

COMPREHENSIVE PLAN: FUNDAMENTALS

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INTRODUCTION

In Oregon, county planning and zoning responsibilities include the adoption and, from time to time, revision of a “comprehensive plan.”¹ This document presents a review of the history and nature of Oregon comprehensive plans as well as points of consideration with respect to the drafting of comprehensive plan policy statements, the prime operative components of a comprehensive plan.

Comprehensive planning concerns the treatment of broad range of topics relevant to a large geographical area over a long-term time horizon. More specifically, comprehensive planning describes the process that identifies community goals and aspirations with respect to aspects of community development such as transportation, utilities, land use, recreation, and housing. The comprehensive planning process culminates in the adoption of a “Comprehensive Plan” by a public body exercising its planning and zoning responsibilities.

Typically, a “Comprehensive Plan” contains three components: narrative context,

¹ ORS 215.050(1)

statements of public policy that flow from the narrative context, and a zoning map that flows from the policy statements and illustrates those policy choices.

In the U.S., the legal effect of the Comprehensive Plan differs from state to state. In Oregon, the Comprehensive Plan is a legal standard of review for land use decisions.”²

GENESIS OF THE OREGON COMPREHENSIVE PLAN

Prior to 1947, planning authority resided solely in Oregon cities.³ This changed in 1947 when the Oregon Legislative Assembly passed legislation designating counties as the primary planning unit and authorizing counties to form planning commissions charged with recommending “development patterns” within the county.⁴

In 1963, in response to concerns that the term “development pattern” did not lend itself to articulation of concrete standards for planning, the legislature replaced the “development pattern” concept with the “comprehensive plan” concept.⁵

Although this new “comprehensive plan” concept provided a framework for establishing planning standards, the legal effect of such standards remained uncertain

² Edward J. Sullivan, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 Urb Law 75, 86 (2003).

³ Carl Abbott, *Land Use Planning*, The Oregon Encyclopedia http://www.oregonencyclopedia.org/articles/land_use_planning/#.VA0-n0vLa50 (last accessed on July 24, 2014).

⁴ Oregon Department of Land Conservation and Development, *History of Oregon’s Land Use Planning*, <http://www.oregon.gov/LCD/Pages/history.aspx> (last accessed on Aug. 22, 2014); *see also* Or Laws 1947, ch 537; ORS 215.020.

⁵ Or Laws 1963, ch 619, § 7; Edward J. Sullivan, *The Quiet Revolution Goes West: The Oregon Planning Program 1961-2011*, 45 John Marshall L Rev 357, 362 (2012).

until the 1973 decision by the Oregon Supreme Court in *Fasano v. Board of County Commissioners*.⁶ In this landmark case, the court explained that the comprehensive plan serves as the “basic instrument to control and direct the use and development of property in a municipality.” To clarify the meaning of this statement, the court contrasted “comprehensive plan” with the term “zoning ordinance,” which the court described as serving the purpose of “carry[ing] out or implement[ing] the comprehensive plan.”⁷

Another significant event occurred in 1973—Oregon Senate Bill 100 was enacted into law. In relevant part, SB 100 initiated *state* oversight of local planning.⁸ To this end, the bill accomplished three particulars: created the Land Conservation Development Commission (“LCDC”)⁹ and charged the commission with adopting Statewide Planning Goals (“SPGs”);¹⁰ created the Department of Land and Conservation Development (“DLCD”)¹¹ to function as the administrative arm to the LCDC; and mandated that cities and counties exercise their planning and zoning responsibilities in accordance with state land use statutes and the SPGs by incorporating the SPGs into their comprehensive plans.¹²

⁶ *Fasano v. Board of County Comm’rs*, 264 Or 574, 507 P2d 23 (1973).

⁷ *Id.* at 581.

⁸ SB 100 (1973).

⁹ See ORS 197.030 codifying authorization for the establishment of the LCDC.

¹⁰ See ORS 197.225 mandating the development and adoption of the SPGs (“The Department of Land Conservation and Development shall prepare and the Land Conservation and Development Commission shall adopt goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans.”); see OAR 660-015-0000 for SPGs 1-14; see also OAR 660-015-0005 for SPG 15; see also OAR 660-015-0010 for SPGs 16-19.

¹¹ See ORS 197.075 establishing the DLCD.

¹² *Friends of Oregon v. Land Conservation & Dev. Com.*, 76 Or App 33, 38, 708 P2d 370 (1985); SB 100 (1973); see ORS 197.175(1) (“Pursuant to ORS chapters 195, 196 and

The “comprehensive plan” concept and the top-down approach to land use planning initiated through SB 100 continue to be the cornerstones of land use planning in Oregon today.

THE NATURE AND FUNCTION OF THE COMPREHENSIVE PLAN

In overview, Oregon comprehensive plans function as an “impermanent constitution that binds the outcome of zone changes or other land use actions.”¹³ The comprehensive plan serves as a constitution in that “citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated into that plan will serve as the basis for land use decisions.”¹⁴ However, in contrast to the everlasting permanence of a state or federal constitution, the comprehensive plan is described as “impermanent” because the plan must remain flexible enough to “change when the needs of the community demand.”¹⁵

197, each city and county in this state shall: (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission”); see ORS 197.250 also requiring that local comprehensive plans comply with the SPGs within one year of their approval by the LCDC.

¹³ Charles Haar, *The Master Plan: An Impermanent Constitution*, 20 Law & Contemp Probs 353 (1955); see also Edward J. Sullivan, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 Urb Law 75, 86 (2003) (“in Oregon, the comprehensive plan is a legal standard of review for land use decisions”).

¹⁴ *1000 Friends of Or. v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); Ed J. Sullivan, *Annual Review of the Law: Recent Developments in Comprehensive Planning* 43 Urb Law 823, 829 (2011) (“[C]onsistency with the plan is a necessary attribute of a rezoning or other land use action”); see also Sullivan, *Ramapo Plus Thirty* at 78 (“[the plan is given] dispositive weight as a quasi-constitutional document * * * required as a precondition to and must be consistent with all subsequent land use regulation”).

¹⁵ *Baker v. Milwaukie*, 271 Or 500, 505, 533 P2d 772 (1975).

More particularly, the term “comprehensive plan” is defined as a generalized policy statement (and map) addressing the functions and uses of land in a coordinated manner:

“‘Comprehensive plan’ means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. ‘Comprehensive’ means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. ‘General nature’ means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is ‘coordinated’ when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. ‘Land’ includes water, both surface and subsurface, and the air.”

ORS 197.015(5).

Further, the Oregon Legislative Assembly has emphasized their conception of the comprehensive plan as a generalized expression of public policy intended to ensure that public actions proceed in a coordinated manner:

“The Legislative Assembly declares that:

“(1) In order to ensure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

“* * *

“(b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

“(c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans; [and]

“(d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans.”

ORS 197.010(1).

As stated earlier, the Oregon Supreme Court has weighed in on the nature and function of the comprehensive plan as well. In *Fasano*, in addition to describing the comprehensive plan as the “basic instrument to control and direct the use and development of property in a municipality,” the court explained that the plan “embodies policy determinations and guiding principles” that are “geared into population, land use, and economic forecasts, which should be the basis of any zoning or other regulations to be adopted by the county.”¹⁶

Further, the court has explained that the comprehensive plan operates at the highest or most general level of local planning and reflects the “judgment of the electors with reference to the physical form and character the municipality is to assume.”¹⁷

¹⁶ *Fasano*, 264 Or at 582-583.

¹⁷ *Baker v. Milwaukie*, 271 Or at 512.

Finally, many counties have also announced their understanding of the nature and function of the comprehensive plan—a few examples include the following:

Multnomah County: “The Multnomah County Comprehensive Framework Plan Summary is the county's land use mission statement. It describes the policies that guide decisions made by the Land Use Planning Division as well as the relationship between Multnomah County land use decisions and the policies adopted by the Metro Council and statewide planning agencies...This plan sets the framework for interrelating all of the Statewide Goals into a broad statement of public policy.”

Deschutes County: “The Plan is a 20-year blueprint to guide growth and development.”

Wasco County: “The intent of the [Wasco County] plan is to establish a single, coordinated set of policies which will act to provide for orderly development of Wasco County. These policies will give a direction to planning, establish priorities for action, serve as a basis for future decisions, provide a standard by which progress can be measured, and promote a sense of community for an improved quality of life. It will also help all levels of government and private enterprise to understand the wants and needs of Wasco County citizens.”

Taken together, the foregoing authorities appear to indicate that the comprehensive plan serves as the mechanism for establishing policies that are intended to guide the development of specific zoning standards. However, these same authorities also indicate

that the comprehensive plan serves as a “constitution” that provides “legal standard[s] of review for land use decisions.” Yet, because “legal standards of review” are typically drafted with a fair degree of specificity, the “generalized” but “constitutional” nature of comprehensive plans, and the policies therein, raises the question of the proper breadth or specificity of a policy statement.

Notably, neither the Oregon Legislative Assembly, LCDC, nor Oregon courts have defined the term “policy” or “policy statement” in the context of comprehensive planning. Consequently, the meaning of this elemental term is left to the counties and cities. The term “goal” is defined in the state comprehensive planning legislation;¹⁸ however, many jurisdictions in Oregon identified their own parallel goals within their plans. Consequently, they needed to establish the relative authoritative weight to give to a goal as compared to a policy or policy statement. The next section highlights different approaches taken to defining these terms throughout Oregon.

COMPREHENSIVE PLAN ELEMENTS: “GOALS” & “POLICIES”

Generally, Oregon cities and counties have adopted comprehensive plans that include “goals” or “policies” or both. In addition, typically, the meaning and intent of goal or policy statement is supported by a narrative that summarizes public comment and pertinent data and inventories and, thereby, provides context for the goal or policy statements.

The use of “goals” and “policies” varies broadly among Oregon cities and counties. Some local jurisdictions utilize both elements, while others use only one. Similarly, some local jurisdictions define these elements, while others do not.

¹⁸ ORS 197.015(8).

A. Goals

Some counties and cities identify “goals” in their comprehensive plans. Unless intended as a reference to the Statewide Planning Goals, these “goals” are distinguished and separate from the SPGs. As presented below, many local jurisdictions define the local meaning of the term “goal” when that element is included in their comprehensive plan. However, some jurisdictions leave the term undefined¹⁹ or refer the reader to the common dictionary meaning.²⁰ Local definitions of the term “goal” include:

City of Portland: “Goals are the broadest expressions of a community's desires. Goals give direction to the plan as a whole. Goals are concerned with the long term, and often describe ideal situations that would result if all plan purposes were fully realized. Since goals are value-based, their attainment is difficult to measure.”

City of McMinnville: “Goals are the broadly-based statements intended to set forth the general principles on which all future land use decisions will be made. Goals carry the full force of the authority of the City of McMinnville and are therefore mandated.”

¹⁹ See e.g., Malheur County Comprehensive Plan, Introduction (“the plan embodies the official goals and policies concerning land use in Malheur County”).

²⁰ See e.g., Jackson County Comprehensive Plan, Definitions (“Where terms or words are not otherwise established, they are construed to have their ordinary accepted meanings in the context of their use. The contemporary edition of *Webster’s Third New International Dictionary* (unabridged) (Merriam-Webster, Inc. Springfield, MA 1986) as supplemented, is to be used as the source for these accepted meanings”).

City of Prineville: “Goals form policies, policies form programs and budgets, implementation occurs, and the result is accomplishment.”

Deschutes County: “Goals are a general description of what Deschutes County wants to achieve. The County will direct resources and/or support partner agencies and organizations to implement the goals over the 20-year Plan timeframe.”

Umatilla County: “A goal is a statement of a desired condition or circumstance to be achieved at some point in the future.”

Coos County: “Goal Statements are policies that provide extremely general guidance, and are developed as a means of dealing with corresponding, general problem statements.”

Eugene-Springfield Metro: “A goal is a broad statement of philosophy that describes the hopes of a Community for its future. A goal may never be completely attainable but it is used as a point toward which to strive.”

B. Policies

As discussed earlier, the Oregon scheme introduces a tension into the meaning of the term policy between the “generalized”²¹ nature of policy statements and the “constitutional” force of law of these statements. As reflected in the following examples

²¹ See e.g. *Davis Walker Corp. v. Blumenthal*, 460 F Supp 283, 294 (DDC 1978) (The Court explained that “[W]hile a substantive rule establishes a standard of conduct which has the force of law, a policy statement neither establishes a binding norm nor is determinative of the issues or rights to which it is addressed.”).

of local definitions of the term “policy,” local jurisdictions have struggled with this tension—some jurisdictions emphasize the “generalized” nature, others the “constitutional” nature, with yet others attempting to straddle the two:

Jackson County: “Policies . . . have the force of law. They represent the most important feature of the whole comprehensive plan.”

Lane County: “Policies are binding commitments, but will be carried out within established work programs and over all County priorities.”

Eugene-Springfield Metro: “A policy is a statement adopted as part of the Metro Plan or other plans to provide a specific course of action moving the community toward attainment of its goals.”

Washington County: “A policy is a specific statement identifying a course of action or County position designed to guide individual decisions and implementation of the plan.”

The City of Portland: “Policies are broad statements that set preferred courses of action. Policies are choices made to carry out the goals in the foreseeable future. Policies need to be specific enough to help determine whether a proposed project or program would advance community values expressed in the goals.”

Marion County: “A policy is a commitment to pursue a course of action which will influence specific decisions.”

Deschutes County: “Policies are statements of principles and guidelines to aid decision making by clarifying and providing direction on meeting the Goals.”

City of La Grande: “Development policies may be specific or general guidelines that are used to evaluate planning decisions being considered. Specific policies are those directives which are recognized in evaluating a particular type of development, or possible location therefore. General policies are those directives which basically apply to all uses and locations in the community. If decisions are made contrary to the development policies, justification for deviating from the policy must be recognized and spelled out (documented).”

Umatilla County: “A policy is a statement of method or approach used to achieve a goal, or move toward it; it implies making decisions in line with the policy.”

Lake County: “Policies are more detailed guidelines that are used individually or collectively as the bases for making planning decisions. Specific policies are those directives which are recognized in evaluating a particular type or site specific development.”

City of McMinnville: “Policies are the more precise and limited statements intended to further define the goals. These statements also carry the full

force of the authority of the City of McMinnville and are therefore mandated.”

Multnomah County: “Policies are general courses of action designed to guide decisions, and strategies, which are stipulated courses of action for implementing the general policies. The policies are adopted public statements of policy, while strategies are recommended courses of action and, as contained in this plan, are not legally binding.”

Coos County: The term “policies” can be used interchangeably with the term “strategies,” explaining that policies/strategies “ * * * provide specific guidance. They implement, or establish specific implementation measures (i.e., zoning instructions) for achieving respective goal statements.”

C. Drilling Down Further

Those readers interested in further comparative analysis of the local use of “goals” and “policies” may contact the Jed Tomkins, Assistant Multnomah County Attorney, to request a spreadsheet that presents a comparison of the manner in which multiple jurisdictions incorporated a particular SPG into their comprehensive plan (the file is quite large and not amenable to distribution in hardcopy form).

REVISING A COMPREHENSIVE PLAN: CONSIDERATIONS

Oregon communities engaging in the comprehensive planning process are tasked with identifying the community’s planning vision and merging that vision with the

framework of minimum requirements set forth at the state level. This interplay between substantial local discretion and the structural components of state-level minimum requirements is best balanced when planning officials afford citizens the opportunity to formulate their planning vision and, in turn, citizens utilize and rely on the expertise of their planning officials to ensure compliance with state standards and the implementation of sound planning principles.²²

Ultimately, after striking the balance described above, the community's planning vision is established through the adoption of policy statements in a Comprehensive Plan. In addition to identifying the subjects to be addressed by in policy statements, a critical task in developing policy statements is the determination of the proper formulation, language, and word choice for each statement.

A prime component of this statement formulation task is the determination of the appropriate degree of breadth or specificity of each policy statement. For some subject matters, a broader statement of guiding principle is appropriate, while other matters might warrant very prescriptive language.

The key to making the foregoing determination is to be fully informed and mindful of the impacts and consequences of specific word choices. To this end, the reader is referred to a document entitled *Policy Statement Review: Considerations*, which will be made available to the Citizen Advisory Committee convened for the present comprehensive plan revision as well as any other interested party.

²² Indeed, the value of this relationship between citizens and their planning officials is recognized in Statewide Planning Goal 1, pursuant to which citizens are afforded the "opportunity to be involved in the phases of the planning process," including the opportunity to be involved in the development of "a body of sound information," inventorying and analyzing of data, evaluation of the elements necessary for development of the comprehensive plan, and reviewing and recommending changes to proposed plans.

The questions presented in the *Considerations* document identify various factors that should be vetted in the course of considering the formulation of each policy statement proposed for inclusion in a comprehensive plan. These factors include considerations such as whether the policy statement:

- complies with law;
- is flexible enough to account for the variety of actual, on-the-ground circumstances throughout the county;
- would benefit from the additional review procedures afforded through code development; and
- establishes a commitment that is feasible to fulfill.