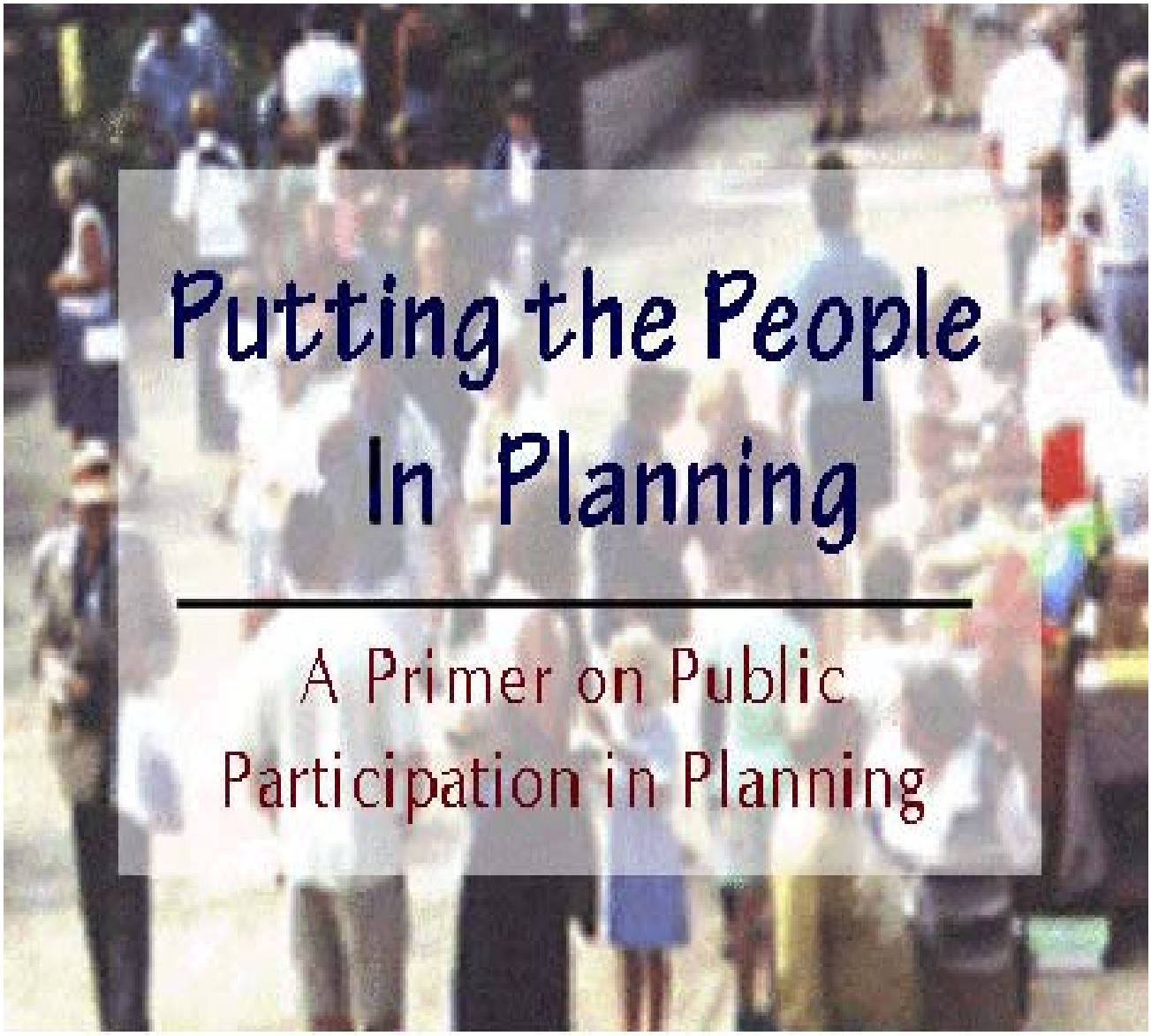

Produced by Oregon's
Citizen Involvement Advisory Committee (CIAC)
Third Edition – May 2008

Putting the People in Planning

Table of Contents

Introduction

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

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

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

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

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

1

What Is Citizen Involvement?

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

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

What is citizen involvement?

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

What is a citizen?

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

What is "participation"?

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

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

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

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

Why get the public involved in planning?

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

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

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

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

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

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

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

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

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

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

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

Planning doesn't end with the adoption of the comprehensive plan – and neither does citizen involvement.

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

2

Goal 1 and Its Six Components

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

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

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

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

What is a "citizen involvement program?"

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

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

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

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

What are the components of a CIP?

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

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

Goal One's Blueprint for a CIP

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

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

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

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

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

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

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

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

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

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

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

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

3

The Framework for Citizen Involvement

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

What is a CCI?

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

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

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

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

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

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

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

Who carries out the CIP?

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

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

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

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

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

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

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

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

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

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

How are other local governments involved?

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

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

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

What is the local framework for citizen involvement?

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

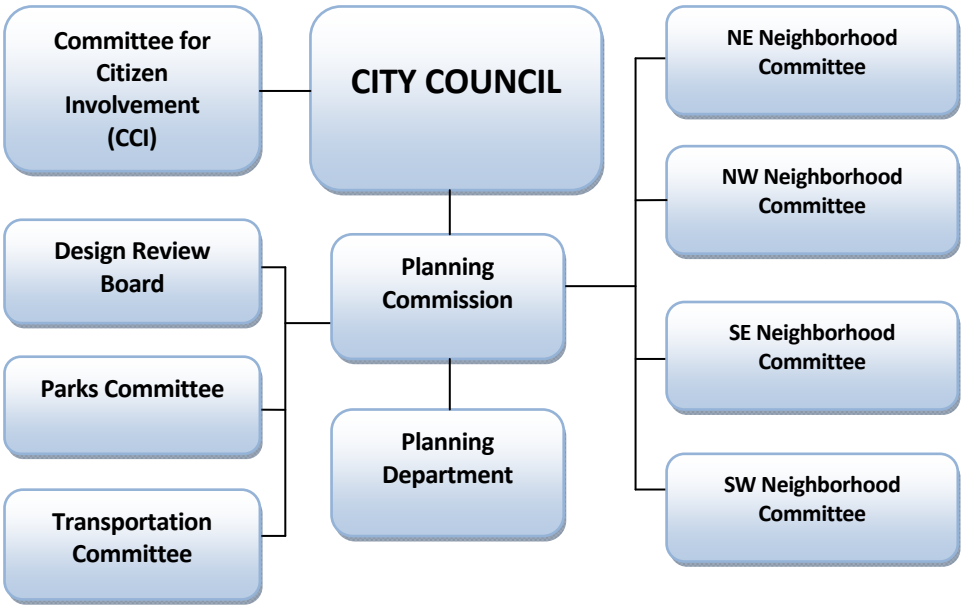

Figure 2: An example of a local framework for citizen involvement

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

What is the state framework for citizen involvement?

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

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

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

staff) has four main roles in citizen involvement:

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

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

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

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

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

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

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

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

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

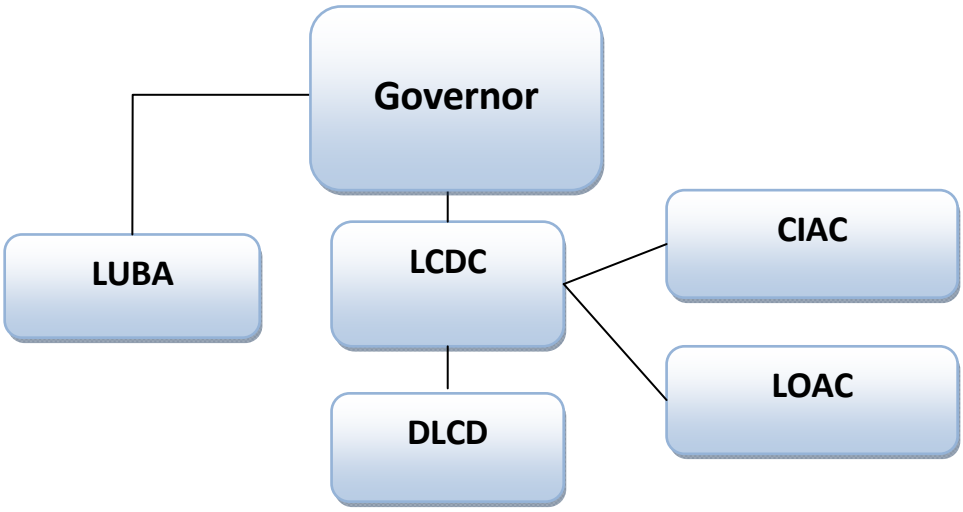

Figure 3: The state framework for citizen involvement

Are Other Agencies Involved?

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

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

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

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

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

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

What part do interest groups play?

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

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

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

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

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

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

4

Participating in the Different "Phases of Planning"

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

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

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

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

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

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

Plan Development: Building the Community Plan

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

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

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

Plan Implementation: Putting the Plan into Play

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plan Revision: A Tale of Two Processes

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

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

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

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

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

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

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

3. Develop and implement a new citizen involvement program.

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

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

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

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

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

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

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

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

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

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

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

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

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

[4] ORS 197.610(2).

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

Periodic Review Today: Less Chance for Involvement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5

The Law on Citizen Involvement

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

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

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

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

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

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

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

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

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

1. What is the main law on citizen involvement?

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

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

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

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

2. What are main types of planning decisions?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Three Examples of LUBA Cases Involving *Ex Parte* Contacts

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

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

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

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

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

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

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

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

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

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

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

5. What are "findings"?

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

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

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

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

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

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

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

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

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

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

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

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

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

Similar instruction to cities is found in ORS 227.173:

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

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

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

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

6. What is "substantial evidence"?

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

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

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

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

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

7. What is a "conflict of interest"?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. What is "standing"?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

interest in the decision.

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

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

9. What is "notice"?

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

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

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

points in common.

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

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

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

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

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

The operative wording in the statutes is found in ORS 197.763

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

11. What is the "Public Meeting Law"?

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

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

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

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

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

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

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

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

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

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

12. What is "deference" to local governments?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6

Common Issues and Problems

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

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

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

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

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

Funding

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

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

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

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

Staffing

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

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

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

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

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

Time

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

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

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

Legal Constraints

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

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

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

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

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

Apathy

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

It's true that many citizens regard planning as a dull topic. They may not see how an abstract planning policy or issue could affect them. They therefore have little interest in attending a hearing, serving on a committee, or otherwise getting involved – until they hear a bulldozer start to work in the vacant lot next door. By then, it may be too late to get involved.

But all too often, officials blame "apathy" for the failures of a citizen involvement program when the real cause is inadequate funding or management of the program. Citizens will not participate in the planning process if they lack access to it.

SUGGESTIONS: Maintain an effective citizen involvement program, one that communicates issues and information clearly to all interested persons and

groups. Develop educational programs and workshops to inform citizens about policies and issues. Encourage citizens to get into the planning process *early*.

Technocracy

Like law or medicine, planning is a complex, technical field. Citizens who venture into it for the first time are likely to be fearful about "technocracy" – government by technicians. The citizens may see their lack of knowledge about planning and the planner's extensive knowledge as a powerful combination of forces working against them. That puts the citizen on the defensive.

By their actions at the permit counter, in public meetings, and elsewhere, planners can ease such fears – or heighten them. Most planners intend to be helpful and want to put citizens at ease. But sometimes a citizen still feels intimidated. Such intimidation usually grows out of three problems. The first is simply poor communication – a failure by the planner to communicate complex ideas and information clearly. The second is paternalism – an assumption that the planner knows all the answers. The third is impatience, often brought on by inadequate staffing. Planners who are being deluged by permit applications are less likely to be patient and diplomatic with every citizen who comes to the permit counter.

Planners do not purposely try to communicate poorly or to be paternalistic. They don't mean to be impatient. Absence of malice, however, doesn't make the problem of intimidation any less real.

SUGGESTIONS: Give staff members training in effective oral and written communications. Develop and maintain programs to streamline permit processing. Use role-playing exercises to help staff better understand the lay person's view. Maintain adequate levels of staffing at key points of contact with the public, especially the permit counter. Establish a customer service program in which the citizen is the customer and the service is access to all phases of the planning process.

The Need for Predictability

Planning is a process for making decisions about how a community expects to use its land and resources. Citizen involvement *during* that process is vital, but such involvement cannot go on forever. At some point, the governing body must make its decisions and carry them out.

The extent to which developers, land owners, utility firms, and other members of the community can rely on a plan's decisions is generally referred to as *predictability*. Without it, a comprehensive plan has little or no value. But the need for predictability and the need for citizen involvement sometimes clash.

Suppose, for example, that a city is considering rezoning an area from single-family residential to multifamily residential. City officials work hard to get the public involved. They send out mailings and run newspaper ads to explain how the rezoning will allow apartments in the area. They conduct several workshops and public hearings. They receive a great deal of testimony, most of it favorable, and they proceed to rezone the area.

A year later, a developer proposes a new apartment complex in that area. Several neighbors object, but the city rejects their complaints. City officials tell them: "This area has been zoned for multifamily dwellings; the builder is completely within his rights to build apartments there."

The concerned neighbors might argue that the city is failing to provide for adequate citizen involvement. But the city already had extensive public participation. Now city officials are simply standing by the decisions that grew out of that earlier involvement.

The need for predictability doesn't mean that a plan can never be changed or that a decision should never be reconsidered. But the whole idea behind planning is to have the community agree on where certain types of land uses and public facilities like streets and sewers should go. Once such agreements have been reached and adopted in the plan, the plan cannot (or should not) be reopened every time someone objects. This is one of the reasons for periodic review: having a systematic evaluation of the entire plan every few years reduces the tendency to continually amend it in a piecemeal, complaint-driven process.

SUGGESTIONS: Emphasize the need for citizen participation *early*, when the plans and policies are being developed, not after they are being applied. Document the citizen involvement that occurred during the plan's development, so that citizens will know that its policies are based on extensive citizen input.

State and Federal Mandates

Other laws indirectly limit citizen involvement by setting standards or requirements that cannot be changed by local citizen actions. Suppose, for example, that a landowner proposes to rezone his land from Exclusive Farm Use to Heavy Industrial. Even if 100 of his friends come to the hearing and all testify for the rezoning, local officials cannot approve it if it fails to satisfy the state laws that protect farmland.

SUGGESTIONS: Inform citizens about state and federal laws that compel certain policies or actions. Provide information that describes not only the requirements of the law but also its purposes. In other words, explain not only what the law requires but also why the law requires it.

The Overburdened Citizen

Each year, cities and counties in Oregon make thousands of decisions about planning, land use, and development. The precise statewide total isn't known, but it's probably in the range of 10,000 to 20,000 decisions. Neither state nor local officials, however, have the power or resources to review or enforce all of those decisions.

Many cities and counties have few staff for zoning enforcement. Local district attorneys often are reluctant to prosecute land use cases, given the large number of criminal cases they face. The state does not hear about many local decisions: most land use decisions need not be reported to any state agency. And the state does not have as much power to intervene as many people think. For example, the Department of Land Conservation and Development cannot overturn a local land use decision. DLCD can only appeal such a decision to LUBA, just as a citizen could.

The result of all this is that much of the burden for enforcing Oregon's planning laws falls on the shoulders of everyday citizens. The citizen who objects to a local decision may have no recourse but to file an appeal to LUBA. Such an appeal is likely to take four to six months and cost several hundred dollars for appeal fees and several thousand dollars in attorney fees – if one is used. (Individuals may represent themselves at LUBA and not hire an attorney.)

A second and related problem is that local government in general and planning in particular depend on the work of lay citizens in a multitude of committees and groups such as planning commissions. Smaller communities often cannot

find enough civic-minded volunteers to fill all the positions on the planning commission, CCI, parks committee, landmarks committee, and other lay groups. Serving on such committees takes time away from families and jobs. It is often boring or stressful or both, and costs for travel to meetings. A certificate of appreciation when one leaves the committee is hardly attractive "pay."

SUGGESTIONS: Work to empower Oregon's citizens. Strive to give them easy access to all aspects of planning. Provide information, training, and incentives for them to serve on committees and commissions. The success of planning in Oregon's cities and counties depends on the work of such citizens.

7

Ways To Put The People In Planning

The preceding chapters of this manual answer some basic questions about citizen involvement: *Who? What? When? Where?* and *Why?* This chapter deals with *How?* It outlines many specific measures for getting the public involved in planning. They are arranged in five categories:

- Planning for effective citizen involvement
- Getting information *to* the public
- Getting information *from* the public
- Exchanging ideas and information with the public
- Working with the media.

In effect, this chapter is a cookbook full of recipes for citizen involvement. Its purpose is to present a wide variety of recipes to choose from, not to suggest that each city or county should try all of them. A recipe that would be good for a small city, for example, might not work at all in a metropolitan county.

The measures described in this chapter are not just theories. Almost all have been or are being used successfully by communities in Oregon. But the list is by no means complete. Our listing of one community's work therefore does not imply that the example cited is the best or only one of its kind in the state.

Also, the absence of an example with a particular "recipe" doesn't mean that no one in Oregon is using it. In some cases, such an absence just means that *many* cities and counties are using that recipe, so there's no point in singling

out one example. In other cases, the recipe sounded good, but we weren't able to find anyone who had tried it.

If you need greater detail about these measures, check the bibliography in Appendix F. It lists publications and organizations that have more information.

Ways To Plan For Effective Citizen Involvement

The best way to have strong citizen involvement in planning is to have strong planning for citizen involvement. In other words, a successful citizen involvement program must be carefully designed and managed.

Establish objectives. Assign responsibilities. Allocate specific funds and staff. Set a schedule. Monitor performance. These are basic steps to successful management of any program. Yet all too often, these steps are forgotten with citizen involvement. For some reason, citizen involvement often is not seen as a program to be actively managed. Rather, it is treated as a passive process, one that will somehow happen automatically if a few notices are mailed and a hearing is held.

But citizen involvement doesn't just happen. The most widespread public participation in planning is found in communities where citizen involvement is planned and managed carefully and aggressively. Here are some of the techniques those communities are using.

■ Manage citizen involvement in the same way as code administration or long-range planning – that is, as a major element of the planning program.

> Many cities and counties in Oregon do this. For example, the **City of Eugene**'s Planning and Development Department has a division called Neighborhood Services, with its own manager, staff, and program. Learn more about it by visiting the city's website at: http://www.eugene-or.gov/portal/server.pt

■ Draw up a citizen involvement plan for each major legislative action and land use decision that involves important community issues.

> For major planning projects, **Eugene's** planning department assigns a project manager. One of the manager's tasks is to create a work program for citizen involvement for that project. That program must be reviewed and approved by Eugene's Citizen Involvement Committee.

■ Use the CCI! The Committee for Citizen Involvement can (and usually

should):

- Advise on how to manage citizen involvement for specific projects.
- Periodically evaluate the citizen involvement program.
- Work with staff to maintain an effective network of citizen advisory committees.
- Act as a mediator to resolve disputes about public participation.
- Act as an ombudsman for citizens concerned about public participation.

> **Clackamas County**'s CCI is a good example of a committee that's doing all of the above – and more.

■ Separate the citizen involvement program from the planning department. This arrangement has several advantages. It frees planning staff from citizen involvement duties that might conflict with or take second place to other planning tasks, such as code enforcement. It allows for broader community involvement: citizen concerns are not limited to land use. And the coordinator can serve as a mediator if the planning department and citizen advisory committees disagree about a land use issue.

> The **City of Gresham** has an Office of Communications and Outreach that's based in the city manager's office. For details, see the website at http://www.ci.gresham.or.us/departments/ocm/communications/

■ Contract for citizen involvement services. An independent contractor can remain neutral during policy conflicts.

> **Washington County** contracts with the Oregon State University Extension Service to provide support to citizen advisory committees for land use and other community issues.

■ If the planning department runs the citizen involvement program, make sure the responsibility for that is clearly assigned to one or more staff persons. If no one is directly responsible for the CIP, some of that program's tasks are likely to remain undone.

■ Develop and use a citizen involvement checklist for the planning staff.

■ Give planners who deal with the public training in customer relations and communications.

■ Give planning staff and members of citizen boards and committees information and training on key topics.

> **Clackamas County** provides such training for members of its CCI.

■ Use role-playing and simulation exercises to help planners, planning commissioners, and other officials to understand the needs and wants of citizens and interest groups.

> **Hood River County**'s planners have conducted mock permit applications to gain a better idea of the view from the other side of the permit counter.

■ Maintain a registry – including e-mail addresses – of stakeholders, interest groups, and individuals with expertise or interests in important land use topics or areas. Use that registry as a source of contacts when deciding whom to involve in a particular citizen involvement effort. Update the list periodically.

■ Appoint a volunteer ombudsman or citizen involvement coordinator. The CCI may fill this role. But in communities where an independent CCI is not available, a lay ombudsman may be able to facilitate public participation in the planning program.

■ Evaluate the CIP each year, and report the results to the governing body.

> The **Clackamas County** CCI evaluates public participation in the county each year and issues a formal report to the Board of Commissioners.

■ Earmark funding for citizen involvement in the budget. Goal 1 requires this, and for good reason: it helps make people aware that citizen involvement cannot happen without a commitment of resources, and it protects the CIP.

■ Seek grants or in-kind services for citizen involvement from government agencies, businesses, service organizations, and philanthropic institutions.

> For its "Your Community 2000" project, the **City of Bend** raised $32,000 from state, city and county governments, recreation districts, private contributors and school districts. The **City of Springfield** got a $60,000 federal grant to help the city carry out its "Springfield Tomorrow" project.

■ Develop and maintain an active network of neighborhood organizations. Make sure the committees continue to receive information about permit applications, policy issues, and major projects, such as revisions to the plan or development codes.

> For example, **Salem's** Community Development Department routinely notifies its neighborhood associations about all proposals for quasi-judicial land use decisions and legislative zone changes in their areas. (Many other communities do, too.)

■ Encourage developers and permit applicants to meet with key neighborhood organizations and citizen advisory committees *before* filing a permit application. This gives applicants an opportunity to respond to neighborhood concerns before they commit to a specific plan for development. The additional time and effort needed to do this often bring significant benefits, mainly in the form of reduced likelihood of appeals. Some cities (Bandon, for example) *require* a pre-application meeting with the neighborhood organization.

■ Provide basic support for citizen advisory committees (including neighborhood groups). Such support usually includes clerical services (photocopying, mailing, and notification) and a place for meetings. Although planning staff usually do not attend all meetings of all committees, some staff attendance is essential. Without direction and assistance from staff, committees are likely to wither, lose effective communication with local officials, or become loose cannons, arguing with local officials over crucial land use issues.

■ When seeking members for a key committee such as the CCI, use an open process: publish notices, contact local civic groups, and post announcements. Don't rely on word of mouth or the personal contacts of planners, planning commissioners, or elected officials. Such a casual approach suffers from three drawbacks. First, it often does not generate a sufficient number of candidates. Second, it may cause the makeup of the committees to be too narrow. Finally, it smacks of secrecy and favoritism and may lead to public distrust or criticism of the committee.

■ Maintain a list of people who have expressed interest in a particular issue or in serving on a committee. That creates a pool of potential volunteers who can be called when a vacancy on a standing committee needs to be filled or when a new committee needs to be formed.

> **Baker County**'s planning department maintains a list of people who have said they are willing to serve on citizen advisory groups such as the county parks committee.

■ Use the Internet! It's a powerful tool for citizen involvement, making communication with citizen groups and interested persons far easier, less costly, and more effective. Many city and county planning departments have "gone online," putting their plans, development

codes, permit application forms, and publications on a website where citizens can learn about planning from the comfort of their own homes and offices.

■ Give recognition to citizen volunteers.

> **Grants Pass** holds an annual awards dinner to honor leaders and activists from its citizen committees.

The best way to have strong citizen involvement in planning is to have strong planning for citizen involvement.

Ways To Get Information To The Public

Perhaps the most common complaint from citizens about government is: "Nobody told us!" That may frustrate the weary planner who has just spent several weeks and thousands of dollars running legal ads, sending out notices, and organizing a series of public hearings. In spite of such efforts, however, the citizens' complaint may be well-founded. Few people read legal ads. Property owners often overlook or fail to understand formal notices. And public hearings do not impart much information to the public. It takes more than the traditional notice and hearing procedures to truly inform an entire community about a planning issue. Here some ways to make your message heard more widely.

■ Mail or e-mail notices and information *to the people most likely to be affected*. State law (ORS 197.763), of course, requires that notices about proposed land use decisions be mailed to owners of property around the site of a land use proposal. Those land owners, however, are not necessarily the only people or groups who will be affected by the proposal. And that law does not apply to legislative actions, which may affect people throughout the community. So start by deciding who is most likely to be affected. Then decide what message should be communicated – a plain English description of how the proposed planning action might affect the community, for example. Then base your notice on those decisions. Don't overlook the law, but don't use it as the sole standard for your communication effort.

> **Clatsop County** received an application for a major development on the shore of the Columbia River in 2007. The development would be highly visible from properties on the Washington side of the river. State law didn't

require Clatsop County's Community Development to notify people in another state about the proposed development, but county staff went the extra mile and kept interested parties in Washington fully apprised. Staff sent copies of the application to community libraries on the Washington side, notified community officials there about hearings, and posted key documents on the county website during review of the application.

■ Post written notices about important meetings and proposals in conspicuous places: the library, city hall, courthouse, community centers, and on or near affected properties.

■ Post digital notices about important meetings and planning matters on the local government's website. If the planning staff has prepared a report on the subject, provide a link to that report on the local government's website.

■ Create and maintain an up-to-date website for the local planning department, with information on it about meetings, permit applications, the zoning code, and citizen groups. Provide links to county maps and county planning and other staff. Increasingly, cities and counties are finding that their presence on the Web is the most cost effective way of creating and facilitating citizen involvement.

The **City of Salem** posts all its applications for land use permits on its website. Interested persons can check the status of a permit and learn about opportunities to participate in its review just by clicking on: http://www.cityofsalem.net/export/departments/scdev/land_use_applications_database The database of permits is organized in several different ways. One may search for permits chronologically, by neighborhood, and so on.

■ Prepare notices and information in a language other than English when a land use proposal is likely to affect members of the community for whom English is not their first language.

■ Enhance readability of documents that will be distributed to the public. Aim for a readability rating of grade level 10 or lower. Readability software programs are inexpensive and readily available on the Internet. They use various systems such as Flesch Reading Ease or the FOG Index to assess a document's readability. Likewise, popular word-processing programs such as Microsoft *Word* contain readability functions. MS *Word* 2007, for example, will analyze readability as part of its spellchecking feature. (Readability analysis is not enabled in the spellchecker's default mode, however.) Another way to enhance readability is to contract with a writer, editor, or graphics artist

to produce documents that invite a reader's attention and communicate more effectively. Short of that, just having a non-planner friend or colleague – a candid one – review a draft planning document is likely to improve its readability.

> **Example**: The first chapter of this handbook is 10.5 on the Flesch Reading Ease scale.

■ Produce summaries of important documents that are too long or complex to be understood readily by the average citizen.

■ Write periodic bulletins or status reports on big projects that are likely to generate a lot of calls or inquiries from citizens or media. This can save a lot of staff time: rather than tell the same story 20 times in long conversations on the phone or at the counter, staff members can just give the latest bulletin to the person who's making the inquiry.

■ Produce plain-English fact sheets or flyers on important issues, and distribute them to citizen committees, interest groups, students, media, and visitors to the planning department.

> **Douglas County** produced an eight-page flyer on wetlands and distributed it to interested persons and groups throughout the county. The illustrated flyer uses a question-and-answer format to define wetlands and describe how they are managed.

■ Produce flyers or booklets that describe processes and procedures such as hearings and appeals. Many planning departments in Oregon produce such information and display it in their permit centers, so visitors can readily get basic information on such as how to file an application for a land use permit. Increasingly, planning departments are maintaining similar types of information on their websites.

> The **City of Eugene**, for example, offers an interactive guide with links to official zoning maps to answer the question "What's My Zoning?"

■ Arrange for local plans, zoning ordinances, and other planning documents to be made available to the public in the local library, city hall, courthouse, and schools, and update those documents as changes are made.

> Before each meeting of its planning commission, the **City of Bandon** puts a packet of meeting materials in the city library. Anyone can come to the library and see the staff reports and other material that will be considered at the meeting. **Clatsop County** provides copies of major planning documents to all libraries in the county's

library system.

■ Prepare and distribute an annual report that describes the main planning activities and issues of the past year.

Lane County's Land Management Division prepares an annual report to its planning commission.

■ Prepare and distribute a list of publications about planning and important local issues. Make it available to reporters, students, citizen activists, and others who want to learn more about land use and the local planning program. Better yet, post all such publications on the planning department's website.

■ Develop and maintain a newsletter (either in print form or electronically).

Different county planning departments produce a quarterly or periodic newsletter that goes to all citizen advisory committees and to other interested persons and groups. **Clackamas County** produces one monthly newsletter from the board of commissioners' office. Many of its articles deal with issues of planning and citizen involvement.

■ Use the newsletters of other groups and agencies as a vehicle for getting information to certain audiences. Contact such a newsletter's editor to suggest topics for articles or to arrange for you to submit an article of your own.

■ Hold a contest. For example, to stimulate the public's interest in urban wildlife habitats and natural areas, city planners could sponsor a photo contest. Photos would show wildlife or natural scenery, and would have to be taken at sites within the city limits during the past year.

■ Enclose bulletins or fact sheets on planning with local utility billings or other routine mailings made by the city or county.

■ Organize a speakers bureau – a list of planners, local officials, and other well-informed persons willing to speak before service groups, clubs, and classes.

■ Work with local service groups, such as the League of Women Voters, Kiwanis, and Rotary. Arrange speakers for them. Distribute relevant notices and publications to them. Seek their help in communicating with the public about large planning efforts such as periodic review.

The **City of Silverton**'s Chamber of Commerce sponsored a forum where

several hundred citizens prioritized the growing needs of their city.

■ Develop a handbook or pamphlet on citizen involvement, to encourage interested citizens to get involved in planning.

Clackamas County produced a 75-page citizens' guide that explains what the county's citizen involvement program is and how one may participate in it. See Appendix F, "Bibliography." **Salem's** Department of Community Development published a 12-page booklet called "Guide To Working With Neighborhood Associations."

■ Write an issue briefing, "backgrounder," or "white paper" to explain reasons behind a controversial policy proposal. The purpose of such a paper is to answer the question "Why?" – and answer it *early*. That question eventually may be answered in a staff report or a set of findings. But those documents often are too late and too legalistic to be useful to the citizen. The white paper helps to shape and inform public opinion about a decision that's *going* to be made; findings are the defense for a decision already made.

■ Set up a citizens' planning information center or display (permanent or temporary) in a public building, shopping mall, or school.

■ Set up booths or displays at county fairs, trade fairs, and community festivals.

■ Put information on citizen involvement and planning in the material provided by Welcome Wagon, the Chamber of Commerce, and other local service groups.

■ Use graphics and audio-visual aids. Television and sophisticated advertising techniques are making the public expect more than typed text. Moreover, many planning issues have a strong visual component. Drawings, flip charts, maps, slides, overheads, or video tapes thus may often be more effective than a standard typed report.

Ashland's planning department produced an illustrated booklet, *Site Design and Use Guidelines*. The 45-page document uses drawings and diagrams effectively to explain complex material.

■ Develop a video tape to show permit applicants and citizens how to testify at a public hearing. Set up a television and video recorder to play that tape on demand at the planning office or in the lobby of the building where the public hearing will be held. (This idea comes from **Gresham's** CCI.)

■ Use "telephone trees" to announce important meetings and to relay other simple information. In such a system, the first person places a call to, say, five people. Those five each call another five people. Only three or four such cycles will quickly reach hundreds of people. The tree needs careful planning, however. Otherwise, its branches turn inward, as people call others who have already been called.

■ Use computers at the permit counter to make information readily available to citizens and permit applicants.

> **Lane County** has terminals at the main counter in the Land Management Division. With help from a staff person, a permit applicant or interested citizen can key in a few commands and moments later get a screen full of information about a particular piece of land – its size, zoning, permit status, number of dwellings, etc.

■ Arrange site observations, walking tours, or bus tours of key sites and areas for interested citizens and organizations.

> **Eugene** has prepared brochures and maps of historical places, so that citizens can take self-guided walking tours of historical districts. The **Lane Council of Governments** arranged tours for interested persons to see areas proposed for inclusion in a new wetlands conservation plan.

■ Have planners or planning officials teach or guest lecture in local schools, community colleges, or universities.

■ Make and retain a written record not only of findings for quasi-judicial land use decisions (as required by statute) but also for legislative and policy decisions. This enables interested persons to see how and why new regulations or policies were developed.

Ways To Get Information From The Public

If the public's most common complaint is "Nobody told us," then the second most common probably is "You didn't listen." But how can planners and local elected officials listen more effectively? Here are some answers to that question – 13 ways to receive the public's messages more clearly.

1. Hold public hearings. Publicize such hearings widely and mail notices to persons and groups who are likely to have an interest in the topic of the meeting. Note that a public hearing is mainly a way to solicit comment *from* the public. If information needs to be conveyed *to* the public, or if an exchange

of ideas and information between the public and planners is needed, other types of public meetings are more effective – town hall meetings and workshops, for example.

2. Make the meeting place accessible. See that all public meetings are held in places that have adequate parking and seating and are accessible to handicapped persons.

3. Schedule public meetings so as to avoid conflicting events. Such scheduling should take into account traditional vacation months like August, school vacations, local or regional sports events, hunting seasons, and other events that might cause many people to be unable to attend.

4. Use a checklist for all public meetings. The list should encompass the multitude of seemingly minor details that, if forgotten, can turn a meeting into a disaster. Such details include, but are by no means limited to, items such as these: number of chairs, sound system, number and type of microphones, timer, sign-up sheets, easel and flip charts, handouts, and audio-visual equipment. Perhaps the most common problem at public meetings is a combination of poor acoustics and inadequate sound system that leaves dozens of people unable to hear what's going on.

5. Mail surveys to a cross-section of the community.

> The **City of Springfield** sent questionnaires to every fourth registered voter in the city as part of its "Springfield Tomorrow" project. The survey asked respondents for their views and priorities on several dozen land use and community planning issues.

6. Gather information and views through door-to-door canvassing.

> The **City of Milwaukie** used several dozen high-school students (led by chair persons of local neighborhood groups) to carry out a "Block Walk." The students went door to door to survey residents about community issues and resources. The project was preceded by extensive press coverage.

7. Conduct on-site interviews or door-to-door surveys in areas that will be affected by a development proposal, rezoning, or planning decision.

8. Provide a "public comment" period at every public meeting of the local planning commission or governing body. Its purpose is to give citizens a chance to speak on topics *not* already on the agenda.

The state's **Land Conservation and Development Commission** and the **Citizen Involvement Advisory Committee** both have a public comment period at their regular meetings, usually as the first item on the agenda.

9. Conduct "passive surveys" by having questionnaires available in the planning department, public library, city hall, shopping mall, or other public places. Such surveys must be brief, and because their respondents are not selected randomly, the results may not be fully reliable. They may, however, provide some useful information and suggestions.

10. Conduct "online surveys" to learn citizen views on key topics.

The **City of Sandy** recently posted such a survey on the city's website to seek citizen comments on proper design standards for commercial development.

11. Invite guest speakers from interest groups or other agencies to make presentations to the planning staff, planning commission, governing body, or citizen advisory committees.

Wasco County invites officials from state agencies to make presentations about state programs that affect the county. The Oregon Department of Fish and Wildlife, for instance, made an hour-long slide presentation on big-game winter range to the Wasco County planning commission.

12. At town hall meetings, workshops, and brainstorming sessions, use flip charts to build a record. Have someone summarize key points on the charts. Tape each filled-out page on the wall, so the audience can see their comments and ideas. After the meeting, record the notes on 8½-by-11-inch paper, and distribute them to those who attended the meeting.

13. Provide a "clipping service" for planning commissioners, elected officials, and chairs of advisory committees. That is, monitor local and regional newspapers for articles, editorials, and letters to the editor about planning issues and citizen involvement. Clip such pieces out of the newspaper and mail them periodically. This service can be done by local staff or by commercial clipping services.

The **Department of Land Conservation and Development**, through its Communications Officer, monitors newspaper coverage of land use in Oregon. On a weekly basis, the Communications Officer sends an email digest of those articles (with links to the full articles) to subscribers. Anyone can subscribe to the free service on the Internet by filling out a short form at:
http://webhost.osl.state.or.us/mailman/listinfo/landuse-news

Ways To Exchange Ideas And Information With The Public

The most effective communication is more than just sending or receiving messages. It involves an *exchange* of ideas and information. Such exchanges are essential in our day-to-day relations with friends, relatives, and colleagues. They are, however, difficult to achieve on a community-wide scale. Here are some ways to attack that problem:

■ Have the public participate in building a vision of the community's future. Such "visioning" is the subject of the recent *Oregon Visions Trilogy*, written by several Oregon planners. The manual describes the visioning process and explains how Oregon communities can use it. (See Appendix F, "Bibliography.")

> The **City of Corvallis** carried out an extensive visioning process in the late 1980s. Among other things, the city organized workshops, invited a well-known futurist to speak to at a public meeting (attended by some 500 people), and organized a special event called "Children's Visions of the Future." The city also printed and distributed 25,000 copies of a newsprint tabloid containing the Corvallis Vision statement. The visioning work provided the policy foundation for the city's statutorily required periodic review.
>
> For a more recent example of an extensive community visioning process that's now under way, click on the **City of Tualatin's** website, at http://www.tualatintomorrow.org/

■ Encourage developers and permit applicants to bring their proposals to neighborhood groups early in the application process. This keeps the citizens informed about issues that may affect their neighborhood, and it enables the developer to respond to citizen concerns early, before much money has been invested in plans, surveys, and permit fees.

> When the **Kaiser-Permanente Corporation** wanted to build a medical center in south Salem, its executives met with local neighborhood groups and talked to all prospective neighbors. Kaiser-Permanente modified their plans so as to satisfy concerns they heard from the neighbors, and then completed the permit and construction process – without opposition.

■ Hold town hall meetings, community forums, or public workshops on important issues and policy proposals. Be aware of the important differences between these types of meetings and a hearing. A hearing is more formal and has a mostly one-way flow of information (from citizens *to* the hearing officials). The main purpose of a hearing is to reach a decision. In contrast, a

town hall, public forum, or workshop is less formal, involves an exchange of ideas and information, and has that exchange (not a decision) as its main purpose.

> The **City of Coos Bay** followed up a community-wide survey with a town hall meeting. The meeting was broken into smaller working groups, each asked to list the top five goals for the city. The groups' lists were quite consistent with each other, and the turnout for the meeting was good – about 200 people.

■ Conduct a series of informal planning workshops in the homes of volunteers.

> The recently incorporated **City of Damascus** organized a successful series of neighborhood "coffees" and "summer socials" to generate community interest in the city's first comprehensive plan. City staff provided "host kits" for the volunteers and attended the events to answer questions and learn more about citizen ideas and interests.

■ Compile a summary of names and main points of those who participated in public meetings and other activities leading to the development of a new policy. This summary of input will help citizens see how the policy was developed and who contributed to its development. It also may be useful years later if ambiguous wording leads to questions about the intent of the policy.

■ When developing new policies, create an *ad hoc* "task force" or "steering committee." Such a group usually is made up of people knowledgeable about the pertinent issues and with ties to a wide variety of interests. Members thus serve two purposes: they bring information to the process, and they convey information to their network of contacts. An *ad hoc* committee also may serve as a neutral party in a controversy if elected officials or planners are perceived to be on one side or the other.

> **Union County** formed an "Aggregate Advisory Committee" to help county officials develop policies on the controversial topic of aggregate mining. The committee had five members – an "at large" member, and one from each of the following groups: landowners near aggregate sites; aggregate operators; business interests; environmental interests.

■ Maintain a temporary 800 telephone number or a special "hotline" to deal with controversial issues likely to generate a great deal of public comment or inquiry.

■ Conduct briefings or roundtable discussions with key community leaders

and stakeholders. The purpose of such meetings is twofold: to convey ideas and information to community leaders, and to learn their views and interests.

> **LCDC** holds community briefings on large and complex topics such as transportation planning, natural hazards and periodic review. The commission also holds roundtable lunch sessions during most meetings conducted outside of Salem.

■ Conduct a charrette. A charrette is an intensive meeting of a few key stakeholders or community leaders working to iron out an agreement. It is an effective way of "getting to yes," but it requires a big investment of time by participants, and it usually does not represent a cross-section of the community.

■ Strive to provide "procedural satisfaction" to all parties when making decisions. This term comes from the growing literature on dispute resolution. It means the belief that the decision-making process is fair no matter what its outcome.

■ Follow up: send a summary of new policies and regulations to people and groups who testified or otherwise helped to develop them. This serves two purposes: it conveys information about the new material to key people, and it gives them some sense of ownership in the final product.

■ Conduct an open house periodically in the planning department.

■ Mail or e-mail information packets periodically to the chairs of all citizen advisory committees. Such a packet might contain the agendas for coming meetings of boards such as the planning commission, recent applications for development permits, any recent fact sheets or summaries, and clippings of recent planning news.

> Each month, **Newberg's** planning department sends its neighborhood committee chairs a report summarizing key planning issues and activities.

■ Work with local schools and teachers to get students involved in planning. The students learn about land use planning and government; they may produce useful data; and they make their parents more aware of planning issues.

> Teacher Neal Maine (from **Seaside**) has developed a coastal resource planning curriculum for high-school students. It's designed to bring science and civics together as students work on actual planning issues.

■ Introduce commission members and staff at the beginning of every public meeting of a body such as the planning commission. Explain their role and the purpose of the meeting.

> **Baker County's** planning commission begins each of its meetings by having the chair introduce all commissioners and the planning director.

Ways To Work With The Media

The first rule for working with the media is this: treat them as allies. Chances are, you have a story to tell about some important planning program or issue, and the media can help you tell it.

Suppose, for example, that a county is beginning the periodic review of its comprehensive plan. One way to inform citizens about that is to run a legal notice about the periodic review hearings. But a better way is to work with a local reporter to develop a front-page news article about periodic review. Such an article provides more information and is read by more people, and it's free. Seizing the initiative also has this big advantage: it enables you to get information to the media before any inaccurate or unbalanced coverage occurs.

Remember, if you don't tell your own story, someone else will tell it for you. Here are some ways to see that *your* story gets told first.

■ Issue news releases and public service announcements (PSAs). Even small planning agencies can use this technique. News releases can be written and distributed quickly, and the media will often use them almost word for word – *if* they contain something newsworthy and are written in the appropriate style. PSAs are news releases for radio stations, written so that they can read on the air in 15 to 30 seconds. A word of caution: news releases and PSAs must be brief. Many media outlets set firm limits on the total number of words allowed. Word processing software can help here: most programs have a word-count function. In Microsoft *Word 2007*, for example, the number of words in a document is displayed at the bottom of the screen, in the status bar.

■ Designate a staff person to be the planning department's "information officer." Assign to him or her responsibility for working with the media and for trying to generate informative stories about important planning issues and programs.

■ Distribute a "press packet" to local and regional media annually and to new

reporters assigned to the local government beat. Such a packet contains basic information about the planning department and the community's planning program. The packet serves two purposes: it reminds the media about your program and its important work, and it provides background information that the media may need when they do a story about your agency.

■ Have the planning director or other key officials appear on local radio or television talk shows.

■ Hold a news conference. This may sound intimidating, but it doesn't require a great deal of time or special skills. The main requirement is to have something newsworthy as the subject of the conference. If a television station is to be invited, try to arrange a site for the conference that has some visual interest. For example, to announce the start of a new program for protecting historical places, have the news conference in a historical building.

■ Arrange to have important public meetings televised on the local community access cable television channel.

> CCTV "cablecasts" the meetings of the **Salem** and **Keizer** city council live and rebroadcasts them later in the week.

■ Use community access cable television to produce special shows about planning issues.

> The **City of Portland** produced a television show about the Albina Neighborhood Plan, using Portland Cable Access Television.

■ Write guest "op/ed" pieces for the local newspaper.

> The **Springfield** *News* ran a guest editorial from city officials encouraging citizens to participate in the "Springfield Tomorrow" project.

■ Call the editor of the local newspaper and suggest news articles or editorials about important planning issues and activities. Don't assume that the media are fully informed about all planning issues and activities that are important to the community. Without your call, the matter may not be reported, or it may be reported incorrectly.

■ Arrange to have meetings and hearings announced in the local calendar of events maintained by most newspapers and radio stations.

> **Hillsboro's** planning commission meetings are announced in the Hillsboro

Argus's community calendar. The *Argus* publishes its calendar once a week. Information to be published in the calendar must be submitted a week in advance. A typical announcement contains about 30 words. The newspaper does not charge for this service.

■ For issues and activities of community-wide importance, use *display* ads in the local newspaper rather than legal ads. Legal ads are required in some cases, but sometimes the only reason for their use is tradition. Most citizens do not read legal ads, and for good reason: they are printed in small type in an obscure section of the newspaper, and often are written in a legalistic, hard-to-read style. If you really want to reach the public, don't rely on legal ads.

The **City of Coos Bay** produces a quarterly newsletter, which is printed and distributed as an insert in the Coos Bay *World*. **Metro** (the Portland metropolitan area's regional government) places its public meeting agendas in the classified ads in the *Oregonian* every Saturday.

■ Arrange for notices, flyers, or other information to be delivered as an insert in the local newspaper. This "print and deliver" service is useful for getting information to a certain part of the community. The inserts can be placed in only those newspapers to be delivered in the northwest part of a city, for example. In most cases, such inserts will be cheaper than a display ad.

■ Conduct surveys or questionnaires through the local media.

The **City of Springfield** used a clip-and-return questionnaire printed in the Springfield *News* and the Eugene *Register-Guard* to survey citizens as part of the "Springfield Tomorrow" project in 1991.

There you have it – multiple ways to bring the citizens of your community into all phases of the planning process. Yes, the activities described above do cost money and take time. They are, however, sound investments – investments that ultimately facilitate better planning. Effective citizen involvement ensures that planning projects and programs better reflect the needs of the community, are better understood by citizens, and face fewer legal challenges.

We on the Citizen Involvement Advisory Committee wish you much success in your efforts to put the people in planning.

———————

Thanks

This third edition of *Putting The People In Planning* was produced by the 2006-07 state Citizen Involvement Advisory Committee (CIAC):

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- Ann Glaze, Dallas (Vice Chair)
- Jack L. Johnson, Cove
- Ian Maitland, Harbor
- Pat Wheeler, Monmouth
- Chris White, Portland
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Mitch Rohse, a planning consultant and author of the first edition of this handbook, wrote this third edition. Peter Frothingham led CIAC's review and editing team. Cliff Voliva, DLCD's Communications Officer, managed the project.

The first edition of this handbook, under the title *How To Put The People In Planning*, was produced by the 1992 CIAC:

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Appendix A:

Goal 1, *Citizen Involvement*

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies, and special- purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

1. Citizen Involvement – To provide for widespread citizen involvement.

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

2. Communication – To assure effective two-way communication with citizens.

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. Citizen Influence – To provide the opportunity for citizens to be involved in all phases of the planning process.

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

4. Technical Information – To assure that technical information is available in an understandable form.

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. Feedback Mechanisms – To assure that citizens will receive a response from policy-makers.

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The rationale used to reach land-use policy decisions shall be available in the form of a written record.

6. Financial Support – To insure funding for the citizen involvement program.

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

GUIDELINES

A. CITIZEN INVOLVEMENT

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and committee appointments should be well publicized.

B. COMMUNICATION

Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

C. CITIZEN INFLUENCE

1. Data Collection - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the

plans.

2. Plan Preparation - The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

3. Adoption Process - The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

4. Implementation - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

5. Evaluation - The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

6. Revision - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

D. TECHNICAL INFORMATION

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

E. FEEDBACK MECHANISM

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

F. FINANCIAL SUPPORT

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

Appendix B: ORS 197.160 and 197.763

"State Citizen Involvement Advisory Committee; city and county citizen advisory committees."

"Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures"

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees. (1) To assure widespread citizen involvement in all phases of the planning process:

(a) The Land Conservation and Development Commission shall appoint a State Citizen Involvement Advisory Committee, broadly representative of geographic areas of the State and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the adoption and amendment of the goals and guidelines.

(b) Each city and county governing body shall submit to the commission, on a periodic basis established by commission rule, a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations within the respective city and county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this subsection shall review the proposed programs submitted by each city and county and report to the commission whether or not the proposed program adequately provides for public involvement in the planning process, and, if it does not so provide, in what respects it is inadequate.

(2) The State Citizen Involvement Advisory Committee is limited to an advisory role to the commission. It has no express or implied authority over any local government or State agency. [1973 c.80 §35; 1981 c.748 §25; 1983 c.740 §49]

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

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

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

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

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

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

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

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

(3) The notice provided by the jurisdiction shall:

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

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

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

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

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

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

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

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

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

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

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

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

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

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

(a) Lists the applicable substantive criteria;

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

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

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

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

evidence, arguments or testimony for the purpose of responding to the new written evidence.

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

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

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

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

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

(9) For purposes of this section:

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

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

Appendix C: ORS 215.416 &.422

"Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing" (for counties)

215.416 Permit application; fees; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Oregon Department of Aviation.

(8)(a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

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

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing,

the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

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

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

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

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

(12) A decision described in ORS 215.402 (4)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.552 §§15, 16; 1977 c.654 §2; 1977 c.766 §12; 1979 c.772 §10a; 1983 c.827 §20; 1987 c.106 §2; 1987 c.729 §17; 1991 c.612 §20; 1991 c.817 §5; 1995 c.595 §27; 1995 c.692 §1; 1997 c.844 §4; 1999 c.357 §2; 1999 c.621 §1; 1999 c.935 §23; 2001 c.397 §1]

215.422 Review of decision of hearings officer or other authority; notice of appeal; fees; appeal of final decision. (1)(a) A party aggrieved by the action of a hearings officer or other decision-making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.

(b) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer or other decision-making authority is the final determination of the county.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee there for, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1). [1973 c.522 §§17,18; 1977 c.766 §13; 1979 c.772 §11; 1981 c.748 §42; 1983 c.656 §1; 1983 c.827 §21; 1991 c.817 §9]

Appendix D: ORS 227.175 &.178 &.180

"Application for permit or zone change; fees; consolidated procedure; hearing approval criteria; decision without hearing" (for cities)

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a “public use airport” if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway “approach surface” as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an

applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or $250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

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

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

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

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

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 (5)(b).

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828. [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2]

227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees. (1) Except as provided in subsections (3) and (5) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what

information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

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

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

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application

for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment. [1983 c.827 §27; 1989 c.761 §16; 1991 c.817 §15; 1995 c.812 §3; 1997 c.844 §8; 1999 c.533 §8; 2003 c.150 §1; 2003 c.800 §31]

227.180 Review of action on permit application; fees. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer or other decision-making authority in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to $500. In lieu of a transcript prepared by the governing body and the fee there for, the governing body shall allow any party to an appeal proceeding held on the record to prepare a transcript of relevant portions of the proceedings conducted at a lower level at the party's own expense. If an appellant prevails at a hearing or on appeal, the transcript fee shall be refunded.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25; 1991 c.817 §12]

Appendix E: ORS 192.610 – 192.690

The Public Meetings Law

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a

person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52]

Note: The amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, take effect January 1, 2008. 192.630, as amended by section 21, chapter 100, Oregon Laws 2007, and including amendments by section 52, chapter 70, Oregon Laws 2007, is set forth for the user's convenience.

192.630. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public

bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed

and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does

not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring

standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134]

Note: The amendments to 192.660 by section 11, chapter 602, Oregon Laws 2007, take effect January 1, 2009. See section 13, chapter 602, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (2) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating

a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23]

Note: The amendments to 192.690 by section 8, chapter 796, Oregon Laws 2007, take effect January 1, 2009. See section 9, chapter 796, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the Health Professionals Program Supervisory Council established under ORS 677.615, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

Appendix F: BIBLIOGRAPHY

Bibliography

Additional Web Information Resources

Key Word Search

The following are suggestions for searching the Internet for web sites related to citizens and land use:

- Public Participation
- Public Participation in Land Use
- Citizen Involvement
- Conflict Resolution
- Citizen Action
- Land Use Planning

For Further Information

Association for Conflict Resolution
Phone: 202-464-9700 (Washington, D.C.)
Fax: 202.464.9720
Email: acr@ACRnet.org
Internet: http://www.acrnet.org

Department of Land Conservation & Development
Current information on meeting dates, agendas, minutes, publications on-line, statutes and administrative rules and other resources
Phone: 503-373-0050
Fax: 503-378-5518
Email: cliff.voliva@state.or.us
Internet: http://www.oregon.gov/LCD

Institute for Local Government
Public participation tips, land use glossary, public hearing checklist, tips for crafting a public participation program
Phone: (916) 658-8208 (Sacramento, CA)
Fax: (916) 444-7535
Email: kjensen@cacities.org
Internet: http://www.cacities.org/index.jsp?zone=ilsg

International Association of Public Participation
Searchable data base of books, articles and websites
Phone: 1-800-644-4273 (Denver, CO)
Fax: 1-303-458-0002
Email: iap2hq@iap2.org
Internet: http://www.iap2.org

http://iap2.civicore.com/index.cfm?fuseaction=resources.main
http://iap2.civicore.com/index.cfm?fuseaction=weblinks.main

Local Government Commission
Center for Livable Communities
Phone: 1-916 448-1198 (Sacramento, CA)
Fax: 1-916 448-8246
Email: center@lgc.org
Internet: http://www.lgc.org
Public participation tools:
http://www.lgc.org/freepub/land_use/participation_tools/landuse_mapping.html

National Conference on Dialogue and Deliberation:
Resources on a host of public participation approaches and literature:
Phone: 1-717-243-5144 (Pennsylvania)
Email: ncdd@thataway.org
Internet: http://www.thataway.org
Dialogue and deliberation models:
http://www.thataway.org/resources/understand/models/models.html

Oregon State Attorney General's Office.
Publishes a helpful guide called the *Public Records and Meetings Manual*. It's not available on-line, but you may order a copy from Publications Section, Department of Justice, 1162 Court Street NE Salem, OR 97301-4096

Portland State University
Center for Public Participation
Phone: 503.725.8290 (Portland, OR)
Fax: 503.725.8250
Email: cpp@pdx.edu
Internet: http://www.cpp.pdx.edu/

Smart Communities Network
National Center for Appropriate Technology
Resource links, tools, and much land use planning information
Internet: http://www.smartcommunities.ncat.org/toolkit/toolkit.shtml

U.S. Environmental Protection Agency
Information on public participation, specific to EPA but many tools and resources are applicable to participation in land use:
Phone: 202-566-2204 (Washington, D.C.)
Fax: 202-566-2220
http://www.epa.gov/publicinvolvement/

University of Wisconsin Center for Land Use Education
Phone: (715) 346-4853 (Madison, WI)

Fax (715) 346-4038
Internet: http://www.uwsp.edu/cnr/landcenter/landcenter.html

A listing of local Oregon non-government land use organizations:
http://www.friends.org/links/affiliates.html

The following website (in about mid page) provides a link to all county websites. Through these, county planning departments and, often, zoning codes can be accessed.
http://www.statelocalgov.net/state-or.cfm

Publications

Citizen Involvement

City of Gresham: Gresham's Neighborhood Associations Guidelines Manual.
http://www.ci.gresham.or.us/departments/ocm/neighborhoods/naguidelines/cover.htm

City of Portland, Environmental Services: *Public Participation Handbook,* 1995
http://www.portlandonline.com/shared/cfm/image.cfm?id=84215

City of Portland, Office of Neighborhood Involvement: *An Outreach and Involvement Handbook for City of Portland Bureaus,* third edition, 2005
http://www.portlandonline.com/shared/cfm/image.cfm?id=98500

City of Portland, Office of Neighborhood Involvement: *Guidelines for Neighborhood Associations, District Coalitions, Neighborhood Business Associations, Communities Beyond Boundaries, Alternative Service Delivery Structures and the Office of Neighborhood Involvement*, 1998.
http://www.portlandonline.com/shared/cfm/image.cfm?id=42468

Oregon Department of Land Conservation & Development
- *How to Testify at Land Use Hearings*, 2006
- *Citizen Involvement Guidelines for Policy Development*, 2004
- *Citizen Initiated Enforcement Orders*, 2000
- *A Legislative History of the Oregon Experience in Limiting SLAPPs*, 1999

http://www.oregon.gov/LCD/publications.shtml#Citizen_Involvement

Portland Development Commission, Public Affairs Department: *Public Participation Manual,* 2005
http://www.pdc.us/pdf/public-participation/public-participation-manual_6-1-05.pdf

Association for Conflict Resolution, *Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes*, 1997.
http://www.acrnet.org/acrlibrary/more.php?id=13_0_1_0_M

Oregon State University: *Good Decision Making,* P. Corcoran, 1998.

http://seagrant.oregonstate.edu/sgpubs/onlinepubs/g99004.pdf

Oregon State University: *Successful Partnerships,* P. Corcoran, 1999.
http://seagrant.oregonstate.edu/sgpubs/onlinepubs/g99001.pdf

Oregon State University: Dealing with Stumbling Blocks, F. Conway, 1998.
http://seagrant.oregonstate.edu/sgpubs/onlinepubs/g99006.html

U.S. Environmental Protection Agency, Office of Emergency and Remedial Response: *Superfund Community Involvement Handbook,* 2002.
http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf

U.S. Department of the Interior, Bureau of Land Management: *Land Use Planning Handbook*, H-1601-1; March, 2005.
http://www.blm.gov/nhp/200/wo210/landuse_hb.pdf

Vancouver Community Network website: *Serving customers or engaging citizens: What is the future of Local Government?* Frank Benest.
http://www.vcn.bc.ca/citizens-handbook/benest.html

Oregon Department of Land Conservation and Development, Salem, OR.
http://www.oregon.gov/LCD/index.shtml

Tarnow, K., P. Watt, and D. Silverberg. 1996. Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues: A Handbook for Land Use Planners, Resource Managers, and Resource Management Councils. *Describes types and causes of conflict and management of conflict through the collaborative process, fairly detailed.*

Books

Available for sale through the American Planning Association website: www.planning.org or from booksellers.

Citizen's Guide to Planning, Herbert H. Smith, 1993, third edition.
For professionals and laypeople.

Planning Made Easy, Efraim Gil, Enid Lucchesi, William Toner, 1994.
Designed for new members of planning commissions. Includes basics of planning, zoning, subdivisions, etc.

Building Citizen Involvement, Mary L. Walsh, 1997.
A workbook on how to increase citizen participation.

Neighborhood Planning, Bernie Jones, 1990.
Explains planning and the role for citizens.

Appendix G: GLOSSARY

Glossary

Appeal. A legal proceeding in which a decision by one body is reviewed by another, usually as the result of a challenge by some aggrieved person. In many cities and counties, a land-use decision by a hearings officer or planning commission can be appealed to the local governing body. Local land-use decisions can be appealed to the state's Land Use Board of Appeal (LUBA).

Citizen. "Any individual within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens." ("Definitions," Oregon's Statewide Planning Goals) See "person" below.

Citizen Advisory Committee (CAC). "A group of citizens organized to help develop and maintain a comprehensive plan and its land use regulations. Local governments usually establish one such group for each neighborhood in a city or each district in a county. CACs may also be known as neighborhood planning organizations, area advisory committees, or other local terms. CACs convey their advice and concerns on planning issues to the planning commission or governing body. CACs also convey information from local officials to neighborhood and district residents." ("Definitions," Oregon's Statewide Planning Goals)

Citizen Involvement Advisory Committee (CIAC). "A State committee appointed by the Land Conservation and Development Commission to advise that commission on matters of citizen involvement, to promote public participation in the adoption and amendment of the goals and guidelines, and to assure widespread citizen involvement in all phases of the planning process. CIAC is established in accordance with ORS 197.160." ("Definitions," Oregon's Statewide Planning Goals) Some cities and counties call their local committee for citizen involvement by this same name.

Citizen Involvement Program (CIP). "A program established by a city or county to ensure the extensive, ongoing involvement of local citizens in planning. Such programs are required by Goal 1, Citizen Involvement, and contain or address the six components described in that goal." ("Definitions," Oregon's Statewide Planning Goals)

Committee for Citizen Involvement (CCI). "A local group appointed by a governing body for these purposes: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning; assisting in the implementation of the citizen involvement program; and evaluating the process being used for citizen involvement. A CCI differs from a citizen advisory committee (CAC) in that the former advises the local government only on matters pertaining to citizen involvement and Goal 1. A CAC, on the other hand, may deal with a broad range of planning and land use issues. Each city or county has only one CCI, whereas there may be several CACs." ("Definitions," Oregon's Statewide Planning Goals)

Department of Land Conservation and Development (DLCD). The State agency that administers Oregon's Statewide planning program, under the direction of the Land Conservation and Development Commission. DLCD's main office is in Salem. The agency also maintains field offices in La Grande, Central Point, Bend, Newport, Eugene and Portland.

Goals. "The mandatory statewide planning standards adopted by the [Land Conservation and Development] commission pursuant to ORS chapters 195, 196 and 197." (ORS 197.015(8)) Oregon has 19 such goals. A copy of the complete text of the goals is available on the DLCD website at: http://www.oregon.gov/LCD/goals.shtml

Land Conservation and Development Commission (LCDC). The seven member lay commission that oversees Oregon's statewide planning program. LCDC's members are appointed by the governor and confirmed by the senate. LCDC's policies are carried out by the Department of Land Conservation and Development (DLCD). This combination of a State agency overseen by a lay commission is typical of most State government programs in Oregon.

Land Use Board of Appeals (LUBA). A board established by the State legislature in 1979 to hear and decide appeals of local land use decisions. LUBA has three members: a board chair and two board members. All are appointed by the governor and confirmed by the State senate. All must be members of the Oregon State Bar.

Notice; notification. An announcement from a governmental body describing some action to be taken by that body and explaining how interested persons can participate in or appeal that action. ORS 197.763 specifies the notice procedures to be used by cities and counties in making quasi-judicial land use decisions. See appendices for complete text of key laws.

Participate. To express one's self in the proper forum at the proper time. A letter to the governing body about a pending land use decision and oral testimony during a public hearing are two of the most common examples of participation in planning.

Person. "Any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197." (ORS 197.015(18))

Standing. The right to participate in or appeal a planning action or decision. Limits on standing vary with the type of action and the place where it is being considered. Standing to appeal a local land-use decision to the State's Land Use Board of Appeals (LUBA) is defined by ORS 197.830:

> " . . . [A] person may petition the board for review of a land use decision or limited land use decision if the person:
> (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
> (b) Appeared before the local government, special district or state agency orally or in writing."

Appendix H:

LCDC's Citizen Involvement Program

Land Conservation and Development Commission
Citizen Involvement Guidelines for Policy Development

Approved by LCDC on April 23, 2004

I. Purpose

The purpose of these guidelines is to provide and promote clear procedures for public involvement in the development of Commission policy on land use. The Commission values the involvement of the public and interested parties in all phases of planning, including development of Commission policy. These guidelines are intended to provide the Commission and the Department with practical guidance on public involvement during policy development, consistent with and in some cases beyond the legal requirements of the Attorney General's Model Rules of Procedure, state law, and the Commission's administrative rules.

The Commission and the Department shall follow these guidelines to the extent practicable in the development of new or amended statewide planning goals and related administrative rules, and in other significant policy development activities related to the statewide land use program.

II. Public Involvement Objectives in Development of Commission Policy

- To provide meaningful, timely, and accessible information to citizens and interested parties about policy development processes and activities of the Commission and the Department.

- To promote effective communication and working relationships among the Commission, the Department, citizens and interested parties in statewide planning issues.

- To facilitate submittal of testimony and comments to the Commission from citizens and interested parties and the response from the Commission to citizens and interested parties about issues of concern with regard to policy proposals.

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

In order to guide the Commission and the Department in planning for and conducting procedures and activities that will result in a significant new or amended statewide land use policy, such as a new or amended statewide planning goal or an administrative rule, the Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;

2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;

3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and

5. Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.

6. Develop a database of names of citizens interested in participating in LCDC land use policy development on general or on specific issues. The department shall maintain this database. In addition, information should be provided on the department's website to notify the public of opportunities to serve on advisory committees or workgroups."

B. In establishing committees, workgroups, and processes for the development of new or amended goals, rules or policies, the Commission and the Department shall consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest. Depending on these considerations with respect to a particular policy issue, the Commission may:

1. Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions.

2. Authorize the Department to establish an advisory committee that includes affected parties, technical experts and other knowledgeable individuals in order to provide advice and assistance to the Director and the Department on a particular policy issue, prepare options or alternatives, and provide advice and information on the political, practical, technical, and scientific aspects of a potential new or amended policy. Such advisory committees to the Department are referred to as "workgroups" and their meetings shall be open to the public. While these meetings are not necessarily subject to the requirements of the Open Meetings Law, the Department shall strive to comply with the provisions of that law with respect to notice and other requirements. The Department shall report to the Commission when it appoints a workgroup in order to provide an opportunity for the Commission to consider and, if necessary, amend the group;

3. Choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.

C. The Commission, when establishing an advisory committee, or the Department, when establishing a workgroup, shall:

1. Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
2. Assure that Department staff provides adequate support, within the limitations noted below;
3. Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
4. Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup; and
5. Consider geographic representation in appointing committees or workgroups.
6. Provide information to members of advisory committees and workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed: (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
7. In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a

workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal.

D. The Commission shall encourage flexibility and innovative methods of engaging the public in its policy activities and shall seek the assistance and advice of citizens affected by or with an interest in the proposed policy issue. To this end the Commission may convene short -term technical panels or focus groups (real or virtual), hold conferences, conduct on-line surveys, and carry out other means of gathering information. Where a goal, rule or significant policy process primarily affects a certain region, and where advisory committee or workgroup meetings are confined to that region, notice and opportunities to comment shall also be made available to citizens and interested parties in other regions of the state. Where appropriate, the Commission shall consider collaborative rulemaking under ORS 183.502.

E. The Commission is cognizant that the level of public involvement and outreach described in these guidelines will be difficult or impossible without adequate staff support from the Department, and that the scope of efforts to promote and facilitate public participation and outreach will be limited based on the adequacy of staff and funding resources.

F. None of the activities described herein are intended to conflict with or replace any of the public notice or comment opportunities provided under state law or administrative rules.

G. The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.

IV. Communication with Citizens

A. Understandable Information

The Commission and the Department shall provide to citizens information that is essential to understanding the policy issues at hand and shall endeavor to make this information easily understood and readily accessible. The Commission and the Department shall identify Department staff or other experts who shall be available to answer questions and provide information to interested citizens.

B. Notice of Decisions

The Commission and the Department shall provide notice of decisions to citizens who have requested information and/or participated in the development of policy. This notice shall be by e-mail except paper mail when specifically requested. Notice shall direct citizens to the Department's website where the decision, background information, staff reports, rationale for the decision, and other information will be available.

C. Costs

Paper copies of items may be mailed upon request subject to fees that may be established by the Department to recover costs (the Commission has established copy fees under OAR 660-040-0005).

D. Appeal Information

Information on appeals procedures shall be available on the Department's website and shall be referenced, when appropriate, in notices to citizens, above.

E. Electronic Communication

While the Commission and the Department recognize that not all citizens presently have or desire direct home access to electronic communications or the agency website on the Internet, the Commission also recognizes the numerous advantages of electronic communication. The Commission is committed to using this medium as a primary means of communication and distribution of information of interest to citizens and shall encourage the Department to employ web-based communication technologies to provide a broad range of information to citizens and to facilitate communication between the Commission and citizens.

V. Applicability

These guidelines are effective April 26, 2004, and supersede the previously adopted Citizen Involvement Program adopted October 7, 1977 and Public Involvement Policy adopted May 4, 2001. The Department is directed to consult with CIAC with regard to new and ongoing projects, including advisory committees and workgroups appointed for those projects, at the earliest scheduled CIAC meetings. However, in the event the meeting schedule of those committees will not allow timely consultation on policy projects intended to begin in accordance with the schedule adopted by LCDC, the Department is directed to proceed with those projects and to consult with CIAC at the earliest opportunity.