



Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Jim Rue, Acting Director
Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 4, January 26, 2012, LCDC Meeting**

PUBLIC HEARING AND ADOPTION OF AMENDMENTS TO ADMINISTRATIVE RULES REGARDING PERIODIC REVIEW (OAR 660, DIVISION 25)

Under this item, the Land Conservation and Development Commission (LCDC) will hold a public hearing on proposed amendments to administrative rules at OAR 660, division 25, regarding Periodic Review (Attachment A). This is a continuation of the public hearing on this proposal held by LCDC on December 8, 2011. At that time, the commission heard some testimony but continued the hearing. In the interim, the department issued a new draft of these proposed rules, in part responding to testimony but also including refinements suggested by staff and legal counsel (See Attachment A, Draft 2). Following the issuance of Draft 2, the department received additional comments and input from legal counsel. As such, a new draft – Draft 3 – is also provided (See Attachment A, Draft 3).

An explanation of this rulemaking was provided in the November 23, 2011 DLCD staff report (Attachment B). These rule amendments are intended to implement legislation enacted by the 2011 Legislature (Attachment C). That legislation amended the statutes that describe Periodic Review and related requirements, including LCDC review of urban growth boundaries (UGBs) and urban and rural reserves “in the manner of periodic review.” The new statutes took effect upon passage in the summer of 2011, but DLCD rules have not been adjusted to reflect the statutory changes, which is the purpose of this item. In addition to amendments to implement the statute, minor amendments to the rules are also proposed in order to update citations, define or clarify terms or adjust sentence wording or structure.

The department issued notice for this rulemaking November 1, 2011, and reissued notice in the Secretary of State bulletin January 1, 2012. If adopted by LCDC, these rules would take effect upon filing with the Secretary of State, estimated to be approximately February 1, 2012.

Recommendation: After close of the public hearing, the department recommends that the commission adopt the rule amendments proposed in Draft 3 (Attachment A to this report).

For additional information regarding this item, please contact Bob Rindy at (503) 373-0050 ext. 229, or by email at bob.rindy@state.or.us.

I. BACKGROUND AND EXPLANATION

The department's staff report provided prior to the December 7 hearing is attached to and made a part of this item (Attachment B). That report provides information about the Periodic Review Administrative rules (OAR 660, division 25) and statutes, and describes the amendments to periodic review statutes adopted in the 2011 session. That report also describes the proposed changes to various rules within division 25 under this item. The report below provides an updated explanation of the proposed amendments.

II. PROPOSED RULE AMENDMENTS, DRAFT 3

The department's previous report in Attachment B described the various rule amendments in the draft rules. Some minor changes to the first draft of the rules are proposed, in response to comments received in December and January. These changes are reflected in Draft 2, published on the department's web site January 6, and in a later Draft 3, described below. Draft 3 is the department's recommendation for changes to these rules.

A. 660-025-0010 Purpose

The department proposes some minor amendments to this rule. These amendments are intended to clarify statements already included in the rule, rather than substantive amendments promulgated by the new statute.

B. 660-025-0020 Definitions

The department is proposing no changes to definitions.

C. 660-025-0030 Periodic Review Schedule

No substantive amendments to this rule are proposed. Amendments are to sentence structure or grammar only.

D. 660-025-0035 Initiating Periodic Review Outside the Schedule

No substantive amendments to this rule are proposed.

E. 660-025-0040 Exclusive Jurisdiction of LCDC

HB 2130 changes the list of decisions subject to the commission's authority, including at ORS 197.626, the statute specifying that expanding an urban growth boundary or designating urban or rural reserves is subject to periodic review. This amendment mainly provides a clearer description of the various actions that are reviewed by LCDC in the manner of periodic review. The former statute provided a list of these actions in a single, very long (and very confusing)

sentence. The new formatting of this statute is a welcome change. The amendments proposed to the rules at 0040 (and later, rules at 0175) reflect this change, using the same wording as in the statute.

However, it should be noted that there is one substantive change within this rewrite: An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary is now clearly reviewable by LCDC rather than LUBA. Previously, it was understood that the designation of an urban reserve was reviewable by LCDC, but it was unclear (but presumed) that any amendment to an urban reserve was reviewable by the commission or LUBA. As such, any change to an urban reserve was reviewable by the commission, rather than only those changes over 50 acres. It is important to note that an amendment of a UGB that “adds” land from an urban reserve is not itself an “amendment of an urban reserve.” This was clarified on the record during legislative consideration of HB 2130.

F. 660-025-0050 Commencing Periodic Review

These proposed changes are intended for clarity only, and are not substantive.

G. 660-025-0060 Periodic Review Assistance Teams

These proposed changes are intended for clarity only, and are not substantive. A statutory citation is added.

H. 660-025-0070 Need for Periodic Review

Most proposed amendments to this rule are not substantive and simply clarify existing provisions. Changes to section (2) were proposed in Draft 1, but these changes were dropped in response to comments.

I. 660-025-0080 Notice and Citizen Involvement

Each local government must review its citizen involvement program under periodic review, as required by both statute and this rule. However, while it is generally understood that this means such review would take place as a first step in periodic review, the rule does not make this clear. The department draft (Attachment A) proposes changing the rule to indicate that any necessary changes to the citizen involvement program to ensure citizen involvement should generally occur at the beginning of the local process. Otherwise, periodic review would not benefit from these changes. Note: the proposal in Drafts 2 and 3 are slightly different than the proposal in Draft 1.

On a related topic, the department proposes an amendment to this rule on citizen involvement. Currently, the rule states that citizen involvement opportunities must, at a minimum, provide that interested persons have the opportunity to comment in advance or at the final hearing. In order to ensure this is a real opportunity to participate, the department proposes that this provision be amended to add that citizens must also have the opportunity to *review materials in advance*. This is not necessarily a change to current understanding about the process, but it does clarify that,

when periodic review results in a change to comprehensive plans, the written materials about such a proposal must be made available in advance.

Finally, nothing in statutes at ORS 197.610 indicate the notice provisions in the statutes do *not* apply to changes to plans and regulations that occur under periodic review (there is no question that *review* of changes under a work task are reviewed differently than for ordinary plan and ordinance changes). As such, the department proposes to add a section to this rule to clarify that, before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation under a work task, the local government must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing as required for plan or ordinance changes outside periodic review (in ORS 197.610 and OAR 660-018-0020).

J. 660-025-0085 Commission Hearings Notice and Procedures

Section (1). The amended statute does not provide for commission review of an evaluation or determination that a work program is not necessary. This section is proposed to be amended to reflect that.

Section (2). This proposed amendment clarifies that it applies only to an appeal or referral of a completed work task.

Section (5)(g). The statutes amended under HB 2130 do not authorize the commission to consider new evidence under any circumstances. This rule currently authorizes new evidence at the commission discretion. As such, the rule is not consistent with the new statute, and the department proposes to amend this rule to reflect that. Henceforth, the commission will not have discretion to ask for new evidence in matters involving review of local periodic review actions.

The department received three sets of comments concerning provisions about the local record. These comments (from the City of Portland, Ed Sullivan, and Metro) concern the local record and in particular, how to determine whether the record before the commission is complete and does not include materials not in the record. This is particularly problematic where a record exceeds 2,000 pages and the local government is allowed to submit an abbreviated record under OAR 660-025-0130(3)(b). Various methods are proposed by the commenters to resolve this. In particular, Metro proposes the following be added to Section (5)(6) of rule 0085:

The commission will consider evidence in the local record submitted to the department with:

- (A) The local government's submittal filed pursuant to OAR 660-025-0130(3);
- (B) An objection filed pursuant to OAR 660-025-0140;
- (C) A local government response to an objection filed pursuant to OAR 660-025-0130(4); and
- (D) An exception filed pursuant to OAR 660-025-0160(5).

The department showed this proposal in Draft 2. However, in conversation with legal counsel, subsequent to Draft 2, concern was expressed that this proposal may limit the record to only

materials received by the department. In fact, the record may be broader than that. As such, the department no longer recommends this wording.

K. 660-025-0090 Evaluation, Work Program or Decision that No Work Is Necessary

The department's initial draft did not recommend changes to this section. However, subsequent to publishing that draft, it came to the department's attention that a key substantive provision in statute is not currently reflected in current division 25 rules. ORS 197.633(4) states: "A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal." The department recommends that this standard be reflected, in rule 0090 as a new section (6). This change is provided in Drafts 2 and 3.

L. 660-025-0100 Notice and Filing of Objections (Work Program Phase)

No substantive changes to this rule are proposed – changes proposed concern sentence structure only, and do not result in a policy change. Draft 3 proposes fewer changes to sentence structure than previous drafts, based on the department's consultation with legal counsel.

M. 660-025-0110 Director and Commission Action (Work Program Phase)

Changes to this rule provide that there is no opportunity for a referral of an evaluation and work program to the commission, as per the new statutes.

N. 660-025-0130 Submission of Completed Work Task

The changes to this rule are primarily for clarity, but concern provisions that allow a truncated submittal when the record exceeds 2,000 pages. The new (4)(b) clarifies that the local government may submit additional materials to this truncated submittal in response to an objection.

O. 660-025-0140 Notice and Filing of Objections (Work Task Phase)

Changes proposed to this rule are primarily intended to clarify that, when a local government has submitted less than the complete record (as authorized when the record is more than 2,000 pages), objectors may refer to information that was not submitted, or add that to the objection.

Section (5) of this rule is not related to the subject matter of this rule. In Draft 3, the department proposes to move this section to rule 150, which is about subject matter related to that section.

P. 660-025-0150 Director Action and Appeal of Director Action (Work Task Phase)

The department recommended amendment of this rule (Attachment A), first to simply clarify that director action under this rule is "in response to a completed work task submitted to the department for review." This is not a substantive amendment, but is for clarity.

The department recommended deletion of subsections (3) through (5) in order to replace these with the more compact provision in statute, and renumbering of subsequent sections. The department has changed this recommendation subsequent to publishing the initial draft. It is

instead recommended that these three sections be retained. As such, the remaining changes to numbering are not shown in Drafts 2 and 3.

The new Section (8) is a provision that has been simply moved from the previous rule. It is also slightly revised for clarity, in Draft 3.

HB 2130 amended the standard of review for the commission. Amendments to rules under OAR 660-025-0160 (see below) provide that standard of review in this division. Since these statutes also provide for initial review of work tasks by the director (which is the subject of this particular rule), it is recommended that the director's standard of review be expressed. After conferring with legal counsel, the department recommends the addition of a new subsection (9) to this rule, indicating that the director's standard of review is the same as the standard that governs the commission expressed in OAR 660-025-0160(2).

The new rule in (8) is actually a rule moved from rule 0140.

It should be noted that HB 2130 amended ORS 197.633(4) to remove the following provision: *If a timely objection is filed, the director shall refer the work task to the commission.* In other words, prior to the bill, an objection resulted in an automatic referral to LCDC if the director failed to make a decision within 120 days of the submittal date. That is no longer the case. The rule never incorporated this statutory provision, so no amendment to the rule is required.

Q. 660-025-0160 Commission Review of Referrals and Appeals (Work Task Phase)

The statutes as amended by HB 2130 provide a modified standard of review for the commission. The standard of review had not been previously expressed in this rule. The department proposes inserting it, as a new section (2). The commission's standard of review, as provided in ORS 197.633, is stated below. The department has one minor change to the proposal in Attachment A:

- (a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.
- (b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
- (c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this **subsection** ~~paragraph~~, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

R. 660-025-0170 Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

No changes are proposed to this rule.

S. 660-025-0175 Review of UGB Amendments and Urban Reserve Area Designations

This is the rule that provides for department and commission review “in the manner of periodic review” for certain UGB and reserve decisions. Since the statute has been amended to rephrase this requirement, and in one case to alter the list of these decisions, the department proposes conforming amendments to this rule. This is a repeat of this list in rule 0040, so an alternative would be to simply reference that rule. However, the department believes the proposed version would be more user-friendly.

T. 660-025-0180 Stay Provisions

This is amended to remove language that reflects the “old” statute regarding UGBs and reserves.

U. 660-025-0210 Updated Planning Documents

The department proposes changes to this rule. The main substantive change is with regard to local governments filing changes on a computer disk. The rule currently authorizes this, but state and department rules on retention of documents do not authorize information on disks. As such, the department intends to eliminate authorization for this format.

The proposed new section (2) reflects the department’s proposal in division 18 rules (see Item 3), on that same topic. When local governments alter a UGB or Urban Reserve, and when local governments produce geospatial data for that change, the department requires that information to keep its data base up to date on these changes. This wording is different than provided in drafts prior to Draft 3, but is similar.

V. 660-025-0220 Computation of Time

No changes are proposed to this rule.

W. 660-025-0230 Applicability

No substantive changes are proposed to this rule, changes are for clarification purposes.

X. 660-025-0250 Transfer of Matters to the Land Use Board of Appeals

This provision has been substantively modified at the advice of legal counsel. The current rule seems to imply that the commission may only transfer review to LUBA when there is an appeal of the director’s decision. Legal counsel indicates the commission may transfer even if there is not a decision. Generally, this provision allows LCDC to transfer a matter to LUBA that does not concern the commission’s authority, for example a “constitutional” question about a charter provision.

III. RECOMMENDATION

The department recommends the commission open the continued public hearing on the proposed amendments described in this and the previous report, close the public hearing following testimony, and adopt the proposed rule amendments in Draft 3, Attachment A to this report.

ATTACHMENTS

- A. Proposed amendments to OAR 660, division 25, Drafts 2 and 3
- B. DLCD November 23, 2011 staff report, including Draft 1, comments, and other attachments
- C. New Periodic Review statutes amended by HB 2130
- D. Notices
- E. Comments

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 25 PERIODIC REVIEW Amendments Draft 3; January 13, 2012

1 **660-025-0010**

2 **Purpose**

3 The purpose of this division is to carry out the state policy outlined in ORS 197.010 and
4 197.628. This division is intended to implement provisions of ORS 197.626 through
5 197.651. The purpose for periodic review is to ensure that comprehensive plans and land
6 use regulations remain in compliance with the statewide planning goals adopted pursuant
7 to ORS 197.230, the commission's rules and applicable land use statutes. Periodic review
8 also is intended to ensure that local government[s] plans **and regulations make** ~~[for]~~
9 adequate provision for **economic development**, needed housing, ~~[economic~~
10 ~~development,]~~ transportation, public facilities and services, and urbanization, and that
11 local plans are coordinated as described in ORS 197.015(5). Periodic Review is a
12 cooperative **planning** process ~~[between]~~ **that includes** the state **and its agencies**, local
13 governments, and other interested persons.

14 Stat. Auth.: ORS ~~[183 &]~~ **197.040 & 197.633**

15 Stats. Implemented: **ORS 197.010**, ORS 197.626~~[8]~~ - 197.651~~[46]~~

16 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
17 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
18 cert. ef. 10-19-11

19 **660-025-0020**

20 **Definitions**

21 For the purposes of this division, the definitions contained in ORS 197.015, 197.303, **and**
22 **197.747** shall apply unless the context requires otherwise. In addition, the following
23 definitions apply:

24 (1) "Economic Revitalization Team" means the team established under ORS 284.555.

25 (2) "Filed" or "Submitted" means that the required documents have been received by the
26 Department of Land Conservation and Development at its Salem, Oregon, office.

27 (3) "Final Decision" means the completion by the local government of a work task on an
28 approved work program, including the adoption of supporting findings and any
29 amendments to the comprehensive plan or land use regulations. A decision is final when
30 the local government's decision is transmitted to the department for review.

31 (4) "Metropolitan planning organization" means an organization located wholly within
32 the State of Oregon and designated by the Governor to coordinate transportation planning
33 in an urbanized area of the state pursuant to 49 USC § 5303(c).

1 (5) "Objection" means a written complaint concerning the adequacy of an evaluation,
2 proposed work program, or completed work task.

3 (6) "Participated at the local level" means to have provided substantive comment,
4 evidence, documents, correspondence, or testimony to the local government during the
5 local proceedings regarding a decision on an evaluation, work program or work task.

6 (7) "Work Program" means a detailed listing of tasks necessary to revise or amend the
7 local comprehensive plan or land use regulations to ensure the plan and regulations
8 achieve the statewide planning goals. A work program must indicate the date that each
9 work task must be submitted to the department for review.

10 (8) "Work Task" or "task" means an activity that is included on an approved work
11 program and that generally results in an adopted amendment to a comprehensive plan or
12 land use regulation.

13 Stat. Auth.: ORS [183 &] 197.**040 & 197.633**
14 Stats. Implemented: ORS 197.015 & 197.628 - 197.646
15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
16 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
17 cert. ef. 10-19-11

18 **660-025-0030**
19 **Periodic Review Schedule**

20 (1) The commission must approve, and update as necessary, a schedule for periodic
21 review. The schedule must include the date when **the department, pursuant to ORS**
22 **197.629, must send a** [each] local government [~~must be sent~~] a letter [~~by the department~~]
23 requesting the local government to commence the periodic review process.

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

25 (a) A city with a population of more than 2,500 within a metropolitan planning
26 organization or a metropolitan service district shall conduct periodic review every seven
27 years after completion of the previous periodic review.

28 (b) A city with a population of 10,000 or more inside its urban growth boundary that is
29 not within a metropolitan planning organization shall conduct periodic review every 10
30 years after completion of the previous periodic review.

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

34 (d) Notwithstanding subsection (c) of this section, if the schedule set for the county is
35 specific as to that portion of the county within the urban growth boundary of a city

1 subject to periodic review under this section, the county shall conduct periodic review for
2 that portion of the county according to the schedule and work program set for the county.

3 (3) The commission may establish a schedule that varies from the standards in section (2)
4 of this rule if necessary to coordinate approved periodic review work programs or to
5 account for special circumstances. The commission may schedule a local government's
6 periodic review earlier than provided in section (2) of this rule if necessary to ensure that
7 all local governments in a region whose land use decisions would significantly affect
8 other local governments in the region are conducting periodic review concurrently, but
9 not sooner than five years after completion of the previous periodic review.

10 (4) The director must maintain and implement the schedule. Copies of the schedule must
11 be provided upon request.

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
15 4-2006, f. & cert. ef. 5-15-06

16 **660-025-0035**

17 **Initiating Periodic Review Outside the Schedule**

18 (1) A [~~local government~~] **city or county** may request, and the commission may approve,
19 initiation of periodic review not otherwise provided for in the schedule established under
20 OAR 660-025-0030. The request must be submitted to the commission along with
21 justification for the requested action. The justification must include a statement of local
22 circumstances that warrant periodic review and identification of the statewide planning
23 goals to be addressed.

24 (2) In consideration of the request filed pursuant to section (1), the commission must
25 consider the needs of the jurisdiction to address the issue(s) identified in **the request for**
26 periodic review, the interrelationships of the statewide planning goals to be addressed in
27 the periodic review project, and other factors the commission finds relevant. If the
28 commission approves the request, the provisions of this division apply, except as
29 provided in section (3) of this rule.

30 (3) The Economic Revitalization Team may work with a city to create a voluntary
31 comprehensive plan review that focuses on the unique vision of the city, instead of
32 conducting a standard periodic review, if the team identifies a city that the team
33 determines can benefit from a customized voluntary comprehensive plan review. In order
34 for a voluntary comprehensive plan review to be initiated by the commission, the city
35 must request initiation of such a modified periodic review. The provisions of this division
36 apply except as follows:

1 (a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the
2 periodic review under this section will not replace or delay the next scheduled periodic
3 review;

4 (b) If the city misses a deadline related to an evaluation, work program or work task,
5 including any extension, the commission must terminate the evaluation, work program, or
6 work task or impose sanctions pursuant to OAR 660-025-0170(3).

7 (4) If the commission pays the costs of a local government that is not subject to OAR
8 660-025-0030 to perform new work programs and work tasks, the commission may
9 require the local government to complete periodic review when the local government has
10 not completed periodic review within the previous five years if:

11 (a) A city has been growing faster than the annual population growth rate of the state for
12 five consecutive years;

13 (b) A major transportation project on the Statewide Transportation Improvement Program
14 that is approved for funding by the Oregon Transportation [e]Commission is likely to:

15 (A) Have a significant impact on a city or an urban unincorporated community; [øf]

16 (B) Be significantly affected by growth and development in a city or an urban
17 unincorporated community;

18 (c) A major facility, including a prison, is sited or funded by a state agency; or

19 (d) Approval by the city or county of a facility for a major employer will increase
20 employment opportunities and significantly affect the capacity of housing and public
21 facilities in the city or urban unincorporated community.

22 (5) As used in section (4) of this rule, "the costs of a local government" means: normal
23 and customary expenses for supplies, personnel and services directly related to preparing
24 a work program, and completing studies and inventories, drafting of ordinances,
25 preparing and sending notices of hearings and meetings, conducting meetings and
26 workshops, and conducting hearings on possible adoption of amendments to plans or
27 codes, to complete a work task.

28 Stat. Auth.: ORS 197.040 & 197.633

29 Stats. Implemented: ORS 197.628 - ORS 197.646

30 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

31 **660-025-0040**

32 **Exclusive Jurisdiction of LCDC**

33 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction [tø] **for**
34 review **of** [the evaluation, work program, and] **completed periodic review** work tasks for
35 compliance with the statewide planning goals and applicable statutes and administrative

1 rules, as set forth in ORS 197.633(3). The director also has authority to review the
2 periodic review evaluation, work program and completed work tasks, as set forth in
3 ORS 197.633 and 197.644.

4 ~~(2)~~ Pursuant to ORS 197.626, the commission has exclusive jurisdiction [~~to~~] **for** review
5 **of** the following **final** land use decisions for compliance with the statewide planning
6 goals:

7 [~~(a) If made by a city with a population of 2,500 or more inside its urban growth~~
8 ~~boundary, amendments to an urban growth boundary to include more than 50 acres;~~

9 ~~(b) If made by a metropolitan service district, amendments to an urban growth boundary~~
10 ~~to include more than 100 acres;~~

11 ~~(c) plan and land use regulations that designate urban reserve areas.]~~

12 **(a) An amendment of an urban growth boundary by a metropolitan service district**
13 **that adds more than 100 acres to the area within its urban growth boundary;**

14 **(b) An amendment of an urban growth boundary by a city with a population of**
15 **2,500 or more within its urban growth boundary that adds more than 50 acres to the**
16 **area within the urban growth boundary;**

17 **(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a**
18 **metropolitan service district or by a city with a population of 2,500 or more within**
19 **its urban growth boundary;**

20 **(d) An amendment of the boundary of an urban reserve by a metropolitan service**
21 **district;**

22 **(e) An amendment of the boundary of an urban reserve to add more than 50 acres**
23 **to the urban reserve by a city with a population of 2,500 or more within its urban**
24 **growth boundary; and**

25 **(f) A designation or an amendment to the designation of a rural reserve under**
26 **ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service**
27 **district, including an amendment of the boundary of a rural reserve.**

28 **(3) A final order of the commission pursuant to sections (1) or (2) of this rule may be**
29 **subject to judicial review in the manner provided in applicable provisions of ORS**
30 **197.650 and 197.651.**

31 ~~(42)~~ The director may transfer one or more matters arising from review of a work task,
32 urban growth boundary amendment or designation or amendment of an urban reserve
33 area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-
34 025-0250.

35 Stat. Auth.: ORS 197.040 **& 197.633**

36 Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825

1 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
2 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
3 cert. ef. 5-15-06; LCDD 1-2011, f & cert. ef. 10-19-11

4 **660-025-0050**
5 **Commencing Periodic Review**

6 (1) The department must commence the periodic review process by sending a letter to the
7 [affected] local government pursuant to OAR 660-025-0030 or 660-025-0035. The
8 department may provide advance notice to a local government of the upcoming review
9 and must encourage local governments to review their citizen involvement provisions
10 prior to beginning periodic review.

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

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

14 (b) The date **the local government must submit** the evaluation and work program or
15 evaluation and decision that no work program is required [~~must be submitted~~];

16 (c) Applicable evaluation forms; and

17 (d) Other information the department considers relevant.

18 (3) The director must provide copies of the materials sent to the local government to
19 interested persons upon written request.

20 Stat. Auth.: ORS 197.040 & 197.633

21 Stats. Implemented: ORS 197.628 - 197.646

22 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

23 **660-025-0060**
24 **Periodic Review Assistance Team(s)**

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

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

31 (a) Information relevant to the periodic review process;

32 (b) New and updated information;

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

2 (d) Coordinated evaluation and comment from state agencies.

3 (3) Membership. The Periodic Review Assistance Team may include representatives of
4 state agencies with programs affecting land use **described in ORS 197.180**, and
5 representatives of regional or local governments who may have an interest in the review.

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

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

13 (6) In addition to the Periodic Review Assistance Team(s), the department may utilize the
14 Economic Revitalization Team or institute an alternative process for coordinating agency
15 participation in the periodic review of comprehensive plans.

16 (7) [~~Consideration by the commission.~~] The commission must consider the
17 recommendations, if any, of the Periodic Review Assistance Team(s).

18 Stat. Auth.: ORS 197.040 & 197.633

19 Stats. Implemented: ORS 197.628 - 197.646

20 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

21 **660-025-0070**

22 **Need for Periodic Review**

23 (1) The following conditions indicate the need for [~~and establish the scope of review~~
24 ~~for,~~] periodic review of comprehensive plans and land use regulations when **periodic**
25 **review is** required under OAR 660-025-0030:

26 (a) There has been a substantial change in circumstances including but not limited to the
27 conditions, findings, or assumptions upon which the comprehensive plan or land use
28 regulations were based, so that the comprehensive plan or land use regulations do not
29 comply with the statewide planning goals relating to economic development, needed
30 housing, transportation, public facilities and services and urbanization;

31 (b) Decisions based on acknowledged comprehensive plan and land use regulations are
32 inconsistent with the goals relating to economic development, needed housing,
33 transportation, public facilities and services and urbanization;

1 (c) There are issues of regional or statewide significance, intergovernmental coordination,
2 or state agency plans or programs affecting land use which must be addressed in order to
3 bring comprehensive plans and land use regulations into compliance with the goals
4 relating to economic development, needed housing, transportation, public facilities and
5 services and urbanization; or

6 (d) **The local government, commission or department determines that** ~~[F]~~the existing
7 comprehensive plan and land use regulations are not achieving the statewide planning
8 goals relating to economic development, needed housing, transportation, public facilities
9 and services and urbanization.

10 (2) When a local government requests initiation of periodic review under OAR 660-025-
11 0035~~(2)~~, the need for periodic review may be based on factors not contained in section
12 (1) of this rule and the scope of such a periodic review may be more limited than would
13 be the case for scheduled periodic review under section (1) of this rule.

14 Stat. Auth.: ORS 197.040 **& 197.633**

15 Stats. Implemented: ORS 197.628 - 197.646

16 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
17 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

18 **660-025-0080**

19 **Notice and Citizen Involvement**

20 (1) The local government must use its acknowledged ~~[or otherwise approved]~~ citizen
21 involvement program, **or amend the program if necessary consistent with section (2)**
22 **of this rule**, to provide adequate participation opportunities for citizens and other
23 interested persons in all phases of the local periodic review. Each local government must
24 publish a notice in a newspaper of general circulation within the community informing
25 citizens about the initiation of the local periodic review. The local government must also
26 provide written notice of the initiation of the local periodic review to ~~[other]~~ persons who
27 ~~[, in writing,]~~ request, **in writing**, such notice.

28 (2) Each local government must review its citizen involvement program **at the beginning**
29 **of periodic review** and, **if necessary, amend the program to ensure** ~~[assure that there is~~
30 ~~an]~~ **it will provide** adequate **opportunities** ~~[process]~~ for citizen involvement in all phases
31 of the periodic review process. Citizen involvement opportunities must, at a minimum,
32 include:

33 (a) Interested persons must have the opportunity **to review materials in advance and to**
34 **comment in writing in advance of or at one or more hearings on the periodic review**
35 **evaluation**. Citizens and other interested persons must have the opportunity to present
36 comments orally at one or more hearings on the periodic review evaluation. Citizens and
37 other interested persons must have the opportunity to propose periodic review work tasks
38 prior to or at one or more hearings. The local government must provide a response to
39 comments at or following the hearing on the evaluation.

1 (b) Interested persons must have the opportunity to **review materials in advance and to**
2 comment in writing in advance of or at one or more hearings on a periodic review work
3 task. Citizens and other interested persons must have the opportunity to present
4 comments orally at one or more hearings on a periodic review work task. The local
5 government must respond to comments at or following the hearing on a work task.

6 **(3) A local government proposing to change an acknowledged comprehensive plan**
7 **or a land use regulation under a work task must provide notice of the proposed**
8 **change to the department 35 days in advance of the first evidentiary hearing, as**
9 **provided in ORS 197.610 and OAR 660-018-0010.**

10 Stat. Auth.: ORS 197.040 & 197.633

11 Stats. Implemented: ORS 197.628 - 197.646

12 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

13 **660-025-0085**

14 **Commission Hearings Notice and Procedures**

15 (1) Hearings before the commission on a referral of a local government submittal of [~~an~~
16 ~~evaluation,~~] **a** work program [~~, determination that a work program is not necessary,~~] or
17 hearings on referral or appeal of a work task must be noticed and conducted in
18 accordance with this rule.

19 (2) The commission shall take final action on an appeal or referral **of a completed work**
20 **task** within 90 days of the date the appeal was filed or the director issued notice of the
21 referral unless:

22 (a) At the request of a local government and a person who files a valid objection or
23 appeals the director's decision, the department may provide mediation services to resolve
24 disputes related to the appeal. Where mediation is underway, the commission shall delay
25 its hearing until the mediation process is concluded or the director, after consultation with
26 the mediator, determines that mediation is of no further use in resolution of the work
27 program or work task disagreements;

28 (b) If the appeal or referral raises new or complex issues of fact or law that make it
29 unreasonable for the commission to give adequate consideration to the issues within the
30 90-day limit the commission is not required to take final action within that time limit; or

31 (c) If the parties to the appeal and the commission agree to an extension, the hearing may
32 be continued for a period not to exceed an additional 90 days.

33 (3) The director must provide written notice of the hearing to the local government, the
34 appellant, objectors, and individuals requesting notice in writing. The notice must contain
35 the date and location of the hearing.

- 1 (4) The director may prepare a written report to the commission on an appeal or referral.
2 If a report is prepared, the director must mail a copy to the local government, objectors,
3 the appellant, and individuals requesting the report in writing.
- 4 (5) Commission hearings will be conducted using the following procedures:
- 5 (a) The chair will open the hearing and explain the proceedings;
- 6 (b) The director or designee will present an oral report regarding the nature of the matter
7 before the commission, an explanation of the director's decision, if any, and other
8 information to assist the commission in reaching a decision. If another state agency
9 participated in the periodic review under ORS 197.637 or 197.638, the agency may
10 participate in the director's oral report.
- 11 (c) Participation in the hearing is limited to:
- 12 (A) The local government or governments whose decision is under review;
- 13 (B) Persons who filed a valid objection to the local decision in the case of commission
14 hearing on a referral;
- 15 (C) Persons who filed a valid appeal of the director's decision in the case of a commission
16 hearing on an appeal; and
- 17 (D) Other affected local governments.
- 18 (d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.
- 19 (e) Persons or their authorized representative may present oral argument.
- 20 (f) The local government that submitted the task may provide general information from
21 the record on the task submittal and address those issues raised in the department review,
22 objections, or the appeal. A person who submitted objections or an appeal may address
23 only those issues raised in the objections or the appeal submitted by that person. Other
24 affected local governments may address only those issues raised in objections or an
25 appeal.
- 26 (g) As provided in ORS 197.633(3), t[~~F~~]he commission will confine its review of [~~not~~
27 ~~consider new~~] evidence to the local record [~~unless it requests it, at its discretion. If the~~
28 ~~commission considers new evidence, it will allow the parties an opportunity to review~~
29 ~~and respond to the new evidence, subject to the time limits in section (2) of this rule~~].
- 30 (h) The director or commission may take official notice of law defined as:
- 31 (A) The decisional, constitutional and public statutory law of Oregon, the United States
32 and any state, territory or other jurisdiction of the United States.

- 1 (B) Public and private official acts of the legislative, executive and judicial departments
2 of this state, the United States, and any other state, territory or other jurisdiction of the
3 United States.
- 4 (C) Regulations, ordinances and similar legislative enactments issued by or under the
5 authority of the United States or any state, territory or possession of the United States.
- 6 (D) Rules of court of any court of this state or any court of record of the United States or
7 of any state, territory or other jurisdiction of the United States.
- 8 (E) The law of an organization of nations and of foreign nations and public entities in
9 foreign nations.
- 10 (F) An ordinance, comprehensive plan or enactment of any local government in this state,
11 or a right derived therefrom.

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

15 **660-025-0090**

16 **Evaluation, Work Program or Decision that No Work Is Necessary**

- 17 (1) The local government must conduct an evaluation of its plan and land use regulations
18 based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The
19 local evaluation process must comply with the following requirements:
- 20 (a) The local government must follow its citizen involvement program and the
21 requirements of OAR 660-025-0080 for conducting the evaluation and determining the
22 scope of a work program.
- 23 (b) The local government must provide opportunities for participation by the department
24 and Periodic Review Assistance Team. **The local government must consider** [H]issues
25 related to coordination between local government comprehensive plan provisions and
26 certified state agency coordination programs that are raised by the affected agency[;] or
27 Periodic Review Assistance Team. [~~must be considered by the local government.~~]
- 28 (c) The local government may provide opportunities for participation by the Economic
29 Revitalization Team.
- 30 (d) At least 21 days before submitting the evaluation and work program, or decision that
31 no work program is required, the local government must provide copies of the evaluation
32 to members of the Periodic Review Assistance Team, if formed, and others who have, in
33 writing, requested copies.

1 (e) After review of comments from interested persons, the local government must adopt
2 an evaluation and work program or decision that no work program is required.

3 (2) The local government must submit the evaluation and work program, or decision that
4 no work program is required, to the department according to the following requirements:

5 (a) The evaluation must include completed evaluation forms that are appropriate to the
6 jurisdiction as determined by the director. Evaluation forms will be based on the
7 jurisdiction's size, growth rate, geographic location, and other factors that relate to the
8 planning situation at the time of periodic review. Issues related to coordination between
9 local government comprehensive plan provisions and certified agency coordination
10 programs may be included in evaluation forms.

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

14 (c) The evaluation and work program, or decision that no work program is necessary,
15 must be submitted within six months of the date the department sent the letter initiating
16 the periodic review process, including any extension granted under section (3) of this
17 rule.

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

23 (4) A decision by the director to deny a request for an extension may be appealed to the
24 commission according to the procedures in OAR 660-025-0110(5), or the director may
25 refer a request for extension under section (3) of this rule to the commission pursuant to
26 OAR 660-025-0085.

27 (5) If a local government fails to submit its evaluation and work program, or decision that
28 no work program is necessary, by the deadline set by the director or the commission,
29 including any extension, the director shall schedule a hearing before the commission
30 according to OAR 660-025-0170(3).

31 **(6) A decision by the director to approve a work program, that no work program is**
32 **necessary or that no further work is necessary, is final and not subject to appeal.**

33 Stat. Auth.: ORS 197.040 & 197.633

34 Stats. Implemented: ORS 197.628 - 197.646

35 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
36 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

1 **660-025-0100**

2 **Notice and Filing of Objections (Work Program Phase)**

3 (1) After the local government approves the evaluation and work program, or the
4 evaluation and decision that no work program is necessary, the local government must
5 notify the department and persons who participated at the local level orally or in writing
6 during the local process. The local government notice must contain the following
7 information:

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

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

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

14 (2) Persons who participated at the local level orally or in writing during the local process
15 leading to the evaluation and work program or decision that no work program is
16 necessary may object to the local government's decision. To be valid, an objection must:

17 (a) Be in writing and filed with the department's Salem office no later than 21 days from
18 the date the notice was mailed by the local government;

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

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

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

24 (3) Objections that do not meet **all** the requirements of section (2) of this rule [~~must~~] **will**
25 not be considered by the director or commission.

26 (4) If **the department does not receive any** [~~no~~] valid objections [~~are received~~] within
27 the 21-day objection period, the director may approve the evaluation and work program
28 or decision that no work program is required. Regardless of whether valid objections are
29 received, the department [~~may~~]**must** make its own determination of the sufficiency of the
30 evaluation and work program or determination that no work program is necessary.

31 (5) If **the department receives one or more** valid objections [~~are received~~], the
32 department must issue a report **that** [~~The report must~~] addresses the issues raised in
33 valid objections. The report must identify specific work tasks to resolve valid objections
34 or department concerns. A valid objection must either be sustained or rejected by the

1 department or commission based on the statewide planning goals and related statutes and
2 administrative rules.

3 Stat. Auth.: ORS 197.040 & 197.633

4 Stats. Implemented: ORS 197.628 - 197.646

5 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
6 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. &
7 cert. ef. 10-19-11

8 **660-025-0110**

9 **Director and Commission Action (Work Program Phase)**

10 (1) **In response to an evaluation and work program submitted to the department**
11 **pursuant to OAR 660-025-0100,** t[~~F~~]he director may:

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

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

17 [~~(c) Refer the evaluation and work program or determination that no work program is~~
18 ~~necessary to the commission for review and action].~~

19 (2) The director may postpone action, pursuant to [sub]section[s] (1)[~~(a)-(c)~~] of this rule
20 to allow the department, the jurisdiction, objectors or other persons who participated
21 orally or in writing at the local level to reach agreement on specific issues relating to the
22 evaluation and work program or determination that no work program is necessary.

23 (3) The director must provide written notice of the decision to the local government
24 persons who filed objections, and persons who requested notice of the local government
25 decision.

26 (4) The director's decision to approve an evaluation and work program or determination
27 that no work program is necessary is final and may not be appealed.

28 (5) The director's decision to deny an evaluation and work program or determination that
29 no work program is necessary may be appealed to the commission by the local
30 government, or a person who filed an objection, or other person who participated orally
31 or in writing at the local level.

32 (a) Appeal of the director's decision must be filed with the department within 21 days of
33 the date notice of the director's action was mailed;

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

7 (6) If no such appeal is filed, the director's decision shall be final.

8 (7) In response to an appeal, the director may prepare and submit a report to the
9 commission. The provisions in OAR 660-025-0160(~~3~~4) and (~~5~~4) apply.

10 (8) The commission shall hear referrals and appeals of evaluations and work programs
11 according to the procedures in OAR 660-025-0085.

12 (9) Following its hearing, the commission must issue an order that either:

13 (a) Establishes a work program; or

14 (b) Determines that no work program is necessary.

15 Stat. Auth.: ORS 197.040 & 197.633

16 Stats. Implemented: ORS 197.628 - 197.646

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

18 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

19 **660-025-0130**

20 **Submission of Completed Work Task**

21 (1) A local government must submit completed work tasks as provided in the approved
22 work program to the department along with the notice required in OAR 660-025-0140
23 and any form required by the department. A local government must submit to the
24 department a list of persons who participated orally or in writing in the local proceedings
25 leading to the adoption of the work task or who requested notice of the local
26 government's final decision on a work task.

27 (2) After receipt of a work task, the department must determine whether the submittal is
28 complete.

29 (3) To be complete, a submittal must be a final decision containing all required elements
30 identified for that task in the work program. **The department may accept a [A]** portion
31 of a task or subtask [~~may be accepted~~] as a complete submittal if the work program
32 identified that portion of the task or subtask as a separate item for adoption by the local
33 government. Task submittals are subject to the following requirements:

- 1 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire
2 local record, including but not limited to adopted ordinances and orders, studies,
3 inventories, findings, staff reports, correspondence, hearings minutes, written testimony
4 and evidence, and any other items specifically listed in the work program;
- 5 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances,
6 **resolutions**, and orders~~[;]~~; **any amended comprehensive or regional framework plan**
7 **provisions or land use regulations**; findings~~[;]~~; hearings minutes~~[;]~~; **materials from the**
8 **record that the local government deems necessary to explain the submittal or cites**
9 **in its findings**; ~~[written testimony and evidence,]~~ and a detailed index listing **all** items **in**
10 **the local record indicating whether or not the item is** included in the submittal. **All**
11 ~~[I]t~~ items in the local record ~~[not included in the submittal]~~ must be made available for
12 public review during the period for submitting objections under OAR 660-025-0140. The
13 director or commission may require **a local government to submit** ~~[submission of]~~ any
14 materials **from the local record** not included in the initial submittal;
- 15 (c) A task submittal of over 500 pages must include an index of all submitted materials.
- 16 (4) A submittal includes only the materials provided to the department pursuant to
17 section (3) of this rule. Following submission of objections pursuant to OAR 660-025-
18 0140, the local government may:
- 19 **(a) Provide** written correspondence that is not part of the local record which identifies
20 material in the record relevant to filed objections. The correspondence may not include or
21 refer to materials not in the record submitted or listed pursuant to section (3) of this rule.
22 The local government must provide the correspondence to each objector at the same time
23 it is sent to the department.
- 24 **(b) Submit material in the record that were not part of the submittal under**
25 **section (3) if the materials are relevant to one or more filed objections. The local**
26 **government may not include or refer to materials not in the local record. The local**
27 **government must provide the materials to each objector at the same time it is sent to**
28 **the department.**
- 29 (5) If the department determines that a submittal is incomplete, it must notify the local
30 government. If the department determines that the submittal should be reviewed despite
31 missing information, the department may commence a formal review of the submittal.
32 Missing material may be identified as a deficiency in the review process and be a basis to
33 require further work by the local government.
- 34 (6) A local government may request an extension of time for submitting a work task. The
35 director may grant the request if the local government shows good cause for the
36 extension. A local government may be permitted only one extension, which shall be for
37 no more than one year.

1 (7) If a local government fails to submit a complete work task by the deadline set by the
2 director, or the commission, including any extension, the director must schedule a
3 hearing before the commission. The hearing must be conducted according to the
4 procedures in OAR 660-025-~~0170(3)~~~~[0090(5)]~~.

5 Stat. Auth.: ORS 197.040 & 197.633

6 Stats. Implemented: ORS 197.628 - 197.646

7 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
8 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
9 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

10 **660-025-0140**

11 **Notice and Filing of Objections (Work Task Phase)**

12 (1) After the local government makes a final decision on a work task, the local
13 government must notify the department and persons who participated at the local level
14 orally or in writing during the local process or who requested notice in writing. The local
15 government notice must contain the following information:

16 (a) Where a person can review a copy of the local government's final decision, and how a
17 person may obtain a copy of the final decision;

18 (b) The requirements listed in section (2) of this rule for filing a valid objection to the
19 work task; and.

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

21 (2) Persons who participated orally or in writing in the local process leading to the final
22 decision may object to the local government's work task submittal. To be valid, **an**
23 objection[s] must:

24 (a) Be in writing and filed with the department's Salem office no later than 21 days from
25 the date the local government mailed the notice;

26 (b) Clearly identify an alleged deficiency in the work task sufficiently to identify the
27 relevant section of the final decision and the statute, goal, or administrative rule the task
28 submittal is alleged to have violated. ;

29 (c) Suggest specific revisions that would resolve the objection; [~~and~~]

30 (d) Demonstrate that the objecting party participated orally or in writing in the local
31 process leading to the final decision.

32 (3) Objections that do not meet **all** the requirements of section (2) of this rule will not be
33 considered by the director or commission.

1 **(4) Objectors may refer to the local record or append to their objections any**
2 **document from the local government's record, whether or not it was submitted to**
3 **the department by the local government.**

4 ~~(5)~~(4) If **the department does not receive any** [nø] valid objections are received within
5 the 21-day objection period, the director may approve the work task. Regardless of
6 whether valid objections are received, the director **must**[may] make a determination of
7 whether the work task final decision complies with the statewide planning goals and
8 applicable statutes and administrative rules.

9 ~~[(5) When a subsequent work task conflicts with a work task that has been deemed~~
10 ~~acknowledged, or violates a statewide planning goal, applicable statute or administrative~~
11 ~~rule related to a previous work task, the director or commission shall not approve the~~
12 ~~submittal until all conflicts and compliance issues are resolved. In such case, the director~~
13 ~~or commission may enter an order deferring acknowledgment of all, or part, of the work~~
14 ~~task until completion of additional tasks.]~~

15 (6) If valid objections are received or the department conducts its own review, the
16 department must issue a report. The report shall address the issues raised in valid
17 objections. The report shall identify specific work tasks to resolve valid objections or
18 department concerns. A valid objection shall either be sustained or rejected by the
19 department or commission based on the **local record, and applicable** statewide planning
20 goals, [~~or applicable~~] statutes or administrative rules.

21 Stat. Auth.: ORS 197.040 & 197.633

22 Stats. Implemented: ORS 197.628 - 197.646

23 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
24 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
25 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

26 **660-025-0150**

27 **Director Action and Appeal of Director Action (Work Task Phase)**

28
29 (1) **In response to a completed work task submitted to the department for review in**
30 **accordance with OAR 660-025-0140, t[~~F~~]**he director may:

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

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

34 (c) Refer the work task to the commission for review and action; or

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

- 1 (2) The director must send the order to the local government, persons who filed
2 objections and persons who, in writing, requested a copy of the action.
- 3 (3) **The director shall take action on, and** the order or referral must be sent, [~~within~~
4 **not later than** 120 days of the date the department received the task submittal from the
5 local government, unless the local government waives the 120-day deadline or the
6 commission grants the director an extension. The local government may withdraw the
7 submittal, in which case the 120-day deadline does not apply, provided the withdrawal
8 will not result in the local government passing the deadline for work task submittal in the
9 work program and any extension allowed in OAR 660-025-0130(6).
- 10 (4) If the director does not issue an order or refer the work task within the time limits set
11 by section (3) of this rule, and the department did not receive any valid objections to the
12 work task, the work task shall be deemed approved. In such cases, the department will
13 provide a letter to the local government certifying that the work task is approved.
- 14 (5) If the department received one or more valid objections to the work task, the director
15 must either issue an order or refer the work task to the commission for review.
- 16 (6) Appeals of a director's decision are subject to the following requirements:
- 17 (a) A director's decision approving or partially approving a work task may be appealed to
18 the commission only by a person who filed a valid objection.
- 19 (b) A director's decision remanding or partially remanding a work task may be appealed
20 to the commission only by the local government, a person who filed a valid objection, or
21 by another person who participated orally or in writing in the local proceedings leading to
22 adoption of the local decision under review.
- 23 (c) Appeals of a director's decision must be filed with the department's Salem office
24 within 21 days of the date the director's action was mailed;
- 25 (d) A person, other than the local government that submitted the work task and an
26 affected local government, appealing the director's decision must:
- 27 (A) Show that the person participated in the local proceedings leading to adoption of the
28 work task orally or in writing;
- 29 (B) Clearly identify a deficiency in the work task sufficiently to identify the relevant
30 section of the submitted task and the statute, goal, or administrative rule the local
31 government is alleged to have violated; and
- 32 (C) Suggest a specific modification to the work task necessary to resolve the alleged
33 deficiency.

1 (7) If no appeal to the commission is filed within the time provided by section (6) of this
2 rule, the director's order is deemed affirmed by the commission. If the order approved a
3 work task, the work task is deemed acknowledged.

4 **(8) When a subsequent work task conflicts with a work task that has been deemed**
5 **acknowledged, or violates a statewide planning goal, applicable statute or**
6 **administrative rule related to a previous work task, the director or commission shall**
7 **not approve the submittal until all conflicts and compliance issues are resolved. In**
8 **such case, the director or commission may enter an order deferring**
9 **acknowledgment of all, or part, of the subsequent work task until completion of**
10 **additional tasks.**

11 **(9) The director's standard of review is the same as the standard that governs the**
12 **commission expressed in OAR 660-025-0160(2).**

13 Stat. Auth.: ORS 197.040 & 197.633

14 Stats. Implemented: ORS 197.628 - 197.646

15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
16 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
17 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

18 **660-025-0160**

19 **Commission Review of Referrals and Appeals (Work Task Phase)**

20 (1) The commission shall hear appeals and referrals of work tasks according to the
21 applicable procedures in OAR 660-025-0085 and 660-025-0150.

22 **(2) The commission's standard of review, as provided in ORS 197.633(3), is:**

23 **(a) For evidentiary issues, whether there is substantial evidence in the record as a**
24 **whole to support the local government's decision.**

25 **(b) For procedural issues, whether the local government failed to follow the**
26 **procedures applicable to the matter before the local government in a manner that**
27 **prejudiced the substantial rights of a party to the proceeding.**

28 **(c) For issues concerning compliance with applicable laws, whether the local**
29 **government's decision on the whole complies with applicable statutes, statewide**
30 **land use planning goals, administrative rules, the comprehensive plan, the regional**
31 **framework plan, the functional plan and land use regulations. The commission shall**
32 **defer to a local government's interpretation of the comprehensive plan or land use**
33 **regulations in the manner provided in ORS 197.829. For purposes of this subsection,**
34 **"complies" has the meaning given the term "compliance" in the phrase "compliance**
35 **with the goals" in ORS 197.747.**

1 ([2]3) In response to a referral or appeal, the director may prepare and submit a report to
2 the commission.

3 ([3]4) The department must mail a copy of the report to the local government, all persons
4 who submitted objections, and other persons who appealed the director's decision. The
5 department must mail the report at least 21 days before the commission meeting to
6 consider the referral or appeal.

7 ([4]5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to
8 the director's report within [~~ten~~(10)] days of the date the report is mailed. **Objectors**
9 **may refer to or append to their exceptions any document from the local record,**
10 **whether or not the local government submitted it to the department under OAR**
11 **660-025-0130.** The director may issue a response to exceptions and may make revisions
12 to the director's report in response to exceptions. **The department may provide the**
13 **commission a [A] response or revised report [may be provided to the commission]** at or
14 prior to its hearing on the referral or appeal. A revised director's report does not require
15 mailing 21 days prior to the commission hearing.

16 ([5]6) The commission shall hear appeals based on the **local** record. [~~except as provided~~
17 ~~in OAR 660-025-0085(5)(g).~~] The written record shall consist of the submittal, timely
18 objections, the director's report, timely exceptions to the director's report, the director's
19 response to exceptions and revised report if any, and the appeal if one was filed.

20 ([6]7) Following its hearing, the commission must issue an order that does one or more of
21 the following:

22 (a) Approves the work task or a portion of the task;

23 (b) Remands the work task or a portion of the task to the local government, including a
24 date for resubmittal;

25 (c) Requires specific plan or land use regulation revisions to be completed by a specific
26 date. Where specific revisions are required, the order shall specify that no further review
27 is necessary. These changes are final when adopted by the local government. The failure
28 to adopt the required revisions by the date established in the order shall constitute failure
29 to complete a work task by the specified deadline requiring the director to initiate a
30 hearing before the commission according to the procedures in OAR 660-025-0170(3);

31 (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b);
32 or

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

35 (78) If the commission approves the work task or portion of a work task under subsection
36 ([6]7)(a) of this rule and no appeal to the Court of Appeals is filed within the time

1 provided in ORS 183.482, the work task or portion of a work task shall be deemed
2 acknowledged. If the commission decision on a work task is under subsection (~~6~~7)(b)
3 through (e) of this rule and no appeal to the Court of Appeals is filed within the time
4 provided in ORS 183.482, the decision is final.

5 Stat. Auth.: ORS 197.040 & 197.633

6 Stats. Implemented: ORS 197.628 - 197.646

7 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
8 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
9 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

10 **660-025-0170**

11 **Modification of an Approved Work Program, Extensions, and Sanctions for Failure**
12 **to Meet Deadlines**

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

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

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

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

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

25 (2) Failure to complete a modified work task shall constitute failure to complete a work
26 task by the specified deadline, requiring the director to initiate a hearing before the
27 commission according to the procedures in section (3).

28 (3) If a local government fails to submit its evaluation and work program, a decision that
29 no work program is necessary, or a work task by the deadline set by the director or the
30 commission, including any extension, the director shall schedule a hearing before the
31 commission. The notice must state the date and location at which the commission will
32 conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and
33 as follows:

34 (a) The director shall notify the local government in writing that its submittal is past due
35 and that the commission will conduct a hearing and consider imposing sanctions against
36 the local government as required by ORS 197.636(2);

1 (b) The director and the local government may prepare written statements to the
2 commission addressing the circumstances causing the local government to miss the
3 deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The
4 written statements must be filed in a manner and according to a schedule established by
5 the director;

6 (c) The commission shall issue an order imposing one or more of the sanctions listed in
7 ORS 197.636(2) until the local government submits its evaluation and work program or
8 its decision that no work program is required, or its work task required under OAR 660-
9 025-0130, as follows:

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

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

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

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

19 Stat. Auth.: ORS 197.040 & 197.633

20 Stats. Implemented: ORS 197.628 - 197.646

21 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
22 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. &
23 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

24 **660-025-0175**

25 **Review of UGB Amendments and Urban Reserve Area Designations**

26 (1) **A local government must submit the following** Land use decisions [~~establishing or~~
27 ~~amending an urban growth boundary or urban reserve area must be submitted~~] to the
28 department for review for compliance with the applicable statewide planning goals,
29 statutes and rules **in the manner provided for review of a work task under ORS**
30 **197.633**[when]:

31 [~~(a) A metropolitan service district amends its urban growth boundary to include more~~
32 ~~than 100 acres;~~

33 [~~(b) A city with a population of 2,500 or more within its urban growth boundary amends~~
34 ~~the urban growth boundary to include more than 50 acres; or~~

1 ~~(e) A city or metropolitan service district designates or amends urban reserve areas under~~
2 ~~ORS 195.145.]~~

3 **(a) An amendment of an urban growth boundary by a metropolitan service district**
4 **that adds more than 100 acres to the area within its urban growth boundary;**

5 **(b) An amendment of an urban growth boundary by a city with a population of**
6 **2,500 or more within its urban growth boundary that adds more than 50 acres to the**
7 **area within the urban growth boundary;**

8 **(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a**
9 **metropolitan service district or by a city with a population of 2,500 or more within**
10 **its urban growth boundary;**

11 **(d) An amendment of the boundary of an urban reserve by a metropolitan service**
12 **district;**

13 **(e) An amendment of the boundary of an urban reserve to add more than 50 acres**
14 **to the urban reserve by a city with a population of 2,500 or more within its urban**
15 **growth boundary; and**

16 **(f) A designation or an amendment to the designation of a rural reserve under**
17 **ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service**
18 **district, including an amendment of the boundary of a rural reserve.**

19 (2) The standards and procedures in this rule govern the local government process and
20 submittal, and department and commission review.

21 (3) The local government must provide notice of the proposed amendment according to
22 the procedures and requirements for post-acknowledgement plan amendments in ORS
23 197.610 and OAR 660-018-0020.

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

27 (5) Department and commission review and decision on the submittal from the local
28 government must follow the procedures and requirements for review and decision of a
29 work task submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

30 Stat. Auth.: ORS 197.040

31 Stats. Implemented: ORS 195.145, 197.626 - 197.646

32 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD

33 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 **660-025-0180**
2 **Stay Provisions**

3 (1) When a local government makes a final decision on a work task or portion of a work
4 task that is required by, or carries out, an approved work program, or if the local
5 government **is required to submit a final decision to the department under OAR 660-**
6 **025-0175(1)**~~[is a city with a population of 2,500 or more and either adopts a decision~~
7 ~~adding more than 50 acres to its urban growth boundary or designates or amends urban~~
8 ~~reserve areas, or a metropolitan service district that adopts a decision adding more than~~
9 ~~100 acres to its urban growth boundary or designates or amends urban reserve areas],~~
10 interested persons may request a stay of the local government's final decision by filing a
11 request for a stay with the commission. In taking an action on a request to stay a local
12 government's final decision on a work task, the commission must use the standards and
13 procedures contained in OAR chapter 660, division 1.

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

19 Stat. Auth.: ORS 197.040 **& 197.633**
20 Stats. Implemented: ORS 197.628 - 197.646
21 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
22 4-2006, f. & cert. ef. 5-15-06

23 **660-025-0210**
24 **Updated Planning Documents**

25 (1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS
26 197.010 **and 197.633**, each local government must file [~~two~~] **a** complete and accurate
27 copy[ies] of its comprehensive plan and land use regulations bearing the date of adoption
28 (including plan and zone maps bearing the date of adoption) with the department
29 following completion of periodic review. These materials may be either a new printing or
30 an up-to-date compilation of the required materials, **and must include data described in**
31 **OAR 660-018-0040(4), if applicable.** [~~or upon approval of the department, an up-to-date~~
32 ~~copy on computer disk(s) or other electronic format.]~~

33 **(2) For local governments that produce geospatial data describing an urban growth**
34 **boundary (UGB) or urban or rural reserve that is created or altered under a**
35 **completed work task following completion of periodic review, the submission must**
36 **include electronic geospatial data depicting the boundary change. Local**
37 **governments that create or alter zoning or comprehensive plan maps as geospatial**
38 **data are encouraged but not required to share this data with the department.**
39 **Geospatial data submitted to the department must comply with the following**
40 **standards endorsed by the Oregon Geographic Information Council:**

1 **(a) The data must be in an electronic format compatible with the State’s Geographic**
2 **Information System software standard described in OAR 125-600-7550; and**

3 **(b) The data must be accompanied by metadata that meets at least the minimum**
4 **requirements of the federal Content Standard for Digital Geospatial Metadata.**

5 (3[2]) Materials described in sections (1) **and (2)** of this rule must be submitted to the
6 department within six months of completion of the last work task.

7 (4[3]) The updated plan must be accompanied by a statement signed by a city or county
8 official certifying that the materials are an accurate copy of current planning documents
9 and that they reflect **the** changes made as part of periodic review.

10 (5[4]) Jurisdictions that do not file an updated plan on time shall not be eligible for
11 **periodic review** grants from the department until such time as the required materials are
12 provided to the department.

13 Stat. Auth.: ORS [~~183 &~~]197.**040**

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

15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
16 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

17 **660-025-0220**

18 **Computation of Time**

19 (1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless
20 otherwise provided by rule, the time to complete required tasks, notices, objections, and
21 appeals shall be computed as follows. The first day of the designated period to complete
22 the task, notice, objection or appeal shall not be counted. The last day of the period shall
23 be counted unless it is a Saturday, Sunday or legal holiday **under ORS 187.010 or**
24 **187.020** [~~recognized by the State of Oregon~~]. In that event the period shall run until the
25 end of the next day that is not a Saturday, Sunday or [state] legal holiday. When the
26 period of time to complete the task is less than seven (7) days, intervening Saturdays,
27 Sundays or [state] legal holidays shall not be counted.

28 Stat. Auth.: ORS 197.040

29 Stats. Implemented: ORS **174.120**, 187.010, 187.020, 197.628 - 197.650

30 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
31 4-2006, f. & cert. ef. 5-15-06

32
33 **660-025-0230**

34 **Applicability**

35 (1) **Except as otherwise required by law,** [A]amendments to this division apply as
36 follows:

1 (a) Local governments in periodic review that have not submitted an evaluation and work
2 program, or decision that no work program is required, must apply the amendments to the
3 evaluation and work program or decision that no work program is required;

4 (b) Local governments in periodic review must apply amendments to work tasks not
5 completed or submitted to the department on the effective date of the amendments;

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

8 (d) The procedures and standards in amendments for department and commission review
9 and action on periodic review submittals, requests for extensions, and late submittals
10 apply to all such submittals and requests filed **with the department** after the effective
11 date of the amendments, as well as any such submittals and requests awaiting initial
12 department action on the effective date of the amendments.

13 Stat. Auth.: ORS 197.040-197.245

14 Stats. Implemented: ORS 197.628 - 197.646

15 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD
16 1-2011, f. & cert. ef. 10-19-11

17 **660-025-0250**

18 **Transfer of Matters to the Land Use Board of Appeals**

19 (1) ~~[When the department receives an appeal of a director's decision pursuant to OAR~~
20 ~~660-025-0150(4), it]~~ **The director may elect to transfer a matter [raised in the appeal] to**
21 **the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A), including but not**
22 **limited to an appeal of the director's decision pursuant to OAR 660-025-0150(6).**

23 (2) **The director may transfer m**[M]atters ~~[raised in an appeal may be transferred by the~~
24 ~~director]~~ to the board when:

25 (a) The matter is an urban growth boundary expansion approved by the local government
26 based on a quasi-judicial land use application and does not require an interpretation of
27 first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or

28 (b)(A) The matter ~~[alleges the work task submittal violates]~~ **concerns** a provision of law
29 not directly related to compliance with a statewide planning goal;

30 (B) The ~~[appeal]~~ **matter is an appeal of the director's decision and concerns a** clearly
31 **identified**[s-the] provision of the **work** task submittal that is alleged to violate a provision
32 of law and clearly identifies the provision of law that is alleged to have been violated; and

33 (C) The matter is sufficiently well-defined **such** that it can be separated from other
34 ~~[allegations in the appeal]~~ **issues in the work task that are not transferred to the**
35 **board.**

1 (3) When the director elects to transfer a matter to the board, notice of the decision must
2 be sent to the local jurisdiction, the appellant, any objectors, and the board [~~within 60~~
3 ~~days of the date the appeal was filed with the department~~]. The notice shall include
4 identification of the matter to be transferred and explanation of the procedures and
5 deadline for appeal of the matter to the board.

6 (4) The director's decision under this rule is final and may not be appealed.

7 Stat. Auth.: ORS 197.040

8 Stats. Implemented: ORS 197.825

9 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06



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November 23, 2011

TO: Land Conservation and Development Commission (LCDC)
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 9, December 7-9, 2011, LCDC Meeting**

PUBLIC HEARING AND ADOPTION OF AMENDMENTS TO ADMINISTRATIVE RULES REGARDING PERIODIC REVIEW

Under this item the Land Conservation and Development Commission (LCDC) will hold a public hearing on proposed amendments to administrative rules (Attachment A). These amendments are intended to implement legislation enacted by the 2011 Legislature (Attachment B). This legislation concerns periodic review, including commission review of urban growth boundaries (UGBs) and urban and rural reserves, reviewed by LCDC “in the manner of periodic review.” The statute took effect upon passage. Amendments to the rules are also proposed in order to update citations, to define or clarify terms, and to adjust sentence structure. After close of the public hearing, the department recommends that the commission adopt the rule amendments proposed in this report. The department issued notice for this rulemaking November 1, 2011. The rules would be in effect upon filing, estimated to be December 30, 2011.

For additional information regarding this item, please contact Bob Rindy at 503-373-0050, ext. 229, or by email bob.rindy@state.or.us.

I. BACKGROUND

The statutes applicable to periodic review are at ORS 197.626 through 197.651. In 1992, based on these statutes (and as explicitly required by ORS 197.633(2)), LCDC adopted administrative rules for periodic review at OAR 660, division 25. The rules in division 25 have been amended several times since then as periodic review evolved and was changed by the legislature. These rules describe the purpose of periodic review, and describe the various elements of the periodic review process.

It is important to note that these rules mainly provide the *procedural* aspects of periodic review, rather than *substantive* issues that must be addressed in periodic review. The periodic review rules do not provide criteria for review of specific substantive changes to comprehensive plans or land use regulations completed in periodic review. Such criteria are provided in the statewide planning goals and interpretive rules, and in other statutes.

The applicable statutes require the commission to adopt rules for conducting periodic review, including rules that address initiating periodic review; citizen participation; the participation of state agencies; the preparation, review and approval of a work program; and the preparation, review and approval of work tasks. The statute specifies that the rules adopted by the commission may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review, and other provisions concerning the scope and standard for commission review to simplify or speed the review. Finally, this statute includes provisions that require the commission to review “larger” urban growth boundary (UGB) amendments and the adoption of urban or rural reserves “in the manner of periodic review.”

As specified in 197.633(1), the periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program. The statute provides authority for both the department and the commission (upon referral or appeal of the director’s decision) to review local decisions on periodic review, including work tasks. Larger UGB amendments and reserve decisions are reviewed in the same manner as work tasks.

Authority to review UGB amendments and all urban reserve decisions was transferred from the Land Use Board of Appeals (LUBA) to LCDC in 1998. However, when the legislature transferred this UGB and reserve review authority, important procedures for LUBA reviews did not exist for reviews by LCDC. As a result, there were gaps and ambiguities in the law concerning certain procedural requirements for reviewing these important local decisions. One example is that, while review of LUBA decisions by the Court of Appeals is “expedited,” such expedited court review does not exist (and was not transferred to LCDC) with regard to review of UGB amendments and urban reserve decisions. As a result, appeals of LCDC decisions regarding UGB and urban reserve amendments can take years, creating practical difficulties for cities and counties attempting to amend UGBs and plan for needed jobs and housing.

Under HB 2130, the department proposed (and the legislature ultimately enacted) various process changes to plug some of these gaps, and to improve and streamline the review of periodic review decisions, including local UGB and urban reserve decisions. This included changes at the administrative level to expedite DLCD review, and changes to the judicial review provisions applicable to these decisions. Some specific elements of the legislation included: clarification as to what the record consists of in such cases, adding "raise it or waive it" requirements to such reviews to assure concerns are raised and addressed at the local level before being raised at the LCDC review level, and clarifying the scope and standards for LCDC's review. The department also proposed adding expedited Court of Appeals judicial review provisions for appeals of UGB and urban reserve decisions (parallel to provisions for expedited court review of LUBA decisions), but this element had a fiscal impact on the Judicial Department and as such that proposal did not move forward with the rest of HB 2130.

In summary, the passage of HB 2130 filled in many of the gaps in procedures and standards for review of local decisions made in periodic review, including UGB and reserve decisions reviewed by the department and LCDC in the manner of periodic review work tasks. With the statutory framework improved, it remains for LCDC to improve the related rules at OAR 660, division 25. This agenda item includes proposals to amend these rules to carry out the recent statute changes.

II. PROPOSED RULE AMENDMENTS

Below is a summary of proposed rule amendments in OAR 660, division 25 (Attachment A), and the department's reasons or intent with regard to the amendments.

660-025-0010 Purpose

The department proposes some minor amendments to this rule. Primarily, these amendments are for clarity of certain statements already included in the rule, rather than substantive amendments promulgated by the new statute.

660-025-0020 Definitions

The department is proposing substantive changes to two definitions. First, definition (1), regarding the "Economic Revitalization Team." The governor's office has changed the name of this to the Regional Solutions Team, and agencies are currently using that as the working title. However, the statute has not been changed, so officially this new name is not recognized by state law. The department proposes a slight change to the rule to recognize that there is a team chosen by the governor to replace the Economic Revitalization Team.

Definition (3), "Final Decision", is proposed to be modified slightly to conform with LUBA's definition of the same term with regard to necessary signatures on a final decision sent to the department for review.

660-025-0030 Periodic Review Schedule

No substantive amendments to this rule are proposed. Amendments are to sentence structure or grammar only.

660-025-0035 Initiating Periodic Review Outside the Schedule

No substantive amendments to this rule are proposed.

660-025-0040 Exclusive Jurisdiction of LCDC

HB 2130 changes the commission's authority, including at ORS 197.626, the statute specifying that expanding an urban growth boundary or designating urban or rural reserves is subject to

periodic review. This amendment mainly provides a more clear description of the various actions that are reviewed by LCDC in the manner of periodic review. The former statute provided a list of these actions in a single, very long (and very confusing) sentence. The new formatting of this statute is a welcome change. The amendments proposed to the rules at 0040 and 0175 reflect this change, using the same wording as in the statute.

However, it should be noted that there is one substantive change within this rewrite: An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary is now clearly reviewable by LCDC rather than LUBA. Previously, it was understood that the designation of an urban reserve was reviewable by LCDC, but it was unclear (but presumed) that any amendment to an urban reserve was reviewable by the commission or LUBA. As such, any change to an urban reserve was reviewable by the commission, rather than changes over 50 acres. It is important to note that an amendment of a UGB that “adds” land from an urban reserve is not itself an “amendment of an urban reserve.” This was clarified on the record during legislative consideration of HB 2130.

660-025-0050 Commencing Periodic Review

No amendments are proposed to this rule.

660-025-0060 Periodic Review Assistance Team(s)

No substantive amendments are proposed to this rule.

660-025-0070 Need for Periodic Review

Most proposed amendments to this rule are not substantive and simply clarify existing provisions. However, the amendment to section (2) clarifies an important substantive issue that has been understood by the department, but up to now is not explicitly stated in a rule. When a local government requests a “self-initiated” periodic review under OAR 660-025-0035, the *scope* of such a periodic review may be more limited **or more expansive** than would be the case for a scheduled periodic review. Thus, while scheduled periodic reviews must focus on Goals 9 through 14, self-initiated periodic reviews might focus on other goal issues.

660-025-0080 Notice and Citizen Involvement

Each local government must review its citizen involvement program under periodic review, as required by both statute and this rule. However, while it is generally understood that this means such review would take place as a first step in periodic review, the rule does not make this clear. The department draft (Attachment A) proposes changing this rule to address this.

However, DLCD is proposing a slight change to the proposed Attachment A wording on this topic, in that draft on page 8, lines 29 and 30. The department proposal in the attachment

indicates the citizen involvement program review should be “**prior to beginning periodic review**”. Technically, periodic review is initiated by the department’s mailing of notice to the local government. As such, the review of the citizen involvement program does not occur until periodic review is underway. The department suggests this wording should instead be “**at the beginning of periodic review**”.

On a related topic, the department proposes an amendment to this rule on citizen involvement. Currently, the rule states that citizen involvement opportunities must, at a minimum, provide that interested persons have the opportunity to comment in advance or at the final hearing. In order to ensure this is a real opportunity to participate, the department proposes that this provision be amended to add that citizens must also have the opportunity to **review materials in advance**. This is not necessarily a change to current understanding about the process, but it does clarify that, when periodic review results in a change to comprehensive plans, the written materials about such a proposal must be made available in advance.

On this same topic, nothing in statutes at ORS 197.610 indicate the notice provisions in the statutes do not apply to changes to plans and regulations that occur under periodic review (there is no question that **review** of changes under a work task are reviewed differently than for ordinary plan and ordinance changes). As such, the department proposes to add a section to this rule to indicate that, before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation under a work task, the local government must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing, as provided for other types of plan or ordinance changes in ORS 197.610 and OAR 660-018-0020.

660-025-0085 Commission Hearings Notice and Procedures

The statutes amended under HB 2130 do not authorize the commission to consider new evidence, period. This rule currently authorizes new evidence at the commission discretion. That statute (amended) says the commission shall confine its review of evidence to the local record. As such, the rule is not consistent with the new statute, and the department proposes to make amendments to reflect that. Henceforth, the commission would not have discretion to ask for new evidence in matters involving review of local periodic review actions.

660-025-0090 Evaluation, Work Program or Decision that No Work Is Necessary

The department’s draft did not recommend changes to this rule. However, subsequent to publishing that notice, it came to the department’s attention that a key substantive provision in statute is not currently reflected in division 25. ORS 197.633(4) states that “A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.” The department recommends that this standard be reflected, in rule 0090 as a new section **(6)**, as follows: **A decision by the director to approve a work program, that no work**

program is necessary or that no further work is necessary, is final and not subject to appeal. This is not shown in Attachment A, it is a new proposal.

660-025-0100 Notice and Filing of Objections (Work Program Phase)

No substantive changes to this rule are proposed – changes proposed concern sentence structure only, and do not result in a policy change.

It should be noted that HB 2130 amended ORS 197.633(4) to **remove** the following provision: *If a timely objection is filed, the director shall refer the work task to the commission.* In other words, prior to the bill, an objection resulted in an automatic referral to LCDC. That is no longer the case. However, commission rules on periodic review had not previously reflected the requirement that was removed. Instead, the current rules already state that, “if valid objections are received, the department must issue a report. The report must address the issues raised in valid objections. The report must identify specific work tasks to resolve valid objections or department concerns. A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.” (OAR 660-025-0100). As such, since this rule already does not describe an automatic referral, the department does not propose any change to the rule.

660-025-0110 Director and Commission Action (Work Program Phase)

No substantive changes to this rule are proposed.

660-025-0130 Submission of Completed Work Task

No changes to this rule are proposed.

660-025-0140 Notice and Filing of Objections (Work Task Phase)

No substantive changes to this rule are proposed – changes proposed concern sentence structure only, and do not result in a policy change.

660-025-0150

Director Action and Appeal of Director Action (Work Task Phase)

The department recommended amendment of this rule (Attachment A), first to simply clarify that director action under this rule is “in response to a completed work task submitted to the department for review.” This is not a substantive amendment, but is for clarity.

The department recommended deletion of subsections (3) through (5) in order to replace these with the more compact provision in statute, and renumbering of subsequent sections. The department has changed its mind on this recommendation, subsequent to publishing the draft. It

is instead recommended that these three sections be retained. As such, the remaining changes to numbering are also no longer recommended

In an unrelated matter, HB 2130 amended the standard of review for the commission. Amendments to rules under OAR 660-025-0160 (see below) provide that standard of review in this division. Since these statutes also provide for initial review of work tasks by the director (which is the subject of this particular rule), it is recommended that the director's standard of review be expressed. After conferring with legal counsel, the department recommends the addition of a new subsection (8), indicating that the director's standard of review is the same as the standard that governs the commission expressed in OAR 660-025-0160(2).

660-025-0160 Commission Review of Referrals and Appeals (Work Task Phase)

The statutes as amended by HB 2130 provide a modified standard of review for the commission. The standard of review had not been previously expressed in this rule. The department proposes inserting it, as a new section (2):

The commission's standard of review, as provided in ORS 197.633, is stated below. The department has one minor change to the proposal in Attachment A:

“(a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this **subsection** [paragraph], “complies” has the meaning given the term “compliance” in the phrase “compliance with the goals” in ORS 197.747.”

660-025-0170 Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

No changes are proposed to this rule.

660-025-0175 Review of UGB Amendments and Urban Reserve Area Designations

This is the rule that provides for department and commission review “in the manner of periodic review” for certain UGB and reserve decisions. Since the statute has been amended to rephrase, and in one case to alter the list of these decisions, the department proposes conforming amendments to this rule. This is a repeat of this list in rule 0040, so an alternative would be to

simply reference that rule. However, the department believes the proposed version would be more user-friendly.

660-025-0180 Stay Provisions

No changes to this rule are proposed.

660-025-0210 Updated Planning Documents

The department proposes changes to this rule. Some of these are simply for clarification. However, the main substantive change is with regard to local governments filing changes on a computer disk. The rule currently authorizes this, but state and department rules on retention of documents do not authorize information on disks. As such, the department intends to eliminate authorization for this format. The department proposes a modification of the proposed rule wording in Attachment A in section (1) on lines 16 through 18 of page 25; wording underlined below should be retained, rather than crossed out as in the Attachment:

“These materials may be either a new printing or an up-to-date compilation of the required materials [or upon approval of the department, an up-to-date copy on computer disk(s) or other electronic format].”

660-025-0220 Computation of Time

No changes are proposed to this rule.

660-025-0230 Applicability

No substantive changes are proposed to this rule, changes are for clarification purposes.

660-025-0250 Transfer of Matters to the Land Use Board of Appeals

No changes to this rule are proposed.

III. SUMMARY OF REQUIRED LCDC RULEMAKING CRITERIA AND PROCEDURES

The commission’s procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC’s procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The commission is also guided by ORS 197.040, as follows:

“197.040 Duties of commission; rules.

(1) The Land Conservation and Development Commission shall:

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.”

IV. NOTICE OF RULEMAKING

The department issued formal rulemaking notice for publication in the November 1, 2011, Secretary of State’s Bulletin, and has mailed notices to interested parties (See Attachment C).

The commission has also adopted “Citizen Involvement Guidelines for Policy Development” (the “CIG”) in order “... to provide and promote clear procedures for public involvement in the development of Commission policy on land use,” which LCDC has committed to follow “to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.” The CIG recommends that, as part of a rulemaking process, the department “shall, to the extent practicable: Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”

The department has followed the above guidelines with respect to this rulemaking. We note that the CIG authorizes LCDC to “choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.” In this case (and in previous LCDC “housekeeping” rulemaking to

conform rules to new statutes), a workgroup was not appointed because the rulemaking is for the most part policy neutral and minor and technical.

V. RECOMMENDATION

The department recommends the commission hold a public hearing on the proposed amendments described in this report, close the public hearing following testimony, and adopt the proposed rule amendments shown in the attachments to this report.

VI. ATTACHMENTS

- A. Proposed amendments to OAR 660, division 25**
- B. HB 2130**
- C. Notices**
- D. Comments Received**

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 25 PERIODIC REVIEW Draft Amendments November 10

1 **660-025-0010**

2 **Purpose**

3 The purpose of this division is to carry out the state policy outlined in ORS 197.010 and
4 197.628. This division is intended to implement provisions of ORS 197.626 through
5 197.651. The purpose for periodic review is to ensure that comprehensive plans and land
6 use regulations remain in compliance with the statewide planning goals adopted pursuant
7 to ORS 197.230, the commission's rules and applicable land use statutes. Periodic review
8 also is intended to ensure that local government[s] plans **and regulations make** ~~[for]~~
9 adequate provision for **economic development**, needed housing, ~~[economic~~
10 ~~development,]~~ transportation, public facilities and services, and urbanization, and that
11 local plans are coordinated as described in ORS 197.015(5). Periodic Review is a
12 cooperative **planning** process ~~[between]~~ **that includes** the state **and its agencies**, local
13 governments, and other interested persons.

14 Stat. Auth.: ORS 183 & 197

15 Stats. Implemented: ORS 197.628 - 197.646

16 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
17 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
18 cert. ef. 10-19-11

19 **660-025-0020**

20 **Definitions**

21 For the purposes of this division, the definitions contained in ORS 197.015, 197.303,
22 shall apply unless the context requires otherwise. In addition, the following definitions
23 apply:

24 (1) "Economic Revitalization Team" means the team established under ORS 284.555, **or**
25 **a team chosen by the governor to replace the Economic Revitalization Team.**

26 (2) "Filed" or "Submitted" means that the required documents have been received by the
27 Department of Land Conservation and Development at its Salem, Oregon, office.

28 (3) "Final Decision" means the completion by the local government of a work task on an
29 approved work program, including the adoption of supporting findings and any
30 amendments to the comprehensive plan or land use regulations. A decision is final when
31 the local government's decision **bearing the necessary signatures of the decision**
32 **maker(s)** is ~~[transmitted]~~ **sent** to the department for review.

33 (4) "Metropolitan planning organization" means an organization located wholly within
34 the State of Oregon and designated by the Governor to coordinate transportation planning
35 in an urbanized area of the state pursuant to 49 USC 5303(c).

1 (5) "Objection" means a written complaint concerning the adequacy of an evaluation,
2 proposed work program, or completed work task.

3 (6) "Participated at the local level" means to have provided substantive comment,
4 evidence, documents, correspondence, or testimony to the local government during the
5 local proceedings regarding a decision on an evaluation, work program or work task.

6 (7) "Work Program" means a detailed listing of tasks necessary to revise or amend the
7 local comprehensive plan or land use regulations to ensure the plan and regulations
8 achieve the statewide planning goals. A work program must indicate the date that each
9 work task must be submitted to the department for review.

10 (8) "Work Task" or "task" means an activity that is included on an approved work
11 program and that generally results in an adopted amendment to a comprehensive plan or
12 land use regulation.

13 Stat. Auth.: ORS [183 &] 197.**040**
14 Stats. Implemented: ORS 197.015 & 197.628 - 197.646
15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
16 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
17 cert. ef. 10-19-11

18 **660-025-0030**
19 **Periodic Review Schedule**

20 (1) The commission must approve, and update as necessary, a schedule for periodic
21 review. The schedule must include the date when each local government must be sent a
22 letter by the department requesting the local government to commence the periodic
23 review process.

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

25 (a) A city with a population of more than 2,500 within a metropolitan planning
26 organization or a metropolitan service district shall [~~conduct~~] **commence** periodic review
27 every seven years after completion of the previous periodic review.

28 (b) A city with a population of 10,000 or more inside its urban growth boundary that is
29 not within a metropolitan planning organization shall conduct periodic review every 10
30 years after completion of the previous periodic review.

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

34 (d) Notwithstanding subsection (c) of this section, if the schedule set for the county is
35 specific as to that portion of the county within the urban growth boundary of a city

1 subject to periodic review under this section, the county shall conduct periodic review for
2 that portion of the county according to the schedule and work program set for the county.

3 (3) The commission may establish a schedule that varies from the standards in section (2)
4 of this rule if necessary to coordinate approved periodic review work programs or to
5 account for special circumstances. The commission may schedule a local government's
6 periodic review earlier than provided in section (2) of this rule if necessary to ensure that
7 all local governments in a region whose land use decisions would significantly affect
8 other local governments in the region are conducting periodic review concurrently, but
9 not sooner than five years after completion of ~~the~~any previous periodic review.

10 (4) The director must maintain and implement the schedule. Copies of the schedule must
11 be provided upon request.

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
15 4-2006, f. & cert. ef. 5-15-06

16 **660-025-0035**

17 **Initiating Periodic Review Outside the Schedule**

18 (1) A local government may request, and the commission may approve, initiation of
19 periodic review not otherwise provided for in the schedule established under OAR 660-
20 025-0030. The request must be submitted to the commission along with justification for
21 the requested action. The justification must include a statement of local circumstances
22 that warrant periodic review and identification of the statewide planning goals to be
23 addressed.

24 (2) In consideration of the request filed pursuant to section (1), the commission must
25 consider the needs of the jurisdiction to address the issue(s) identified in **the request for**
26 periodic review, the interrelationships of the statewide planning goals to be addressed in
27 the periodic review project, and other factors the commission finds relevant. If the
28 commission approves the request, the provisions of this division apply, except as
29 provided in section (3) of this rule.

30 (3) The Economic Revitalization Team may work with a city to create a voluntary
31 comprehensive plan review that focuses on the unique vision of the city, instead of
32 conducting a standard periodic review, if the team identifies a city that the team
33 determines can benefit from a customized voluntary comprehensive plan review. In order
34 for a voluntary comprehensive plan review to be initiated by the commission, the city
35 must request initiation of such a modified periodic review. The provisions of this division
36 apply except as follows:

1 (a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the
2 periodic review under this section will not replace or delay the next scheduled periodic
3 review;

4 (b) If the city misses a deadline related to an evaluation, work program or work task,
5 including any extension, the commission must terminate the evaluation, work program, or
6 work task or impose sanctions pursuant to OAR 660-025-0170(3).

7 (4) If the commission pays the costs of a local government that is not subject to OAR
8 660-025-0030 to perform new work programs and work tasks, the commission may
9 require the local government to complete periodic review when the local government has
10 not completed periodic review within the previous five years if:

11 (a) A city has been growing faster than the annual population growth rate of the state for
12 five consecutive years;

13 (b) A major transportation project on the Statewide Transportation Improvement Program
14 that is approved for funding by the Oregon Transportation commission is likely to:

15 (A) Have a significant impact on a city or an urban unincorporated community; or

16 (B) Be significantly affected by growth and development in a city or an urban
17 unincorporated community;

18 (c) A major facility, including a prison, is sited or funded by a state agency; or

19 (d) Approval by the city or county of a facility for a major employer will increase
20 employment opportunities and significantly affect the capacity of housing and public
21 facilities in the city or urban unincorporated community.

22 (5) As used in section (4) of this rule, "the costs of a local government" means: normal
23 and customary expenses for supplies, personnel and services directly related to preparing
24 a work program, and completing studies and inventories, drafting of ordinances,
25 preparing and sending notices of hearings and meetings, conducting meetings and
26 workshops, and conducting hearings on possible adoption of amendments to plans or
27 codes, to complete a work task.

28 Stat. Auth.: ORS 197.040 & 197.633

29 Stats. Implemented: ORS 197.628 - ORS 197.646

30 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

31 **660-025-0040**

32 **Exclusive Jurisdiction of LCDC**

33 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction [to] **for**
34 review **of** [~~the evaluation, work program, and~~] **completed periodic review** work tasks for
35 compliance with the statewide planning goals and applicable statutes and administrative

1 rules, as set forth in ORS 197.628 to 197.650. The director also has authority to
2 review the periodic review evaluation, work program and completed work tasks, as
3 set forth in ORS 197.633 and 197.644.

4 (2) Pursuant to ORS 197.626, the commission has exclusive jurisdiction [~~to~~] for review
5 of the following land use decisions for compliance with the statewide planning goals:

6 [~~(a) If made by a city with a population of 2,500 or more inside its urban growth~~
7 ~~boundary, amendments to an urban growth boundary to include more than 50 acres;~~

8 ~~(b) If made by a metropolitan service district, amendments to an urban growth boundary~~
9 ~~to include more than 100 acres;~~

10 ~~(c) plan and land use regulations that designate urban reserve areas.]~~

11 (a) An amendment of an urban growth boundary by a metropolitan service district
12 that adds more than 100 acres to the area within its urban growth boundary;

13 (b) An amendment of an urban growth boundary by a city with a population of
14 2,500 or more within its urban growth boundary that adds more than 50 acres to the
15 area within the urban growth boundary;

16 (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a
17 metropolitan service district or by a city with a population of 2,500 or more within
18 its urban growth boundary;

19 (d) An amendment of the boundary of an urban reserve by a metropolitan service
20 district;

21 (e) An amendment of the boundary of an urban reserve to add more than 50 acres
22 to the urban reserve by a city with a population of 2,500 or more within its urban
23 growth boundary; and

24 (f) A designation or an amendment to the designation of a rural reserve under
25 ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service
26 district, including an amendment of the boundary of a rural reserve.

27 (3) Commission action pursuant to sections (1) or (2) of this rule is a final order
28 subject to judicial review in the manner provided in applicable provisions of ORS
29 197.650 and 197.651.

30 (4) The director may transfer one or more matters arising from review of a work task,
31 urban growth boundary amendment or designation or amendment of an urban reserve
32 area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-
33 025-0250.

34 Stat. Auth.: ORS 197.040

35 Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825

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

1 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
2 cert. ef. 5-15-06; LCDD 1-2011, f & cert. ef. 10-19-11

3 **660-025-0050**

4 **Commencing Periodic Review**

5 (1) The department must commence the periodic review process by sending a letter to the
6 affected local government pursuant to OAR 660-025-0030 or 660-025-0035. The
7 department may provide advance notice to a local government of the upcoming review
8 and must encourage local governments to review their citizen involvement provisions
9 prior to beginning periodic review.

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

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

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

15 (c) Applicable evaluation forms; and

16 (d) Other information the department considers relevant.

17 (3) The director must provide copies of the materials sent to the local government to
18 interested persons upon written request.

19 Stat. Auth.: ORS 197.040 & 197.633

20 Stats. Implemented: ORS 197.628 - 197.646

21 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

22 **660-025-0060**

23 **Periodic Review Assistance Team(s)**

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

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

30 (a) Information relevant to the periodic review process;

31 (b) New and updated information;

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

2 (d) Coordinated evaluation and comment from state agencies.

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

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

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

13 (6) In addition to the Periodic Review Assistance Team(s), the department may utilize the
14 Economic Revitalization Team or institute an alternative process for coordinating agency
15 participation in the periodic review of comprehensive plans.

16 (7) [~~Consideration by the commission.~~] The commission must consider the
17 recommendations, if any, of the Periodic Review Assistance Team(s).

18 Stat. Auth.: ORS 197.040 & 197.633

19 Stats. Implemented: ORS 197.628 - 197.646

20 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

21 **660-025-0070**

22 **Need for Periodic Review**

23 (1) The following conditions indicate the need for~~[, and establish the scope of review~~
24 ~~for,]~~ periodic review of comprehensive plans and land use regulations when **periodic**
25 **review is** required under OAR 660-025-0030:

26 (a) There has been a substantial change in circumstances including but not limited to the
27 conditions, findings, or assumptions upon which the comprehensive plan or land use
28 regulations were based, so that the comprehensive plan or land use regulations do not
29 comply with the statewide planning goals relating to economic development, needed
30 housing, transportation, public facilities and services and urbanization;

31 (b) Decisions based on acknowledged comprehensive plan and land use regulations are
32 inconsistent with the goals relating to economic development, needed housing,
33 transportation, public facilities and services and urbanization;

1 (c) There are issues of regional or statewide significance, intergovernmental coordination,
2 or state agency plans or programs affecting land use which must be addressed in order to
3 bring comprehensive plans and land use regulations into compliance with the goals
4 relating to economic development, needed housing, transportation, public facilities and
5 services and urbanization; or

6 (d) **The local government, commission or department determines that** ~~[F]~~the existing
7 comprehensive plan and land use regulations are not achieving the statewide planning
8 goals relating to economic development, needed housing, transportation, public facilities
9 and services and urbanization.

10 (2) When a local government requests initiation of periodic review under OAR 660-025-
11 0035~~(2)~~, the need for periodic review may be based on factors not contained in section
12 (1) of this rule and the scope of such a periodic review may be more limited **or more**
13 **expansive** than would be the case for scheduled periodic review under section (1) of this
14 rule.

15 Stat. Auth.: ORS 197.040

16 Stats. Implemented: ORS 197.628 - 197.646

17 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
18 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

19 **660-025-0080**

20 **Notice and Citizen Involvement**

21 (1) The local government must use its acknowledged ~~[or otherwise approved]~~ citizen
22 involvement program, **and amend the program if necessary consistent with section (2)**
23 **of this rule,** to provide adequate participation opportunities for citizens and other
24 interested persons in all phases of the local periodic review. Each local government must
25 publish a notice in a newspaper of general circulation within the community informing
26 citizens about the initiation of the local periodic review. The local government must also
27 provide written notice of the initiation of the local periodic review to ~~[other]~~ persons who
28 ~~[, in writing,]~~ request, **in writing,** such notice.

29 (2) Each local government must review its citizen involvement program **prior to**
30 **beginning periodic review** and, **if necessary, amend the program to ensure** ~~[assure~~
31 ~~that there is an]~~ **it will provide** adequate **opportunities** ~~[process]~~ for citizen involvement
32 in all phases of the periodic review process. Citizen involvement opportunities must, at a
33 minimum, include:

34 (a) Interested persons must have the opportunity **to review materials in advance and to**
35 comment in writing in advance of or at one or more hearings on the periodic review
36 evaluation. Citizens and other interested persons must have the opportunity to present
37 comments orally at one or more hearings on the periodic review evaluation. Citizens and
38 other interested persons must have the opportunity to propose periodic review work tasks

1 prior to or at one or more hearings. The local government must provide a response to
2 comments at or following the hearing on the evaluation.

3 (b) Interested persons must have the opportunity to **review materials in advance and to**
4 **comment in writing in advance of or at one or more hearings on a periodic review work**
5 **task. Citizens and other interested persons must have the opportunity to present**
6 **comments orally at one or more hearings on a periodic review work task. The local**
7 **government must respond to comments at or following the hearing on a work task.**

8 **(3) Before a local government adopts a change to an acknowledged comprehensive**
9 **plan or a land use regulation under a work task, the local government must provide**
10 **notice of the proposed change to the department 35 days in advance of the first**
11 **evidentiary hearing, as provided in ORS 197.610 and OAR 660-018-0020.**

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

15 **660-025-0085**

16 **Commission Hearings Notice and Procedures**

17 (1) Hearings before the commission on a referral of a local government submittal of an
18 evaluation, work program, determination that a work program is not necessary, or
19 hearings on referral or appeal of a work task must be noticed and conducted in
20 accordance with this rule.

21 (2) The commission shall take final action on an appeal or referral within 90 days of the
22 date the appeal was filed or the director issued notice of the referral unless:

23 (a) At the request of a local government and a person who files a valid objection or
24 appeals the director's decision, the department may provide mediation services to resolve
25 disputes related to the appeal. Where mediation is underway, the commission shall delay
26 its hearing until the mediation process is concluded or the director, after consultation with
27 the mediator, determines that mediation is of no further use in resolution of the work
28 program or work task disagreements;

29 (b) If the appeal or referral raises new or complex issues of fact or law that make it
30 unreasonable for the commission to give adequate consideration to the issues within the
31 90-day limit the commission is not required to take final action within that time limit; or

32 (c) If the parties to the appeal and the commission agree to an extension, the hearing may
33 be continued for a period not to exceed an additional 90 days.

34 (3) The director must provide written notice of the hearing to the local government, the
35 appellant, objectors, and individuals requesting notice in writing. The notice must contain
36 the date and location of the hearing.

- 1 (4) The director may prepare a written report to the commission on an appeal or referral.
2 If a report is prepared, the director must mail a copy to the local government, objectors,
3 the appellant, and individuals requesting the report in writing.
- 4 (5) Commission hearings will be conducted using the following procedures:
- 5 (a) The chair will open the hearing and explain the proceedings;
- 6 (b) The director or designee will present an oral report regarding the nature of the matter
7 before the commission, an explanation of the director's decision, if any, and other
8 information to assist the commission in reaching a decision. If another state agency
9 participated in the periodic review under ORS 197.637 or 197.638, the agency may
10 participate in the director's oral report.
- 11 (c) Participation in the hearing is limited to:
- 12 (A) The local government or governments whose decision is under review;
- 13 (B) Persons who filed a valid objection to the local decision in the case of commission
14 hearing on a referral;
- 15 (C) Persons who filed a valid appeal of the director's decision in the case of a commission
16 hearing on an appeal; and
- 17 (D) Other affected local governments.
- 18 (d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.
- 19 (e) Persons or their authorized representative may present oral argument.
- 20 (f) The local government that submitted the task may provide general information from
21 the record on the task submittal and address those issues raised in the department review,
22 objections, or the appeal. A person who submitted objections or an appeal may address
23 only those issues raised in the objections or the appeal submitted by that person. Other
24 affected local governments may address only those issues raised in objections or an
25 appeal.
- 26 (g) **As provided in ORS 197.633(3), t**~~he~~ commission will not consider new evidence
27 ~~[unless it requests it, at its discretion. If the commission considers new evidence, it will~~
28 ~~allow the parties an opportunity to review and respond to the new evidence, subject to the~~
29 ~~time limits in section (2) of this rule].~~
- 30 (h) The director or commission may take official notice of law defined as:
- 31 (A) The decisional, constitutional and public statutory law of Oregon, the United States
32 and any state, territory or other jurisdiction of the United States.

- 1 (B) Public and private official acts of the legislative, executive and judicial departments
2 of this state, the United States, and any other state, territory or other jurisdiction of the
3 United States.
- 4 (C) Regulations, ordinances and similar legislative enactments issued by or under the
5 authority of the United States or any state, territory or possession of the United States.
- 6 (D) Rules of court of any court of this state or any court of record of the United States or
7 of any state, territory or other jurisdiction of the United States.
- 8 (E) The law of an organization of nations and of foreign nations and public entities in
9 foreign nations.
- 10 (F) An ordinance, comprehensive plan or enactment of any local government in this state,
11 or a right derived therefrom.

12 Stat. Auth.: ORS 197.040 & 197.633
13 Stats. Implemented: ORS 197.628 - 197.646
14 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

15 **660-025-0090**

16 **Evaluation, Work Program or Decision that No Work Is Necessary**

- 17 (1) The local government must conduct an evaluation of its plan and land use regulations
18 based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The
19 local evaluation process must comply with the following requirements:
- 20 (a) The local government must follow its citizen involvement program and the
21 requirements of OAR 660-025-0080 for conducting the evaluation and determining the
22 scope of a work program.
- 23 (b) The local government must provide opportunities for participation by the department
24 and Periodic Review Assistance Team. Issues related to coordination between local
25 government comprehensive plan provisions and certified state agency coordination
26 programs that are raised by the affected agency, or Periodic Review Assistance Team
27 must be considered by the local government.
- 28 (c) The local government may provide opportunities for participation by the Economic
29 Revitalization Team.
- 30 (d) At least 21 days before submitting the evaluation and work program, or decision that
31 no work program is required, the local government must provide copies of the evaluation
32 to members of the Periodic Review Assistance Team, if formed, and others who have, in
33 writing, requested copies.

1 (e) After review of comments from interested persons, the local government must adopt
2 an evaluation and work program or decision that no work program is required.

3 (2) The local government must submit the evaluation and work program, or decision that
4 no work program is required, to the department according to the following requirements:

5 (a) The evaluation must include completed evaluation forms that are appropriate to the
6 jurisdiction as determined by the director. Evaluation forms will be based on the
7 jurisdiction's size, growth rate, geographic location, and other factors that relate to the
8 planning situation at the time of periodic review. Issues related to coordination between
9 local government comprehensive plan provisions and certified agency coordination
10 programs may be included in evaluation forms.

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

14 (c) The evaluation and work program, or decision that no work program is necessary,
15 must be submitted within six months of the date the department sent the letter initiating
16 the periodic review process, including any extension granted under section (3) of this
17 rule.

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

23 (4) A decision by the director to deny a request for an extension may be appealed to the
24 commission according to the procedures in OAR 660-025-0110(5), or the director may
25 refer a request for extension under section (3) of this rule to the commission pursuant to
26 OAR 660-025-0085.

27 (5) If a local government fails to submit its evaluation and work program, or decision that
28 no work program is necessary, by the deadline set by the director or the commission,
29 including any extension, the director shall schedule a hearing before the commission
30 according to OAR 660-025-0170(3).

31 Stat. Auth.: ORS 197.040 & 197.633

32 Stats. Implemented: ORS 197.628 - 197.646

33 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
34 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

1 **660-025-0100**

2 **Notice and Filing of Objections (Work Program Phase)**

3 (1) After the local government approves the evaluation and work program, or the
4 evaluation and decision that no work program is necessary, the local government must
5 notify the department and persons who participated at the local level orally or in writing
6 during the local process. The local government notice must contain the following
7 information:

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

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

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

14 (2) Persons who participated at the local level orally or in writing during the local process
15 leading to the evaluation and work program or decision that no work program is
16 necessary may object to the local government's decision. To be valid, an objection must:

17 (a) Be in writing and filed with the department's Salem office no later than 21 days from
18 the date the notice was mailed by the local government;

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

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

22 (d) Demonstrate that the objecting party participated at the local level orally or in writing
23 during the local process; **and**

24 **(e) Be provided to the local government.**

25 (3) Objections that do not meet **all** the requirements of section (2) of this rule [~~may~~] **will**
26 not be considered by the director or commission.

27 (4) If no valid objections are received within the 21-day objection period, the director
28 may approve the evaluation and work program or decision that no work program is
29 required. Regardless of whether valid objections are received, the department [~~may~~] **must**
30 make its own determination of the sufficiency of the evaluation and work program or
31 determination that no work program is necessary.

32 (5) If valid objections are received, the department must issue a report. The report must
33 address the issues raised in valid objections. The report must identify specific work tasks

1 to resolve valid objections or department concerns. A valid objection must either be
2 sustained or rejected by the department or commission based on the statewide planning
3 goals and related statutes and administrative rules.

4 Stat. Auth.: ORS 197.040 & 197.633

5 Stats. Implemented: ORS 197.628 - 197.646

6 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
7 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. &
8 cert. ef. 10-19-11

9 **660-025-0110**

10 **Director and Commission Action (Work Program Phase)**

11 **(1) In response to an evaluation and work program submitted to the department**

12 **t[F]he director may:**

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

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

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

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

24 (3) The director must provide written notice of the decision to the local government
25 persons who filed objections, and persons who requested notice of the local government
26 decision.

27 (4) The director's decision to approve an evaluation and work program or determination
28 that no work program is necessary is final and may not be appealed.

29 (5) The director's decision to deny an evaluation and work program or determination that
30 no work program is necessary may be appealed to the commission by the local
31 government, or a person who filed an objection, or other person who participated orally
32 or in writing at the local level.

33 (a) Appeal of the director's decision must be filed with the department within 21 days of
34 the date notice of the director's action was mailed;

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

7 (6) If no such appeal is filed, the director's decision shall be final.

8 (7) In response to an appeal, the director may prepare and submit a report to the
9 commission. The provisions in OAR 660-025-0160(3) and (4) apply.

10 (8) The commission shall hear referrals and appeals of evaluations and work programs
11 according to the procedures in OAR 660-025-0085.

12 (9) Following its hearing, the commission must issue an order that either:

13 (a) Establishes a work program; or

14 (b) Determines that no work program is necessary.

15 Stat. Auth.: ORS 197.040 & 197.633

16 Stats. Implemented: ORS 197.628 - 197.646

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

18 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

19 **660-025-0130**

20 **Submission of Completed Work Task**

21 (1) A local government must submit completed work tasks as provided in the approved
22 work program to the department along with the notice required in OAR 660-025-0140
23 and any form required by the department. A local government must submit to the
24 department a list of persons who participated orally or in writing in the local proceedings
25 leading to the adoption of the work task or who requested notice of the local
26 government's final decision on a work task.

27 (2) After receipt of a work task, the department must determine whether the submittal is
28 complete.

29 (3) To be complete a submittal must be a final decision containing all required elements
30 identified for that task in the work program. A portion of a task or subtask may be
31 accepted as a complete submittal if the work program identified that portion of the task or
32 subtask as a separate item for adoption by the local government. Task submittals are
33 subject to the following requirements:

1 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire
2 local record, including but not limited to adopted ordinances and orders, studies,
3 inventories, findings, staff reports, correspondence, hearings minutes, written testimony
4 and evidence, and any other items specifically listed in the work program;

5 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances
6 and orders, findings, hearings minutes, written testimony and evidence, and a detailed
7 index listing items not included in the submittal. Items in the local record not included in
8 the submittal must be made available for public review during the period for submitting
9 objections under OAR 660-025-0140. The director or commission may require
10 submission of any materials not included in the initial submittal;

11 (c) A task submittal of over 500 pages must include an index of all submitted materials.

12 (4) A submittal includes only the materials provided to the department pursuant to
13 section (3) of this rule. Following submission of objections pursuant to OAR 660-025-
14 0140, the local government may provide written correspondence that is not part of the
15 local record which identifies material in the record relevant to filed objections. The
16 correspondence may not include or refer to materials not in the record submitted or listed
17 pursuant to section (3) of this rule. The local government must provide the
18 correspondence to each objector at the same time it is sent to the department.

19 (5) If the department determines that a submittal is incomplete, it must notify the local
20 government. If the department determines that the submittal should be reviewed despite
21 missing information, the department may commence a formal review of the submittal.
22 Missing material may be identified as a deficiency in the review process and be a basis to
23 require further work by the local government.

24 (6) A local government may request an extension of time for submitting a work task. The
25 director may grant the request if the local government shows good cause for the
26 extension. A local government may be permitted only one extension, which shall be for
27 no more than one year.

28 (7) If a local government fails to submit a complete work task by the deadline set by the
29 director, or the commission, including any extension, the director must schedule a
30 hearing before the commission. The hearing must be conducted according to the
31 procedures in OAR 660-025-0090(5).

32 Stat. Auth.: ORS 197.040 & 197.633

33 Stats. Implemented: ORS 197.628 - 197.646

34 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
35 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
36 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 **660-025-0140**
2 **Notice and Filing of Objections (Work Task Phase)**

3 (1) After the local government makes a final decision on a work task, the local
4 government must notify the department and persons who participated at the local level
5 orally or in writing during the local process or who requested notice in writing. The local
6 government notice must contain the following information:

7 (a) Where a person can review a copy of the local government's final decision, and how a
8 person may obtain a copy of the final decision;

9 (b) The requirements listed in section (2) of this rule for filing a valid objection to the
10 work task[; ~~and~~].

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

12 (2) Persons who participated orally or in writing in the local process leading to the final
13 decision may object to the local government's work task submittal. To be valid, **an**
14 objection[s] must:

15 (a) Be in writing and filed with the department's Salem office no later than 21 days from
16 the date the local government mailed the notice;

17 (b) Clearly identify an alleged deficiency in the work task sufficiently to identify the
18 relevant section of the final decision and the statute, goal, or administrative rule the task
19 submittal is alleged to have violated;

20 (c) Suggest specific revisions that would resolve the objection; [~~and~~]

21 (d) Demonstrate that the objecting party participated orally or in writing in the local
22 process leading to the final decision; **and**

23 **(e) Be provided to the local government.**

24 (3) Objections that do not meet **all** the requirements of section (2) of this rule will not be
25 considered by the director or commission.

26 (4) If no valid objections are received within the 21-day objection period, the director
27 may approve the work task. Regardless of whether valid objections are received, the
28 director **must**[~~may~~] make a determination of whether the work task final decision
29 complies with the statewide planning goals and applicable statutes and administrative
30 rules.

31 (5) When a subsequent work task conflicts with a work task that has been deemed
32 acknowledged, or violates a statewide planning goal, applicable statute or administrative
33 rule related to a previous work task, the director or commission shall not approve the

1 submittal until all conflicts and compliance issues are resolved. In such case, the director
2 or commission may enter an order deferring acknowledgment of all, or part, of the work
3 task until completion of additional tasks.

4 (6) If valid objections are received or the department conducts its own review, the
5 department must issue a report. The report shall address the issues raised in valid
6 objections. The report shall identify specific work tasks to resolve valid objections or
7 department concerns. A valid objection shall either be sustained or rejected by the
8 department or commission based on the statewide planning goals, or applicable statutes
9 or administrative rules.

10 Stat. Auth.: ORS 197.040 & 197.633

11 Stats. Implemented: ORS 197.628 - 197.646

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

13 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &

14 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

15 **660-025-0150**

16 **Director Action and Appeal of Director Action (Work Task Phase)**

17

18 (1) **In response to a completed work task submitted to the department for review in**
19 **accordance with OAR 660-025-0140, t[~~F~~]**he director may:

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

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

23 (c) Refer the work task to the commission for review and action; or

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

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

29 [~~(3) The order or referral must be sent within 120 days of the date the department~~
30 ~~received the task submittal from the local government, unless the local government~~
31 ~~waives the 120-day deadline or the commission grants the director an extension. The~~
32 ~~local government may withdraw the submittal, in which case the 120-day deadline does~~
33 ~~not apply, provided the withdrawal will not result in the local government passing the~~
34 ~~deadline for work task submittal in the work program and any extension allowed in OAR~~
35 ~~660-025-0130(6).]~~

1 ~~[(4) If the director does not issue an order or refer the work task within the time limits set~~
2 ~~by section (3) of this rule, and the department did not receive any valid objections to the~~
3 ~~work task, the work task shall be deemed approved. In such cases, the department will~~
4 ~~provide a letter to the local government certifying that the work task is approved.]~~

5 ~~[(5) If the department received one or more valid objections to the work task, the director~~
6 ~~must either issue an order or refer the work task to the commission for review.]~~

7 **(3) The director shall take action on a work task not later than 120 days after the**
8 **local government submits the work task for review unless the local government**
9 **waives the 120-day deadline or the commission grants the director an extension. If**
10 **the director does not take action within the time period required by this subsection,**
11 **the work task is deemed approved. The department shall provide a letter to the local**
12 **government certifying that the work task is approved unless an interested party has**
13 **filed a timely objection to the work task consistent with administrative rules for**
14 **conducting periodic review.**

15 ~~[(6)4]~~ Appeals of a director's decision are subject to the following requirements:

16 (a) A director's decision approving or partially approving a work task may be appealed to
17 the commission only by a person who filed a valid objection.

18 (b) A director's decision remanding or partially remanding a work task may be appealed
19 to the commission only by the local government, a person who filed a valid objection, or
20 by another person who participated orally or in writing in the local proceedings leading to
21 adoption of the local decision under review.

22 (c) Appeals of a director's decision must be filed with the department's Salem office
23 within 21 days of the date the director's action was mailed;

24 (d) A person, other than the local government that submitted the work task and an
25 affected local government, appealing the director's decision must:

26 (A) Show that the person participated in the local proceedings leading to adoption of the
27 work task orally or in writing;

28 (B) Clearly identify a deficiency in the work task sufficiently to identify the relevant
29 section of the submitted task and the statute, goal, or administrative rule the local
30 government is alleged to have violated; and

31 (C) Suggest a specific modification to the work task necessary to resolve the alleged
32 deficiency.

33 ~~[(7)5]~~ If no appeal to the commission is filed within the time provided by section (6) of
34 this rule, the director's order is deemed affirmed by the commission. If the order
35 approved a work task, the work task is deemed acknowledged.

1 **(6) The director's standard of review is the same as the standard that governs the**
2 **commission expressed in OAR 660-025-0160(2).**

3 Stat. Auth.: ORS 197.040 & 197.633
4 Stats. Implemented: ORS 197.628 - 197.646
5 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
6 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
7 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

8 **660-025-0160**
9 **Commission Review of Referrals and Appeals (Work Task Phase)**

10 (1) The commission shall hear appeals and referrals of work tasks according to the
11 applicable procedures in OAR 660-025-0085 and 660-025-0150.

12 **(2) The commission's standard of review, as provided in ORS 197.633, is:**

13 **(a) For evidentiary issues, whether there is substantial evidence in the record as a**
14 **whole to support the local government's decision.**

15 **(b) For procedural issues, whether the local government failed to follow the**
16 **procedures applicable to the matter before the local government in a manner that**
17 **prejudiced the substantial rights of a party to the proceeding.**

18 **(c) For issues concerning compliance with applicable laws, whether the local**
19 **government's decision on the whole complies with applicable statutes, statewide**
20 **land use planning goals, administrative rules, the comprehensive plan, the regional**
21 **framework plan, the functional plan and land use regulations. The commission shall**
22 **defer to a local government's interpretation of the comprehensive plan or land use**
23 **regulations in the manner provided in ORS 197.829. For purposes of this**
24 **paragraph, "complies" has the meaning given the term "compliance" in the phrase**
25 **"compliance with the goals" in ORS 197.747.**

26 ([2]3) In response to a referral or appeal, the director may prepare and submit a report to
27 the commission.

28 ([3]4) The department must mail a copy of the report to the local government, all persons
29 who submitted objections, and other persons who appealed the director's decision. The
30 department must mail the report at least 21 days before the commission meeting to
31 consider the referral or appeal.

32 ([4]5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to
33 the director's report within ten (10) days of the date the report is mailed. The director may
34 issue a response to exceptions and may make revisions to the director's report in response
35 to exceptions. A response or revised report may be provided to the commission at or prior

1 to its hearing on the referral or appeal. A revised director's report does not require
2 mailing 21 days prior to the commission hearing.

3 (~~5~~6) The commission shall hear appeals based on the record except as provided in OAR
4 660-025-0085(5)(g). The written record shall consist of the submittal, timely objections,
5 the director's report, timely exceptions to the director's report, the director's response to
6 exceptions and revised report if any, and the appeal if one was filed.

7 (~~6~~7) Following its hearing, the commission must issue an order that does one or more of
8 the following:

9 (a) Approves the work task or a portion of the task;

10 (b) Remands the work task or a portion of the task to the local government, including a
11 date for resubmittal;

12 (c) Requires specific plan or land use regulation revisions to be completed by a specific
13 date. Where specific revisions are required, the order shall specify that no further review
14 is necessary. These changes are final when adopted by the local government. The failure
15 to adopt the required revisions by the date established in the order shall constitute failure
16 to complete a work task by the specified deadline requiring the director to initiate a
17 hearing before the commission according to the procedures in OAR 660-025-0170(3);

18 (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b);
19 or

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

22 (~~7~~8) If the commission approves the work task or portion of a work task under subsection
23 (6)(a) of this rule and no appeal to the Court of Appeals is filed within the time provided
24 in ORS 183.482, the work task or portion of a work task shall be deemed acknowledged.
25 If the commission decision on a work task is under subsection (6)(b) through (e) of this
26 rule and no appeal to the Court of Appeals is filed within the time provided in ORS
27 183.482, the decision is final.

28 Stat. Auth.: ORS 197.040 & 197.633

29 Stats. Implemented: ORS 197.628 - 197.646

30 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
31 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
32 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 **660-025-0170**
2 **Modification of an Approved Work Program, Extensions, and Sanctions for Failure**
3 **to Meet Deadlines**

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

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

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

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

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

16 (2) Failure to complete a modified work task shall constitute failure to complete a work
17 task by the specified deadline, requiring the director to initiate a hearing before the
18 commission according to the procedures in section (3).

19 (3) If a local government fails to submit its evaluation and work program, a decision that
20 no work program is necessary, or a work task by the deadline set by the director or the
21 commission, including any extension, the director shall schedule a hearing before the
22 commission. The notice must state the date and location at which the commission will
23 conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and
24 as follows:

25 (a) The director shall notify the local government in writing that its submittal is past due
26 and that the commission will conduct a hearing and consider imposing sanctions against
27 the local government as required by ORS 197.636(2);

28 (b) The director and the local government may prepare written statements to the
29 commission addressing the circumstances causing the local government to miss the
30 deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The
31 written statements must be filed in a manner and according to a schedule established by
32 the director;

33 (c) The commission shall issue an order imposing one or more of the sanctions listed in
34 ORS 197.636(2) until the local government submits its evaluation and work program or
35 its decision that no work program is required, or its work task required under OAR 660-
36 025-0130, as follows:

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

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

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

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

10 Stat. Auth.: ORS 197.040 & 197.633

11 Stats. Implemented: ORS 197.628 - 197.646

12 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
13 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. &
14 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

15 **660-025-0175**

16 **Review of UGB Amendments and Urban Reserve Area Designations**

17 (1) **The following final** [~~L~~]land use decisions [~~establishing or amending an urban growth~~
18 ~~boundary or urban reserve area~~] must be submitted to the department for review for
19 compliance with the applicable statewide planning goals, statutes and rules **in the**
20 **manner provided for review of a work task under ORS 197.633**[~~when~~]:

21 [~~(a) A metropolitan service district amends its urban growth boundary to include more~~
22 ~~than 100 acres;~~

23 [~~(b) A city with a population of 2,500 or more within its urban growth boundary amends~~
24 ~~the urban growth boundary to include more than 50 acres; or~~

25 [~~(c) A city or metropolitan service district designates or amends urban reserve areas under~~
26 ~~ORS 195.145.]~~

27 **(a) An amendment of an urban growth boundary by a metropolitan service district**
28 **that adds more than 100 acres to the area within its urban growth boundary;**

29 **(b) An amendment of an urban growth boundary by a city with a population of**
30 **2,500 or more within its urban growth boundary that adds more than 50 acres to the**
31 **area within the urban growth boundary;**

32 **(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a**
33 **metropolitan service district or by a city with a population of 2,500 or more within**
34 **its urban growth boundary;**

1 **(d) An amendment of the boundary of an urban reserve by a metropolitan service**
2 **district;**

3 **(e) An amendment of the boundary of an urban reserve to add more than 50 acres**
4 **to the urban reserve by a city with a population of 2,500 or more within its urban**
5 **growth boundary; and**

6 **(f) A designation or an amendment to the designation of a rural reserve under**
7 **ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service**
8 **district, including an amendment of the boundary of a rural reserve.**

9 (2) The standards and procedures in this rule govern the local government process and
10 submittal, and department and commission review.

11 (3) The local government must provide notice of the proposed amendment according to
12 the procedures and requirements for post-acknowledgement plan amendments in ORS
13 197.610 and OAR 660-018-0020.

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

17 (5) Department and commission review and decision on the submittal from the local
18 government must follow the procedures and requirements for review and decision of a
19 work task submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

20 Stat. Auth.: ORS 197.040

21 Stats. Implemented: ORS 195.145, 197.626 - 197.646

22 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD
23 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

24 **660-025-0180**
25 **Stay Provisions**

26 (1) When a local government makes a final decision on a work task or portion of a work
27 task that is required by, or carries out, an approved work program, or if the local
28 government is a city with a population of 2,500 or more and either adopts a decision
29 adding more than 50 acres to its urban growth boundary or designates or amends urban
30 reserve areas, or a metropolitan service district that adopts a decision adding more than
31 100 acres to its urban growth boundary or designates or amends urban reserve areas,
32 interested persons may request a stay of the local government's final decision by filing a
33 request for a stay with the commission. In taking an action on a request to stay a local
34 government's final decision on a work task, the commission must use the standards and
35 procedures contained in OAR chapter 660, division 1.

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

6 Stat. Auth.: ORS 197.040

7 Stats. Implemented: ORS 197.628 - 197.646

8 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
9 4-2006, f. & cert. ef. 5-15-06

10 **660-025-0210**

11 **Updated Planning Documents**

12 (1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS
13 197.010, each local government must file ~~[two]~~ **a** complete and accurate copy~~[ies]~~ of its
14 comprehensive plan and land use regulations bearing the date of adoption (including plan
15 and zone maps bearing the date of adoption) with the department following completion of
16 periodic review. ~~[These materials may be either a new printing or an up-to-date
17 compilation of the required materials or upon approval of the department, an up-to-date
18 copy on computer disk(s) or other electronic format.]~~

19 (2) Materials described in section (1) of this rule must be submitted to the department
20 within six months of completion of the last work task.

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

24 (4) Jurisdictions that do not file an updated plan on time shall not be eligible for **periodic**
25 **review** grants from the department until such time as the required materials are provided
26 to the department.

27 Stat. Auth.: ORS ~~[183 &]~~ **197.040**

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

29 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
30 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

31 **660-025-0220**

32 **Computation of Time**

33 (1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless
34 otherwise provided by rule, the time to complete required tasks, notices, objections, and
35 appeals shall be computed as follows. The first day of the designated period to complete
36 the task, notice, objection or appeal shall not be counted. The last day of the period shall
37 be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of

1 Oregon. In that event the period shall run until the end of the next day that is not a
2 Saturday, Sunday or state legal holiday.

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

5 Stat. Auth.: ORS 197.040

6 Stats. Implemented: ORS 187.010, 187.020, 197.628 - 197.650

7 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
8 4-2006, f. & cert. ef. 5-15-06

9 **660-025-0230**

10 **Applicability**

11 (1) **Except as otherwise required by law**, [A]amendments to this division apply as
12 follows:

13 (a) Local governments in periodic review that have not submitted an evaluation and work
14 program, or decision that no work program is required, must apply the amendments to the
15 evaluation and work program or decision that no work program is required;

16 (b) Local governments in periodic review must apply amendments to work tasks not
17 completed or submitted to the department on the effective date of the amendments;

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

20 (d) The procedures and standards in amendments for department and commission review
21 and action on periodic review submittals, requests for extensions, and late submittals
22 apply to all such submittals and requests filed **with the department** after the effective
23 date of the amendments, as well as any such submittals and requests awaiting initial
24 department action on the effective date of the amendments.

25 Stat. Auth.: ORS 197.040-197.245

26 Stats. Implemented: ORS 197.628 - 197.646

27 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD
28 1-2011, f. & cert. ef. 10-19-11

29 **660-025-0250**

30 **Transfer of Matters to the Land Use Board of Appeals**

31 (1) When the department receives an appeal of a director's decision pursuant to OAR
32 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the
33 Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).

34 (2) Matters raised in an appeal may be transferred by the director to the board when:

- 1 (a) The matter is an urban growth boundary expansion approved by the local government
2 based on a quasi-judicial land use application and does not require an interpretation of
3 first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or
- 4 (b)(A) The matter alleges the work task submittal violates a provision of law not directly
5 related to compliance with a statewide planning goal;
- 6 (B) The appeal clearly identifies the provision of the task submittal that is alleged to
7 violate a provision of law and clearly identifies the provision of law that is alleged to
8 have been violated; and
- 9 (C) The matter is sufficiently well-defined that it can be separated from other allegations
10 in the appeal.
- 11 (3) When the director elects to transfer a matter to the board, notice of the decision must
12 be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of
13 the date the appeal was filed with the department. The notice shall include identification
14 of the matter to be transferred and explanation of the procedures and deadline for appeal
15 of the matter to the board.
- 16 (4) The director's decision under this rule is final and may not be appealed.
- 17 Stat. Auth.: ORS 197.040
18 Stats. Implemented: ORS 197.825
19 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Amendments to existing rules in order to implement new laws regarding periodic review.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to existing rules in order to implement new laws regarding periodic review.

Statutory Authority:

ORS 197.040

Other Authority:

Statewide Planning Goals (OAR 660, div 15)

Stats. Implemented:

ORS 197.626-197.646; Or Laws 2011, chapter 469 (HB 2130)

Need for the Rule(s):

The proposed amendments would modify rules pertaining to periodic review and related topics. The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding changes to comprehensive plans and land use regulations. The amendments are needed in order to conform existing rules to these new laws.

The Commission may consider other minor and technical amendments to rules in the division specified above based on testimony and comments received during the public comment period, and may adopt amendments that may be proposed during the public comment period.

Documents Relied Upon, and where they are available:

ORS 197.626 to 197.646; Statewide Planning Goals (OAR 660, division 15); Or Laws 2011, chapter 469 (HB 2130) - available online

Fiscal and Economic Impact:

Statutory provisions (ORS 183.335(2)(b)(E) and (G), and ORS 183.540) require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business:

The proposed amendments will not have economic affects on business because the proposed amendments will generally conform existing rules to new statutes already in effect. The department cannot propose alternative rules that would achieve the underlying lawful governmental objective because the proposal is necessary to implement new laws. The proposed rule amendments apply to periodic review and are not substantially different than existing requirements in periodic review rules. As such, economic and property interests will not be affected. However, to the extent that the new laws implemented by these rules represent a clearer expression of requirements previously in law, economic effects to business are expected to be positive; such affects cannot be quantified.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534). The proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (See ORS 183.534). The Housing Cost Impact Statement is attached and is incorporated into this statement by this reference.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments carry out new provisions of periodic review that are substantially the same as existing provisions in state law.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

The rule does not apply to small businesses. None are subject to the rule.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

These rule amendments will not change current department procedures regarding the periodic review process, as reflected by state law, and no professional service costs are anticipated as a result of the new rules beyond those costs already required for compliance with state law.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.

How were small businesses involved in the development of this rule?

If not, why?:

Because these amendments primarily concern implementation of amendments to an existing statute regarding periodic review, and because the topics addressed by these rules concern local governments rather than small businesses, and because the proposed rule amendments reflect periodic review statutes already in effect, the department did not consult with small businesses.

Statutory provisions (ORS 197.040) also require the agency to "Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact." These requirements "shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

Economic interests and property owners will not be directly affected by the amended rules for the same reasons described above for small businesses.

Administrative Rule Advisory Committee consulted?: No

For the same reasons provided above concerning small business involvement.

12-08-2011 Close of Hearing	Casaria Tuttle	casaria.r.tuttle@state.or.us	10-14-11 3:17 PM
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

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Oregon

John A. Kitzhaber, M.D., Governor

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November 10, 2011

TO: Interested persons
FROM: Department of Land Conservation and Development (DLCD)

Notice of Proposed Amendments to Administrative Rules

The Land Conservation and Development Commission (LCDC) is considering amendments to administrative rules regarding comprehensive plans and land use regulations (OAR 660, division 18) and periodic review (OAR 660, division 25), including the possible repeal of some division 18 rules. Rule amendments are necessary to implement legislation enacted by the 2011 Oregon Legislature – HB 2129 and HB 2130 – which amended statutes under ORS 197.610 through 197.651.

LCDC will hold a public hearing December 8, 2011, to hear public comments regarding the proposed rule amendments. This meeting, which includes other agenda items preceding the rule hearing, is scheduled to begin at 8:30a.m. at the Columbia Gorge Discovery Center, 5000 Discovery Drive, The Dalles, Oregon. After completion of the public hearing, LCDC will consider testimony and other information provided and may adopt the proposed rule amendments.

If adopted, the rule amendments will be effective upon filing with the Secretary of State on approximately December 30, 2011. HB 2129 will go into effect January 1, 2012, and HB 2130 was effective upon passage on June 23, 2011.

A draft of the proposed rules and other notices and fiscal statements are available on DLCD's website at <http://www.lcd.state.or.us/LCD/rulemaking.shtml>, as well as copies of the pertinent legislation. To obtain copies of the proposed rule amendments and related information by mail, email or fax, please contact Casaria Tuttle at 503-373-0050 ext. 322; email casaria.r.tuttle@state.or.us. The agenda for LCDC's December 7-9 meeting will be available on DLCD's website at least ten days prior to the meeting at <http://www.lcd.state.or.us/>.

Interested persons may provide oral testimony to LCDC regarding the proposed rule amendments at the December 8 public hearing, and are encouraged to send written comments in advance of the hearing. Interested individuals can submit oral and written testimony until the close of the hearing. The agency also requests comments suggesting other options while reducing any negative economic impact on business. Address written comments to the Chair of the Land Conservation and Development Commission, care of Casaria Tuttle at the department's address above, or email comments to casaria.r.tuttle@state.or.us. Fax comments to 503-378-6033.

If you have questions about the proposed rules, contact Bob Rindy at 503- 373-0050 ext. 229; email bob.rindy@state.or.us.

Land Conservation and Development Commission

Public Comment Received as of November 22, 2011

December 7-9, 2011

<via email>

November 22, 2011

Dear Mr. Rindy:

These comments are respectfully submitted on behalf of the Portland Bureau of Planning and Sustainability for inclusion in the Land Conservation and Development Commission's hearing record for December 7 through 9, 2011.

The proposed amendments to the Post Acknowledgement Plan Amendment rule are thoughtful, thorough, and ready for adoption. While good progress has been made on the amendments to the Period Review Rule, we respectfully request that the Commission not take final action until its January 26, 2012 meeting in order to address some remaining issues.

These issues generally fall within one of two categories:

1. Important differences between the periodic review and post acknowledgement work program products, and
2. Ramifications of the Commission's review being limited to the local record.

We have identified these issues by topic, and offer some proposed improvements in the form of amended rule language.

Topic 1: Notice of Proposed Adoption for Periodic Review Tasks

Nether the existing, rule, statute of HB 2130 (2011) require a notice of proposed adoption for a periodic review work task. So, it is a good idea to provide for one by rule.

The proposed rule language does not, however, recognize that the post acknowledgment plan amendment procedures are not always a good fit for periodic review tasks. Generally, post acknowledgement amendments are narrower in subject matter scope and considerably less voluminous than periodic review tasks. Amendments are also more fully developed when they are first proposed than tasks.

Requiring a notice of proposed adoption for periodic review tasks 35-days before the "first evidentiary hearing" is probably not a good idea. For most local governments would mean the first hearing before the planning commission, and consist of review of some fairly raw studies and draft reports. These would be sharpened over the course of many months, and would not come into good focus until the commission recommends a more polished draft to the governing body. Also, the governing body's first evidentiary hearing could be a year or more after the planning commissions first evidentiary hearing. For example Portland's first commission hearing on Task II of its periodic review work

program was in June on 2009 while our City Council's first hearing is scheduled for March of 2012. The June 2009 products hardly resemble those being prepared for Council consideration. Having the notice go out before the first evidentiary hearing of the governing body would provide a more meaningful for public review.

Also, periodic review work products tend to be huge. The rule as written would require Portland to attach several thousand pages to the required notice. Having the notice describe, but not include, the review documents in a manner similar OAR 660-025-0130 is a necessary change. Please consider the following proposed language.

OAR 660-025-0080

(3) Before a local government adopts ~~a change to an acknowledged comprehensive plan or a land use regulation under~~ a work task, the local government must provide notice of **proposed adoption** ~~proposed change~~ to the department 35 days in advance of the first evidentiary hearing **before the governing body of the local government**, as provided in ORS 197.610 and OAR 660-018-0020. **All work task products must be made available for public review during the 35 day period. Should these products exceed 500 pages the local government must prepare, and make available, an index of the products. For purposes of computation of time a notice under this rule is considered to have been "submitted" on the day that paper copies of the notice are received by the department in its Salem office.**

Topic 2: The "On the Local Record" limitation applies to the Director as well as the Commission.

In some instances the Director is acting as the Commission's delegate. The following proposed language recognizes this. There may be other instances in the rule that should be changed as well.

OAR 660-025-0080

(5)(g) As provided in ORS 197.633(3), the commission **and director** will not consider new evidence.

Topic 3: Since Commission review "on the record" it is very important to more carefully define what the record is.

Topic 4: The necessary elements of a Periodic Review Task Submittal should be listed in the Periodic Review Work Program and not paraphrased in the rule.

Topic 5: The local government should be able to control the volume of the local record by, as provided in LUBA rules, limiting the record to materials before the final decision maker.

Topic 6: In the interests of not having the Commission consider a disputed record, the local government and objectors should be placed on a more equal footing by allowing objectors to submit portions of the local record to the Department, while limiting both the local government and objectors to the record.

Please consider the following changes that address Topics 3 through 6 above:

OAR 660-025-0130

(3) To be complete a submittal must be a final decision **of the governing body of the local government** containing all required ~~elements~~ **products** identified for that task in the work program. A portion of a task or subtask may be accepted as a complete submittal if the work program identified that portion of the task or subtask as a separate ~~item~~ **product** for adoption by the local government. Task submittals are subject to the following requirements:

(a) The local record is limited to materials specifically incorporated into the final decision or placed before the governing body during the course of the all proceedings before the governing body of the local government;

(b) If the local record does not exceed 2,000 pages, a submittal must include the entire local record. ~~including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program.~~ **(b)** If the local record exceeds 2,000 pages, a submittal must include adopted ordinances and orders, findings, hearings minutes, written testimony and evidence, and a detailed index listing items not included in the submittal. Items in the local record not included in the submittal must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require submission of any materials not included in the initial submittal;

(c) A task submittal of over 500 pages must include an index of all submitted materials.

(4) A submittal includes only the materials **in the local record** provided to the department **by the local government** pursuant to section (3) of this rule **and, for records exceeding 2,000 pages, local record materials submitted by objectors pursuant to OAR 660-025-140.** Following submission of objections pursuant to OAR 660-025-0140, the local government may provide written **table of** correspondence that is not part of the local record which identifies material in the record **relevant related** to filed objections. ~~The correspondence table may not include or refer to materials not in the record-submitted local record or listed indexed~~ **relevant related** pursuant to section (3) of this rule. The local government must provide the ~~correspondence table~~ **relevant related** to each objector at the same time it is sent to the department.

Topic 6: Notice for “In the Manner of Periodic Review” Tasks.

The reasons for the proposed change are the same as our “Topic 1” comments for OAR 660-025-0083(3) above.

OAR 660-025-0175

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements ~~for post acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020~~ **described in OAR 660-025-0080(3).**

Topic 7: The consequences of not having an approved work program for “In the Manner of Periodic Review” tasks.

While statute provides that certain local and regional government decisions are to be reviewed by the commission “In the Manner of Periodic Review,” the rule provides for review only under Phase Two (task submittal) of periodic review without first requiring a Phase One Work Program. Since there is no work program to define the contents of the required submittal, please consider the following additions to the rule.

OAR 660-025-0175

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140. **In addition to these requirements the submittal must include an adopted coordinated population forecast, an adopted identification of housing and employment needs, and an adopted determination of which of the identified needs cannot be reasonably accommodated within existing urban land.**

Topic 8: Existing stay provisions are misleading and unnecessary.

Unlike post acknowledgement plan amendments, periodic review tasks cannot become effective until they are acknowledged. Since there no need to stay something that is not effective the existing language should be deleted.

660-025-0180

Stay Provisions

~~(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is a city with a population of 2,500 or more and either adopts a decision adding more than 50 acres to its urban growth boundary or designates or amends urban reserve areas, or a metropolitan service district that adopts a decision adding more than 100 acres to its urban growth boundary or designates or amends urban reserve areas, interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.~~

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

Thank you for the opportunity to provide these comments.

Sincerely,

Al Burns, AICP
Senior City Planner
Portland Bureau of Planning and Sustainability

<via email>

From: Richard Benner [mailto:Richard.Benner@oregonmetro.gov]
Sent: Tuesday, November 22, 2011 9:18 AM
To: bob rindy
Cc: John Williams; Tim O'Brien; Sherry Oeser; Ted Reid; Randy Tucker; Dan Cooper
Subject: Comments on Propose Amendments to OAR Division 25

11/22/11

Bob,

Here are comments from Metro on the proposed amendments to the periodic review rules that would implement HB 2130 (do you need comments in hard copy?):

1. 660-025-0085(5)(g) leaves an ambiguity that can be readily resolved. The proposed language says:

"As provided in ORS 197.633(3), the commission will not consider new evidence."

It is not clear what is meant by "new evidence." It could mean evidence that was not submitted to the local government. But it could also mean evidence that was not submitted to the agency by the local government [660-025-130(3) allows a local government, under the specified circumstances, to submit less than the full record of the local decision]. I suggest the following language to make clear that commission review is limited to evidence submitted to the local government:

"The commission will consider only that evidence submitted both to the local government in proceedings leading to the local decision and to the department with:

- (a) The local government's submittal filed pursuant to OAR 660-025-0130(1);
- (b) An objection filed pursuant to OAR 660-025-0140;
- (c) A local government response to an objection, filed pursuant to OAR 660-025-0130(4); or
- (d) An exception filed pursuant to OAR 660-025-0160."

2. Proposed revisions to 660-025-0130 leave ambiguities about what local governments must submit from their full records. This is important to Metro, whose records always exceed 2,000 pages. Paragraphs (b) and (c) expressly provide that a local government with a large record may submit less than its full record. Yet (b) provides a list of items that must be submitted that leaves confusion about items that need not be submitted. Comparing the (b) list with the (a) list implies that "studies", "inventories", "staff reports", and "correspondence" need not be submitted from a large record. But (b) requires submission of "written testimony and evidence." What, for example, is not included in "written testimony and evidence"? Is not "correspondence" "written testimony"? If a person submits a "study" with her testimony, is it not "evidence"? I suggest language that requires a local government to submit its decision, with all its components, and those materials from its full local record that it believes are necessary to explain its decision or are cited in its findings.

"(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions or orders; any plan provisions or land use regulations amended by the decision; minutes from hearings; materials from the record which the local government deems necessary to explain its decision or cites in its findings; a list of persons who participated in proceedings before the local government, and a detailed index listing all items in the local record, submitted

or not. All items in the local record must be made available for public review during the period for objections under OAR 660-025-0140. The director or the commission may require a local government to submit materials from its record that it did not include in its submittal.”

Section 0140 and 0160 should then make clear that objections or exceptions may append materials from the full record that were not submitted by the local government.

OAR 660-025-0140(2):

“Persons who participated orally or in writing in the local process leading to the final decision may object to the local government’s work task submittal and may append to their objections any document from the local government’s record, whether or not it was submitted to the department by the local government....”

OAR 660-025-0160(4):

“The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director’s report within ten (10) days of the date the report is mailed, and may append to their exceptions any document from the local government’s record, whether or not it was submitted to the department by the local government....”

3. Section 0140(4) is unclear. It reads as follows:

“...the local government may provide written correspondence that is not part of the record which identifies material in the record relevant to filed objections.”

This language unintentionally suggests a local government can send the agency written correspondence (its own or some other) that is not in the local record. I suggest the following revision:

“...the local government may submit material from the local record that was not part of the submittal if the material is relevant to an objection.”

Dick Benner

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GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Please reply to EDWARD J. SULLIVAN
 esullivan@gsblaw.com
 DID 503-553-3106

November 21, 2011

Department of Land Conservation and Development
 635 Capitol Street, NE
 Suite 200
 Salem, OR 97301-2540

Re: Proposed Amendments to OAR 660, Div. 25 (Periodic Review)

Dear Commissioners:

I have reviewed these rules, meant to implement new statutory provisions from the 2011 legislative session. In general, I agree with their direction, but request that you consider the following comments as you move toward adoption of the final version of these rules.

1. The Record in Periodic Review -- Proposed OAR 660-025-0130(3)(b) allows local governments to select certain materials that will not be transmitted to DLCD and LCDC as part of the record of periodic review, but allows those materials to be available for review by objectors. The rule also allows DLCD or LCDC to add to the record from these omitted materials. However, it does not appear that a citizen objector may be aware of her rights with regard to the record and that it is necessary to raise an objection if these additional materials are to be considered by DLCD and LCDC.

To remedy this problem, I suggest that on p. 17 of the proposed rules, proposed OAR 660-025-0140(1) be amended as follows:

On line 10, delete the period and restore the semicolon.

On line 11, add the following:

“(c) If the record exceeds 2000 pages, that an objector must review any items proposed to be omitted from the record before the Department and Commission under OAR 660-025-0130(3)(b) and file an objection to the record on or before the expiration of the period for submitting objections.”

2. Limitation of Director or Commission Decision on a Work Task to the Record -- To assure that neither the director nor commission utilizes material outside the record, I suggest a slight revision to OAR 660-025-0140(6):



G A R V E Y S C H U B E R T B A R E R

November 21, 2011
Page 2

"If valid objections are received or the department conducts its own review, the department must issue a report. The report shall address the issues raised in valid objections. The report shall identify specific work tasks to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the record and applicable statewide planning goals, [or applicable] statutes or administrative rules.

I hope you find these comments helpful.

Sincerely,

GARVEY SCHUBERT BARER

By 
Edward J. Sullivan

EJS:kms

Item 9 – Attachment A Revised
December 7-9, 2011 LCDC Meeting

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 25 PERIODIC REVIEW

Draft Amendments ~~December 5, 2011~~ **November 4**

1 **660-025-0010**

2 **Purpose**

3 The purpose of this division is to carry out the state policy outlined in ORS 197.010 and
4 197.628. This division is intended to implement provisions of ORS 197.626 through
5 197.651. The purpose for periodic review is to ensure that comprehensive plans and land
6 use regulations remain in compliance with the statewide planning goals adopted pursuant
7 to ORS 197.230, the commission's rules and applicable land use statutes. Periodic review
8 also is intended to ensure that local government[s] plans and regulations make ~~for~~
9 adequate provision for economic development, needed housing, ~~economic~~
10 ~~development,~~ transportation, public facilities and services, and urbanization, and that
11 local plans are coordinated as described in ORS 197.015(5). Periodic Review is a
12 cooperative planning process ~~between~~ that includes the state and its agencies, local
13 governments, and other interested persons.

14 Stat. Auth.: ORS ~~[183 &]~~ 197.040 & 197.633

15 Stats. Implemented: ORS 197.010, ORS 197.626~~[8]~~ - 197.651~~[46]~~

16 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
17 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
18 cert. ef. 10-19-11

19 **660-025-0020**

20 **Definitions**

21 For the purposes of this division, the definitions contained in ORS 197.015, 197.303, and
22 197.747 shall apply unless the context requires otherwise. In addition, the following
23 definitions apply:

24 (1) "Economic Revitalization Team" means the team established under ORS 284.555, or
25 a team chosen by the governor to replace the Economic Revitalization Team.

26 (2) "Filed" or "Submitted" means that the required documents have been received by the
27 Department of Land Conservation and Development at its Salem, Oregon, office.

28 (3) "Final Decision" means the completion by the local government of a work task on an
29 approved work program, including the adoption of supporting findings and any
30 amendments to the comprehensive plan or land use regulations. A decision is final when
31 the local government's decision bearing the necessary signatures of the decision
32 maker(s) is ~~transmitted~~ sent to the department for review.

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Comment [SXS1]: This is curious wording

1 (4) "Metropolitan planning organization" means an organization located wholly within
2 the State of Oregon and designated by the Governor to coordinate transportation planning
3 in an urbanized area of the state pursuant to 49 USC §5303(c).

4 (5) "Objection" means a written complaint concerning the adequacy of an evaluation,
5 proposed work program, or completed work task.

6 (6) "Participated at the local level" means to have provided substantive comment,
7 evidence, documents, correspondence, or testimony to the local government during the
8 local proceedings regarding a decision on an evaluation, work program or work task.

9 (7) "Work Program" means a detailed listing of tasks necessary to revise or amend the
10 local comprehensive plan or land use regulations to ensure the plan and regulations
11 achieve the statewide planning goals. A work program must indicate the date that each
12 work task must be submitted to the department for review.

13 (8) "Work Task" or "task" means an activity that is included on an approved work
14 program and that generally results in an adopted amendment to a comprehensive plan or
15 land use regulation.

16 Stat. Auth.: ORS [183 &] 197.040 & 197.633
17 Stats. Implemented: ORS 197.015 & 197.628 - 197.646
18 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
19 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f &
20 cert. ef. 10-19-11

21 **660-025-0030**
22 **Periodic Review Schedule**

23 (1) The commission must approve, and update as necessary, a schedule for periodic
24 review. The schedule must include the date when **the department, pursuant to ORS**
25 **197.629, must send a [each] local government [must be sent] a letter [by the department]**
26 requesting the local government to commence the periodic review process.

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

28 (a) A city with a population of more than 2,500 within a metropolitan planning
29 organization or a metropolitan service district shall ~~conduct~~ **commence** periodic review
30 every seven years after completion of the previous periodic review.

31 (b) A city with a population of 10,000 or more inside its urban growth boundary that is
32 not within a metropolitan planning organization shall conduct periodic review every 10
33 years after completion of the previous periodic review.

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Comment [SXS2]: I recommend that this change not be made. "Conduct" is the statutory term. If this change is made, I recommend that a corresponding change in line 29.

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

4 (d) Notwithstanding subsection (c) of this section, if the schedule set for the county is
5 specific as to that portion of the county within the urban growth boundary of a city
6 subject to periodic review under this section, the county shall conduct periodic review for
7 that portion of the county according to the schedule and work program set for the county.

8 (3) The commission may establish a schedule that varies from the standards in section (2)
9 of this rule if necessary to coordinate approved periodic review work programs or to
10 account for special circumstances. The commission may schedule a local government's
11 periodic review earlier than provided in section (2) of this rule if necessary to ensure that
12 all local governments in a region whose land use decisions would significantly affect
13 other local governments in the region are conducting periodic review concurrently, but
14 not sooner than five years after completion of ~~the~~ any previous periodic review.

Comment [SXS3]: Recommend this change not be made; it adds uncertainty as to whose previous periodic review.

15 (4) The director must maintain and implement the schedule. Copies of the schedule must
16 be provided upon request.

17 Stat. Auth.: ORS 197.040 & 197.633

18 Stats. Implemented: ORS 197.628 - 197.646

19 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
20 4-2006, f. & cert. ef. 5-15-06

21 **660-025-0035**

22 **Initiating Periodic Review Outside the Schedule**

23 (1) A ~~local government~~ city or county may request, and the commission may approve,
24 initiation of periodic review not otherwise provided for in the schedule established under
25 OAR 660-025-0030. The request must be submitted to the commission along with
26 justification for the requested action. The justification must include a statement of local
27 circumstances that warrant periodic review and identification of the statewide planning
28 goals to be addressed.

Comment [SXS4]: Under ORS 197.629(6), only a city of county may request PR (local government is broader under ORS 197.015)

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29 (2) In consideration of the request filed pursuant to section (1), the commission must
30 consider the needs of the jurisdiction to address the issue(s) identified in the request for
31 periodic review, the interrelationships of the statewide planning goals to be addressed in
32 the periodic review project, and other factors the commission finds relevant. If the
33 commission approves the request, the provisions of this division apply, except as
34 provided in section (3) of this rule.

35 (3) The Economic Revitalization Team may work with a city to create a voluntary
36 comprehensive plan review that focuses on the unique vision of the city, instead of
37 conducting a standard periodic review, if the team identifies a city that the team
38 determines can benefit from a customized voluntary comprehensive plan review. In order

1 for a voluntary comprehensive plan review to be initiated by the commission, the city
2 must request initiation of such a modified periodic review. The provisions of this division
3 apply except as follows:

4 (a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the
5 periodic review under this section will not replace or delay the next scheduled periodic
6 review;

7 (b) If the city misses a deadline related to an evaluation, work program or work task,
8 including any extension, the commission must terminate the evaluation, work program, or
9 work task or impose sanctions pursuant to OAR 660-025-0170(3).

10 (4) If the commission pays the costs of a local government that is not subject to OAR
11 660-025-0030 to perform new work programs and work tasks, the commission may
12 require the local government to complete periodic review when the local government has
13 not completed periodic review within the previous five years if:

14 (a) A city has been growing faster than the annual population growth rate of the state for
15 five consecutive years;

16 (b) A major transportation project on the Statewide Transportation Improvement Program
17 that is approved for funding by the Oregon Transportation ~~[e]~~Commission is likely to:

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18 (A) Have a significant impact on a city or an urban unincorporated community; ~~[or]~~

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19 (B) Be significantly affected by growth and development in a city or an urban
20 unincorporated community;

21 (c) A major facility, including a prison, is sited or funded by a state agency; or

22 (d) Approval by the city or county of a facility for a major employer will increase
23 employment opportunities and significantly affect the capacity of housing and public
24 facilities in the city or urban unincorporated community.

25 (5) As used in section (4) of this rule, "the costs of a local government" means: normal
26 and customary expenses for supplies, personnel and services directly related to preparing
27 a work program, and completing studies and inventories, drafting of ordinances,
28 preparing and sending notices of hearings and meetings, conducting meetings and
29 workshops, and conducting hearings on possible adoption of amendments to plans or
30 codes, to complete a work task.

31 Stat. Auth.: ORS 197.040 & 197.633
32 Stats. Implemented: ORS 197.628 - ORS 197.646
33 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

1 **660-025-0040**

2 **Exclusive Jurisdiction of LCDC**

3 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction [to] **for**
4 review ~~of [the evaluation, work program, and]~~ **completed periodic review** work tasks for
5 compliance with the statewide planning goals and applicable statutes and administrative
6 rules, ~~as set forth in ORS 197.633(3)28 to 197.650. The director also has authority to~~
7 **review the periodic review evaluation, work program and completed work tasks, as**
8 **set forth in ORS 197.633 and 197.644.**

9 ~~(2)~~ Pursuant to ORS 197.626, the commission has exclusive jurisdiction [~~to~~] **for** review
10 ~~of~~ the following **final** land use decisions for compliance with the statewide planning
11 goals:

12 ~~[(a) If made by a city with a population of 2,500 or more inside its urban growth~~
13 ~~boundary, amendments to an urban growth boundary to include more than 50 acres;~~

14 ~~(b) If made by a metropolitan service district, amendments to an urban growth boundary~~
15 ~~to include more than 100 acres;~~

16 ~~(c) plan and land use regulations that designate urban reserve areas.]~~

17 **(a) An amendment of an urban growth boundary by a metropolitan service district**
18 **that adds more than 100 acres to the area within its urban growth boundary;**

19 **(b) An amendment of an urban growth boundary by a city with a population of**
20 **2,500 or more within its urban growth boundary that adds more than 50 acres to the**
21 **area within the urban growth boundary;**

22 **(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a**
23 **metropolitan service district or by a city with a population of 2,500 or more within**
24 **its urban growth boundary;**

25 **(d) An amendment of the boundary of an urban reserve by a metropolitan service**
26 **district;**

27 **(e) An amendment of the boundary of an urban reserve to add more than 50 acres**
28 **to the urban reserve by a city with a population of 2,500 or more within its urban**
29 **growth boundary; and**

30 **(f) A designation or an amendment to the designation of a rural reserve under**
31 **ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service**
32 **district, including an amendment of the boundary of a rural reserve.**

33 **(3) A final order of the Commission-commission action** pursuant to sections (1) or
34 **(2) of this rule is a final order may be subject to judicial review in the manner**
35 **provided in applicable provisions of ORS 197.650 and 197.651.**

36 ~~(42)~~ The director may transfer one or more matters arising from review of a work task,
37 urban growth boundary amendment or designation or amendment of an urban reserve

1 area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-
2 025-0250.

3 | Stat. Auth.: ORS 197.040 & 197.633
4 Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825
5 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
6 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
7 cert. ef. 5-15-06; LCDD 1-2011, f & cert. ef. 10-19-11

8 **660-025-0050**
9 **Commencing Periodic Review**

10 (1) The department must commence the periodic review process by sending a letter to the
11 | ~~affected~~ local government pursuant to OAR 660-025-0030 or 660-025-0035. The
12 department may provide advance notice to a local government of the upcoming review
13 and must encourage local governments to review their citizen involvement provisions
14 prior to beginning periodic review.

Comment [SX55]: We use the term affected local government differently elsewhere in the rule. Cf. OAR 660-025-0085(5)(c)(D).

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

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

18 | (b) The date **the local government must submit** the evaluation and work program or
19 evaluation and decision that no work program is required ~~must be submitted~~;

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20 (c) Applicable evaluation forms; and

21 (d) Other information the department considers relevant.

22 (3) The director must provide copies of the materials sent to the local government to
23 interested persons upon written request.

24 Stat. Auth.: ORS 197.040 & 197.633
25 Stats. Implemented: ORS 197.628 - 197.646
26 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

27 **660-025-0060**
28 **Periodic Review Assistance Team(s)**

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

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

2 (a) Information relevant to the periodic review process;

3 (b) New and updated information;

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

5 (d) Coordinated evaluation and comment from state agencies.

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

Comment [SXS6]: Note – term is from ORS
197.180

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

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

16 (6) In addition to the Periodic Review Assistance Team(s), the department may utilize the
17 Economic Revitalization Team or institute an alternative process for coordinating agency
18 participation in the periodic review of comprehensive plans.

19 (7) [~~Consideration by the commission.~~] The commission must consider the
20 recommendations, if any, of the Periodic Review Assistance Team(s).

21 Stat. Auth.: ORS 197.040 & 197.633

22 Stats. Implemented: ORS 197.628 - 197.646

23 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

24 **660-025-0070**

25 **Need for Periodic Review**

26 (1) The following conditions indicate the need for ~~and establish the scope of review~~
27 ~~for,~~ periodic review of comprehensive plans and land use regulations when **periodic**
28 **review is** required under OAR 660-025-0030:

29 (a) There has been a substantial change in circumstances including but not limited to the
30 conditions, findings, or assumptions upon which the comprehensive plan or land use
31 regulations were based, so that the comprehensive plan or land use regulations do not
32 comply with the statewide planning goals relating to economic development, needed
33 housing, transportation, public facilities and services and urbanization;

1 (b) Decisions based on acknowledged comprehensive plan and land use regulations are
2 inconsistent with the goals relating to economic development, needed housing,
3 transportation, public facilities and services and urbanization;

4 (c) There are issues of regional or statewide significance, intergovernmental coordination,
5 or state agency plans or programs affecting land use which must be addressed in order to
6 bring comprehensive plans and land use regulations into compliance with the goals
7 relating to economic development, needed housing, transportation, public facilities and
8 services and urbanization; or

9 (d) **The local government, commission or department determines that** [T]the existing
10 comprehensive plan and land use regulations are not achieving the statewide planning
11 goals relating to economic development, needed housing, transportation, public facilities
12 and services and urbanization.

13 (2) When a local government requests initiation of periodic review under OAR 660-025-
14 0035[(2)], the need for periodic review may be based on factors not contained in section
15 (1) of this rule and the scope of such a periodic review may be more limited **or more**
16 **expansive** than would be the case for scheduled periodic review under section (1) of this
17 rule.

18 | Stat. Auth.: ORS 197.040 **& 197.633**
19 Stats. Implemented: ORS 197.628 - 197.646
20 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
21 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

22 **660-025-0080**
23 **Notice and Citizen Involvement**

24 (1) The local government must use its acknowledged [~~or otherwise approved~~] citizen
25 involvement program, **and amend the program if necessary consistent with section (2)**
26 **of this rule**, to provide adequate participation opportunities for citizens and other
27 interested persons in all phases of the local periodic review. Each local government must
28 publish a notice in a newspaper of general circulation within the community informing
29 citizens about the initiation of the local periodic review. The local government must also
30 provide written notice of the initiation of the local periodic review to [~~other~~] persons who
31 [~~in writing,~~] request, **in writing**, such notice.

32 | (2) Each local government must review its citizen involvement program ~~prior to~~**At the**
33 **beginning of periodic review** and, **if necessary, amend the program to ensure** [assure
34 ~~that there is an~~ **it will provide** adequate **opportunities** [~~process~~] for citizen involvement
35 in all phases of the periodic review process. Citizen involvement opportunities must, at a
36 minimum, include:

37 (a) Interested persons must have the opportunity **to review materials in advance and to**
38 comment in writing in advance of or at one or more hearings on the periodic review

1 evaluation. Citizens and other interested persons must have the opportunity to present
2 comments orally at one or more hearings on the periodic review evaluation. Citizens and
3 other interested persons must have the opportunity to propose periodic review work tasks
4 prior to or at one or more hearings. The local government must provide a response to
5 comments at or following the hearing on the evaluation.

6 (b) Interested persons must have the opportunity to **review materials in advance and to**
7 comment in writing in advance of or at one or more hearings on a periodic review work
8 task. Citizens and other interested persons must have the opportunity to present
9 comments orally at one or more hearings on a periodic review work task. The local
10 government must respond to comments at or following the hearing on a work task.

11 **(3) ~~Before a~~ local government adopts a proposing to change to an acknowledged**
12 **comprehensive plan or a land use regulation under a work task, the local**
13 **government must provide notice of the proposed change to the department 35 days**
14 **in advance of the first evidentiary hearing, as provided in ORS 197.610 and OAR**
15 **660-018-00xx.**

16 Stat. Auth.: ORS 197.040 & 197.633

17 Stats. Implemented: ORS 197.628 - 197.646

18 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

19 **660-025-0085**

20 **Commission Hearings Notice and Procedures**

21 (1) Hearings before the commission on a referral of a local government submittal of an
22 **evaluation**, work program, **determination that a work program is not necessary**, or
23 hearings on referral or appeal of a work task must be noticed and conducted in
24 accordance with this rule.

25 (2) The commission shall take final action on an appeal or referral **of a completed work**
26 **task** within 90 days of the date the appeal was filed or the director issued notice of the
27 referral unless:

28 (a) At the request of a local government and a person who files a valid objection or
29 appeals the director's decision, the department may provide mediation services to resolve
30 disputes related to the appeal. Where mediation is underway, the commission shall delay
31 its hearing until the mediation process is concluded or the director, after consultation with
32 the mediator, determines that mediation is of no further use in resolution of the work
33 program or work task disagreements;

34 (b) If the appeal or referral raises new or complex issues of fact or law that make it
35 unreasonable for the commission to give adequate consideration to the issues within the
36 90-day limit the commission is not required to take final action within that time limit; or

Comment [SXS7]: Under new ORS 197.633(4) and ORS 197.644(2), I'm not sure either evaluation or determination that a work program is not necessary need to come before LCDC

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1 (c) If the parties to the appeal and the commission agree to an extension, the hearing may
2 be continued for a period not to exceed an additional 90 days.

3 (3) The director must provide written notice of the hearing to the local government, the
4 appellant, objectors, and individuals requesting notice in writing. The notice must contain
5 the date and location of the hearing.

6 (4) The director may prepare a written report to the commission on an appeal or referral.
7 If a report is prepared, the director must mail a copy to the local government, objectors,
8 the appellant, and individuals requesting the report in writing.

9 (5) Commission hearings will be conducted using the following procedures:

10 (a) The chair will open the hearing and explain the proceedings;

11 (b) The director or designee will present an oral report regarding the nature of the matter
12 before the commission, an explanation of the director's decision, if any, and other
13 information to assist the commission in reaching a decision. If another state agency
14 participated in the periodic review under ORS 197.637 or 197.638, the agency may
15 participate in the director's oral report.

16 (c) Participation in the hearing is limited to:

17 (A) The local government or governments whose decision is under review;

18 (B) Persons who filed a valid objection to the local decision in the case of commission
19 hearing on a referral;

20 (C) Persons who filed a valid appeal of the director's decision in the case of a commission
21 hearing on an appeal; and

22 (D) Other affected local governments.

23 (d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.

24 (e) Persons or their authorized representative may present oral argument.

25 (f) The local government that submitted the task may provide general information from
26 the record on the task submittal and address those issues raised in the department review,
27 objections, or the appeal. A person who submitted objections or an appeal may address
28 only those issues raised in the objections or the appeal submitted by that person. Other
29 affected local governments may address only those issues raised in objections or an
30 appeal.

31 (g) **As provided in ORS 197.633(3), t[F]**he commission will **confine its review of [not**
32 **consider new]** evidence **to the local record**~~[unless it requests it, at its discretion. If the~~

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1 ~~commission considers new evidence, it will allow the parties an opportunity to review~~
2 ~~and respond to the new evidence, subject to the time limits in section (2) of this rule].~~

3 **The commission will consider evidence from the local record submitted to the**
4 **department with:**

Comment [BR8]: Recommended insertion as per comment received from Metro (See attachment D and Response to Comments),

5 **(A) The local government's submittal filed pursuant to OAR 660-025-0130(3);**

6 **(B) An objection filed pursuant to OAR 660-025-0140;**

7 **(C) A local government response to an objection filed pursuant to OAR 660-025-**
8 **0130(4); and**

9 **(D) An exception filed pursuant to OAR 660-025-0160(5).**

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10 (h) The director or commission may take official notice of law defined as:

11 (A) The decisional, constitutional and public statutory law of Oregon, the United States
12 and any state, territory or other jurisdiction of the United States.

13 (B) Public and private official acts of the legislative, executive and judicial departments
14 of this state, the United States, and any other state, territory or other jurisdiction of the
15 United States.

16 (C) Regulations, ordinances and similar legislative enactments issued by or under the
17 authority of the United States or any state, territory or possession of the United States.

18 (D) Rules of court of any court of this state or any court of record of the United States or
19 of any state, territory or other jurisdiction of the United States.

20 (E) The law of an organization of nations and of foreign nations and public entities in
21 foreign nations.

22 (F) An ordinance, comprehensive plan or enactment of any local government in this state,
23 or a right derived therefrom.

24 Stat. Auth.: ORS 197.040 & 197.633

25 Stats. Implemented: ORS 197.628 - 197.646

26 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

27 **660-025-0090**

28 **Evaluation, Work Program or Decision that No Work Is Necessary**

29 (1) The local government must conduct an evaluation of its plan and land use regulations
30 based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The
31 local evaluation process must comply with the following requirements:

1 (a) The local government must follow its citizen involvement program and the
2 requirements of OAR 660-025-0080 for conducting the evaluation and determining the
3 scope of a work program.

4 (b) The local government must provide opportunities for participation by the department
5 and Periodic Review Assistance Team. ~~The local government must consider~~ issues
6 related to coordination between local government comprehensive plan provisions and
7 certified state agency coordination programs that are raised by the affected agency or
8 Periodic Review Assistance Team. ~~must be considered by the local government.~~

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9 (c) The local government may provide opportunities for participation by the Economic
10 Revitalization Team.

11 (d) At least 21 days before submitting the evaluation and work program, or decision that
12 no work program is required, the local government must provide copies of the evaluation
13 to members of the Periodic Review Assistance Team, if formed, and others who have, in
14 writing, requested copies.

15 (e) After review of comments from interested persons, the local government must adopt
16 an evaluation and work program or decision that no work program is required.

17 (2) The local government must submit the evaluation and work program, or decision that
18 no work program is required, to the department according to the following requirements:

19 (a) The evaluation must include completed evaluation forms that are appropriate to the
20 jurisdiction as determined by the director. Evaluation forms will be based on the
21 jurisdiction's size, growth rate, geographic location, and other factors that relate to the
22 planning situation at the time of periodic review. Issues related to coordination between
23 local government comprehensive plan provisions and certified agency coordination
24 programs may be included in evaluation forms.

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

28 (c) The evaluation and work program, or decision that no work program is necessary,
29 must be submitted within six months of the date the department sent the letter initiating
30 the periodic review process, including any extension granted under section (3) of this
31 rule.

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

1 (4) A decision by the director to deny a request for an extension may be appealed to the
2 commission according to the procedures in OAR 660-025-0110(5), or the director may
3 refer a request for extension under section (3) of this rule to the commission pursuant to
4 OAR 660-025-0085.

5 (5) If a local government fails to submit its evaluation and work program, or decision that
6 no work program is necessary, by the deadline set by the director or the commission,
7 including any extension, the director shall schedule a hearing before the commission
8 according to OAR 660-025-0170(3).

9 (6) A decision by the director to approve a work program, that no work program is
10 necessary or that no further work is necessary, is final and not subject to appeal.

11 Stat. Auth.: ORS 197.040 & 197.633

12 Stats. Implemented: ORS 197.628 - 197.646

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

14 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

15 **660-025-0100**

16 **Notice and Filing of Objections (Work Program Phase)**

17 (1) After the local government approves the evaluation and work program, or the
18 evaluation and decision that no work program is necessary, the local government must
19 notify the department and persons who participated at the local level orally or in writing
20 during the local process. The local government notice must contain the following
21 information:

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

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

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

28 (2) Persons who participated at the local level orally or in writing during the local process
29 leading to the evaluation and work program or decision that no work program is
30 necessary may object to the local government's decision. To be valid, an objection must:

31 (a) Be in writing and filed with the department's Salem office no later than 21 days from
32 the date the notice was mailed by the local government;

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

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

2 (d) Demonstrate that the objecting party participated at the local level orally or in writing
3 during the local process; **and**

4 **(e) Be provided to the local government.**

5 (3) Objections that do not meet **all** the requirements of section (2) of this rule [~~must~~] **will**
6 not be considered by the director or commission.

7 (4) If **the department does not receive any** [~~no~~] valid objections [~~are received~~] within
8 the 21-day objection period, the director may approve the evaluation and work program
9 or decision that no work program is required. Regardless of whether valid objections are
10 received, the department [~~may~~] **must** make its own determination of the sufficiency of the
11 evaluation and work program or determination that no work program is necessary.

Comment [SXS9]: Clarifies that it is DLCD and not the LG under section (2)(e) that must receive the valid objection.

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12 (5) If **the department receives one or more** valid objections [~~are received~~], the
13 department must issue a report **that** [~~The report must~~] **addresses** the issues raised in
14 valid objections. The report must identify specific work tasks to resolve valid objections
15 or department concerns. A valid objection must either be sustained or rejected by the
16 department or commission based on the statewide planning goals and related statutes and
17 administrative rules.

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18 Stat. Auth.: ORS 197.040 & 197.633
19 Stats. Implemented: ORS 197.628 - 197.646
20 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
21 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. &
22 cert. ef. 10-19-11

23 **660-025-0110**
24 **Director and Commission Action (Work Program Phase)**

25 (1) **In response to an evaluation and work program submitted to the department**
26 **pursuant to OAR 660-025-0100,** [~~T~~] the director may:

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

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

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

Comment [SXS10]: Corresponding change if response to comment 7 is to delete evaluation and determination that no work program is necessary.

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

Comment [SXS11]: Same

5 (3) The director must provide written notice of the decision to the local government
6 persons who filed objections, and persons who requested notice of the local government
7 decision.

8 (4) The director's decision to approve an evaluation and work program or determination
9 that no work program is necessary is final and may not be appealed.

10 (5) The director's decision to deny an evaluation and work program or determination that
11 no work program is necessary may be appealed to the commission by the local
12 government, or a person who filed an objection, or other person who participated orally
13 or in writing at the local level.

14 (a) Appeal of the director's decision must be filed with the department within 21 days of
15 the date notice of the director's action was mailed;

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

22 (6) If no such appeal is filed, the director's decision shall be final.

23 (7) In response to an appeal, the director may prepare and submit a report to the
24 commission. The provisions in OAR 660-025-0160(~~3~~4) and (~~5~~4) apply.

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25 (8) The commission shall hear referrals and appeals of evaluations and work programs
26 according to the procedures in OAR 660-025-0085.

27 (9) Following its hearing, the commission must issue an order that either:

28 (a) Establishes a work program; or

29 (b) Determines that no work program is necessary.

30 Stat. Auth.: ORS 197.040 & 197.633

31 Stats. Implemented: ORS 197.628 - 197.646

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

33 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 **660-025-0130**
2 **Submission of Completed Work Task**

3 (1) A local government must submit completed work tasks as provided in the approved
4 work program to the department along with the notice required in OAR 660-025-0140
5 and any form required by the department. A local government must submit to the
6 department a list of persons who participated orally or in writing in the local proceedings
7 leading to the adoption of the work task or who requested notice of the local
8 government's final decision on a work task.

9 (2) After receipt of a work task, the department must determine whether the submittal is
10 complete.

11 (3) To be complete, a submittal must be a final decision containing all required elements
12 identified for that task in the work program. **The department may accept a [A]** portion
13 of a task or subtask ~~[may be accepted]~~ as a complete submittal if the work program
14 identified that portion of the task or subtask as a separate item for adoption by the local
15 government. Task submittals are subject to the following requirements:

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16 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire
17 local record, including but not limited to adopted ordinances and orders, studies,
18 inventories, findings, staff reports, correspondence, hearings minutes, written testimony
19 and evidence, and any other items specifically listed in the work program;

20 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances,
21 **resolutions,** and orders~~[-];~~ **any amended comprehensive or regional framework plan**
22 **provisions or land use regulations;** findings~~[-];~~ hearings minutes~~[-];~~ **materials from the**
23 **record that the local government deems necessary to explain the submittal or cites**
24 **in its findings;** ~~[written testimony and evidence,]~~ and a detailed index listing **all items in**
25 **the local record indicating whether or not the item is** included in the submittal. **All**
26 ~~[I]tems in the local record [not included in the submittal]~~ must be made available for
27 public review during the period for submitting objections under OAR 660-025-0140. The
28 director or commission may require **a local government to submit [ssion of]** any
29 materials **from the local record** not included in the initial submittal;

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30 (c) A task submittal of over 500 pages must include an index of all submitted materials.

31 (4) A submittal includes only the materials provided to the department pursuant to
32 section (3) of this rule. Following submission of objections pursuant to OAR 660-025-
33 0140, the local government may:

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34 ~~(a) p~~Provide written correspondence that is not part of the local record which identifies
35 material in the record relevant to filed objections. The correspondence may not include or
36 refer to materials not in the record submitted or listed pursuant to section (3) of this rule.
37 The local government must provide the correspondence to each objector at the same time
38 it is sent to the department.

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1 **(b) Submit material in the record that were not part of the submittal under section**
2 **(3) if the materials are relevant to one or more filed objections. The local**
3 **government may not include or refer to materials not in the local record. The local**
4 **government must provide the materials to each objector at the same time it is sent to**
5 **the department.**

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6 (5) If the department determines that a submittal is incomplete, it must notify the local
7 government. If the department determines that the submittal should be reviewed despite
8 missing information, the department may commence a formal review of the submittal.
9 Missing material may be identified as a deficiency in the review process and be a basis to
10 require further work by the local government.

11 (6) A local government may request an extension of time for submitting a work task. The
12 director may grant the request if the local government shows good cause for the
13 extension. A local government may be permitted only one extension, which shall be for
14 no more than one year.

15 (7) If a local government fails to submit a complete work task by the deadline set by the
16 director, or the commission, including any extension, the director must schedule a
17 hearing before the commission. The hearing must be conducted according to the
18 procedures in OAR 660-025-~~0170(3)~~~~0090(5)~~.

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19 Stat. Auth.: ORS 197.040 & 197.633
20 Stats. Implemented: ORS 197.628 - 197.646
21 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
22 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
23 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

24 **660-025-0140**
25 **Notice and Filing of Objections (Work Task Phase)**

26 (1) After the local government makes a final decision on a work task, the local
27 government must notify the department and persons who participated at the local level
28 orally or in writing during the local process or who requested notice in writing. The local
29 government notice must contain the following information:

30 (a) Where a person can review a copy of the local government's final decision, and how a
31 person may obtain a copy of the final decision; **and**

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32 (b) The requirements listed in section (2) of this rule for filing a valid objection to the
33 work task; ~~and~~.

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

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35 (2) Persons who participated orally or in writing in the local process leading to the final
36 decision may object to the local government's work task submittal, **and may append to**

1 their objections any document from the local government's record, whether or not it
2 was submitted to the department by the local government. To be valid, an

Comment [BR12]: From Metro Comments, suggested insert.

3 objection[s] must:

4 (a) Be in writing and filed with the department's Salem office no later than 21 days from
5 the date the local government mailed the notice;

6 (b) Clearly identify an alleged deficiency in the work task sufficiently to identify the
7 relevant section of the final decision and the statute, goal, or administrative rule the task
8 submittal is alleged to have violated. ;

9 (c) Suggest specific revisions that would resolve the objection; [and]

10 (d) Demonstrate that the objecting party participated orally or in writing in the local
11 process leading to the final decision; and

12 (e) Be provided to the local government.

13 (3) Objections that do not meet all the requirements of section (2) of this rule will not be
14 considered by the director or commission.

15 (4) If the department does not receive any [no] valid objections [are received] within
16 the 21-day objection period, the director may approve the work task. Regardless of
17 whether valid objections are received, the director must[may] make a determination of
18 whether the work task final decision complies with the statewide planning goals and
19 applicable statutes and administrative rules.

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20 (5) When a subsequent work task conflicts with a work task that has been deemed
21 acknowledged, or violates a statewide planning goal, applicable statute or administrative
22 rule related to a previous work task, the director or commission shall not approve the
23 submittal until all conflicts and compliance issues are resolved. In such case, the director
24 or commission may enter an order deferring acknowledgment of all, or part, of the work
25 task until completion of additional tasks.

26 (6) If valid objections are received or the department conducts its own review, the
27 department must issue a report. The report shall address the issues raised in valid
28 objections. The report shall identify specific work tasks to resolve valid objections or
29 department concerns. A valid objection shall either be sustained or rejected by the
30 department or commission based on the local record, and applicable statewide planning
31 goals, [or applicable] statutes or administrative rules.

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32 Stat. Auth.: ORS 197.040 & 197.633

33 Stats. Implemented: ORS 197.628 - 197.646

34 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
35 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
36 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 **660-025-0150**
2 **Director Action and Appeal of Director Action (Work Task Phase)**
3

4 **(1) In response to a completed work task submitted to the department for review in**
5 **accordance with OAR 660-025-0140, t[~~F~~]**he director may:

- 6 (a) Issue an order approving the completed work task;
- 7 (b) Issue an order remanding the work task to the local government including a date for
8 resubmittal;
- 9 (c) Refer the work task to the commission for review and action; or
- 10 (d) The director may issue an order approving portions of the completed work task
11 provided these portions are not affected by an order remanding or referring the completed
12 work task.
- 13 (2) The director must send the order to the local government, persons who filed
14 objections and persons who, in writing, requested a copy of the action.

15 ~~(3) The director shall take action on, and t[~~F~~]~~the order or referral must be sent, ~~[within]~~
16 ~~not later than~~ 120 days of the date the department received the task submittal from the
17 local government, unless the local government waives the 120-day deadline or the
18 commission grants the director an extension. The local government may withdraw the
19 submittal, in which case the 120-day deadline does not apply, provided the withdrawal
20 will not result in the local government passing the deadline for work task submittal in the
21 work program and any extension allowed in OAR 660-025-0130(6). ~~}~~

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22 ~~(4) If the director does not issue an order or refer the work task within the time limits set~~
23 ~~by section (3) of this rule, and the department did not receive any valid objections to the~~
24 ~~work task, the work task shall be deemed approved. In such cases, the department will~~
25 ~~provide a letter to the local government certifying that the work task is approved. }~~

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26 ~~(5)If the department received one or more valid objections to the work task, the director~~
27 ~~must either issue an order or refer the work task to the commission for review. }~~

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28 ~~(3) The director shall take action on a work task not later than 120 days after the~~
29 ~~local government submits the work task for review unless the local government~~
30 ~~waives the 120-day deadline or the commission grants the director an extension. If~~
31 ~~the director does not take action within the time period required by this subsection,~~
32 ~~the work task is deemed approved. The department shall provide a letter to the local~~
33 ~~government certifying that the work task is approved unless an interested party has~~
34 ~~filed a timely objection to the work task consistent with administrative rules for~~
35 ~~conducting periodic review. }~~

Comment [SXS13]: We'll need to track any corresponding numbering changes

36 ~~(6)4~~ Appeals of a director's decision are subject to the following requirements:

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1 (a) A director's decision approving or partially approving a work task may be appealed to
2 the commission only by a person who filed a valid objection.

3 (b) A director's decision remanding or partially remanding a work task may be appealed
4 to the commission only by the local government, a person who filed a valid objection, or
5 by another person who participated orally or in writing in the local proceedings leading to
6 adoption of the local decision under review.

7 (c) Appeals of a director's decision must be filed with the department's Salem office
8 within 21 days of the date the director's action was mailed;

9 (d) A person, other than the local government that submitted the work task and an
10 affected local government, appealing the director's decision must:

11 (A) Show that the person participated in the local proceedings leading to adoption of the
12 work task orally or in writing;

13 (B) Clearly identify a deficiency in the work task sufficiently to identify the relevant
14 section of the submitted task and the statute, goal, or administrative rule the local
15 government is alleged to have violated; and

16 (C) Suggest a specific modification to the work task necessary to resolve the alleged
17 deficiency.

18 | ~~(7.15)~~ If no appeal to the commission is filed within the time provided by section (6) of
19 this rule, the director's order is deemed affirmed by the commission. If the order
20 approved a work task, the work task is deemed acknowledged.

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21 | **(86) The director's standard of review is the same as the standard that governs the**
22 **commission expressed in OAR 660-025-0160(2).**

23 Stat. Auth.: ORS 197.040 & 197.633

24 Stats. Implemented: ORS 197.628 - 197.646

25 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
26 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
27 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

28 **660-025-0160**

29 **Commission Review of Referrals and Appeals (Work Task Phase)**

30 (1) The commission shall hear appeals and referrals of work tasks according to the
31 applicable procedures in OAR 660-025-0085 and 660-025-0150.

32 | **(2) The commission's standard of review, as provided in ORS 197.633(3), is:**

1 **(a) For evidentiary issues, whether there is substantial evidence in the record as a**
2 **whole to support the local government's decision.**

3 **(b) For procedural issues, whether the local government failed to follow the**
4 **procedures applicable to the matter before the local government in a manner that**
5 **prejudiced the substantial rights of a party to the proceeding.**

6 **(c) For issues concerning compliance with applicable laws, whether the local**
7 **government's decision on the whole complies with applicable statutes, statewide**
8 **land use planning goals, administrative rules, the comprehensive plan, the regional**
9 **framework plan, the functional plan and land use regulations. The commission shall**
10 **defer to a local government's interpretation of the comprehensive plan or land use**
11 **regulations in the manner provided in ORS 197.829. For purposes of this**
12 **paragraph subsection, "complies" has the meaning given the term "compliance" in**
13 **the phrase "compliance with the goals" in ORS 197.747.**

14 ([2]3) In response to a referral or appeal, the director may prepare and submit a report to
15 the commission.

16 ([3]4) The department must mail a copy of the report to the local government, all persons
17 who submitted objections, and other persons who appealed the director's decision. The
18 department must mail the report at least 21 days before the commission meeting to
19 consider the referral or appeal.

20 ([4]5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to
21 the director's report within ~~ten (10) days~~ of the date the report is mailed, **and may**
22 **append to their exceptions any document from the local record, whether or not the**
23 **local government submitted it to the department under OAR 660-025-0130.** The
24 director may issue a response to exceptions and may make revisions to the director's
25 report in response to exceptions. **The department may provide the commission a [A]**
26 **response or revised report [may be provided to the commission]** at or prior to its hearing
27 on the referral or appeal. A revised director's report does not require mailing 21 days
28 prior to the commission hearing.

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29 ([5]6) The commission shall hear appeals based on the **local** record. ~~[except as provided~~
30 ~~in OAR 660-025-0085(5)(c)].~~ The written record shall consist of the submittal, timely
31 objections, the director's report, timely exceptions to the director's report, the director's
32 response to exceptions and revised report if any, and the appeal if one was filed.

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33 ([6]7) Following its hearing, the commission must issue an order that does one or more of
34 the following:

35 (a) Approves the work task or a portion of the task;

36 (b) Remands the work task or a portion of the task to the local government, including a
37 date for resubmittal;

1 (c) Requires specific plan or land use regulation revisions to be completed by a specific
2 date. Where specific revisions are required, the order shall specify that no further review
3 is necessary. These changes are final when adopted by the local government. The failure
4 to adopt the required revisions by the date established in the order shall constitute failure
5 to complete a work task by the specified deadline requiring the director to initiate a
6 hearing before the commission according to the procedures in OAR 660-025-0170(3);

7 (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b);
8 or

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

11 ~~(78)~~ If the commission approves the work task or portion of a work task under subsection
12 | ~~(617)~~(a) of this rule and no appeal to the Court of Appeals is filed within the time
13 provided in ORS 183.482, the work task or portion of a work task shall be deemed
14 | acknowledged. If the commission decision on a work task is under subsection ~~(617)~~(b)
15 through (e) of this rule and no appeal to the Court of Appeals is filed within the time
16 provided in ORS 183.482, the decision is final.

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17 Stat. Auth.: ORS 197.040 & 197.633
18 Stats. Implemented: ORS 197.628 - 197.646
19 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
20 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
21 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

22 **660-025-0170**
23 **Modification of an Approved Work Program, Extensions, and Sanctions for Failure**
24 **to Meet Deadlines**

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

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

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

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

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

1 (2) Failure to complete a modified work task shall constitute failure to complete a work
2 task by the specified deadline, requiring the director to initiate a hearing before the
3 commission according to the procedures in section (3).

4 (3) If a local government fails to submit its evaluation and work program, a decision that
5 no work program is necessary, or a work task by the deadline set by the director or the
6 commission, including any extension, the director shall schedule a hearing before the
7 commission. The notice must state the date and location at which the commission will
8 conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and
9 as follows:

10 (a) The director shall notify the local government in writing that its submittal is past due
11 and that the commission will conduct a hearing and consider imposing sanctions against
12 the local government as required by ORS 197.636(2);

13 (b) The director and the local government may prepare written statements to the
14 commission addressing the circumstances causing the local government to miss the
15 deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The
16 written statements must be filed in a manner and according to a schedule established by
17 the director;

18 (c) The commission shall issue an order imposing one or more of the sanctions listed in
19 ORS 197.636(2) until the local government submits its evaluation and work program or
20 its decision that no work program is required, or its work task required under OAR 660-
21 025-0130, as follows:

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

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

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

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

31 Stat. Auth.: ORS 197.040 & 197.633

32 Stats. Implemented: ORS 197.628 - 197.646

33 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
34 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. &
35 cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

1 660-025-0175
2 **Review of UGB Amendments and Urban Reserve Area Designations**

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3 (1) ~~A local government must submit t~~**The following final** [E]land use decisions
4 ~~[establishing or amending an urban growth boundary or urban reserve area]~~ must be
5 ~~submitted~~ to the department for review for compliance with the applicable statewide
6 planning goals, statutes and rules **in the manner provided for review of a work task**
7 **under ORS 197.633**~~[when]:~~

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8 [(a) A metropolitan service district amends its urban growth boundary to include more
9 than 100 acres;

10 (b) A city with a population of 2,500 or more within its urban growth boundary amends
11 the urban growth boundary to include more than 50 acres; or

12 (c) A city or metropolitan service district designates or amends urban reserve areas under
13 ORS 195.145.]

14 **(a) An amendment of an urban growth boundary by a metropolitan service district**
15 **that adds more than 100 acres to the area within its urban growth boundary;**

16 **(b) An amendment of an urban growth boundary by a city with a population of**
17 **2,500 or more within its urban growth boundary that adds more than 50 acres to the**
18 **area within the urban growth boundary;**

19 **(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a**
20 **metropolitan service district or by a city with a population of 2,500 or more within**
21 **its urban growth boundary;**

22 **(d) An amendment of the boundary of an urban reserve by a metropolitan service**
23 **district;**

24 **(e) An amendment of the boundary of an urban reserve to add more than 50 acres**
25 **to the urban reserve by a city with a population of 2,500 of more within its urban**
26 **growth boundary; and**

27 **(f) A designation or an amendment to the designation of a rural reserve under**
28 **ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service**
29 **district, including an amendment of the boundary of a rural reserve.**

30 (2) The standards and procedures in this rule govern the local government process and
31 submittal, and department and commission review.

32 (3) The local government must provide notice of the proposed amendment according to
33 the procedures and requirements for post-acknowledgement plan amendments in ORS
34 197.610 and OAR 660-018-0020.

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

4 (5) Department and commission review and decision on the submittal from the local
5 government must follow the procedures and requirements for review and decision of a
6 work task submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

7 Stat. Auth.: ORS 197.040

8 Stats. Implemented: ORS 195.145, 197.626 - 197.646

9 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD

10 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

11 **660-025-0180**
12 **Stay Provisions**

13 (1) When a local government makes a final decision on a work task or portion of a work
14 task that is required by, or carries out, an approved work program, or if the local
15 government **is required to submit a final decision to the department under OAR 660-**
16 **025-0175(1)** ~~is a city with a population of 2,500 or more and either adopts a decision~~
17 ~~adding more than 50 acres to its urban growth boundary or designates or amends urban~~
18 ~~reserve areas, or a metropolitan service district that adopts a decision adding more than~~
19 ~~100 acres to its urban growth boundary or designates or amends urban reserve areas],~~
20 interested persons may request a stay of the local government's final decision by filing a
21 request for a stay with the commission. In taking an action on a request to stay a local
22 government's final decision on a work task, the commission must use the standards and
23 procedures contained in OAR chapter 660, division 1.

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

29 Stat. Auth.: ORS 197.040 **& 197.633**

30 Stats. Implemented: ORS 197.628 - 197.646

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

32 4-2006, f. & cert. ef. 5-15-06

33 **660-025-0210**
34 **Updated Planning Documents**

35 (1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS
36 197.010 **and 197.633**, each local government must file ~~two~~ **a** complete and accurate
37 ~~copies~~ of its comprehensive plan and land use regulations bearing the date of adoption
38 (including plan and zone maps bearing the date of adoption) with the department
39 following completion of periodic review. ~~These materials may be either a new printing~~

Comment [SXS14]: Portland Bureau of Planning Topic 8 suggests deleting this provision. However, ORS 197.625(3)(d)(A) applies to changes adopted in periodic review being effective absent a stay under ORS 197.845.

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1 | or an up-to-date compilation of the required materials, **and must include data described**
2 | **in OAR 660-018-0040(4), if applicable.** ~~[or upon approval of the department, an up-to-~~
3 | ~~date copy on computer disk(s) or other electronic format.]~~

4 (2) Materials described in section (1) of this rule must be submitted to the department
5 within six months of completion of the last work task.

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

9 (4) Jurisdictions that do not file an updated plan on time shall not be eligible for **periodic**
10 **review** grants from the department until such time as the required materials are provided
11 to the department.

12 Stat. Auth.: ORS ~~[183 &]~~ 197.040

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

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
15 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2011, f. & cert. ef. 10-19-11

16 **660-025-0220**

17 **Computation of Time**

18 (1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless
19 otherwise provided by rule, the time to complete required tasks, notices, objections, and
20 appeals shall be computed as follows. The first day of the designated period to complete
21 the task, notice, objection or appeal shall not be counted. The last day of the period shall
22 be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of
23 Oregon. In that event the period shall run until the end of the next day that is not a
24 Saturday, Sunday or state legal holiday.

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

27 Stat. Auth.: ORS 197.040

28 | Stats. Implemented: ORS **174.120**, 187.010, 187.020, 197.628 - 197.650

29 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
30 4-2006, f. & cert. ef. 5-15-06

31 **660-025-0230**

32 **Applicability**

33 (1) **Except as otherwise required by law, [A]** amendments to this division apply as
34 follows:

Comment [BR15]: Regarding GIS Data regarding UGB and reserve amendments. Alternatively, this could be repeated in this rule (would be new section (2), requires renumbering of subsequent sections):
(2) For local governments that produce geospatial data depicting an urban growth boundary (UGB) or urban or rural reserve that is created or altered as part of an adopted change to a comprehensive plan or land use regulation, the submission must include electronic files containing geospatial data for the applicable boundary change. Local governments that produce geospatial data concerning planning and zoning maps not related to UGBs or reserves, including changes to those maps, are encouraged but not required to share this data with the department. Geospatial data submitted to the department must meet the following standards:
(a) The product must be submitted in an electronic format compatible with the State's Geographic Information System (GIS) software standard (OAR 125-600-7550);
(b) The data must be free of topological errors;
(c) Metadata must meet the current State of Oregon metadata standards developed by the Oregon Geographic Information Council (OGIC); and
(d) All data should have the attributes, units, map projection and relevant datums documented in the metadata.

1 (a) Local governments in periodic review that have not submitted an evaluation and work
2 program, or decision that no work program is required, must apply the amendments to the
3 evaluation and work program or decision that no work program is required;

4 (b) Local governments in periodic review must apply amendments to work tasks not
5 completed or submitted to the department on the effective date of the amendments;

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

8 (d) The procedures and standards in amendments for department and commission review
9 and action on periodic review submittals, requests for extensions, and late submittals
10 apply to all such submittals and requests filed **with the department** after the effective
11 date of the amendments, as well as any such submittals and requests awaiting initial
12 department action on the effective date of the amendments.

13 Stat. Auth.: ORS 197.040-197.245

14 Stats. Implemented: ORS 197.628 - 197.646

15 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD
16 1-2011, f. & cert. ef. 10-19-11

17 **660-025-0250**

18 **Transfer of Matters to the Land Use Board of Appeals**

19 (1) When the department receives an appeal of a director's decision pursuant to OAR
20 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the
21 Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).

22 (2) Matters raised in an appeal may be transferred by the director to the board when:

23 (a) The matter is an urban growth boundary expansion approved by the local government
24 based on a quasi-judicial land use application and does not require an interpretation of
25 first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or

26 (b)(A) The matter alleges the work task submittal violates a provision of law not directly
27 related to compliance with a statewide planning goal;

28 (B) The appeal clearly identifies the provision of the task submittal that is alleged to
29 violate a provision of law and clearly identifies the provision of law that is alleged to
30 have been violated; and

31 (C) The matter is sufficiently well-defined that it can be separated from other allegations
32 in the appeal.

33 (3) When the director elects to transfer a matter to the board, notice of the decision must
34 be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of

Comment [SXS16]: Is that too limited of a circumstance? Are there situations where the director might refer a matter based on an objection and not go through first resolving it in the director's decision?

1 the date the appeal was filed with the department. The notice shall include identification
2 of the matter to be transferred and explanation of the procedures and deadline for appeal
3 of the matter to the board.

4 (4) The director's decision under this rule is final and may not be appealed.

5 Stat. Auth.: ORS 197.040

6 Stats. Implemented: ORS 197.825

7 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

Land Conservation and Development Commission

Public Comment Received as of November 22, 2011

December 7-9, 2011

<via email>

November 22, 2011

Dear Mr. Rindy:

These comments are respectfully submitted on behalf of the Portland Bureau of Planning and Sustainability for inclusion in the Land Conservation and Development Commission's hearing record for December 7 through 9, 2011.

The proposed amendments to the Post Acknowledgement Plan Amendment rule are thoughtful, thorough, and ready for adoption. While good progress has been made on the amendments to the Period Review Rule, we respectfully request that the Commission not take final action until its January 26, 2012 meeting in order to address some remaining issues.

These issues generally fall within one of two categories:

1. Important differences between the periodic review and post acknowledgement work program products, and
2. Ramifications of the Commission's review being limited to the local record.

We have identified these issues by topic, and offer some proposed improvements in the form of amended rule language.

Topic 1: Notice of Proposed Adoption for Periodic Review Tasks

Nether the existing, rule, statute of HB 2130 (2011) require a notice of proposed adoption for a periodic review work task. So, it is a good idea to provide for one by rule.

The proposed rule language does not, however, recognize that the post acknowledgment plan amendment procedures are not always a good fit for periodic review tasks. Generally, post acknowledgement amendments are narrower in subject matter scope and considerably less voluminous than periodic review tasks. Amendments are also more fully developed when they are first proposed than tasks.

Requiring a notice of proposed adoption for periodic review tasks 35-days before the "first evidentiary hearing" is probably not a good idea. For most local governments would mean the first hearing before the planning commission, and consist of review of some fairly raw studies and draft reports. These would be sharpened over the course of many months, and would not come into good focus until the commission recommends a more polished draft to the governing body. Also, the governing body's first evidentiary hearing could be a year or more after the planning commissions first evidentiary hearing. For example Portland's first commission hearing on Task II of its periodic review work

program was in June on 2009 while our City Council's first hearing is scheduled for March of 2012. The June 2009 products hardly resemble those being prepared for Council consideration. Having the notice go out before the first evidentiary hearing of the governing body would provide a more meaningful for public review.

Also, periodic review work products tend to be huge. The rule as written would require Portland to attach several thousand pages to the required notice. Having the notice describe, but not include, the review documents in a manner similar OAR 660-025-0130 is a necessary change. Please consider the following proposed language.

OAR 660-025-0080

(3) Before a local government adopts ~~a change to an acknowledged comprehensive plan or a land use regulation under~~ a work task, the local government must provide notice of **proposed adoption** ~~proposed change~~ to the department 35 days in advance of the first evidentiary hearing **before the governing body of the local government**, as provided in ORS 197.610 and OAR 660-018-0020. **All work task products must be made available for public review during the 35 day period. Should these products exceed 500 pages the local government must prepare, and make available, an index of the products. For purposes of computation of time a notice under this rule is considered to have been "submitted" on the day that paper copies of the notice are received by the department in its Salem office.**

Topic 2: The "On the Local Record" limitation applies to the Director as well as the Commission.

In some instances the Director is acting as the Commission's delegate. The following proposed language recognizes this. There may be other instances in the rule that should be changed as well.

OAR 660-025-0080

(5)(g) As provided in ORS 197.633(3), the commission **and director** will not consider new evidence.

Topic 3: Since Commission review "on the record" it is very important to more carefully define what the record is.

Topic 4: The necessary elements of a Periodic Review Task Submittal should be listed in the Periodic Review Work Program and not paraphrased in the rule.

Topic 5: The local government should be able to control the volume of the local record by, as provided in LUBA rules, limiting the record to materials before the final decision maker.

Topic 6: In the interests of not having the Commission consider a disputed record, the local government and objectors should be placed on a more equal footing by allowing objectors to submit portions of the local record to the Department, while limiting both the local government and objectors to the record.

Please consider the following changes that address Topics 3 through 6 above:

OAR 660-025-0130

(3) To be complete a submittal must be a final decision **of the governing body of the local government** containing all required ~~elements~~ **products** identified for that task in the work program. A portion of a task or subtask may be accepted as a complete submittal if the work program identified that portion of the task or subtask as a separate ~~item~~ **product** for adoption by the local government. Task submittals are subject to the following requirements:

(a) The local record is limited to materials specifically incorporated into the final decision or placed before the governing body during the course of the all proceedings before the governing body of the local government;

~~(b) If the local record does not exceed 2,000 pages, a submittal must include the entire local record. ,including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program.~~ **(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances and orders, findings, hearings minutes, written testimony and evidence, and a detailed index listing items not included in the submittal. Items in the local record not included in the submittal must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require submission of any materials not included in the initial submittal;**

(c) A task submittal of over 500 pages must include an index of all submitted materials.

~~(4) A submittal includes only the materials in the local record provided to the department by the local government pursuant to section (3) of this rule and, for records exceeding 2,000 pages, local record materials submitted by objectors pursuant to OAR 660-025-140. Following submission of objections pursuant to OAR 660-025-0140, the local government may provide written table of correspondence that is not part of the local record which identifies material in the record relevant related to filed objections. The correspondence table may not include or refer to materials not in the record-submitted local record or listed indexed pursuant to section (3) of this rule. The local government must provide the correspondence table to each objector at the same time it is sent to the department.~~

Topic 6: Notice for “In the Manner of Periodic Review” Tasks.

The reasons for the proposed change are the same as our “Topic 1” comments for OAR 660-025-0083(3) above.

OAR 660-025-0175

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements ~~for post acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020~~ **described in OAR 660-025-0080(3).**

Topic 7: The consequences of not having an approved work program for “In the Manner of Periodic Review” tasks.

While statute provides that certain local and regional government decisions are to be reviewed by the commission “In the Manner of Periodic Review,” the rule provides for review only under Phase Two (task submittal) of periodic review without first requiring a Phase One Work Program. Since there is no work program to define the contents of the required submittal, please consider the following additions to the rule.

OAR 660-025-0175

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140. **In addition to these requirements the submittal must include an adopted coordinated population forecast, an adopted identification of housing and employment needs, and an adopted determination of which of the identified needs cannot be reasonably accommodated within existing urban land.**

Topic 8: Existing stay provisions are misleading and unnecessary.

Unlike post acknowledgement plan amendments, periodic review tasks cannot become effective until they are acknowledged. Since there no need to stay something that is not effective the existing language should be deleted.

660-025-0180

Stay Provisions

~~(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is a city with a population of 2,500 or more and either adopts a decision adding more than 50 acres to its urban growth boundary or designates or amends urban reserve areas, or a metropolitan service district that adopts a decision adding more than 100 acres to its urban growth boundary or designates or amends urban reserve areas, interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.~~

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

Thank you for the opportunity to provide these comments.

Sincerely,

Al Burns, AICP
Senior City Planner
Portland Bureau of Planning and Sustainability

<via email>

From: Richard Benner [mailto:Richard.Benner@oregonmetro.gov]
Sent: Tuesday, November 22, 2011 9:18 AM
To: bob rindy
Cc: John Williams; Tim O'Brien; Sherry Oeser; Ted Reid; Randy Tucker; Dan Cooper
Subject: Comments on Propose Amendments to OAR Division 25

11/22/11

Bob,

Here are comments from Metro on the proposed amendments to the periodic review rules that would implement HB 2130 (do you need comments in hard copy?):

1. 660-025-0085(5)(g) leaves an ambiguity that can be readily resolved. The proposed language says:

“As provided in ORS 197.633(3), the commission will not consider new evidence.”

It is not clear what is meant by “new evidence.” It could mean evidence that was not submitted to the local government. But it could also mean evidence that was not submitted to the agency by the local government [660-025-130(3) allows a local government, under the specified circumstances, to submit less than the full record of the local decision]. I suggest the following language to make clear that commission review is limited to evidence submitted to the local government:

“The commission will consider only that evidence submitted both to the local government in proceedings leading to the local decision and to the department with:

- (a) The local government’s submittal filed pursuant to OAR 660-025-0130(1);
- (b) An objection filed pursuant to OAR 660-025-0140;
- (c) A local government response to an objection, filed pursuant to OAR 660-025-0130(4); or
- (d) An exception filed pursuant to OAR 660-025-0160.”

2. Proposed revisions to 660-025-0130 leave ambiguities about what local governments must submit from their full records. This is important to Metro, whose records always exceed 2,000 pages. Paragraphs (b) and (c) expressly provide that a local government with a large record may submit less than its full record. Yet (b) provides a list of items that must be submitted that leaves confusion about items that need not be submitted. Comparing the (b) list with the (a) list implies that “studies”, “inventories”, “staff reports”, and “correspondence” need not be submitted from a large record. But (b) requires submission of “written testimony and evidence.” What, for example, is not included in “written testimony and evidence”? Is not “correspondence” “written testimony”? If a person submits a “study” with her testimony, is it not “evidence”? I suggest language that requires a local government to submit its decision, with all its components, and those materials from its full local record that it believes are necessary to explain its decision or are cited in its findings.

“(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions or orders; any plan provisions or land use regulations amended by the decision; minutes from hearings; materials from the record which the local government deems necessary to explain its decision or cites in its findings; a list of persons who participated in proceedings before the local government, and a detailed index listing all items in the local record, submitted

or not. All items in the local record must be made available for public review during the period for objections under OAR 660-025-0140. The director or the commission may require a local government to submit materials from its record that it did not include in its submittal.”

Section 0140 and 0160 should then make clear that objections or exceptions may append materials from the full record that were not submitted by the local government.

OAR 660-025-0140(2):

“Persons who participated orally or in writing in the local process leading to the final decision may object to the local government’s work task submittal and may append to their objections any document from the local government’s record, whether or not it was submitted to the department by the local government....”

OAR 660-025-0160(4):

“The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director’s report within ten (10) days of the date the report is mailed, and may append to their exceptions any document from the local government’s record, whether or not it was submitted to the department by the local government....”

3. Section 0140(4) is unclear. It reads as follows:

“...the local government may provide written correspondence that is not part of the record which identifies material in the record relevant to filed objections.”

This language unintentionally suggests a local government can send the agency written correspondence (its own or some other) that is not in the local record. I suggest the following revision:

“...the local government may submit material from the local record that was not part of the submittal if the material is relevant to an objection.”

Dick Benner

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November 21, 2011

Department of Land Conservation and Development
 635 Capitol Street, NE
 Suite 200
 Salem, OR 97301-2540

Re: Proposed Amendments to OAR 660, Div. 25 (Periodic Review)

Dear Commissioners:

I have reviewed these rules, meant to implement new statutory provisions from the 2011 legislative session. In general, I agree with their direction, but request that you consider the following comments as you move toward adoption of the final version of these rules.

1. The Record in Periodic Review -- Proposed OAR 660-025-0130(3)(b) allows local governments to select certain materials that will not be transmitted to DLCD and LCDC as part of the record of periodic review, but allows those materials to be available for review by objectors. The rule also allows DLCD or LCDC to add to the record from these omitted materials. However, it does not appear that a citizen objector may be aware of her rights with regard to the record and that it is necessary to raise an objection if these additional materials are to be considered by DLCD and LCDC.

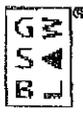
To remedy this problem, I suggest that on p. 17 of the proposed rules, proposed OAR 660-025-0140(1) be amended as follows:

On line 10, delete the period and restore the semicolon.

On line 11, add the following:

“(c) If the record exceeds 2000 pages, that an objector must review any items proposed to be omitted from the record before the Department and Commission under OAR 660-025-0130(3)(b) and file an objection to the record on or before the expiration of the period for submitting objections.”

2. Limitation of Director or Commission Decision on a Work Task to the Record -- To assure that neither the director nor commission utilizes material outside the record, I suggest a slight revision to OAR 660-025-0140(6):



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"If valid objections are received or the department conducts its own review, the department must issue a report. The report shall address the issues raised in valid objections. The report shall identify specific work tasks to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the record and applicable statewide planning goals, [or applicable] statutes or administrative rules.

I hope you find these comments helpful.

Sincerely,

GARVEY SCHUBERT BARER

By 
Edward J. Sullivan

EJS:kms



Oregon

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December 8, 2011

TO: Land Conservation and Development Commission (LCDC)
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 9, December 7-9, 2011, LCDC Meeting**

Response to Comments and Amendments to Proposed Rules

In response to the department's notice and request for comments, three sets of comments were received. These are provided in Attachment D to the staff report. Following issuance of the staff report, the department prepared a response to the comments, below. The responses are numbered according to the commenter (1 through 3, below), and according to the various issues raised by each commenter.

The department's response results in some new recommended changes to the proposed rules in Attachment A, issued on November 4. On December 5, DLCD legal counsel (Steve Shipsey) also recommended changes to the November 4 draft rules. Finally, the department also recommended changes to the draft, outlined in the staff report. As such, the attached "Hand Carry" draft, a revised version of Attachment A, also includes changes to reflect the staff report and other department recommendations subsequent to issuance of the staff report.

Department Response to Comments

1. Al Burns on behalf of the City of Portland has provided comments organized under topics, described below.

Topic 1: Portland included several different points under "Topic 1." These begin on page 2 of the Portland comment letter (see Attachment D of the staff report) with regard to proposed rules at OAR 660-025-0080(3) (see Attachment A, page 9, lines 8 – 11):

- A. Portland suggests that, rather than require 35 day notice of a "change to a plan or regulation" proposed under periodic review, the rule should instead require a 35-day notice prior to the adoption of "a work task."

DLCD RESPONSE: A work task is not always a plan amendment. ORS 197.610 requires DLCD notice 35 days prior to a proposed "change to a comprehensive plan or land use regulation." A "work task" under periodic review may include a change to a plan or regulations, but some work tasks involve studies or other products that are not necessarily a change to a plan or regulation,

and some work tasks conclude that no change to a plan is required. As such, DLCD does not recommend the Portland suggestion.

Where a work task includes the adoption of a change to a plan or regulation, ORS 197.610 does not, on its face, indicate that adoption of such a change is exempt from the DLCD notice requirement. Therefore, the department recommended that rule 0080 be modified to make it clear that 35-day notice is required for certain periodic review work tasks, but only when “a change” to a comprehensive plan or regulation is proposed by a local government in order to complete the work task.

Note this is not proposed as a requirement for notice of adoption of “a work task,” it is a requirement for notice of adoption of “a change” to the plan or regulations. This is the same requirement as in the rules for plan amendments under OAR 660-018-0020 (see Item 8 Attachment A, pages 2 and 3). Rather than repeat all the details for such notice submittals, in division 25, the department’s proposed rule refers to OAR 660-018-0020, as well as statutes underlying this requirement at ORS 197.610.

- B. Portland suggests that, rather than “35 days before the first evidentiary hearing,” the rule should require the notice 35 days prior to “the first evidentiary hearing before the governing body” of the local government. In other words, notice prior to a planning commission or hearings officer would not be provided, only notice for evidentiary hearings before the city council (or a county board), typically after evidentiary hearings before a planning commission.

RESPONSE: The department believes ORS 197.610 notice requirements apply to a “change” adopted under a work task. As such, the rule should reflect the statute requirement, and LCDC has no authority to adopt a different standard as suggested by Portland. We note that, while Portland’s procedures provide opportunities for new evidence in final hearings before the governing body (city council) that is not necessarily practice of other local governments.

- C. Portland recommends the rule eliminate reference to ORS 197.610 and OAR 660-018-0020 (no reason provided).

RESPONSE: The department does not recommend this. If that statute applies, it should be referenced in the rule. However, the department recommends that the reference to rules be broadened to include OAR 660-025-0030 and 0045. These provisions also apply to notices of proposed changes to plans and regulations.

- D. Portland recommends that the rule require that “all work task products must be made available for public review during the 35 day period.”

RESPONSE: This requirement is provided in OAR 660-025-0130(2)(b).

-
- E. Portland recommends that, should work task products exceed 500 pages, the local government must provide an index of the products rather than include the products with the 35-day notice. Portland indicates that under the DLCD draft rule proposal, for Portland's work task currently in progress, notice would need to include several thousand pages. The comments reference OAR 660-025-0130, which currently mentions this index. We note that rule 0130 pertains to final work products, and requires the "index" in addition to the actual products.

RESPONSE: We note that the notice window prior to their adoption has been narrowed from 45 days to 35 days under HB 2130. In many instances, especially with a proposal exceeding 500 pages, reviewing a proposal and responding to the local government within the current 45-day window, and especially the new 35-day window, presents a major challenge for the department. An "index" does not suffice for review purposes, so the challenges of a timely response from the department would be greatly exacerbated by the Portland suggestion. The department does not recommend this suggestion.

- F. Portland recommends wording for rules at OAR 660-025-0080 that indicates work task proposals are considered to have been submitted on the day the paper copies are received. This is not necessary as it is already specified in OAR 660-025-0020(2).

Topic 2: Portland states that, in some instances the director is acting as the commission's delegate. Portland proposes changes to OAR 660-025-0080(5)(g) to specify that the commission and the director will not consider new evidence.

DLCD RESPONSE: This is indeed the current requirement, but it is unnecessary to add this to rule 0080. A different rule at OAR 660-025-0150 (new section (6); see Attachment A, page 20, lines 1 and 2) provides standards of review for the director. The department's proposed amendments to those rules state "the director's standard of review is the same as the standard that governs the commission."

Topic 3: Portland indicates that since commission review is now "on the record" it is very important to more carefully define what the record is. Portland suggests that the record should consist only of those materials which the local government placed before the governing body of the local government prior to its final decision.

DLCD RESPONSE: First, the department notes that the requirement for commission review "on the record" is not new; it has long been the standard. The statute amendment adopted as HB 2130 reflects this longstanding practice. Regarding the specific suggestion as to how to define the record, the department does not recommend this definition. Persons who have appeared and testified before, say, the planning commission, should not have their input disregarded – with concurrent loss of standing – simply because the local government did not choose to place their input before the final decision body.

Topic 4: The necessary elements of a Periodic Review Task Submittal should be listed in the Periodic Review Work Program and not paraphrased in the rule. Portland recommends omitting a requirement currently in (3)(b) of rule 130, which states that : If the local record does not exceed 2,000 pages, a submittal must include the entire local record~~], including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;].~~

DLCD RESPONSE: Dick Benner on behalf of Metro also sent suggestions for modification of this provision in OAR 550-025-0130 regarding completed work task (see below), for similar reasons expressed by Portland. The department is suggesting that the commission amend the rule in the manner proposed by Metro rather than in the manner proposed by Portland. Portland's recommendations flow from the proposal described above under Topic 2, which the department does not recommend. (See revised Attachment A).

Topic 5: The local government should be able to control the volume of the local record by limiting the record to materials before the final decision maker, as provided in LUBA rules.

DLCD RESPONSE: See response to Topic 3, above. Dick Benner on behalf of Metro also provided suggestions for modification of OAR 550-025-0130 regarding the record, addressed below. The department is suggesting that the commission amend the rule as proposed by Metro, but not in the manner proposed by Portland. Portland's suggestion flows from the proposal to limit the record to that which it places before the governing body, as addressed in Topic 3, above. The department does not recommend this change.

Topic 6: Portland suggests that, "in the interests of not having the Commission consider a disputed record, the local government and objectors should be placed on a more equal footing by allowing objectors to submit portions of the local record to the Department, while limiting both the local government and objectors to the record."

DLCD RESPONSE: Portland's suggestions would limit the record to only those materials provided to the city council, in the same manner as addressed in issues addressed above. The department does not recommend the rule be modified in this manner. Staff does agree, however, that the rule should explicitly state that objectors may include portions of the record in their objections and exceptions if they were not part of the original submittal. This is addressed in our response to Metro's topic 1.

2. Ed Sullivan states that proposed changes to OAR 660-025-0130(3)(b) allow local governments to select certain materials that will not be transmitted to DLCD as part of the record, but requires these be available for review by objectors. He notes that citizens may not be aware of their rights to raise an objection to the record. To remedy this, he suggests restoring a provision in the next rule, 660-025-0140(1)(c), which had been suggested for deletion by the department (Attachment A, page 17, line 10). That provision indicates that local notices must

state that copies of objections must be provided to the local government. Furthermore, Mr. Sullivan suggests new provisions in the rule declaring that “an objector must review any items proposed to be omitted from the record and file an objection to the record ...”. Finally, Ed Sullivan suggests that OAR 66-025-0140(6) be revised to clarify that “A valid objection shall either be sustained or rejected by the department or commission based on **the record**...”.

DLCD RESPONSE: OAR 660-025-0130(3)(b) allows less than the full record to be submitted where the record exceeds 2000 pages. However, it should be clear that those materials not submitted are still part of “the record,” and must be available for review by citizens. As such, the comments of Ed Sullivan should not be taken to imply that materials omitted from the submittal are also omitted from the record. A citizen may object based on materials that are not submitted provided the materials are in the record. Following such an objection, the rule allows the local government to provide information about the material subject to the objection. Mr. Sullivan suggests that, in addition, the initial local notice to parties should indicate that citizens need to review the record and object to those items not being submitted to LCDC.

The department does not recommend the commission adjust this language as suggested by Ed Sullivan. The provision on line 10 was proposed for deletion from (1) because the department suggested it should instead be part of (2) rather than (1), primarily for reasons of sentence structure and grammar. Provisions in (1)(b) (unaltered by the draft) state that requirements of (2) must be provided in the notice, and since this requirement would be placed in (2), it would be part of the notice.

However, two concerns have been noted about this proposal. First, the wording of this requirement in (2) might erroneously suggest that an objection must be filed with the local government rather than the department. This was not the intent. Second, placement in (2) means that an objection to the commission would be invalid if not provided to the local government. The department did not intend that consequence. While under the current rule objectors are notified that they must provide a copy of an objection to the local government, the rule does not specify that failure to do so would disqualify the objection. As such, DLCD suggests that these proposed amendments not be adopted. This rule should remain unaltered (see revised Attachment A).

Finally, the department agrees with the final suggestion from Ed Sullivan, adding a clarification to OAR 66-025-0140(6) that the final decision on an objection shall be based on the record as well as applicable statutes, goals and rules (see revised Attachment A).

3. Dick Benner has provided comments under three topics, addressed below:

Topic 1: Mr. Benner suggests that OAR 660-025-0085(5)(g), which states that “the commission will not consider new evidence,” is ambiguous, and might be interpreted to allow evidence that was not submitted to the local government. But it could also mean evidence that was not submitted to the agency by the local government under OAR 660-025-130(3), which allows a

local government to submit less than the full record if it exceeds 2000 pages. Mr. Benner suggests wording added to OAR 660-025-0085(6), to make clear that commission review is limited to evidence submitted to the local government.

RESPONSE: The department concurs with this suggestion (see revised Attachment A).

Topic 2: Dick Benner indicates that proposed revisions to OAR 660-025-0130 leave ambiguities about what local governments must submit from their full records. Benner suggests revised rule language that requires a local government to submit its decision, with all its components, and with those materials from its full local record that it believes are necessary to explain its decision or are cited in its findings.

DLCD RESPONSE: The department agrees and recommends the proposed revisions to these rules (see revised Attachment A).

Topic 3: Metro states that Section 0130(4) (erroneously labeled 0140(4) in Metro's letter) is unclear; the language unintentionally suggests a local government can send the agency written correspondence (its own or some other) that is not in the local record. Metro suggests a revision to this section.

DLCD RESPONSE: The department concurs that the section should include express authority for the local government to supplement the submittal with materials already in the record. The department does not agree, however, that the rule's allowance for written correspondence outside the record was inadvertent. Allowing local governments to assist the department by identifying the location of materials relevant to objections was advertent and beneficial (See Revised Attachment A).

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

Enrolled
House Bill 2130

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to periodic review of land use planning; creating new provisions; amending ORS 197.626, 197.633, 197.644, 197.646, 197.650 and 197.651; repealing section 2, chapter 150, Oregon Laws 2011 (Enrolled House Bill 2688); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.626 is amended to read:

197.626. [A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 195.145 (1)(b), a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.]

(1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

(2) A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

SECTION 1a. If House Bill 2688 becomes law, section 2, chapter 150, Oregon Laws 2011 (Enrolled House Bill 2688) (amending ORS 197.626), is repealed.

SECTION 2. ORS 197.633 is amended to read:

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

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

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of *[an evaluation of a comprehensive plan and land use regulations];* **a work program; and**

[(e) Review of a work program; and]

[(f)] **(e) The preparation, review and approval of [completed] work tasks[.], including:**

(A) The amendment of an urban growth boundary.

(B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:

(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

[(3)] **(4) A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.**

[(4)] **(5) The director:**

(a) Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review. *[If a timely objection is filed, the director shall refer the work task to the commission.]*

(b) May approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.

[(5)] **(6) Except as provided in this subsection, the commission shall take action on the appeal or referral of a work task within 90 days of the appeal or referral. Action by the commission in**

response to an appeal from a decision of the director **or a referral** is a final order subject to judicial review in the manner provided in ORS 197.650 **and 197.651**. The commission may extend the time for taking action on the appeal or referral if the commission finds that:

- (a) The appeal or referral is appropriate for mediation;
- (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or
- (c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

~~[(6)]~~ (7) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. *[In order]* To promote the timely completion of periodic review, the commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs.

SECTION 3. ORS 197.644 is amended to read:

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

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

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

~~[(3)(a)]~~ (3) Commission action pursuant to subsection ~~[(1) or]~~ (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650 **and 197.651**.

[(b) Action by the director pursuant to subsection (1) of this section may be appealed to the commission pursuant to rules adopted by the commission. Commission action under this paragraph is a final order subject to judicial review in the manner provided in ORS 197.650.]

SECTION 4. ORS 197.646 is amended to read:

197.646. (1) A local government shall amend its acknowledged comprehensive plan[,] **or acknowledged** regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with **a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.***[.]*

[(a) A new statutory requirement; or]

[(b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission.]

[(2) Periodic review is not the implementation process for new statutory, land use planning goal or rule requirements.]

~~[(3)(a)]~~ (2)(a) The Department of Land Conservation and Development shall notify local governments when a new *[statutory]* requirement *[or a new land use planning goal or rule requirement adopted by the commission]* **in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals** requires changes to an acknowledged comprehensive plan,

[a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan.

(b) The **Land Conservation and Development** Commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, [a] **an acknowledged** regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new [statutory] requirement **in a land use statute**, if the legislation does not specify a time period for compliance; and

(B) A new **requirement in a** land use planning goal or rule [requirement] adopted by the commission.

[(4)] **(3)** When a local government does not adopt amendments to [a] **an acknowledged** comprehensive plan, [a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan, as required by subsection (1) of this section, the new [statutory, land use planning goal or rule] requirements apply directly to the local government's land use decisions. The failure to adopt amendments to [a] **an acknowledged** comprehensive plan, [a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

SECTION 5. ORS 197.650 is amended to read:

197.650. (1) A Land Conservation and Development Commission **final order issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794** may be appealed to the Court of Appeals **by persons who participated in proceedings, if any, that led to issuance of the final order being appealed.** [*in the manner provided in ORS 183.482 by the following persons:*]

[(a) *Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;*]

[(b) *Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (7);*]

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

[(d) *Persons who submitted comments or objections pursuant to ORS 197.659 and 215.788 to 215.794 or proceedings under ORS 197.659 and 215.788 to 215.794 and are appealing a commission order issued under ORS 197.659 and 215.788 to 215.794;*]

[(e) *Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and 197.659 or proceedings under ORS 197.652 to 197.658 and 197.659 and are appealing a commission order issued under ORS 197.652 to 197.658 and 197.659; or*]

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

[(2) *Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636, 197.644 or 197.659.*]

[(3) *Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections.*]

(2) Jurisdiction for judicial review of a final order of the commission issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is conferred upon the Court of Appeals.

SECTION 6. ORS 197.651 is amended to read:

197.651. [(1) *Notwithstanding ORS 197.650, a Land Conservation and Development Commission order concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 may be appealed to the Court of Appeals by the persons described in ORS 197.650.*]

[*(2) Judicial review of orders described in subsection (1) of this section is as provided in this section.*]

(1) Judicial review of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 is as provided in subsections (3) to (12) of this section.

(2) Judicial review of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215,780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

(3) [*Jurisdiction for judicial review is conferred upon the Court of Appeals.*] A proceeding for judicial review **under this section** may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

(6) Within 21 days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(8) The Court of Appeals shall:

(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than 49 days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

(b) Set forth in writing and provide to the parties a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

(c) Consider, in making a determination under paragraph (b) of this subsection:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(9) The court:

(a) Shall limit judicial review of an order reviewed under this section to the record.

(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

(b) Unconstitutional.

(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

(11) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

SECTION 7. Notwithstanding any other provision of law, ORS 197.646, 197.649 and 197.650 are not considered to have been added to or made a part of ORS 197.628 to 197.650 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that series.

SECTION 8. ORS 197.646, 197.649, 197.650 and 197.651 are added to and made a part of ORS chapter 197.

SECTION 9. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House May 3, 2011

Received by Governor:

Repassed by House June 10, 2011

.....M.,....., 2011

Approved:

.....
Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

.....
Bruce Hanna, Speaker of House

.....
John Kitzhaber, Governor

.....
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2011

Passed by Senate June 8, 2011

.....
Peter Courtney, President of Senate

.....
Kate Brown, Secretary of State

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

<u>Land Conservation and Development Department</u>	660
Agency and Division	Administrative Rules Chapter Number
Casaria Tuttle	(503) 373-0050, ext. 322
Rules Coordinator	Telephone
<u>Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301</u>	
Address	

RULE CAPTION

Amendments to existing rules in order to implement new laws regarding periodic review.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
1-26-12	08:30 AM	DICD, 635 Capitol St, Basement Hearing Room, Salem, OR 97301	LCDC

Auxiliary aids for persons with disabilities are available upon request.

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

660-025

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 197.040

Other Authority:

Statewide Planning Goals (OAR 660, div 15)

Statutes Implemented:

ORS 197.626-197.646; Or Laws 2011, chapter 469 (HB 2130)

RULE SUMMARY

The proposed amendments would modify rules pertaining to periodic review and related topics. The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding periodic review, and are needed in order to conform existing rules to these new laws.

The Commission may consider other minor amendments based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments that may be proposed during the public comment period.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

<u>01-26-2012 Close of Hearing</u>	<u>Casaria Tuttle</u>	<u>casaria.r.tuttle@state.or.us</u>	<u>12-15-11 11:00a.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Amendments to existing rules in order to implement new laws regarding periodic review.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to existing rules in order to implement new laws regarding periodic review

Statutory Authority:

ORS 197.040

Other Authority:

Statewide Planning Goals (OAR 660, div 15)

Stats. Implemented:

ORS 197.626-197.646; Or Laws 2011, chapter 469 (HB 2130)

Need for the Rule(s):

The proposed amendments would modify rules pertaining to periodic review and related topics. The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding changes to comprehensive plans and land use regulations. The amendments are needed in order to conform existing rules to these new laws.

The Commission may consider other minor and technical amendments to rules in the division specified above based on testimony and comments received during the public comment period, and may adopt amendments that may be proposed during the public comment period.

Documents Relied Upon, and where they are available:

ORS 197.626 to 197.646; Statewide Planning Goals (OAR 660, division 15); Or Laws 2011, chapter 469 (HB 2130) - available online

Fiscal and Economic Impact:

Statutory provisions (ORS 183.335(2)(b)(E) and (G), and ORS 183.540) require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business:

The proposed amendments will not have economic affects on business because the proposed amendments will generally conform existing rules to new statutes already in effect. The department cannot propose alternative rules that would achieve the underlying lawful governmental objective because the proposal is necessary to implement new laws. The proposed rule amendments apply to periodic review and are not substantially different than existing requirements in periodic review rules. As such, economic and property interests will not be affected. However, to the extent that the new laws implemented by these rules represent a clearer expression of requirements previously in law, economic effects to business are expected to be positive; such affects cannot be quantified.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534). The proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (See ORS 183.534). The Housing Cost Impact Statement is attached and is incorporated into this statement by this reference.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments carry out new provisions of periodic review that are substantially the same as existing provisions in state law.h

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

None are subject to the rule.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

These rule amendments will not change current department procedures regarding the periodic review process, as reflected by state law, and no professional service costs are anticipated as a result of the new rules beyond those costs already required for compliance with state law.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.s

How were small businesses involved in the development of this rule?

If not, why?:

Because these amendments primarily concern implementation of amendments to an existing statute regarding periodic review, and because the topics addressed by these rules concern local governments rather than small businesses, and because the proposed rule amendments reflect periodic review statutes already in effect, the department did not consult with small businesses.

Administrative Rule Advisory Committee consulted?: No

For the same reasons provided above concerning small business involvement.i

<u>01-26-2012 Close of Hearing</u>	<u>Casaria Tuttle</u>	<u>casaria.r.tuttle@state.or.us</u>	<u>12-15-11 11:00 AM</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534) FOR ADMINISTRATIVE RULES

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

AGENCY NAME:

Department of Land Conservation and Development

HEARING DATE: December 8, 2011

ADDRESS: 635 Capitol Street NE

CITY/STATE: Salem, OR 97301

PHONE: (503) 373-0050

PERMANENT:

TEMPORARY:

EFFECTIVE DATE: Upon Filing

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT
WILL RESULT FROM THIS PROPOSED CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

The proposed amendments would modify rules pertaining to periodic review and related topics in order to conform to new statutes at Oregon Laws 2011, chapter 469 (HB 2130).

Description of the need for, and objectives of the rule: The proposed amendments are needed in order to implement new laws (Oregon Laws 2011, chapter 469) regarding periodic review and are needed in order to conform existing rules to these new laws.

List of rules amended: OAR chapter 660, division 25 (Periodic Review)

Materials and labor costs increase or savings: The amendments will not affect the cost of housing materials or labor costs because the amendments will not create new substantive provisions not already required by rule, statute or other law with respect to housing.

Estimated administrative, construction or other costs increase or savings: The amendments will not affect administrative, construction, or other housing costs, for the same reasons described above concerning materials and labor costs, above.

Land costs increase or savings: The amendments will not affect land costs, for the same reasons described above concerning materials and labor costs.

Other costs increase or savings: None anticipated

PREPARERS NAME: Bob Rindy, Senior Policy Analyst **EMAIL ADDRESS:** bob.rindy@state.or.us

Land Conservation and Development Commission

Public Comment Received as of January 13, 2012

January 26-27, 2012

Tuttle, Casaria R.

From: Richard Benner <Richard.Benner@oregonmetro.gov>
Sent: Thursday, January 19, 2012 3:56 PM
To: Tuttle, Casaria R.
Cc: Rindy, Bob; Robin McArthur; John Williams; Dan Cooper
Subject: Proposed Revisions to Division 25

Follow Up Flag: Follow up
Flag Status: Flagged

January 19, 2012

Dear Ms. Tuttle:

Metro reviewed the proposed revisions to the rules governing periodic review (Division 25) and find them to be significant improvements to the process as Metro has experienced it. Thank you for addressing our concerns about the submittal record; the proposed changes will reduce costs and time spent on the submittals without limiting anyone's access to the entire local record.

There are two further matters Metro would like to bring to the commission's attention. Both can be simply addressed with the suggested language below.

1. Section 0025 authorizes cities and counties to request periodic review not otherwise provided in the schedule. It does not expressly authorize Metro to request periodic review. Several years ago, Metro requested periodic review for its 2035 Regional Transportation Plan and the commission allowed it. We ask that the Commission add Metro to this section to make it clear that Metro can seek periodic review in the future. The language of 0025 would read:

"A city **[or]**, county **or Metro** may request, and the commission may approve, initiation of periodic review not otherwise provided for in the schedule established under OAR 660-025-0030."

2. A sentence in section 0160(2)(c) provides that the commission will defer to local interpretation of comprehensive plans and land use regulations. As you know, ORS chapter 197 distinguishes between "comprehensive plan" and "regional framework plan." Metro implements its Regional Framework Plan through "functional plans." ORS chapter 197 distinguishes between "land use regulations" and "functional plans." To make clear that Metro would receive the same deference from the commission for its interpretations of the regional framework plan and functional plans as cities and counties would receive for their interpretations of their comprehensive plans and land use regulations, and to conform the sentence to the preceding sentence in the rule (which DOES mention the framework and functional plans), we ask the commission to revise the sentence to read as follows:

"The commission shall defer to a local government's interpretation of its comprehensive plan or land use regulations, **or of Metro's regional framework plan or functional plans**, in the manner provided in ORS 197.829."

Thank you for your attention to these points. Please enter this email letter into the rulemaking record.

Sincerely,

Richard Benner
Office of Metro Attorney