



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

June 18, 2008

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director  
Darren Nichols, Community Services Division Manager

SUBJECT: **Agenda Item 6, August 6 - 7, 2008, LCDC Meeting**

### **SUMMARY OF OVERDUE PERIODIC REVIEW TASKS**

#### **I. AGENDA ITEM SUMMARY**

At the Commission's June 2008 meeting in Damascus, staff provided an overview of outstanding periodic tasks and asked the Commission for guidance in handling those tasks going forward. The Commission directed staff to follow up with the jurisdictions responsible for completing overdue tasks to determine whether and how the department or the Commission should proceed. This report provides additional information offers a recommended course of action. The Commission will be asked to provide further guidance to department staff for handling overdue periodic review work tasks, again focusing particularly on those tasks for which the Commission has issued an order for performance or completion. For additional information on this agenda item, please contact Darren Nichols, Community Services Division Manager, at 503.373.0050 x255 or [Darren.Nichols@state.or.us](mailto:Darren.Nichols@state.or.us).

#### **II. SUMMARY OF RECOMMENDED ACTION**

Staff recommends that the Commission provide direction to the department for proceeding with overdue periodic review work tasks suspended during the implementation of Ballot Measures 37 and 49. Staff further recommends that, if the Commission decides to pursue completion of overdue tasks, certain categories of tasks receive the highest priority (see Section V of this report).

#### **III. BACKGROUND**

Senate Bill 543 (1999) made several changes to the periodic review process, including addition of work task deadline enforcement authority for the Commission. Work programs created before the effective date of this bill contained task completion deadlines, but there was little ability on the part of the department to enforce them.

Following the 2003 legislative session, the department was directed by the legislature to focus its efforts on the successful completion of outstanding periodic review work tasks. This included Senate Bill 920, which temporarily suspended the initiation of any new periodic review work programs, made some existing tasks optional unless the Commission required completion, and implemented statutory deadlines for department review of submitted work tasks. The legislature also initiated a streamlined version of periodic review, applicable primarily to cities with more than 10,000 population, starting in mid-2007; that new version is now underway with 10 cities across the state.

Following the passage of Ballot Measure 37 in 2004, the department found itself under pressure to process a large volume of staff reports and orders on claims filed under the Measure. At that time, the Commission considered the department's workload and made a decision to suspend certain items of department business, including the enforcement of overdue periodic review work tasks.

At this point, there remain 70 periodic review work tasks which are outstanding or overdue. Of those, 17 are work tasks undertaken by ten counties and 53 are undertaken by 25 cities.

Overdue tasks can be organized into these five categories:

1. Tasks on work programs approved prior to SB 543 (1999), having "soft" deadlines;
2. Tasks on work programs approved after SB 543, having "hard" deadlines;
3. Tasks the Commission required to be completed under SB 920 (2003);
4. Completed tasks that were remanded by the Commission; and
5. Completed tasks that were remanded by the department.

Some of the remand orders for tasks in categories 3 and 4 did not include a submittal deadline, so calling them "overdue" may not technically be accurate. Some of those tasks, however, have been outstanding for quite some time.

#### **IV. PERIODIC REVIEW PROCEDURES AND ANALYSIS**

The statutory responsibility for Commission action on overdue periodic review work tasks is laid out in ORS 197.636 as follows:

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

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

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

final approval by the director or the commission:

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

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

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

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

(3) If the department receives a work program or work task completed in response to a commission order issued under subsection (2) of this section, the director shall evaluate and issue a decision on the work program or work task within 90 days.

(4) 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.

The language in the statute clearly directs the department to schedule hearings before the Commission for any overdue work tasks. The volume of overdue tasks could dedicate LCDC efforts to periodic review hearings for a period of several meetings, spanning as much as a year or more.

The method of dealing with an overdue task may depend upon its status. A Category 1 task (a pre-SB 543 task with a “soft” submittal date) can probably only be addressed by amending the work program so that the provisions of SB 543 become effective and the submittal date becomes enforceable. The department cannot amend work programs without concurrence from the local government, but the Commission can.

Category 2–4 tasks with established submittal dates could be enforced; the method of enforcement under ORS 197.636(2) would depend on the nature of the task. Remanded tasks without submittal dates will require an amended order to provide an enforceable deadline.

It is important to note that the department’s general fund grant budget is fully committed for the 2007-2009 biennium, including a significant portion of the budget reserved for the completion of newly approved periodic review work tasks/programs. Although there may be opportunities to fund additional periodic review tasks in the department’s 2009-2011 grant budget, it is not likely that funds will be available to assist with the completion of overdue PR tasks during the current biennium. In other words, the department’s ability to fund outstanding work tasks is essentially non-existent in the current biennium and may also be limited during the following biennium.

## **V. CONCLUSIONS AND RECOMMENDATION**

Duties associated with Measure 49 are being handled by dedicated staff, so deferral of responsibilities related to periodic review can be reconsidered. A major effort directed at full compliance would result in a significant initiative at the staff and Commission levels. The department recommends a limited re-engagement.

If the Commission decides that the department should pursue some level of enforcement of periodic review task submittal dates, staff recommends a first step of those tasks that fall in

categories 3 and 4, tasks that the Commission required to be completed and those that were remanded by the Commission.

The department further recommends that the Commission begin with those tasks for which the deadline expired first and moving chronologically toward those tasks for which the deadline expired most recently. Some orders may need to be amended in order to establish submittal dates.

The Commission may also direct department staff to further refine the list(s) of overdue work tasks if that helps to inform further discussion.