues to the planning commission or governing body. CACs also convey information from local officials to neighborhood and district residents.

CITIZEN INVOLVEMENT ADVISORY COMMITTEE (CIAC). A state committee appointed by the Land Conservation and Development Commission to advise that commission on matters of citizen involvement, to promote public participation in the adoption and amendment of the goals and guidelines, and to assure widespread citizen involvement in all phases of the planning process. CIAC is established in accordance with ORS 197.160.

CITIZEN INVOLVEMENT PROGRAM (CIP). A program established by a city or county to ensure the extensive, ongoing involvement of local citizens in planning. Such programs are required by Goal 1, "Citizen Involvement," and contain or address the six components described in that goal.

COASTAL LAKES. Lakes in the coastal zone that are bordered by a dune formation or that have a direct hydrologic surface or subsurface connection with saltwater.

COASTAL SHORELANDS. Those areas immediately adjacent to the ocean, all estuaries and associated wetlands, and all coastal lakes.

COASTAL STREAM. Any stream within the coastal zone.

COASTAL WATERS. Territorial ocean waters of the continental shelf; estuaries; and coastal lakes.

COASTAL ZONE. The area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction, and in the east by the crest of the coastal mountain range, with the exception of: (a) The Umpqua River basin, where the coastal zone shall extend to Scottsburg; (b) The Rogue River basin, where the coastal zone shall extend to Agness; (c) The Columbia River basin, where the coastal zone shall extend to the downstream end of Puget Island. (Formerly ORS 191.110)

COMMITTEE FOR CITIZEN INVOLVEMENT (CCI). A local group appointed by a governing body for these purposes: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning; assisting in the implementation of the citizen involvement program; and evaluating the process being used for citizen involvement. A CCI differs from a citizen advisory committee (CAC) in that the former advises the local government only on matters pertaining to citizen involvement and Goal 1. A CAC, on the other hand, may deal with a broad range of planning and land use issues. Each city or county has only one CCI, whereas there may be several CACs.

CONSERVE. To manage in a manner which avoids wasteful or destructive uses and provides for future availability.

CONSERVATION. The act of conserving the environment.

CONTINENTAL SHELF. The area seaward from the ocean shore to the distance when the ocean depth is 200 meters, or where the ocean floor slopes more steeply to the deep ocean floor. The area beyond the state's jurisdiction is the OUTER Continental Shelf.

DEFLATION PLAIN. The broad interdune area which is wind-scoured to the level of the summer water table.

DEVELOP. To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

DEVELOPMENT. The act, process or result of developing.

DIVERSITY. The variety of natural, environmental, economic, and social resources, values, benefits, and activities.

DUNE. A hill or ridge of sand built up by the wind along sandy coasts.

DUNE, ACTIVE. A dune that migrates, grows and diminishes from the effect of wind and supply of sand. Active dunes include all open sand dunes, active hummocks, and active foredunes.

DUNE, CONDITIONALLY STABLE. A dune presently in a stable condition, but vulnerable to becoming active due to fragile vegetative cover.

DUNE, OLDER STABILIZED. A dune that is stable from wind erosion, and that has significant soil development and that may include diverse forest cover. They include older foredunes.

DUNE, OPEN SAND. A collective term for active, unvegetated dune landforms.

DUNE, RECENTLY STABILIZED. A dune with sufficient vegetation to be stabilized from wind erosion, but with little, if any, development of soil or cohesion of the sand under the vegetation. Recently stabilized dunes include conditionally stable foredunes, conditionally stable dunes, dune complexes, and younger stabilized dunes.

DUNES, YOUNGER STABILIZED. A wind-stable dune with weakly developed soils and vegetation.

DUNE COMPLEX. Various patterns of small dunes with partially stabilized intervening areas.

ECOSYSTEM. The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are inter-related.

ENCOURAGE. Stimulate; give help to; foster.

ESTUARY. A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater, except for the Columbia River Estuary, which by definition is considered to extend to the western edge of Puget Island.

ESTUARINE ENHANCEMENT. An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

FILL. The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land.

FLOODFRINGE. The area of the floodplain lying outside of the floodway, but subject to periodic inundation from flooding.

FLOODPLAIN. The area adjoining a stream, tidal estuary or coast that is subject to regional flooding.

FLOOD, REGIONAL (100-YEAR). A standard statistical calculation used by engineers to determine the probability of severe flooding. It represents the largest flood which has a one-percent chance of occurring in any one year in an area as a result of periods of higher-than-normal rainfall or streamflows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.

FLOODWAY. The normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.

FOREDUNE, ACTIVE. An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass, and occur in sand spits and at river mouths as well as elsewhere.

FOREDUNE, CONDITIONALLY STABLE. An active foredune that has ceased growing in height and that has become conditionally stable with regard to wind erosion.

FOREDUNE, OLDER. A conditionally stable foredune that has become wind stabilized by diverse vegetation and soil development.

FOREST LANDS. See definition of commercial forest lands and uses in the Oregon Forest Practices Act and the Forest Lands Goal.

GEOLOGIC. Relating to the occurrence and properties of earth. Geologic hazards include faults, land and mudslides, and earthquakes.

HEADLANDS. Bluffs, promontories or points of high shoreland jutting out into the ocean, generally sloping abruptly into the water. Oregon headlands are generally identified in the report on Visual Resource Analysis of the Oregon Coastal Zone, OCCDC, 1974.

HISTORICAL RESOURCES. Those districts, sites, buildings, structures, and artifacts which have a relationship to events or conditions of the human past. (See Archaeological Resources definition.)

HUMMOCK, ACTIVE. Partially vegetated (usually with beach grass), circular, and elevated mounds of sand which are actively growing in size.

HYDRAULIC. Related to the movement or pressure of water. Hydraulic hazards are those associated with erosion or sedimentation caused by the action of water flowing in a river or streambed, or oceanic currents and waves.

HYDRAULIC PROCESSES. Actions resulting from the effect of moving water or water pressure on the bed, banks, and shorelands of water bodies (oceans, estuaries, streams, lakes, and rivers).

HYDROGRAPHY. The study, description and mapping of oceans, estuaries, rivers and lakes.

HYDROLOGIC. Relating to the occurrence and properties of water. Hydrologic hazards include flooding (the rise of water) as well as hydraulic hazards associated with the movement of water.

IMPACT. The consequences of a course of action; effect of a goal, guideline, plan or decision.

INSURE. Guarantee; make sure or certain something will happen.

INTEGRITY. The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system, including its parts, materials, and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.

INTERDUNE AREA. Low-lying areas between higher sand landforms and which are generally under water during part of the year. (See also Deflation Plain.)

INTERTIDAL. Between the levels of mean lower low tide (MLLT) and mean higher high tide (MHHT).

KEY FACILITIES. Basic facilities that are primarily planned for by local government but which also may be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal.

LCDC. The Land Conservation and Development Commission of the State of Oregon. The members appointed by the Governor and confirmed by the Oregon Senate in accordance with the requirements of ORS 197.030.

LITTORAL DRIFT. The material moved, such as sand or gravel, in the littoral (shallow water nearshore) zone under the influence of waves and currents.

MAINTAIN. Support, keep, and continue in an existing state or condition without decline.

MANAGEMENT UNIT. A discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited.

MINOR NAVIGATIONAL IMPROVEMENTS. Alterations necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

MITIGATION. The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 541.626).

NATURAL AREAS. Includes land and water that has substantially retained its natural character, which is an important habitat for plant, animal, or marine life. Such areas are not necessarily completely natural or undisturbed, but can be significant for the study of natural, historical, scientific, or paleontological features, or for the appreciation of natural features.

NATURAL RESOURCES. Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man.

OCCDC. Oregon Coastal Conservation and Development Commission created by ORS 191; existed from 1971 to 1975. Its work is continued by LCDC.

OCEAN FLOODING. The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to ocean flooding include beaches, marshes, coastal lowlands, and low-lying interdune areas. Areas of ocean flooding are mapped by the Federal Emergency Management Agency (FEMA). Ocean flooding includes areas of velocity flooding and associated shallow marine flooding.

PLANNING AREA. The air, land and water resources within the jurisdiction of a governmental agency.

POLLUTION. The violation or threatened violation of applicable state or federal environmental quality statutes, rules and standards.

PRESERVE. To save from change or loss and reserve for a special purpose.

PROGRAM. Proposed or desired plan or course of proceedings and action.

PROTECT. Save or shield from loss, destruction, or injury or for future intended use.

PROVIDE. Prepare, plan for, and supply what is needed.

PUBLIC FACILITIES AND SERVICES. Projects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare.

PUBLIC GAIN. The net gain from combined economic, social, and environmental effects which accrue to the public because of a use or activity and its subsequent resulting effects.

QUALITY. The degree of excellence or relative goodness.

RECREATION. Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction.

Coastal Recreation occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

Low-Intensity Recreation does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation.

High-Intensity Recreation uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.

RESTORE. Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events. For the purposes of Goal 16 estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

Active Restoration involves the use of specific positive remedial actions, such as removing fills, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

Passive Restoration is the use of natural processes, sequences, and timing which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RIPARIAN. Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP. A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

RURAL LAND. Land outside urban growth boundaries that is:

(a) Non-urban agricultural, forest or open space,

(b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or

(c) In an unincorporated community.

SEDENTARY. Attached firmly to the bottom, generally incapable of movement.

SHORELINE. The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

SIGNIFICANT HABITAT AREAS. A land or water area where sustaining the natural resource characteristics is important or essential to the production and maintenance of aquatic life or wildlife populations.

SOCIAL CONSEQUENCES. The tangible and intangible effects upon people and their relationships with the community in which they live resulting from a particular action or decision.

STRUCTURE. Anything constructed or installed or portable, the use of which requires a location on a parcel of land.

SUBSTRATE. The medium upon which an organism lives and grows. The surface of the land or bottom of a water body.

SUBTIDAL. Below the level of mean lower low tide (MLLT).

TEMPORARY ALTERATION. Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance), (2) alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.

TERRITORIAL SEA. The ocean and seafloor area from mean low water seaward three nautical miles.

TIDAL MARSH. Wetlands from lower high water (LHW) inland to the line of non-aquatic vegetation.

URBAN LAND. Land inside an urban growth boundary.

URBANIZABLE LAND. Urban land that, due to the present unavailability of urban facilities and services, or for other reasons, either:
(a) Retains the zone designations assigned prior to inclusion in the boundary, or
(b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned.

WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER ORIENTED. A use whose attraction to the public is enhanced by a view of or access to coastal waters.

WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

WETLANDS. Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.