Chapter 195

2007 EDITION

Local Government Planning Coordination

Note: Definitions in 197.015 apply to ORS chapter 195.

COORDINATION AGREEMENTS

(Agreements Generally)

195.020 Special district planning responsibilities; agreements with local governments and Metropolitan Service District. (1) Special districts shall exercise their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use, including a city or special district boundary change as defined in ORS 197.175 (1), in accordance with goals approved pursuant to ORS chapters 195, 196 and 197.

(2) A county assigned coordinative functions under ORS 195.025 (1), or the Metropolitan Service District, which is assigned coordinative functions for Multnomah, Washington and Clackamas counties by ORS 195.025 (1), shall enter into a cooperative agreement with each special district that provides an urban service within the boundaries of the county or the metropolitan district. A county or the Metropolitan Service District may enter into a cooperative agreement with any other special district operating within the boundaries of the county or the metropolitan district.

(3) The appropriate city and county and, if within the boundaries of the Metropolitan Service District, the Metropolitan Service District, shall enter into a cooperative agreement with each special district that provides an urban service within an urban growth boundary. The appropriate city and county, and the Metropolitan Service District, may enter into a cooperative agreement with any other special district operating within an urban growth boundary.

(4) The agreements described in subsection (2) of this section shall conform to the requirements of paragraphs (a) to (d), (f) and (g) of this subsection. The agreements described in subsection (3) of this section shall:

(a) Describe how the city or county will involve the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations;

(b) Describe the responsibilities of the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations regarding provision of urban services;

(c) Establish the role and responsibilities of each party to the agreement with respect to city or county approval of new development;

(d) Establish the role and responsibilities of the city or county with respect to district interests including, where applicable, water sources, capital facilities and real property, including rights of way and easements;

(e) Specify the units of local government which shall be parties to an urban service agreement under ORS 195.065;

(f) If a Metropolitan Service District is a party to the agreement, describe how the Metropolitan Service District will involve the special district in the exercise of the Metropolitan Service District's regional planning responsibilities; and

(g) Contain such other provisions as the Land Conservation and Development Commission may require by rule.

(5) Agreements required under subsections (2) and (3) of this section are subject to review by the commission. The commission may provide by rule for periodic submission and review of cooperative agreements to insure that they are consistent with acknowledged comprehensive plans. [Formerly 197.185]

195.025 Regional coordination of planning activities; alternatives. (1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district.

(2) For the purposes of carrying out ORS chapters 195, 196 and 197, counties may voluntarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the Land Conservation and Development Commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the elections officer and the commission shall be considered the district elections

authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties. [Formerly 197.190]

195.034 Alternate population forecast. (1) If the coordinating body under ORS 195.025 (1) has adopted, within 10 years before a city initiates an evaluation or amendment of the city's urban growth boundary, a population forecast as required by ORS 195.036 that no longer provides a 20-year forecast for an urban area, a city may propose a revised 20-year forecast for its urban area by extending the coordinating body's current urban area forecast to a 20-year period using the same growth trend for the urban area assumed in the coordinating body's current adopted forecast.

(2) If the coordinating body has not adopted a forecast as required by ORS 195.036 or if the current forecast was adopted more than 10 years before the city initiates an evaluation or amendment of the city's urban growth boundary, a city may propose a 20-year forecast for its urban area by:

(a) Basing the proposed forecast on the population forecast prepared by the Office of Economic Analysis for the county for a 20-year period that commences when the city initiates the evaluation or amendment of the city's urban growth boundary; and

(b) Assuming that the urban area's share for the forecasted county population determined in paragraph (a) of this subsection will be the same as the urban area's current share of the county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the United States Census Bureau.

(3)(a) If the coordinating body does not take action on the city's proposed forecast for the urban area under subsection (1) or (2) of this section within six months after the city's written request for adoption of the forecast, the city may adopt the extended forecast if:

(A) The city provides notice to the other local governments in the county; and

(B) The city includes the adopted forecast in the comprehensive plan, or a document included in the plan by reference, in compliance with the applicable requirements of ORS 197.610 to 197.650.

(b) If the extended forecast is adopted under paragraph (a) of this subsection consistent with the requirements of subsection (1) or (2) of this section:

(A) The forecast is deemed to satisfy the requirements of a statewide land use planning goal relating to urbanization to establish a coordinated 20-year population forecast for the urban area; and

(B) The city may rely on the population forecast as an appropriate basis upon which the city and county may conduct the evaluation or amendment of the city's urban growth boundary.

(4) The process for establishing a population forecast provided in this section is in addition to and not in lieu of a process established by goal and rule of the Land Conservation and Development Commission. [2007 c.689 §1]

Note: 195.034 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

195.035 [Formerly 197.255; repealed by 1995 c.547 §6 (195.036 enacted in lieu of 195.035)]

195.036 Area population forecast; coordination. The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary. [1995 c.547 §7 (enacted in lieu of 195.035)]

195.040 Annual county reports on comprehensive planning compliance. Upon the expiration of one year after the date of the approval of the goals and guidelines and annually thereafter, each county governing body, upon request of the Land Conservation and Development Commission, shall report to the commission on the status of comprehensive plans within each county. Each report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of land use regulations applied to areas of critical state concern within the county.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the goals. [Formerly 197.260]

(Urban Service Agreements)

195.060 Definitions. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires otherwise:

(1) "District" has the meaning given that term in ORS 198.010. In addition, the term includes a county service district organized under ORS chapter 451.

(2) "Urban growth boundary" means an acknowledged urban growth boundary contained in a city or county comprehensive plan or an acknowledged urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3).

(3) "Urban service" has the meaning given that term in ORS 195.065. [1993 c.804 §12]

195.065 Agreements required; contents; county responsibilities. (1) Under ORS 190.003 to 190.130, units of local government and special districts that provide an urban service to an area within an urban growth boundary that has a population greater than 2,500 persons, and that are identified as appropriate parties by a cooperative agreement under ORS 195.020, shall enter into urban service agreements that:

(a) Specify whether the urban service will be provided in the future by a city, county, district, authority or a combination of one or more cities, counties, districts or authorities.

(b) Set forth the functional role of each service provider in the future provision of the urban service.

(c) Determine the future service area for each provider of the urban service.

(d) Assign responsibilities for:

(A) Planning and coordinating provision of the urban service with other urban services;

(B) Planning, constructing and maintaining service facilities; and

(C) Managing and administering provision of services to urban users.

(e) Define the terms of necessary transitions in provision of urban services, ownership of facilities, annexation of service territory, transfer of moneys or project responsibility for projects proposed on a plan of the city or district prepared pursuant to ORS 223.309 and merger of service providers or other measures for enhancing the cost efficiency of providing urban services.

(f) Establish a process for review and modification of the urban service agreement.

(2)(a) Each county shall have responsibility for convening representatives of all cities and special districts that provide or declare an interest in providing an urban service inside an urban growth boundary within the county, for the purpose of negotiating an urban service agreement. A county may establish two or more subareas inside an urban growth boundary for the purpose of such agreements. If an urban service is to be provided within the boundaries of a Metropolitan Service District, a county shall notify the Metropolitan Service District in advance of the time for cities and special districts to meet for the purpose of negotiating an urban service agreement, and the Metropolitan Service District shall exercise its review, advisory and coordination functions under ORS 195.025.

(b) When negotiating for an urban service agreement, a county shall consult with recognized community planning organizations within the area affected by the urban service agreement.

(3) Decisions on a local government structure to be used to deliver an urban service under ORS 195.070 are not land use decisions under ORS 197.015.

(4) For purposes of ORS 195.020, 195.070, 195.075, 197.005 and this section, "urban services" means:

(a) Sanitary sewers;

(b) Water;

(c) Fire protection;

(d) Parks;

(e) Open space;

(f) Recreation; and

(g) Streets, roads and mass transit.

(5) Whether the requirement of subsection (1) of this section is met by a single urban service agreement among multiple providers of a service, by a series of agreements with individual providers or by a combination of multiprovider and single-provider agreements shall be a matter of local discretion. [1993 c.804 §3]

195.070 Agreement factors. (1) The following factors shall be considered in establishing urban service agreements under ORS 195.065:

(a) Financial, operational and managerial capacity to provide the service;

(b) The effect on the cost of the urban service to the users of the service, the quality and quantity of the service provided and the ability of urban service users to identify and contact service providers, and to determine their accountability, with ease;

(c) Physical factors related to the provision of the urban service;

(d) The feasibility of creating a new entity for the provision of the urban service;

(e) The elimination or avoidance of unnecessary duplication of facilities;

(f) Economic, demographic and sociological trends and projections relevant to the provision of the urban service;

(g) The allocation of charges among urban service users in a manner that reflects differences in the costs of providing services to the users;

(h) Matching the recipients of tax supported urban services with the payers of the tax;

(i) The equitable allocation of costs between new development and prior development; and

(j) Economies of scale.

(2) The extent of consideration of the factors set forth in subsection (1) of this section is a matter of local government and special district discretion. [1993 c.804 §4]

195.075 Agreement provisions and considerations. (1) Urban service agreements entered into under ORS 195.065 shall provide for the continuation of an adequate level of urban services to the entire area that each provider serves. If an urban service agreement calls for significant reductions in the territory of a special service district, the urban service agreement shall specify how the remaining portion of the district is to receive services in an affordable manner.

(2) Units of local government and special districts that enter into an urban service agreement shall consider the agreement's effect on the financial integrity and operational ability of each service provider and its protection of the solvency and commitments of affected service providers. When an urban service agreement provides for the elimination, consolidation or reduction in size of a service provider, the urban service agreement shall address:

(a) The capital debt of the provider and short- and long-term finances;

(b) Rates;

(c) Employee compensation, benefits and job security; and

(d) Equality of service. [1993 c.804 §5]

195.080 Application of comprehensive plans and land use regulations. Nothing in ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304 shall be construed to prevent planning for, installation of or connection to public facilities or services consistent with acknowledged comprehensive plans and land use regulations. [1993 c.804 §6]

195.085 Compliance deadlines. (1) No later than the first periodic review that begins after November 4, 1993, local governments and special districts shall demonstrate compliance with ORS 195.020 and 195.065.

(2) The Land Conservation and Development Commission may adjust the deadline for compliance under this section when cities and counties that are parties to an agreement under ORS 195.020 and 195.065 are scheduled for periodic review at different times.

(3) Local governments and special districts that are parties to an agreement in effect on November 4, 1993, which provides for the future provision of an urban service shall demonstrate compliance with ORS 195.065 no later than the date such agreement expires or the second periodic review that begins after November 4, 1993, whichever comes first. [1993 c.804 §§7,8]

(School Facility Planning)

195.110 School facility plan for large school districts. (1) As used in this section, "large school district" means a school district that has an enrollment of over 2,500 students based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.

(2) A city or county containing a large school district shall:

(a) Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.

(b) Initiate planning activities with a school district to accomplish planning as required under ORS 195.020.

(3) The provisions of subsection (2)(a) of this section do not apply to a city or a county that contains less than 10 percent of the total population of the large school district.

(4) The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.

(5)(a) The school facility plan must cover a period of at least 10 years and must include, but need not be limited to, the following elements:

(A) Population projections by school age group.

(B) Identification by the city or county and by the large school district of desirable school sites.

(C) Descriptions of physical improvements needed in existing schools to meet the minimum standards of the large school district.

(D) Financial plans to meet school facility needs, including an analysis of available tools to ensure facility needs are met.

(E) An analysis of:

(i) The alternatives to new school construction and major renovation; and

(ii) Measures to increase the efficient use of school sites including, but not limited to, multiple-story buildings and multipurpose use of sites.

(F) Ten-year capital improvement plans.

(G) Site acquisition schedules and programs.

(b) Based on the elements described in paragraph (a) of this subsection and applicable laws and rules, the school facility plan must also include an analysis of the land required for the 10-year period covered by the plan that is suitable, as a permitted or conditional use, for school facilities inside the urban growth boundary.

(6) If a large school district determines that there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the school facility plan, the city or county, or both, and the large school district shall cooperate in identifying land for school facilities and take necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing lots or parcels in separate ownership, adding one or more sites designated for school facilities to an urban growth boundary, or petitioning a metropolitan service district to add one or more sites designated for school facilities to an urban growth boundary pursuant to applicable law.

(7) The school facility plan shall provide for the integration of existing city or county land dedication requirements with the needs of the large school district.

(8) The large school district shall:

(a) Identify in the school facility plan school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan; and

(b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.

(9)(a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

(b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.

(10) A school district that is not a large school district may adopt a school facility plan as described in this section in consultation with an affected city or county.

(11) The capacity of a school facility is not the basis for a development moratorium under ORS 197.505 to 197.540.

(12) This section does not confer any power to a school district to declare a building moratorium.

(13) A city or county may deny an application for residential development based on a lack of school capacity if:

(a) The issue is raised by the school district;

(b) The lack of school capacity is based on a school facility plan formally adopted under this section; and

(c) The city or county has considered options to address school capacity. [1993 c.550 §2; 1995 c.508 §1; 2001 c.876 §1; 2007 c.579 §1]

Note: Section 3, chapter 579, Oregon Laws 2007, provides:

Sec. 3. A school district that is a large school district as defined in ORS 195.110 on the effective date of this 2007 Act [January 1, 2008] shall complete a school facility plan within two years after the effective date of this 2007 Act. [2007 c.579 §3]

195.115 Reducing barriers for pedestrian and bicycle access to schools. City and county governing bodies shall work with school district personnel to identify barriers and hazards to children walking or bicycling to and from school. The cities, counties and districts may develop a plan for the funding of improvements designed to reduce the barriers and hazards identified. [2001 c.940 §1]

Note: 195.115 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PARKS

195.120 Rules and planning goal amendments for parks required; allowable uses; application of certain land use laws. (1) The Legislative Assembly finds that Oregon's parks are special places and the protection of parks for the use and enjoyment of present and future generations is a matter of statewide concern.

(2) The Land Conservation and Development Commission, in cooperation with the State Parks and Recreation Commission and representatives of local government, shall adopt rules and land use planning goal amendments as necessary to provide for:

(a) Allowable uses in state and local parks that have adopted master plans;

(b) Local government planning necessary to implement state park master plans; and

(c) Coordination and dispute resolution among state and local agencies regarding planning and activities in state parks.

(3) Rules and goal amendments adopted under subsection (2) of this section shall provide for the following uses in state parks:

(a) Campgrounds, day use areas and supporting infrastructure, amenities and accessory visitor service facilities designed to meet the needs of park visitors;

(b) Recreational trails and boating facilities;

(c) Facilities supporting resource-interpretive and educational activities for park visitors;

(d) Park maintenance workshops, staff support facilities and administrative offices;

(e) Uses that directly support resource-based outdoor recreation; and

(f) Other park uses adopted by the Land Conservation and Development Commission.

(4) A local government shall not be required to adopt an exception under ORS 197.732 from a land use planning goal protecting agriculture or forestry resources to authorize a use identified by rule of the Land Conservation and Development Commission under this section in a state or local park.

(5) A local government shall comply with the provisions of ORS 215.296 for all uses and activities proposed in or adjacent to an exclusive farm use zone described in the state or local master plan as adopted by the local government and made a part of its comprehensive plan and land use regulation. [1997 c.604 §3]

195.125 Existing uses in state parks; approval by local governments. Existing uses and facilities in all state parks on July 25, 1997, shall be allowed to continue. The following uses and activities shall be approved by a local government subject only to clear and objective siting criteria, which criteria, either individually or cumulatively, shall not prohibit the use or activity of:

(1) The repair and renovation of existing facilities;

(2) The replacement of existing facilities and services, including minor location changes; and

(3) The minor expansion of existing uses and facilities. [1997 c.604 §4]

URBAN AND RURAL RESERVES

195.137 Definitions for ORS 195.137 to 195.145. As used in ORS 195.137 to 195.145:

(1) "Rural reserve" means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.

(2) "Urban reserve" means lands outside an urban growth boundary that will provide for:

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary. [2007 c.723 §1]

195.139 Legislative findings. The Legislative Assembly finds that:

(1) Long-range planning for population and employment growth by local governments can offer greater certainty for:

(a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and

(b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty. [2007 c.723 §2]

195.141 Designation of rural reserves and urban reserves pursuant to intergovernmental agreement; rules. (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

(2) Land designated as a rural reserve:

(a) Must be outside an urban growth boundary.

(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).

(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

(b) Is capable of sustaining long-term agricultural operations;

(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

(d) Is suitable to sustain long-term agricultural operations, taking into account:

(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural infrastructure in the area.

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section. [2007 c.723 §3]

Note: Sections 10 and 11, chapter 723, Oregon Laws 2007, provide:

Sec. 10. Notwithstanding ORS 195.145 (4), if urban reserves are designated by a metropolitan service district and a county pursuant to ORS 195.145 (1)(b) on or before December 31, 2009, the urban reserves must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the next inventory, determination and analysis required under ORS 197.299 on or after the effective date of this 2007 Act [June 28, 2007]. [2007 c.723 §10]

Sec. 11. The Land Conservation and Development Commission shall adopt the goals or rules required by section 3 of this 2007 Act [195.141] and by the amendments to ORS 195.145 by section 6 of this 2007 Act not later than January 31, 2008. [2007 c.723 §11]

195.143 Coordinated and concurrent process for designation of rural reserves and urban reserves. (1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to ORS 195.141; and

(b) Urban reserves pursuant to ORS 195.145 (1)(b).

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county and the district also agree to designate rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves pursuant to ORS 195.145 (1)(b):

(a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.

(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947. [2007 c.723 §4]

195.145 Urban reserves; when required; limitation; rules. (1) To ensure that the supply of land available for urbanization is maintained:

(a) Local governments may cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.625.

(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

(2)(a) The Land Conservation and Development Commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic review if:

(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

(B) The local government has been required to designate an urban reserve by rule prior to November 4, 1993.

(3) In carrying out subsections (1) and (2) of this section:

(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve.

(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.

(4) Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.

(5) A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

(b) Includes sufficient development capacity to support a healthy urban economy;

(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

(e) Can be designed to preserve and enhance natural ecological systems; and

(f) Includes sufficient land suitable for a range of housing types.

(6) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection (1)(b) of this section. [1993 c.804 §19; 1999 c.622 §6; 2007 c.723 §6]

URBAN SERVICE PROVIDER ANNEXATION

(Temporary provisions relating to requirements for annexation of certain industrial lands)

Note: Sections 1, 2 and 11, chapter 539, Oregon Laws 2005, provide:

Sec. 1. Section 2 of this 2005 Act is added to and made a part of ORS 195.205 to 195.225. [2005 c.539 §1]

Sec. 2. (1) A lot, parcel or tract may not be included in territory proposed to be annexed unless the owner of the lot, parcel or tract gives written consent to the annexation, if the lot, parcel or tract:

(a) Is zoned for industrial use or designated for industrial use zoning in an acknowledged comprehensive plan;

(b) Is land on which no electors reside, unless one or more electors living on-site are employed or engaged to provide security services for the industrial user of the land;

(c) Has an assessed value of more than $2 million, including improvements; and

(d) Is in unincorporated Jackson County, either:

(A) Within the urban unincorporated community of White City, west of Oregon Route 62; or

(B) Within the urban growth boundary of the City of Medford, west of Oregon Route 99.

(2) After annexation of a lot, parcel or tract described in subsection (1) of this section, the development rights that apply to the lot, parcel or tract under the industrial zoning classification applicable to the lot, parcel or tract when it is annexed are retained and run with the lot, parcel or tract.

(3) As used in this section, "urban unincorporated community" means an unincorporated community that:

(a) Includes at least 150 permanent residential dwelling units;

(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

(c) Includes areas served by a community sewer system; and

(d) Includes areas served by a community water system. [2005 c.539 §2]

Sec. 11. Sections 2, 4, 6, 8 and 10 of this 2005 Act are repealed June 30, 2016. [2005 c.539 §11]

195.205 Annexation by provider; prerequisites to vote; public hearing. (1) A city or district that provides an urban service may annex territory under ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304 that:

(a) Is situated within an urban growth boundary; and

(b) Is contained within an annexation plan adopted pursuant to ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304.

(2) A city or district may submit an annexation plan to a vote under subsection (5) of this section only if, prior to the submission of the annexation plan to a vote:

(a) The territory contained in the annexation plan is subject to urban service agreements among all appropriate counties and cities and the providers of urban services within the territory, as required by ORS 195.065 and 195.070, and:

(A) Such urban service agreements were in effect on November 4, 1993; or

(B) They expressly state that they may be relied upon as a prerequisite of the annexation method authorized by ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304; and

(b) The territory contained in the annexation plan is subject to an agreement between the city and county addressing fiscal impacts, if the annexation is by a city and will cause reductions in the county property tax revenues by operation of section 11b, Article XI of the Oregon Constitution.

(3) Prior to adopting an annexation plan, the governing body of a city or district shall hold a public hearing at which time interested persons may appear and be heard on the question of establishing the annexation plan.

(4) The governing body of the city or district shall cause notice of the hearing to be published, once each week for two successive weeks prior to the day of the hearing, in a newspaper of general circulation in the city or district.

(5) If after the public hearing required under subsection (3) of this section, the governing body of the city or district decides to proceed with the annexation plan, it shall cause the annexation plan to be submitted to the electors of the city or district and to the electors of the territory proposed to be annexed under the annexation plan. The proposed annexation plan may be voted upon at a general election or at a special election to be held for that purpose. [1993 c.804 §13]

195.210 Election procedures. (1) The statement summarizing the measure and its major effect in the ballot title of a proposal for adoption of an annexation plan shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement summarizing the measure and its major effect may not exceed 150 words.

(2) The notice of an annexation plan election shall be given as provided in ORS 254.095, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed. [1993 c.804 §14; 1995 c.79 §72; 1995 c.534 §9; 2007 c.154 §58]

195.215 Election certification; order. (1) The governing body of the city or district shall determine the results of the election from the official figures returned by the county clerk. If the governing body of the city finds that a majority of the votes cast in the territory and a majority of the votes cast in the city favor the annexation plan, the governing body, by resolution or ordinance, shall declare the adoption of the annexation plan. The governing body of the district shall certify the results of the election to the appropriate county governing body. When a majority of the votes cast in the territory and a majority of the votes cast in the district favor the annexation plan, the county governing body by order shall so declare. The resolution, ordinance or order declaring approval of the annexation plan must contain a legal description of each territory annexed.

(2) Annexation of particular tracts of territory takes effect in accordance with the provisions of the adopted annexation plan. [1993 c.804 §15; 2005 c.388 §1]

195.220 Annexation plan provisions. (1) An annexation plan adopted under ORS 195.205 shall include:

(a) The timing and sequence of annexation.

(b) Local standards of urban service availability required as a precondition of annexation.

(c) The planned schedule for providing urban services to the annexed territory.

(d) The effects on existing urban services providers.

(e) The long-term benefits of the annexation plan.

(2) An annexation plan shall be consistent with all applicable comprehensive plans. [1993 c.804 §16; 1997 c.541 §341]

195.225 Boundary commission review; action; plan amendment; election. (1) In areas subject to the jurisdiction of a local government boundary commission, the boundary commission shall conduct an advisory review of an annexation plan for conformity with annexation plan requirements set forth in ORS 195.220, 199.462 and the rules of procedure of the Land Conservation and Development Commission.

(2) If a boundary commission finds that an annexation plan does not comply with ORS 195.220, 199.462 or the procedural rules of the commission, the boundary commission, by order, shall disapprove the annexation plan and return the plan to the governing body of the city or district. The order of the boundary commission that disapproves an annexation plan shall describe with particularity the provisions of the annexation plan that do not comply with ORS 195.220, 199.462 or the procedural rules of the commission and shall specifically indicate the reasons for noncompliance.

(3) The governing body of the city or district, upon receiving an order of the boundary commission that disapproves an annexation plan, may amend the plan and resubmit the amended plan to the boundary commission.

(4) After a boundary commission reviews an annexation plan, the annexation plan shall be submitted to the electors of the city or district and affected territory as provided in ORS 195.205.

(5) Notwithstanding ORS chapter 199, annexations provided for in an annexation plan approved by the electors of a city or district and affected territory do not require the approval of a local government boundary commission.

(6) A city or district shall submit an annexation plan approved by the electors and a copy of the resolution, ordinance, order or proclamation proclaiming an annexation under an approved annexation plan to the local government boundary commission filing with the Secretary of State, Department of Revenue, assessor and county clerk of each county in which the affected territory is located. [1993 c.804 §17]

195.235 Application of other annexation procedures. The method of annexing territory to cities or districts set forth in ORS 195.205 to 195.225 is in addition to and does not affect or prohibit other methods of annexation authorized by law. [1993 c.804 §18]

LANDSLIDE HAZARD AREAS

195.250 Definitions for ORS 195.250 to 195.260. As used in ORS 195.250 to 195.260:

(1) "Further review area" means an area of land within which further site specific review should occur before land management or building activities begin because either the State Department of Geology and Mineral Industries or the State Forestry Department determines that the area reasonably could be expected to include sites that experience rapidly moving landslides as a result of excessive rainfall.

(2) "Landslide" means any detached mass of soil, rock or debris that is of sufficient size to cause damage and that moves down a slope or a stream channel.

(3) "Rapidly moving landslide" means a landslide that is difficult for people to outrun or escape. [1999 c.1103 §1]

Note: 195.250 to 195.260 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

195.253 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon that:

(1) Each property owner, each highway user and all federal, state and local governments share the responsibility for making sound decisions regarding activities that may affect landslide hazards and the associated risks of property damage or personal injury.

(2) In keeping with the concept of shared responsibility where individuals are primarily responsible for making sound decisions to protect personal interests, regulation applied pursuant to ORS 195.250 to 195.260 shall be restricted to reducing the risk of serious bodily injury or death that may result from rapidly moving landslides.

(3) In recognition of the need for consistent treatment and coordination of actions relating to rapidly moving landslides and because of the potential for serious bodily injury or death as a result of rapidly moving landslides and the effect of rapidly moving landslides on the ability of people to use their property, ORS 195.250 to 195.260 shall be regarded as the controlling policy of this state for rapidly moving landslides. [1999 c.1103 §2]

Note: See note under 195.250.

195.256 Legislative findings. The Legislative Assembly finds that:

(1) Many locations in Oregon are subject to naturally occurring landslide hazards, and some human activities may accelerate the incidence or increase the adverse effects of those hazards.

(2) Rapidly moving landslides present the greatest risk to human life, and persons living in or traveling through areas prone to rapidly moving landslides are at increased risk of serious bodily injury or death.

(3) Although some risk from rapidly moving landslides can be mitigated through proper siting and construction techniques, sites that are vulnerable to impact from rapidly moving landslides are generally unsuitable for permanent habitation.

(4) Activities that require sound decisions to mitigate rapidly moving landslide hazards and risks include but are not limited to:

(a) Siting or constructing homes or other structures in areas prone to rapidly moving landslides;

(b) Occupying existing homes or other structures in areas prone to rapidly moving landslides during periods of high risk due to heavy or extended rainfall;

(c) Conducting land management activities that may adversely alter the susceptibility of land to rapidly moving landslides; and

(d) Operating motor vehicles in areas known to be subject to rapidly moving landslides. [1999 c.1103 §3]

Note: See note under 195.250.

195.260 Duties of local governments, state agencies and landowners in landslide hazard areas. (1) In order to reduce the risk of serious bodily injury or death resulting from rapidly moving landslides, a local government:

(a) Shall exercise all available authority to protect the public during emergencies, consistent with ORS 401.015.

(b) May require a geotechnical report and, if a report is required, shall provide for a coordinated review of the geotechnical report by the State Department of Geology and Mineral Industries or the State Forestry Department, as appropriate, before issuing a building permit for a site in a further review area.

(c) Except those structures exempt from building codes under ORS 455.310 and 455.315, shall amend its land use regulations, or adopt new land use regulations, to regulate the siting of dwellings and other structures designed for human occupancy, including those being restored under ORS 215.130 (6), in further review areas where there is evidence of substantial risk for rapidly moving landslides. All final decisions under this paragraph and paragraph (b) of this subsection are the responsibility of the local government with jurisdiction over the site. A local government may not delegate such final decisions to any state agency.

(d) May deny a request to issue a building permit if a geotechnical report discloses that the entire parcel is subject to a rapidly moving landslide or that the subject lot or parcel does not contain sufficient buildable area that is not subject to a rapidly moving landslide.

(e) Shall maintain a record, available to the public, of properties for which a geotechnical report has been prepared within the jurisdiction of the local government.

(2) A landowner allowed a building permit under subsection (1)(c) of this section shall sign a statement that shall:

(a) Be recorded with the county clerk of the county in which the property is located, in which the landowner acknowledges that the landowner may not in the future bring any action against an adjacent landowner about the effects of rapidly moving landslides on or adjacent to the landowner's property; and

(b) Record in the deed records for the county where the lot or parcel is located a nonrevocable deed restriction that the landowner signs and acknowledges, that contains a legal description complying with ORS 93.600 and that prohibits any present or future owner of the property from bringing any action against an adjacent landowner about the effects of rapidly moving landslides on or adjacent to the property.

(3) Restrictions on forest practices adopted under ORS 527.710 (10) do not apply to risk situations arising solely from the construction of a building designed for human occupancy in a further review area on or after October 23, 1999.

(4) The following state agencies shall implement the following specific responsibilities to reduce the risk of serious bodily injury or death resulting from rapidly moving landslides:

(a) The State Department of Geology and Mineral Industries shall:

(A) Identify and map further review areas selected in cooperation with local governments and in coordination with the State Forestry Department, and provide technical assistance to local governments to facilitate the use and application of this information pursuant to subsection (1)(b) of this section; and

(B) Provide public education regarding landslide hazards.

(b) The State Forestry Department shall regulate forest operations to reduce the risk of serious bodily injury or death from rapidly moving landslides directly related to forest

operations, and assist local governments in the siting review of permanent dwellings on and adjacent to forestlands in further review areas pursuant to subsection (1)(b) of this section.

(c) The Land Conservation and Development Commission may take steps under its existing authority to assist local governments to appropriately apply the requirements of subsection (1)(c) of this section.

(d) The Department of Transportation shall provide warnings to motorists during periods determined to be of highest risk of rapidly moving landslides along areas on state highways with a history of being most vulnerable to rapidly moving landslides.

(e) The Office of Emergency Management shall coordinate state resources for rapid and effective response to landslide-related emergencies.

(5) Notwithstanding any other provision of law, any state or local agency adopting rules related to the risk of serious bodily injury or death from rapidly moving landslides shall do so only in conformance with the policies and provisions of ORS 195.250 to 195.260.

(6) No state or local agency may adopt or enact any rule or ordinance for the purpose of reducing risk of serious bodily injury or death from rapidly moving landslides that limits the use of land that is in addition to land identified as a further review area by the State Department of Geology and Mineral Industries or the State Forestry Department pursuant to subsection (4) of this section.

(7) Except as provided in ORS 527.710 or in Oregon's ocean and coastal land use planning goals, no state agency may adopt criteria regulating activities for the purpose of reducing risk of serious bodily injury or death from rapidly moving landslides on lands subject to the provisions of ORS 195.250 to 195.260 that are more restrictive than the criteria adopted by a local government pursuant to subsection (1)(c) of this section. [1999 c.1103 §4; 2003 c.141 §1; 2003 c.740 §8; 2007 c.740 §37]

Note: See note under 195.250.

195.263 [1999 c.1103 §5; repealed by 2003 c.141 §2]

195.266 [1999 c.1103 §6; repealed by 2003 c.141 §2]

195.270 [1999 c.1103 §7; repealed by 2003 c.141 §2]

195.275 [1999 c.1103 §9; repealed by 2003 c.141 §2]

JUST COMPENSATION FOR LAND USE REGULATION

195.300 Definitions for ORS 195.300 to 195.336. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007:

(1) "Acquisition date" means the date described in ORS 195.328.

(2) "Claim" means a written demand for compensation filed under:

(a) ORS 195.305, as in effect immediately before December 6, 2007; or

(b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.

(3) "Enacted" means enacted, adopted or amended.

(4) "Fair market value" means the value of property as determined under ORS 195.332.

(5) "Farming practice" has the meaning given that term in ORS 30.930.

(6) "Federal law" means:

(a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government;

(b) A requirement contained in a plan or rule enacted by a compact entity; or

(c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.

(7) "File" means to submit a document to a public entity.

(8) "Forest practice" has the meaning given that term in ORS 527.620.

(9) "Ground water restricted area" means an area designated as a critical ground water area or as a ground water limited area by the Water Resources Department or Water Resources Commission before December 6, 2007.

(10) "High-value farmland" means:

(a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.

(b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and the following soils:

(A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;

(B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically Huffling Silty Clay Loam.

(c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:

(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

(B) Within the boundaries of a district, as defined in ORS 540.505; or

(C) Within the boundaries of a diking district formed under ORS chapter 551.

(d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

(11) "High-value forestland" means land:

(a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

(12) "Home site approval" means approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.

(13) "Just compensation" means:

(a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, for land use regulations enacted on or before January 1, 2007; and

(b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

(a) A statute that establishes a minimum lot or parcel size;

(b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;

(c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;

(d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;

(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

(15) "Measure 37 permit" means a final decision by Metro, a city or a county to authorize the development, subdivision or partition or other use of property pursuant to a waiver.

(16) "Owner" means:

(a) The owner of fee title to the property as shown in the deed records of the county where the property is located;

(b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust

becomes irrevocable only the trustee is the owner.

(17) "Property" means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.

(18) "Protection of public health and safety" means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.

(19) "Public entity" means the state, Metro, a county or a city.

(20) "Urban growth boundary" has the meaning given that term in ORS 195.060.

(21) "Waive" or "waiver" means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property.

(22) "Zoned for residential use" means zoning that has as its primary purpose single-family residential use. [2007 c.424 §2]

195.301 Legislative findings. (1) The Legislative Assembly finds that:

(a) In some situations, land use regulations unfairly burden particular property owners.

(b) To address these situations, it is necessary to amend Oregon's land use statutes to provide just compensation for unfair burdens caused by land use regulations.

(2) The purpose of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and the amendments to Ballot Measure 37 (2004) is to modify Ballot Measure 37 (2004) to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon's protections for farm and forest uses and the state's water resources. [2007 c.424 §3]

195.305 Compensation for restriction of use of real property due to land use regulation. (1) If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in ORS 195.310 to 195.314.

(2) Just compensation under ORS 195.310 to 195.314 shall be based on the reduction in the fair market value of the property resulting from the land use regulation.

(3) Subsection (1) of this section shall not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:

(a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

(b) Restricting or prohibiting activities for the protection of public health and safety;

(c) To the extent the land use regulation is required to comply with federal law; or

(d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just compensation under this section. Nothing in subsection (3) of this section is intended to affect or alter rights provided by the Oregon or United States Constitution.

(b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection of human health and safety.

(c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation that is enacted after January 1, 2007, unless the public entity enacting the regulation has no discretion under federal law to decline to enact the regulation.

(5) A public entity may adopt or apply procedures for the processing of claims under ORS 195.310 to 195.336.

(6) The public entity that enacted the land use regulation that gives rise to a claim under subsection (1) of this section shall provide just compensation as required under ORS 195.310 to 195.336.

(7) A decision by a public entity that an owner qualifies for just compensation under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and a decision by a public entity on the nature and extent of that compensation are not land use decisions.

(8) The remedies created by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424,

Oregon Laws 2007, are in addition to any other remedy under the Oregon or United States Constitution, and are not intended to modify or replace any constitutional remedy.

(9) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect. [Formerly 197.352]

(Temporary provisions relating to previously filed claims)

Note: Sections 5, 6, 7, 8, 9, 10 and 11, chapter 424, Oregon Laws 2007, provide:

Sec. 5. A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is entitled to just compensation as provided in:

(1) Section 6 or 7 of this 2007 Act, at the claimant's election, if the property described in the claim is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(2) Section 9 of this 2007 Act if the property described in the claim is located, in whole or in part, within an urban growth boundary; or

(3) A waiver issued before the effective date of this 2007 Act [December 6, 2007] to the extent that the claimant's use of the property complies with the waiver and the claimant has a common law vested right on the effective date of this 2007 Act to complete and continue the use described in the waiver. [2007 c.424 §5]

Sec. 6. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] is eligible for three home site approvals on the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be approved for property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state; or

(b) Three, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed three.

(3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief under this section may establish at least one additional lot, parcel or dwelling on the property. In addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant may amend the claim to reduce the number to no more than three by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If a claim was for a use other than a subdivision or partition of property, or other than approval for establishing a dwelling on the property, the claimant may amend the claim to seek one or more home site approvals under this section. A person amending a claim under this subsection may not make a claim under section 7 of this 2007 Act.

(5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.

(6) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act, to qualify for a home site approval under this section the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

(e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)]; and

(f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels or dwellings on the property that are authorized under this section.

(7) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(8) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for a property under this section, the claimant may seek other governmental authorizations required by law for the partition or subdivision of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §6]

Sec. 7. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property that is not high-value farmland or high-value forestland and that is not in a ground water restricted area is eligible for four to 10 home site approvals for the property if the requirements of this section and sections 8 and 11 of this 2007 Act are met. The procedure for obtaining home site approvals under this section is set forth in section 8 of this 2007 Act.

(2) The number of lots, parcels or dwellings that may be established on the property under this section may not exceed the lesser of:

(a) The number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state;

(b) 10, except that if there are existing dwellings on the property or the property contains more than one lot or parcel, the number of lots, parcels or dwellings that may be established is reduced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or dwellings located on or contained within the property, does not exceed 10; or

(c) The number of home site approvals with a total value that represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of lots, parcels or dwellings described in a waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the number of lots, parcels or dwellings described in the claim filed with the state is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the form required by section 8 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than 10 in any case.

(5) To qualify for a home site approval under this section, the claimant must have filed a claim for the property with both the state and the county in which the property is located. In addition, regardless of whether a waiver was issued by the state or the county before the effective date of this 2007 Act to qualify for a home site approval under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located entirely outside any urban growth boundary and entirely outside the boundaries of any city;

(d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

(e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

(f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of lots, parcels and dwellings on the property that are authorized under this section; and

(g) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis for the claim caused a reduction in the fair market value of the property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under subsection (2) of this section, with the reduction in fair market value measured as set forth in subsection (6) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each home site approval to which the claimant is entitled under section 6 (2) of this 2007 Act, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under subsection (6) of this section. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) If the claim was filed after December 4, 2006, to issue a home site approval under this section, the Department of Land Conservation and Development must verify that the claim was filed in compliance with the applicable rules of the Land Conservation and Development Commission and the Oregon Department of Administrative Services.

(10) Except as provided in section 11 of this 2007 Act, if the Department of Land Conservation and Development has issued a final order with a specific number of home site approvals for the property under this section, the claimant may seek other governmental authorizations required by law for the subdivision or partition of the property or for the development of any dwelling authorized, and a land use regulation enacted by the state or county that has the effect of prohibiting the subdivision or partition, or the dwelling, does not apply to the review of those authorizations. [2007 c.424 §7]

Sec. 8. (1) No later than 120 days after the effective date of this 2007 Act [December 6, 2007], the Department of Land Conservation and Development shall send notice to all the following claimants that filed a claim for property outside an urban growth boundary:

(a) A claimant whose claim was denied by the state before the effective date of this 2007 Act, but who may become eligible for just compensation because of section 21 (2) of this 2007 Act [195.328 (2)] or any other pro-

vision of sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act];

(b) A claimant whose claim was approved by the state before the effective date of this 2007 Act; and

(c) A claimant whose claim has not been approved or denied by the state before the effective date of this 2007 Act.

(2) The notice required by subsection (1) of this section must:

(a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a dwelling on the property under sections 5 to 22 of this 2007 Act;

(b) Identify any information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) A claimant must choose whether to proceed under section 6 or 7 of this 2007 Act by filing the form provided by the department within 90 days after the date the department mails the notice and form required under subsection (1) of this section. In addition, the claimant must file any information required in the notice. If the claimant fails to file the form within 90 days after the date the department mails the notice, the claimant is not entitled to relief under section 6 or 7 of this 2007 Act.

(4) The department shall review the claims in the order in which the department receives the forms required under subsection (3) of this section. In addition to reviewing the claim, the department shall review the department's record on the claim, the form required under subsection (3) of this section, any new material from the claimant and any other information required by sections 5 to 22 of this 2007 Act to ensure that the requirements of this section and section 6 or 7 of this 2007 Act are met. The department shall provide a copy of the material submitted by the claimant to the county where the property is located and consider written comments from the county that are timely filed with the department. If the department determines that the only land use regulations that restrict the claimant's use of the property are regulations that were enacted by the county, the department shall transfer the claim to the county where the property is located and the claim shall be processed by the county in the same manner as prescribed by this section for the processing of claims by the department. The county must consider any written comments from the department that are timely filed with the county.

(5) If the claimant elects to obtain relief under section 7 of this 2007 Act, the claimant must file an appraisal that establishes the reduction in the fair market value of the property as required by section 7 (6) of this 2007 Act. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must be filed with the department or, if the claim is being processed by the county, with the county within 180 days after the date the claimant files the election to obtain relief under section 7 of this 2007 Act. A claimant that elects to obtain relief under section 7 of this 2007 Act may change that election to obtain relief under section 6 of this 2007 Act, but only if the claimant provides written notice of the change on or before the date the appraisal is filed. If a county is processing the claim, the county may impose a fee for the review of a claim under section 7 of this 2007 Act in an amount that does not exceed the actual and reasonable cost of the review.

(6) The department or the county shall review claims as quickly as possible, consistent with careful review of the claim. The department shall report to the Joint Legislative Audit Committee on or before March 31, 2008, concerning the department's progress and the counties' progress in completing review of claims under sections 6 and 7 of this 2007 Act.

(7) The department's final order and a county's final decision on a claim under section 6 or 7 of this 2007 Act must either deny the claim or approve the claim. If the order or decision approves the claim, the order or decision must state the number of home site approvals issued for the property and may contain other terms that are necessary to ensure that the use of the property is lawful. [2007 c.424 §8]

Sec. 9. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the lesser of:

(a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;

(b) 10, except that if there are existing dwellings on the property, the number of single-family dwellings that may be established is reduced so that the maximum number of dwellings, including existing dwellings located on the property, does not exceed 10; or

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

(3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county is more than 10, the claimant may amend the claim to reduce the number to no more than 10 by filing notice of the amendment with the information required by section 10 of this 2007 Act.

(4) If multiple claims were filed for the same property, the number of single-family dwellings that may be established for purposes of subsection (2)(a) of this section is the number in the most recent waiver issued by Metro, a city or a county before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but not more than 10 in any case.

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

(b) All owners of the property have consented in writing to the claim;

(c) The property is located, in whole or in part, within an urban growth boundary;

(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;

(e) The property is zoned for residential use;

(f) One or more land use regulations prohibit establishing the single-family dwellings;

(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(8) Relief may not be granted under this section if the highest and best use of the property was not residential use at the time the land use regulation was enacted.

(9) When Metro, a city or a county has issued a final decision authorizing one or more single-family dwellings under this section on the portion of the property located within the urban growth boundary, the claimant may seek other governmental authorizations required by law for that use, and a land use regulation enacted by a public entity that has the effect of prohibiting the use does not apply to the review of those authorizations, except as provided in section 11 of this 2007 Act. If Metro is reviewing a claim for a property, and a city or a county is reviewing a claim for the same property, Metro and the city or county shall coordinate the review and decisions and may:

(a) Provide that one of the public entities be principally responsible for the review; and

(b) Provide that the decision of each of the public entities is contingent on the decision of the other public entity.

(10) The only types of land use that are authorized by this section are the subdivision or partition of land for one or more single-family dwellings, or the establishment of one or more single-family dwellings on land on which the dwellings would not otherwise be allowed. [2007 c.424 §9]

Sec. 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act [December 6, 2007] for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9 of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public entity shall complete a tentative review no later than 240 days after the effective date of this 2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

(2) If Metro, a city or a county has not made a final decision before the effective date of this 2007 Act on a claim filed for property located, in whole or in part, within an urban growth boundary, the public entity with which the claim was filed shall send notice to the claimant within 90 days after the effective date of this 2007 Act. The notice must:

(a) Explain that the claimant is entitled to seek relief under section 9 of this 2007 Act;

(b) Identify the information that the claimant must file; and

(c) Provide a form for the claimant's use.

(3) Within 120 days after the date the public entity mails notice under subsection (2) of this section, a claimant must notify the public entity if the claimant intends to continue the claim and must file the information required in the notice. If the claimant fails to file the notice and required information with the public entity within 120 days after the date the public entity mails the notice, the claimant is not entitled to relief under section 9 of this 2007 Act.

(4) A public entity that receives a notice from a claimant under subsection (3) of this section shall review the claim, the record on the claim, the notice received from the claimant and the information required under subsection (3) of this section to determine whether the claim demonstrates that the requirements of section 9 of this 2007 Act are satisfied. The public entity shall complete a tentative review no later than 120 days after receipt of the notice from the claimant and shall provide written notice to the claimant, the department and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 180 days after receipt of the notice from the claimant.

(5) If a claimant filed a claim that is subject to this section after December 4, 2006, the claim must have included a copy of a final land use decision by the city or county with land use jurisdiction over the property that denied an application by the claimant for the residential use described in the claim. If the claim was filed after December 4, 2006, and did not include a final land use decision denying the residential use described in the claim, the claimant is not entitled to relief under section 9 of this 2007 Act. [2007 c.424 §10]

Sec. 11. (1) A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.

(2) Before beginning construction of any dwelling authorized under section 6 or 7 of this 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.

(3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:

(A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or on land within a ground water restricted area; or

(B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.

(b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.

(4) If an owner is authorized to subdivide or partition more than one property, or to establish dwellings on more than one property, under sections 5 to 11 of this 2007 Act and the properties are in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of the properties if that property is less suitable than the other properties for farm or forest use. If one of the properties is zoned for residential use, the owner may cluster some or all of the dwellings, lots or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on the property zoned for residential use.

(5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11 of this 2007 Act, regardless of how many properties that person owns or how many claims that person has filed.

(6) An authorization to partition or subdivide the property, or to establish dwellings on the property, granted under section 6, 7 or 9 of this 2007 Act runs with the property and may be either transferred with the property or encumbered by another person without affecting the authorization. There is no time limit on when an authorization granted under section 6, 7 or 9 of this 2007 Act must be carried out, except that once the owner who obtained the authorization conveys the property to a person other than the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subsequent owner of the property must create the lots or parcels and establish the dwellings authorized by a waiver under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance. In addition:

(a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 of this 2007 Act remains a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law; and

(b) A dwelling or other residential use of the property based on an authorization under section 6, 7 or 9 of this 2007 Act is a permitted use and may be established or continued by the claimant or a subsequent owner, except that once the claimant conveys the property to a person other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner must establish the dwellings or other residential use authorized under section 6, 7 or 9 of this 2007 Act within 10 years of the conveyance.

(7) When relief has been claimed under sections 5 to 11 of this 2007 Act:

(a) Additional relief is not due; and

(b) An additional claim may not be filed, compensation is not due and a waiver may not be issued with regard to the property under sections 5 to 22 of this 2007 Act [195.305 to 195.336 and sections 5 to 11 of this 2007 Act] or ORS 197.352 [renumbered 195.305] as in effect immediately before the effective date of this 2007 Act [December 6, 2007], except with respect to a land use regulation enacted after January 1, 2007.

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to carry out a use of land authorized under sections 5 to 11 of this 2007 Act from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable development interests between the jurisdictions of the public entities that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

(9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or 9 of this 2007 Act and an authorization to use the property provided by a waiver under section 6, 7 or 9 of this 2007 Act:

(a) Is not affected by the death of the claimant if the death occurs on or after the effective date of this 2007 Act; and

(b) Passes to the person that acquires the property by devise or by operation of law. [2007 c.424 §11]

195.308 Exception to requirement for compensation. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691, 561.693, 561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes. [2007 c.490 §1]

Note: 195.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

195.310 Claim for compensation; calculation of reduction in fair market value; highest and best use of restricted property; status of use authorized. (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to 195.314 after June 28, 2007, if:

(a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(b) The person's desired use of the property is a residential use or a farming or forest practice;

(c) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(3) Relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.

(4) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

(6) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130. [2007 c.424 §12]

195.312 Procedure for processing claims; fees. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation.

(2) A claim filed under ORS 195.310 must be filed with the public entity that enacted the land use regulation that is the basis for the claim.

(3) Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim.

(4) A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

(5) A public entity that receives a claim filed under ORS 195.310 must issue a final determination on the claim within 180 days after the date the claim is complete, as described in subsection (9) of this section.

(6) If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111, the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the claim must be filed with the chief administrative office of the public entity, or with an individual designated by ordinance, resolution or order of the public entity.

(7) A claim filed under ORS 195.310 must be in writing and must include:

(a) The name and address of each owner;

(b) The address, if any, and tax lot number, township, range and section of the property;

(c) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(d) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the public entity to identify the specific land use regulation that is the basis for the claim;

(e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(f) An appraisal of the property that complies with ORS 195.310 (2).

(8) A claim filed under ORS 195.310 must include the fee, if any, imposed by the public entity with which the claim is filed pursuant to subsection (3) of this section.

(9) The public entity shall review a claim filed under ORS 195.310 to determine whether the claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the public entity shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by subsection (8) of this section and:

(a) The missing information;

(b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(10) If a public entity does not notify a claimant within 60 days after a claim is filed under ORS 195.310 that information or the fee is missing from the claim, the claim is deemed complete when filed.

(11) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice to the claimant under subsection (9) of this section and the claimant does not comply with the requirements of subsection (9) of this section. [2007 c.424 §13]

195.314 Notice of claim; evidence and argument; record on review; final determination. (1) A public entity that receives a complete claim as described in ORS 195.312 shall provide notice of the claim at least 30 days before a public hearing on the claim or, if there will not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

(a) All owners identified in the claim;

(b) All persons described in ORS 197.763 (2);

(c) The Department of Land Conservation and Development, unless the claim was filed with the department;

(d) Metro, if the property is located within the urban growth boundary of Metro;

(e) The county in which the property is located, unless the claim was filed with the county; and

(f) The city, if the property is located within the urban growth boundary or adopted urban planning area of the city.

(2) The notice required under subsection (1) of this section must describe the claim and state:

(a) Whether a public hearing will be held on the claim, the date, time and location of the hearing, if any, and the final date for submission of written evidence and arguments relating to the claim;

(b) That judicial review of the final determination of a public entity on the claim is limited to the written evidence and arguments submitted to the public entity; and

(c) That judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond.

(3) Except as provided in subsection (4) of this section, written evidence and arguments in proceedings on the claim must be submitted to the public entity not later than:

(a) The close of the final public hearing on the claim; or

(b) If a public hearing is not held, the date that is specified by the public entity in the notice required under subsection (1) of this section.

(4) The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

(5) A public entity shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections (3) and (4) of this section.

(6) A public entity shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The public entity shall forward to the county, and the county shall record, a memorandum of the final determination in the deed records of the county in which the property is located. [2007 c.424 §14]

195.316 Notice of Measure 37 permit. In addition to any other notice required by law, a county must give notice of a Measure 37 permit for property located entirely outside an urban growth boundary to:

(1) The county assessor for the county in which the property is located;

(2) A district or municipality that supplies water for domestic, municipal or irrigation uses and has a place of use or well located within one-half mile of the property; and

(3) The Department of Land Conservation and Development, the State Department of Agriculture, the Water Resources Department and the State Forestry Department. [2007 c.424 §15]

195.318 Judicial review. (1) A person that is adversely affected by a final determination of a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, may obtain judicial review of that determination under ORS 34.010 to 34.100, if the determination is made by Metro, a city or a county, or under ORS 183.484, if the determination is one of a state agency. Proceedings for review of a state agency determination under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, must be commenced in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue. A determination by a public entity under ORS 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is not a land use decision.

(2) A person is adversely affected under subsection (1) of this section if the person:

(a) Is an owner of the property that is the subject of the final determination; or

(b) Is a person who timely submitted written evidence, arguments or comments to a public entity concerning the determination.

(3) Notwithstanding subsection (1) of this section, judicial review of a final determination under ORS 195.305 or 195.310 to 195.314 or sections 5 to 11, chapter 424, Oregon Laws 2007, is:

(a) Limited to the evidence in the record of the public entity at the time of its final determination.

(b) Available only for issues that are raised before the public entity with sufficient specificity to afford the public entity an opportunity to respond. [2007 c.424 §16]

195.320 Ombudsman. (1) The Governor shall appoint an individual to serve, at the pleasure of the Governor, as the Compensation and Conservation Ombudsman.

(2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:

(a) Analyze problems of land use planning, real property law and real property valuation; and

(b) Facilitate resolution of complex disputes. [2007 c.424 §17]

195.322 Duties of ombudsman. (1) For the purpose of helping to ensure that a claim is complete, as described in ORS 195.312, the Compensation and Conservation Ombudsman may review a proposed claim if the review is requested by a claimant that intends to file a claim under ORS 195.305 and 195.310 to 195.314.

(2) At the request of the claimant or the public entity reviewing a claim, the ombudsman may facilitate resolution of issues involving a claim under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. [2007 c.424 §18]

195.324 Effect of certain applications or petitions on right to relief. (1) If an owner submits an application for a comprehensive plan or zoning amendment, or submits an application for an amendment to the Metro urban growth boundary, and Metro, a city or a county approves the amendment, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the application was filed.

(2) If an owner files a petition to initiate annexation to a city and the city or boundary commission approves the petition, the owner is not entitled to relief under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, with respect to a land use regulation enacted before the date the petition was filed. [2007 c.424 §19]

195.326 Qualification of appraisers; review of appraisals. An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007. The Department of Land Conservation and Development is authorized to retain persons to review the appraisals. [2007 c.424 §20]

195.328 Acquisition date of claimant. (1) Except as provided in this section, a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

(2) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, by using the procedure provided in ORS 105.623 to 105.649.

(3) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.

(4) A default judgment entered after December 2, 2004, does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004. [2007 c.424 §21]

195.330 Filing date of documents. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, a document is filed on the date the document is received by the public entity. [2007 c.424 §21a]

195.332 Fair market value of property. For the purposes of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements. [2007 c.424 §21b]

195.334 Effect of invalidity. If any part of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, is held to be unconstitutional or otherwise invalid, all remaining parts of ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, shall not be affected by the holding and shall remain in full force and effect. [2007 c.424 §21c]

195.336 Compensation and Conservation Fund. (1) The Compensation and Conservation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on moneys in the Compensation and Conservation Fund shall be credited to the fund. The fund consists of moneys received by the Department of Land Conservation and Development under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and other moneys available to the department for the purpose described in subsection (2) of this section.

(2) Moneys in the fund are continuously appropriated to the department for the purpose of paying expenses incurred to review claims under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and for the purpose of paying the expenses of the Compensation and Conservation Ombudsman appointed under ORS 195.320. [2007 c.424 §22]

MISCELLANEOUS

195.850 Reporting local government boundary changes to certain mass transit districts. If changes in the urban growth boundary of a local government must be included in the boundaries of a mass transit district formed under ORS 267.107, the local government shall provide the mass transit district with a legal description of the urban growth boundary and changes to the urban growth boundary that consists of a series of courses in which the first course starts at a point of beginning and the final course ends at the point of beginning. [2001 c.138 §13b]