

**Interim Committee on Periodic Review Reform**

**Report to the 2005 Legislature  
on the effectiveness and efficiency of the  
process for periodic review of local  
comprehensive land use plans**

**With recommendations for reform**

**March 29, 2005**

# Interim Committee on Periodic Review Reform Report to the 2005 Legislature

## Table of Contents

Executive Summary .....	ii
Committee roster.....	iii

### Chapter

1. Introduction.....	1
Purpose of Committee.....	1
Methods.....	1
2. Overview of Periodic Review .....	3
3. Evaluation of Periodic Review:	
Opportunities and Constraints.....	5
What Works Well .....	7
What Hasn't Worked As Well .....	8
4. Recommended Changes to Periodic Review .....	10
Recommendation 1 .....	10
Recommendation 2 .....	11
Recommendation 3 .....	12
Recommendation 4 .....	12
Recommendation 5 .....	13
Recommendation 6 .....	14
Minority Report .....	15
5. Legislation and Implementation .....	18

### Appendices

- A. Overview of comprehensive plan update process in other states
- B. Planning director survey
- C. Comparison of periodic review schedule under various options
- D. Committee meeting notes

# Executive Summary

---

This report is from the committee created by Section 10, Chapter 793, Oregon Laws 2003, to provide recommendations on periodic review to the 2005 Legislature, and fulfills this mandate of that committee. Based on the opportunities and constraints identified in the report, the committee makes certain recommendations and identifies additional legislative and implementation issues that decision-makers must address if the recommendations are approved.

The committee focused its attention on the periodic review program as it exists today, following adoption of changes in the 1999 and 2003 Legislative Sessions (Senate Bills 543 and 920, respectively). However, the committee reviewed the history of the program and what other states require, and surveyed practitioners to determine the elements of periodic review that work well and those that do not.

The committee makes the following recommendations:

1. Reduce the number and frequency of local governments required to do “capacity reviews.”
2. Provide an opportunity for voluntary review for exempt cities and counties.
3. Utilize the Economic Revitalization Team to encourage exempt cities and counties to re-think their comprehensive plans through a simplified PR process.
4. “Decouple” periodic review from the process of amending comprehensive plans and land use regulations to comply with new state requirements.
5. Allow no appeal of a decision (local or state) to adopt a periodic review work program.
6. Make LCDC the single forum for review of matters arising in periodic review.

These recommendations are not unanimous among committee members. A minority report (which concurs in recommendations 4-6 above) is provided.

# Committee Roster

---

The committee was appointed by the Land Conservation and Development Commission.

<b>Name</b>	<b>Affiliation</b>	<b>Representing</b>
Dick Benner	Metro	same
Jim Brown	Governor's office	same
Jon Chandler	Oregon Home Builders Association	Developer interests
Keith Cubic	Douglas County	Counties
Sid Friedman	1000 Friends of Oregon	Land use planning public interest groups
Ken Gibb	City of Corvallis	Cities
Linda Ludwig	League of Oregon Cities	same
Art Schlack	Association of Oregon Counties	same
Becky Steckler	Consulting firm	Oregon Chapter APA
Ed Sullivan	Garvey Schubert Barer	not specified
John Van Landingham	LCDC	same
Burton Weast	Western Advocates	Special districts

The commission also appointed Don Ivy, representing the Coquille Tribe, who resigned during the committee's tenure but too late to be effectively replaced.

# Chapter 1 Introduction

---

This report, the *Interim Committee on Periodic Review Reform Report to the 2005 Legislature*, is from the committee created by Section 10, Chapter 793, Oregon Laws 2003 (SB 920), to provide recommendations to the 2005 Legislature and fulfill this mandate of the committee. This report provides an overview of the periodic review program and identifies opportunities and constraints. Based on the opportunities and constraints, the Interim Committee makes recommendations and identifies additional legislative and implementation issues that decision makers must address if the recommendations are approved.

## PURPOSE OF COMMITTEE

The periodic review committee was created by the 2003 Legislature to review the existing periodic review program and make recommendations as to its future. Paraphrasing the legislation, the committee's charge was to determine:

1. The effectiveness of the program in accomplishing the legislatively declared policy for the program (recognizing the changes made by 1999 Oregon Laws Chapter 622 (SB 543) and 2003 Oregon Laws Chapter 793 (SB 920));
2. The cost-effectiveness of the program; and
3. The efficiency of the program in balancing the requirements with available state and local resources.

## METHODS

The findings of this report are based on the following activities:

- **Interviews with current and former DLCD and LUBA staff.** The Interim Committee invited former and long-time DLCD staffer Jim Knight, long-time home builders representative Fred Van Natta, and LUBA Referee Mike Holstun to share their experiences with the formation and implementation of the periodic review program.
- **Surveys.** Ken Gibb, Corvallis Community Development Director, conducted an email survey of Oregon city planning directors to identify the opportunities and constraints with the existing program. Keith Cubic, Douglas County planning director, did a similar survey of county planners, and Linda Ludwig of the League of Oregon Cities polled city managers.
- **Review of other state comprehensive plan update programs.** Committee members Becky Steckler, OAPA, and Linda Ludwig, League of Oregon Cities, conducted an internet search of comprehensive plan update programs and conducted telephone interviews of state program

managers to learn how other states conduct “periodic review” types of activities.

- **Committee deliberations.** The committee met 11 times in 2004 and 2005 to discuss and debate recommended changes to the periodic review program.

## **Chapter 2      Overview of Periodic Review**

---

Periodic review requirements and procedures have evolved over the 24 years since its inception. The major legislative mileposts follow.

- 1981** Oregon Laws Chapter 748, Sec. 9: Required update of acknowledged plans periodically on a schedule set by the commission, but at least every five years. Review was to insure the local plan and ordinances remained in compliance with the goals and coordinated with state agency plans and programs. Established substantive and procedural requirements for determining whether periodic review was required for a jurisdiction. These “factors” for determining if periodic review is needed are still largely intact.
- 1983** Oregon Laws Chapter 827, Sec. 11: Refined the schedule to two to five years for the first review and every three to five years thereafter. Required DLCD to provide notice to local government at least 180 days prior to beginning of next periodic review. Established procedural requirements and time frames for completion of periodic review (all amendments contained in one “review order”). DLCD to review within 60 days; department options were to terminate periodic review or refer to the commission. Directed commission to establish rules for expedited procedure to apply to small cities and counties.
- 1987** Oregon Laws Chapter 729, Secs. 7–13: Provided for “segmented” periodic reviews for joint planning areas such as urban growth boundaries and shorelands. Provided for time extensions for local government action and state review.
- 1991** Oregon Laws Chapter 612: Replaced old procedures and requirements. Amended interval between periodic reviews to four to ten years. Established steps: local plan evaluation, development of work program that includes tasks and completion dates, and task submittal. Provided for appeals, commission amendment of a work program, and sanctions for failing to complete a work program (through a contested case process).
- 1999** Oregon Laws Chapter 622 (SB 543): Established periodic review policy. Exempted small cities and counties from the requirement to perform periodic review. Amended interval between periodic reviews to five to ten or five to fifteen years, depending on size of the jurisdiction. Focused periodic review work programs and funding on four topics—employment, needed housing, public facilities and services, and transportation. Limited extensions of task deadlines and provided LCDC the responsibility to apply sanctions for missing work program or task completion dates.

**2003 Oregon Laws Chapter 793 (SB 920):** Made completion of certain existing work programs and tasks optional. Set deadlines for department review of submitted tasks. Prohibited most new work programs and tasks. Created committee to study the efficiency and effectiveness of periodic review and recommend improvements.

# **Chapter 3      Evaluation of Periodic Review: Opportunities and Constraints**

---

A comprehensive evaluation of the effectiveness of periodic review is beyond the scope of the budget and time allocated to the committee. The best that the committee can offer is an impression informed by our collective experience, our understanding of the experience of other states dealing with processes analogous to periodic review, and brief surveys of local governments.

The measure of effectiveness is whether periodic review is accomplishing the purposes set forth in the periodic review statute at ORS 197.628(1):

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

The committee focused its attention on the periodic review program as it exists today, following adoption of changes in the 1999 and 2003 Legislative sessions (Senate Bills 543 and 920, respectively). Those changes sought to address many of the principal complaints about periodic review. Because the changes have not yet been fully implemented, or the implementation has not yet been fully felt, some of the perceived difficulties that spurred the 1999 and 2003 changes may still be present in the system. The committee notes those perceptions in this report, but concentrates on post-2003 periodic review.

Among the negative perceptions of periodic review identified by the drafters of Senate Bill 543 (1999), were the following:

1. Periodic review was taking too long, many years in some instances.
2. Periodic review was expensive and state and local resources have diminished.
3. There were too many tasks assigned to local governments in periodic review.
4. There was a large backlog of completed work tasks sitting at DLCD waiting for action, but delayed for a variety of reasons.

Senate Bill 543 responded by (1) exempting small cities and counties from periodic review and allowing them to end their current reviews; (2) lengthening the period between reviews for those local governments still required to do periodic review; (3) establishing timelines for completion of periodic review;

(4) focusing new periodic reviews on the legislature's highest priority growth management issues; (5) directing LCDC to make goals and rules easier for local governments to apply in periodic review; and (6) directing LCDC to establish incentives for efficient local completion of periodic review.

Some of these changes are still unfolding. For example, LCDC has revised some rules to make it easier for local governments to undertake periodic review (for example, the new rule determining what level of residential development is "rural"), but is still revising others (for example, a work group is currently developing recommended changes to Goal 14 regarding UGB expansions).

Some of the changes produced a lower level of "savings" than anticipated. For example, not all local governments eligible to terminate their periodic reviews chose to do so; many remained in periodic review, for a variety of reasons, some reflecting the benefits of periodic review. Some local governments exempt from periodic review under SB 543 have nonetheless decided to enter it for advantages they perceive in the process. As a result, the agency's periodic review workload did not drop as much as anticipated.

In addition, following SB 543, attention focused on other concerns with periodic review: the statutory process (for example, the two steps—development of work program and completion of work tasks—either or both of which can be appealed); the split jurisdiction between LCDC and LUBA; the lack of involvement by state agencies; the need to update plans on a regional rather than a city-by-city and county-by-county basis; and other matters.

In 2003, SB 920 adopted a second set of temporary and permanent changes; the Legislature did the following: (1) set deadlines for completion or elimination of pending periodic review work tasks in order to clear the "pipeline;" (2) imposed a partial moratorium on new periodic review work until July 1, 2005; (3) limited new periodic review work after that date until June 30, 2007; and (4) adopted other measures designed to reduce the periodic review workload.

As noted, the changes made by Senate Bills 543 and 920 have not yet been fully implemented. Nonetheless, those changes have had a dramatic effect on the periodic review workload. As indicated by the materials attached to this report, most of the periodic review work in the pipeline prior to the changes discussed above has been completed by local governments and DLCD, or the obligation to undertake periodic review has been removed.

The reduction of the periodic review workload inclined some members of the committee to recommend that the Legislature: (1) make no changes in the 2005 session and give the previously-adopted changes more time to take hold; and (2) defer further discussion of periodic review to the overall evaluation of the land

use program anticipated in the 2005-07 and 2007-09 biennia.<sup>1</sup> In fact, we do recommend that the Legislature refrain from *major* change in the course of periodic review in anticipation of a full program evaluation expected after the 2005 session.

The committee does recommend several changes that it considers *minor*—described in Chapter 4 of this report. We recommend that the Legislature enact these changes in the 2005 session because the periodic review workload will rise again when the July 1, 2007 partial moratorium expires. These changes will make periodic review more efficient by reducing the time and cost of the process and help accomplish the objectives of the changes made by previous Legislatures in SBs 543 and 920.

The committee believes that the periodic review program has been a major contributor in accomplishing state policy directing that local comprehensive plans and land use regulations must be updated periodically. The committee believes that this is an important state policy that should continue to be implemented.

There are mixed reviews regarding the efficiency and effectiveness of Oregon's periodic review program. The following lists summarize the committee's perspectives.

## **WHAT WORKS WELL**

- Periodic review prompts local governments to update plans in order to respond to changing demographics, economic conditions and public facility needs. Local officials are required to conduct a local planning process that otherwise may not rise to the top of the local government agenda.
- Periodic review provides a comprehensive and systematic approach to updating community plans and a formal structure for directing state coordination and assistance.
- Periodic review challenges local governments to deal with key planning items such as residential densities and industrial land availability that are important policy issues at the local, regional and state levels.
- Periodic review provides the impetus for local governments to respond to various state planning requirements in a consolidated package of planning and regulatory updates.

---

<sup>1</sup> Governor Kulongoski is supporting a broad review of the Oregon land use planning program by an independent task force jointly appointed by the Governor and Legislature. The task force would assess the effectiveness of the planning program in meeting current and future needs of all Oregonians. SB 82.

- Periodic review has provided grants and technical assistance resources to assist local governments in updating comprehensive plans and land use regulations. This assistance has been particularly beneficial to smaller jurisdictions that otherwise could not afford to support long range planning.
- Periodic review procedural requirements help engage local citizens early in the community planning process.

## **WHAT HASN'T WORKED AS WELL**

- The periodic review process has generally been too cumbersome and the complicated process has often overshadowed the end product. The multiple opportunities for appeal have contributed to this problem.
- Periodic review work programs have focused on updating local plans to comply with various mandated state laws and rules and current state identified planning agendas. This has often not allowed local communities to adequately address high priority local planning issues.
- The periodic review process has not been timely as demonstrated by the backlog of work tasks and the amount of time that it takes to complete periodic review. This has caused some work programs to lose momentum and the process being viewed as a “chore” rather than an opportunity for good community planning. Some jurisdictions, including Metro (which has an every 5 year requirement), are constantly in periodic review.
- Periodic review work programs are often too large in scope and lacking in state and local financial resources necessary to support the effort. Contributing factors include excessive expectations by DLCD and unrealistic local goals during the scoping of work programs.
- Periodic review has been hampered by a lack of involvement and commitment by other state agencies to the goal of state and local coordination.
- Periodic review, as a state-mandated program, creates a regulatory approach to local planning rather than a locally managed process that is sensitive to local interests and priorities.
- Senate Bill 543 and Senate Bill 920 exempted many cities and counties from periodic review requirements. Some committee members are concerned that this may result in smaller, rural cities and counties being left behind in economic development opportunities because local plans are outdated.

Sources for the above summary:

- John Van Landingham's running summary of the committee work
- Becky Steckler's report on SB 543
- Keith Cubic's summary of county planning director's comments
- Ken Gibb's survey of city planning directors
- Linda Ludwig's survey of city managers
- Committee discussion

# Chapter 4      Recommended Changes to Periodic Review

---

As noted in Chapter 3, the committee does not recommend major changes to the periodic review process, both because the Legislature is expected to authorize an evaluation of the entire land use program in Oregon and because the revisions to periodic review made in Senate Bills 543 (1999) and 920 (2003) have not yet had sufficient time to be fully implemented or evaluated. The committee believes, however, that the following changes would significantly improve periodic review and save resources for all participants. Because these proposals were not unanimously supported, the committee's recommendations are followed by a minority report endorsed by three committee members.

## **RECOMMENDATION 1**

**Reduce the number and frequency of local governments required to do "capacity reviews."**

Senate Bill 543 (1999) changed periodic review by requiring it to focus on the capacity of comprehensive plans to accommodate population growth. The legislature told LCDC to concentrate periodic review on Statewide Planning Goals 9 (Economy of the State), 10 (Housing), 11 (Public Facilities and Services) and 12 (Transportation). ORS 197.628(2). As a practical matter, periodic review has become "capacity review."

Senate Bill 543 also exempted some local governments from periodic review.

A majority of the committee recommends further exemptions to align review requirements more closely with available state and local resources, and to make reviews a more positive and beneficial experience for all participants.

Senate Bill 543 exempted cities with less than 2,500 people from review. The committee recommends that cities smaller than 10,000 in population be exempt *unless*:

- The city is growing faster than the state average for five consecutive years, or
- LCDC calls a city to periodic review upon a recommendation from the Economic Revitalization Team, in consultation with the city, that the city is likely to be affected significantly by (1) a major state investment (highway interchange or corrections facility, e.g.), or (2) a major new or expanded employer that will affect the supply of housing or capacity of public services.

Even these growing cities would remain exempt if they had completed periodic review within the past five years.

Senate Bill 543 exempted low-population counties (less than 15,000 people) from periodic review. The committee recommends that *all* counties be exempt, *except*:

- The urban portions of counties (inside a UGB), which would be part of the appropriate city's review; or
- The portion of a county within an urban unincorporated community upon a recommendation from the Economic Revitalization Team, in consultation with the county, that the community is likely to be affected significantly by (1) a major state investment (highway interchange or corrections facility, e.g.), or (2) a major new or expanded employer that will affect the supply of housing or capacity of public services.

The remaining exempt cities and rural portions of counties would remain in compliance with the goals by updating their comprehensive plans as necessary to comply with new state requirements through the "post-acknowledgement plan amendment" ("PAPA") process rather than through periodic review (see Recommendation 4, "Decoupling").

Finally, the committee also recommends that periodic review be required less frequently. Local governments in regions large enough to be designated metropolitan planning organizations (MPOs) should do periodic review at least every seven years (Portland area; Salem-Keizer; Corvallis area; Eugene-Springfield; Medford area; and Bend area). Cities larger than 10,000 citizens and not in an MPO should do periodic review once every 10 years.

The table in Appendix C compares the current periodic review schedule (after the Senate Bill 920 moratorium) with the schedule that would result from these recommendations, including a list of exempt local governments. Note that the periodic review process is employed under current law (ORS 197.628) whenever a city over 2,500 population proposes to expand its boundary by 50 acres or more (100 acres for Metro); this is not proposed to change.

## **RECOMMENDATION 2**

### **Provide an opportunity for voluntary review for exempt cities and counties.**

The committee recommends that the state offer exempt cities and counties the opportunity to undertake, with state assistance set aside for this purpose (to the extent available), a full evaluation and overhaul of their comprehensive plans and land use ordinances. This review would be different from the "capacity reviews" currently required under Senate Bill 543 and Recommendation 1. The review would be entirely voluntary on the part of local government and would focus on a city's vision for its future.

### **RECOMMENDATION 3**

**Utilize the Economic Revitalization Team to encourage exempt cities and counties to re-think their comprehensive plans through a simplified PR process.**

In its discussion of Recommendation 1—to exempt more cities and counties from periodic review—the committee considered the plight of small cities with comprehensive plans that, though the plans may comply with state planning laws, are nonetheless out of date and may impede the cities’ ability to prosper economically. Many small cities have little internal capacity to modernize their plans. And while Recommendation 2 would allow these exempt cities to voluntarily opt in to periodic review, the committee is concerned that these cities may not realize the benefits of updating their plans.

The committee therefore recommends that the Economic Revitalization Team (ERT), to the extent state resources are available, identify and work with those cities that would benefit from a voluntary plan update customized to focus on that city’s vision, rather than a full periodic review. After identifying such a city, ERT’s role would be to educate the city about the benefits of re-thinking the city’s vision, and then—if the city so chooses—to help design a process to update the plan.

### **RECOMMENDATION 4**

**“Decouple” periodic review from the process of amending comprehensive plans and land use regulations to comply with new state requirements.**

For many years it has been the practice of the legislature and LCDC, when they amend or add a requirement of state land use law, to tell local governments that they must revise their comprehensive plans to comply with the change “at the time of their next periodic review.” The reasons for linking these changes to periodic review have been to give local governments time to make the changes, to spread the changes over time, and to allow local governments to make the changes when they are considering other changes to their plans as well.

The link, however, has had other, unintended consequences, underlying some of the criticism of periodic review. The requirement to amend plans to comply with new state requirements has sometimes overwhelmed, or at least dominated, periodic review work programs. The result has often been to turn the attention of the local government from its own periodic review objectives to the state-required plan amendments. The link has also lengthened periodic review for many local governments and increased its cost. Finally, reliance on periodic review would clearly not work for those cities and counties that are altogether exempt from periodic review under the current statute or that would become exempt under Recommendation 1.

The committee recommends that the state no longer use the periodic review process as the vehicle for implementation of new state requirements. Instead, the legislature and LCDC should set a date for compliance with such requirements at the time they are enacted. (If no other date is set, new requirements become applicable directly to local land use decisions upon their effective dates, pursuant to ORS 197.646.) This “decoupling” of state requirements from the periodic review process will let local governments use the periodic review process to achieve local purposes and long-range planning for “needed housing, employment, transportation and public facilities and services” as required by ORS 197.628(2). Local governments would implement new state requirements via post acknowledgement plan amendments instead of the periodic review process.

As part of this recommendation, the committee suggests that the Legislature require the department to include in its biennial report to the Legislature (required by ORS 197.060) a section on the progress of local compliance with new statutory and regulatory requirements.

One concern with “decoupling” discussed by the committee is that it will cause an increase in the number of cases filed with LUBA: amendments to local plans that would otherwise happen in periodic review (appeal to LCDC with further appeal to the Court of Appeals) will instead be appealed to LUBA as “post-acknowledgement plan amendments.” Given the passage of Measure 37, however, neither the Legislature nor LCDC is likely to impose new land use requirements through local comprehensive plans. Also, the case-load at LUBA will be reduced by Recommendations 5 and 6.

## **RECOMMENDATION 5**

**Allow no appeal of a decision (local or state) to adopt a periodic review work program.**

Current law provides for appeal both of the adoption of a periodic review work program and of the completion of a periodic review work program task by any participant. ORS 197.633(3). The committee believes citizen involvement in the development of a work program, and in periodic review itself, is essential. The committee also believes citizens who participate in periodic review should be able to appeal LCDC approval of a work task to the Court of Appeals. But appeal of adoption of a work program, before any work is accomplished, has burdened the periodic review process with little benefit.

Eliminating appeals of periodic review work program adoption will not only reduce the cost and the length of periodic reviews. It will also reduce the LUBA workload.

## **RECOMMENDATION 6**

**Make LCDC the single forum for review of matters arising in periodic review.**

As a general matter, LCDC, rather than LUBA, has jurisdiction over periodic review decisions by local governments. The Legislature gave the agency, rather than LUBA, jurisdiction over matters submitted to the agency in periodic review in 1983 in order to settle disputes about jurisdiction and to prevent “forum-shopping,” inconsistent rulings and duplicate appeals.

However, the same statute that gives LCDC jurisdiction over this *kind of decision* also limits LCDC’s jurisdiction to certain *subject matters*. LUBA has interpreted this law to limit LCDC’s periodic review jurisdiction to contentions of (1) violation of statewide planning goals and rules and (2) lack of consistency between local plans and ordinances submitted in periodic review. As a result of this split subject-matter jurisdiction, lawyers for citizens objecting to a local periodic review decision feel compelled due to malpractice concerns to file an appeal both at LCDC and LUBA, and local governments must defend their decisions at both places. On occasion, local governments must then follow appeals of LCDC and LUBA decisions to the Court of Appeals in two separate cases. This is wasteful of LUBA’s time, local governments’ time and objectors’ time (and money). Split jurisdiction also spawns its own costly and time-consuming set of legal issues (“what are matters related to the statewide planning goals?”).

The committee discussed a simple solution: Send all objections arising from a periodic review decision by a local government to LCDC, with no appeal to LUBA. This would make LCDC the single forum for appeals of local decisions made in periodic review, with further appeal to the Court of Appeals. The department expressed two concerns with this proposal: (1) LUBA is likely to have greater expertise than LCDC over issues not related to the statewide planning goals; and (2) whatever savings that might accrue to LUBA would be transferred to the department.

With these concerns in mind, the committee believes the best solution is to give the agency initial jurisdiction over all issues raised during the local periodic review process, with authority for the director to transfer an issue to LUBA if the director determines LUBA is better qualified to decide the issue. The transfer decision should not be subject to appeal. Although this proposal will not completely end dual appeals, it will end disputes over jurisdiction, saving LUBA, the agency, local governments and citizens time and money.

## MINORITY REPORT

Three members disagree with some of the committee's recommendations. We support the recommendation to decouple legislative or LCDC policy directions to local governments from periodic review and instead implement them through the PAPA process. We support the recommendation to direct all periodic review appeals to LCDC, rather than LUBA. With one dissent, we also support the non-appealability of a work program decision. Our major difference lies with how to treat those local governments for whom review is not covered by one of the mandatory triggers in the majority recommendation.

We believe a mechanism is needed to ensure that all local plans and regulations continue to comply with the statewide planning goals. The majority recommendation contains no such mechanism. Instead, as plans in smaller communities go "stale," many will no longer comply with the goals and will no longer meet the needs and aspirations of the community, nor be able to respond to new opportunities quickly. We fear that, over time, a widening gulf will arise between those cities and counties who have been the recipients of state largesse to maintain their plans and regulations, and all others. Does anyone doubt which communities will benefit from such a scheme? Likely it will be those communities who have active planning programs and which need state financial help less than those communities who find themselves in the winter of permanent recession, even in better economic times.

As time goes by, the cost of plan revision or replacement will rise disproportionate to the costs of maintenance and the perception of those communities left in the cold will be that they have been abandoned by the state. That perception will be strengthened if those communities cannot respond to, or miss out on, economic opportunities because their plans and regulations are not in compliance with state law.<sup>2</sup> That perception, established by the majority proposal, is correct.

The State of Oregon has a legitimate interest in ensuring that *all* plans and regulations remain in compliance with the statewide planning goals. Anything less is an unacceptable alternative that also leads to loss of credibility of those local planning and plan implementation efforts, as well as the slow death of the program, exacerbating the divide of "the other Oregon." Maintaining compliant local plans cannot be voluntary.<sup>3</sup>

---

<sup>2</sup> Currently ORS 197.712-.719 provides for use of commercial and industrial lands inventories and other growth-encouraging measures so that all cities and counties may compete fairly for economic opportunities. Moreover, the maps setting out lands under which destination resorts may be sited, once adopted, cannot be changed except through periodic review. ORS 197.455(2).

<sup>3</sup> ORS 197.175(2)(a) requires local governments to "adopt, amend *and* revise" their plans in compliance with the statewide planning goals. Goal 2, Land Use Planning, requires local review of plans on a periodic cycle. The suspension of the state periodic review process does not affect this goal requirement.

Moreover, given the significant state investment in local plans and regulations, the state has a legitimate interest in ensuring they remain coordinated<sup>4</sup> and updated to reflect physical, economic and social realities. In our view, the majority is oblivious to the needs of communities to undertake population allocations following the decennial census so that they may amend their urban growth boundaries, rezone lands for residential, commercial and industrial use, and steer their own course for the future without fear of being frustrated because they are so far out of compliance with state law that they cannot do anything.

For these reasons, we make the following recommendations:

- Those cities and counties that have not undergone periodic review as a result of one of the mandatory or voluntary triggers for a period exceeding ten years shall report to the department as to whether their plan remains in compliance or is in need of review. The decision shall be made at a public hearing by the governing body.
- To allow for adequate citizen participation and to give the local government the benefit of citizen input, a public hearing on the adequacy of the plan shall also be held before the planning commission prior to the hearing before the governing body.
- The hearings shall be subject to the notice provisions that govern legislative land use decisions. Findings of compliance (i.e., no need for periodic review) shall be final, unless a local participant files timely “objections” with the department under applicable law to meet the requirements of ORS 197.628(1). The presumption is that, after ten years, periodic review is required for at least some elements of the plan (i.e., population, residential, commercial and industrial land allocations, and urban growth boundary changes). If a local government cannot justify the absence of a need for periodic review, it must set out what portions of its plan and regulations must be revised to allow it to comply with the Goals.
- The local government must submit a report to DLCD. As under the current statutes and administrative rules, there must be an opportunity to those

---

<sup>4</sup> Without a system of periodic review for all local governments, there is nothing in place to assure that state agencies remain coordinated with local governments. *See* ORS 197.180(1)(b)(C). Nor is there any guarantee that, with respect to those local governments not subject to periodic review, that “needed housing” will be allocated under ORS 197.295-.314. The principal means for cities over 25,000 by which sufficiency of buildable lands within urban growth boundaries is judged is through periodic review. *See* ORS 197.296(2). In addition, the only means by which open space removed from housing inventories must be replaced is through the periodic review process under ORS 197.186(1). Under the majority scheme, the only authority for goal compliance will be an Enforcement Order under ORS 197.319-.335, a very ineffective instrument in these circumstances.

who participated before the local government to object to its determination. The local government must submit a report to the DLCDC. If the department finds that the local government is not in compliance with the state goals, the department shall require the local government to undertake periodic review. The decision of the director is subject to review by the commission and the appellate courts.

While local consideration of compliance or need for review may or may not lead to a community entering periodic review, we do not see the above requirement as unduly burdensome. Local action might involve consideration of allocated population, and possibly housing and Goal 9 reviews of commercial and industrial lands. If nothing is happening in a community, the previous land allocations may well be unchanged and very little or nothing needs to be done. Nevertheless, we strongly believe that each community should consider every decade where it is and where it is going.

## **Chapter 5      Legislation and Implementation**

---

The committee intends to present this report to the House and Senate land use committees in the 73rd Oregon Legislative Assembly, as required by SB 920. Representatives of the committee will first meet with the chair of the House Land Use Committee and with the chair of the Senate Environment and Land Use Committee. If the chairs are supportive, the committee will pursue legislation to implement the recommendations listed in chapter 4 of the report. Of course, the Legislature will decide between the report's majority and minority recommendations.

SB 920's limitations on new periodic reviews continue until June 30, 2007. The committee recommends that any changes to periodic review made as a result of its recommendations should be effective after June 30, 2007. Legislation implementing the committee's recommendations should delegate to DLCD and LCDC the authority to stagger new periodic reviews for local governments that would otherwise come due in the first several years after the effective date of the new provisions.

# **APPENDIX A**

## **Overview of Comprehensive Plan Update Process in Other States**





# Oregon Chapter of the American Planning Association

2020 SW Eighth Avenue, #336 West Linn, OR 97068

Phone: (503) 657-6087 FAX: (503) 210-0860

Email: [oapa@oregonapa.org](mailto:oapa@oregonapa.org) • Website: <http://www.oregonapa.org>

## **PRESIDENT**

Bob Clay, AICP

## **VICE PRESIDENT**

Philip Farrington, AICP

## **SECRETARY**

April Bertelsen

## **TREASURER**

Daniel "DJ" Heffernan

## **IMMEDIATE PAST PRESIDENT**

MITCH ROHSE, AICP

## **MEMBERS AT LARGE**

Nadine Smith

Michelle Rudd

Anita Yap, AICP

Sandra Zaida, AICP

## **PLANNING COMMISSIONER**

### **REPRESENTATIVES**

County: Reeve L. Hennion

City: Ken Sandblast

## **DIRECTOR OF LEGISLATIVE & POLICY AFFAIRS**

Ed Sullivan

## **PROFESSIONAL DEVELOPMENT OFFICER**

Steve Matthews, AICP

## **OREGON PLANNERS' JOURNAL**

**EDITOR:** Becky Steckler, AICP

## **EDUCATION & OUTREACH CHAIR**

Denny Egner, AICP

## **COMMITTEES**

### *Conference*

Philip Farrington, AICP

### *Membership*

Laurie Wall, AICP

### *Rural Issues*

Damian Syrnok, AICP

### *Scholarships*

Lidwien Rahman

### *Visions Project*

Steven Ames, AICP

### *Women In Planning*

Robin Scholetzky, AICP

### *Ethics*

Bill Adams

## **STUDENT REPRESENTATIVES**

### *University of Oregon*

Nick Snead

### *Portland State University*

Ellie Fiore

## **EXECUTIVE ASSISTANT**

Patricia Zepp

April 20, 2004

To: Interim Committee on Periodic Review

From: Becky Steckler, AICP, OAPA Representative

RE: Requirements for updating comprehensive plans in other states and regions

## **Background**

At the March meeting, I volunteered to conduct preliminary research regarding the regulations for updating comprehensive plans in jurisdictions across the country, as well as typical budgets and timeframes. During the April meeting I said that I would look at several states in get an indepth perspective of their periodic review process.

## **Summary**

A number of states require that local jurisdictions update their comprehensive plans on a regular basis, including: Florida, Georgia, Maryland, Minnesota, New Jersey, Washington, and West Virginia. Most of the jurisdictions are required to update their plans every five to ten years. Comprehensive plans generally cost between \$200,000 and \$300,000, even for small jurisdictions.

Georgia has some of the most detailed information on the Internet. They require that all 688 cities and counties update their comprehensive plan before 2008. Maryland has similar requirements to Oregon, though they require jurisdictions to review their plans every six years. Washington requires jurisdictions in a six county area to review their urban growth areas (UGAs, similar to Oregon's urban growth boundaries) every 10 years to determine if development and densities are proceeding as planned. Florida requires only a report that assesses the status of the local comprehensive plan and makes recommendations. Only cities around the seven-county metropolitan area of Minnesota must update their comprehensive plan on a regular basis.

## **Methods**

As editor of the Oregon Planners' Journal, I am a member of the national editor's listserv. Several weeks ago, I sent a message to list asking for information about updating comprehensive plans across the country. Many people responded, providing information from California, Florida, Georgia, Minnesota, New Jersey, New Mexico, and West Virginia. The information below is the summary provided by the editors, unless otherwise indicated.

## **Periodic review around the nation**

### **Washington**

Most counties in the state with a set of full requirements under the GMA have completed their first comprehensive plans under the act. As part of this work, they developed criteria and made decisions about urban/rural boundaries. Six counties in the Buildable Lands Program – Clark, King, Kitsap, Pierce, Snohomish, and Thurston – have special requirements related to UGAs. They are gathering data, at five-year intervals, on the level and type of development that is occurring. This information is to be compared to the level and type of development expected, as identified in local comprehensive plans. In 2002 the GMA was amended to allow local governments to discontinue their buildable lands work, if no state funding was provided. No state funding is currently available for this effort.

If gaps are found in this analysis, measures are to be adopted that will be likely to increase consistency during the next five-year period. Techniques other than adjusting urban growth boundaries are to be used.

Communities planning under GMA are monitoring their UGAs to determine if they are properly sized. If UGAs are filling up faster than expected or growth is occurring at lower densities than planned for, measures are to be adopted that will be likely to increase consistency.

At least every ten years, jurisdictions are required to review UGAs, including densities, and make changes, if needed [RCW 36.70A.130(3)]. The county comprehensive plan designating UGAs and the densities permitted in the UGAs by the comprehensive plans of the county and each city located within UGAs need to be revised to accommodate the urban growth projected to occur in the county for March 2002 the next 20-years. (Source: Urban growth areas fact sheet, Washington State Office of Community Development)

### **California**

California State law requires that every city and county adopt "a comprehensive, long term general plan" (CA Government Code §65300). The law does not mandate how often a General Plan must be updated; it simply states that a jurisdiction shall "periodically review and revise, as necessary, the General Plan" (§65103[a]). The exception to that rule is the Housing Element, which must be updated every five years.

Lisa Harmon of California provided this summary of planning in California from Bill Fulton's book, *PLANNING IN CALIFORNIA* (Solano Press):

The General Plan is CA's version of the "master" or "comprehensive" plan. Although the State does not establish a specific timetable for updating general plans, a wholesale revision typically

occurs every 10 to 15 years--usually when the data on which the plan is based becomes dated, when the growth patterns facing a community have changed, or when the plan is perceived as legally vulnerable.

The general plan is supposed to contain a vision of the community's future. Under State law, every local general plan the following seven elements or sections:

- Land Use Element
- Circulation Element
- Housing Element
- Conservation Element
- Open-space Element
- Noise Element
- Safety Element

HOWEVER, individual communities may add any other elements they wish, and most do, such as economic development or community design. It is also permissible to combine elements. To create a general plan, General Plan Guidelines are available from the Governor's Office of Planning and Research. The guidelines recommend an eight-step process. However, state law imposes only a few procedural requirements--notably one public hearing before the planning commission and one before the city council.

A wholesale general plan revision is likely to take two to three years, and even for small cities, will cost a bare minimum of \$200,000 to \$300,000. Most money funds two activities: technical analysis on specifics of the general plan (which can dovetail with the required Environmental Impact Report required by the California Environmental Quality Act [CEQA]) and public meetings and workshops. If there is not consensus in the community, it will be longer and more expensive.

In many cases, an advisory task force or "general plan advisory committee" is assembled and an outside general plan consultant is frequently engaged. A citizens advisory committee is usually formed as well. Over a period of months, the consultant and the citizens committee will put together a draft general plan, and the consulting team will provide the technical input and make recommendations, while the committee makes the policy choices. After approval, the General Plan will move to the planning board or city council, and either can change the document. An Environmental Impact Report must be prepared pursuant to CEQA prior to plan approval.

According to Sandy George, lobbyist and Executive Director for California Chapter of the American Planning Association, California does not have a requirement for revision of the General Plan. However, after 8-10 years, the Office of Planning and Research and the Attorney General begin sending letters suggesting it would be a good time to review the plans to be sure they are still relevant, and locals can be sued at any time if the General Plan is out of date, although that doesn't happen often. Funding is one of the biggest barriers to updating the plan. However, California does have a requirement that every five years the housing element of the general plan must be updated. That was delayed a few years because of a shortage in state mandate funding. However, in the last three years, almost every jurisdiction updated their housing element and many updated their entire General Plan as well to be sure they are consistent.

The California Coastal Commission conducts studies of local governments Local Coastal Programs on a jurisdiction, county, or regional basis. The Regional Cumulative Assessment Project (ReCAP) is a program to evaluate the implementation of Local Coastal Programs (LCPs) and to improve the management of cumulative impacts to coastal resources. The Coastal Act mandates that the Commission periodically review the implementation of LCPs and recommend corrective actions, where necessary. The Commission also uses the ReCAP methodology to evaluate the implementation of Coastal Commission policies and to provide guidance to local governments in completing LCPs for certification. (Source: <http://www.coastal.ca.gov/recap2/recap3.html>)

A typical ReCap study takes several years and costs over \$200,000 (it can be much more).

### **Florida**

Florida requires local jurisdictions to issue a report every seven years that evaluates how successfully a community has been in addressing major community land use planning issues through implementation of its comprehensive plan. Based on this evaluation, the report suggests how the plan should be revised to better address community objectives, changing conditions and trends affecting the community, and to changes in state requirements regarding growth management.

Adopted by the 1985 Legislature, Florida's Growth Management Act (Chapter 163, Part II, Florida Statutes, The Local Government Comprehensive Planning and Land Development Regulation Act) requires all of Florida's 67 counties and 408 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development.

The Growth Management Act requires the Department of Community Affairs (DCA), Division of Community Planning, to review comprehensive plans and plan amendments for compliance with the Act. Other review agencies, including the regional planning councils, water management districts, the Departments of State, Transportation, Environmental Protection, and Agriculture, and the Florida Fish and Wildlife Conservation Commission also review comprehensive plans and amendments and issue recommended objections to DCA. Local governments may amend their comprehensive plans twice per year.

Within an established time frame, the Department first issues an Objections, Recommendations and Comments (ORC) report that identifies areas of the proposed plan or proposed amendment that are inconsistent with the provisions of Chapter 163, Part II, F.S. The local government may or may not address the recommendations to revise the proposed plan or amendment, or elect to adopt or not adopt the amendment. When the local government adopts the plan or amendment, it is submitted to the Department for a compliance review. Within 20 to 45 days of receipt of the adopted amendment, the Department issues a public Notice of Intent to find the adopted plan and/or plan amendment either in or not in compliance with the Act. If DCA finds the plan or

amendment not in compliance, the local government must take remedial actions to bring the plan or amendment into compliance to avoid an administrative hearing.

Pursuant to Section 163.3191, F.S., "each local government shall adopt an evaluation and appraisal report (EAR) once every seven years assessing the progress in implementing the local government's comprehensive plan." The report evaluates how successfully a community has been in addressing major community land use planning issues through implementation of its comprehensive plan. Based on this evaluation, the report suggests how the plan should be revised to better address community objectives, changing conditions and trends affecting the community, and to changes in state requirements regarding growth management.

According to Sheri Coven in Florida, almost all the local governments in Florida with a population greater than 2,500 have adopted evaluation and appraisal reports (EARs) within the past 5 years. They do not have any information related to costs. The state did distribute a number of small grants (\$12,000 to \$40,000; depending on how much the Legislature allocated during each fiscal year).

The Florida Department of Community Affairs, Division of Community Planning, (<http://www.dca.state.fl.us/fdcp/DCP/ear/indexear.htm>), provides detailed information about the EARs.

The Department has established a phased schedule for the adoption of EARs based on the requirements in Section 163.3191(9), F.S. Consistent with state law, municipalities are scheduled to adopt their EARs approximately one year to 18 months after the county in which they are located adopts its EAR. This phasing allows municipalities to benefit from updated information that may be collected and analyzed by the county, particularly regarding major community-wide planning issues.

The Department provides a number of technical assistance resources, including:

1. **EAR Guide:** The Department has prepared A Guide to Preparing an Evaluation and Appraisal Report that provides step-by-step suggestions for completing the evaluation and adopting the report.
2. **Local Workshops:** The Department has scheduled a series of workshops to discuss the content requirements and process for preparing EARs. Each workshop is scheduled approximately 18 months prior to a county's scheduled due date. Click here to view the EAR workshop schedule. The workshops include a PowerPoint presentation regarding the report requirements. Click here to view a power point presentation that was presented at the Tampa Bay EAR Workshop on March 19, 2003.
3. **Scoping Meetings:** Evaluation and appraisal reports focus on the major planning issues within a community. Typically, local governments will hold a scoping meeting to identify the major issues and discuss the extent of effort needed to address the major components of the report. Click here to read a short brochure describing the scoping meeting process.
4. **Letters of Understanding:** Each local government should prepare a list of major issues and ask the Department to concur that these are the issues on which the report should focus. Entering into such a "Letter of Understanding" between the Department and the local government will help avoid misunderstandings during the review of the adopted report.

5. **Statutory and Rule Changes:** Comprehensive plans should address all current statutory and rule requirements. The EAR presents an opportunity to compare the content of the comprehensive plan with current requirements to ensure that the plan is up-to-date. To assist in this comparison, the Department has prepared a summary of changes to Chapter 163, Part II, F.S., and Rule 9J-5, F.A.C.

## **Georgia**

### **Local Comprehensive Planning and Qualified Local Government Status under the Georgia Planning Act of 1989**

The cornerstone of the coordinated planning program is the preparation of a long-range comprehensive plan by each local government in the state. This plan is intended to highlight community goals and objectives as well as determine how the government proposes to achieve those goals and objectives. It is intended that the comprehensive plan be used to guide local government decision-making on a daily basis. With the passage of the Georgia Planning Act of 1989, all of Georgia's 159 counties and 529 cities were designated "Qualified Local Governments." Each of these local governments must maintain that status in order to remain eligible for a range of state and federal assistance programs. The Official Code of Georgia (O.C.G.A.) Section 50-8-2(G)(18) defines "Qualified Local Government" as a county or municipality which:

- Has a comprehensive plan in conformity with the minimum standards and procedures;
- Has established regulations consistent with its comprehensive plan and with the minimum standards and procedures; and
- Has not failed to participate in the department's [Department of Community Affairs] mediation or other means of resolving conflicts in a manner, which, in the judgment of the department, reflects a good faith effort to resolve any conflict.
- Schedule of Comprehensive Plan Updates for Years 2004-2008

All local governments in Georgia will need to prepare a complete update to their comprehensive plan sometime during the period of 2004-2008. Every local government has been given a specific deadline by which time their plan update must be submitted, reviewed and approved by the Department of Community Affairs (DCA), and adopted by the local government in order to maintain their QLG status. All municipalities in a county share the same full plan update deadline as their county government, thereby facilitating the coordinated planning process. All municipalities share the same Comprehensive Plan recertification schedule as the County in which they are located. (1/1/04)

(Source: <http://www.dca.state.ga.us/planning/coordinated.html>).

According to Deborah Miness, Assistant Director, Office of Planning and Quality Growth, Georgia Department of Community Affairs, under the Georgia Planning Act of 1989, local governments are required to update their Short Term Work Programs at least every five years, and their long-range Comprehensive Plans every ten years. The latter requirement was postponed slightly in order to allow them to use the data from the 2000 Census, but between 2004 and 2008, all local governments (cities and counties) will be completing major updates of their plans. It is

difficult to estimate the time and budget costs for these updates, as they are just beginning the process (Georgia has three deadlines a year, and have just passed the first one). Furthermore, they increased the planning requirements considerably for larger and faster growing communities; therefore, the time and other cost demands for an update will likely exceed those for preparing the plans in the first place. They tried to make plan updates easier by providing data, maps and an online tool to assist in plan preparation (Georgia PlanBuilder), but they do not directly fund planning at the local level. Rather, we provide funding to the Regional Development Centers (of which there are 16) to assist local governments.

### **Maryland**

The Economic Growth, Resource Protection and Planning Act of 1992 (the Growth Act) amended Article 66B requires jurisdictions to periodically review their Comprehensive Plans and implementation measures. The Growth Act requires all jurisdictions, at intervals of no more than six years, to review and, if necessary, update the Plan (section 3.05(b) of Article 66B\*). Implementation regulations that are consistent with the updated Plan, such as revised zoning and subdivision laws, should also be adopted (section 4.09 of Article 66B\*). Jurisdictions are required to evaluate the current plan, review planning maps, evaluate the plan in terms of the Smart Growth Areas Act, review other directives, requirements, and principles, and evaluate plan implementation measures. (Source: Managing Maryland's Growth: The Six Year Review, Maryland Office of Planning, June 2000).

### **Minnesota**

"Minnesota enables counties, cities, regions and townships to administer land use controls, but there are no statewide comprehensive planning rules outside of the metropolitan area. Counties and cities within the seven-county metropolitan area are required to update comprehensive plans every 10 years to uphold the Metropolitan Council's regional development goals. Counties and cities outside of the Minneapolis/St.Paul metropolitan area do not have to complete a comprehensive land use plan, but many choose to do so." (Source: [http://www.1000fom.org/growth\\_corr.htm](http://www.1000fom.org/growth_corr.htm))

### **New Jersey**

According to Linda Weber, AICP in New Jersey, municipalities reexamine their master plans at least every six years. Requirements are in the Municipal Land Use Law, Chapter 291, Laws of NJ 1975. Section 40:55D-89 reads, "The governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board, which shall prepare and adopt by resolution a report on the findings of such reexamination...."

### **New Mexico**

Dan Pava, a planner in New Mexico, didn't know of any requirement for periodic review in New Mexico. In fact, there may not be a requirement that a city or county even have a plan but many do and most are going that direction.

The amount of money spent for updating a plan would depend upon the sources of funding and commitment of the community. The City of Rio Rancho New Mexico updated an out of date plan with a budget of about \$300,000 for a two-year effort from 1998-2000.

## **West Virginia**

According to Michael Dougherty, the Editor of the West Virginia Planning Association, West Virginia recently passed a new state enabling planning statute (the governor signed the legislation on April 7, 2004). While comprehensive plans are not required, the legislation calls for review and updates of existing comprehensive plans every 10 years (8A-3-11 (a)).

Full text of the new law is available on the WVPA Website:  
<http://www.wvplanning.com/news/enrolledsb454.pdf>

# **APPENDIX B**

## **Planning Director Survey**

**Survey of City Planning Directors  
Re: Periodic Review  
May - August 2004**

Twenty responses representing diversity in size and geographical location.

**Summary of Responses**

**What Works**

- Prompts an update of local plans and regulations
- Provides a comprehensive approach to community planning
- Gets local jurisdictions in compliance with State requirements
- Motivates local officials to engage in planning process
- Encourages cities to look at progressive planning issues
- Provides grants to support planning at the local level

**What Doesn't Work**

- Cumbersome process
- Lack of funding to undertake process
- State requirements, e.g., compliance with new laws overshadows local planning needs
- Lack of timeliness in the process creates loss of momentum at local level
- Lack of understanding of competing interests at local level
- Lack of involvement by other State agencies
- Concern that the process depends on field representative and the agenda being pushed by some DLCD staff
- General concern about local control

## **Grants vs Technical Assistance**

- Mixed response about the relative priority
- Smaller communities tended to more highly value technical assistance
- Larger cities more likely to favor grants
- Experience with field staff influenced the response

## **Ideas for the Future**

- Build more flexibility into the process
- More local control to address local situations
- Streamline system to periodic check-ups vs full deal
- Make grant process easier and more flexible
- Link Periodic Review to census data
- Prioritize those tasks that are time dated, e.g., population projections, housing, buildable lands
- Develop self-certification process which results in approval unless DLCDC objects
- Focus on how to meet community and state needs rather than creating complex standards

# **APPENDIX C**

## **Comparison Of Periodic Review Schedule Under Various Options**

## LATEST DATE TO BEGIN PERIODIC REVIEW – STATUS QUO

### July 1, 2007 (13)

Creswell  
Durham  
Keizer  
King City  
Lake Oswego  
Molalla  
Oakridge  
Pendleton  
Roseburg  
Sutherlin  
Washington Co. Rural  
Washington Co. Urban  
Yamhill Co.

### July 1 to December 31, 2007 (4)

Hermiston  
Nyssa  
Redmond  
Tigard

### 2008 (5)

Cottage Grove  
Estacada  
Jefferson  
Multnomah Co.  
Newberg

### 2009 (10)

Burns  
Junction City  
Malheur Co.  
Milwaukie  
Newport  
Rivergrove  
The Dalles  
Troutdale  
Union Co.  
West Linn

### 2010 (3)

Douglas Co.  
Portland  
Seaside

TOTAL - 36

**LATEST DATE TO BEGIN PERIODIC REVIEW – SULLIVAN PROPOSAL  
(10-YEAR INTERVAL, NO CITIES <2,500)**

Before July 1, 2007 (30)

Astoria  
Burns  
Cottage Grove  
Creswell  
Hermiston  
Jefferson  
Junction City  
Keizer  
King City  
Lake Oswego  
Malheur Co.  
Milwaukie  
Molalla  
Newberg  
Newport  
Nyssa  
Oakridge  
Pendleton  
Redmond  
Roseburg  
Seaside  
Sherwood  
Sutherlin  
The Dalles  
Troutdale  
Union Co.  
Washington Co. Rural  
Washington Co. Urban  
West Linn  
Yamhill Co.

2008 (2)

Multnomah Co.  
Tualatin

2009 (2)

Sandy  
Wood Village

2010 (7)

Crook County  
Douglas County  
Hubbard  
Lafayette  
Reedsport  
Portland  
Umatilla

TOTAL - 46

**NOTE:** Ed stated at the Dec. meeting that regional grouping made sense, so the impact in 2007 could be spread out over several years by forming such groups.

In review of the jurisdictions on the list, it appears there is limited opportunity for this, however, outside Metro.

July 1 to December 31, 2007 (2)

Tigard  
Happy Valley

**LATEST DATE TO BEGIN PERIODIC REVIEW – BENNER PROPOSAL  
(TRACK II, NO CITIES <2,500)**

- (1) At least every seven years for local governments in an MPO
- (2) At least every 10 years for non-MPO cities >10,000
- (3) Following five years of high growth for cities <10,000  
(Speculative, for illustration only. Includes cities that grew  $\geq 25\%$  4/1/00 to 7/1/04  
(census and PSU populations, respectively), and have not completed PR w/in 5 years.)

<u>Before July 1, 2007 (23)</u>	<u>July 1 to December 31, 2007</u>
Happy Valley (1)	none
Keizer (1)	
King City (1)	<u>2008</u>
Lake Oswego (1)	none
Milwaukie (1)	
Portland (1)	<u>2009 (3)</u>
Sherwood (1)	Clackamas Co. Urban (1)
Tigard (1)	Fairview (1)
Tualatin (1)	Oregon City (1)
Troutdale (1)	
Washington Co. Urban (1)	<u>2010 (3)</u>
West Linn (1)	Deschutes Co. Urban (1)
<u>Wood Village (1)</u>	Phoenix (1)
Hermiston (2)	Hillsboro (1)
Newberg (2)	
Pendleton (2)	TOTAL – 29
Redmond (2)	
Roseburg (2)	
<u>The Dalles (2)</u>	
Adair Village (3)	
Malin (3)	
Sisters (3)	
Umatilla (3)	

**EXEMPT JURISDICTIONS 10+ YEARS SINCE P.R. IN 2007**

1 Adair Village-MPO	40 Granite*	79 Mt. Vernon
2 Adams	41 Grass Valley*	80 Nehalem
3 Adrian	42 Greenhorn*	81 North Powder
4 Amity	43 Haines	82 Oakland
5 Antelope*	44 Halfway*	83 Paisley*
6 Arlington*	45 Halsey	84 Pilot Rock*
7 Banks	46 Helix	85 Port Orford*
8 Barlow	47 Heppner*	86 Prairie City
9 Bonanza	48 Hines*	87 Prescott*
10 Brownsville	49 Huntington	88 Richland*
11 Butte Falls	50 Idanha	89 Riddle
12 Cannon Beach	51 Imbler	90 Rivergrove-MPO
13 Canyonville	52 Ione*	91 Rockaway Bch
14 Carlton	53 Irrigon*	92 Rogue River
15 Chiloquin	54 Island City	93 Rufus*
16 Clatskanie	55 John Day	94 Scio
17 Columbia City	56 Johnson City-MPO	95 Scotts Mills
18 Condon*	57 Jordan Valley	96 Seneca*
19 Cove	58 Joseph*	97 Shady Cove
20 Culver	59 King City-MPO	98 Shaniko*
21 Dayton	60 Lake Co	99 Siletz*
22 Dayville*	61 Lexington	100 Sisters
23 Depoe Bay	62 Lonerock	101 Sodaville
24 Detroit	63 Long Creek*	102 Spray
25 Dune City	64 Lostine*	103 Summerville
26 Donald	65 Lowell	104 Sumpter
27 Dufur*	66 Lyons	105 Ukiah*
28 Durham-MPO	67 Malin	106 Union
29 Echo	68 Manzanita	107 Unity*
30 Elgin*	69 Maupin*	108 Waldport
31 Estacada	70 Merrill	109 Wallowa
32 Falls City	71 Metolius*	110 Wasco
33 Fossil	72 Mill City	111 Waterloo
34 Garibaldi	73 Mitchell	112 Westfir
35 Gaston	74 Monroe	113 Weston*
36 Gates	75 Monument*	114 Wheeler Co
37 Gilliam Co	76 Moro*	115 Yachats
38 Glendale	77 Morrow Co	116 Yamhill
39 Gold Hill	78 Mosier	117 Yoncalla

\* No work program required at last PR (32)

# **APPENDIX D**

## **Committee Meeting Notes**

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

MEETING NOTES  
MARCH 18, 2004

### Attendance

John Van Landingham, LCDC – chair  
Jim Brown, Governor's Natural Resource Advisor  
Richard Benner, Metro  
Jon Chandler, Oregon Building Industries Association  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Linda Ludwig, League of Oregon Cities  
Becky Steckler, ECONorthwest & Oregon Chapter APA  
Ed Sullivan, Garvey Schubert Barer  
Burton Weast, Special Districts Association of Oregon

Roger Kaye, Friends of Marion County – guest

Lane Shetterly, DLCD Director  
Rob Hallyburton, DLCD

### Absent:

Keith Cubic, Douglas County/Association of Oregon County Planning Directors  
Don Ivy, Coquille Tribe  
Art Schlack, Association of Oregon Counties

1. **Introductions.** Each attendee introduced themselves and who they represent, and gave some personal background.

2. **Legislative Directive.** The group reviewed the committee's charge from Senate Bill 920: evaluate the efficiency and effectiveness of periodic review in carrying out the policy for the program, cost-effectiveness, and how efficiently the program balances requirements and resources. The committee is to prepare a report to the 2005 legislature containing the results of the evaluation and recommendations for improving periodic review.

The group decided a good target date for completing the report is November or early December of 2004. If the committee has legislative recommendations, they should also be ready by December.

The discussion turned to periodic review (PR) issues. Those mentioned include:

- Funding (process expensive, declining budgets)

- It takes too long
- Number of mandates (should they all be in PR?)
- Why do we do PR (30,000-foot look)
- Advisability of exempting jurisdictions
- Penalty for not completing updates
- What are the standards? What is sufficient to comply?

**3. Operational Issues.** The group discussed the relationship between the committee and LCDC, including who sponsors legislation (DLCD has proposed a placeholder bill), and further discussion of the required committee report.

The committee would like minutes and an agenda in advance of each meeting.

Decision-making: Strive for consensus, but require at least a “strong agreement” (ten or eleven votes). Allow minority reports. The Commission indicated that the appointments are personal and there should not be alternates.

**4. Background.** DLCD staff made a presentation on the current PR process (PowerPoint file available). Staff answered questions and the committee discussed various aspects of the process, including status of exempt jurisdictions, potential conflict between HB 3557 and SB 920, DLCD’s and LCDC’s role in work program development, the transition from pre- to post-SB 543 work programs, mandatory tasks, and notice requirements.

**5. Agenda for future meetings.** The chair suggested two items for the next agenda: “big picture” and “current problems with periodic review.” During the discussion, other items were added. The chart the chair prepared included the following items:

1. Big Picture
  - A. Why do PR?
    - What are we trying to accomplish?
    - Is it still relevant?
  - B. Is there a better way?
    - What are others doing? (Becky will research)
    - Dept. approval of work plans – needed? Helpful?
  - C. Standards used to review tasks
  - D. What issues/goals get reviewed; who (mandated tasks added to PR)
2. Current problems with PR
  - A. Dept. data on waiting list
  - B. What works, what doesn’t, for local government, citizens, developers, state agencies, others (survey of local governments)
  - C. Results of SB 543 and SB 920 – remaining problems
  - D. \$\$
    - Enough for the tasks/work (local government and DLCD)
    - Incentive to stay in PR

3. SB 543's exemption of small cities and counties
  - A. Why they opt to stay in PR?
  - B. Was this a bad idea (how do exempt jurisdictions update)?
4. Confusion over procedures in PR
  - A. Plan amendment, but not PAPA
  - B. Appeals – LUBA or LCDC?
5. Desired changes to PR

Second meeting – Homework: issue ID.

Third meeting – What would you have PR do, substantively and procedurally?

The group decided a panel discussion of individuals that helped create periodic review initially would be advantageous. Chandler and Sullivan were charged with finding panelists.

April meeting: DLCD staff will poll via email for good dates.

Subsequent meetings: Fourth Thursdays

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

MEETING NOTES  
APRIL 20, 2004

### ATTENDANCE

John Van Landingham, LCDC – chair  
Richard Benner, Metro  
Jon Chandler, Oregon Building Industries Association  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibbs, City of Corvallis / Oregon City Planning Director's Association  
Linda Ludwig, League of Oregon Cities  
Becky Steckler, ECONorthwest and Oregon Chapter of APA  
Ed Sullivan, Garvey Schubert Barer  
Burton Weast, Special Districts Association of Oregon  
Art Schlack, Association of Oregon Counties

Jim Knight – Panelist  
Fred Van Natta – Panelist  
Roger Kaye – Guest  
Peggy Lynch – Guest

Lane Shetterly, DLCD Director  
Rob Hallyburton, DLCD Community Services Division Manager  
Larry French, DLCD Periodic Review and Plan Amendment Specialist

**1. Original purposes for periodic review – panel discussion.** The land use planning started with Senate Bill 100. Senate Bill 100 did not say anything about Periodic Review. Between 1977 and 1979 the legislature add amendments to Senate Bill 100 to look at fixes for the land use bill, but really did not know how.

The post acknowledgement plan amendment (PAPA) process was started in approximately 1981 and first look at the periodic review process was started sometime after 1981. Then in 1983 periodic review (PR) was adopted and the rules were created.

The PR process in 1983 was originally used to keep plans, development codes, ordinances updated. Today, by jurisdictions it is used to completely change plans, code, ordinances, maps that most likely should follow the PAPA process.

**2. Evolution of Periodic Review: what was added.** With Senate Bill 2225 the bill gave some guidelines to the PR process starting that the process should only take two to five years to complete. During this time frame the PR process reviewed plans and either changed or approved as submitted.

In the discussion, five things were addressed that could affect the plan and they were listed as the developer, new planners, LCDC Commissioners changing the goals and guidelines, legislature passing new laws, and changes from the community stating that the plan does not work. Some of the changes were urban growth boundaries, property adjustments, and other community concerns.

It was also noted that there was a decrease in population from 1981 through 1984 in the state, where people left to find gainful employment.

The 1983 rules first contained and required work tasks for PAPA process, PR rules, direct application of the goals, other financial considerations, technical assistance, direct legislative mandates, other agency directives and super siting were considered as tasks

The process was changed again sometime in 1991 when the legislature changing the way PR operated within the department, and LCDC, and with the jurisdictions. The legislation also brought in for the first time a requirement where the work program had to be negotiated between DLCD and the jurisdiction. This created long delays in the process, and lengthen the PR Process out for years. Because of the new legislations almost all work programs were too large and today they still are too large. Again causing the PR process to stretch out for years. Creating the need to modify the PR tasks and program to keep up with current changes by the legislature and the needs of the jurisdictions.

In 1999 the legislature pass Senate Bill 543 and again changed the PR process creating a hybrid program, where a jurisdiction of more than 2500 in population that wanted to expand their urban growth boundary by more than 50 acres had to propose the expansion as a PAPA and then converted to a PR process at adoption. SB 543, also limited the number of jurisdictions that were required to be in PR, making it optional for jurisdictions under 2500. Many jurisdictions under 2500 opted out of PR.

The PR concept as it is today is a good concept, but in many cases it has lost focus of what is to be accomplished.

The rules for PR have become too large for the program; too many goals and tasks are mandated.

### **3. What others are doing**

Becky reported that we are not alone in updates to the jurisdictions comprehensive plans. See handout entitled "Oregon Chapter of American Planning Association" describing what our states are doing in their planning programs. The States that were identified in the article were California, Florida, Georgia, Maryland Minnesota, New Jersey, Washington, and New Jersey.

Several panelist wanted Becky to take a few states and try to expand on what they are doing in the planning arena. Rob will distribute copies of Becky's executive summary.

The next two agenda items were combined.

**4. Issues identification.** What works and what doesn't; Are past purposes still relevant, Have needs changed?

**5. Moving forward.** What changes are needed; how can they be accomplished?

Measure 30 (1995) was discussed. It has led to some of the increase in PR requirements, but is not the only reason.

PR has become the dumping ground for everything that is wrong with planning in the state. The legislature throughout the years has added issues to PR and then new Oregon Administrative Rules have to be written in some cases to accommodate the legislation. Many of the changes are unfunded mandates that the government agencies and jurisdictions must follow.

County PR programs normally are less involved than for cities. When local planners and commissions get into the programs they tend to enlarge the tasks that they are required to do.

The PR process should be separated into two separate tracks. One track should be a quick turnaround and the other could be a longer timeframe project that is more complicated, but a funding source would have to be found for these tracks.

The PR process has too long of a list of items that are required. What should we do about plans that are 20 to 25 years old (a question for everyone to answer)?

There should be different levels of PR (Funding Source needed). PR should be a list of what is reviewed in the program such as a short list of goals, population, comp plan changes, development code changes, UGBs for jurisdictions required to be in PR.

SB 543 – required UGB expansion more than 50 acres and 2500 in population, PR adjustments, community solutions team would decide what PR to review, and limited the local communities that had to be in PR.

PR should be for major overhaul of plans only.

A suggestion that PR should be on regional bases only, and all jurisdictions in that region should be in PR at the same time. But does DLCD have the manpower?

PR could have a list that every jurisdiction would follow. In other words, the jurisdictions in PR would do all the same type of tasks.

Maybe it is time for state agencies to enter PR and update their agreements between each other.

Another suggestion would be, that PR would use the statewide planning goals as a guide. And only pick certain goals to update.

**6. Wrap-up. What do we agree on and how do we get to agreement on other issues.** What are the challenges? Everyone in the group needs to come up with a priority list of what the periodic review should be reviewing. A good starting point for the list is, the "Statutory and Rules Requirements Addressed in Periodic Review – Chronological" handout that you received by email. Other ideas would be a goal-by-goal analysis of what needs to be done through PR.

Rob will poll members by email to set the date for the next meeting.

J:\PR\Interim Committee on Reform\Meeting notes 4-20-2004.doc

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

### MEETING NOTES

May 28, 2004

#### Attendance

John Van Landingham, LCDC – chair  
Jim Brown, Governor's Natural Resource Advisor  
Richard Benner, Metro  
Jon Chandler, Oregon Building Industries Association  
Keith Cubic, Douglas County/Association of Oregon County Planning Directors  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Don Ivy, Coquille Tribe  
Becky Steckler, ECONorthwest & Oregon Chapter APA  
Ed Sullivan, Garvey Schubert Barer

Lane Shetterly, DLCD Director  
Rob Hallyburton, DLCD  
Larry French, DLCD

Peggy Lynch, CIAC - Guest

1. **Introductions.** Each attendee introduced themselves and who they represent, and gave some personal background.

2. **What others are doing.** Becky asked to be deferred to the next meeting, because of her schedule. She did pass out a document entitled "S.B. 543 – Policy Implications of Exempting Oregon's Small Jurisdictions from Periodic Review – June 2002." She provided a short summary of the handout.

3. **Findings regarding what works and what doesn't.** Ken conducted a survey of periodic review and whether jurisdictions thought that it was needed.

Out of seventy surveys sent out, fourteen were sent back; seven were from the Valley, three were from Eastern Oregon, three from Southern Oregon, and one from the Coast.

Some observations of Ken's were:

What works?

- Provides incentive for updating of plans and codes
- A support mechanism for jurisdictions from the state
- Allows for updating of plans when laws change
- PR can engage the community in ideas that may use in the future

What doesn't work?

- PR does not support local needs as well as state mandates
- Timeliness
- Cumbersome process
- Lack of funding
- Lack of involvement by other state agencies
- DLCD representatives in some cases push their own agendas

He also did a survey of planning directors and departments regarding whether technical assistance or grants are more desirable, and got mixed results. The responses seemed to relate to the size of the jurisdiction and experiences with individual field reps.

Other questions/issues:

Is PR the proper way to update the plans?

The problem can be that jurisdictions don't want to accept the *results* of a task, rather than the problem being the *process*.

PR is too process-driven.

Keith distributed a handout entitled "Periodic Review – Oregon's Regulatory Program to Address Maintenance of Local Comprehensive Plans and Implementing Ordinances."

Observations by Keith:

The PAPA process can accomplish just as much as the PR process, and most work should be done under the PAPA process.

PR is controlled by the state.

Objections and appeals to many in the PR process

The focus should be on results and not process in periodic review

Citizen involvement should not be inside the PR rule

Miscellaneous:

Planning never stops, updates to the goals, rules, statutes.

PR is a place to make updates from laws passed by the legislature.

Maybe counties should only have to go through PR to update their urban areas.

The state may only have the capacity for four to six jurisdictions in periodic review at the same time. The current system is not manageable, where 100 or more are in PR at the same time.

**4. Proposal for rethinking periodic review.** Ed presented an outline of his idea on restructuring PR. He thought that SB 543 in 1999 was an error by the legislature in that small cities and counties should still be required to go through PR. Assistance should not be an issue. He thinks that local citizens do not understand the process. He stated that PR is the dumping ground for any new statute or rule that is passed into law.

Both appeal routes LCDC and LUBA take a long time. Of the two LUBA is the shortest time.

**5. Wrap-up.** Rob will schedule the next meeting, the schedule will also reflect or should reflect the fourth Thursday of the next 4 months.

# INTERIM PERIODIC REVIEW REFORM COMMITTEE

## MEETING NOTES

June 24, 2004

### Attendance

John Van Landingham, LCDC – chair  
Jim Brown, Governor's Natural Resource Advisor  
Jon Chandler, Oregon Building Industries Association  
Keith Cubic, Douglas County/Association of Oregon County Planning Directors  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Linda Ludwig, League of Oregon Cities  
Art Schlack, Association of Oregon Counties  
Becky Steckler, ECONorthwest & Oregon Chapter APA – *Conference Call*  
Burton Weast, Special Districts Association of Oregon

Lane Shetterly, DLCD Director  
Rob Hallyburton, DLCD  
Larry French, DLCD  
Bob Rindy, DLCD

**1. What others are doing.** Becky is still in the process of gathering information with her review, and survey of what others are doing outside the State of Oregon.

Linda with the help of two interns, is polling states in the Western United States, and found that Washington has a 10-year review of comprehensive plans. California has city and county review of plans. Texas and New Mexico do not have any reviews of their plans. Arizona has a ten-year review of plans throughout the state.

Jon will also be doing a survey of his own on comprehensive plan updates. Report will be at a later date.

Bob Rindy thought that there might be a book in the DLCD Library entitled "Planning and the States" – which describes what the various states are doing in the area of planning for their states.

**2. More findings regarding what works and what doesn't.** City planners survey – Ken sent out two notices and directly contacted others and he has no new information from the last survey to report.

Linda – has contacted 49 city managers in looking at the PR process. Some of the results are: (1) 10% of the cities were not in PR, (2) 30% said that periodic review is not

helpful, (3) periodic review is too slow to address the developmental process and current changes, (4) there is a need for more grant dollars, (5) PR is currently too long of a process, and for the most part not locally driven.

See handout by Linda entitled "Periodic Review Survey – City Managers".

Art believes that PR tasks are too complex and too much is required to finish PR in a short period of time.

Keith – count planning directors' perceptions are:

- a. PR Process is complicated. Why is the state telling us how to do the work tasks
- b. The periodic review "factors" need to be revised; they are too narrow in scope to put locals in the review
- c. There is too much participation by the state and others to get each task done. Objections are too numerous and appeals make it difficult to finish the tasks,
- d. Their need to be other agencies participating in the tasks besides DLCD.

### **3. Proposals for rethinking periodic review – discussion.**

- The legislature and others have added numerous actions
- The process today is too large and complex
- What triggers should we use to start the PR process?
- Impacts of lawsuits have changed the land use process, and courts have made the goals laws, before court rulings the goals were guidelines
- Locals need to do the planning, because locals know what is need for the area and all planning should be done this way
- Make the process simpler, and revise why we are doing periodic review
- Reduce appeals by only allowing objections at the local level only
- Stop putting everything into PR when some new legislation and/or action need to be accomplished at the local level
- Have a program for grants that are identified through a local checklist of local issues
- How should appeals in the future be handled?
- Other states have a local appeal process only, no state appeal process.

**4. Wrap-up.** We don't have a clear answer to what we are fundamentally trying to accomplish. The state's interest needs to be defined.

**Next meeting:** Thursday, July 22, 2004 - 9:00 a.m., Local Government Center

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

### MEETING NOTES

July 22, 2004

Present:

Dick Benner, Metro

Jim Brown, Governor's Natural Resource Advisor

Ken Gibb, City of Corvallis/Oregon City Planning Director's Association

Don Ivy, Coquille Indian Tribe

Linda Ludwig, League of Oregon Cities

Becky Steckler, ECONorthwest & Oregon Chapter APA – *Conference Call*

Ed Sullivan, Garvey Schubert Barer

Burton Weast, Special Districts Association of Oregon

Rob Hallyburton, DLCD

Larry French, DLCD

Mike Collmeyer, 1000 Friends of Oregon – guest

Peggy Lynch – guest

With chair Van Landingham absent, facilitation responsibilities went to Mr. Hallyburton.

**1. What others are doing.** The meeting started out with Becky's review of her research on what other states are doing. Most of the responses on her survey were from planning directors.

Florida's planning direction and program for updating required all jurisdictions to prepare an Environmental Evaluation Report. The reports are similar to our amendments and are adopted by the jurisdiction. The reports are usually incorporated into the comprehensive plans of the jurisdiction and there must be at least one to two public meetings. There is no appeal and no formal state review.

Every seven years jurisdictions must update their plans, and approximately 67 jurisdictions per year go through the process. The process has changed with successive iterations.

Burton mentioned he feels that our periodic review remains the same; he would like to see phases built into our program, somewhat like Florida.

Linda reviewed handout materials that describe and summarize circumstances in nine states regarding procedures for adoption and amendment of comprehensive plans, frequency of review, location of final review, requirements for public participation, and other procedures and requirements.

General discussion included the question: how do you get a jurisdiction to look at their plan? An incentive is not necessarily fiscal; it could be something else such as some action or suggestion. Periodic review is loaded down with mandatory tasks by the legislature and rules, meaning jurisdictions don't get much of a chance to make other updates.

**2. What works and what doesn't.** Nothing new.

**3. Defining the state's interest in updating plans.** The committee made a distinction between a state interest in comprehensive planning and in updating plans.

Regarding the state's interest in comprehensive planning, the group discussed a variety of issues which was summarized as:

1. Preserve the economy
2. The state policy embodied in the 19 goals
3. Effective plans moving towards the goals
4. Coordination with other state agencies and their permits
5. Protecting state investments
6. preserve the quality of life in the state

Regarding plan updates, there was general recognition that circumstances change, both in local communities and in land-use planning laws and rules.

Discussion included statements that other state agencies needed to get back into the planning process on some scale, there are too many jurisdictions in the process at one time in the present system, it is hard to get participation into the process if the locals don't have a stake in the issues, and not everything can be addressed in every update.

**4. Triggers for launching periodic review.** Ed would use his table list of restructuring of the periodic review process by using Goals 9, 10, 11, 12, and 14 as triggers. He believes that jurisdictions should look at everything every 10 years and also should be tied to the census across the board.

Some opinions expressed include:

- The local jurisdiction must look at all items in the plan
- Counties would probably have less to do in periodic review than urban jurisdictions
- Jurisdictional budgets and legislative funding will limit the amount of PR that will be done in the future
- If we don't have PR, the state's investments could be at risk
- We could have a pilot program that would allow a limited number of jurisdictions into PR and test a limited number of issues

- Local jurisdictions should have the ability to certify that they have met requirements

Dick discussed his handout, in which he suggests four tracks in updating local comprehensive plans:

1. Voluntary comprehensive review: state-assisted, in coordination with GERT, to conform the plan to the community vision and modernize growth management tools
2. Required comprehensive review: When plan has not been updated recently, triggered by substantial state investment, can include elements of No. 1 above.
3. Regular review: Same as existing post-acknowledgement plan amendment process, and
4. Occasional plan update: To amend plans and ordinances to comply with new laws

Jim identified (1) significant change in population or circumstances, (2) major state investment not contemplated, and (3) a schedule as alternative triggers.

**5. Wrap-up.** The next meeting will include continued discussion of triggers for launching PR, fiscal and financial considerations (Linda will research), and periodic review processes, including LUBA and DLCDC perspectives on how cases are processed.

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

### MEETING NOTES

August 31, 2004

#### Present

John Van Landingham, LCDC – chair  
Richard Benner, Metro  
Jim Brown, Governor's Natural Resource Advisor  
Keith Cubic, Douglas County/Association of Oregon County Planning Directors  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Linda Ludwig, League of Oregon Cities  
Becky Steckler, ECONorthwest & Oregon Chapter APA  
Ed Sullivan, Garvey Schubert Barer  
Burton Weast, Special Districts Association of Oregon

Lane Shetterly, DLCD Director  
Gloria Gardiner, DLCD  
Bob Rindy, DLCD  
Doug White, DLCD

Mike Holstun, LUBA referee - guest

1. **Review of July notes.** No comments on the July notes.

2. **Plan amendment review process.** Mike Holstun went over the makeup of the Land Use Board of Appeals staff. There are three board members, one of whom is the Chair of the Board, an executive support specialist and a paralegal that handles the paperwork, and a part time staff attorney. The budget for LUBA is approximately 1.26 million dollars. Per Mike there are only a handful of filed LUBA cases that were periodic review tasks. Maybe, 20 cases per year. Mike does not see any problem with the present system of cases – PAPA versus PR.

Dick Benner commented that LCDC should have sole jurisdiction over anything related to periodic review.

One way to address the periodic review issue would be for PR cases to first go to LCDC with appeals to the Court of Appeals. After the court ruled on the case, the parties could take the non-goal issues to LUBA. But the key factor is that any case that goes to LUBA could end up in the Court of Appeals, just like cases that go before LCDC.

What types of cases does LUBA hear? Normally the cases involve traffic, zoning issues, farm dwellings, and non-farm dwellings.

Ed feels periodic review cases take forever to get through LCDC, and it would be faster to go through LUBA.

Mike feels that if LUBA had to rule on complicated cases it would probably not be any faster, and most likely it would take a lot longer because of the complexity of the issues, and not having the DLCD staff knowledge of the issues that are being disputed.

Burton stated he would like to know how many cases that go to LUBA are related to PR.

Ken asked how many appeals are filed with LUBA that are plan amendments related to PR.

Becky wanted to know what are the most common appeals to LUBA.

Mike: There is a broad range of appeals—goal issues, code rewrites, small UGB Expansions and others.

LUBA has an expedited review process with the Court of Appeals, so when a case is appealed from LUBA to the Court of Appeals the case is put on a fast track in the court.

LUBA is all attorneys and LCDC is more local people and lay people. LCDC is responsible for goal issues related to periodic review and LUBA is responsible for non-goal issues related to PR, so you have a dual process. This creates longer delays in PR because two different legal bodies have to basically rule on the same tasks.

LUBA has a mandatory deadline that was created by the legislature, and if the agency fails to meet the deadline, the parties can file in circuit court. If ruled on, LUBA must pay for attorney fees, filings, and produce the pending decision before proceeding with their present cases.

It was suggested that all related issues in PR programs and tasks under PR go directly to DLCD, and not in a dual appeal system as we have today.

Mike felt that if there was no periodic review process sending complicated issues to LCDC, LUBA would sink under the expanded workload.

The group compared how long it takes for a case to get through LCDC and LUBA, here is a summary.

1. LUBA is faster to Court of Appeals, because of expedited review
2. LUBA is more consistent and certain than LCDC, because cases are simpler

3. LUBA issues more land use opinions than LCDC
4. LUBA is not suited for complicated large issues, LCDC is more suited for those type cases
5. LUBA could possibly gear up for complicated cases, but where would the money come from
6. LUBA only deals with issues raised by the appellants.

Doug White of DLCD presented an overview of current PR processes in DLCD, how it works, how work tasks are submitted, the approval, objection process, and appeal process.

The task review process today takes a maximum of 120 days from submittal of completed work task to a department decision. Appeals must be heard by the commission within 90 days.

Questions: How many PR decisions by the department go to LCDC on appeal, how many of those are appealed, and how many are due to objections by someone other than the department?

**3. Continued discussion of triggers for launching PR.** Suggestions from committee members:

Keith believes that work programs should not be appealable and the components of a work program should not be appealable. Only the final product that is submitted to DLCD should be appealable. The jurisdiction should have sole control of the work program, and they should address policy, not code provisions. As it is now, they are too complex. We should define work tasks to tie them to completion of a goal element.

Rindy: Work programs get little attention. They are set by often consensus between the local government and the department, with no notice sent out. However, one source of problems is the staggered work, due to funding limitations.

Sid thinks PR work programs should be a broad based group of ideas.

Rindy: There should be some constraints on work plans. Time? Number?

Benner: If a city wants to do more, shouldn't that be its decision?

The committee discussed periodic review being a two-step process—work program development and task completion—and appeals of work programs.

Burton: Don't do more tweaking; that just requires more adjustments. Should only explain the state's interest.

DCLD staff needs to provide input to committee on what a new PR process would look like for the agency.

**4. Fiscal and financial considerations.** Linda went over her handout, entitled: "Periodic Review Reform Committee Fiscal Considerations 08/30/2004 State Comprehensive Plan Research (2) discussing Periodic Review Planning for Florida, Georgia, Hawaii, Maine, New Jersey, Pennsylvania, and Wisconsin."

#### **5. Wrap-Up**

The meeting schedule, all at 9:00 a.m. to noon at the Local Government Center, is:

Thursday September 23

Tuesday October 26

Tuesday November 23

Chair Van Landingham will, with staff, draft a "decision tree" to assist the committee at the next meeting. Becky asked that it be coordinated with her recently prepared report outline. We will start next meeting with more information from staff about the status of the backlog and the number of appeals and double appeals. Then we'll use the decision tree to start making some decisions.

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

MEETING NOTES  
September 23, 2004

### Present

John Van Landingham, LCDC – chair  
Art Schlack, Association of Oregon Counties  
Richard Benner, Metro  
Jon Chandler, Oregon Building Industries Association  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Ed Sullivan, Garvey Schubert Barer

Lane Shetterly, DLCD Director  
Rob Hallyburton, DLCD Community Services Manager  
Gloria Gardiner, DLCD Urban Planning Specialist

Larry French, DLCD PAPA and Periodic Review Specialist

Peggy Lynch - Guest

1. **Review of August notes.** Sid did not remember saying that he thinks PR work programs should be a broad based group of ideas.

### 2. **Periodic Review “backlog” status report**

Rob Hallyburton provided two hand-outs, entitled “Submitted Periodic Review Tasks Under Review” and “Periodic Review Status.” He reported to the group that there were currently three submitted tasks the department had not made a decision on, and the periodic review backlog appeared to have been eliminated. The number was trimmed because there were fewer tasks being submitted and because of the new time limit on DLCD review.

The “Periodic Review Status” report shows the number of remaining tasks on each PR work program. The group wanted additional information on what issues are still out there in PR: how many tasks are outstanding and what goals do the tasks relate to? Rob indicated he would provide that information at the next meeting.

The committee discussed the DLCD task review process. The maximum timeframe for review of a task is 210 days from submittal to approval: 120 days for department action and 90 days from that decision to a commission hearing if there is an appeal or referral.

### **3. Periodic Review appeal data**

Rob reported the department does not track appeals of work programs, but as far he could determine there had been only one. This does not mean other work programs had not been influenced by citizen and/or DLCD participation, as clearly many had been.

Rob called attention to a spreadsheet entitled "Recent Task Approvals" (the committee pointed out it should be named "Recent Task Decisions" because they were not all approvals). The report shows 138 department actions since April 2003. Twelve had been appealed to LCDC, and three of these had also been appealed to the Land Use Board of Appeals (LUBA). Two UGB expansions were referred to LCDC by DLCD without a department decision, and those cases were concurrently appealed to LUBA, too. Two of the three tasks currently before DLCD had been appealed to LUBA.

### **4. Committee decision tree**

John Van Landingham handed out and reviewed the latest draft of the Periodic Review Reform Ideas list (version 8). John reminded the committee that they must have a report to the legislature by January 1, 2005.

The committee discussed the list to ensure it was complete and accurately reflected members' input. Several revisions were suggested.

The merits of a variety of a options for reform of periodic review received further discussion.

### **5. Wrap-Up**

Assignment: Each member of the group is to review the Periodic Review Reform Ideas list and submit which elements from the list they believe should receive further discussion, with a deadline of October 7, 2004. Submit the ideas to the entire committee via a "reply all" to the email Rob will send reporting this assignment.

The next meetings are scheduled for 9:00 a.m. to noon at the Local Government Center, on:

Tuesday October 26  
Tuesday November 23

## INTERIM PERIODIC REVIEW REFORM COMMITTEE

### MEETING NOTES

January 20, 2005

#### Present

John VanLandingham, LCDC – chair  
Richard Benner, Metro  
Jim Brown, Governor's Natural Resource Advisor (former)  
Jon Chandler, Oregon Building Industries Association  
Sid Friedman, 1000 Friends of Oregon  
Ken Gibb, City of Corvallis/Oregon City Planning Director's Association  
Linda Ludwig, League of Oregon Cities  
Ed Sullivan, Garvey Schubert Barer

Rob Hallyburton, DLCD Community Services Division Manager  
Larry French, DLCD Periodic Review Specialist

**1. Review of December notes.** No changes.

**2. Discussion of the impact of the passage of Measure 37 on the committee's task.** Linda reported that two major concerns got expressed at the Joint Legislative Committee on Land Use : there are holes in the measure making it hard to implement and transferability of waivers to subsequent property owners.

The committee reiterated its commitment to continue on with periodic review reform and report to the legislature in spite of Measure 37.

**3. Continue discussion and narrowing of reform ideas.** Rob went over a handout he prepared that shows which jurisdictions would be required to begin periodic review over the next five years under various scenarios: existing regulations, the "Benner Proposal," and the "Sullivan Proposal."

The committee discussed how to proceed with their recommendation and report, and whether it should include more than one alternative. The group decided to make a recommendation, but allow a minority report.

There seemed to be general agreement on the following: (1) "Decouple" legislative and commission mandates from PR (i.e., do not implement new statutes and rules through PR); (2) excluded rural areas of counties from PR; (3) remove LUBA appeals from the PR process (i.e., give LCDC sole jurisdiction over PR submittal review and appeals to simply the process); and (4) lengthen time between Metro PRs.

Dick reviewed his December 8, 2004 proposal for PR reform. Track 1 would be for updating plans to comply with new mandates and would not use PR; changes would be done through the post-acknowledgment plan amendment process. If a jurisdiction did not make changes to their plan and/or code, LCDC would enforce the change upon the jurisdiction. The agency would keep track of the changes and also report to the legislature on who made changes and who didn't. DLCD would provide model codes to assist with updates.

Concerns included that there would have to be funding to do the monitoring and code writing at DLCD and Measure 30 implications. No change would be made to 197.646. A checklist could be used as a test to make sure a jurisdiction complied state laws, rule, or statute. Rob will ask Mike Holstun of LUBA what would be the impact of increasing LUBA caseload.

Track 2: This track is the closest to the existing PR process, and would not include the rural parts of counties. Metro cities would update plans every seven years, other cities over 10,000 population at least every 10 years, and there would be several "triggers" that would lead to other cities entering periodic review in certain circumstances, generally related to major new, unanticipated public or private investment. The Governor's Economic Revitalization Team would help decide what is a major investment.

Track 3 would be voluntary and be used by a city not required to complete PR to update their community vision and address growth. The process would be similar to existing PR.

There was discussion regarding state's interest in updated plans in small, non-growing communities. Ed believes all jurisdictions should look at their plan periodically. He feels that doing nothing is not acceptable. Dick feels that not all jurisdictions should be in PR.

Ideas raised included: possibly the counties could be a clearinghouse for small cities to submit their updates to their comprehensive plans; small and static cities could be required to perform an evaluation periodically, with no requirement that they update their plan; possibly a larger GERT workforce could be used to go around the state and check with small cities.

The committee decided on several recommendations. A summary of these recommendations is attached to these minutes.

Straw poll. After discussion of the "Benner proposal," and discussion at the previous meeting of the "Sullivan proposal," the committee voted on their preference. Five preferred the Benner proposal, one the Sullivan proposal and one a hybrid.

#### **4. Discuss report to legislature**

Ed will ask Becky to re-write her report introduction, to simplify it for non-land use people. Dick will write up his policy recommendations for inclusion in the report – “the Benner proposal” plus John’s expanded GERT idea for helping non-required locals rethink their visions. This is tentatively the majority committee recommendation.

Ed, with Sid’s help, will write up a “minority report” for the policy recommendations (Ed and Sid agree on the decoupling and appeal proposals).

Rob will compile the various pieces and make them fit into a draft report. He will then email the draft report out to the committee before the February 22 meeting, where we expect to finalize the report.

Rob will contact Mike Holstun about potential cost impact to LUBA of the decoupling proposal, and possibly determine the offset by the decrease in PR appeals to LUBA.

#### **5. Wrap-up/next meeting**

Next meeting is February 22, 2005 at 9:00 a.m., place to be announced. Rob will confirm meeting space with Linda, and send meeting notices electronically.