

## Public Participation in Land Use Planning:

Transforming Aspiration into Realization



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## Introduction

Public participation is the first goal in Oregon's land use planning program. Why? Beginning in the 1960s and '70s, our nation witnessed an emerging demand for the integration of social, political, and environmental concerns in public decision making. When "*sagebrush subdivisions, coastal condomania, and the ravenous rampages of suburbia*" threatened Oregon's quality of life and economic base, Oregonians demanded greater participation in the land use decisions impacting their communities. The Oregon legislature adopted Senate Bill 100 in 1973 to reflect Oregonians' ethic of land stewardship.<sup>1</sup> The bill established the land use planning system, which included a strong public participation component.

Civic leaders, legislators, the governor, the Land Conservation and Development Commission (LCDC), and others recognized that the success of Oregon's land use program would depend on input from Oregonians. Thus, LCDC undertook a robust public participation initiative, mobilizing more than 10,000 Oregonians, distributing more than 100,000 informational pamphlets and questionnaires, and holding nearly 100 statewide workshops.<sup>2 3</sup> This process bore the heart of the program: the 19 statewide planning goals. These goals still guide Oregon's land use program today. The first goal in Oregon's land use planning program is *Citizen Involvement*.

Goal 1 requires local governments to provide opportunities for the public to be involved in crafting the land use plans of their communities. While this objective is still worthwhile 40 years later, public participation in the program has dwindled. Today's implementation of Goal 1 fails to meet both its early successes and today's expectations for multiple engagement methods that reach diverse communities. Instead, most local governments meet a bare minimum level of notice, using mailed and sometimes e-mail notice to those already on a local government mailing list, holding public hearings after much discussion of a development has occurred privately between applicants and local staff, and without providing for things that would make it easier for more to attend, like bus passes and child care. As methods and information about how to effectively involve the public in government decision-making have evolved over the past 40 years, Goal 1 has stagnated. Now, meaningful public participation often occurs outside of the Goal 1 processes, if it occurs at all.

### Key Findings:

**Goal 1 and many local Citizen Involvement Programs (CIP) have not been updated since the beginning years of SB 100.** Local land use plans were meant to be vibrant documents that were periodically updated with widespread involvement from residents. Over the years, however, the Oregon Legislature has curtailed the requirement that cities and counties update their comprehensive plans and CIPs, effectively removing or restricting critical opportunities for public participation in changing land use policy and preventing the evolution of Goal 1.<sup>4</sup>

**The effectiveness of Goal 1 and local CIPs cannot be monitored or evaluated** because the Goal does not contain qualitative or quantitative performance measurements and DLCD has not adopted any.

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<sup>1</sup> Oregon Department of Land Conservation and Development, "History of Oregon's Land Use Planning," *Oregon.Gov.* Web. Accessed 01 June 2014 from <http://www.oregon.gov/LCD/Pages/history.aspx>

<sup>2</sup> Ame, John. "History of Land Use in Oregon." *Land Use Explorer* (2008). Web. Accessed on 07 May 2014 from <http://oregonexplorer.info/landuse/HistoryLandUseOregon>

<sup>3</sup> Ame, John (2008)

<sup>4</sup> Oregon Department of Land Conservation and Development, "Urban & Rural Issues," *Oregon.Gov.* Web. Accessed 9 July 2014 from <http://www.oregon.gov/LCD/Pages/urbanrural.aspx>

**Some local governments are averse to public participation.** Some, but not all, local governments tend to view public involvement as somewhere between a necessary evil and an outright annoyance, prompting many jurisdictions to do the bare minimum to provide public involvement in making individual land use decisions.

**The public is largely unaware of the significance of Oregon's land use planning program.** Without ongoing education and engagement, Oregonians are uninformed or disenchanted with the program, and opportunities to improve the program from public input are lost.

**The majority of local Committees for Citizen Involvement (CCI) are made up solely of a jurisdiction's planning commission.** Enhancing or evaluating Citizen Involvement Programs (CIP) may not be a top priority for planning commissioners, and this has led to little or no evolution of local CIPs or public participation processes.

**Goal 1's guidelines are antiquated, ambiguous, and lack teeth.** The indicators following each guideline are not enforceable by LCDC, so local governments that do not strictly adhere to their CIPs do not face consequences.

### An Overview of Oregon's Land Use Program

The foundation of Oregon's land use planning program is its 19 statewide land use goals, each of which addresses a single topic. These topics include farm and forest land conservation, natural resource protection, housing, air and water quality, coastal resources, economic development, and urban growth. Every city and county in Oregon is required to complete a comprehensive plan consistent with the applicable statewide goals.<sup>5</sup> The comprehensive plan should include an inventory of local resources used to establish long-range land use objectives, policies, and zoning ordinances. LCDC must review every local comprehensive plan to see whether it complies with the statewide Goals, and "acknowledge" those that do, while sending back those that do not. By the mid-1980s, LCDC had acknowledged every city and county land use plan.

The phases of the planning process can be grouped into three categories: plan development, plan implementation, and plan revision.<sup>6</sup>

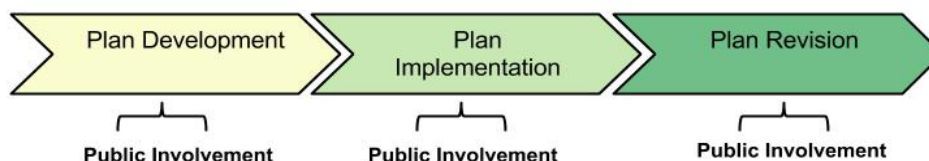


Fig. 1 . The linear progression of the three phases in the planning process as they relate to public involvement

**Plan development**, or creation, is the first phase of any planning process and shapes subsequent land use policy, with few procedural limitations on public participation. It often starts with a community visioning process. **Plan implementation** is the continuous process of applying the policy developed in the plan development stage. Here, the public can be involved in making quasi-judicial, or individual, land use decisions. **Plan revision** is the process of

<sup>5</sup> Goal 15 deals with conservation of the natural, historical, agricultural, and recreational qualities of the Willamette River Greenway. Goal 16 protects Oregon estuaries and associated wetlands. Goals 17, 18, and 19 address protection of Oregon's coastal shorelands, beaches and dunes, and marine resources.

<sup>6</sup> CIAC (2008)

evaluating and updating land use policy to keep current with changing needs. For example, if a town attracts younger families with children or has an aging population, housing needs will change. Several new employers concentrated in one area and new shopping centers might cause congestion, necessitating a revised transportation plan. Cities often need to plan for new schools, parks, and hospitals. As long as the local plans are kept up to date, the upfront planning process works well. Periodic review was the mechanism designed by the Oregon Legislature to ensure that comprehensive plans, including the local implementation of Goal 1, were completely updated on a regular schedule. Additionally, the post acknowledgement plan amendment (PAPA) process (i.e. piecemeal changes to comprehensive plans, including Goal 1 processes) gives localities the opportunity to make smaller changes in between periodic reviews.

Oregon's land use planning program is designed so that public involvement at the beginning is a prerequisite to major decisions about how to designate and zone land. Some examples of designations are "exclusive farm use," "high density housing," "mixed use development," or "heavy industry." Then, as site-specific development applications are submitted over the following years, those individual local decisions about whether an application conforms to the underlying plan and zone are intended to be relatively straightforward. Of course, because the land use program gives local governments substantial discretion in how and under what conditions development occurs (for example, height and setback requirements, transportation infrastructure requirements, etc.), and because some issues cannot be determined until there is an actual development application (for example, impact on nearby natural resources), those local decisions often require additional information and public input. Oregon's land use planning framework allows local governments to make land use decisions more representative of public need than many other states.<sup>7</sup>

### **An Overview of Goal 1**

The structure of Goal 1 is a blueprint for local governments to follow when designing their own CIPs.<sup>8</sup> It contains six guidelines: citizen involvement, communication, citizen influence, technical information, feedback mechanisms, and financial support.

Goal 1 requires each local government to establish a CCI, whose only responsibility is promoting and enhancing public participation in planning in that community.<sup>9</sup> However, the goal allows local governments, including elected city councils and county commissioners, to assume that responsibility themselves, or assign it to the appointed planning commission.

Goal 1 also requires every city and county in Oregon to "develop a [CIP] that insures the opportunity for citizens to be involved in all phases of the planning process."<sup>10</sup> Regardless of the composition of the CCI, it is responsible for assisting the local government in developing, implementing, and evaluating its CIP.

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<sup>7</sup> This is in contrast to land use processes in many other states, in which there is little upfront planning and instead, each development application undergoes much longer and sometimes somewhat inconsistent analysis.

<sup>8</sup> CIAC (2008)

<sup>9</sup> Citizen Involvement Advisory Committee (CIAC). "Putting the People in Planning: A Primer on Public Participation in Planning." 3rd (2008): Web. Accessed 12 May 2014 from

[http://www.oregon.gov/LCD/docs/publications/putting\\_the\\_people\\_in\\_planning.pdf](http://www.oregon.gov/LCD/docs/publications/putting_the_people_in_planning.pdf)

<sup>10</sup> Oregon Department of Land Conservation and Development, "GOAL 1: Citizen Involvement OAR 660-015-0000(1)," Oregon.Gov. Web. Accessed 12 May 2014 from <http://www.oregon.gov/LCD/docs/goals/goal01.pdf>

At the state level, the Citizen Involvement Advisory Committee (CIAC) is responsible for monitoring every city's and county's citizen involvement program. Together, the CIAC and every locality's CCI are responsible for enhancing public involvement in planning.

### **Stuck in the Past: Archaic Goal, Unevaluated Plans**

Goal 1 was designed in 1974 to guide local governments in fostering public involvement while developing comprehensive land use plans. Since then, it has been amended only once, in 1988.<sup>11</sup> The goal contains language that indicates its old age. The term "citizen," used heavily throughout the document, is the most obvious remnant of the Goal's beginning years.<sup>12</sup>

The Goal gives local governments flexibility to design CIPs that are not one-size-fits-all.<sup>13</sup> Once local governments obtain state approval for their own CIP programs, the Goal no longer applies directly. After they are approved, each locality's CIP is the document that controls public involvement in their jurisdiction. In the '70s, most local governments designed their CIPs with limited time, staff, and public participation expertise.<sup>14</sup> During the "acknowledgement phase," beginning in the late '70s and ending in 1986, LCDC and the CIAC approved local CIPs using equally limited public involvement expertise. In a 2008 survey, 50% of counties and 21 of the 25 cities that responded indicated that they have not updated their CIPs since the original acknowledgement phase.<sup>15</sup>

**What caused the stagnation?** A comprehensive plan's goals, policies, and objectives need continuous data collection and evaluation to reflect a community's changing values, economic trends, and population growth. In 1980, the Oregon Legislature designed "periodic review" as the tool to require every city and county to periodically perform a holistic evaluation of every goal within their plan and update the plan where necessary.

Beginning in 1999, however, the state legislature passed a series of bills weakening the aim of, and the opportunities for, periodic review (SB 543 (1999), SB 920 (2003), and HB 3310 (2005)).<sup>16</sup> Today, out of Oregon's 246 cities and 36 counties, periodic review is required in only a few dozen of the state's largest cities and counties.<sup>17</sup> Even among these, local jurisdictions are legally required only to consider goals related to the "fundamental building blocks of local planning: housing, economic development, transportation, public facilities and services, and urban land supply;" leaving the review of Goal 1 (public participation), Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), Goal 6 (Air, Water, and Land Resource Quality), Goal 7 (Areas Subject to Natural Hazards), and Goal 13 (Energy Conservation) to the discretion of jurisdictions.<sup>18</sup> As a result, most local comprehensive land use plans have not been thoroughly

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<sup>11</sup> Oregon Department of Land Conservation and Development, "Goal Adoption Amendment Dates," *Oregon.gov*. (March 12 2010). Web. Accessed 25 June 2014. Web.

<sup>12</sup> Interview with Sy Adler, 12 June 2014. As a political term, it does not capture the growing number of undocumented members of Oregon's population. The shift from "citizen" to "public" would be a political choice based on values, but a shift will make community engagement in land use more meaningful

<sup>13</sup> Interview with Faust, Steve & Jim Owens, 17 June 2014.

<sup>14</sup> Interview with Mitch Rohse, 10 June 2014.

<sup>15</sup> The Institute for Natural Resources. "The Oregon Land Use Program: An Assessment of Selected Goals." (August 2008). Web. Accessed 4 September 2014 from [http://landuselaw.wustl.edu/articles/FINAL\\_REPORT\\_Land\\_Use\\_Project\\_Aug\\_2008.pdf](http://landuselaw.wustl.edu/articles/FINAL_REPORT_Land_Use_Project_Aug_2008.pdf)

<sup>16</sup> Ame, John (2008)

<sup>17</sup> CIAC (2008)

<sup>18</sup> Oregon Department of Land Conservation and Development, "Urban & Rural Issues," *Oregon.Gov*. Web. Accessed 9 July 2014 from <http://www.oregon.gov/LCD/Pages/urbanrural.aspx>



updated in many years, including their Goal 1 elements. Thus, public participation, considered fundamental in 1973, has not been evaluated by many cities.

**Why was Periodic Review Curtailed?** The periodic review process necessitates the availability of grants, local funding, staff, motivated elected officials, and an engaged public to effectively complete the process. Additionally, assessing whether an update is even needed requires a bulk of information on each component of a local comprehensive plan. To date, the statewide land use planning program does not have a “goals-specific, integrated system for data gathering, tracking, and reporting.”<sup>19</sup> Lacking a system to continuously collect goal-specific data makes the periodic review process a weighty procedure in which local governments have no way to quickly evaluate the effectiveness of their comprehensive plans. After local governments and the state devoted large amounts of resources to develop comprehensive plans in the beginning years of SB 100, the periodic review process met a reduced political will to revisit and reinvest in subsequent years. The absence of an effective process to update comprehensive plans and CIPs has led to many challenges in Oregon’s land use planning program and public participation, including:

- **Dissatisfaction. Public** dissatisfaction with aspects of the statewide land use program – some focused, some unfocused, and some the result of misplaced blame on the statewide land use program – reflects that, in part, many Oregonians no longer feel connected to their local land use planning process and have not been able to influence those plans to represent their changing communities. This disconnect contributed to piecemeal legislative changes, several ballot initiatives,<sup>20</sup> the Big Look Task Force,<sup>21</sup> and many local initiatives to require voting on city annexations.<sup>22</sup> These political challenges are evidence that the program needs an effective process to reflect the changing demographics, needs, and views of all Oregonians.
- **No Ideal Substitute for Changing Land Use Policy.** Local governments exempt from periodic review are incrementally making significant changes to local land use policy through the PAPA process.<sup>23</sup> This procedure cannot be a substitute for a revised periodic review process because:
  - Public Involvement in PAPAs is “limited in time and scope.”<sup>24</sup>
  - PAPAs occur out of discrete needs, which are not necessarily connected with larger community needs.
  - PAPAs occur episodically, not regularly.
  - The process does not involve holistic evaluation of comprehensive plans.
- **Hindrance of Individual Land Use Decisions.** Periodic review was designed to involve Oregonians in updating comprehensive plans and zoning codes so that when it came to implementing them, individual land use decisions could be decided quickly and with minimal confrontation. By scaling down periodic

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<sup>19</sup> The Institute for Natural Resources (August 2008)

<sup>20</sup> Ballot measures to overturn the land use planning program were defeated by a margin of 57% to 43% in 1976 and 61% to 39% in 1978. Then, during the recession of 1981-82, Measure 6 was defeated 55%-45%.<sup>20</sup> Measure 7 required the governments to reimburse land owners if regulations reduced the value of their property. It was overturned by the Oregon Supreme Court, but a similar initiative, Measure 37 was passed in 2004, requiring state or local government to compensate land owners whose property value reduced by land use regulations. Measure 49 reduced the impact of 37 by reducing compensation provisions and granted transferability or property rights. Although Measure 7 was overturned by Oregon courts and the public replaced Measure 37 with Measure 49, mitigating its most unfair aspects, these sent a message that the program was not connecting or listening enough to public concerns. The Institute for Natural Resources (August 2008)

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<sup>23</sup> Interview with Pat Zimmerman, 2 June 2014

<sup>24</sup> CIAC (2008)

review, LCDC has significantly reduced the opportunity for upfront public participation in changing land use policy, resulting too often in a disgruntled public whose only remaining opportunity for voicing policy concerns is at public hearings on individual land use decisions.

During interviews with individuals knowledgeable about public involvement in Oregon land use planning, two views on restoring periodic review stood out. Some believe it should be restored to its original capacity, requiring all local governments to review their entire comprehensive plans, not only housing, economic development, transportation, public facilities and services, and urban land supply.<sup>25</sup> Others express that the land use program cannot put too much stock in the original periodic review process because of its technical nature and the absence for meaningful public involvement.<sup>26</sup> Despite this difference in opinion, a common theme emerged – progress on Goal 1, along with public interest, understanding, and ownership of the program, have dwindled as a result of the legislative curtailment of an adequate review process. What is it about periodic review that needs restructuring?

**Public Hearings are not sufficient means of Participation.** In periodic review, LCDC requires local governments to provide, at a minimum, the opportunity for public comment of review materials at or before *one or more* public hearings.<sup>27</sup> Given the importance of updating local comprehensive plans to adapt to the changing needs of communities, LCDC has prescribed a minimum of public participation barely capable of accomplishing this goal. Individuals tend to show up only when they have much at stake, sometimes causing them to be perceived as reactors, and reinforcing polarized arguments.<sup>28</sup> In a recent study, the National Research Center found that 76% of survey respondents across the country had not attended a local public hearing in the past year.<sup>29</sup> Often, those who attend public hearings are not a broad representation of the community. Instead, they are community members who care about all aspects of land use planning and monitor much of their city's or county's land use activities. Over time, local elected officials sometimes tend to discount those from whom they hear often, or fail to hear from other community members. Or, local government bodies hear from those with a financial stake in a particular development proposal, but from no one else. The location and formalized nature of public hearings often thwarts meaningful participation -For example, they are usually held in government chambers in public buildings, which can be far away and intimidating to many people. They also have a formalized structure of testimony with time limits, and they are often held at times that are inconvenient. From the community perspective, public hearings provide the "choice of illusion,"<sup>30</sup> a façade in which the decision has already been made. Since the creation of Goal 1, collaborative participation practices and dynamic engagement methods (e.g. participatory decision making and interactive modeling) have come a long way, but the periodic review process continues to lean heavily on public hearings as the main source of public input on land use decisions. A revised review process would provide ample and diverse opportunities for meaningful participation in addition to public hearings.

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<sup>25</sup> Interview with Ed Sullivan, 27 May 2014 & 4 September 2014

<sup>26</sup> Interview with John Fregonese, 16 June 2014

<sup>27</sup> Department of Land Conservation and Development. "Periodic Review: 660-025-0080," *State of Oregon*. (2013). Web. Accessed 5 August 2014 from [http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_660/660\\_025.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_025.html)

<sup>28</sup> Innes, Judith, and David Booher. "Public Participation in Planning: New Strategies for the 21st Century," *Institute of Urban & Regional Development*. (1 Nov. 2000) Web. Accessed 15 May 2014 from <http://escholarship.org/uc/item/3r34r38h>

<sup>29</sup> Maciag, Mike. "The Citizens Most Vocal in Local Government," *Governing: States and Localities*. (July 2014). Web. Accessed 3 August 2014 from <http://www.governing.com/topics/politics/gov-national-survey-shows-citizens-most-vocal-active-in-local-government.html>

<sup>30</sup> Fregonese, John and C.J. Gabbe. "Chapter 8: Engaging the Public and Communicating Successfully in Regional Planning," Taken from *Regional Planning in America. Lincoln Institute of Land Policy*. (April 2011)



## Levels of Public Participation

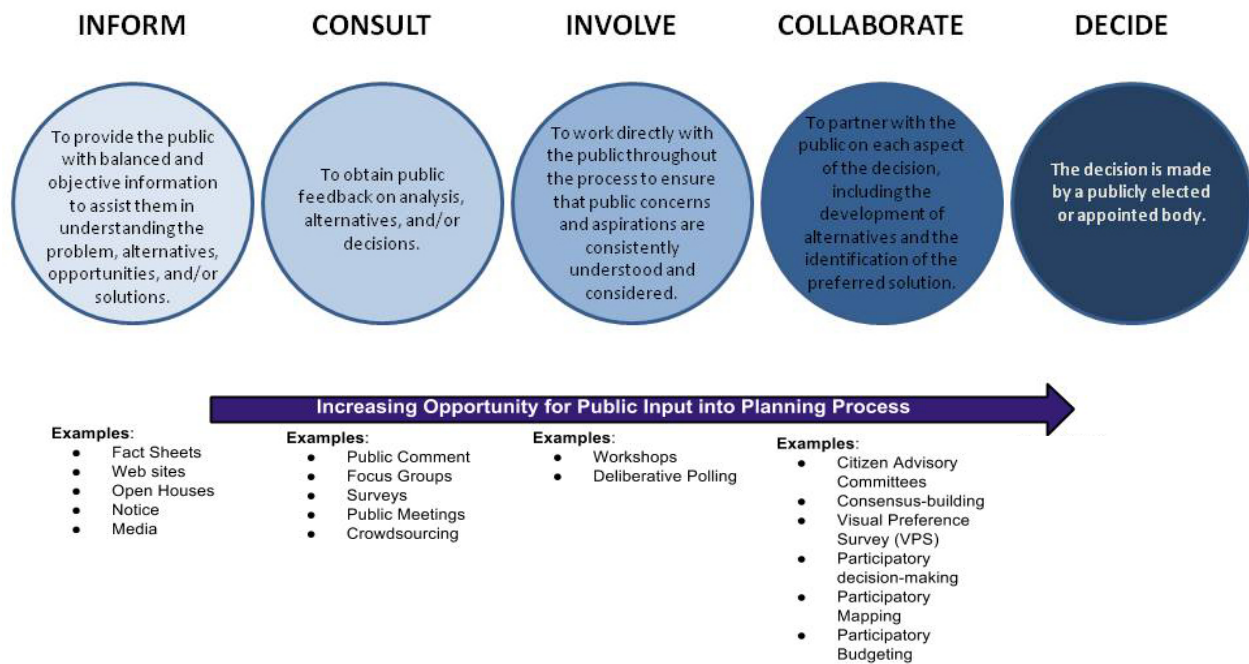


Fig. 2. The spectrum of public participation.<sup>31</sup> Public hearings (aka “public meetings” or “public comment”) fall under “Consult.” A better process of plan revision will include methods of public participation that, at least, fall under “Involve,” “Collaborate,” and “Decide.”

**No System to Measure Progress.** Lacking goal-specific data and the tools to store and report on these data not only makes reviewing and updating comprehensive plans a huge and muddy undertaking for local governments, but it is a significant hurdle to evaluating the effectiveness of Oregon’s land use goals.<sup>32</sup> A reinvigorated periodic review process would require DLCDC to develop “a goal-specific, integrated system for data gathering, tracking and reporting.”<sup>33</sup> An evaluation done by The Institute for Natural Resources concludes that the system should include.<sup>34</sup>

1. Goal-specific performance measurements developed by LCDC. This is especially important for Goal 1 because lack of measurable criteria has led to variation in how each local jurisdiction interprets the Goal’s guidelines, resulting in a “great deal of confusion about what is required under Goal 1.”<sup>35</sup>
2. “An integrated tracking and reporting system across agencies and levels of government...that would require reporting from local government to a central data repository, such as DLCDC.”<sup>36</sup> LCDC or a task

<sup>31</sup> Taken, but adapted from: International Association of Public Participation. “IAP2 Spectrum of Public Participation.” (2007) Web. Accessed 20 October 2014 from

[http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/imported/IAP2%20Spectrum\\_vertical.pdf](http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/imported/IAP2%20Spectrum_vertical.pdf)

<sup>32</sup> The Institute for Natural Resources (August 2008)

<sup>33</sup> The Institute for Natural Resources (August 2008)

<sup>34</sup> The Institute for Natural Resources (August 2008)

<sup>35</sup> Milgram, Jean. “Leagues Complete Survey in Jackson County,” *League of Women Voters*. (2006) Web. Accessed 2 June 2014 from <http://lwvrv.files.wordpress.com/2012/10/land-use-survey-2006.pdf>

<sup>36</sup> The Institute for Natural Resources (August 2008)

force should decide “how measures should be developed, what appropriate data sources exist, what data are needed, what entities are best to collect and report data.”<sup>37</sup>

### Moving Forward: Revitalizing and Restructuring Plan Revision

A **CNA** is a tool that identifies gaps between current land use conditions and the needs of the community, and prescribes a range of solutions to fill-in those missing elements. The community then turns that assessment into a specific action plan to implement appropriate solutions. It is a more effective process than Periodic Review, because it:

- Uses a system to gather the goal-specific data to evaluate and enhance comprehensive and citizen involvement plans, Goal 1.
- Provides the flexibility in using various public participation methods (in addition to public hearings) to solicit meaningful input.

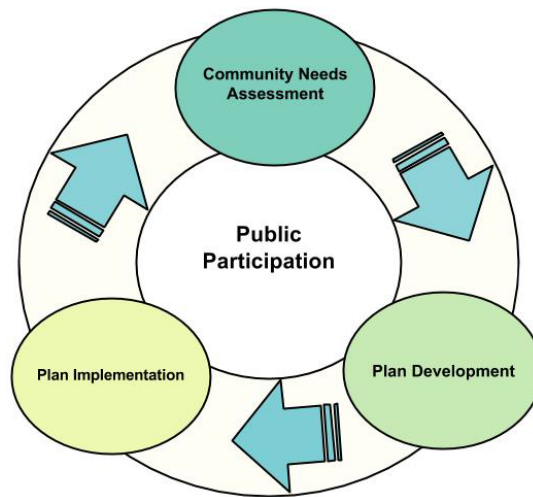


Fig. 3. The phases of land use planning in a circular perspective, with public participation at the core of the process

Some benefits of replacing periodic review with a community needs assessment are:

- **Builds Mutual Trust.** Engaging community members in a process directed toward understanding and updating comprehensive plans based on their needs and the goals increases the likelihood that community and elected officials will feel like partners jointly invested in the outcome.
- **Coordinated Public Participation Approach.** Every local government will place public participation at the forefront of reviewing plans, and collaborative coordination beyond the traditional public hearing setting will be required.
- **Research.** By developing a goal-specific integrated data system as part of conducting a CNA, local governments will provide to LCDC and DLCD data to inform a systematic evaluation of Goal 1, the public participation process, and the 18 other goals in the land use program.
- **Better Understanding of the Program.** The CNA process will strengthen public awareness of the land use goals, their role in creating a prosperous Oregon for the past 40 years, and their potential for addressing

<sup>37</sup> The Institute for Natural Resources (August 2008)

state and community needs in the future. Better understanding of the program could result in fewer costly public interventions such as appeals and ballot measures.<sup>38</sup>

- **Use of 21<sup>st</sup> Century Techniques of Public Participation.** Local governments will stay current with evolving public participation tools.
- **Reduces Friction in Individual Land Use Decisions.** By presenting a transparent and accountable process for communities to engage regularly in updates of their plans, communities will have access to the appropriate policy-changing outlet.
- **Provides Flexibility.** CNA provides a systematic approach to public participation without determining the exact methods that are to be used, so governments and organizers can select most suitable methods given resource availability.

A CNA would replace periodic review and occur on a reasonable timeframe determined by LCDC. The timeframe should be driven by factors such as population growth and the size of localities. Cities within a metropolitan planning organization (MPO) could commence a CNA at the same time or on a shorter timeline than smaller cities. Whichever timeline is defined, LCDC would require all cities and counties to conduct a CNA.

### **Unfair Rules: State Restricts Public Participation**

Some state and local government officials tend to perceive public participation in land use planning as an irritant. This opposition to providing upfront participation is reflected in the state-set notice requirements for individual land use decisions and the exorbitant price of appealing land use decisions at some local governments.

**Notice Requirements Present Unequal Opportunity.** Public involvement in most individual land use decisions occurs at a public hearing.<sup>39</sup> The Oregon state legislature has set procedural rules for these with the objective of providing efficiency and fairness when making decisions. Anyone who testifies orally at the hearing or submits testimony in writing has *standing* to continue their participation in the land use decision, including the right to appeal the decision of the local government. However, only those who know about a hearing will know to testify, and under current law, the *notice* that local governments are required to provide is too limited and restricts fair access to hearings on individual land use decisions. The state-set minimum notice requirement describes *who is given notice, where notice is provided, how it is delivered, and what it says*.<sup>40</sup> Consequently, many local governments give the bare minimum in notice.<sup>41</sup>

The statutory floor for who is required to receive notice discriminates based on whether one owns land. Only land owners “on the most recent property tax assessment roll” are required to receive notice.<sup>42</sup> Renters – whether of residential, commercial, or industrial land – are not required to be given notice. This means that, for example, if a developer applies to tear down a strip mall and replace it with a pub, and if the local government provides the statutory minimum notice, the fifty renters living in the apartment complex next door to the strip mall will not receive legal notice of the opportunity to testify at the public hearing, whereas the apartment building owner, who might live out-of-state or out of the neighborhood, will. In 2010, 62.2% of Oregon’s residents were homeowners,

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<sup>38</sup> The Institute for Natural Resources (August 2008.)

<sup>39</sup> For expedited and limited land use decisions, local governments are exempt from providing the opportunity for public hearing.

<sup>40</sup> ORS 197.763.

<sup>41</sup> Interview with Pat Zimmerman, 2 June 2014.

<sup>42</sup> ORS 197.763

and 37.8% were renters.<sup>43</sup> Local governments that follow the state's minimum notice rules are disregarding a significant portion of their populations.

In addition, where notice is provided, it is spatially unjust. If the applicant's property is:<sup>44</sup>

- *Inside the UGB: Landowners within 100 ft of property are subject to notice;*
- *Outside the UGB and not on farm or forest zone: Landowners within 250 ft of property are subject to notice; or*
- *Within a farm or forest zone: Landowners within 500 ft of property subject to notice*

The average city block in downtown Portland is 200 feet.<sup>45</sup> If notice within a UGB is provided according to state requirement, only half a block of *land owners* will be notified. Renters and those beyond 100 feet away generally receive no notice. This significantly reduces the likelihood renters will participate even if changes to the neighborhood will directly affect them.

Providing notice only by mailing a paper copy, the only required method of delivering notice, is outdated. Today's technology has rapidly outpaced this method of providing notice. While many local governments deliver notice electronically, some still do not and some charge for the service. The state requirement for delivering notice should recognize and promote delivery methods better suited to increasingly standard new technologies (Internet, email, listserv, phone alerts), in addition to regular mail.

Finally, the rule on when notice is delivered is insufficient. The state requires local governments to mail notice at least 20 days before the first hearing.<sup>46</sup> This timeframe is not enough for the general public to review an application, prepare all the materials needed for the public hearing, gather input from their community, or reschedule their calendars to make time for these proceedings.

**The Price of Appeals.** Individuals, organizations, and others may appeal a land use decision made by a local government to the state Land Use Board of Appeals (LUBA). However, they can do this only after they have exhausted appeal opportunities at the local level. One example of this is if someone fought the decision by appealing a planning commission's or planning director's decision to the county commission or city council. This is complicated by the fact that some Oregon jurisdictions charge local appeal fees of thousands of dollars.<sup>47</sup> As the prerequisite to taking any case to LUBA, these potentially exorbitant local appeal fees confine public participation to those able to pay, significantly limiting access to the courts.

### **Equal Access: Remove Procedural Barriers and Cap Local Appeal Fees**

State-set notice requirements should be revised to allow residents, not just land owners, the opportunity to participate in public hearings. LCDC should cap local appeal fees for quasi-judicial decisions. Removing these

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<sup>43</sup> U.S. Census Bureau. "Profile of General Population and Housing Characteristics: 2010." *American FactFinder*. (2010). Web. Accessed 26 July 2014 from <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

<sup>44</sup> ORS 197.763

<sup>45</sup> Miskimins, Laurie. "The 200 Foot Block: Creating a More Walkable Portland," *Portland Bureau of Transportation*, (2 Dec. 2010). Web. Accessed on 13 June 2013 from <https://www.portlandoregon.gov/transportation/45195?a=167703>

<sup>46</sup> ORS 197.763

<sup>47</sup> Central Oregon Landwatch. "Oregon State Legislature: BLUBS, SLUBS, and Other Ignominious Attacks on Land Use Laws." *Central Oregon Landwatch*. Web. Accessed 4 August 2014 from <http://www.centraloregonlandwatch.org/our-projects/oregon-state-legislature>

procedural barriers and capping local appeal fees might well result in more upfront public participation, making for potentially lengthy public hearings. However, if the public feels they have had a chance to be heard and perhaps even influence the land use decision, this upfront participation can reduce the likelihood of time-consuming and costly appeals.

### **Little Evolution of Plans or Programs: Committee Dependence on Local Government**

To carry out Goal 1, LCDC requires local governments to establish a committee for citizen involvement (CCI) to provide Oregonians the opportunity to shape CIPs that promote meaningful public participation at every phase of the planning process. This opportunity cannot be fully realized when local government staff, elected officials, or planning commissioners serve as the CCI. This is not a new conclusion; many observers of Goal 1 have suggested that citizen committees be independent of local governments.<sup>48</sup> The majority of local governments, however, still have their Planning Commission acting as their CCI.<sup>49</sup> In 2008, a Goal 1 evaluation surveyed cities and counties on the composition of their CCI.<sup>50</sup> Twenty-two out of 26 city planning directors, and 16 out of 18 counties indicated that the planning commission serves as their CCI.<sup>51</sup> The dependence of CCIs on local government curtails the evolution of public participation programs or processes, because:

**Enhancing public participation is not a priority.** CICs should consist of volunteers who represent the diverse needs and perspectives of their community and are actively interested in promoting public participation in land use in their community. Planners, local government staff, or elected officials may delay evaluating citizen involvement programs or processes until they “have the time.”<sup>52</sup>

**There is a gap in interest.** Boards of county commissioners, city council members, and planning commissioners are frequently required to hold public hearings in the process of making land use decisions or recommendations. These can be time-consuming and contentious. Thus, a conflict of interest, or the appearance of a conflict, can arise if those same officials are also charged with designing their jurisdiction’s public involvement process, since sometimes active public participation comes at the expense of a speedy hearing.

**The composition does not provide a broad representation of public needs or desires.** Local government staff, elected officials, or planning commissioners are professional employees of or appointed by the government. They represent a very limited portion of Oregon’s population.

### **Independent CCIs**

The duties of CCI members require commitment from a representative public whose sole responsibility is to ensure public involvement in the planning process.<sup>53</sup> Citizen Involvement committees should be independent of the local government and any state agency. To cure this, Goal 1 should be rewritten to omit the option allowing local governments or planning commissions to assume the responsibility of the CCI.

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<sup>48</sup> Observation has been made in the following publications: Putting People in Planning, by CIAC; Leagues Complete Survey, by Jean Milgram; Land Use: Progress and Challenges, by The League of Women Voters of Oregon

<sup>49</sup> Interview with Ed Sullivan, 27 May 2014 & 4 September 2014

<sup>50</sup> The Institute for Natural Resources (August 2008)

<sup>51</sup> The Institute for Natural Resources (August 2008)

<sup>52</sup> Interview with Damian Syrnyk, 28 May 2014

<sup>53</sup> CIAC (2008)

### Immeasurable Expectations: Ineffective Goal and Plans

Each of the six guidelines in Goal 1 lacks measurable criteria. Due to the variance in how each local jurisdiction interprets these guidelines, localities are unsure what is actually required under Goal 1.<sup>54</sup> Instead of containing performance measurements, the guidelines are followed by indicators so antiquated and unspecific that many local government's CIPs "differ considerably in content, and none of the municipalities strictly adhere to their written plan."<sup>55</sup> Goal 1 is weak. Without enforceable indicators of meaningful public participation, local governments are given discretion in deciding the means of achieving each guideline.

For example, one guideline states that every local government must include a "feedback mechanism" section in their CIP. Its following indicator requires CIPs to "...state the mechanism through which the citizens will receive a response from policy-makers," and delineate "a process for quantifying...citizens attitudes."<sup>56</sup> This guideline and accompanying indicators present some obvious issues:

- **Lacks Specificity and Measurable Objectives:** How often will local governments provide feedback? Will the mechanism be widely available to the public, or only to a limited audience? Some local governments curtail this guideline and its indicators by publishing feedback in newspapers that are read by a narrow audience.<sup>57</sup>
- **Unenforceable Standards:** Neither the guideline nor the following indicators are strictly enforceable by LCDC.<sup>58</sup> As a result, local governments can and often do the bare minimum in providing adequate feedback with the public.<sup>59</sup>

### Enforcing and Measuring Meaningful Public Participation

To modernize each guideline, LCDC should update their respective indicators to reflect 21<sup>st</sup> century expectations of meaningful public involvement. Following the update, LCDC should enforce the updated indicators via administrative rules.

Each indicator should be followed by qualitative and quantitative performance measurements to standardize and differentiate the differing levels of public participation needed to develop, review, or implement comprehensive plans and CIPs.<sup>60</sup> By adding performance measurements to these guidelines, local governments can strategically perform periodic evaluations on the effectiveness of their CIPs.

### Unaware and Uninspired: The Generational Gap in Education and Engagement

Oregon's land use planning program is not currently benefitting all those it was designed to serve because:

**Oregonians are largely unaware of the program.** Neither the state nor LCDC has undertaken a major effort to educate Oregonians on the history of Oregon's land use planning program, nor its importance in shaping the

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<sup>54</sup> Jean Milgram (2006)

<sup>55</sup> Jean Milgram (2006)

<sup>56</sup> DLCD. Goal 1.

<sup>57</sup> Interview with Ed Sullivan, 27 May 2014 & 4 September 2014

<sup>58</sup> CIAC (2008)

<sup>59</sup> Interview with Pat Zimmerman, 2 June 2014

<sup>60</sup> Interview with Jonathan Ostar, 10 July 2014



quality of life in Oregon for current and future generations.<sup>61</sup> More than half of Oregon's population was born or has moved here since the advent of Oregon's land use program in 1973.<sup>62</sup> Many come or stay due to Oregon's quality of life but are unaware that this is not by accident. Oregon's attractive quality of life is due to the very intentional land use program. **Programs and Plans lack standards.** Goal 1 requires city and county CPLs to "stimulate" public participation through:<sup>63</sup>

1. a "range of available media (including television, radio, newspapers, mailings, and meetings)" and
2. land use education provided by educational institutions and *interested* institutions or agencies in land use.

If LCDC enforced these requirements, they would find many cities and counties guilty of underperforming. Often, local CPLs describe aspirational methods to stimulate public participation, but lack any means to achieve them. . Columbia County's CPL, for example, lists radio, newspaper, mailings, and public meetings as their "range of available media," but makes no commitment to actually use all of them. The County also fails to include actual *educational* opportunities.<sup>64</sup> Vague policies like that of Columbia County are not unique, and do not actually increase public knowledge of and engagement in local land use planning and decisions.

Without CPLs or public participation processes that actively foster public understanding of the role land use planning has played and can play in creating the communities and places they value, Oregonians may remain unmotivated and uninspired to participate in land use decision making in their neighborhoods and communities.<sup>65</sup>

### Partnerships: Engaging and Educating Oregonians

Reinvigorating Goal 1, citizen involvement plans, and public participation processes is not a small state or local government undertaking. Much needs to be done. The most effective, durable, equitable, and accountable planning processes are those that employ partnerships.<sup>66</sup> Below are examples of partnerships that various agencies have used to enhance the planning process and effectively engage the public:

**Collaboration:** Partnerships can provide volunteers or services such as child care, public transportation, and translation for key public processes.

- Example: While designing Charlottesville, Virginia's Regional Transportation plan, UnJAM 2025, the planning commission partnered with KidJAM, a children's radio company, to provide activities for youth during the public workshops (<http://www.terrain.org/articles/17/rue.htm>)

**Engagement:** Partnerships can aide in providing educational and research opportunities in land use planning for citizen involvement committees, students, and disadvantaged populations.

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<sup>61</sup> Interview with Ed Sullivan, 27 May 2014 & 4 September 2014

<sup>62</sup> Daniels, Katherine H., and Edward J. Sullivan. "Oregon's 40-Year-Old Innovation," *Planning: American Planning Association*, (Feb. 2013) Web. Accessed 27 May 2014 from [http://www.oregon.gov/LCD/docs/Oregons\\_40\\_year\\_old\\_innovation.pdf](http://www.oregon.gov/LCD/docs/Oregons_40_year_old_innovation.pdf)

<sup>63</sup> DLCD, Goal 1

<sup>64</sup> Columbia County. "Columbia County Comprehensive Plan [Citizen Involvement: Goals and Policies]," (August 1984, Integrated through April 2011) Web. Accessed 7 August 2014 from [http://www.co.columbia.or.us/files/lds/2011-04%20Comp\\_%20Plan%20.pdf](http://www.co.columbia.or.us/files/lds/2011-04%20Comp_%20Plan%20.pdf)

<sup>65</sup> Holdar, Gina Gilbreath, and Olha Zakharchenko, eds. "Citizen Participation Handbook: People's Voice Project International Centre for Policy Studies," *"iMedia" Ltd.*, (Aug. 2002) Web. Accessed 24 June 2014 from <http://siteresources.worldbank.org/INTBELARUS/Resources/eng.pdf>

<sup>66</sup> European Institute for Public Participation. "Public Participation in Europe: An International Perspective." (June 2009) Web. Accessed 16 May 2014 from [http://www.participationinstitute.org/wp-content/uploads/2009/06/pp\\_in\\_e\\_report\\_03\\_06.pdf](http://www.participationinstitute.org/wp-content/uploads/2009/06/pp_in_e_report_03_06.pdf)

- Example: Oregon's Washington County partners with the Oregon State University cooperative extension services to provide a *Citizen Participation Organization Program* <http://extension.oregonstate.edu/washington/>.
- Example: Various agencies in Oregon partner with AmeriCorps's Resource Assistance for Rural Environments (RARE) program to receive assistance from graduate students in land use planning projects <http://csc.uoregon.edu/rare/node>
- Example: The City of Eugene's planning department has an internship program that offers students the opportunity to work on either zoning and land use planning projects or metropolitan and community planning projects <http://www.eugene-or.gov/index.aspx?NID=850>

Example: Washington county has partnered with the Center for Intercultural Organizing Disadvantaged populations in its Policy, Leadership and Action for Newcomers (PLAN), to involve them in promoting equitable plans [http://www.interculturalorganizing.org/?page\\_id=2598](http://www.interculturalorganizing.org/?page_id=2598) Local government efforts to increase partnerships will result in a better understanding and engagement of diverse communities, as well as cultivate public ownership of the land use program.<sup>67</sup>

## Conclusion

By 2040, Oregon's population is expected to grow by 46%, housing [nearly 5.2 million people](#).<sup>68</sup> [Public involvement in land](#) use peaked in the 1970s, but as the population grows and economies evolve, efforts to reinvigorate it are necessary to guarantee Oregon's hallmark land use program will see another 40 years.

The greatest barrier to reinvigorating public participation in land use planning is insufficient funding. More state funding is needed to assist local governments in periodically updating local comprehensive plans and to invest in a widespread effort to engage Oregonians in the significance of the land use program to their communities and livelihoods. Local governments need to invest in developing meaningful public involvement programs, and they need the funds necessary to implement them.

The environmental, cultural, and economic challenges posed by population growth demand collaboration from all Oregonians to ensure equitable participation processes and sound land use decisions. A lot has changed since the beginning of Oregon's land use planning program, but Oregonians' sense of livability and quality of life being tied to our land is unlikely to change. Providing creative, frequent, and consistent ways to engage in the decisions impacting our communities will benefit Oregonians today and tomorrow.

## Recommendations:

**Periodic review should be replaced with a Community Needs Assessment**, a process requiring continuous data collection and collaborative public participation techniques to systematically evaluate and update comprehensive plans based off on community needs.

<sup>67</sup> Bureau of Planning and Sustainability. "Portland Comprehensive Plan Update Proposed Draft: Chapter 2." *PortlandOregon.gov*. (2014) Web. Accessed 12 July 2014 from <http://www.portlandoregon.gov/bps/57352>

<sup>68</sup> Ame, John. "Coastal Land Use," *Oregon State University*. (2007) Web. Accessed 13 June 2014 from <http://oregonexplorer.info/northcoast/CoastalLandUse0>

**Opportunities for participation in individual land use decisions should be equitable.** The Oregon legislature should amend notification requirements that limit equitable access to public hearings, and it should cap local appeal fees.

**Local Governments should exceed perfunctory compliance with participatory requirements** and provide meaningful public participation in land use planning. Sufficient funding and resources for local CICs are necessary to ensure the development of CIPs tailored to every major land use decision, plan, and process.

**The public should be continuously educated about and engaged in Oregon's land use program.** Engagement methods, such as partnerships, should be employed to increase public participation.

**Committees for Citizen Involvement (CCI) should be independent of local government staff, elected officials, or planning commissioners.** LCDC should develop administrative rules requiring local jurisdictions to establish their CCI independent from local government or state agency.

**LCDC should update and enforce Goal 1 indicators** to ensure a standardized method of ensuring meaningful and equitable public participation processes.

**LCDC should amend Goal 1 to contain quantitative and qualitative performance measurements** that will aid in evaluating and improving public participation process.

#### Interviews

Interview with Sy Adler, 12 June 2014

Interview with Damian Syrnyk, 28 May 2014

Interview with Ed Sullivan, 27 May 2014 & 4 September 2014

Interview with Mitch Rohse, 4 June 2014

Interview with Greg Holmes, 29 May 2014

Interview with Pat Zimmerman, 2 June 2014

Interview with Peggy Lynch, 27 May 2014

Interview with John Fregonese, 16 June 2014

Interview with Steve Faust, 17 June 2014

Interview with Jim Owens, 17 June 2014

Interview with Jonathan Ostar, 10 July 2014

Interview with Paul Leistner, 17 July 2014

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