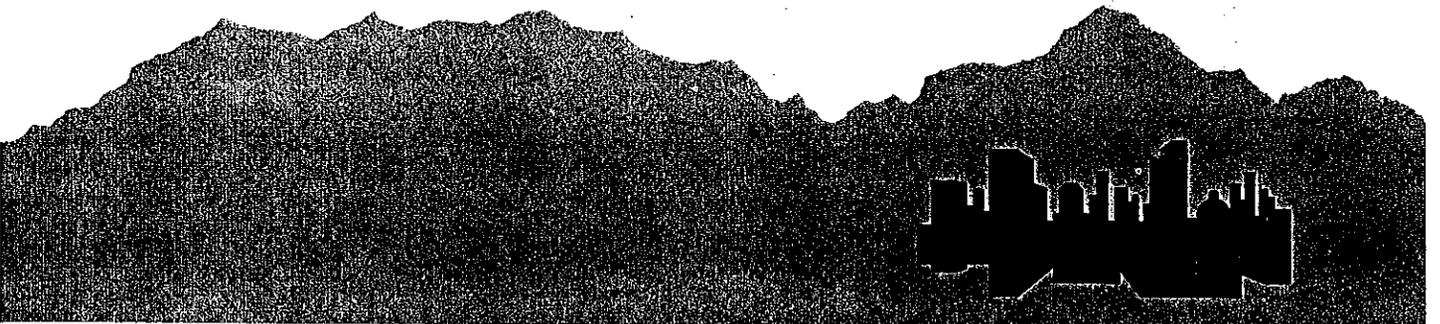
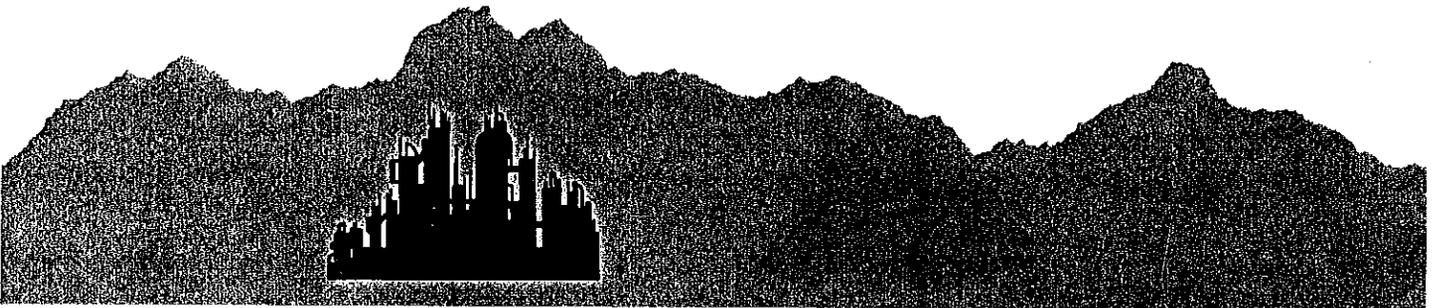
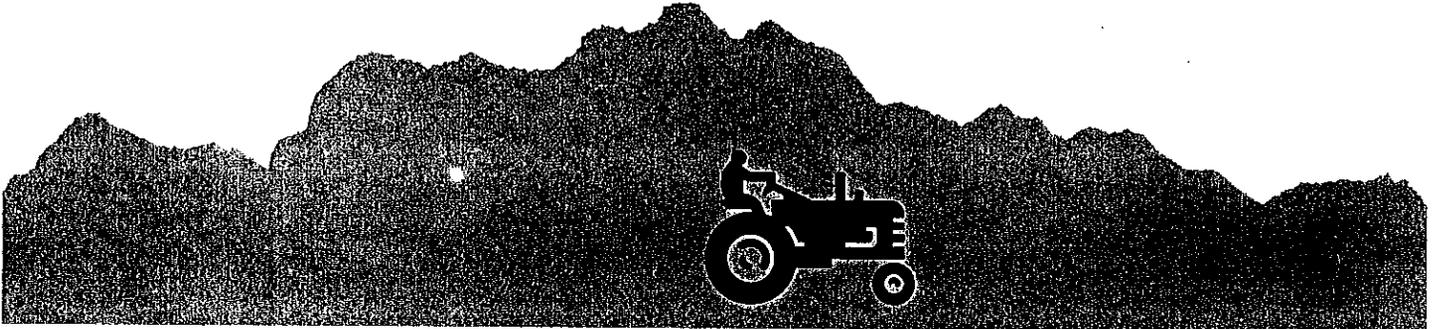
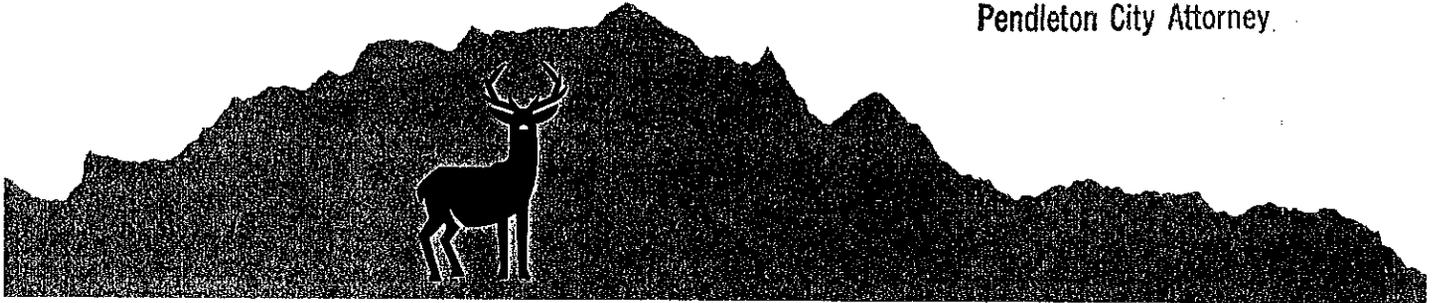


OREGON LAND USE PLANNING

LOCAL PLANNING DIGEST

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Pendleton City Attorney



OREGON LAND USE PLANNING

LOCAL PLANNING DIGEST



BUREAU OF GOVERNMENTAL RESEARCH AND SERVICE
UNIVERSITY OF OREGON
EUGENE, OREGON 97403-0177

November 1984
Price \$4.00

FOREWORD

This *Digest* is an overview of Oregon's land use planning and development system, prepared especially for city and county elected officials and planning commission members. It is a summary of the lengthier and more technical *Guide to Local Planning and Development*, also published by the Bureau of Governmental Research and Service as part of its Land Use Training Materials Package.

Oregon's land use planning and development system has evolved over many years, but its major framework has changed significantly during the last decade. Local government officials are the key decision-makers in this system, with guidance provided by state law and with general oversight by the state Land Conservation and Development Commission. As the key decisionmakers, local officials hold an important public trust in the form of the statewide planning goals and their own comprehensive plans. This *Digest* is designed to provide essential information to help them meet this challenge.

The *Digest* is tied directly to the *Guide to Local Planning and Development* by the use of reference numbers appearing in the *Digest's* margins. Readers of the *Digest* who want additional information about a particular topic may find it under the reference number in the *Guide*.

The *Digest* was written by David Colvin Olson and Pamela Dunham, with graphic design by Chris Michel. Ted Hallock Inc. coordinated the production of all visual and printed media for the Training Materials Project, including this *Digest*. The Bureau of Governmental Research and Service reviewed all drafts, and is responsible for all content.



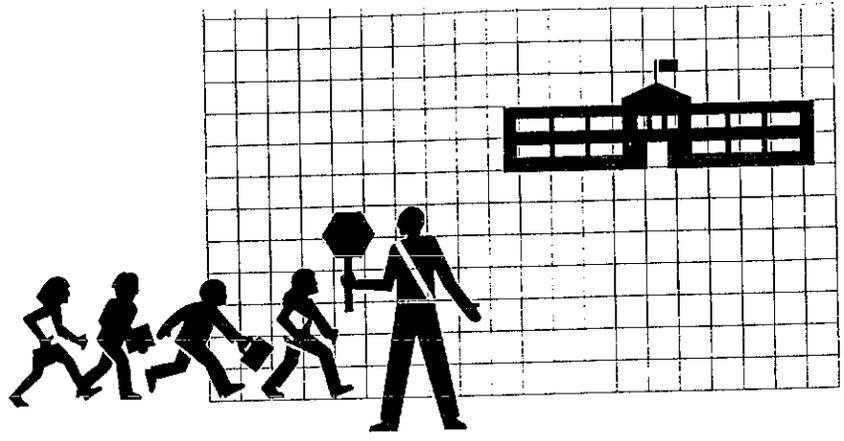
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CHAPTER ONE

EVOLUTION OF LAND USE PLANNING IN OREGON

OREGON LAND USE PLANNING



THE NEED FOR LAND USE PLANNING

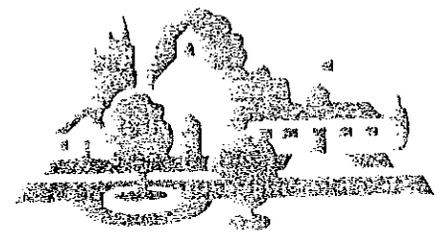
It is unthinkable that a builder would attempt to construct a building without having a set of drawings, plans, and specifications. For a residence, the plans would be designed to accommodate the various activities and needs of a family—shelter, warmth, eating, sleeping, leisure time, entertaining, recreation—and the plumbing and electrical systems would be designed to support those activities at the various locations within the structure.

On a much larger scale, a state and its communities cannot develop in a logical, coordinated manner to accommodate the needs and activities of their citizens unless some advance planning is done to guide the continuing development and change that occurs.

There are relatively few individuals who may be responsible for making decisions relative to the construction of a residence. However, there is a very large number of diverse individuals, organizations, businesses, public agencies, corporations, etc., which have various responsibilities for making decisions relative to the development of the state.

These decisions represent a wide variety of beliefs and priorities as to what and where and how and when development should occur, what is most important and what is less important, who should have what responsibilities, etc.

In Oregon, the consequences of a lack of coordinated planning have become evident to a majority of the state's residents and its citizens have determined that land use planning on a statewide basis is the most logical way to assure that development will be guided in a direction that will provide maximum satisfaction of the needs and desires of everyone. The Oregon Land Use Act of 1973 is the basis for this coordinated land use planning effort.



ROOTS OF LAND USE PLANNING IN OREGON

Land use planning in Oregon began naturally in the cities of our state. Urban settings created urban needs—for coordinated approaches to particular uses of the land.

Recognizing this, the 1919 Oregon Legislature passed enabling legislation allowing cities in Oregon to plan in an orderly way for the challenges that resulted from steady growth. This legislation enabled cities to establish planning commissions and required planning commission approval for subdivision plats. After World War II, Oregon counties were similarly authorized to establish planning commissions, at a time when rapid growth created increasing urban problems in many unincorporated areas.

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1B.200

8 Evolution of Land Use Planning in Oregon

Through most of this century, Oregon state government's role in planning was limited. The state Legislature authorized local planning to occur and provided for coordination with the federal government when the need arose (during depression-era dam building projects, for example), but did not preempt or control local guidance of development and growth.

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As Oregon grew dramatically in population and income during and after World War II, however, it became increasingly evident that our system of permissive, local-option planning was not adequate to accommodate complex regional and statewide pressures and trends that tended to cross many jurisdictional boundaries.

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Oregon's growing pains were the object of increasing public recognition and concern, as Oregonians began to view with alarm pollution of the Willamette River, dirty air in the Portland metropolitan area, loss of farmland to subdivisions in the populous Willamette Valley, land speculation east of the Cascades, commercial strips along the Oregon coast, and pockets of "leap-frog" development appearing in various parts of the state—which required urban services and created urban problems on developed parcels that stood outside the existing urban boundaries.

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State government during this period began slowly, but with growing speed spurred by popular concern, to respond to the challenges resulting from rapid growth and development. A Department of Environmental Quality was established, backed by clean air and water laws and pollution bonds; landmark Oregon legislation created significant laws on beaches, bottle deposits, bike paths, and billboard removal.



But it was apparent that land use difficulties were at the root of many of the problems resulting from growth. Oregon's primary and most productive farming land—the 100-mile-long Willamette Valley—was also home to 80 percent of the state's population. As Oregon's population increased by nearly 40 percent between 1950 and 1970, 80 percent of that growth occurred in the Willamette Valley. The result was significant growth in cities of the Valley, with concomitant losses of prime farmland.

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Spurred by the losses of farmland and prodded by first-term Governor Tom McCall, the 1969 Oregon Legislature passed Senate Bill 10 which required all cities and counties to adopt comprehensive land use plans and zoning regulations. SB 10 laid to rest the view that selective local option planning alone would suffice to meet regional and areawide land use challenges which could significantly affect the economic and environmental bases of this state.

1C.405

Through SB 10, statewide land use planning was established firmly as a principle and a mandate. Not only were zoning and subdivision regulations required of every jurisdiction in the state, but statewide goals were set out which addressed conservation of prime farmland and other vital state concerns, including air and water quality, open space, natural and scenic resources, timely development of public facilities, well-considered transportation systems, and orderly transition from rural to urban uses with a careful view to protecting the basic character of Oregon.

Unfortunately, the 1969 legislation contained no assistance to meet the cost of compliance, and its enforcement provisions proved inappropriate.

This led to a strong effort on the part of Governor McCall and key state legislators to work together to develop an acceptable proposal that would make statewide land use planning a reality rather than a platitude in every jurisdiction in the state.



CHAPTER TWO

THE OREGON LAND USE ACT OF 1973



OREGON LAND USE PLANNING



THE OREGON LAND USE ACT OF 1973

Governor McCall was re-elected in 1972 on a platform which included a call for legislation to strengthen SB 10 and ensure implementation of land use goals by local government. At the same time, State Senator Hector Macpherson, a farmer and former Linn County planning commissioner, began work with the Governor's Local Government Relations Division to draft legislation putting substance into SB 10 and shoring up coordination and supervision of local planning efforts.

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The 1973 Legislature convened with bipartisan support for strengthening state oversight of local planning. The result of its effort, the Oregon Land Use Act of 1973, established the framework that in major part governs and guides land use planning in Oregon to the present day.

The Act was passed by substantial margins in both chambers of the 1973 Legislature. It remains a controversial piece of legislation, but has withstood numerous challenges in the Legislature, in the courts, and at the polls. It also represents the concerns and has received the support of various groups representing agriculture, business, homebuilders, local government, and environmental organizations.

The Oregon Land Use Act of 1973 put in place the following framework to govern statewide land use planning:

- Established the Land Conservation and Development Commission (LCDC), appointed by the Governor
- Created the Department of Land Conservation and Development (DLCD) to provide fulltime staff and coordinate functions for LCDC
- Directed the LCDC to establish statewide goals
- Required all cities and counties in Oregon to prepare and adopt comprehensive plans consistent with statewide goals
- Required state agency plans and actions to conform to LCDC goals and to city and county comprehensive plans
- Required all cities and counties to enact zoning, subdivision, and other regulatory ordinances to implement their comprehensive plans
- Directed the LCDC to review all local comprehensive plans and implementing ordinances for conformance with statewide goals
- Required widespread citizen involvement in the planning process at local and statewide levels
- Allowed for appeals from local decisions alleged to violate state goals

1D.200

12 The Oregon Land Use Act of 1973

Critical emphasis in the Land Use Act was devoted to the means by which Oregonians throughout the state could participate in statewide and local land use planning, and the mechanism through which local governments could establish comprehensive plans that met or exceeded the statewide goals set forth by LCDC. In addition, LCDC extended its administrative supervision through DLCD; fiscal support was provided so that local governments could meet their new responsibilities; a means of coordination with other agencies and entities (local and state) was established, and the role of local government as the primary planner and decisionmaker in guiding development, once a local plan was acknowledged, was strengthened.

Ultimately, the Act put *you*, the local official and concerned citizen, in the driver's seat as you guide development and preserve resources through the planning process in your community. At the same time, however, it was designed to give you "rules of the road" in land use—rules established as goals by the common consensus of citizens and officials from throughout the state.

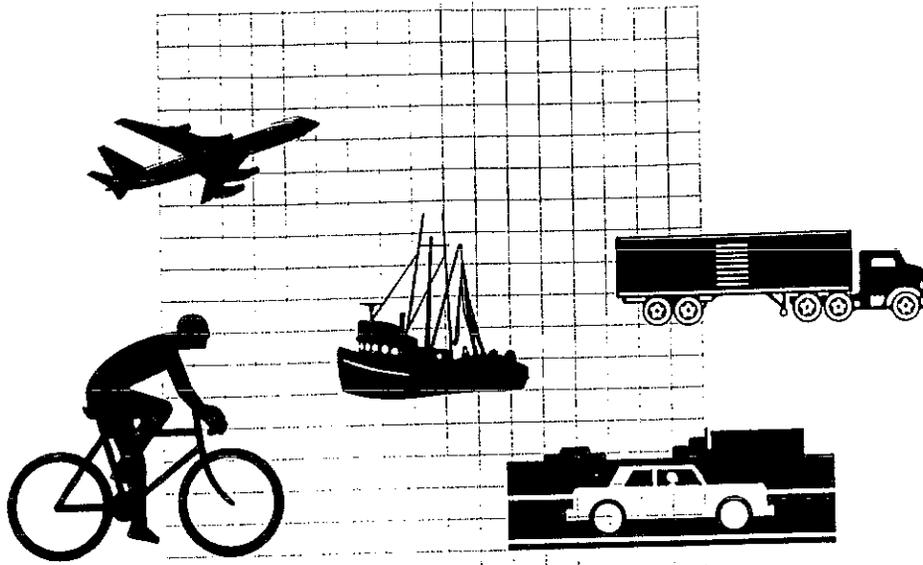
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CHAPTER THREE

A DECADE
OF REFINEMENT

OREGON LAND USE PLANNING



DEVELOPING THE GOALS

Once the Land Use Act was on the books, sleeves were rolled up throughout Oregon as the work of implementation began. The foremost immediate task for LCDC was development of the statewide planning goals against which each local comprehensive plan could be measured.

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After more than a year of public workshops and hearings around the state, LCDC adopted 14 statewide land use planning goals in late 1974.

Later on, coastal goals and a Willamette River Greenway goal were added to make a grand total of 19 statewide land use planning goals.

The goals are discussed in greater depth in Chapter IV.

ENFORCEMENT OF THE LAND USE ACT

Implementation of the Oregon statewide land use program has involved enforcement actions, litigation, and appeals as local land use decisions and comprehensive plans have been tested against the statewide goals and subjected to new procedures required by the courts about the same time the Act went into effect. The litigation and subsequent clarifying amendments to the Land Use Act have established the framework of decisionmaking rules which you as a local decisionmaker are bound to apply.

LCDC'S RESPONSIBILITIES

LCDC itself acts mainly through the acknowledgment and post-acknowledgment review processes. It may also issue "enforcement orders," which specify areas of noncompliance in local planning or decisions, and specify the corrective action required. In proceeding against noncompliance with the Act, LCDC can make formal findings and limit or prohibit land use actions of local government, including subdivision approval and issuance of building permits. In addition, LCDC is empowered to withhold a local jurisdiction's share of state revenue from gasoline taxes, liquor taxes, and the like. LCDC at this writing has issued only 12 enforcement orders since its first one was entered in 1978.

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It is important to note that LCDC's enforcement powers relate only to cities' and counties' compliance with the Land Use Act and the goals. Cities and counties themselves remain responsible for assuring that individual land use actions conform with their local comprehensive plan. Local government is the primary enforcement entity, and appeals of final local decisions go directly to the Land Use Board of Appeals.

DECIDING APPEALS

Oregon's highest courts have continued to play a significant role in enforcing and interpreting land use laws and policies. Even as the 1973 Land Use Act was being debated, the Oregon Supreme Court decided the landmark *Fasano* case, which established that certain local land use decisions were "quasi-judicial" and must adhere to strict procedural guidelines. Classic due process safeguards extended to parties to a land use proceeding include notice to all affected parties, an opportunity to be heard, an opportunity to present and rebut evidence, a hearing before an impartial decisionmaker, and ultimately a final decision in writing, listing specific findings made by the jurisdiction.

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Fasano procedural safeguards, which have been substantially codified and incorporated into statutes and ordinances, are further discussed in Chapter VI.

The procedure for appeal of local land use decisions has undergone several changes over the last ten years. Procedural and substantive grounds for appeals of local land use decisions are set out in the Land Use Act. Land use decisions before 1979 were subject to review by both LCDC and the Circuit Courts, with further appeal allowed to the Court of Appeals and the Supreme Court.

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This overlapping jurisdiction was clarified and consolidated in 1979 with creation of the Land Use Board of Appeals (LUBA). After acknowledgment, LUBA hears all appeals of land use decisions of all types. Appeal of LUBA decisions may be made directly to the Oregon Court of Appeals. LCDC itself is obliged to utilize the LUBA process in appealing land use decisions. LUBA decisions are published and serve as additional precedents for local enforcement.

THE LEGISLATURE AND THE VOTER

Since the passage of the Land Use Act, the Oregon Legislature has been continuously active in refining and adjusting the statewide land use program. No fundamental changes in framework have occurred, but each biennial session of the Legislature has produced significant legislation on land use. Examples include legislation redefining LCDC's enforcement relationship with local government; refining and expediting the appeals process; assisting local governments to complete comprehensive plans, and setting deadlines for completion; tightening the exceptions and acknowledgment procedures; establishing LUBA, etc.

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Oregon voters have upheld the program by defeating three successive ballot measures to repeal or weaken the Act, in 1976, 1978, and 1982—as have the courts, the Legislature, and three successive Governors. All have consistently supported retaining the basic land use planning framework for our state.

THE LAND USE SYSTEM TODAY

After 11 years, Oregon's land use planning system has settled firmly into place. By the end of 1984, all Oregon cities and counties should have acknowledged comprehensive plans. In 1982 a close review of the land use system by a Governor's Task Force concluded that Oregon's land use laws were not a significant factor in causing or compounding the recent economic recession. In fact, Oregon's land use laws are often seen to assist local economic development efforts by providing industries with certainty and predictability—two factors vitally necessary for orderly site location or expansion anywhere in the state.

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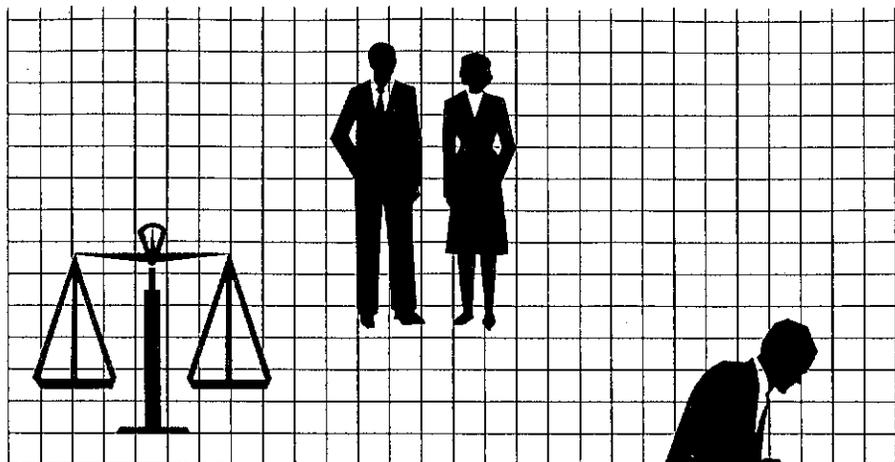


CHAPTER FOUR

THE STATEWIDE GOALS



OREGON LAND USE PLANNING



LEGAL EFFECT: LOCAL CONTROL AND STATEWIDE COORDINATION

In effect, the 1973 Land Use Act addressed Oregon's vexing land use problems by bringing the state government into full partnership with local governments in land use planning and the orderly regulation of development. That partnership created what Gov. Tom McCall referred to as "A framework—the mere possibility—for solving the state's land use problems."

Responsibility for carrying out the letter and spirit of the land use law rests with local officials, who represent the public trust. Local governments retain their traditional decisionmaking authority over land use changes, subject to their own acknowledged comprehensive plans and the statewide goals.

The "framework" objective of the Land Use Act is very much alive today: it is that every land use decision in Oregon must be consistent with local comprehensive plans and ordinances. The plan, in turn, is to be coordinated with plans of neighboring governments, state agencies, and, if possible, federal agencies. Both state and local plans must be consistent with state laws and statewide goals.

Oregon's statewide land use planning goals and related administrative regulations bind both citizens and their state and local governments. While the goal statements themselves have the force of law, a full understanding requires reference to several additional authoritative sources that interpret and clarify the goals. These sources include the administrative regulations adopted for several of the goals and codified in Oregon Administrative Rules (OAR), Chapter 660. They also include past decisions of the courts, the Land Use Board of Appeals, and LCDC itself.

2D.000

The "Guidelines" originally promulgated along with the goals contain additional interpretation, but the Legislature has made it clear that the guidelines are suggestions only, and are not binding upon local governments.

THE PURPOSE OF THE GOALS: DEVELOPMENT AND PRESERVATION

Taken as a whole, the goals are best understood as devoted to two primary purposes. First, they seek to protect the natural resources on which Oregon's economy depends (in particular the farm and forest bases of our economy) and our environmental quality. Second, the goals seek to concentrate urban development within areas inside or adjacent to Oregon cities.

1E.200

Implicit in both purposes of the goals is the *encouragement* of economic development through orderly growth. The goals encourage such growth, but provide a way of accommodating it so that the long-term economic and environmental foundations of Oregon are not placed at risk.

The twin concerns—development and preservation—meet and are resolved in Goal 14. This “urbanization” goal requires that each city, in consultation with its county and neighboring jurisdictions, draw a boundary around itself which is intended to establish the projected limits of urban growth for about 20 years. Data to support the boundary is required, including 20-year population and growth forecasts. All land within this boundary—called the urban growth boundary, or UGB—will be considered either urban or potentially urban, while land outside the boundary must remain predominately rural in character.

The nineteen statewide land use planning goals can be generally grouped into three categories:

- **Process Goals**, which ensure citizen participation and set forth basic procedures for local planning and development regulations (Goals 1 and 2).
- **Development Goals**, which address the interrelated factors of the economy, housing, public facilities, transportation, energy, and urbanization (Goals 9-14).
- **Conservation Goals**, which address the preservation of natural resources of various types:
 - Rural resources, relating to agriculture and forest (Goals 3 & 4).
 - Coastal resources, including estuaries, shorelines, beaches and dunes, and the ocean itself (Goals 16-19).
 - Resource management, providing for environmental quality; recreational areas; scenic, historic, and natural resource areas; and management of natural hazards (Goals 5-8).
 - Willamette River Greenway, recognizing the special characteristics of, and demands on, this major waterway (Goal 15).



PROCESS GOALS

GOAL 1, the first “process” goal, requires that your local jurisdiction maintain a program for citizen involvement in the planning process and support the citizen activity with information and resources that will make it viable and vital to your local planning and decisionmaking. Citizen involvement programs are, in fact, required to be included as a part of your comprehensive plan itself. The adequacy of your program to involve citizens is subject to LCDC review during the acknowledgment process.

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GOAL 2, the second “process” goal, sets forth LCDC’s basic requirements for your community’s planning and development processes as a whole. Generally, Goal 2 requires that you document factually all of your policies and decisions, be consistent in both your comprehensive plan and implementing ordinances, coordinate with other jurisdictions in your area, and carry out periodic review and adjustment of your plan and its implementation. Goal 2 also sets out LCDC’s “exceptions” process by which you may, with LCDC’s approval, take exceptions to certain goals when land is already committed to other uses or is demonstrably needed for uses consistent with other goals. Throughout the state, most exceptions to date have been taken in connection with agricultural land (Goal 3) and forest land (Goal 4).

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DEVELOPMENT GOALS

The six "development" goals may be summarized briefly as follows:

GOAL 9, Economy of the State, is a mandate to consider economic development needs in local land use plans and identify the community's economic development strategy. Local jurisdictions are expected not only to allocate sufficient land for economic development needs, but also to identify the public facilities necessary to accommodate the community's economic growth during the plan period.

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GOAL 10, Housing, requires that sufficient lands be designated for residential use to provide for a housing supply adequate to meet the community's growth requirements, and to provide a range of choice on matters such as location, type, and density of housing. The basic planning unit for purposes of Goal 10 is the area within a city's UGB (see Goal 14), or, in the case of the Portland area, the metropolitan UGB. The goal requires both an inventory of buildable lands and a housing needs assessment. Planning for housing in rural areas (i.e., outside a UGB) is subject to Goal 3 and Goal 4 requirements for farm, forest, and nonfarm and nonforest dwellings, except in "exceptions" areas.

2D.1100

GOAL 11, Public Facilities and Services, requires cities and counties to address urban and rural public facility needs in their comprehensive plans. Legislation enacted in 1983 specifically requires cities and counties having UGBs containing more than 2,500 population to prepare public facility plans for sewer, water, and transportation facilities that include a rough cost estimate for the facilities involved.

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GOAL 12, Transportation, requires consideration of all modes of transportation and of the social, economic, and environmental impacts of transportation policies.

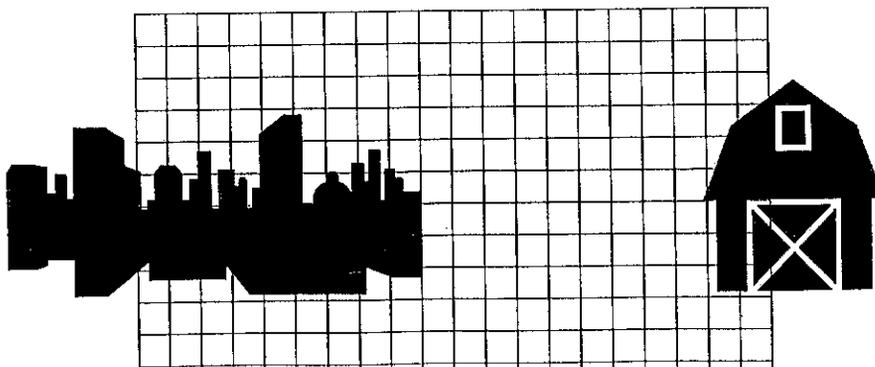
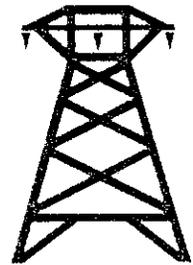
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GOAL 13, Energy Conservation, provides for consideration of energy conservation and renewable energy resource development in preparing and implementing local plans.

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GOAL 14, Urbanization, requires cities and counties to jointly designate for each city an urban growth boundary encompassing the land area that is expected to be needed for urban development during the plan period. The boundary separates urban and urbanizable land from rural land and establishes the perimeter within which urban facilities and services are to be contained. City and county planning and regulatory programs must be coordinated under intergovernmental agreements covering land outside city limits but within the UGB.

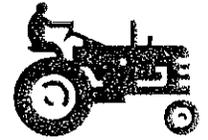
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CONSERVATION GOALS

The eleven "conservation" goals address a number of important conservation, rural farming, and forest, coastal, and resource management issues. They may be briefly summarized as follows:

GOAL 3, Agricultural Lands, requires exclusive farm use (EFU) zoning of lands that have certain types of soils or are otherwise suited or required for agricultural purposes. State law defines the uses allowable in EFU zones. The protection of EFU lands has been a critical, longstanding concern in Oregon's statewide land use program. 2D.300



GOAL 4, Forest Lands, similarly requires designation of land used for commercial forestry and other forest uses based generally on site classification. As in the case of Goal 3, the objective is to ensure the protection of land uses that are critical to the state's resource-based economy. 2D.400

GOAL 5, Open Spaces, Scenic and Historic Areas, and Natural Resources, provides for protection of a variety of natural and cultural resources through plan inventories and local regulations to prevent conflicting land uses to the extent possible. 2D.600

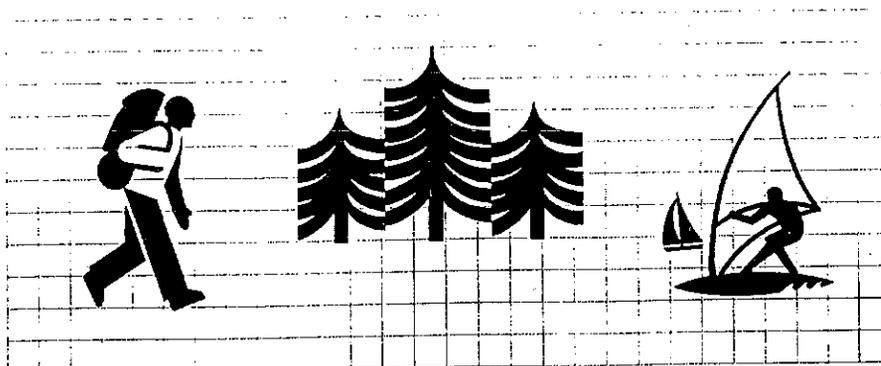
GOAL 6, Air, Water, and Land Resources Quality, basically makes compliance with applicable state and federal environmental requirements a matter to be addressed in comprehensive plans through inventories of local conditions and, if necessary, local regulations to protect air and water quality. 2D.700

GOAL 7, Natural Disasters and Hazards, requires that local governments restrict or prohibit development on land subject to flooding, erosion, landslides, and other hazards. 2D.800

GOAL 8, Recreational Needs, provides for local inventories and protective actions for land valuable for outdoor recreation. 2D.900

GOAL 15, Willamette River Greenway, requires local inventories and special regulations governing development within areas immediately adjacent to the Willamette River. 2D.1600

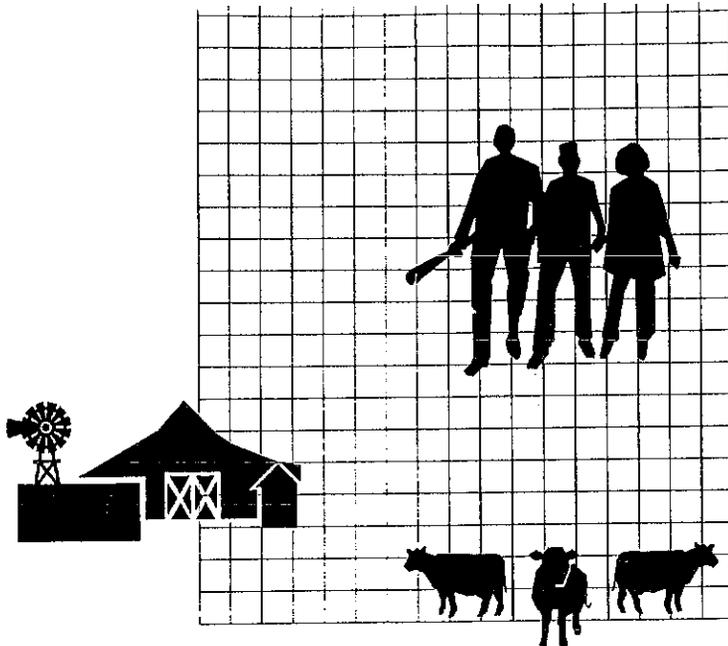
GOALS 16, 17, 18 and 19, the Coastal Goals, establish policies and requirements and include specific regulations and development criteria for estuaries, coastal shorelands, beaches and dunes, and ocean resources (the latter primarily for the guidance of state and federal agencies rather than local governments). These goals not only set parameters for planning by jurisdictions located along the Oregon coast, but also establish policies and procedures for Oregon's participation in the federal Coastal Zone Management Act program. 2D.1700
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CHAPTER FIVE

COMPREHENSIVE PLANS AND THEIR IMPLEMENTATION

OREGON LAND USE PLANNING



THE COMPREHENSIVE PLAN AND ITS IMPLEMENTATION

If you are like most local officials in Oregon, your jurisdiction has invested enormous effort and countless hours in developing a comprehensive plan, and your plan has been acknowledged by LCDC.

Does this mean that most of your duties in land use planning are behind you?

No.

Your acknowledged comprehensive plan is not a conclusion, it is a charter. Far from being a signature at the end of your jurisdiction's planning effort, it is a series of guideposts to assist you in your daily decisionmaking.

PLANNING AS A CONTINUING PROCESS

Comprehensive land use planning in Oregon is a continuing process involving you and the citizens in your community. Working together you will:

- continue to develop, implement, and update your plan;
- apply your plan to zone changes, conditional use permits, variances, subdivisions, and other land development proposals; and
- continue to measure your plan, your decisions, and the pattern of land use in your community against local and state-wide goals.

In short, you have a critical ongoing role in the vital continuing process called comprehensive planning. It is a challenging task, and a tremendously significant one.

WHAT IS A COMPREHENSIVE PLAN?

Your comprehensive plan is a series of generalized, coordinated policy statements, accompanied by a land use map, through which your community has set out its vision of its future. It includes a text describing goals and policies, and the factual data and projections on which the policies were based, together with a map which generally indicates future locations of various types of public and private uses of the land.

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Comprehensive plans are the culmination of a long-established legal status of property ownership in our society; that is, a citizen's right to use and develop property is not unlimited, but is conditioned by the needs and interests of other citizens and property owners and of the community as a whole. Conditions expressed by the community and the state through the local comprehensive plan may represent many different interests and many levels of the community; abutting property owners, neighborhoods, transportation, farming, recreation, and state or federal policies.

From an era when comprehensive plans in Oregon merely served as general guides, we have entered an era in which acknowledged comprehensive plans are legally binding on the land use decisions of local government.

THE PLAN AND ITS PARTS

Each city and county governing body is responsible for adopting and implementing a comprehensive plan within its jurisdiction. Though each plan must comply with the statewide goals, the plans themselves vary widely. Each plan does have, however, a number of essential common features:

1. Data base and projections.

Basic information about the community is assembled and analyzed. Past trends, present conditions, and future expectations are examined in detail. Inventories of data concerning the physical, economic, and human resources of the area are gathered. From forestland to fish, education to income, transportation to topography, these inventories describe past and present conditions. Based on analysis of these facts, projections are made for the future, usually for a period of 20 years.

2. Functional components.

Each plan interrelates functional components that reflect the potentials and concerns of the community as a whole. Housing, commercial and industrial land, recreation and open spaces, public facilities, agriculture and forest— each component is integrated through the planning process into a coordinated pattern of land use within the community.

3. Local goals.

Local goals identify the particular emphasis a community places on matters such as economic growth, downtown development, recreational facilities, and other matters of special local concern. Identification of such goals is generally accomplished by local planning commissions, staff, and citizen advisory committees, but ultimately is the responsibility of local elected officials. All local goals must in turn comply with statewide goals.

4. Plan coordination and citizen involvement.

Special encouragement and legal authority is provided for areawide coordination of city and county plans, and for the encouragement of widespread citizen involvement in the planning process. Each plan must provide for ongoing citizen participation, and specific procedures are set out for coordination of the plan with the plans of neighboring governments.

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SIGNIFICANCE OF ACKNOWLEDGMENT

Upon completion of local hearings and final adoption of a comprehensive plan and implementing ordinances, the final product is submitted to LCDC for acknowledgment. Once a comprehensive plan achieves acknowledgment, its policy statements and maps become legally binding legislation.

2C.600

2C.700

After acknowledgment, your land use decisions may be tested only against your own local comprehensive plan and implementing ordinances, which have already been found to be in accord with statewide goals. The result is greater security and certainty in your decisionmaking—and certainty among the many “publics” affected by your decisions, including development interests, rural interests, and many others. The certainty and predictability of an acknowledged comprehensive plan strengthen local control and help support and guide community growth and development.

IMPLEMENTING THE PLAN: ORDINANCES AND NONREGULATORY MEASURES

As we have seen, Oregon state government does not regulate local land use directly, but instead has developed statewide goals and required your community to address those goals in your local comprehensive plan. Once your plan is acknowledged, the goals continue to apply—albeit indirectly through your own comprehensive plan.

Once adopted by your city or county and acknowledged by LCDC, in what ways and by what means is your comprehensive plan implemented? In other words, what are the types of decisions you will be called upon to consider?

Actually, your plan is implemented in a great variety of ways: by adopting new land use regulations and amending existing ones; by enacting nonregulatory measures such as capital improvement programs; by decisions on individual applications; by entering into intergovernmental agreements, and by continuing to refine the comprehensive plan and its ordinances.

TYPES OF LAND USE REGULATIONS

Though each comprehensive plan contains a map and general policy statements, it is the implementing ordinances which establish the particular criteria, standards, and procedures through which the plan will be carried out. They prescribe laws governing the way in which land may be used and divided.

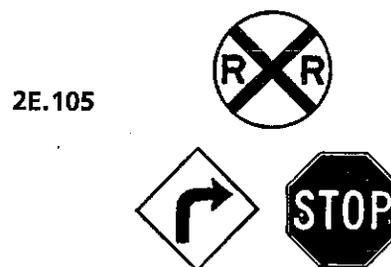
Let us look at the two most common types of land use regulation: zoning ordinances and subdivision regulations. You will encounter both of these traditional forms of land use regulation frequently as you go about your duties, although some communities have combined the two with related measures into a single overall “land development code”.

ZONING is the placement of various land use “labels” (such as farming, residential, commercial) on particular geographic areas in your community. Zoning describes the uses permitted, and generally establishes criteria and standards for each use (such as lot size, setbacks, parking). In designating these areas and establishing the conditions, the zoning ordinance will usually allow for flexibility and the accommodation of special concerns. Typically, provisions for variances, nonconforming uses, conditional uses, design review, and other special provisions will be built into the zoning ordinance.



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SUBDIVISION REGULATIONS control the particular ways in which parcels of land are divided. Typically, provision is made for design and layout of sites, roads, utility easements, public areas, etc. Many subdivision and partitioning regulations require that the applicant make or guarantee certain public improvements upon dividing the property.

2E.110

NONREGULATORY MEASURES include a wide array of government programs that assist a city or county in carrying out its comprehensive plan. They may include incentive programs for economic development, capital improvement programs, and low-income housing programs.

2E.200

INTERGOVERNMENTAL AGREEMENTS seek to ensure the consistency of neighboring or overlapping jurisdictions' planning with each other, describe the relationship between cities and counties, and establish priorities for extending city services into unincorporated areas. LCDC acknowledgment of city plans requires a growth management agreement between each city and its county. This describes the coordination of plan implementation in areas between city limits and the UGB, as well as methods for coordinating future plan amendments. Most counties retain final authority for land use decisions in areas outside the city limits.

2E.300

YOUR OWN DAILY DECISIONMAKING is itself an integral part of comprehensive plan implementation. Depending on your position in local government, you may review a bewildering array of applications for conditional use permits, variances, zone changes, subdivisions, partitioning, and other land use proposals of every possible type, variety, and level of significance. Local ordinances assign responsibility for decisions on these matters variously to staff, hearings officers, planning commissions, special panels, and to city councils or boards of county commissioners.

Ultimately, you will find that your comprehensive plan and implementing ordinances require amendment and alteration from time to time. The population, economy, or other characteristics of your community evolve over time, and your comprehensive plan must be able to evolve as well.

Whether or not you choose to amend your plan, inconsistencies with statewide goals may possibly develop as a result of state or local change. That is why state law requires periodic LCDC review of your plan to ensure that it remains consistent with the statewide goals.

But the critical, overall, day-to-day land use decisionmaking responsibility rests with you.

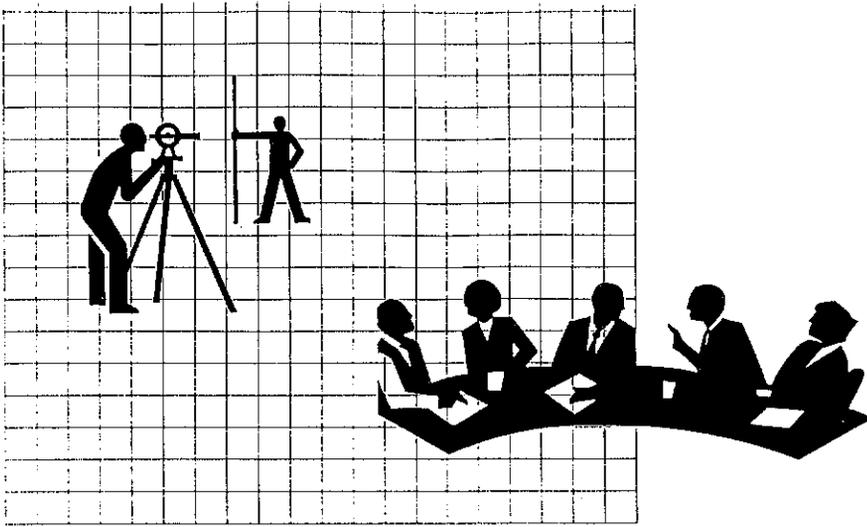
As we have seen, it is a tremendously significant public trust.



CHAPTER SIX

MAKING LAND USE DECISIONS

OREGON LAND USE PLANNING



MAKING LAND USE DECISIONS

Making decisions is the day-to-day work of public officials, and the area of land use is little different. But land use decisions impose some special requirements on public officials in terms of the process by which they are made. The purpose of these special requirements is to protect the interests of land owners, developers, and other affected parties through an open process that is fair to all concerned, and to ensure that decisions are grounded in facts with clearly stated reasoning. The requirements are discussed in this chapter.

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WHAT IS A LAND USE DECISION?

The technical definition of a land use decision is found in state statutes (ORS 197.015). In general, a local government makes a land use decision whenever it makes a final determination adopting or amending its plan or ordinances, or applying its plan or ordinances to a particular land use proposal. However, local plans and ordinances set forth various procedures for handling different kinds of land use and development applications, so what is a land use decision in one city or county may not be in another.

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In defining land use decisions, state statutes exclude “ministerial decisions” made under “clear and objective standards” and for which the local government provides no right to a hearing. If your ordinance sets forth measurable standards for issuing certain permits, and authorizes the planning director or other staff to grant them without hearings, then it’s not a land use decision. But if your ordinance provides for a public hearing on a particular type of application, the permit *is* a land use decision and you should follow the special procedures.

If an issue arises that is not clearly addressed by plan implementation documents and there is doubt as to whether the decision is a land use decision, the test to apply is: “Will the decision have a *significant impact* on present and future land use?” If still in doubt, it is best to treat the decision procedurally as a land use decision, to avoid challenges based on your failure to follow correct procedures. For example, while it’s clear that not every street improvement is a land use decision, the Oregon Supreme Court determined that a certain street improvement would affect the use of adjacent land to such an extent that it should be processed as a land use decision.

In sum, the answer to “what is a land use decision?” is determined by the definition in state statutes, by your local ordinances, and, if inadequately addressed in your ordinances, by the common sense test of “Significant Impact”.

THREE KINDS OF LAND USE DECISIONS

Local governments make all kinds of decisions regarding the use of land—decisions that range from issuing building permits to adopting comprehensive plans. But the nature of land use decisions is most easily divided into two categories: legislative and quasi-judicial. Legislative decisions *make* law for the entire jurisdiction. Quasi-judicial decisions *apply* existing law to individual situations.

3B.200

When a city or county adopts or amends its comprehensive plan, when it adopts or amends ordinances to implement its plan, its governing body acts legislatively, *making* law which applies to the entire jurisdiction.

On the other hand, when elected or appointed officials approve a conditional use permit they are not acting as legislators, but are *applying* existing law to a specific site and to specific individuals. In these cases, there are often at least two parties involved, and you are required to make a discretionary judgment based on review of applicable law and the evidence. Your role in these cases is more like that of a judge than a legislator. Hence, they are called “quasi-judicial” land use decisions.

A third kind of decision affecting land use (though not a land use decision in a technical, legal sense) is the so-called “ministerial” decision, which is made administratively by staff according to authority specifically delegated to them by ordinance. These decisions simply apply measurable standards which are contained in the ordinance, and require no discretionary judgment.

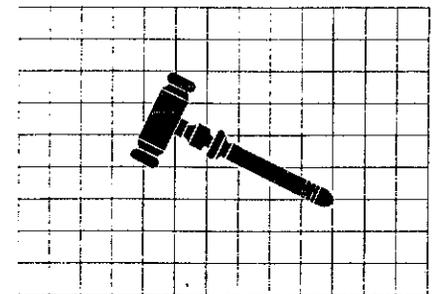
PROCEDURES FOR MAKING LEGISLATIVE LAND USE DECISIONS

Legislative land use decisions are much like other legislative decisions, but they impose some special responsibilities on you as a public official. These responsibilities revolve around the *process* by which the decision is made.

While there are some special requirements for notice and hearings on legislative land use decisions, the difference that will have the greatest effect on performance of your duty is the requirement that *findings* must be drafted and adopted. Findings delineate the *factual base* supporting your decision and demonstrate that it complies with your ordinances, comprehensive plan, and/or the statewide goals.

To minimize the risk of legislative land use decisions being reversed or remanded on procedural grounds, it is important to comply with the special procedures required by state law.

1. NOTICE. In addition to a city or county governing body’s customary notice procedures, notice of proposed legislative land use decisions must be mailed to persons and agencies *requesting* it. Statutory time-limit requirements include:



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- 10-day notice of hearings on adoption of subdivision and partitioning regulations.
- If statewide goals apply to the legislative action, LCDC must receive notice 45 days before the final hearing.

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2. HEARING. A legislative land use decision may be made only after a public hearing at which persons have the *right* (not just the privilege) of submitting oral or written testimony.

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3. DECISION AND FINDINGS. Consistent with the Oregon "Open Meeting Law," decisions must be made at a public meeting. Unlike other legislative decisions, land use decisions require that *findings* to support the decision must be prepared, clearly demonstrating that the decision has "an adequate factual base" and that it complies with the comprehensive plan and/or statewide goals.

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4. NOTICE OF DECISION must be mailed within five working days to persons who *requested* it and who participated in the hearing. If the decision adopts or amends the comprehensive plan or its implementing ordinances, a copy of the plan or ordinance, plus a copy of the *findings*, must be sent to LCDC within five working days.

The notice:

- A. Describes the action taken;
- B. Tells the date of the decision;
- C. States where the plan amendment or regulation may be reviewed; and
- D. Explains how the decision may be appealed.



APPEAL OF LEGISLATIVE LAND USE DECISIONS

Appeals of land use decisions differ from other legislative decisions which may be reviewed by the Circuit Courts and overturned if they are unreasonable or unconstitutional. Once you have an acknowledged comprehensive plan, your jurisdiction's legislative land use decisions may be appealed only to the Land Use Board of Appeals (LUBA), whose scope of review will include a determination of the decision's compliance with the comprehensive plan and statewide goals, as well as the special procedural rules regarding notice, hearing, and findings.

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WHO MAY APPEAL LEGISLATIVE DECISIONS?

State law extends standing to appeal to LUBA to persons who meet the statutory requirements for "standing," including:

1. Persons who provided written or oral testimony at the hearing; and
2. Persons who can prove they were aggrieved or have interests adversely affected by the decision.

The LUBA decision may be appealed—either by the local government itself, or by the parties listed above—to the Oregon Court of Appeals, and then to the Oregon Supreme Court.

QUASI-JUDICIAL DECISIONS

The 1973 Oregon Supreme Court decision in the landmark case of *Fasano V. Board of Commissioners of Washington County* established that certain land use decisions are like judicial decisions. These are the most common kinds of land use decisions. Even though they're made by a legislative body or a planning commission and not a court, they have the nature of a judicial decision. They *apply* existing law and policy to specific land and persons, and to evidence (not necessarily just facts that can be objectively measured), to reach a decision which involves discretionary judgment.

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Since they are not legislative, but quasi-judicial decisions, the parties involved are entitled to many of the same procedural rights as

parties to a judicial decision. The *Fasano* decision determined those rights to be specifically:

1. The right to notice and an opportunity to *present and rebut evidence at a hearing*;
2. The right to have a *record made of the hearing and adequate findings adopted* explaining reasons for the decision;
3. The right to an *impartial decisionmaker*.

“IMPARTIALITY” —A POTENTIAL DILEMMA FOR THE ELECTED OFFICIAL

It is this “right to an impartial decisionmaker” that can be troublesome for elected officials. The public does not expect you to be impartial in your legislative decisions. You’re expected to have some predispositions, based on commitments you made to voters in your campaign. But people have quite the opposite expectation when it comes to quasi-judicial decisions. People expect “justice” to be dispensed by a neutral third party.

So, you may find yourself with a personal dilemma—caught between the parties’ right to an impartial decisionmaker and your personal biases. Or, just as painful, there may be the *appearance*, to one group or another, of partiality in your actions. Some guidelines are offered here, but the best advice, if you doubt your impartiality, is to seek legal counsel as to whether you should disqualify yourself.

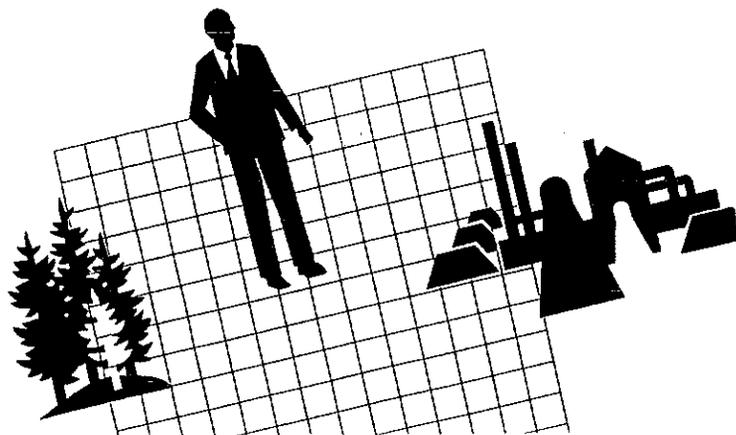
3F.220

CONFLICTS OF INTEREST

City and county planning commissioners are required by law to disqualify themselves from participating in proceedings where a potential conflict of interest exists—that is, proceedings in which they, their families, partners, or businesses have a “direct or substantial financial interest”. But for elected officials, the course of action is not so clearly dictated: ORS 244.120 requires an elected official to “...announce publicly the nature of the potential conflict prior to taking any official action thereon”.

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While the law requires only disclosure and not abstention, the Attorney General has questioned whether government officials are not, nevertheless, under a statutory duty to disqualify themselves if a potential conflict of interest exists. ORS chapter 244 defines a potential conflict of interest as “any transaction where a person acting in a capacity as a public official takes any action or makes any recommendation, the effect of which would be to the private pecuniary benefit or detriment of the person or a member of the person’s household”.



PERSONAL BIAS

State statutes address only financial conflicts of interest, but it is easy to imagine a situation in which one may be biased for reasons unrelated to financial benefit. When a son or daughter seeks a variance, or a business competitor requests a zone change, one may be so prejudiced for or against a party that one is incapable of rendering a fair, impartial judgment.

Still, the definitions remain vague, and the question of impartiality will continue to be a thorny one. It is the particular facts surrounding each case which provide evidence of bias. If a petitioner on appeal can successfully establish your bias, your decision can be reversed or remanded, causing undue delay and adding to the costs of your land use administration.

Your local ordinances may provide additional requirements addressing conflict of interest, disqualification, and nonperformance of duty.

EX PARTE CONTACTS

It happens all the time. There's a conditional use permit hearing scheduled next Wednesday. On Sunday, you sit next to an adjoining property owner at a Little League game. He tells you he knows for certain that parking requirements exceed what the applicant is representing. You've just had an *ex parte* contact. So, what do you do at the hearing on Wednesday? *Get your conversation into the record!*

The 1983 Legislature clarified that *ex parte* contacts will not invalidate a decision if the decisionmaker, *at the first hearing on the matter*:

1. places on the record the substance of any written or oral *ex parte* communication; and
2. makes an announcement at the hearing of a party's right to rebut the substance of the communication.

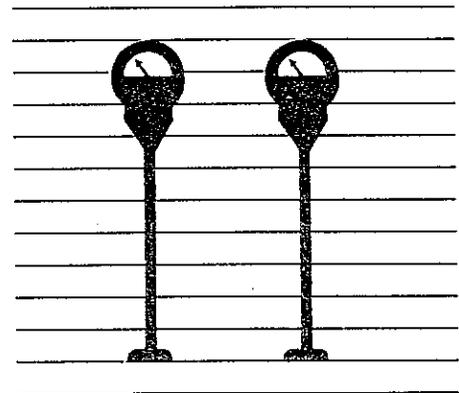
There is much confusion on this issue, and it stems from the interpretation of court decisions beginning with *Fasano*, which concluded that parties to a quasi-judicial land use hearing are "entitled to...a tribunal which is impartial in the matter—i.e., having no pre-hearing or *ex parte* contacts concerning the question at issue". This was originally interpreted to be a prohibition against any and all "pre-hearing" or *ex parte* contacts. Subsequent court decisions have recognized the impossibility of insulating elected officials from their constituents.

Ex parte contacts are now viewed as an *example* of how impartiality might be violated, rather than an automatic violation of the impartial tribunal requirement. LUBA has reversed land use decisions when *ex parte* contacts were not sufficiently disclosed at the hearing to allow rebuttal. For example, a *site visit*, as well as the facts gained from the visit, must be made part of the record.

When in doubt, disclose any communication *on the record*, and be sure to state the parties' right to rebut its substance.

Your conversations with planning staff members are not considered *ex parte* contacts.

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PROCEDURES FOR QUASI-JUDICIAL DECISIONS

State statutes, as well as local procedural rules, govern the procedures surrounding quasi-judicial land use decisions. These procedures have special requirements (for notice, hearing, findings, and appeal) that may be more elaborate than those used for legislative land use decisions. That's because quasi-judicial land use decisions always involve the property rights of specific persons and should be made under procedures that adequately protect those rights.

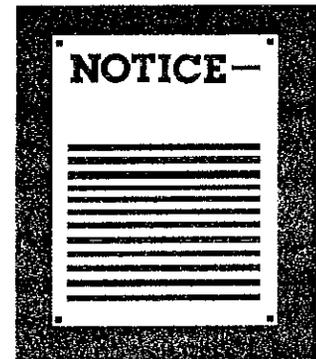
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PROTECTING THE CITIZENS' RIGHT TO BE HEARD

A common reason for reversing or remanding quasi-judicial decisions on appeal is the complaint by affected property owners that they did not know about, and therefore could not participate in, the decision. Local ordinances, in conformance with the applicable state laws, determine the procedures for giving notice in each situation (e.g., mailed, posted, or published, or a combination of these). To avoid successful appeals on procedural grounds, it is important that notice of a hearing:

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- adequately describes the issue to be decided (including identifying the property involved and the relevant criteria), as well as the time and place of the hearing and the parties' right to present evidence;
- is received by affected parties in time to allow them adequate time to prepare testimony; and
- if required to be posted, appears in a sufficient number of conspicuous places to allow potentially interested persons to see it.



STANDING

To have "standing" means to have the right to be heard at a decisionmaking hearing. For quasi-judicial decisions, this right is determined by local ordinances and—in actual practice—is extended to most persons with relevant testimony who wish to speak at a hearing.

3F.215

However, standing to appeal to LUBA may be different from standing to be heard at a local hearing. As with the appeal of legislative land use decisions, it is often difficult to determine who is "aggrieved" or has interests that are "adversely affected". On appeal to LUBA, these criteria are usually determined by examining the facts in each case.

HOLDING THE HEARING

In conducting the hearing, it is important to strive for the *appearance* of fairness, as well as fairness in fact. While parties to the decision have the right to present and rebut evidence, local governments have considerable leeway in establishing the rules under which these rights are exercised. At the beginning of the hearing, the presiding officer should state those rules (e.g., his or her intention to place a time limit on testimony, to avoid repetition, to accept only relevant evidence, or whatever), and require members of the hearing body to declare any *ex parte* contacts or conflicts of interest.

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The burden of proof in the proceedings is on the proponent of change. Technical rules of evidence do not generally apply, but the evidence must be "substantial"—that is, enough to lead a reasonable person to make the decision. Typical of many jurisdictions is Douglas

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County's requirement that evidence be of the quality that "reasonable persons rely upon in the conduct of their everyday affairs".

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MAKING THE RECORD: FACTS AND FINDINGS

While a verbatim transcript of the hearings is not a requirement, the record must be complete. Any evidence relied upon in making the decision must appear in the record of the hearing. (That's why anything you learned in *ex parte* contact must be made part of the record.) If it's not in the record, it's not "evidence" that can be used to make the decision, because the parties have had no opportunity to review or rebut it. On appeal, the record may be the only information upon which the reviewing body may legally rely.

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A decision is not final until the hearing body has adopted *findings*. The findings are essentially the road map of the decision. They:

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- *cite relevant criteria* and standards from the relevant ordinances or the comprehensive plan;
- *recite the facts* relied upon in making the decision, and
- *provide an explanation* tying the facts to the criteria and justifying the decision's compliance with the law.

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The importance of preparing and adopting findings in reasonable detail cannot be overemphasized.

Well-drafted findings may prevent successful appeal of a decision by showing that it was logical and that all evidence was considered. Lack of adequate findings has been the most often cited basis for remanding or overturning decisions on appeal.

While LUBA and the courts have been quick to identify "inadequate" findings, they are less clear about what constitutes "adequate" findings. One decision was overturned on appeal because, while the record showed that the planning commission had visited the site of the proposed development, the record did not include a summary of the facts it had gained from the visit and their *relationship* to the decision.

Findings are prepared in various ways, but the important thing is that the hearing body in fact *deliberates* on and adopts findings that are based on the record and that correctly document its decision. Often, the decisionmaking body reaches a tentative decision and asks the staff or the prevailing party—or both—to draft findings for its subsequent review and approval. This is appropriate so long as the decisionmaking body in fact reviews, deliberates upon, and formally adopts the findings.

3F.425



APPEALS OF QUASI-JUDICIAL DECISIONS

The law requires that notice of a quasi-judicial decision be sent to all parties to a proceeding. Your jurisdiction may provide for its own internal appeals (for example, from the planning commission to the board of commissioners) before the decision is final. In that case, the applicant has seven days from the time of receiving the notice of decision in which to file notice of appeal, but any internal appeal procedure must be completed within 120 days from the time a completed application was filed.

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Several variations and levels of review exist among Oregon's cities and counties. The scope of your jurisdiction's appellate review is generally defined by local ordinances, and can range from a review of the previous hearing record to a *de novo* hearing, which is held as if the prior decision had not been rendered. The latter has the advantage of providing an opportunity to correct bad decisions or procedural errors. But it can be

costly, repetitious, and time-consuming.

Final quasi-judicial land use decisions can be appealed directly to the Land Use Board of Appeals. Notice of an appeal to LUBA must be filed within 21 days of a final decision. A person may appeal if he or she appeared at the local level, either orally or in writing, and was entitled to notice and a hearing or is aggrieved or has interests adversely affected by the decision.

DELEGATING AUTHORITY TO STREAMLINE THE PROCESS

MINISTERIAL DECISIONS

A major objective of good land use planning and administration is to facilitate timely decisions, eliminating unnecessary and time-consuming procedures that are costly to the jurisdiction and discouraging to the applicant. To achieve this end, many cities and counties have adopted ordinances that establish specific, objective standards for approving certain kinds of permits and have delegated authority for those decisions to the staff.

In these "ministerial" decisions, the objective standards of the ordinance are applied to each situation. The situation either meets or does not meet the standards. Standards in the ordinance must be sufficiently detailed and specific to allow a determination based upon the facts alone. No discretionary judgment is involved. The decision is made administratively, much like issuing a building permit or a business license.

3G.000

Because they are expressly excluded from the statutory definition of land use decisions, ministerial decisions may not be appealed to LUBA. Historically, most jurisdictions have provided for appeal of *any* type of administrative land use decision to the governing body, but if yours does not, the staff decision is final.

PHASED QUASI-JUDICIAL DECISIONS

To allow non-controversial decisions to be made with the least procedural encumbrance, but to still protect the interests of potentially affected parties, some cities and counties have provided for a *phased quasi-judicial* process. This combines the administrative approach of an initial staff decision with the safeguards of the quasi-judicial format.

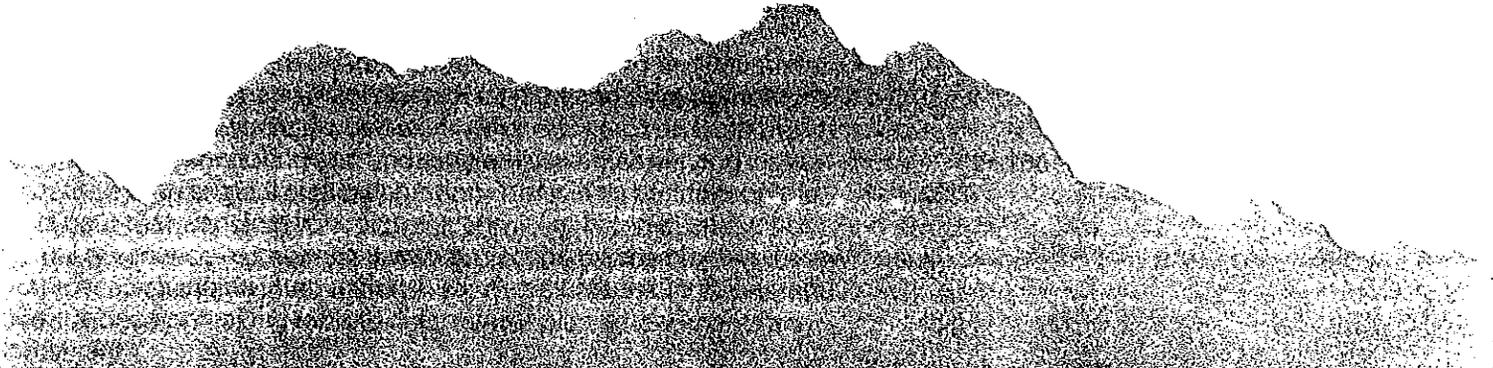
3F.600

Under this process, which is especially useful when there may be no controversy, even though some degree of discretionary judgment is involved, the planning director or other staff member reviews an application against relevant criteria in the ordinance and reaches a tentative decision. He or she then gives notice of the decision to all affected parties. If no one objects or requests a hearing, the planning director issues a final decision and sends notice of that decision to all parties.

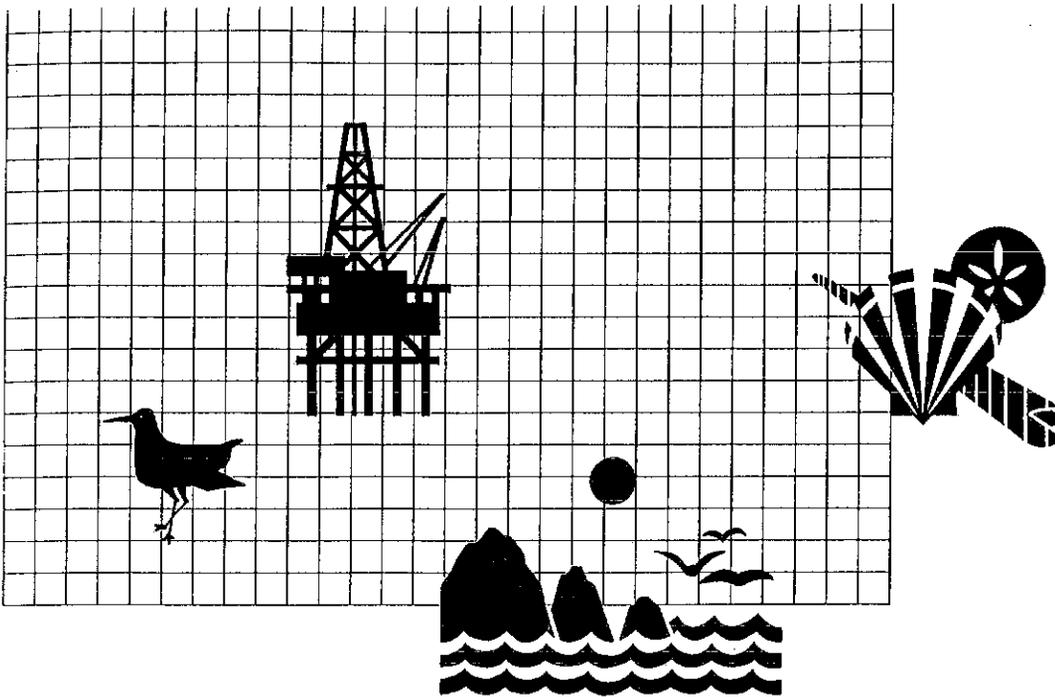
At any time in the process a hearing can be triggered by a hearing request. The process then operates under normal quasi-judicial procedures.

CHAPTER SEVEN

MONITORING AND UPDATING THE PLANS AND ORDINANCES



OREGON LAND USE PLANNING



ENTERING THE ERA OF POST-ACKNOWLEDGMENT

As the process of acknowledging plans drew to a close, natural questions arose regarding the necessity and scope for continuing state involvement in land use. Briefly put, the questions was: Should the state continue to be involved even after all communities' plans are acknowledged to be in compliance with the statewide goals?

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The answer was yes.

Legislators charged with answering that question recognized that as changes occur, they must be measured against the local comprehensive plan, and changes in the plan must in turn be measured against the statewide planning goals.

The 1981 Legislature opted for two methods of reviewing change in local plans. First, the local governments will notify DLCDC if they determine that LCDC goals apply to a local proposed plan or ordinance amendment. LCDC and DLCDC can then review the particular situation. Second, LCDC must undertake periodic review of all local plans, and it retains the power to issue enforcement orders during the post-acknowledgment period.

MONITORING CHANGE

Your plan contains a variety of assumptions and projections regarding the nature and magnitude of change and development. Regular monitoring of real-world experience will help you keep the plan on track. Monitoring and updating are usually easier and less expensive than original plan preparation. You will be building on the data base that went into your plan. An annual or biennial analysis of actual experience—comparing it with projections in the plan—will allow you to map changing interrelationships, re-evaluate assumptions, and provide decisionmaking tools to determine if plan amendments are necessary.

2F.200

To have good information it's important to establish systematic administrative procedures for collecting, tabulating, and monitoring data. LCDC can be a resource to your staff in advising on types of information and methods of monitoring.

AMENDING THE PLAN AND ORDINANCES

Planning, of course, is an ongoing process, and your comprehensive plan is not a static document. Changes in economic conditions, population characteristics, or a community's vision for itself—as well as a host of other changes—can occasion a need to amend the comprehensive plan.

Even more common is the need to amend implementing regulatory ordinances—to make them more specific, to address oversights, or to eliminate unnecessarily encumbering provisions. (Note that when ordinances are mute or inconsistent with the plan, it is the plan itself that prevails under the law. Land use decisions may be challenged and overturned in court for being inconsistent with comprehensive plans.)

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PERIODIC REVIEW AND UPDATE

Whether or not these kinds of needs for amendment occur, your plan includes a schedule for review and update. In addition, LCDC is required to make a periodic review of comprehensive plans.

The first review must occur within 2-5 years after LCDC acknowledgment of the plan, with subsequent review every 3-5 years thereafter. Within that time line, your jurisdiction may request a certain date for LCDC review, which must be based on four considerations:

2F.400

- Changes indicated by changing conditions and circumstances which affect local development;
- Changes necessary to comply with statewide goals or rules adopted by LCDC subsequent to acknowledgment of the plan;
- Changes needed to preserve consistency with state agency plans or programs adopted since acknowledgment of the plan;
- Performance of additional planning that was required or agreed to at the time of initial acknowledgment.

Steps in the review and update process are essentially the same as those you went through to adopt the comprehensive plan. The diagram on page 43 charts these steps.



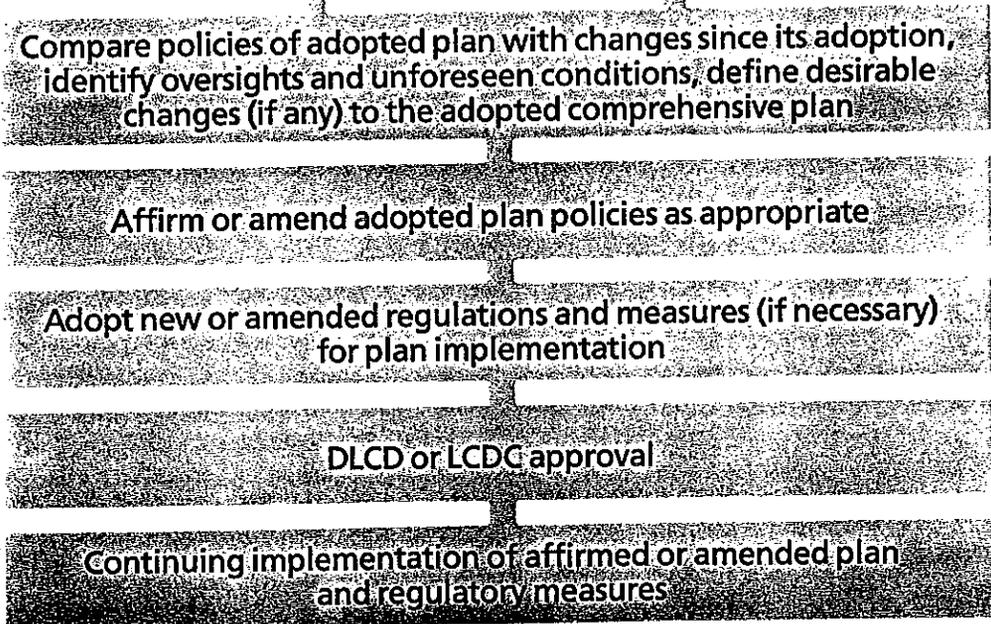
STEPS IN THE COMPREHENSIVE PLAN REVIEW AND UPDATE PROCESS

NEW DATA

- Changes in community attitudes and priorities
- New laws
- Changes in funding and financial conditions
- New or revised statewide goals
- New or revised federal policies
- Evaluate and modify (if appropriate) adopted community planning goals

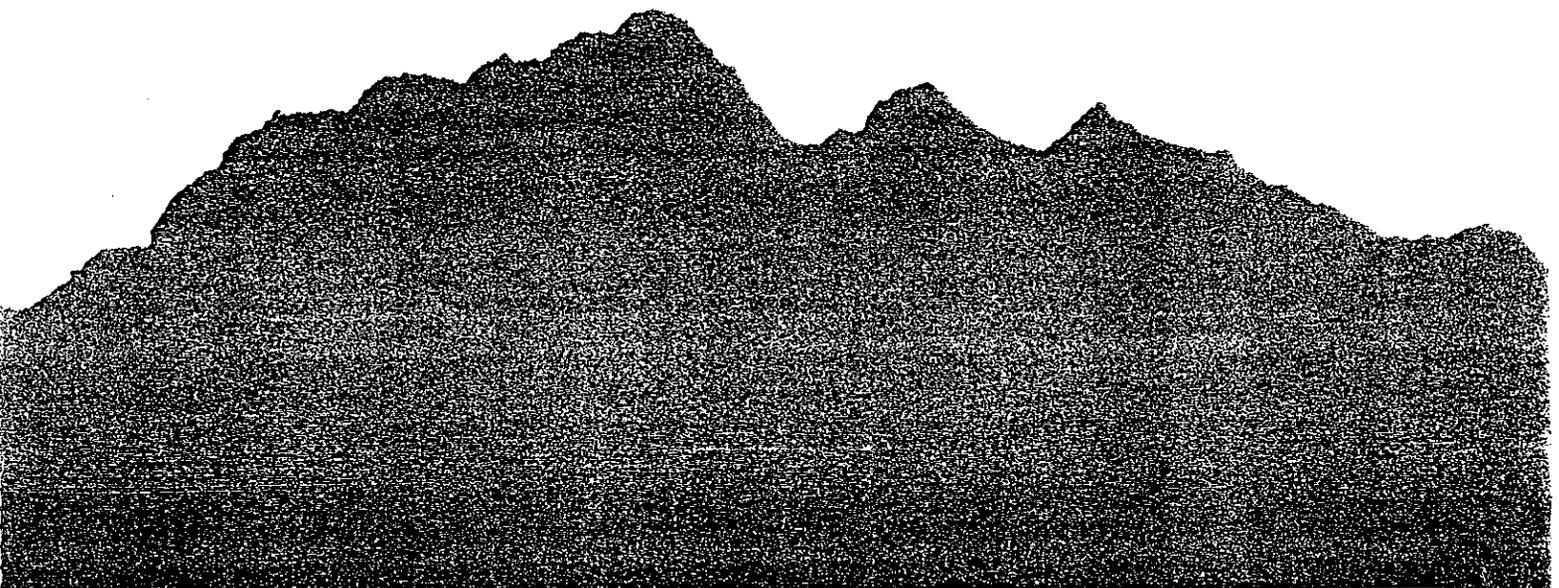
EVALUATE

- Indicators of change
- Expanded or improved data base
- New or revised state or federal plans
- Modified or verified projections of need
- Experiences with plan implementation



CHAPTER EIGHT

KEY AGENCIES AND ENTITIES



OREGON LAND USE PLANNING



KEY AGENCIES AND ENTITIES

Your job of making land use decisions on an on-going basis will be made easier with some understanding of the key agencies and entities with which you will work. There are a number of agencies and organizations—both governmental and private, both statewide and local—that are actively involved or interested in land use policy and administration.

1F.005

LOCAL GOVERNMENT ENTITIES

Local governing bodies. City and county governing bodies are the key to successful land use planning and development regulation. Their duty is to:

- A. Adopt and amend comprehensive plans and implementing ordinances and approve related ordinances and policies (such as for parks, public facilities, transportation, and economic development);
- B. Establish planning commissions, hearings officers, or other entities, and make appointments thereto;
- C. Apply local plans and ordinances to specific proposals, either directly or by delegating authority to staff or planning commissions;
- D. Hear and decide appeals of staff or planning commission decisions, if so provided by the local ordinances;
- E. Support the program, with a budget adequate to administer the program, and monitor local planning and development activities.

1F.105

Planning commissions. Planning commissions already exist in most cities and counties, their functions established primarily by local law. Local ordinances determine most of the duties of planning commissioners, their number, term, and manner of appointment. Planning commission functions include development of plan and ordinance revisions for recommendations to the governing body, and making land use decisions as provided under the local ordinances.

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Other local entities. Other local entities include hearings officers and special panels, county coordinators in some areas, citizen involvement committees in many jurisdictions, and other local government agencies whose activities will necessarily affect the pattern of local land use policies and decisionmaking. A short list would include public works departments; building departments; water and electric agencies; and various special districts such as water, sewer, park, and port districts.

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1F.120
1F.125
1F.130



Land Conservation and Development Commission. A seven-member lay commission appointed by the Governor and confirmed by the Senate for 4-year terms. One LCDC Commissioner must be appointed from each Congressional district, plus two at-large. One Commissioner must be

1F.205

from Multnomah County and one must be an elected city or county official. Duties of LCDC, many of them already highlighted herein, are to:

- approve the statewide planning goals
- make rules to clarify and elaborate on the goals
- acknowledge city or county plans for acceptability when measured against the goals
- conduct periodic review of each acknowledged plan to make certain that plan changes comport with the goals
- coordinate state agency planning and operations to be consistent with the goals and with acknowledged local plans
- correct any violation of the goals through enforcement orders

Department of Land Conservation and Development.

The Director of the DLCD is appointed by the Commission. Currently, a staff of 37 persons serves in Salem and in field offices around the state.

LCDC Citizen Involvement Advisory Committee (CIAC).

Statewide land use planning goals were built on citizen involvement, and citizen involvement is a key and specific feature of the goals themselves. It is encouraged and coordinated through the CIAC, whose 14 members are appointed by and serve at the pleasure of the Commission.

1F.210

LCDC Local Official Advisory Committee. A group of local officials who meet on call of the Commission.

Land Use Board of Appeals (LUBA). Created in 1979, LUBA consists of 3 referees appointed by the Governor and confirmed by the Senate. Once a comprehensive plan is acknowledged, LUBA has exclusive jurisdiction over appeals from local and state agency land use decisions, whether legislative or quasi-judicial. LUBA decisions are appealable to the Court of Appeals.

1F.215

Joint Committee on Land Use. The Land Use Act of 1973 established the Joint Committee on Land Use, consisting of four State Representatives and three State Senators. This permanent Joint Committee exercises general oversight of the program, receives periodic reports from DLCD, investigates specific issues, and reviews and makes recommendations for legislative action.

1F.220

Other state government entities. All state agencies are required to comply with the goals and with local comprehensive plans. Among the most significant are Transportation; Economic Development; Forestry; Geology and Mineral Industries; Water; Fish and Wildlife; Energy; Building Codes and Housing Divisions of the Department of Commerce; Division of State Lands; Public Utility Commissioner; and Soil and Water Conservation Division of the Department of Agriculture.

1F.225

NON-GOVERNMENTAL ORGANIZATIONS AND ENTITIES.

Many nongovernmental entities are significantly involved in land use program development. Among the most active are 1000 Friends of Oregon, the Homebuilders Association, Association of Oregon Counties, League of Oregon Cities, the Oregon Association of Realtors, the Association of General Contractors, League of Women Voters, Agriculture for Oregon, the Oregon Environmental Council, the American Planning Association, and the Oregon Coastal Zone Management Association. Many other organizations are also deeply involved.

1F.300



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