

Making Your Vision the Law

A Citizen's Guide to Periodic Review

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Disclaimer

This manual is designed to provide general guidance to citizens seeking to get involved in local land use planning and regulations. It is not intended to be used as legal advice.

This manual draws upon the work of Scott Exo and Paul Ketcham. Kudos.

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Introduction

An Opportunity to Change Direction

Once in a great while, communities take a step back from day-to-day planning decisions and completely reevaluate where they are headed.

That's what periodic review should be -- a thorough review and update of the local land use plan. Periodic review offers an opportunity for citizens to influence local land use policies and decisions for years to come. Unfortunately, many citizens miss this important opportunity, either by overlooking it or by exhausting their time and money on individual permit decisions.

This citizen's guide explains what periodic review is, how it works, and how citizens can participate effectively.

Local Land Use Plans in Oregon

State law requires each of Oregon's 36 counties and 240 cities to have a comprehensive land use plan and map and local regulations to carry out those plans. Zoning laws and maps are examples of such regulations. In both rural and urban settings, zoning laws establish areas in which specific uses are permitted, others are permitted subject to certain standards, and others are excluded completely. In this document, we often use the term "plan" to refer to both the comprehensive plan and companion regulations.

In Oregon, local plans must meet standards set forth in laws made by the Legislature, and in statewide planning goals and administrative rules adopted by the Land Conservation and Development Commission (LCDC). LCDC was established by the Legislature to oversee the administration of Oregon's land use laws. In the 1970s and early 1980s, LCDC and its staff at the Department of Land Conservation and Development (DLCD) reviewed the original local plans for compliance with statewide land use goals. Subsequent amendments to local plans are subject to similar review.

Periodic Review and Planning

Planning means anticipating change. Land use plans and regulations should ensure that land uses achieve public objectives and conserve important resources.

There are several reasons for revisiting plans. The plans may not be producing the desired outcomes, or assumptions or facts shaping previous plans may change. For example, in response to changing demographics in population, a city may find it needs to alter its residential zones to allow "granny flats" and smaller lot sizes; a county might determine residential development is no longer appropriate in its commercial forest zone. Desired outcomes may also be modified or expanded to include things like reducing dependence on the automobile.

Therefore, Oregon law requires most cities and counties to update their comprehensive land use plans every five to fifteen years, a process known as periodic review.¹ Periodic review is designed to provide a systematic process for reviewing a land use plan and map, the rules that implement the plan, called zoning ordinances or codes, and zoning maps. When the review identifies changes that are needed or desirable, the plan and ordinances are changed to address better current local planning needs and conditions, to update key information and assumptions, and to carry out more adequately state land use policies.

¹ A bill passed in 1999 (Senate Bill 543) makes counties under 15,000 and cities under 2,500 population not significantly affected by a nearby city over 25,000 exempt from periodic review. Exempt cities and counties must "regularly review" their comprehensive plans, but there is no legal definition of what "regular" means.

Periodic review should include the following at a minimum:

- An evaluation of whether the community's plan is meeting the statewide planning goals and statutes;
- A revision of the comprehensive plan to reflect any changes in statewide planning goals and statutes;
- A review of unfinished planning work, if the local government was directed to complete specific planning tasks by DLCD to make the plan consistent with statewide goals;
- An evaluation of consistency with state plans and related city/county plans; and
- For urban communities, an evaluation of whether adequate land exists inside the community's urban growth boundary for future growth.

Periodic review might also include other items of interest to the community. For example, is the jurisdiction planning for adequate parks and open space? Does a shift to a new crop, such as wine grapes, make greater legal protection of certain soils desirable?

Legislation passed in 1999 shifts the main focus of the review to four central issues: housing, employment, transportation, and public facilities and services. However, while government money and resources will be focused on these areas, citizens should feel free to raise any concerns outside of these areas as well.

LCDC establishes the schedule for local governments to follow in completing periodic review. At the appropriate time, DLCD notifies cities and counties what is required of them and when, and coordinates the involvement of interested persons and other state agencies. DLCD and LCDC are also responsible for making sure that changes to city and county plans are consistent with state land use laws.

Know the Rules and Observe Deadlines

Periodic review has two phases: the evaluation and work program phase, and the task phase. State law requires local governments create specific opportunities for interested persons to comment, testify, and appeal key decisions in both phases. Likewise, there are specific guidelines and deadlines for citizens to do so. To be effective, you must understand these rules and observe the deadlines. Don't allow your best efforts to be disregarded or rejected for procedural reasons. The rules and timelines are spelled out in Oregon Administrative Rules (OARs) Chapter 660, Division 25.

To be effective, you must understand the rules and observe the deadlines.

Legal Framework for Periodic Review

State law governing periodic review is found in two places. The first is in the Oregon Revised Statutes, Chapter 197, Sections 296 and 628 through 650. These are the laws passed by the legislature, and are typically referred to as ORS 197.296 and ORS 197.628-650. The more detailed administrative rules, laws passed by state agencies, are found in the OARs, Chapter 660, Division 25 (OAR 660-025). Because periodic review evaluates whether the community's plan is meeting the nineteen statewide planning goals, you will also want to review these goals closely (they are in OAR 660-015). If the periodic review you are tracking involves review of an Urban Growth Boundary, you will want also to review ORS 197.298. These statutes and rules are Appendix A.

Participating in Periodic Review

The following sections outline what to do, and how to do it effectively, before and during the key steps in periodic review.

Before Periodic Review Begins

If you are fortunate and foresighted enough to be thinking about your local government's periodic review before it actually begins, there are several important things you can do.

- Contact the local planning department, your DLCD field representative, or DLCD directly (503-373-0050) to determine when your city or county is scheduled to begin periodic review.
- Familiarize yourself with the statewide planning goals and related laws regarding the land use issues that concern you. Copies of the goals, statutes, and administrative rules are available from DLCD; there is a charge for statutes and rules (see Appendix C), but copies of the goals are free. Most libraries have copies of these statutes and rules, but make sure they are current. They are also available at the DLCD website: www.lcd.state.or.us/goalsrul.html
- Get to know the existing local comprehensive plan, land use ordinances, and zoning maps. These are available from the local planning department and are often in the local library. Evaluate for yourself how effective the plan and ordinance have been in carrying out the statewide planning goals and addressing local concerns.

One note of caution: goals are often written in broad, encompassing language; such language doesn't have much legal weight. For example, simply because a jurisdiction has claimed its goal is to "provide adequate affordable housing" or "protect farmland" does not mean you can appeal decisions that don't meet all of these goals. Nevertheless, such language does have *political* weight, and can be used to hold local officials accountable to their professed goals.

Decide if your plan has met statewide planning goals and addressed local concerns.

- Communicate with those DLCD staff and other state agency staff members who will influence the content of the periodic review notice that will be sent to the local government.
- Write a letter to the local government and ask for notice of all hearings on the periodic review evaluation, work program, and tasks (sample in Appendix D). Keep a copy for your files.
- Write to DLCD and ask to be notified when they receive your local government's periodic review evaluation, work plan, and tasks (sample in Appendix D).
- Write a letter to the DLCD periodic review specialist (currently Brenda Cansler) and ask to be sent a copy of the periodic review notice when it is sent to your local government.

The Periodic Review Notice

Periodic review officially begins when the DLCD director sends a notice to a city or county. Notices are sent to specified cities and counties according to a schedule adopted by LCDC.

The notice is important because it "starts the clock," determining deadlines for the completion of the evaluation and work program, and it details the standards and provides suggestions for evaluating the content and effectiveness of the current plan and ordinance.

You should obtain and review a copy of the notice and its attachments from the DLCD periodic review specialist. The notice will tell you what is required of the city or county, and when. It will also detail what issues are being raised by DLCD and other participating state agencies in the periodic review process.

Standards for Periodic Review

The reasons for conducting periodic review are contained in state law. According to ORS 197.628 and echoed in OAR 660-025-070:

It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services.

The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address needed housing, employment, transportation and public facilities and services.

The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals;

(c) There are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with provisions of the goals; or

(d) The local government, commission or Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals.

These conditions are used to evaluate the existing plan and ordinances and their implementation. They are also used by DLCDC and LCDC to determine whether the periodic review work products are adequate to carry out the statewide land use goals. Therefore, it is important to use these conditions as the logical basis for your testimony and any subsequent objections and appeals during your participation in the periodic review process.

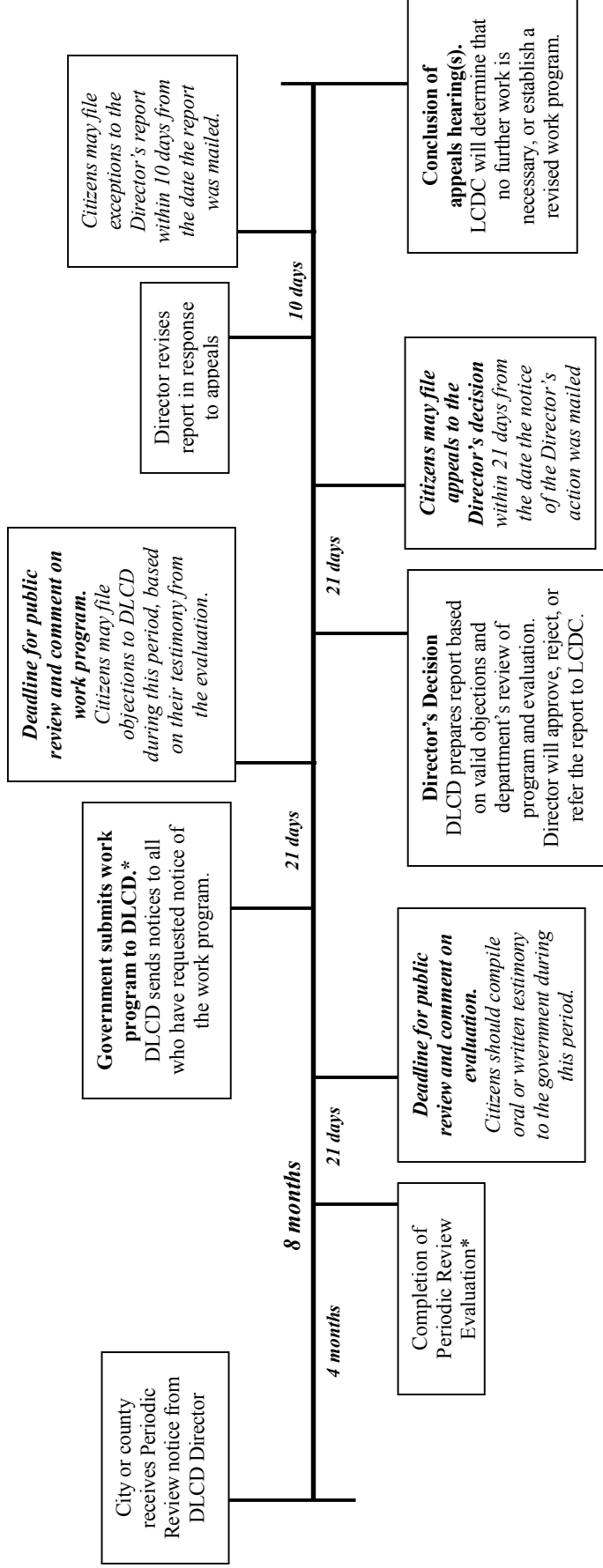
Use the four legal conditions as the basis for your testimony and objections

The Steps of Periodic Review: Evaluate, Plan, Execute

Periodic review has three parts, the first two compose the evaluation and work program phase (evaluating and planning), the third is the task phase (execution). The evaluation identifies the elements of the existing local plan and ordinance needing change. The work program results in a list of tasks -- research, drafting ordinances, mapping -- necessary to make the identified changes and update the plan. Once the task list is finalized, including DLCDC or LCDC approval, periodic review shifts to implementation (the task phase).

Timeline for Periodic Review Process

Evaluation and Work Program Phase



*Deadline can be extended by DLCDC Director

Phase I: Evaluation and Work Program

The Evaluation

Once the local government receives the periodic review notice, they have four months to complete the periodic review evaluation. The DLCDC director can extend this deadline.

At this stage, the local government must review its existing plan and ordinances in light of the four periodic review conditions and purpose of periodic review, respond to the questions contained in the notice, and consider jurisdiction-specific issues raised by the DLCDC periodic review assistance team. This evaluation is submitted to DLCDC. The local government is also required to review its citizen involvement program and assure that there is an adequate process for citizen involvement in the periodic review process (OAR 660-025-0080). State law does not define “adequate.”

Participating in the Evaluation

In oral and written testimony to the local government on the evaluation, you should:

- Raise general issues about strengths and deficiencies in the current plan and ordinances—either their content or the cumulative effect of their implementation. Relate the deficiencies to the four periodic review conditions.
- Raise issues about the adequacy of the citizen involvement program for incorporating citizen input in the periodic review process, if there are any.
- Make a written request to the local government for a copy of the evaluation. Keep a copy of your request.

The key for reform is early involvement and independent assessment of what plan changes are needed. Rather than waiting for DLCDC or local staff planners to define the issues, citizens should draw up their own list of concerns. Once an individual or community group has established its plan critique, members should contact DLCDC and local government staff to discuss their major points. After meeting those agencies, you should inform local press of your concerns.

Don't wait for DLCDC or local planners to define the issues. Draw up your own list of concerns.

The local government must provide at least 21 days for review and comment on the evaluation before submitting its work program to DLCDC.

The Work Program

The work program is a list of tasks and deadlines drafted by the local government, leading to an updated plan and ordinance that meets the statewide planning goals and laws. Once completed and approved by DLCDC, the work program defines which specific tasks need to be performed to complete periodic review, and when. The work program deadline is eight months after DLCDC's original notice letter. The deadline can be extended by the DLCDC director.

The content of the work program is intended to result directly from the findings of the evaluation, and the issues raised by DLCDC, the periodic review assistance team, and others (like you) who participated in local review of the evaluation. The work program tasks are likely to include elements of research, updating key information, and drafting and adoption of new plan and ordinance language. Zoning maps may also be amended.

Cities growing at a more rapid rate than the state average, as well as all cities with more than 25,000 people, have specific additional requirements at periodic review. They are listed in ORS 197.296:

- (2) *At periodic review or any other legislative review of the urban growth boundary, comprehensive plans or functional plans shall provide sufficient buildable lands within urban growth boundaries established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.*
- (3) *As part of its next periodic review pursuant to ORS 197.628 to 197.650 following September 9, 1995, or any other legislative review of the urban growth boundary, a local government shall:*
 - (a) *Inventory the supply of buildable lands within the urban growth boundary;*
 - (b) *Determine the actual density and the actual average mix of housing types of residential development that have occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; and*
 - (c) *Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the amount of land needed for each needed housing type for the next 20 years.*

If you don't know if your city is subject to these requirements, check with DLCDC or 1000 Friends.

Participating in the Development of the Work Program

Your objective in the work program development should be to ensure that both the list of tasks and the tasks themselves, if done properly, will result in the changes to the plan that meet local needs and fulfill statewide planning goals.

Your involvement in the development of the work program should build on your previous participation in the evaluation. There are several ways to influence the content of the work program:

- The local government must hold at least one hearing on the work program. At this hearing, raise issues related to the adequacy of the work program to meet the periodic review standards. For example, if you believe that a particular task will not adequately respond to the need for affordable housing, explain why you believe the task is inadequate and suggest an alternative.
- If you think an issue lies within the scope of a state agency's responsibilities, contact that agency's periodic review assistance team member. For example, if the evaluation does not address the need for groundwater information in an area with known groundwater problems, contact the Water Resources Department representative on the periodic review assistance team.
- Contact other agencies, groups, and individuals with an interest in any issue related to periodic review. Urge them to review the evaluation, to contact the appropriate periodic review assistance team member and DLCDC, and to submit testimony to the local government on the evaluation and work program.
- Contact the DLCDC periodic review team leader assigned to oversee periodic review for your local government, to discuss any shortcomings you find in the evaluation.

In order to preserve your right to object or appeal later in the work program phase of the process, you must be on record as having testified on the work program.

You can testify orally at the hearing, submit written testimony before the appropriate deadline, or both. When testifying, be sure to state your name and the organization you represent, if appropriate. If you are representing an organization, stating that you are testifying both on your own behalf and on behalf of the organization will preserve your right to object or appeal as an individual. If you submit written testimony,

keep a copy and ask that your copy be marked and dated as having been received. Send a copy of your testimony to the DLCD staff person assigned to the periodic review.

You will also want to know when your city or county submits its completed work program to DLCD for review. To be sure you know when this happens, you should:

- Write to the local government and request to be notified when they submit their work program to DLCD.
- Write to DLCD and request to be notified when the director receives the local government's work program.

You may have issues with your local plan that you believe need to be addressed, but do not clearly fit any of the four periodic review conditions that would require its inclusion on the work program. In this case, you must convince your local elected officials to include it in the work program because DLCD cannot require it. DLCD may, in fact, resist because of the four priorities established by the 1999 Legislature (housing, employment, transportation, and public facilities and services) and because DLCD is responsible for funding parts of periodic review.

Objecting to the Work Program

Deadline: 21 days

Once DLCD receives the completed work program from the local government, DLCD will send a notice to all who requested such notice in writing. At this point you should review the work program and decide if you think it adequately addresses the issues important to you, in the context of the periodic review standards. If not, and you gave testimony locally, you may file objections with DLCD.

Written objections must be received by DLCD within 21 days from the date this notice is mailed. If you do not object at this point, then you are not allowed to file exceptions to the director's report or appeal the director's decision (see below).

To be valid, objections must:

- A. Be filed within the twenty-one (21) day period;
- B. Clearly identify an alleged deficiency in the task;
- C. Suggest specific revisions that would resolve the objection; and
- D. Demonstrate that you participated at the local level orally or in writing during the local process. (OAR 660-025-0100(2))

In addition to submitting objections, request written notice of the director's decision regarding the work program and evaluation.

DLCD Review of Work Program

In response to objections, DLCD will prepare a report, based on any valid objections and the department's own review of the work program and evaluation. The report will either sustain or reject valid objections and identify specific tasks to resolve objections or department concerns (OAR 660-025-0100(5)).

Regardless of whether objections are received, the department reviews the submitted evaluation and work program. Based on the review, the director will:

- Approve the evaluation and work program;
- Reject it, suggest modifications to the local government, and set a new submittal deadline; or
- Refer it to LCDC for review and action.

Appealing the Director's Decision

If you filed valid objections to the work program, you may appeal the director's decision. The local government may also appeal the director's decision. The deadline for appealing the decision is 21 days from the date the notice of the director's action was mailed. If no appeal is filed in this 21-day period, the director's decision is final.

Filing Exceptions and Appearing before LCDC

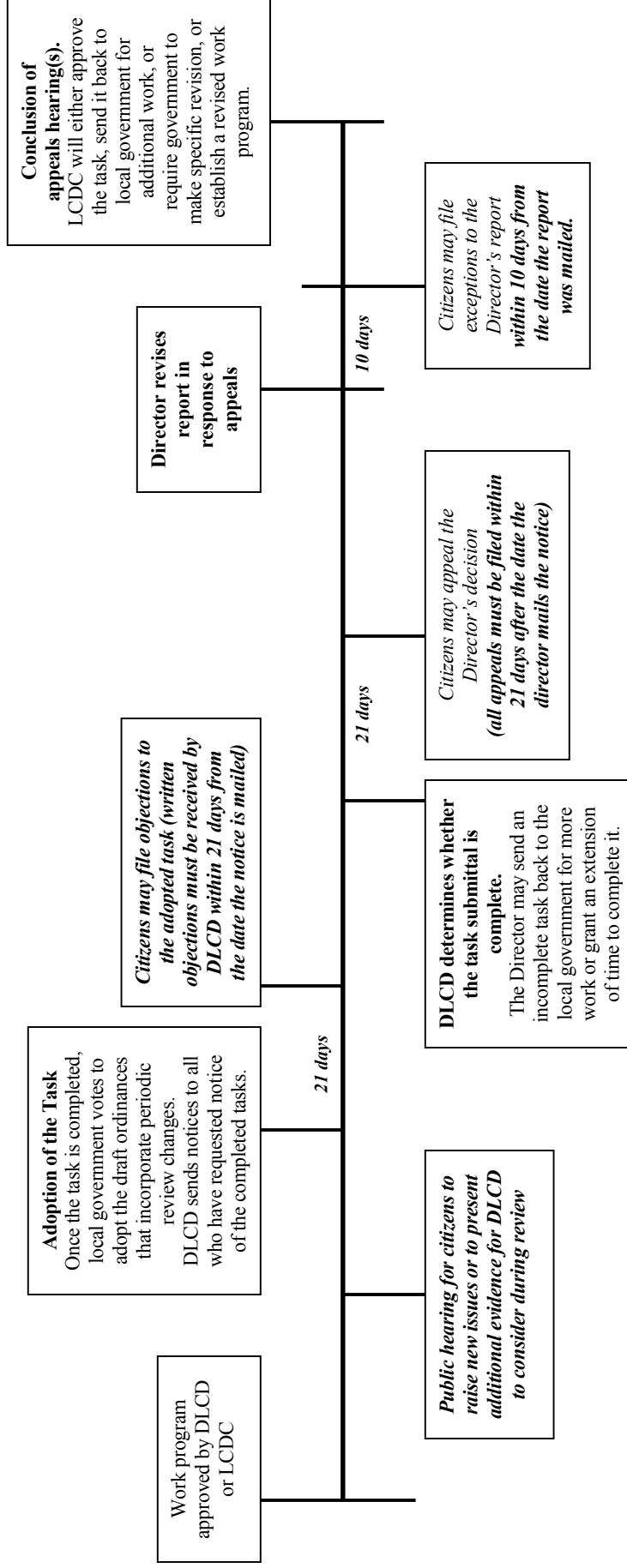
In response to an appeal, the director may prepare another report, which will be mailed to everyone who submitted objections. If you filed objections, whether you appealed the director's decision or not, you may file exceptions to the director's report. Exceptions to this director's report must be filed within 10 days from the date the report is mailed. The director may issue a response to the exceptions and make revisions to the report. This response and modified report will be available prior to or at the LCDC hearing on the appeal of the director's decision.

The appeal will be heard by LCDC based on the written record. Oral arguments will be heard by LCDC only if the director recommends it or LCDC moves to accept it. In either case, time will be given to allow parties to prepare before the hearing. If you have appealed the director's decision, and are allowed the opportunity to argue your case before LCDC, you must limit your testimony to issues raised in your valid objections. Be brief, summarize, and supplement your oral arguments with concise written materials detailing the basis for your appeal. If you provide your material to the department sufficiently in advance of the meeting, it will be distributed to the commission members. If you bring written materials to the meeting, you need to provide LCDC with 15 copies.

At the conclusion of the appeal hearing (which could include more than one meeting), LCDC will either determine that no further work is necessary or establish a revised work program.

Timeline for Periodic Review Process

Task Phase



Phase II: The Task Phase

Once the work program is approved by DLCD or LCDC, the task phase begins. Tasks typically involve some combination of research, inventories, mapping, and the drafting of language for plans and ordinances related to the task topic. A task subject is often defined by one of the statewide planning goals. For example, there might be a task for transportation issues (Goal 12) and another for housing (Goal 10). The task phase is not meant to take longer than three years.

Under the new periodic review system, local governments may complete and send separate tasks to DLCD for approval well before the entire periodic review process is slated to end. Local governments will typically deal with each task separately, though work may proceed on more than one task simultaneously. It is important to keep abreast of what is being done and when; refer to the deadlines in the DLCD-approved work program, request written notice from the local government if you haven't already, and watch for public notices in the newspaper.

Participating in Tasks

Each local government differs in its public participation process. Some governments provide for "citizen participation" by having planning staff do all the work and submit it to the planning commission for a vote. Others organize special committees to do tasks with public meetings and much discussion. You need to know the process being used and design a campaign to educate the decision makers on your issues. Here are some suggested strategies for various types of forums:

- **Planning commission:** Where the planning commission is the primary outlet for public comment on the proposed plan and ordinance changes, we recommend making a brief oral presentation on each issue of concern, accompanied by a more detailed written statement. Divide responsibility for components of a complex issue among several people, if possible. Include visual aids (photos, maps, tables, charts) and explanations of why the specific issue is important in each speaker's presentation.
- **Special review body:** Typically, a special review body is an ad hoc committee of appointed citizens. If you cannot get on the committee, then attend and take part in the committee meetings. Often the groups are so small that one person's input on an issue can determine the outcome. Written communications before each meeting regarding the specific items to be discussed will help to focus the discussions on important issues. Sometimes, more than one committee will be formed to address a special interest such as transportation or natural resources. Look for these groups.
- **Other participants:** In addition to state agencies, don't forget to contact and encourage comment from local agencies, like the school board, fire protection district, the County Water Master or water district, landfill operator, or road engineers. Each of these can play a role in periodic review. They will be more likely to participate if you can help clarify how the outcome of a periodic review task will directly affect issues within their areas of responsibility.

Once you've determined what the process is and who the players are, help to shape the product:

- **Submit information** into the local record on each task that interests you. For example, if there are wildlife sites you think should be included in or added to a Goal 5 inventory, identify them by tax lot number and tell the local government why the sites should be added.
- **Urge public agencies and interest groups** to participate in a task related to their missions. For example, if there are low-income housing shortages, contact the state Housing and Community Services Department, county social services agency, or housing advocacy groups and ask them to comment on the Goal 10 housing component.

- **Draft and submit proposed findings and ordinance language** to be adopted for a task. This allows you to lobby for a particular outcome while doing some of the work for the decision makers.
- **Throughout the process, send copies of your submittals and testimony** to local allies and to DLC.

Strategies for Shaping Tasks

Most local governments will listen to suggestions from the public. It is the reluctance to act upon these suggestions that is most frustrating to participants. Periodic review is a big job for local governments, especially those with few (or no) planning staff and resources. Reluctance to expand the public input process often stems from the desire to get the job done as quickly and cheaply as possible, not from a hostility toward citizen involvement. The receptivity of the local government to your suggestions will be increased if you offer to help with the work. Make it simpler for them to see how what you want could be accomplished.

Offer concrete alternatives and information: Provide clear methods of accomplishing your proposals. Some examples are:

- Mapping
- Identification of Goal 5 resource sites
- Methodological suggestions
- Data sources
- Expert opinions
- Draft ordinance or plan language

Specific, clearly explained alternatives have a better chance of being adopted by the local government. For example, a riparian buffer zone is usually proposed by the planners as a fixed width. A fixed width buffer may protect some valuable resources, but not enough of others. The alternative is a flexible, site-specific minimum-maximum buffer for saving more of the valuable resource and less of the marginal resource. Careful packaging of the information you submit will help, too.

Provide summaries of issues. The local governments have limited time to study material submitted on periodic review issues. Begin any information package with a summary of important issues. Arrange the package in sections corresponding to the statewide planning goals and refer to specific exhibits in the information package, where appropriate.

Make specific alternative suggestions. Identify specific ordinance provisions or work program failings that must be addressed. Then, provide a suggested alternative method, answer, site, or ordinance language.

Large and Fast-Growing Cities Subject to ORS 197.296

Cities that exceeded the average rate of growth for the state for three of the last five years and all cities with a population of 25,000 or more will have specific work tasks to ensure their urban growth boundary can accommodate estimated housing needs for 20 years. Under the statute, they are required to:

- (a) *Inventory the supply of buildable lands within the urban growth boundary;*
- (b) *Determine the actual density and the actual average mix of housing types of residential development that have occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; and*
- (c) *Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the amount of land required for each needed housing type for the next 20 years.*

If a city finds that it has insufficient land within its existing UGB to accommodate projected need, it must expand its UGB, **or** amend its plan and zoning regulations so as to accommodate projected need within the existing UGB, **or** adopt a combination of the two alternatives.

These tasks have two key parts: the estimate of land needed over 20 years and the inventory of the existing supply of buildable lands. Many cities lack the resources to complete these tasks themselves and instead hire an outside consultant. Either way, you will want to pay close attention to both parts of the work. Make sure your questions and concerns are part of the record. For example:

- Is the twenty-year population projection too large? Is it “coordinated” with the county as required by law?
- Does the analysis of future needs adequately consider changing demographics that may point to a greater need for smaller lots or more apartments? Will planned housing types be affordable to future residents?
- Is the estimated size of future households realistic? A small change in household size can have a big impact on future land needs.
- Does the inventory of the existing supply of buildable lands arbitrarily exclude any land that should be included?
- Does it adequately consider the potential for infill and redevelopment?
- Is the amount of land allocated to right-of-way or other “unbuildable” categories too large? If floodplains, for example, are excluded from the inventory, does the city in fact prohibit development in the floodplain?

When addressing issues like those raised above, document and support your positions with data from the Census Bureau, comparable cities, affordable housing providers, etc. Sample testimony on this issue is available from 1000 Friends.

Adoption of the Task

Once the local government decides that the work on a specific task is completed, they will usually vote to adopt the draft ordinances incorporating the periodic review changes for a specific task. At this stage, there is usually a public hearing. This final public hearing is the last chance to raise new issues or to present additional evidence that DLCD can consider when reviewing the task product adopted and submitted to them by the local government.

If the information you submitted as testimony is well-organized, DLCD will be able to look at the condensed materials and quickly see what issues are being contested. Refer to exhibits so the DLCD reviewer can move straight to those sections which are most interesting, and where a narrative awaits to explain the particular issue in detail.

If you haven't yet done so, send DLCD a letter asking them to notify you when they receive the adopted periodic review task from the local government.

Filing Objections to the Adopted Task

Deadline: 21 days

The process for objecting to a task adopted and submitted to DLCD by a local government is virtually the same as for objecting to the work program and evaluation.

Sometimes there is disagreement or uncertainty about whether an amendment to the comprehensive plan or ordinance adopted by the local government is part of an approved work task. In this situation, due to ambiguity in the periodic review statute and rules, you should consider appealing the adopted amendment to

the Land Use Board of Appeals (LUBA), the deadline for which is also 21 days. 1000 Friends has a separate *Citizens Guide to LUBA Appeals*.

Once DLCD receives the completed task from the local government, DLCD will send a notice to all who requested such notice in writing. Written objections must be received by DLCD within 21 days from the date this notice is **mailed**.

If you do not object here, then you are not allowed to file exceptions to the director's report, or appeal the director's decision.

To be valid, objections must:

- A. Be filed within the twenty-one (21) day period;
- B. Clearly identify an alleged deficiency in the task;
- C. Suggest SPECIFIC revisions that would resolve the objection; and
- D. Demonstrate that you participated at the local level orally or in writing during the local review process. OAR 660-250-0140(2)

The rule is unclear about whether participation at the prior work program phase is sufficient to fulfill the last requirement (D above) for valid objections to a work task.

DLCD Review of Task and Objections

After DLCD receives the task product from the local government, DLCD will determine whether the submittal is complete -- i.e. does it contain all the elements identified for that task in the approved work program, and uphold the applicable statewide planning goals? The director may send an incomplete task back to the local government for more work, and grant an extension of time to complete it. The decision to grant an extension may be challenged (OAR 660-025-0230(4)).

If DLCD receives no objections in the 21-day period, and DLCD finds no problem with the submittal, the director will approve the task. If DLCD receives no objections, it must act within 60 days of the local government's submittal (i.e., after the twenty-first day and before the sixty-first day following submittal). DLCD's action must be to either approve the task or inform the local government that the review will continue. If DLCD does not act during this period, the work task is deemed approved.

If DLCD receives valid objections, or if DLCD reviews the task and finds problems with it, DLCD will issue a report. The report will:

- Detail the valid objections and/or DLCD concerns;
- Identify specific tasks to resolve objections or DLCD concerns; and
- Sustain or reject objections based on the periodic review standards in OAR 660-025-0070.

Regardless of whether objections are received, the director must decide to (1) approve the task; (2) reject the task and send it back; or (3) refer it to LCDC for a decision.

In the third instance, the director will often simply summarize the report by DLCD. The report is usually attached to the director's recommendation. The reports are usually divided into two sections. The first are "referral issues" which the commission will be asked to decide. The second section are those issues without objection or exception, which the director believes satisfy the requirements of periodic review in OAR 660-025-0070.

Appealing the Director's Decision

Deadline: 21 days

If you filed objections to the task, you may appeal the director's decision. You might choose to appeal the decision if you believe the DLCD director has approved work that fails to fulfill a task detailed in the work program, or if the approved tasks fail to implement adequately a statewide goal, statute or administrative rule.

An appeal must be filed within 21 days after the date the director mails notice of the decision, and must be limited to issues raised in valid objections that you filed previously. If no appeal is filed in the 21-day period, the task is considered approved. Consult OAR 660-025-0150 and 0160 for the detailed rules for appeals.

Filing Exceptions, Appearing before LCDC

If an appeal is filed, or if the task is referred by the director, it will come before LCDC. In both cases, the director will issue a report. This report will be sent to the local government and anyone who filed timely objections. It will be mailed at least 21 days before the LCDC meeting at which the matter will be considered. You may file exceptions to the report if you filed prior objections. The deadline for exceptions is 10 days from the date the report is mailed. The detailed rules regarding exceptions to the report and LCDC review are in OAR 660-025-0160.

LCDC Action

After the hearings(s) on an appeal or referral, LCDC will either approve the task, send it back to the local government for additional work, or require the local government to make specific revisions to its plan or ordinance by a specified date.

Appealing LCDC's Decision to the Court of Appeals

Deadline: 60 DAYS

LCDC's decision can be appealed to the Court of Appeals within 60 days. The court will only reverse for errors of law and not substitute its opinion of the facts for those of LCDC. The Land Use Board of Appeals (LUBA) does not review LCDC decisions regarding periodic review.

Plan Amendment during Periodic Review

When a local government proposes to change its plan or ordinances outside the periodic review process, it must notify DLCD at least 45 days before the first evidentiary hearing (which may also be the final hearing). The plan amendment process is governed by different deadlines and procedures from those governing periodic review. For example, appeals of plan amendments go to the Land Use Board of Appeals, and not to LCDC. Plan amendments are reviewed directly against the statewide planning goals, and not against the four periodic review criteria.

Since periodic review almost always results in some changes to plans and ordinances, citizens have to be aware that both processes are occurring simultaneously. During the course of periodic review, local governments may propose and adopt plan amendments that relate to periodic review. To preserve appeal rights, citizens should participate in both processes.

For example, a county may amend its exclusive farm use zone as a plan amendment prior to its final hearing on the local periodic review order. The county would then include the amended zone as part of the final order it submits to DLCD. If citizens believe the amended zone violates the goals, they should consider both appealing the plan amendment to LUBA and objecting to the amendment during periodic review proceedings.

1000 Friends can help citizens to deal with the complications of the dual processes.

A Final Word

Oregon's land use planning system succeeds because of its firm foundation of citizen support and involvement. Periodic review offers the opportunity to further this success, continually improving local plans.

Although the process of periodic review may appear bewildering to citizens, 1000 Friends staff stands by ready to provide technical and legal assistance to citizens.

1000 Friends also has other printed resources available, including *A Citizen's Guide to Local Land Use Procedures*, which looks at all phases of the planning process. Don't be afraid to contact us, or visit our web site, www.friends.org, to see our resources.

Appendices

- Appendix A: Statutes and administrative rules for periodic review
ORS 197.296 through 298
ORS 197.610 through 650
OAR 660, Division 25
- Appendix B: Obtaining statutes and rules related to land use planning
- Appendix C: A review of Senate Bill 543's changes to periodic review
- Appendix D: Examples of letters used to request notices regarding periodic review
- Appendix E: Citizen involvement requirements during periodic review
- Appendix F: Building the record
- Appendix G: Checklist for effective involvement in periodic review
- Appendix H: Common goal-related issues to raise during periodic review (pending)

Appendix A: Oregon Revised Statutes Regarding Periodic Review

197.296 Amendment of urban growth boundary or comprehensive plan to include sufficient buildable lands within boundary; analysis and determination of residential housing patterns.

- (1) (a) The provisions of this section apply to local government comprehensive plans for lands:
- (A) Within any urban growth boundary for a city with a population of 25,000 or more;
- (B) Within any urban growth boundary for a city with a population of less than 25,000 with a rate of growth that exceeded the average rate of growth for the state for three of the last five years; and
- (C) For which a functional plan is prepared by a metropolitan service district under ORS 268.390 (2).
- (b) Notwithstanding paragraph (a) of this subsection, the Land Conservation and Development Commission may waive the requirements of that paragraph.
- (2) At periodic review or any other legislative review of the urban growth boundary, comprehensive plans or functional plans shall provide sufficient buildable lands within urban growth boundaries established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.
- (3) As part of its next periodic review pursuant to ORS 197.628 to 197.650 following September 9, 1995, or any other legislative review of the urban growth boundary, a local government shall:
- (a) Inventory the supply of buildable lands within the urban growth boundary;
- (b) Determine the actual density and the actual average mix of housing types of residential development that have occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; and
- (c) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the amount of land needed for each needed housing type for the next 20 years.
- (4) If the determination required by subsection (3) of this section indicates that the urban growth boundary does not contain sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density that has occurred since the last periodic review, the local government shall take one of the following actions:

- (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density during the period since the last periodic review or within the last five years, whichever is greater. As part of this process, the amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;
- (b) Amend its comprehensive plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or
- (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.
- (5) Using the analysis conducted under subsection (3)(c) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (3)(b) of this section, or if that mix is different from the actual mix of housing types determined under subsection (3)(b) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.
- (6) A local government that takes any actions under subsection (4) or (5) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.
- (7) In establishing that actions and measures adopted under subsections (4) and (5) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations; and
- (h) Adoption of an average residential density standard. [1995 c.547 s.3]

197.298 Priority of land to be included within urban growth boundary.

(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

- (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
- (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
- (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
- (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

- (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
- (b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
- (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands. [1995 c.547 s.5; 1999 c.59 s.56]

POST-ACKNOWLEDGMENT PROCEDURES

197.610 Local government notice of proposed amendment or new regulation; exceptions; report to commission.

(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.

(2) When a local government determines that the goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:

- (a) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615 (1) and (2); and
- (b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845.

(3) When the Department of Land Conservation and Development participates in a local government proceeding, at least 15 days before the final hearing on the proposed amendment to the comprehensive plan or land use regulation or the new land use regulation, the department shall notify the local government of:

- (a) Any concerns the department has concerning the proposal; and
- (b) Advisory recommendations on actions the department considers necessary to address the concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.

(4) The director shall report to the Land Conservation and Development Commission on whether the director:

(a) Believes the local government's proposal violates the goals; and

(b) Is participating in the local government proceeding. [1981 c.748 s.4; 1983 c.827 s.7; 1985 c.565 s.27; 1989 c.761 s.20; 1999 c.622 s.1]

197.615 Local government notice of adopted amendment or new regulation; content; notice by director. (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the Department of Land Conservation and Development a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.

(2)(a) On the same day that the text and findings are mailed or delivered, the local government also shall mail or otherwise submit notice to persons who:

(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and

(B) Requested of the local government in writing that they be given such notice.

(b) The notice required by this subsection shall:

(A) Describe briefly the action taken by the local government;

(B) State the date of the decision;

(C) If delivered by mail, include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail;

(D) List the place where and the time when the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, and findings, may be reviewed; and

(E) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845.

(3) Not later than five working days after receipt of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this section, the director shall notify by mail

or other submission any persons who have requested notification. The notice shall:

(a) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845; and

(b) List the locations where the comprehensive plan or land use regulation amendment or new land use regulation may be reviewed. [1981 c.748 s.5; 1983 c.827 s.9; 1999 c.255 s.1]

197.620 Who may appeal. (1) Notwithstanding the requirements of ORS 197.830 (2), persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new land use regulation is not appealable except where the amendment is necessary to address the requirements of a new or amended goal, rule or statute.

(2) Notwithstanding the requirements of ORS 197.830 (2), the Director of the Department of Land Conservation and Development or any other person may file an appeal of the local government's decision under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action. [1981 c.748 s.5a; 1983 c.827 s.8; 1989 c.761 s.21; 1991 c.612 s.13a]

197.625 When amendment or new regulation considered acknowledged; application prior to acknowledgment. (1) If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not acknowledged unless the adopted amendment has been submitted to the Director of the Department of Land Conservation and Development as required by ORS 197.610 to 197.625 and the 21-day appeal period has expired, the board affirms the decision or the appellate courts affirm the decision.

(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.

(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is

effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in accordance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.

(d) The provisions of this subsection apply to applications for land use decisions, expedited land divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan and land use regulation amendments adopted:

(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636;

(B) After June 1, 1991, to meet the requirements of ORS 197.646; and

(C) After November 4, 1993.

(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from the board stating either:

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (9); or

(b) The date the appellate decision affirming the adoption of the amendment or new regulation became final.

(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five days of receiving a valid request from the local government.

(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the Land Conservation and Development Commission from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628. [1981 c.748 s.5b; 1983 c.827 s.10; 1987 c.729 s.6; 1989 c.761 s.23; 1991 c.612 s.14; 1993 c.792 s.44; 1995 c.595 s.25; 1999 c.348 s.9; 1999 c.621 s.5]

197.626 Expanding urban growth boundary and designating urban reserve area subject to periodic review.

A city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve areas under ORS 195.145 shall submit the amendment or

designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.644. [1999 c.622 s.14]

197.628 Periodic review; policy; conditions that indicate need for periodic review. (1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services.

(2) The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address needed housing, employment, transportation and public facilities and services.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals;

(c) There are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals; or

(d) The local government, commission or Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals. [1991 c.612 s.2; 1999 c.622 s.2]

Note: 197.628 to 197.650 were added to and made a part of ORS chapter 197 by legislative action but were not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

197.629 Schedule for periodic review; coordination. (1) The Land Conservation and Development Commission shall establish and maintain a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary to coordinate approved periodic review work programs and to account for special circumstances that from time to time arise, the schedule shall reflect the following timelines:

(a) A city with a population of less than 2,500 within its urban growth boundary shall not be required to conduct periodic review unless the city lies close enough to another city that has a population of 25,000 or more within its urban growth boundary that the smaller city is significantly affected by needed housing, employment, transportation or public facility and services decisions made by the larger city;

(b) Except as provided in subsection (2) of this section, a county with a population of less than 15,000 shall not be required to conduct periodic review;

(c) A county with a population of 15,000 or more but less than 50,000, or a city with a population of 2,500 or more but less than 25,000 inside its urban growth boundary, shall conduct periodic review every 5 to 15 years after completion of the previous periodic review; and

(d) A county with a population of 50,000 or more, or a metropolitan service district or a city with a population of 25,000 or more inside its urban growth boundary, shall conduct periodic review every 5 to 10 years after completion of the previous periodic review.

(2) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(3) The Land Conservation and Development Commission may schedule periodic review for a local government earlier than provided in subsection (1) of this section if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently.

(4) A city or county that is exempt from periodic review under subsection (1)(a) or (b) of this section may request periodic review by the commission. [1999 c.622 s.10]

Note: 197.629 was added to and made a part of 197.610 to 197.638 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 15, chapter 622, Oregon Laws 1999, provides:

Sec. 15. A city or county that is exempt from periodic review under section 10 (1)(a) or (b) of this 1999 Act [197.629 (1)(a) or (b)] may choose to continue a periodic review begun prior to the effective date of this 1999 Act [July 12, 1999]. [1999 c.622 s.15]

197.630 [1981 c.748 s.5c; repealed by 1983 c.827 s.59]

197.631 Commission to amend regulations to facilitate periodic review; report to Legislative Assembly. (1) In order to use state and local periodic review resources most efficiently and effectively and to concentrate periodic review

on adequate provision of needed housing, employment, transportation and public facilities and services, the Land Conservation and Development Commission shall adopt, amend or repeal the statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic review and to provide for compliance by local governments with those goals not described in ORS 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625.

(2) In the biennial report required under ORS 197.060, the commission shall report to the Legislative Assembly and the Joint Legislative Committee on Land Use on its activities implementing subsection (1) of this section. [1999 c.622 s.11]

Note: 197.631 was added to and made a part of 197.610 to 197.638 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

197.633 Two phases of periodic review; rules; appeal of decision on work program; schedule for completion. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review. The rules shall provide a process for:

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of an evaluation of a comprehensive plan and land use regulations;

(e) Review of a work program; and

(f) Review of completed work tasks.

(3) A decision by the Director of the Department of Land Conservation and Development to approve a work program or a work task, that no work program is necessary or that no further work is necessary, may be appealed to the commission or referred to the commission by the director. The commission shall take action on the appeal or referral within 90 days of the appeal or referral. Action by the commission in response to an appeal from a decision of the director is a final order subject to judicial review in the manner provided in ORS 197.650.

(4) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. In order to promote the timely completion of periodic review, the commission shall establish a system of

incentives to encourage local government compliance with timelines in periodic review work programs. [1991 c.612 s.3; 1993 c.18 s.38; 1999 c.622 s.3]

Note: See note under 197.628.

197.635 [1981 c.748 s.6; repealed by 1983 c.827 s.59]

197.636 Procedures and actions for failure to meet periodic review deadlines.

(1) Upon good cause shown by a local government, the Director of the Department of Land Conservation and Development may allow the local government an extension of time for submitting a work program or completing a work task. A decision by the director to grant or deny an extension may be appealed to the Land Conservation and Development Commission or may be referred to the commission by the director. The Department of Land Conservation and Development or the commission shall not extend the deadline for submitting a work program more than once nor for more than 90 days, and shall not extend the deadline for a work task more than once nor for more than 180 days.

(2) If a local government fails to submit a work program or to complete a work task by the deadline set by the director or the commission, including any extension that has been granted, the director shall schedule a hearing before the commission. The commission shall issue an order imposing one or more of the following sanctions until the local government submits its work program or completes any required work task:

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this paragraph only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task.

(c) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335 (4).

(d) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

(3) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 s.4; 1999 c.622 s.4]

Note: See note under 197.628.

197.637 Department of Land Conservation and Development may request review by Housing and Community Services Department of certain local housing

measures. (1) Upon request of the Department of Land Conservation and Development, the Housing and Community Services Department shall review the inventory and analysis of housing, and measures taken to address the housing need, required of certain local governments under ORS 197.296. The review shall address the likely effect of measures developed by a local government under ORS 197.296 (4) on the adequacy of the supply of buildable land and opportunities to satisfy needs identified under ORS 197.296 (3).

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Housing and Community Services Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.296. [1999 c.622 s.12]

Note: 197.637 and 197.638 were added to and made a part of 197.610 to 197.638 by legislative action but were not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

197.638 Department of Land Conservation and Development may request review by Economic and Community Development Department of local inventory and analysis of industrial and commercial land.

(1) Upon request of the Department of Land Conservation and Development, the Economic and Community Development Department shall review the inventory and analysis of industrial and commercial land, and measures taken to address the land needs, required of certain local governments under ORS 197.712. The review shall address the likely effect of measures developed by a local government on the adequacy of the supply of sites and opportunities to satisfy needs identified under ORS 197.712.

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Economic and Community Development Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.712. [1999 c.622 s.13]

Note: See note under 197.637.

197.639 State assistance teams; alternative coordination process. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the Department of Land Conservation and Development may establish one or more state assistance teams made up of representatives of various agencies and local governments or an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process.

(3) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds. [1991 c.612 s.5]

Note: See note under 197.628.

197.640 [1981 c.748 s.9; 1983 c.827 s.11; 1987 c.69 s.1; 1987 c.729 s.7; 1987 c.856 s.8; repealed by 1991 c.612 s.23]

197.641 [1983 c.827 s.11b; 1987 c.729 s.8a; repealed by 1991 c.612 s.23]

197.643 [1983 c.827 s.11c; 1987 c.729 s.9; repealed by 1991 c.612 s.23]

197.644 Modification of work program; commission jurisdiction and rules. (1) The Land Conservation and Development Commission may direct or, upon request of the local government, the Director of the Department of Land Conservation and Development may authorize a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work program task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) The commission shall have exclusive jurisdiction for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.650. The commission shall adopt rules governing standing, the provision of notice, conduct of hearings, adoption of stays, extension of time periods and other matters related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416, 227.175 and 466.385.

(3)(a) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650.

(b) Action by the director pursuant to subsection (1) of this section may be appealed to the commission pursuant to rules

adopted by the commission. Commission action under this paragraph is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 s.6; 1997 c.634 s.1; 1999 c.622 s.5]

Note: See note under 197.628.

197.645 [1983 c.827 s.11d; 1987 c.729 s.10; repealed by 1991 c.612 s.23]

197.646 Implementation of new or amended goals, rules or statutes. (1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, Land Conservation and Development Commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the Department of Land Conservation and Development as set forth in ORS 197.610 to 197.625.

(2) The department shall notify cities and counties of newly adopted commission goals and commission rules, including the effective date, as they are adopted. The department shall notify cities and counties of newly adopted land use statutes following the legislative session when such statutes are adopted.

(3) When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions. The failure to adopt comprehensive plan and land use regulation amendments required by subsection (1) of this section may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1991 c.612 s.7]

Note: See note under 197.628.

197.647 [1983 c.827 s.11e; 1987 c.69 s.2; 1987 c.729 s.11; repealed by 1991 c.612 s.23]

197.649 Fees for notice; establishment by rules. The Land Conservation and Development Commission may establish by rule fees to cover the cost of notice given to persons by the Director of the Department of Land Conservation and Development under ORS 197.610 (1) and 197.615 (3). [1983 c.827 s.11f; 1985 c.565 s.28; 1991 c.612 s.15]

Note: See note under 197.628.

197.650 Appeal to Court of Appeals; standing; petition content and service. (1) A Land Conservation and Development Commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636

or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;

(b) Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (6);

(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed; or

(d) Persons who submitted oral or written testimony in a proceeding before the commission pursuant to ORS 215.780.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner

submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644.

(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections. [1981 c.748 s.10; 1983 c.827 s.52; 1989 c.761 s.8; 1991 c.612 s.16; 1997 c.247 s.1; 1999 c.622 s.7]

Note: See note under 197.628.

Appendix A *continued*: Oregon Administrative Rules Regarding Periodic Review

OARs filed through November 15, 2000

DIVISION 25

PERIODIC REVIEW

660-025-0010

Purpose

The purpose of this division is to carry out the state policy outlined in ORS 197.010. This division is intended to implement provisions of ORS 197.628 through 197.646. The purpose for periodic review of each local government's comprehensive plan and land use regulations is to assure that comprehensive plans and land use regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and that adequate provision for needed housing, employment, transportation, and public facilities and services, coordinated as described in ORS 197.015(5). Periodic Review is a cooperative process between the state, local governments, and other interested persons.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0020

Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 197.303, and the following definitions, shall apply:

- (1) "Filed" or "Submitted" means that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon, office.
- (2) "Final Decision" means the completion by the local government of a work program task, including the adoption of supporting findings and any amendments to the comprehensive plan or land use regulations. A decision is final when the local government's decision is transmitted to the Department for review.
- (3) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program, or completed work task.
- (4) "Work Program" means a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to assure the plan and regulations achieve the statewide planning goals. A work program shall indicate

the date that each work task shall be submitted to the Department for review.

(5) "Work Task" means a work program task that is included on an approved work program.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.015 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0030

Periodic Review Schedule

(1) The Commission shall approve, and update as necessary, a schedule for periodic review. The schedule shall include the date when each local government shall be sent a letter by the Department requesting the local government to commence the periodic review process.

(2) The schedule developed by the commission shall reflect the following:

(a) A city with a population of less than 2,500 within its urban growth boundary shall not be required to conduct periodic review, unless the city lies close enough to another city that has a population of 2,500 or more within its urban growth boundary that the smaller city is significantly affected by needed housing, employment, transportation, or public facilities and services decisions by the larger city;

(b) A county with a population of less than 15,000 shall not be required to conduct periodic review, except if the county has a portion of its population within the urban growth boundary of a city subject to periodic review, it shall conduct periodic review for that portion of the county according to the schedule and work program for the city;

(c) A county with a population of 15,000 or more but less than 50,000, or a city with a population of 2,500 or more but less than 25,000 inside its urban growth boundary, shall conduct periodic review every five to 15 years after completion of the previous periodic review;

(d) A county with a population of 50,000 or more, or a metropolitan service district or a city with a population of 25,000 or more inside its urban growth boundary, shall conduct periodic review every five to 10 years after completion of the previous periodic review.

(3) The Commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The Commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions

would significantly affect other local governments in the region are conducting periodic review concurrently.

(4) A city or county that is exempt from periodic review under subsection (2)(a) through (d) of rule may request periodic review by the commission.

(5) The Director shall maintain and implement the schedule. Copies of the schedule shall be provided upon request.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0040

Exclusive Jurisdiction of LCDC

(1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work program tasks for compliance with the statewide planning goals. Pursuant to ORS 197.610 [Section 14, SB 543], the commission has exclusive jurisdiction to review the following land use decisions for compliance with the statewide planning goals, if made by a city with a population of 2,500 or more inside its urban growth boundary:

(a) Amendments to an urban growth boundary to include more than 50 acres;

(b) Plan and land use regulations that designate urban reserve areas.

(2) The Land Use Board of Appeals shall have exclusive jurisdiction over land use decisions described in section (1) of this rule for issues that do not involve compliance with the statewide planning goals, and over all other land use decisions as provided in ORS 197.825.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0050

Commencing Periodic Review

(1) The Department shall commence the periodic review process by sending a letter to the affected local government pursuant to the schedule. The Department may provide advance notice to a local government of the upcoming review and shall encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter shall include the following information:

(a) A description of the requirements for citizen involvement, evaluation of the plan and preparation of a work program;

(b) The date the evaluation and work program or evaluation and decision that no work program is required shall be submitted;

(c) Applicable evaluation forms; and

(d) Other information the Department considers relevant.

(3) The Director shall provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0060

Periodic Review Assistance Team(s)

(1) The Director may create one or more Periodic Review Assistance Team(s) to coordinate state, regional or local public agency comment, assistance, and information into the evaluation and work program development process. The Director shall seek input from agencies, regional governments and local governments on the membership of Periodic Review Assistance Team(s).

(2) Members of the Periodic Review Assistance Team shall provide, as appropriate:

(a) Information relevant to the periodic review process;

(b) New and updated information;

(c) Technical and professional land use planning assistance; or

(d) Coordinated evaluation and comment from state agencies.

(3) Membership. The Periodic Review Assistance Team may include representatives of state agencies with programs affecting land use and representatives of regional or local governments who may have an interest in the review.

(4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide information and advice to a local government in periodic review.

(5) Authority. The Periodic Review Assistance Team shall be an advisory body. The team may make recommendations concerning an evaluation, a work program or work task undertaken pursuant to an approved work program. The team may also make recommendations to cities, counties, state agencies and the Commission regarding any other issues related to periodic review.

(6) Consideration by the Commission. The Commission shall consider the recommendations, if any, of the Periodic Review Assistance Team(s).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0070

Need for Periodic Review

The following conditions indicate the need for, and establish the scope of, review for periodic review of comprehensive plans and land use regulations:

- (1) There has been a substantial change in circumstances including but not limited to the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals;
- (2) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals;
- (3) There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals; or
- (4) The existing comprehensive plan and land use regulations are not achieving the statewide planning goals.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0080

Citizen Involvement

- (1) The local government shall use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government shall publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review. The local government shall also provide written notice of the initiation of the local periodic review to other persons who, in writing, request such notice.
- (2) Each local government shall review its citizen involvement program and assure that there is an adequate process for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities shall, at a minimum, include:
 - (a) Interested persons shall have the opportunity to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons shall have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons shall have the

opportunity to propose periodic review work program tasks prior to or at one or more hearings. Citizens and other interested persons shall receive a response to their comments at or following the hearing on the evaluation.

- (b) Interested persons shall have the opportunity to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons shall have the opportunity to present comments orally at one or more hearings on a periodic review work task. Citizens and other interested persons shall receive a response to their comments at or following the hearing on a work task.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0090

Evaluation, Work Program or Decision that No Work Is Necessary

- (1) The local government shall conduct an evaluation of its plan and land use regulations based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The local evaluation process shall comply with the following requirements:
 - (a) The local government shall follow its citizen involvement program and the requirements of OAR 660-025-0080 for conducting the evaluation and determining the scope of a work program.
 - (b) The local government shall provide opportunities for participation by the Department and Periodic Review Assistance Team. Issues related to coordination between local government comprehensive plan provisions and certified state agency coordination programs that are raised by the affected agency, or Periodic Review Assistance Team, shall be considered by the local government.
 - (c) At least 21 days before submitting the evaluation and work program, or decision that no work program is required, the local government shall provide copies of the evaluation to members of the Periodic Review Assistance Team, if formed, and others who have, in writing, requested copies.
 - (d) After review of comments from interested persons, the local government shall adopt an evaluation and work program or decision that no work program is required.
- (2) The local government shall submit the evaluation and work program, or decision that no work program is required, to the Department according to the following requirements:
 - (a) The evaluation shall include completed evaluation forms that are appropriate to the jurisdiction as determined by the Director. Evaluation forms shall be based on the jurisdiction's size, growth rate, geographic location, and other factors that relate to the planning situation at the time of periodic review.

Issues related to coordination between local government comprehensive plan provisions and certified agency coordination programs may be included in evaluation forms.

(b) The local government shall also submit to the Department a list of persons who requested notice of the evaluation and work program or decision that no work program is required.

(c) The evaluation shall be submitted within four months of the date the Department sent the letter initiating the periodic review process, including any extension granted under section (3) of this rule.

(3) A local government may request an extension of time for submitting its evaluation and work program, or decision that no work program is required. The Director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than 90 days.

(4) A decision by the Director to grant or deny a request for an extension may be appealed to the Commission, or the Director may refer the request to the Commission as follows:

(a) The Director shall provide the local government with written notice of the decision to grant, deny, or refer the request to the Commission;

(b) Appeal of the Director's decision shall be in writing and filed with the Department within 10 days of the date of notice of the decision;

(c) Appeals may be filed by the local government and persons who participated orally or in writing at the local level and demonstrate such participation as part of their appeal;

(d) In response to an appeal, the Director may prepare a written report to the Commission. If a report is prepared, the Director shall mail a copy to the local government and the appellant, if different;

(e) The Commission shall hear appeals and referrals based on the written record, and may hear oral argument at its discretion. If heard, oral argument shall be limited to the Director, or the Department on the Director's behalf, the local government, and the appellant if different;

(f) If no appeal is timely filed, the Director's decision becomes final.

(5) If a local government fails to submit its evaluation and work program, or decision that no work program is required, by the deadline set by the Director or the Commission, including any extension, the Director shall schedule a hearing before the Commission. The hearing shall be conducted as follows:

(a) The Director shall notify the local government in writing that its submittal is past due and that the Commission will conduct a hearing and consider imposing sanctions against the local government as required by ORS 197.636(2). The notice

shall state the date and location at which the Commission will conduct the hearing;

(b) The Director and the local government may prepare written statements to the Commission addressing the circumstances causing the local government to miss the deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The written statements shall be filed in a manner and according to a schedule established by the Director;

(c) The Commission may hear oral argument at its discretion. If heard, oral argument shall be limited to the Director, or the Department on the Director's behalf, and the local government;

(d) The Commission shall issue an order imposing one or more of the sanctions listed in ORS 197.636(2) until the local government submits its evaluation and work program or decision that no work program is required, or its work task required under OAR 660-025-0130, as follows:

(A) Require the local government to apply those portions of the goals and rules to land use decision as specified in an order issued by the commission,

(B) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task,

(C) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4),

(D) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0100

Notice and Filing of Objections (Work Program Phase)

(1) After the local government approves the evaluation and work program, or the evaluation and decision that no work program is necessary, the local government shall notify the Department, Periodic Review Assistance Team members, and persons who have requested such notice in writing. The local government notice shall contain the following information:

(a) Where a person can review a copy of the local government's evaluation and work program or the evaluation and decision that no work program is necessary, and how a person may obtain a copy of the decision;

(b) The requirements listed in section (2) of this rule for filing valid objection to the evaluation, work program or decision that no work program is necessary; and

(c) That objectors must give a copy of the objection to the local government.

(2) To be valid, an objection shall:

(a) Be in writing and filed no later than 21 days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the evaluation, work program or decision that no work program is necessary;

(c) Suggest a specific work task that would resolve the deficiency;

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule shall not be considered by the Director or Commission.

(4) If no valid objections are received within the 21 day objection period, the Director may approve the evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the Department may make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If valid objections are received or the Department conducts its own review, the Department shall issue a report. The report shall focus on the issues raised in valid objections and concerns of the Department. The report shall identify specific work tasks to resolve valid objections or Department concerns. A valid objection shall either be sustained or rejected by the Department or Commission based on the standards set forth in OAR 660-025-0070.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0110

Director Action (Work Program Phase)

(1) The Director may:

(a) Issue an order approving the evaluation and work program or evaluation and determination that no work program is necessary;

(b) Issue an order rejecting the evaluation and work program or evaluation and determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal; or

(c) Refer the evaluation and work program or evaluation and determination that no work program is necessary to the Commission for review and action.

(2) The Director may postpone action, pursuant to subsections (1)(a)–(c) of this rule to allow the Department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or evaluation and determination that no work program is necessary.

(3) The Director shall provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The local government, or a person who filed an objection, or other person who participated orally or in writing at the local level, may appeal the Director's decision to the Commission.

(a) Appeal of the Director's decision shall be filed with the Department within 21 days of the date notice of the Director's action was mailed;

(b) A person appealing the Director's decision must show that the person participated in the local government decision. The person appealing the Director's decision must show a deficiency in the evaluation, work program or decision that no work program is necessary. The person appealing the Director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(5) If no such appeal is filed, the Director's decision shall be final.

(6) In response to an appeal, the Director may prepare and submit a report to the Commission.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0120

Commission Review of Referrals and Appeals (Work Program Phase)

(1) The Commission shall take final action on an appeal or a referral within 90 days of the date the appeal was filed or the date the Director issued notice of the referral.

(2) Upon completion of a report, the Department shall mail a copy of the report to the local government, persons who submitted objections, and other persons who appealed the Director's decision. The report shall be mailed at least 21 days before the Commission meeting to consider the appeal or referral.

(3) The local government and persons who filed valid objections or an appeal may file written exceptions to the Directors report within ten (10) days of the date the report is mailed. The Department may issue a response to exceptions and may make revisions to its report in response to exceptions. A response or revised report may be provided to the Commission at or prior to its hearing on the referral or appeal.

(4) At the request of a local government and a person who filed a valid objection or an appeal, the Department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the Commission shall delay its hearing until the mediation process is concluded or the Director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work program disagreements.

(5) The Commission shall hear referrals and appeals based on the written record unless the Commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. No oral argument shall be allowed unless the director recommends it or the Commission on its own motion accepts it. In such case, the hearing may be postponed to allow parties to prepare for the hearing. If the Commission chooses to hear oral argument, such argument shall be limited to the Director, the local government, the appellant, and parties who filed objections, exceptions, or an appeal. The commission may authorize additional parties to present testimony in support of the local government decision, provided such parties participated in the local decision process. Parties may address the Commission concerning only those issues raised in their objections or exceptions, or appeal.

(6) Following its referral or appeal hearing, the Commission shall issue an order which either:

- (a) Establishes a work program; or
- (b) Determines that no work program is necessary.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0130

Submission of Completed Work Task

(1) A local government shall submit completed work tasks as provided in the approved work program. A local government shall submit to the Department a list of persons who requested notice of the local government's final decision on a work task.

(2) After receipt of a work task, the Department shall determine whether the submittal is complete. To be complete a submittal shall be a final decision containing all required elements identified for that task in the work program.

(3) If the Department determines that a submittal is incomplete, it shall notify the local government. If the Department determines that the submittal should be reviewed despite missing information, the Department may commence a formal review of the submittal. Missing material may be identified as a deficiency in the review process and be a basis to require further work by the local government.

(4) A local government may request an extension of time for submitting a work task. The Director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than 180 days.

(5) A decision by the Director to grant or deny a request for an extension may be appealed to the Commission, or the Director may refer the request to the Commission, according to the procedures in OAR 660-025-0090(4).

(6) If a local government fails to submit a complete work task by the deadline set by the Director, or the Commission, including any extension, the Director shall schedule a hearing before the Commission. The hearing shall be conducted according to the procedures in OAR 660-025-0090(5).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0140

Notice and Filing of Objections (Work Task Phase)

(1) After the local government makes a final decision on a work task, the local government shall notify the Department and persons who requested notice in writing. The local government notice shall contain the following information:

- (a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;
 - (b) The requirements listed in section (2) of this rule for filing valid objection to the work task;
 - (c) That objectors must give a copy of the objection to the local government; and
 - (d) That, for matters outside the jurisdiction of the Commission, objectors must appeal to the Land Use Board of Appeals as provided by ORS 197.825 through 197.830.
- (2) To be valid, objections shall:
- (a) Be in writing and filed no later than 21 days from the date the notice was mailed by the local government;
 - (b) Clearly identify an alleged deficiency in the work task;
 - (c) Suggest specific revisions that would resolve the objection; and

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule shall not be considered by the Director or Commission.

(4) If no valid objections are received within the 21 day objection period, the Director may approve the work task. Regardless of whether valid objections are received, the Department may make its own determination of the sufficiency and completeness of the work task. Except as provided in section (5) of this rule, if no objections are received and the Department does not notify the local government of a decision to conduct its own review within 60 days of the date the Department provided notice, the work task shall be deemed acknowledged. The Department shall provide a letter to the local government and persons who filed objections certifying that the work task is deemed acknowledged.

(5) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal related to a previous work task, the Director or Commission shall not approve the submittal until all conflicts and goal compliance issues are resolved. In such case, the Director or Commission may enter an order deferring acknowledgment of all, or part of, the work task until completion of additional tasks.

(6) If valid objections are received or the Department conducts its own review, the Department shall issue a report. The report shall focus on the issues raised in valid objections and concerns of the Department. The report shall identify specific work tasks to resolve valid objections or Department concerns. A valid objection shall either be sustained or rejected by the Department or Commission based on the standards set forth in OAR 660-025-0070.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0150

Director Action (Work Task Phase)

(1) The Director may:

(a) Issue an order approving the completed work task;

(b) Issue an order remanding the work task to the local government including a date for resubmittal;

(c) Refer the work task and recommendation to the Commission for review and action; or

(d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

(2) The Director shall send the order to the local government, persons who filed objections, and persons who, in writing, requested a copy of the action.

(3) The local government, a person who filed a valid objection, or other person who participated orally, or in writing, at the local level, may appeal the Director's decision to the Commission.

(a) Appeals of the Director's decision shall be filed with the Department within 21 days of the date the Director's action was mailed;

(b) A person appealing the Director's decision must show that the person participated in the local government decision. The person appealing the Director's decision must show a deficiency in the work task. The person appealing the Director's decision also must suggest a specific modification to the work task necessary to resolve the alleged deficiency.

(4) In response to a referral or appeal, the Director may prepare and submit a report to the Commission.

(5) If no appeal to the Commission is filed within the time provided by section (3) of this rule, the work tasks approved by the Director are considered acknowledged. The Department shall provide a letter to the local government, and persons who filed objections, certifying that the work task is acknowledged.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0160

Commission Review of Referrals and Appeals (Work Task Phase)

(1) The Commission shall take final action on an appeal or referral within 90 days of the date the appeal was filed or the Director issued notice of the referral.

(2) The Department shall mail a copy of the report to the local government, all persons who submitted objections, and other persons who appealed the Director's decision. The Department shall mail the report at least 21 days before the Commission meeting to consider the referral or appeal.

(3) Persons who filed objections, or an appeal, may file written exceptions to the Director's report within ten (10) days of the date the report is mailed. The Director may issue a response to exceptions and may make revisions to its report in response to exceptions. A response or revised report may be provided to the Commission at or prior to its hearing on the referral or appeal. A revised Director's report does not require mailing 21 days prior to the Commission hearing. Where the Director's report is substantially revised in response to exceptions, oral argument shall be allowed at the time of the

scheduled Commission review. Oral argument shall be limited to issues resulting from the change in the Director's report.

(4) The Director may postpone the hearing on a revised report in order to allow the parties to submit written exceptions to the revised report. Such a postponement shall provide at least ten (10) days for filing exceptions. Where the Director postpones review for the purpose of filing exceptions to a revised Director's report the Commission review shall be pursuant to section (6) of this rule.

(5) At the request of a local government and a person who files a valid objection or a person who appeals the Director's decision, the Department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the Commission shall delay its hearing until the mediation process is concluded or the Director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work task disagreements.

(6) The Commission shall hear Appeals based on the written record unless the Commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. The written record shall consist of the submittal, timely objections, the Director's report, and timely exceptions to the Director's report, and the appeal if one was filed. No oral argument shall be allowed unless the Director recommends it or the Commission on its own motion accepts it. In such case, the hearing may be postponed to the next regular meeting of the Commission to allow parties to prepare for the hearing. If the Commission chooses to hear oral argument, argument shall be limited to the Director, the local government, and parties who filed objections, exceptions, or an appeal. Parties may address the Commission concerning only those issues raised in their objections, exceptions, or appeal.

(7) Following its referral, or appeal hearing, the Commission shall issue an order which does one or more of the following:

- (a) Approves the work task;
- (b) Remands the work task to the local government, including a date for resubmittal;
- (c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task by the specified deadline requiring the Director to initiate a hearing before the Commission according to the procedures in OAR 660-025-0090(5);
- (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or

(e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

(8) If no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the work task shall be deemed acknowledged. The Department shall provide a letter to the local government and persons who filed objections certifying that the work task is acknowledged.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0170

Modification of an Approved Work Program and Extensions

(1) The Commission may direct, or upon request of the local government, the Director may authorize a local government to modify an approved work program when:

- (a) Issues of regional or statewide significance arising out of another local government's periodic review requires an enhanced level of coordination;
- (b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;
- (c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or
- (d) Issues relating to needed housing, employment, transportation, or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) Failure to complete a modified work task shall constitute failure to complete a work task by the specified deadline, requiring the Director to initiate a hearing before the Commission according to the procedures in OAR 660-025-0090(5)

(3) Action by the director pursuant to subsection (1) of this rule may be appealed to the commission pursuant to the procedures in OAR 660-025-0110 and 0120.

Stat. Auth.: ORS 183, ORS 193 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0175

Review of UGB Amendments and Urban Reserve Area Designations.

(1) A city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres, or that designates urban reserve areas under ORS 195.145, shall submit the amendment, or the designation, to the Department for review for compliance with the statewide planning goals. The standards and procedures in this rule govern the local government process and submittal, and Department and Commission review.

(2) The local government shall follow the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610, et seq., and any applicable statewide planning goals and administrative rules.

(3) The local government shall submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the Department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

(4) Department and Commission review and decision on the submittal from the local government shall follow the procedures and requirements for review and decision of a work task submittal in OAR 660-025-0140 through 660-025-0160.

Stat. Auth.: ORS 183-325 - ORS 183.355 & ORS 197.040 - ORS 197.245

Stats. Implemented: ORS 195 - ORS 197 & ORS 215 - ORS 227

Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0180

Stay Provisions

(1) When a local government makes a final decision on a work task, or portion of a work task that is required by, or carries out, an approved work program, or if the local government is a city with a population of 2,500 or more and either adopts a decision adding more than 50 acres to its urban growth boundary or designates urban reserve areas, interested persons may request a stay of the local government's final decision by filing a request for a stay with the Commission. In taking an action on a request to stay a local government's final decision on a work task, the Commission shall use the standards and procedures contained in OAR Chapter 660, Division 1.

(2) The Director may grant a temporary stay of a final decision on a local government decision described in section (1) of this rule. A temporary stay shall meet applicable stay requirements of the Administrative Procedures Act. A temporary stay issued by the Director shall only be effective until the Commission has acted on a stay request pursuant to section (1) of this rule.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0210

Updated Planning Documents

(1) Pursuant to ORS 197.260, 197.190, and the legislative policy described in ORS 197.010, each local government shall file two complete and accurate copies of its comprehensive plan and land use regulations bearing the date of adoption (including plan and zone maps bearing the date of adoption) with the Department following completion of periodic review. These materials may be either a new printing or an up-to-date compilation of the required materials or upon approval of the Department, an up-to-date copy on computer disk(s) or other electronic format.

(2) Materials described in section (1) of this rule shall be submitted to the Department within six months of completion of the last work task.

(3) The updated plan shall be accompanied by a statement signed by the Planning Director or other city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect changes made as part of periodic review.

(4) Jurisdictions who do not file an updated plan on time shall not be eligible for grants from the Department until such time as the required materials are provided to the Department.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.190, ORS 197.270 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0220

Computation of Time

(1) For the purposes of OAR Chapter 660, Division 25, periodic review rule, the time to complete required tasks shall be computed as follows. The first day of the designated period to complete the task shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of Oregon. In that event the period shall run until the end of the next day which is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 183 & ORS 197

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0230

Applicability

(1) A city or county exempt from periodic review under ORS 197.629 [section 10 of SB 543], may choose to end or continue and complete a periodic review begun prior to June 30, 1999, the effective date of the that law. Eligible local governments must make their election in writing to the Department by June 1, 2000.

(2) 1999 amendments to this division apply as follows:

(a) Local governments in periodic review that have not submitted an evaluation and work program, or decision that no work program is required, when these rules become effective shall apply the new requirements to the evaluation;

(b) Local governments in periodic review shall apply the 1999 amendments to work tasks not completed or submitted to the Department on the effective date of the 1999 amendments;

(c) The Commission may modify approved work programs to carry out the priorities and standards reflected in the 1999 amendments;

(d) The procedures and standards in the 1999 amendments for Department and Commission review and action on periodic review submittals, requests for extensions, and late submittals apply to all such submittals and requests filed after the effective date of the 1999 amendments, as well as any such submittals and requests awaiting initial Department action on the effective date of the 1999 amendments.

Stat. Auth.: ORS 183-325 - ORS 183.355 & ORS 197.040 - ORS 197.245

Stats. Implemented: ORS 195 - ORS 197 & ORS 215 - ORS 227

Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State.

Appendix B

Obtaining state statutes and administrative rules related to land use planning

The state laws known as Oregon Revised Statutes (ORSs), and the official statements clarifying those laws known as Oregon Administrative Rules (OARs), are essential tools for the execution and evaluation of land use planning in the state.

<i>ORS Chapter 93</i>	<i>Recording Property Rights and Transaction; Notice, process, etc.</i>
<i>ORS Chapter 192</i>	<i>Public Records; Public Reports and Meetings</i>
<i>ORS Chapter 195</i>	<i>Local Government Planning Coordination</i>
<i>ORS Chapter 196</i>	<i>Wetlands & Rivers; Removal & Fill; Ocean Resources Planning</i>
<i>ORS Chapter 197</i>	<i>Comprehensive Land Use Planning Coordination</i>
<i>ORS Chapter 215</i>	<i>County Planning; Housing Codes</i>
<i>ORS Chapter 227</i>	<i>City Planning and Zoning</i>
<i>ORS Chapter 244</i>	<i>Government Standards and Practices</i>
<i>ORS Chapter 527</i>	<i>Insect and Disease Control; Forest Practices</i>
<i>OAR Chapter 660</i>	<i>Land Conservation and Development Commission (Chapter 660 has numerous divisions, covering a statewide goal or procedural topic; periodic review is Division 25, for example)</i>

Many public libraries have copies of the ORSs and OARs. All law libraries have them. Those that pertain to land use are available at the DLCD website at <http://www.lcd.state.or.us/goalsrul.html>

The statutes (ORSs) are available at <http://landru.leg.state.or.us/ors/> or for \$5.00 per chapter from:

*The Office of Legislative Counsel
Room S-101 State Capitol
Salem, OR 97310
phone: 503-986-1243*

The administrative rules (OARs) are available at <http://arcweb.sos.state.or.us> or 25 cents per page from:

*Administrative Rules
Archives Building
800 Summer Street NE
Salem OR 97310
phone: 503-373-0701*

Regular updates on DLCD-related rules are available from Victoria Schiller, Rules Coordinator, 503-373-0050 ext. 231.

Appendix C

Senate Bill 543 (1999) and Periodic Review

One of the most significant land use bills of the 1999 session was SB 543, which revises the periodic review process. These changes went into effect July 12th, 1999. An overview of the bill:

The focus of periodic review is changed to four factors: housing, employment, transportation, and public facilities and services

- Periodic review's purpose is restated from “assuring comprehensive plans and land use regulations are achieving statewide planning goals” to those plans and regulations “are remaining in compliance with statewide planning goals and ensure the plans and regulations make adequate provision for needed housing, employment, transportation, and public facilities and services.”
- Focused state money. LCDC's assistance will be concentrated on those goals and laws addressing needed housing, employment, transportation, and public facilities and services.
- Incentives. LCDC directed to establish incentives to encourage local government compliance with three-year work program timelines.
- Streamlining laws. LCDC directed to adopt, amend, or repeal statewide planning goals and rules to facilitate periodic review's productivity. (*Note: DLCD Director Benner believes these last two will mean LCDC adopting more “safe harbor” provisions.*)

Small cities and counties are exempted from periodic review; for others, periodic review happens less often depending on size of city

- The four-to-ten year scheduled review is replaced:
 - Cities under 2,500 don't have to do periodic review. *Exception:* the city lies close enough to a city population 25,000 (within its UGB), that the smaller city is significantly affected by larger city's needed housing, employment, transportation or public facility and services decisions.
 - Counties under 15,000 don't have to do periodic review except for those parts in cities within those counties required to do periodic review.
 - Counties under 50,000 and cities under 25,000 (within UGB) go through periodic review every 5 to 15 years after completion of previous periodic review.
 - Larger jurisdictions go through periodic review every 5 to 10 years after completion of previous periodic review.
- LCDC can change the schedule to make jurisdictions plan concurrently.

UGB increases of greater than 50 acres by cities greater than 2,500 population must be submitted to LCDC

- Cities with greater than 2,500 population that increase their urban growth boundaries (UGBs) by more than 50 acres, or designate urban reserve areas, must submit the amendment to LCDC.

Various small changes/conforming notes

- DLCD shall be notified at least 45 days before the *first evidentiary* (instead of final) hearing for adoption of changes to comprehensive plans.
- Cities and counties in periodic review before this act may continue such periodic review.
- Exempt cities and counties can request periodic review by LCDC.
- LCDC is directed to adopt rules about initiating periodic review, citizen participation, state agency participation, evaluation of the comprehensive plan and land use regulations, review of the work program, and review of completed work tasks. More detailed statutory directions on these subjects were removed by Senate Bill 543.
- DLCD can request the Department of Housing and Community Services to review the housing inventory and needs regarding buildable land supply. LCDC must consider such review in deciding whether the comprehensive plan meets Oregon's land use laws.
- DLCD can request the Economic Development Department to review commercial and industrial land needs. LCDC must consider such review in deciding whether the comprehensive plan meets Oregon's land use laws.
- A new condition was added for indicating need for periodic review: the local government, commission, or DLCD determines the comprehensive plan and land use regulations are not achieving the statewide planning goals.
- The regional problem-solving program was continued by removing a sunset provision.

Appendix D

Sample letters to request information

Date

Planning Director
Willamette County Planning Dept.
123 4th Street
Willamette, OR 99999

Dear Planning Director:

I wish to participate in periodic review. Pursuant to OAR 660-25, please send me the following information as it becomes available:

- Notices of all hearings related to periodic review and opportunities to submit comments on the subject;
- Copies of the draft evaluation, work program, and work tasks;
- Notice when the evaluation, work program, and work tasks are submitted to DLCDC; and,
- Copies of the final evaluation, work program, and work tasks submitted to DLCDC.

Thank you very much.

Susan Q. Public

Date

Director
Department of Land Conservation and Development
635 Capitol St. NE
Salem, OR 97301-2540

Dear Director:

I wish to participate in periodic review for Willamette County. Pursuant to OAR 660-25, please send me request written notice when you receive the evaluation, work program and work tasks submitted by Willamette County.

Thank you very much.

Susan Q. Public

Appendix E

Citizen Involvement Requirements

State law governing citizen involvement in periodic review may be found in ORS 197.633(3)(b), OAR 660-025-080 and 660-025-090 (see Appendix A).

In addition to meeting the requirements of state law, the revised plan and ordinances should meet your community's specific land use needs. This requires extensive public involvement throughout the process.

Each city and county has a citizen involvement program outlined in its comprehensive plan. Regardless of whether this program is currently active, the local government is required to "use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review."

In addition, the city or county must:

- Publish written notice in a local paper when periodic review begins and send notice to those who request it in writing;
- Hold one or more hearings on the periodic review evaluation; and
- Hold one or more hearings on periodic review tasks.

There must be an opportunity for the public to submit written testimony before, and orally during, these hearings. Testimony can include proposed periodic review work tasks. And the city or county must provide a response to the comments at or following the hearings.

These are the minimum requirements for citizen participation in periodic review. Some local governments (Clatsop County and Corvallis, for example) have gone well beyond this, creating citizen working groups and task forces to deal with one or periodic review phases and issues. The level of citizen involvement is partly a function of the level and breadth of public interest, and the resources a city or county has or devotes to the process.

Appendix F

Putting it on the Record

The LCDC hearing on the final local review order is based “on the record,” which means that new evidence will not be accepted. Therefore, citizens should include all the supporting evidence to their arguments in their objection and exception statements to DLCD during local hearings.

The record of all the testimony at public meetings and letters to the government is the only legal basis for future appeals. The rule of thumb for judges is: “Show me you put it in the official record.”

Putting it on the record:

- Who?** Any and every citizen or group who may someday want to appeal. Your neighbor can’t say it for you.
- What?** Each and every concern you have with the plan. All the facts you have to support your position, including photographs, documents, and expert testimony.
- When?** At any public hearing where the government keeps a record during the six months of public review, up through the local hearing. You may also comment in writing throughout that period.
- Why?** Because if you’re not thorough, you may lose your right to appeal. Citizen appeals are the only sure enforcement tool. The public -- not government planners – was chosen by the legislature to watchdog comprehensive plans.
- Where?** At public meetings, usually in your county courthouse or city hall. But you can supplement the legal record with correspondence. And you should also meet in person with DLCD staff, as early as possible.

More information on building a record is included in *A Citizen’s Guide to Local Land Use Procedures*, available from 1000 Friends.

Appendix G

Checklist for Effective Involvement in Periodic Review

- Get involved early.** Be the one who chooses the most important issues, rather than follows them. Start meeting with your neighbors before LCDC writes its first review order.
- Do your own independent evaluation** of your city or council's comprehensive plan. When you've developed a list of priority concerns for planning, you're ready to work for its inclusion in DLCD's Notice of Periodic Review.
- Lobby early to get your issues included.** Take your list of concerns to DLCD's staff and your local press, as well as to your planning director. One or more county commissioners or city council members may want to meet with your group, too, before DLCD drafts a Proposed Work Order.
- Build a sturdy record** in the public hearings. Elected officials, planning staff and commissioners, and the media will pay more attention to a well-researched presentation. If decision makers fail to meet your concerns, all legal appeals rest on the hearings record.
- Find other groups and individuals** who will support your position. A packed hearing shows that your issue merits study even if it entails some cost of staff time and money.
- Keep the press informed.** They are often so busy that they need help from informed citizens to understand the importance and details of land use planning issues.
- Let 1000 Friends know if you want help.** In many cases, we have publications and staff to assist citizens. We also depend on *you* to be the expert about local situations.
- Prepare to follow through.** Our land use laws provide a basis for a fair and inexpensive appeals process for citizens. 1000 Friends can often provide legal assistance through the Cooperating Attorneys Program.