Chapter 197

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Comprehensive Land Use Planning Coordination

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GENERAL PROVISIONS

197.005 Legislative findings. The Legislative Assembly finds that:

(1) Uncoordinated use of lands within this state threatens the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with goals.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated statewide land conservation and development requires the creation of a statewide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.

(5) City and county governments are responsible for the development of local comprehensive plans. The purpose of ORS 195.065, 195.070 and 195.075 is to enhance coordination among cities, counties and special districts to assure effectiveness and efficiency in the delivery of urban services required under those local comprehensive plans. [1973 c.80 §1; 1977 c.664 §1; 1981 c.748 §21; 1993 c.804 §2a; 1999 c.348 §1]

197.010 Policy. The Legislative Assembly declares that:

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

(a) Must be adopted by the appropriate governing body at the local and state levels;

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

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

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

(e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.

(2)(a) The overarching principles guiding the land use program in the State of Oregon are to:

(A) Provide a healthy environment;

(B) Sustain a prosperous economy;

(C) Ensure a desirable quality of life; and

(D) Equitably allocate the benefits and burdens of land use planning.

(b) Additionally, the land use program should, but is not required to, help communities achieve sustainable development patterns and manage the effects of climate change.

(c) The overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection provide guidance to:

(A) The Legislative Assembly when enacting a law regulating land use.

(B) A public body, as defined in ORS 174.109, when the public body:

(i) Adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197, 215 or 227; or

(ii) Interprets a law governing land use.

(d) Use of the overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable.

(3) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy. [1973 c.80 §2; 1981 c.748 §21a; 1993 c.792 §48; 2009 c.873 §1]

197.012 Compact urban development. In areas of the state that are growing rapidly, state agencies, as defined in ORS 171.133, cities and counties should, within constraints of applicable federal law and regulations, state law and rules and local ordinances:

(1) Consider directing major public infrastructure investments, including major transportation investments, to reinforce compact urban development; and

(2) Consider giving priority to investments that promote infill or redevelopment of existing urban areas to encourage the density necessary to support alternative modes of transportation. [2009 c.873 §14]

Note: 197.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.013 Implementation and enforcement are of statewide concern. Implementation and enforcement of acknowledged comprehensive plans and land use regulations are matters of statewide concern. [1981 c.884 §7]

197.015 Definitions for ORS chapters 195, 196 and 197. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

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

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide land use planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360;

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquefied petroleum

gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; or

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

(c) Does not include a decision by a school district to close a school;

(d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision":

(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(A) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(B) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(b) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission

or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

(21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [1973 c.80 §3; 1977 c.664 §2; 1979 c.772 §7; 1981 c.748 §1; 1983 c.827 §1; 1989 c.761 §1; 1989 c.837 §23; 1991 c.817 §1; 1993 c.438 §1; 1993 c.550 §4; 1995 c.595 §22; 1995 c.812 §1; 1997 c.833 §20; 1999 c.533 §11; 1999 c.866 §1; 2001 c.955 §§2,3; 2005 c.22 §137; 2005 c.88 §3; 2005 c.239 §2; 2005 c.829 §8; 2007 c.354 §§4,5; 2007 c.459 §§1,2; 2009 c.606 §2; 2009 c.790 §1; 2011 c.567 §7]

197.020 Land use decision considerations. Age, gender or physical disability shall not be an adverse consideration in making a land use decision as defined in ORS 197.015. [1987 c.555 §5; 2005 c.22 §138]

197.022 Policy regarding ORS 215.433 and 227.184. The Legislative Assembly declares that it is in the interest of the citizens of this state that a process be established to allow the efficient resolution of all legal issues surrounding the permissible use of private land, including questions regarding the dismissal of appeals under the legal doctrine known as ripeness. It is in this interest that the Legislative Assembly enacts ORS 215.433 and 227.184. [1999 c.648 §5]

Note: 197.022 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

LAND CONSERVATION AND DEVELOPMENT COMMISSION

197.030 Land Conservation and Development Commission; members; appointment; confirmation; term; vacancies. (1) There is established a Land Conservation and Development Commission consisting of seven members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

(2) The Governor shall appoint to the commission:

(a) One member representing Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook Counties and those portions of Douglas and Lane Counties lying west of the summit of the Coast Range;

(b) Two members representing Clackamas, Multnomah and Washington Counties;

(c) One member representing Benton, Linn, Marion, Polk and Yamhill Counties and that portion of Lane County lying east of the summit of the Coast Range;

(d) One member representing Jackson and Josephine Counties and that portion of Douglas County lying east of the summit of the Coast Range;

(e) One member representing Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties; and

(f) One member representing Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County lying east of the summit of the Coast Range.

(3) At least one member shall be or have been an elected city official in Oregon and at least one member shall be an elected county official at the time of appointment.

(4) The term of office of each member of the commission is four years, but a member may be removed by the Governor for cause. Before the expiration of the term of a member, the Governor shall appoint a successor. No person shall serve more than two full terms as a member of the commission.

(5) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. [1973 c.80 §5; 1977 c.664 §3; 1981 c.545 §4; 1993 c.792 §49; 1999 c.833 §1]

197.035 Officers; quorum; compensation and expenses. (1) The Land Conservation and Development Commission shall select one of its members as chairperson and another member as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions

of such offices as the commission determines. The vice chairperson of the commission shall act as the chairperson of the commission in the absence of the chairperson.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) Members of the commission are entitled to compensation and expenses as provided in ORS 292.495. [1973 c.80 §§7,8]

197.040 Duties of commission; rules. (1) The Land Conservation and Development Commission shall:

(a) Direct the performance by the Director of the Department of Land Conservation and Development and the director's staff of their functions under ORS chapters 195, 196 and 197.

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems;

(C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(D) Assess the likely degree of economic impact on identified property and economic interests; and

(E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 197.

(B) Adopt by rule in accordance with ORS chapter 183 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b).

(C) Review decisions of the Land Use Board of Appeals and land use decisions of the Court of Appeals and the Supreme Court within 120 days of the date the decisions are issued to determine if goal or rule amendments are necessary.

(d) Cooperate with the appropriate agencies of the United States, this state and its political subdivisions, any other state, any interstate agency, any person or groups of persons with respect to land conservation and development.

(e) Appoint advisory committees to aid it in carrying out ORS chapters 195, 196 and 197 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS chapters 195, 196 and 197, the commission shall:

(a) Adopt, amend and revise goals consistent with regional, county and city concerns;

(b) Prepare, collect, provide or cause to be prepared, collected or provided land use inventories;

(c) Prepare statewide planning guidelines;

(d) Review comprehensive plans for compliance with goals;

(e) Coordinate planning efforts of state agencies to assure compliance with goals and compatibility with city and county comprehensive plans;

(f) Insure widespread citizen involvement and input in all phases of the process;

(g) Review and recommend to the Legislative Assembly the designation of areas of critical state concern;

(h) Report periodically to the Legislative Assembly and to the committee;

(i) Review the land use planning responsibilities and authorities given to the state, regions, counties and cities, review the resources available to each level of government and make recommendations to the Legislative Assembly to improve the administration of the statewide land use program; and

(j) Perform other duties required by law.

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule. [1973 c.80 §§9,11; 1977 c.664 §5; 1981 c.748 §22; 1991 c.817 §19; 1993 c.792 §51; 1995 c.299 §1; 2009 c.873 §2]

197.045 Powers of commission. The Land Conservation and Development Commission may:

(1) Apply for and receive moneys from the federal government and from this state or any of its agencies or departments.

(2) Contract with any public agency for the performance of services or the exchange of employees or services by one to the other necessary in carrying out ORS chapters 195, 196 and 197.

(3) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agen-

cies, in carrying out its duties under ORS chapters 195, 196 and 197.

(4) Perform other functions required to carry out ORS chapters 195, 196 and 197.

(5) Assist in development and preparation of model land use regulations to guide state agencies, cities, counties and special districts in implementing goals.

(6) Notwithstanding any other provision of law, review comprehensive plan and land use regulations related to the identification and designation of high-value farmland pursuant to chapter 792, Oregon Laws 1993, under procedures set forth in ORS 197.251. [1973 c.80 §10; 1977 c.664 §6; 1981 c.748 §22a; 1993 c.792 §11]

Note: Legislative Counsel has substituted "chapter 792, Oregon Laws 1993," for the words "this 1993 Act" in section 11, chapter 792, Oregon Laws 1993, which amended 197.045. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 20 of ORS.

197.047 Notice to local governments and property owners of changes to commission rules or certain statutes; form; distribution of notice; costs. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) At least 90 days prior to the final public hearing on a proposed new or amended administrative rule of the Land Conservation and Development Commission described in subsection (10) of this section, the Department of Land Conservation and Development shall cause the notice set forth in subsection (3) of this section to be mailed to every affected local government that exercises land use planning authority under ORS 197.175.

(3) The notice required in subsection (2) of this section must:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that the Land Conservation and Development Commission has proposed a new or amended administrative rule that, if adopted, may affect the permissible uses of properties in your jurisdiction.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), the Land Conservation and Development Commission will hold a public hearing regarding adoption of proposed (new or amended) rule (number). Adoption of the rule may change the zoning classification of properties in your jurisdiction or may limit or prohibit land uses previously allowed on properties in your jurisdiction.

Rule (number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of the proposed rule (number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number).

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(4) A local government that receives notice under subsection (2) of this section shall cause the notice set forth in subsection (5) of this section to be mailed to every owner of real property that will be rezoned as a result of the proposed rule. Notice to an owner under this subsection must be mailed at least 45 days prior to the final public hearing on the proposed rule.

(5) The notice required in subsection (4) of this section must:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that the Land Conservation and Development Commission has proposed a new or amended administrative rule that, if adopted, may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), the Land Conservation and Development Commission will hold a public hearing regarding adoption of proposed (new or amended) rule (number). Adoption of the rule may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Rule (number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of the proposed rule (number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number).

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(6) At least 90 days prior to the effective date of a new or amended statute or administrative rule described in subsection (10) of this section, the department shall cause the notice set forth in subsection (7) of this section to be mailed to every affected local government that exercises land use planning authority under ORS 197.175 unless the statute or rule is effective within 90 days of enactment or adoption, in which case the department shall cause the notice to be mailed not later than 30 days after the statute or rule is effective.

(7) The notice required in subsection (6) of this section must:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

(Check on the appropriate line:)

_____ This is to notify you that the Land Conservation and Development Commission has adopted an administrative rule that may affect the permissible uses of properties in your jurisdiction; or

_____ This is to notify you that the Legislative Assembly has enacted a land use planning statute that may affect the permissible uses of properties in your jurisdiction.

(b) Contain substantially the following language in the body of the notice:

(Check on the appropriate line:)

_____ On (date of rule adoption), the Land Conservation and Development Commission adopted administrative rule (number). The commission has determined that this rule may change the zoning classification of properties in your jurisdiction or may limit or prohibit land uses previously allowed on properties in your jurisdiction.

Rule (number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of the rule (number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number); or

_____ On (date of enactment) the Legislative Assembly enacted (House/Senate bill number). The Department of Land Conservation and Development has determined that enactment of (House/Senate bill number) may change the zoning classification of properties in your jurisdiction or may limit or prohibit land uses previously allowed on properties in your jurisdiction.

A copy of (House/Senate bill number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of (House/Senate bill number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number).

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(8) A local government that receives notice under subsection (6) of this section shall cause a copy of the notice set forth in subsection (9) of this section to be mailed to every owner of real property that will be rezoned as a result of adoption of the rule or enactment of the statute, unless notification was provided pursuant to subsection (4) of this section. The local government shall mail the notice to an owner under this subsection at least 45 days prior to the effective date of the rule or statute unless the statute or rule is effective within 90 days of enactment or adoption, in which case the local government shall mail the notice to an owner under this subsection not later than 30 days after the local government receives notice under subsection (6) of this section.

(9) The notice required in subsection (8) of this section must:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

(Check on the appropriate line:)

_____ This is to notify you that the Land Conservation and Development Commission has adopted an administrative rule that may affect the permissible uses of your property and other properties; or

_____ This is to notify you that the Legislative Assembly has enacted a land use planning statute that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

(Check on the appropriate line:)

_____ On (date of rule adoption), the Land Conservation and Development Commission adopted administrative rule (number). The rule may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Rule (number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of the rule (number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number); or

_____ On (date of enactment) the Legislative Assembly enacted (House/Senate bill number). The Department of Land Conservation and Development has determined that enactment of (House/Senate bill number) may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

A copy of (House/Senate bill number) is available for inspection at the Department of Land Conservation and Development located at (address). A copy of (House/Senate bill number) also is available for purchase at a cost of $_____.

For additional information, contact the Department of Land Conservation and Development at (telephone number).

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(10) The provisions of this section apply to all statutes and administrative rules of the Land Conservation and Development Commission that limit or prohibit otherwise permissible land uses or cause a local government to rezone property. For purposes of this section, property is rezoned when the statute or administrative rule causes a local government to:

(a) Change the base zoning classification of the property; or

(b) Adopt or amend an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

(11) The Department of Land Conservation and Development shall reimburse the local government for:

(a) The actual costs incurred responding to questions from the public related to a proposed new or amended administrative rule of the Land Conservation and Development Commission and to notice of the proposed rule; and

(b) All usual and reasonable costs of providing the notices required under subsection (4) or (8) of this section. [1999 c.1 §5; 2003 c.668 §1]

197.050 Interstate agreements and compacts; commission powers. Except as provided in ORS 196.150 and 196.155, if an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the Land Conservation and Development Commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under ORS 195.020 to 195.040, ORS chapter 197 and ORS 469.350, the commission may:

(1) Negotiate with the interstate agency in defining the areas of responsibility of the commission and the interstate planning agency; and

(2) Cooperate with the interstate planning agency in the performance of its functions. [1973 c.80 §12; 1977 c.664 §8; 1987 c.14 §6; 2001 c.672 §5]

197.055 [1973 c.80 §16; repealed by 1977 c.664 §42]

197.060 Biennial report; draft submission to legislative committee; contents. (1) Prior to the end of each even-numbered year, the Department of Land Conservation and Development shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, Land Conservation and Development Commission, state agencies, local governments and special districts in carrying out ORS chapters 195, 196 and 197.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the appropriate legislative committee at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section.

(4) The department shall include in its biennial report:

(a) A description of its activities implementing ORS 197.631; and

(b) An accounting of new statutory, land use planning goal and rule requirements and local government compliance with the new requirements pursuant to ORS 197.646. [1973 c.80 §56; 1977 c.664 §9; 1981 c.748 §21b; 2005 c.829 §9; 2007 c.354 §6]

197.065 Biennial report analyzing uses of certain land; annual local government reports. (1) Prior to each odd-numbered year regular legislative session, the Land Conservation and Development Commission shall submit to the appropriate legislative committee a written report analyzing applications approved and denied for:

(a) New and replacement dwellings under:

(A) ORS 215.213 (1)(d) and (f), (2)(a) and (b), (3) and (4), 215.283 (1)(d) and (e), 215.284 and 215.705; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

(b) Divisions of land under:

(A) ORS 215.263 (2), (4) and (5); and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

(c) Dwellings and land divisions approved for marginal lands under:

(A) ORS 215.317 or 215.327; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland; and

(d) Such other matters pertaining to protection of agricultural or forest land as the commission deems appropriate.

(2) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the appropriate legislative committee under subsection (1) of this section. The department shall establish, after consultation with county governing bodies, an annual reporting period and may establish a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

(a) Dwellings authorized by ORS 215.213 (1)(d) or 215.283 (1)(d); or

(b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum size established by the commission under ORS 215.780.

(3) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsection (1) of this section. [1983 c.826 §13; 1985 c.811 §9; 1987 c.555 §4; 1989 c.107 §1; 1993 c.792 §9; 2001 c.704 §9; 2007 c.354 §7; 2009 c.850 §3; 2011 c.545 §34]

197.070 Public inspection of assessments prepared by commission. The Land Conservation and Development Commission shall keep on file and available for public inspection the assessments prepared pursuant to ORS 197.040 and 197.230. [1995 c.299 §3]

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

197.075 Department of Land Conservation and Development. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the Director of the Department of Land Conservation and Development and their subordinate officers and employees. [1973 c.80 §4]

197.080 [1973 c.80 §55; 1977 c.664 §10; 1981 c.748 §21c; repealed by 2007 c.354 §1]

197.085 Director; appointment; compensation and expenses. (1) The Land Conservation and Development Commission shall appoint a person to serve as the Director of the Department of Land Conservation and Development. The director shall hold the office of the director at the pleasure of the commission and the salary of the director shall be fixed by the commission unless otherwise provided by law.

(2) In addition to salary, the director shall be reimbursed, subject to any applicable law regulating travel and other expenses of state officers and employees, for actual and necessary expenses incurred by the director in the performance of official duties. [1973 c.80 §13]

197.090 Duties and authority of director; appealing local land use decision; rules. (1) Subject to policies adopted by the Land Conservation and Development Commission, the Director of the Department of Land Conservation and Development shall:

(a) Be the administrative head of the Department of Land Conservation and Development.

(b) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, local governments and special districts.

(c) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.

(d) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(2)(a) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of:

(A) A land use decision, expedited land division or limited land use decision involving the goals or involving an acknowledged comprehensive plan and land use regulations implementing the plan; or

(B) Any other matter within the statutory authority of the department or commission under ORS chapters 195, 196 and 197.

(b) The director shall report to the commission on each case in which the department participates and on the positions taken by the director in each case.

(c) If a meeting of the commission is scheduled prior to the close of the period for seeking review of a land use decision, expedited land division or limited land use decision, the director shall obtain formal approval from the commission prior to seeking review of the decision. However, if the land use decision, expedited land division or limited land use decision becomes final less than 15 days before a meeting of the commission, the director shall proceed as provided in paragraph (d) of this subsection. If the director requests approval from the commission, the applicant and the affected local government shall be notified in writing that the director is seeking commission approval. The director, the applicant and the affected local government shall be given reasonable time to address the commission regarding the director's request for approval to seek review. The parties shall limit their testimony to the factors established under subsection (3) of this section. No other testimony shall be taken by the commission.

(d) If a meeting of the commission is not scheduled prior to the close of the period for seeking review of a land use decision, expedited land division or limited land use decision, at the next commission meeting the director shall report to the commission on each case for which the department has sought review. The director shall request formal approval to proceed with each appeal. The applicant and the affected local government shall be notified of the commission meeting in writing by the director. The director, the applicant and the affected local government shall be given reasonable time to address the commission regarding the director's request for approval to proceed with the appeal. The parties shall limit their testimony to the factors established under subsection (3) of this section. No other testimony shall be taken by the commission. If the commission does not formally approve an appeal, the director shall file a motion with the appropriate tribunal to dismiss the appeal.

(e) A decision by the commission under this subsection is not subject to appeal.

(f) For purposes of this subsection, "applicant" means a person seeking approval of a permit, as defined in ORS 215.402 or 227.160, expedited land division or limited land use decision.

(3) The commission by rule shall adopt a set of factors for the commission to consider when determining whether to appeal or intervene in the appeal of a land use decision, expedited land division or limited land use decision that involves the application of the goals, acknowledged comprehensive plan, land use regulation or other matter within the authority of the department or commission under ORS chapters 195, 196 and 197.

(4) The director may intervene in an appeal of a land use decision, expedited land division or limited land use decision brought by another person in the manner provided for an appeal by the director under subsection (2)(c) and (d) of this section. [1973 c.80 §14; 1979 c.772 §7d; 1981 c.748 §21d; 1983 c.827 §2; 1991 c.817 §20; 1995 c.595 §23; 1999 c.292 §1; 2010 c.8 §8; 2010 c.107 §10]

197.095 Land Conservation and Development Account. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS chapters 195, 196 and 197.

(2) All fees, moneys and other revenue received by the Department of Land Conservation and Development shall be deposited in the Land Conservation and Development Account. [1973 c.80 §15; 1977 c.664 §11; 1981 c.748 §21e; 2007 c.354 §8]

197.125 [1973 c.80 §22; repealed by 2007 c.354 §1]

197.130 [1973 c.80 §23; 1975 c.530 §6; 1977 c.891 §8; 1981 c.748 §23; 1987 c.158 §33; repealed by 2007 c.354 §1]

197.135 [1973 c.80 §24; 1981 c.748 §24; repealed by 2007 c.354 §1]

ADVISORY COMMITTEES

197.158 Policy-neutral review and audit of statewide land use program. (1) The Land Conservation and Development Commission, in cooperation with the Oregon Law Commission and other public or private entities, may, as resources are available, appoint a work group to conduct a policy-neutral review and audit of ORS chapters 195, 196, 197, 215 and 227, the statewide land use planning goals and the rules of the commission implementing the goals.

(2) The commission shall sequence any review based on its judgment as to which aspects of the statewide land use program are most in need of updating.

(3) A review undertaken under this section should, but does not have to, include appropriate involvement of local government, professional land use planning, private legal and other representatives.

(4) Recommendations should, but do not have to, address major policies and key procedures that are most appropriate for enactment by law and what policies and procedures are most appropriate for adoption by statewide land use planning goals or rules to allow for greater variation between regions of the state over time and to reduce complexity. [2009 c.873 §17]

Note: 197.158 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees. (1) To assure widespread citizen involvement in all phases of the planning process:

(a) The Land Conservation and Development Commission shall appoint a State Citizen Involvement Advisory Committee, broadly representative of geographic areas of the state and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the adoption and amendment of the goals and guidelines.

(b) Each city and county governing body shall submit to the commission, on a periodic basis established by commission rule, a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations within the respective city and county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this subsection shall review the proposed programs submitted by each city and county and report to the commission whether or not the proposed program adequately provides for public involvement in the planning process, and, if it does not so provide, in what respects it is inadequate.

(2) The State Citizen Involvement Advisory Committee is limited to an advisory role to the commission. It has no express or implied authority over any local government or state agency. [1973 c.80 §35; 1981 c.748 §25; 1983 c.740 §49]

197.165 Local Officials Advisory Committee. For the purpose of promoting mutual understanding and cooperation between the Land Conservation and Development Commission and local government in the implementation of ORS chapters 195, 196 and 197 and the goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments. [1977 c.664 §7; 1981 c.748 §25a]

COMPREHENSIVE PLANNING RESPONSIBILITIES

197.173 Findings regarding coordination between state agencies and local governments. The Legislative Assembly finds and declares that:

(1) Improving coordination and consistency between the duties and actions of state agencies that affect land use and the duties and actions of local governments under comprehensive plans and land use regulations is required to ensure that the actions of state agencies complement both state and local land use planning objectives.

(2) Improved coordination is necessary to streamline state and local permitting procedures.

(3) The Department of Land Conservation and Development has not engaged in a formal and concerted effort to update state agency land use coordination programs since 1989, and that state agency rules, plans and programs affecting land use and local government comprehensive plans and land use regulations have changed substantially since that time.

(4) Rules of the Land Conservation and Development Commission regarding state agency land use coordination and state permit compliance and compatibility should be:

(a) Reviewed to eliminate unclear or conflicting provisions and to ensure that local land use decisions authorizing a use generally precede state agency decisions on permits for the use or for aspects of the use; and

(b) Updated regularly to maintain a high level of coordination between state agencies and local governments in reviewing authorizations for a use of property. [2009 c.606 §1]

Note: 197.173 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.175 Cities' and counties' planning responsibilities; rules on incorporations; compliance with goals. (1) Cities and counties shall exercise their planning and zoning responsibilities, including, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city and the formation or change of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410 to 199.534 or 451.010 to 451.620, in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197. The Land Conservation and Development Commission shall adopt rules clarifying how the goals apply to the incorporation of a new city. Notwithstanding the provisions of section 15, chapter 827, Oregon Laws 1983, the rules shall take effect upon adoption by the commission. The applicability of rules promulgated under this section to the incorporation of cities prior to August 9, 1983, shall be determined under the laws of this state.

(2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

(b) Enact land use regulations to implement their comprehensive plans;

(c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;

(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and

(e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.510 to 198.915 or 451.010 to 451.620. [1973 c.80 §§17,18; 1977 c.664 §12; 1981 c.748 §15; 1983 c.827 §3; 1989 c.761 §18; 1991 c.817 §21; 1993 c.792 §45; 1999 c.348 §4]

197.178 Development applications; urban residential density; reporting to Department of Land Conservation and Development. (1) Local governments with comprehensive plans or functional plans that are identified in ORS 197.296 (1) shall compile and report annually to the Department of Land Conservation and Development the following information for all applications received under ORS 227.175 for residential permits and residential zone changes:

(a) The number of applications received for residential development, including the net residential density proposed in the application and the maximum allowed net residential density for the subject zone;

(b) The number of applications approved, including the approved net density; and

(c) The date each application was received and the date it was approved or denied.

(2) The report required by this section may be submitted electronically. [1997 c.763 §5; 2011 c.354 §1]

197.180 State agency planning responsibilities; determination of compliance with goals and compatibility with plans; coordination between agencies and local governments; rules; exceptions. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with the goals, rules implementing the goals and rules implementing this section; and

(b) In a manner compatible with acknowledged comprehensive plans and land use regulations.

(2) State agencies need not comply with subsection (1)(b) of this section if a state agency rule, plan or program relating to land use was not in effect when the comprehensive plan provision or land use regulation with which the action would be incompatible was acknowledged and the agency has demonstrated that:

(a) The state agency rule, plan or program is mandated by state statute or federal law;

(b) The state agency rule, plan or program is consistent with the goals;

(c) The state agency rule, plan or program has objectives that cannot be achieved in a manner compatible with the acknowledged comprehensive plan and land use regulations; and

(d) The agency has complied with its certified state agency coordination program.

(3) Unless federal or state law requires otherwise, the commission, by rule, may specify the sequence of a local government land use decision and a state agency action concerning the same, similar or related uses or activities.

(4) Upon request by the Land Conservation and Development Commission, each state agency shall submit to the Department of Land Conservation and Development the following information:

(a) Agency rules and summaries of state agency plans and programs affecting land use;

(b) A program for coordination pursuant to ORS 197.040 (2)(e);

(c) A program for coordination pursuant to ORS 197.090 (1)(b); and

(d) A program for cooperation with and technical assistance to local governments.

(5) Within 90 days of receipt, the Director of the Department of Land Conservation and Development shall review the information submitted pursuant to subsection (4) of this section and shall notify each state agency if the director believes the state agency rules, plans or programs submitted are insufficient to ensure compliance with goals and compatibility with acknowledged comprehensive plans and land use regulations.

(6) Within 90 days of receipt of notification specified in subsection (5) of this section, the state agency may revise the state agency rules, plans or programs and resubmit them to the director.

(7) The director shall make findings under subsections (5) and (6) of this section as to whether the state agency rules, plans or programs are sufficient to ensure compliance with the goals and compatibility with acknowledged city and county comprehensive plans and land use regulations and shall forward the rules and summaries of state agency plans or programs to the commission for its action. The commission shall either certify the state agency rules, plans or programs as compliant with the goals and compatible with the acknowledged comprehensive plans and land use regulations of affected local governments or shall determine the same to be insufficient.

(8) The department shall report, to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the state agency budget, any agency that has failed to meet the requirements of subsection (7) of this section.

(9) Any state agency that has failed to meet the requirements of subsection (7) of this section shall report the reasons therefor to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

(10) Until rules and state agency plans and programs are certified as compliant with the goals and compatible with the acknowledged comprehensive plans and land use regulations of affected local governments, the state agency shall make findings when adopting or amending its rules and state agency plans and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

(11) The commission shall adopt rules establishing procedures to ensure that state agency permits affecting land use are issued in compliance with the goals and compatible with acknowledged comprehensive plans and land use regulations, as required by subsection (1) of this section. The rules must prescribe the circumstances in which state agencies may rely upon a determination of compliance with the goals or compatibility with the acknowledged comprehensive plan.

(12) A state agency required to have a land use coordination program shall participate in a local government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a manner that is consistent with the coordination program, unless the agency participated in the local government's periodic review pursuant to ORS 197.633 and raised the issue that is the basis for participation in the land use hearing.

(13) State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan. However, a state agency may apply statutes and rules to deny, condition or further restrict an action of the state agency or of any applicant before the state agency if the state agency applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

(14) In cooperation with local governments and state agencies whose rules, plans or programs affect land use, the department periodically shall:

(a) Identify aspects of coordination related to uses that require the issuance of multiple permits from state agencies and local governments.

(b) Update and improve rules regulating the effectiveness and efficiency of state agency coordination programs.

(15) This section does not apply to rules, plans, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992. [1973 c.80 §21; 1977 c.664 §13; 1981 c.748 §16; 1983 c.827 §4; 1987 c.555 §1; 1987 c.919 §3; 1989 c.761 §19; 1991 c.612 §9; 1995 c.595 §30; 1999 c.622 §8; 2009 c.606 §3]

197.183 Local government to notify Department of Aviation of applications received for certain water impoundments. (1) A local government shall provide notice to the Oregon Department of Aviation when the local government or its designee receives an application for a comprehensive plan amendment, zone change or permit as defined in ORS 215.402 or 227.160 that, if approved, would result in a water impoundment larger than one-quarter acre within 10,000 feet of an airport identified in ORS 836.610 (1).

(2) The department has no authority to make final a determination regarding a new water impoundment described in ORS 836.623. Determinations regarding such impoundments shall be made by local governments as provided in ORS 836.623. [1997 c.859 §10; 1999 c.935 §19]

197.185 [1973 c.80 §20; 1977 c.664 §14; 1981 c.748 §26; 1993 c.804 §1; renumbered 195.020 in 1993]

197.186 Removal from buildable lands inventory of land subject to open space tax assessment; reapplication for assessment. (1) At periodic review under ORS 197.633 next following approval of an application under ORS 308A.309, the local government shall remove any lot or parcel subject to the application from any inventory of buildable lands maintained by the local government. The local government shall compensate for the resulting reduction in available buildable lands either by increasing the development capacity of the remaining supply of buildable lands or by expanding the urban growth boundary.

(2) A landowner who wishes to reapply for current open space use assessment under ORS 308A.306 following the end of the assessment period shall reapply with the local government as provided in ORS 308A.309. [1999 c.503 §5]

197.190 [1973 c.80 §19; 1977 c.664 §15; 1981 c.748 §27; 1983 c.350 §1; renumbered 195.025 in 1993]

197.195 Limited land use decision; procedures. (1) A limited land use decision shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.

(2) A limited land use decision is not subject to the requirements of ORS 197.763.

(3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this subsection.

(a) In making a limited land use decision, the local government shall follow the applicable procedures contained within its acknowledged comprehensive plan and land use regulations and other applicable legal requirements.

(b) For limited land use decisions, the local government shall provide written notice to owners of property within 100 feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) The notice and procedures used by local government shall:

(A) Provide a 14-day period for submission of written comments prior to the decision;

(B) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient specificity to enable the decision maker to respond to the issue;

(C) List, by commonly used citation, the applicable criteria for the decision;

(D) Set forth the street address or other easily understood geographical reference to the subject property;

(E) State the place, date and time that comments are due;

(F) State that copies of all evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

(G) Include the name and phone number of a local government contact person;

(H) Provide notice of the decision to the applicant and any person who submits com-

ments under subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal rights; and

(I) Briefly summarize the local decision making process for the limited land use decision being made.

(4) Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(5) A local government may provide for a hearing before the local government on appeal of a limited land use decision under this section. The hearing may be limited to the record developed pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction of additional testimony or evidence. A hearing on appeal that allows the introduction of additional testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the decision rendered on appeal shall be given to all parties who appeared, either orally or in writing, before the hearing. The notice of decision shall include an explanation of the rights of each party to appeal the decision. [1991 c.817 §3; 1995 c.595 §1; 1997 c.844 §1]

197.200 Refinement plan; procedures for land division, site or design review within area subject to plan. (1) A local government may convene a land use proceeding to adopt a refinement plan for a neighborhood or community within its jurisdiction and inside the urban growth boundary as provided in this section.

(2) A refinement plan is more detailed than a comprehensive plan and applies to a specific geographic area. A refinement plan shall:

(a) Establish efficient density ranges, including a minimum and a maximum density for residential land uses;

(b) Establish minimum and maximum floor area ratios or site coverage requirements for nonresidential uses;

(c) Be based on a planning process meeting statewide planning goals; and

(d) Include land use regulations to implement the plan.

(3) A refinement plan and associated land use regulations adopted prior to September 9, 1995, may qualify as a refinement plan if the local government holds a public hearing to gather public comment and decides to adopt the plan as a refinement plan under this section.

(4) A local government shall apply the procedures for expedited land divisions described in ORS 197.360 to 197.380 to all applications for land division and site or design review located in any area subject to an acknowledged refinement plan. The review shall include:

(a) All elements of a local government comprehensive plan and land use regulations that must be applied in order to approve or deny any such application; and

(b) Any planned unit development standards and any procedures designed to regulate:

(A) The physical characteristics of permitted uses;

(B) The dimensions of the lots to be created; or

(C) Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development.

(5) Any decision made on a refinement plan described in subsection (3) of this section shall be appealed only as provided for appeals of expedited land division decisions in ORS 197.375.

(6) Refinement plans and implementing ordinances may be adopted through the post-acknowledgment or periodic review process. [1995 c.595 §15]

GOALS COMPLIANCE

197.225 Preparation; adoption. The Department of Land Conservation and Development shall prepare and the Land Conservation and Development Commission shall adopt goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans. [1973 c.80 §33; 1981 c.748 §27a]

197.230 Considerations; finding of need required for adoption or amendment of goal. (1) In preparing, adopting and amending goals and guidelines, the Department of Land Conservation and Development and the Land Conservation and Development Commission shall:

(a) Assess:

(A) What economic and property interests will be, or are likely to be, affected by the proposed goal or guideline;

(B) The likely degree of economic impact on identified property and economic interests; and

(C) Whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(b) Consider the existing comprehensive plans of local governments and the plans and programs affecting land use of state agencies and special districts in order to preserve functional and local aspects of land conservation and development.

(c) Give consideration to the following areas and activities:

(A) Lands adjacent to freeway interchanges;

(B) Estuarine areas;

(C) Tide, marsh and wetland areas;

(D) Lakes and lakeshore areas;

(E) Wilderness, recreational and outstanding scenic areas;

(F) Beaches, dunes, coastal headlands and related areas;

(G) Wild and scenic rivers and related lands;

(H) Floodplains and areas of geologic hazard;

(I) Unique wildlife habitats; and

(J) Agricultural land.

(d) Make a finding of statewide need for the adoption of any new goal or the amendment of any existing goal.

(e) Design goals to allow a reasonable degree of flexibility in the application of goals by state agencies, cities, counties and special districts.

(2) Goals shall not be land management regulations for specified geographic areas established through designation of an area of critical state concern under ORS 197.405.

(3) The requirements of subsection (1)(a) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.

(4) The commission may exempt cities with a population less than 10,000, or those areas of a county inside an urban growth boundary that contain a population less than 10,000, from all or any part of land use planning goals, guidelines and administrative rules that relate to transportation planning. [1973 c.80 §34; 1977 c.664 §17; 1981 c.748 §17; 1983 c.740 §50; 1995 c.299 §2; 1999 c.784 §1]

197.235 Public hearings; notice; citizen involvement implementation; submission of proposals. (1) In preparing the goals and guidelines, the Department of Land Conservation and Development shall:

(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing. At least two public hearings must be held in each congressional district.

(b) Implement any other provision for public involvement developed by the State Citizen Involvement Advisory Committee under ORS 197.160 (1) and approved by the Land Conservation and Development Commission.

(2) Upon completion of the preparation of the proposed goals and guidelines, or amendments to those goals and guidelines, the department shall submit them to the commission, the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the appropriate legislative committee for review.

(3) The commission shall consider the comments of the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the legislative committee before the adoption and amendment of the goals and guidelines.

(4) Notwithstanding subsection (1)(a) of this section, when a legislative enactment or an initiative measure is inconsistent with the adopted goals and guidelines or directs the commission to make a specific change to the adopted goals and guidelines, the commission may amend the goals and guidelines after only one public hearing, at a location determined by the commission, if the proposed amendment:

(a) Is necessary to conform the goals and guidelines to the legislative enactment or the initiative measure; and

(b) Makes no change other than the conforming changes unless the change corrects an obvious scrivener's error. [1973 c.80 §36; 1981 c.748 §28; 2005 c.147 §1; 2007 c.354 §9]

197.240 Commission action; public hearing; notice; amendment; adoption. Upon receipt of the proposed goals and guidelines prepared and submitted to it by the Department of Land Conservation and Development, the Land Conservation and Development Commission shall:

(1) Hold at least one public hearing on the proposed goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed goals and guidelines to the Governor, the appropriate legislative committee, affected state agencies and special districts and to each local government without charge. The department shall provide copies of such proposed goals and

guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any amendments to the proposed goals and guidelines that it considers necessary and approve the proposed goals and guidelines as they may be amended by the commission. [1973 c.80 §37; 1981 c.748 §28a; 2007 c.354 §10]

197.245 Commission amendment of initial goals; adoption of new goals. The Land Conservation and Development Commission may periodically amend the initial goals and guidelines adopted under ORS 197.240 and adopt new goals and guidelines. The adoption of amendments to or of new goals shall be done in the manner provided in ORS 197.235 and 197.240 and shall specify with particularity those goal provisions that are applicable to land use decisions, expedited land divisions and limited land use decisions before plan revision. The commission shall establish the effective date for application of a new or amended goal. Absent a compelling reason, the commission shall not require a comprehensive plan, new or amended land use regulation, land use decision, expedited land division or limited land use decision to be consistent with a new or amended goal until one year after the date of adoption. [1973 c.80 §38; 1981 c.748 §29; 1991 c.612 §10; 1991 c.817 §22a; 1995 c.595 §24]

197.247 [1983 c.826 §2; repealed by 1993 c.792 §55]

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission. [1973 c.80 §32; 1977 c.664 §19; 1981 c.748 §29a; 1983 c.827 §56a]

197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; compliance schedule. (1) Upon the request of a local government, the Land Conservation and Development Commission shall by order grant, deny or continue acknowledgment of compliance of comprehensive plan and land use regulations with the goals. A commission order granting, denying or continuing acknowledgment shall be entered within 90 days of the date of the request by the local government unless the commission finds that due to extenuating circumstances a period of time greater than 90 days is required.

(2) In accordance with rules of the commission, the Director of the Department of Land Conservation and Development shall prepare a report for the commission stating whether the comprehensive plan and land use regulations for which acknowledgment is sought are in compliance with the goals. The rules of the commission shall:

(a) Provide a reasonable opportunity for persons to prepare and to submit to the director written comments and objections to the acknowledgment request; and

(b) Authorize the director to investigate and in the report to resolve issues raised in the comments and objections or by the director's own review of the comprehensive plan and land use regulations.

(3) Upon completion of the report and before the commission meeting at which the director's report is to be considered, the director shall afford the local government and persons who submitted written comments or objections a reasonable opportunity to file written exceptions to the report.

(4) The commission's review of the acknowledgment request shall be confined to the record of proceedings before the local government, any comments, objections and exceptions filed under subsections (2) and (3) of this section and the report of the director. Upon its consideration of an acknowledgment request, the commission may entertain oral argument from the director and from persons who filed written comments, objections or exceptions. However, the commission shall not allow additional evidence or testimony that could have been presented to the local government or to the director but was not.

(5) A commission order granting, denying or continuing acknowledgment shall include a clear statement of findings which sets forth the basis for the approval, denial or continuance of acknowledgment. The findings shall:

(a) Identify the goals applicable to the comprehensive plan and land use regulations; and

(b) Include a clear statement of findings in support of the determinations of compliance and noncompliance.

(6) A commission order granting acknowledgment shall be limited to an identifiable geographic area described in the order if:

(a) Only the identified geographic area is the subject of the acknowledgment request; or

(b) Specific geographic areas do not comply with the applicable goals, and the goal

requirements are not technical or minor in nature.

(7) The commission may issue a limited acknowledgment order when a previously issued acknowledgment order is reversed or remanded by the Court of Appeals or the Oregon Supreme Court. Such a limited acknowledgment order may deny or continue acknowledgment of that part of the comprehensive plan or land use regulations that the court found not in compliance or not consistent with the goals and grant acknowledgment of all other parts of the comprehensive plan and land use regulations.

(8) A limited acknowledgment order shall be considered an acknowledgment for all purposes and shall be a final order for purposes of judicial review with respect to the acknowledged geographic area. A limited order may be adopted in conjunction with a continuance or denial order.

(9) The director shall notify the Real Estate Agency, the local government and all persons who filed comments or objections with the director of any grant, denial or continuance of acknowledgment.

(10) The commission may grant a planning extension, which shall be a grant of additional time for a local government to comply with the goals in accordance with a compliance schedule. A compliance schedule shall be a listing of the tasks which the local government must complete in order to bring its comprehensive plan, land use regulations, land use decisions and limited land use decisions into initial compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county.

(11) As used in this section:

(a) "Continuance" means a commission order that:

(A) Certifies that all or part of a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed within a specified time period for acknowledgment to occur; and

(C) Is a final order for purposes of judicial review of the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations as to the parts found consistent or in compliance with the goals.

(b) "Denial" means a commission order that:

(A) Certifies that a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed for acknowledgment to occur; and

(C) Is used when the amendments or other changes required in the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations affect many goals and are likely to take a substantial period of time to complete. [1977 c.766 §18; 1979 c.242 §3; 1981 c.748 §7; 1983 c.827 §5; 1985 c.811 §13; 1991 c.817 §23; 1993 c.438 §2]

197.252 [1977 c.664 §20a; 1979 c.772 §7a; repealed by 1981 c.748 §56]

197.253 Participation in local proceedings required for submitting comments and objections. Notwithstanding the provisions of ORS 197.251 (2)(a), a person may not submit written comments and objections to the acknowledgment request of any city or county that submits its plan or regulations to the Land Conservation and Development Commission for acknowledgment for the first time after August 9, 1983, unless the person participated either orally or in writing in the local government proceedings leading to the adoption of the plan and regulations. [1983 c.827 §5a]

197.254 Bar to contesting acknowledgment, appealing or seeking amendment. (1) A state agency is barred, after the date set for submission of programs by the Land Conservation and Development Commission as provided in ORS 197.180 (4), from contesting a request for acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal of a post-acknowledgement change under ORS 197.610 to 197.625 to a comprehensive plan or a land use regulation, if the commission finds that:

(a) The state agency has not complied with ORS 197.180; or

(b) The state agency has not coordinated its plans, programs or rules affecting land use with the comprehensive plan or land use regulations of the city or county pursuant to a coordination program approved by the commission under ORS 197.180.

(2) A state agency is barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or a land use regulation in order to comply with the agency's plan or program unless the agency has first re-

quested the amendment from the local government and has had its request denied.

(3) A special district is barred from contesting a request for initial compliance acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal of a post-acknowledgement change under ORS 197.610 to 197.625 to a comprehensive plan or a land use regulation, if the county or metropolitan service district assigned coordinative functions under ORS 195.025 (1) finds that:

(a) The special district has not entered into a cooperative agreement under ORS 195.020; or

(b) The special district has not coordinated its plans, programs or regulations affecting land use with the comprehensive plan or land use regulations of the local government pursuant to its cooperative agreement made under ORS 195.020.

(4) A special district is barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or a land use regulation in order to comply with the special district's plan or program unless the special district has first requested the amendment from the local government and has had its request denied. [1977 c.664 §16; 1981 c.748 §11; 1983 c.827 §57; 1991 c.612 §11; 2009 c.606 §4; 2011 c.280 §7]

197.255 [1973 c.80 §39; 1981 c.748 §29b; 1983 c.827 §57a; renumbered 195.035 in 1993]

197.260 [1973 c.80 §44; 1981 c.748 §29c; renumbered 195.040 in 1993]

197.265 State compensation for costs of defending compliance actions. (1) As used in this section, "action" includes but is not limited to a proceeding under ORS 197.830 to 197.845.

(2) If any action is brought against a local government challenging any comprehensive plan, land use regulation or other action of the local government which was adopted or taken for the primary purpose of complying with the goals approved under ORS 197.240 and which does in fact comply with the goals, then the Land Conservation and Development Commission shall pay reasonable attorney fees and court costs incurred by such local government in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor. [1977 c.898 §2; 1979 c.772 §7b; 1981 c.748 §39; 1983 c.827 §6]

197.270 Copies of comprehensive plan and land use regulations; post review. Within six months following completion of the periodic review process, the affected local government shall file three complete and accurate copies of its comprehensive plan and land use regulations with the Department of Land Conservation and Development. This document can be either a new printing or an up-to-date compilation of the required materials. [1987 c.729 §13]

197.274 Review of Metro regional framework plan. (1) The Metro regional framework plan, its separate components and amendments to the regional framework plan or to its separate components are subject to review:

(a) For compliance with land use planning statutes, statewide land use planning goals and administrative rules corresponding to the statutes and goals, in the same manner as a comprehensive plan for purposes of:

(A) Acknowledgment of compliance with the goals under ORS 197.251; and

(B) Post-acknowledgment procedures under ORS 197.610 to 197.651; and

(b) As a land use decision under ORS 197.805 to 197.855 and 197.860.

(2) With the prior consent of the Land Conservation and Development Commission, Metro may submit to the Department of Land Conservation and Development an amendment to the Metro regional framework plan or to a component of the regional framework plan in the manner provided for periodic review under ORS 197.628 to 197.651, if the amendment implements a program to meet the requirements of a land use planning statute, a statewide land use planning goal or an administrative rule corresponding to a statute or goal. [1993 c.438 §3; 1999 c.59 §55; 1999 c.348 §5; 2003 c.793 §1]

197.275 [1973 c.80 §40; 1977 c.664 §21; repealed by 1981 c.748 §56]

197.277 Oregon Forest Practices Act; exclusion. (1) The goals and rules established in ORS chapters 195, 196 and 197 do not apply to programs, rules, procedures, decisions, determinations or activities carried out under the Oregon Forest Practices Act administered under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

(2) No goal or rule shall be adopted, construed or administered in a manner to require or allow local governments to take any action prohibited by ORS 527.722.

(3) The Land Conservation and Development Commission shall amend goals and rules as necessary to implement ORS 197.180, 197.277, 197.825, 215.050, 477.090, 477.440, 477.455, 477.460, 526.009, 526.016, 526.156, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.687, 527.715, 527.990 and 527.992. [1987 c.919 §2]

197.279 Approved wetland conservation plans comply with goals; exception; rules. (1) Wetland conservation plans approved by the Director of the Department of State Lands pursuant to ORS chapter 196

shall be deemed to comply with the requirements of statewide planning goals relating to other than estuarine wetlands for those areas, uses and activities which are regulated by the wetland conservation plans.

(2) Wetland conservation plans shall be adopted and amended by local governments according to the procedures of ORS 197.610 to 197.625.

(3) The department shall adopt by rule:

(a) Standards for cities and counties to use to inventory and identify wetlands; and

(b) Criteria for cities and counties to use to determine when a wetland is a significant wetland. [1989 c.837 §25; 1995 c.472 §2]

197.280 [1973 c.80 §41; repealed by 1977 c.664 §42 and 1977 c.766 §16]

197.283 Commission to assure protection of ground water resources. (1) The Land Conservation and Development Commission shall take actions it considers necessary to assure that city and county comprehensive plans and land use regulations and state agency coordination programs are consistent with the goal set forth in ORS 468B.155.

(2) The commission shall direct the Department of Land Conservation and Development to take actions the department considers appropriate to assure that any information contained in a city or county comprehensive plan that pertains to the ground water resource of Oregon shall be forwarded to the centralized repository established under ORS 468B.167. [1989 c.833 §48]

197.285 [1973 c.80 §42; repealed by 1981 c.748 §56]

URBAN GROWTH BOUNDARIES AND NEEDED HOUSING WITHIN BOUNDARIES

197.295 Definitions for ORS 197.295 to 197.314 and 197.475 to 197.490. As used in ORS 197.295 to 197.314 and 197.475 to 197.490:

(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. "Buildable lands" includes both vacant land and developed land likely to be redeveloped.

(2) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(3) "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(4) "Manufactured homes" has the meaning given that term in ORS 446.003.

(5) "Mobile home park" has the meaning given that term in ORS 446.003.

(6) "Periodic review" means the process and procedures as set forth in ORS 197.628 to 197.651.

(7) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan. [1981 c.884 §4; 1983 c.795 §1; 1987 c.785 §1; 1989 c.648 §51; 1991 c.226 §16; 1991 c.612 §12; 1995 c.79 §73; 1995 c.547 §2]

197.296 Factors to establish sufficiency of buildable lands within urban growth boundary; analysis and determination of residential housing patterns. (1)(a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land

needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Demographic and population trends;

(D) Economic trends and cycles; and

(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or more of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;

(b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

(7) Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types

at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) The local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) or (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:

(a) Increases in the permitted density on existing residential land;

(b) Financial incentives for higher density housing;

(c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;

(d) Removal or easing of approval standards or procedures;

(e) Minimum density ranges;

(f) Redevelopment and infill strategies;

(g) Authorization of housing types not previously allowed by the plan or regulations;

(h) Adoption of an average residential density standard; and

(i) Rezoning or redesignation of nonresidential land. [1995 c.547 §3; 2001 c.908 §1; 2003 c.177 §1]

197.298 Priority of land to be included within urban growth boundary. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

(c) Maximum efficiency of land uses within a proposed urban growth boundary

requires inclusion of lower priority lands in order to include or to provide services to higher priority lands. [1995 c.547 §5; 1999 c.59 §56]

197.299 Metropolitan service district analysis of buildable land supply; schedule for accommodating needed housing; need for land for school; extension of schedule. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than five years after completion of the previous inventory, determination and analysis.

(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3). [1997 c.763 §2; 2001 c.908 §2; 2005 c.590 §1; 2007 c.579 §2]

197.300 [1973 c.80 §51; 1977 c.664 §22; repealed by 1979 c.772 §26]

197.301 Metropolitan service district report of performance measures. (1) A metropolitan service district organized under ORS chapter 268 shall compile and report to the Department of Land Conservation and Development on performance measures as described in this section at least once every two years. The information shall be reported in a manner prescribed by the department.

(2) Performance measures subject to subsection (1) of this section shall be adopted by a metropolitan service district and shall include but are not limited to measures that analyze the following:

(a) The rate of conversion of vacant land to improved land;

(b) The density and price ranges of residential development, including both single family and multifamily residential units;

(c) The level of job creation within individual cities and the urban areas of a county inside the metropolitan service district;

(d) The number of residential units added to small sites assumed to be developed in the metropolitan service district's inventory of available lands but which can be further developed, and the conversion of existing spaces into more compact units with or without the demolition of existing buildings;

(e) The amount of environmentally sensitive land that is protected and the amount of environmentally sensitive land that is developed;

(f) The sales price of vacant land;

(g) Residential vacancy rates;

(h) Public access to open spaces; and

(i) Transportation measures including mobility, accessibility and air quality indicators. [1997 c.763 §3]

197.302 Metropolitan service district determination of buildable land supply; corrective action; enforcement. (1) After gathering and compiling information on the performance measures as described in ORS 197.301 but prior to submitting the information to the Department of Land Conservation and Development, a metropolitan service district shall determine if actions taken under ORS 197.296 (6) have established the buildable land supply and housing densities necessary to accommodate estimated housing needs determined under ORS 197.296 (3). If the metropolitan service district determines

that the actions undertaken will not accommodate estimated need, the district shall develop a corrective action plan, including a schedule for implementation. The district shall submit the plan to the department along with the report on performance measures required under ORS 197.301. Corrective action under this section may include amendment of the urban growth boundary, comprehensive plan, regional framework plan, functional plan or land use regulations as described in ORS 197.296.

(2) Within two years of submitting a corrective action plan to the department, the metropolitan service district shall demonstrate by reference to the performance measures described in ORS 197.301 that implementation of the plan has resulted in the buildable land supply and housing density within the urban growth boundary necessary to accommodate the estimated housing needs for each housing type as determined under ORS 197.296 (3).

(3) The failure of the metropolitan service district to demonstrate the buildable land supply and housing density necessary to accommodate housing needs as required under this section and ORS 197.296 may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1997 c.763 §4; 2001 c.908 §3]

197.303 "Needed housing" defined. (1) As used in ORS 197.307, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(2) Subsection (1)(a) and (d) of this section shall not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals. [1981 c.884 §6; 1983 c.795 §2; 1989 c.380 §1; 2011 c.354 §2]

197.304 Lane County accommodation of needed housing. (1) Notwithstanding an intergovernmental agreement pursuant to ORS 190.003 to 190.130 or acknowledged comprehensive plan provisions to the contrary, a city within Lane County that has a population of 50,000 or more within its boundaries shall meet its obligation under ORS 197.295 to 197.314 separately from any other city within Lane County. The city shall, separately from any other city:

(a) Establish an urban growth boundary, consistent with the jurisdictional area of responsibility specified in the acknowledged comprehensive plan; and

(b) Demonstrate, as required by ORS 197.296, that its comprehensive plan provides sufficient buildable lands within an urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years.

(2) Except as provided in subsection (1) of this section, this section does not alter or affect an intergovernmental agreement pursuant to ORS 190.003 to 190.130 or acknowledged comprehensive plan provisions adopted by Lane County or local governments in Lane County. [2007 c.650 §2]

197.305 [1973 c.80 §52; 1977 c.664 §23; repealed by 1979 c.772 §26]

197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in

themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject. [1981 c.884 §5; 1983 c.795 §3; 1989 c.380 §2; 1989 c.964 §6; 1993 c.184 §3; 1997 c.733 §2; 1999 c.357 §1; 2001 c.613 §2; 2011 c.354 §3]

197.309 Local ordinances or approval conditions may not effectively establish housing sale price or designate class of purchasers; exception. (1) Except as provided in subsection (2) of this section, a city, county or metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers.

(2) This section does not limit the authority of a city, county or metropolitan service district to:

(a) Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus

or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295. [1999 c.848 §2; 2007 c.691 §8]

197.310 [1973 c.80 §53; 1977 c.664 §24; repealed by 1979 c.772 §26]

197.312 Limitation on city and county authority to prohibit certain kinds of housing; zoning requirements for farmworker housing; real estate sales office. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public. [1983 c.795 §5; 1989 c.964 §7; 2001 c.437 §1; 2001 c.613 §3; 2011 c.354 §4]

197.313 Interpretation of ORS 197.312. Nothing in ORS 197.312 or in the amendments to ORS 197.295, 197.303, 197.307 by sections 1, 2 and 3, chapter 795, Oregon Laws 1983, shall be construed to require a city or county to contribute to the financing, administration or sponsorship of government assisted housing. [1983 c.795 §6]

197.314 Required siting of manufactured homes; minimum lot size; approval standards. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.651.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the

predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(7) This section shall not be construed as abrogating a recorded restrictive covenant. [1993 c.184 §2; 1997 c.295 §1; 1999 c.348 §7; 2005 c.22 §139; 2011 c.354 §5]

197.315 [1973 c.80 §54; 1977 c.664 §25; repealed by 1979 c.772 §26]

ENFORCEMENT OF PLANNING REQUIREMENTS

197.319 Procedures prior to request of an enforcement order. (1) Before a person may request adoption of an enforcement order under ORS 197.320, the person shall:

(a) Present the reasons, in writing, for such an order to the affected local government; and

(b) Request:

(A) Revisions to the local comprehensive plan, land use regulations, special district cooperative or urban service agreement or decision-making process which is the basis for the order; or

(B) That an action be taken regarding the local comprehensive plan, land use regulations, special district agreement or decision-making process that is the basis for the order.

(2)(a) The local government or special district shall issue a written response to the request within 60 days of the date the request is mailed to the local government or special district.

(b) The requestor and the local government or special district may enter into mediation to resolve issues in the request. The Department of Land Conservation and Development shall provide mediation services when jointly requested by the local government or special district and the requestor.

(c) If the local government or special district does not act in a manner which the requestor believes is adequate to address the issues raised in the request within the time period provided in paragraph (a) of this subsection, a petition may be presented to the Land Conservation and Development Commission under ORS 197.324.

(3) A metropolitan service district may request an enforcement order under ORS 197.320 (12) without first complying with subsections (1) and (2) of this section. [1989 c.761 §4; 1993 c.804 §9; 2007 c.176 §2]

197.320 Power of commission to order compliance with goals and plans. The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:

(1) A comprehensive plan or land use regulation adopted by a local government not on a compliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(2) A plan, program, rule or regulation affecting land use adopted by a state agency or special district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(3) A local government is not making satisfactory progress toward performance of its compliance schedule;

(4) A state agency is not making satisfactory progress in carrying out its coordination agreement or the requirements of ORS 197.180;

(5) A local government has no comprehensive plan or land use regulation and is not on a compliance schedule directed to developing the plan or regulation;

(6) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation. In making its determination under this subsection, the commission shall determine whether there is evidence in the record to support the decisions made. The commission shall not judge the issue solely upon adequacy of the findings in support of the decisions;

(7) A local government has failed to comply with a commission order entered under ORS 197.644;

(8) A special district has engaged in a pattern or practice of decision-making that violates an acknowledged comprehensive plan or cooperative agreement adopted pursuant to ORS 197.020;

(9) A special district is not making satisfactory progress toward performance of its obligations under ORS chapters 195 and 197;

(10) A local government is applying approval standards, special conditions on approval of specific development proposals or procedures for approval that do not comply with ORS 197.307 (6); or

(11) A local government is not making satisfactory progress toward meeting its obligations under ORS 195.065.

(12) A local government within the jurisdiction of a metropolitan service district has failed to make changes to the comprehensive plan or land use regulations to comply with the regional framework plan of the district

or has engaged in a pattern or practice of decision-making that violates a requirement of the regional framework plan. [1977 c.664 §34; 1979 c.284 §123; 1981 c.748 §32; 1983 c.827 §58; 1987 c.729 §8; 1989 c.761 §2; 1991 c.612 §13; 1991 c.817 §24; 1993 c.804 §10; 1995 c.547 §4; 2003 c.793 §2; 2007 c.176 §3]

197.324 Proceedings prior to order of compliance with goals; disclosure notice. (1) On its own motion, the Land Conservation and Development Commission may initiate a proceeding to carry out the provisions of ORS 197.320. If the commission proceeds on its own motion, it shall proceed as set forth in ORS 197.328.

(2)(a) After a person meets the requirements of ORS 197.319, the person may file a petition to request that the commission consider the matter. Filing occurs upon mailing the petition to the Department of Land Conservation and Development.

(b) The commission shall determine if there is good cause to proceed on the petition.

(c) If the commission determines that there is not good cause to proceed on the petition, the commission shall issue a final order dismissing the petition, stating the reasons therefor.

(d) If the commission determines that there is good cause to proceed on the petition, the commission shall proceed as set forth in ORS 197.328.

(3) Following initiation of a proceeding under subsection (1) of this section or a determination by the commission that there is good cause to proceed on a petition under subsection (2) of this section, the affected local government shall include the following disclosure in any subsequent notice of a land use decision that could be affected by the enforcement order:

NOTICE: THE OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION HAS FOUND GOOD CAUSE FOR AN ENFORCEMENT PROCEEDING AGAINST _____ (Name of local government). AN ENFORCEMENT ORDER MAY BE EVENTUALLY ADOPTED THAT COULD LIMIT, PROHIBIT OR REQUIRE APPLICATION OF SPECIFIED CRITERIA TO ANY ACTION AUTHORIZED BY THIS DECISION BUT NOT APPLIED FOR UNTIL AFTER ADOPTION OF THE ENFORCEMENT ORDER. FUTURE APPLICATIONS FOR BUILDING PERMITS OR ANY TIME EXTENSIONS MAY BE AFFECTED.

[1989 c.761 §5; 1995 c.778 §3]

197.325 [1973 c.80 §45; repealed by 1977 c.664 §42]

197.328 Procedures to consider order to comply with goals. If a proceeding is initiated under ORS 197.324, the following procedures apply:

(1) The Land Conservation and Development Commission shall hold a hearing to consider the petition or shall appoint a hearings officer to consider the petition under the provisions of ORS chapter 183 applicable to contested cases, except as otherwise provided in this section.

(2) The commission or hearings officer shall schedule a hearing within 45 days of receipt of the petition.

(3) If the commission appoints a hearings officer, the hearings officer shall prepare a proposed order, including recommended findings and conclusions of law. The proposed order shall be served on the Department of Land Conservation and Development and all parties to the hearing within 30 days of the date the record closed.

(4) If the commission appoints a hearings officer, the commission review of the proposed order shall be limited to the record of proceedings before the hearings officer. In its review of a proposed order, the commission shall not receive new evidence but shall hear arguments as to the proposed order and any exceptions. Any exception to the proposed order shall be filed with the commission no later than 15 days following issuance of the proposed order.

(5) The commission shall adopt a final order relative to a petition no later than 120 days from the date the petition was filed. [1989 c.761 §6]

197.330 [1973 c.80 §50; repealed by 1977 c.664 §42]

197.335 Order for compliance with goals; review of order; withholding grant funds; injunctions. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local government, state agency or special district shall set forth:

(a) The nature of the noncompliance, including, but not limited to, the contents of the comprehensive plan or land use regulation, if any, of a local government that do not comply with the goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with the goals. In the case of a pattern or practice of decision-making which violates the goals, comprehensive plan or land use regulations, the order shall specify the decision-making which constitutes the pattern or practice, including specific provisions the Land Conservation and Development Commission believes are being misapplied;

(b) The specific lands, if any, within a local government for which the existing plan

or land use regulation, if any, does not comply with the goals; and

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply. In the case of a pattern or practice of decision-making that violates an acknowledged comprehensive plan or land use regulation, the commission may require revisions to the comprehensive plan, land use regulations or local procedures which the commission believes are necessary to correct the pattern or practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of this section, an enforcement order does not affect:

(A) Land use applications filed with a local government prior to the date of adoption of the enforcement order unless specifically identified by the order;

(B) Land use approvals issued by a local government prior to the date of adoption of the enforcement order; or

(C) The time limit for exercising land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(2) Judicial review of a final order of the commission shall be governed by the provisions of ORS chapter 183 applicable to contested cases except as otherwise stated in this section. The commission's final order shall include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal, modification or remand unless the court shall find that substantial rights of any party were prejudiced thereby;

(b) The order to be unconstitutional;

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

(3)(a) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission's order under ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions, building permits, limited land use decisions or land use decisions until the plan, land use regulation or subsequent land use decisions and limited land use decisions are brought into compliance. The commission may issue an order that requires review of local decisions by a hearings officer or the Department of Land Conservation and Development before the local decision becomes final.

(b) Any requirement under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the requirement is necessary to correct the violation.

(c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be interpreted to affect the commission's authority to limit, prohibit or require application of specified criteria to subsequent land use decisions involving land use approvals issued by a local government prior to the date of adoption of the enforcement order.

(4) As part of its order under ORS 197.320 or subsection (2) of this section, the commission may withhold grant funds from the local government to which the order is directed. As part of an order issued under this section, the commission may notify the officer responsible for disbursing state-shared revenues to withhold that portion of state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the amount of state planning grant moneys previously provided the local government by the commission. The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as outlined in this section and shall release funds to the local government or department when notified to so do by the commission or its designee. The commission may retain a portion of the withheld revenues to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor

land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the local government upon completion of requirements of the commission order.

(5)(a) As part of its order under this section, the commission may notify the officer responsible for disbursing funds from any grant or loan made by a state agency to withhold such funds from a special district to which the order is directed. The officer responsible for disbursing funds shall withhold funds as outlined in this section and shall release funds to the special district or department when notified to do so by the commission.

(b) The commission may retain a portion of the funds withheld to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions and limited land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the special district upon completion of the requirements of the commission order.

(6) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1989 c.761 §7; 1991 c.817 §25; 1993 c.804 §11; 1995 c.301 §36; 1995 c.778 §1]

197.340 Weight given to goals in planning practice; regional diversity and needs. (1) The Land Conservation and Development Commission, the Department of Land Conservation and Development, other state agencies and local governments shall give the goals equal weight in any matter in which the goals are required to be applied.

(2) The commission and the department shall consider and recognize regional diversity and differences in regional needs when making or reviewing a land use decision or otherwise applying the goals. [1981 c.748 §20; 1987 c.729 §1; 1995 c.521 §2]

197.350 Burden of persuasion or proof in appeal to board or commission. (1) A party appealing a land use decision or limited land use decision made by a local government to the board or Land Conservation and Development Commission has the burden of persuasion.

(2) A local government that claims an exception to a goal adopted by the commission has the burden of persuasion.

(3) There shall be no burden of proof in administrative proceedings under ORS chapters 195, 196 and 197. [1981 c.748 §10a; 1983 c.827 §43; 1991 c.817 §26]

197.352 [2005 c.1; 2007 c.354 §28; 2007 c.424 §4; renumbered 195.305 in 2007]

197.353 Measure 37 timelines; death of claimant. (1) As used in this section:

(a) "Claimant" means a person that makes a Measure 37 claim.

(b) "Measure 37 claim" means a written demand for compensation under ORS 197.352.

(c) "Land use regulation" has the meaning given that term in ORS 197.352.

(d) "Owner" has the meaning given that term in ORS 197.352.

(e) "Public entity" has the meaning given that term in ORS 197.352.

(2) Notwithstanding ORS 197.352 (4) and (6), if a Measure 37 claim was made on or after November 1, 2006:

(a) Just compensation under ORS 197.352 is due the owner of the property from the public entity only if the land use regulation continues to be enforced against the property 540 days after the Measure 37 claim is made to the public entity; and

(b) The owner of the subject property has a cause of action for compensation under ORS 197.352 (6) only if a land use regulation continues to apply to the subject property more than 540 days after the Measure 37 claim is made.

(3) If a claimant is an individual, the ability to make or prosecute a Measure 37 claim is not affected by the death of the claimant during the extended review period provided by subsection (2) of this section, and the ability to make or prosecute a Measure 37 claim for property that belonged to the claimant passes to the person who acquires the property by devise or by operation of law. [2007 c.133 §2]

Note: 197.353 includes references to 197.352, which was amended and renumbered as 195.305 by action of the Legislative Assembly. See section 28, chapter 354, Oregon Laws 2007, and sections 1, 1a and 4, chapter 424, Oregon Laws 2007. The text of 197.353 was not amended to reflect the amendments or renumbering. Editorial adjustment of 197.353 for the amendments to and renumbering of 197.352 has not been made.

EXPEDITED LAND DIVISIONS

197.360 "Expedited land division" defined; applicability. (1) An expedited land division:

(a) Is an action of a local government that:

(A) Includes land that is zoned for residential uses and is within an urban growth boundary.

(B) Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.

(C) Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:

(i) Open spaces, scenic and historic areas and natural resources;

(ii) The Willamette River Greenway;

(iii) Estuarine resources;

(iv) Coastal shorelands; and

(v) Beaches and dunes.

(D) Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.

(E) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site.

(b) Is a land division that:

(A) Will create three or fewer parcels under ORS 92.010; and

(B) Meets the criteria set forth for an action under paragraph (a)(A) to (D) of this subsection.

(2) An expedited land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including any planned unit development standards and any procedures designed to regulate:

(a) The physical characteristics of permitted uses;

(b) The dimensions of the lots or parcels to be created; or

(c) Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.

(4) An application to a local government for an expedited land division shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section. [1995 c.595 §7]

197.365 Application for expedited land division; notice requirements; procedure. When requested by an applicant for an expedited land division, in lieu of the procedure set forth in its comprehensive plan and land use regulations, the local government shall use the following procedures for an expedited land division under ORS 197.360:

(1)(a) If the application for expedited land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(2) The local government shall provide written notice of the receipt of the completed application for an expedited land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3) The notice required under subsection (2) of this section shall:

(a) State:

(A) The deadline for submitting written comments;

(B) That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C) That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b) Set forth, by commonly used citation, the applicable criteria for the decision.

(c) Set forth the street address or other easily understood geographical reference to the subject property.

(d) State the place, date and time that comments are due.

(e) State a time and place where copies of all evidence submitted by the applicant will be available for review.

(f) Include the name and telephone number of a local government contact person.

(g) Briefly summarize the local decision-making process for the expedited land division decision being made.

(4) After notice under subsections (2) and (3) of this section, the local government shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

(b) Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the local government's land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:

(A) Shall not hold a hearing on the application; and

(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.

(c) Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:

(A) The summary statement described in paragraph (b)(B) of this subsection; and

(B) An explanation of appeal rights under ORS 197.375. [1995 c.595 §8]

197.370 Failure of local government to approve or deny application within specified time. (1) Except as provided in subsection (2) of this section, if the local government does not make a decision on an expedited land division within 63 days after the application is deemed complete, the applicant may apply in the circuit court for the county in which the application was filed for a writ of mandamus to compel the local government to issue the approval. The writ shall be issued unless the local government shows that the approval would violate a substantive provision of the applicable land use regulations or the requirements of ORS 197.360. A decision of the circuit court under this section may be appealed only to the Court of Appeals.

(2) After seven days' notice to the applicant, the governing body of the local government may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an expedited land division prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380, including the mandamus remedy provided by subsection (1) of this section, shall remain applicable to the expedited land division, except that the extended period shall be substituted for the 63-day period wherever applicable.

(3) The decision to approve or not approve an extension under subsection (2) of this section is not a land use decision or limited land use decision. [1995 c.595 §9]

197.375 Appeal of decision on application for expedited land division; notice requirements; standards for review; procedure; costs. (1) An appeal of a decision made under ORS 197.360 and 197.365 shall be made as follows:

(a) An appeal must be filed with the local government within 14 days of mailing of the notice of the decision under ORS 197.365 (4), and shall be accompanied by a $300 deposit for costs.

(b) A decision may be appealed by:

(A) The applicant; or

(B) Any person or organization who files written comments in the time period established under ORS 197.365.

(c) An appeal shall be based solely on allegations:

(A) Of violation of the substantive provisions of the applicable land use regulations;

(B) Of unconstitutionality of the decision;

(C) That the application is not eligible for review under ORS 197.360 to 197.380 and should be reviewed as a land use decision or limited land use decision; or

(D) That the parties' substantive rights have been substantially prejudiced by an error in procedure by the local government.

(2) The local government shall appoint a referee to decide the appeal of a decision

made under ORS 197.360 and 197.365. The referee shall not be an employee or official of the local government. However, a local government that has designated a hearings officer under ORS 215.406 or 227.165 may designate the hearings officer as the referee for appeals of a decision made under ORS 197.360 and 197.365.

(3) Within seven days of being appointed to decide the appeal, the referee shall notify the applicant, the local government, the appellant if other than the applicant, any person or organization entitled to notice under ORS 197.365 (2) that provided written comments to the local government and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (1) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The referee shall provide the local government an opportunity to explain its decision, but is not limited to reviewing the local government decision and may consider information not presented to the local government.

(4)(a) The referee shall apply the substantive requirements of the local government's land use regulations and ORS 197.360. If the referee determines that the application does not qualify as an expedited land division as described in ORS 197.360, the referee shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements.

(b) The referee may not reduce the density of the land division application. The referee shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The referee may not remand the application to the local government for any reason other than as set forth in this subsection.

(5) Unless the governing body of the local government finds exigent circumstances, a referee who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as referee in the appeal.

(6) Notwithstanding any other provision of law, the referee shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of $500, including the deposit paid under subsection (1) of this section, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the referee and costs incurred by the local government, but not the costs of other parties.

(7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380.

(8) Any party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

(a) That the decision does not concern an expedited land division as described in ORS 197.360 and the appellant raised this issue in proceedings before the referee;

(b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

(c) That the decision is unconstitutional. [1995 c.595 §10; 2003 c.598 §37]

197.380 Application fees for expedited land division. Each city and county shall establish an application fee for an expedited land division. The fee shall be set at a level calculated to recover the estimated full cost of processing an application, including the cost of appeals to the referee under ORS 197.375, based on the estimated average cost of such applications. Within one year of establishing the fee required under this section, the city or county shall review and revise the fee, if necessary, to reflect actual experience in processing applications under ORS 197.360 to 197.380. [1995 c.595 §11; 1999 c.348 §8]

ACTIVITIES ON FEDERAL LAND

197.390 Activities on federal land; list; permit required; enjoining violations. (1) The Land Conservation and Development Commission shall study and compile a list of all activities affecting land use planning which occur on federal land and which the state may regulate or control in any degree.

(2) No activity listed by the commission pursuant to subsection (1) of this section which the state may regulate or control which occurs upon federal land shall be undertaken without a permit issued under ORS 197.395.

(3) Any person or agency acting in violation of subsection (2) of this section may be enjoined in civil proceedings brought in the name of the State of Oregon. [1975 c.486 §2; 1981 c.748 §33]

197.395 Application for permit; review and issuance; conditions; restrictions; review. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control and which occurs upon federal land shall apply to the local government in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the local government as prescribed by rule of the Land Conservation and Development Commission.

(2) If the local government finds after review of the application that the proposed activity complies with goals and the comprehensive plans of the local government affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying for the permit. If the governing body does not approve or disapprove the permit within 60 days of receipt of the application, the application shall be considered approved.

(3) The local government may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with the goals and the comprehensive plans of the local governments affected by the activity.

(4) Actions pursuant to this section are subject to review under ORS 197.830 to 197.845. [1975 c.486 §3; 1977 c.664 §26; 1979 c.772 §7c; 1981 c.748 §40; 1983 c.827 §44]

197.400 [1973 c.80 §25; 1977 c.664 §27; repealed by 1981 c.748 §56]

AREAS OF CRITICAL CONCERN

197.405 Designation of areas of critical state concern; commission recommendation; committee review; approval by Legislative Assembly. (1) The Land Conservation and Development Commission may recommend to appropriate legislative committees the designation of areas of critical state concern. Each such recommendation:

(a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the area;

(c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;

(d) May establish permissible use limitations for all or part of the area;

(e) Shall locate a boundary describing the area; and

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.

(2) The commission may act under subsection (1) of this section on its own motion or upon the recommendation of a state agency or a local government. If the commission receives a recommendation from a state agency or a local government and finds the proposed area to be unsuitable for designation, it shall notify the state agency or the local government of its decision and its reasons for that decision.

(3) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsection (1) of this section to the appropriate legislative committees for review.

(4) No proposed designation under subsection (1) of this section shall take effect unless it has first been submitted to appropriate legislative committees under subsection (3) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28; 1981 c.748 §12; 2007 c.354 §11]

197.410 Use and activities regulated; enjoining violations. (1) No use or activity subjected to state regulations required or allowed for a designated area of critical state concern shall be undertaken except in accordance with the applicable state regulations.

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in

the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29; 1981 c.748 §13]

197.415 [1973 c.80 §27; 1977 c.664 §30; repealed by 1981 c.748 §56]

197.416 Metolius Area of Critical State Concern. (1) As used in this section, "Metolius Area of Critical State Concern" means the areas identified as Area 1 and Area 2 in the management plan recommended by the Land Conservation and Development Commission.

(2) Pursuant to ORS 197.405 (4), the Legislative Assembly hereby approves the recommendation of the commission, submitted to the Legislative Assembly on April 2, 2009, that the Metolius Area of Critical State Concern be designated an area of critical state concern.

(3) The Legislative Assembly approves the management plan included in the commission's recommendation pursuant to ORS 197.405 (1)(c) and directs the commission to adopt the management plan, by rule, without change except that:

(a) The management plan must require:

(A) The commission to give notice of proposed amendments to the management plan to the governing bodies of Jefferson County and of the Confederated Tribes of the Warm Springs Indian Reservation; and

(B) If either governing body files a written objection to the proposed amendments, the commission to adopt the proposed amendments only if the commission finds by clear and convincing evidence that the proposed amendments meet the requirements of subsection (5) of this section.

(b) The management plan must limit development of a small-scale recreation community within township 13 south, range 10 east, sections 20, 21, 28 and 29 in Jefferson County so that all units must be sited within up to 25 clusters that may be connected only by a road system. The commission may not enforce, and shall modify, a contrary provision in the management plan.

(c) Descriptions in the management plan of annual average water use must refer to annual average consumptive water use. The commission may not enforce, and shall modify, a contrary provision in the management plan.

(4) Except as otherwise provided in this section, the commission may amend the management plan only as provided in the management plan and only pursuant to applicable rulemaking procedures.

(5) In addition to limitations on development that are contained in the management plan, new development allowed by amendment of the management plan, except development allowed by the administrative amendments required by subsection (3) of this section, may not result in:

(a) Negative impact on the Metolius River, its springs or its tributaries;

(b) Negative impact on fish resources in the Metolius Area of Critical State Concern; or

(c) Negative impact on the wildlife resources in the Metolius Area of Critical State Concern.

(6) A county may not approve siting a destination resort in the Metolius Area of Critical State Concern. [2009 c.712 §1]

Note: 197.416 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.420 [1973 c.80 §28; 1977 c.664 §31; repealed by 1981 c.748 §56]

197.425 [1973 c.80 §29; 1977 c.664 §32; repealed by 1981 c.748 §56]

197.430 Enforcement powers. If the county governing body or the Land Conservation and Development Commission determines the existence of an alleged violation under ORS 197.410, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS chapters 195, 196 and 197, as soon as possible.

(2) For the purpose of investigating conditions relating to the violation, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.

(3) Conduct public hearings.

(4) Publish its findings and recommendations as they are formulated relative to the violation.

(5) Give notice of any order relating to a particular violation of the state regulations for the area involved or a particular violation of ORS chapters 195, 196 and 197 by mailing notice to the person or public body conducting or proposing to conduct the project affected in the manner provided by ORS chapter 183. [1973 c.80 §31; 1977 c.664 §33; 1981 c.748 §14]

RESIDENTIAL AND RECREATIONAL DEVELOPMENT

(Temporary provisions relating to transferable development opportunities)

Note: Sections 1 to 10, chapter 636, Oregon Laws 2009, provide:

Sec. 1. The Legislative Assembly finds that:

(1) Providing for rural unemployment reductions and living wage job opportunities brings stability to economically distressed rural communities.

(2) Sections 1 to 9 of this 2009 Act are intended to reduce unemployment and create living wage jobs in economically distressed counties.

(3) Working forests make vital contributions to Oregon by providing jobs, timber, timber products, tax base and other social and economic benefits, by helping to maintain soil, air and water resources, by reducing levels of carbon dioxide in the atmosphere and by providing habitat for wildlife and aquatic life.

(4) Population growth, escalating land values, increasing risks due to wildfire and invasive species, and changes in land ownership and management objectives, with a resulting increase in conflict caused by dispersed residential development, require that new methods be developed to facilitate continued management of private lands zoned for forest use for timber harvest.

(5) It is the public policy of the State of Oregon to:

(a) Explore alternative methods to encourage the continued management of private forestlands for timber production.

(b) Protect water quality, wildlife habitat and other important natural resources by limiting location of dispersed residential development on forestlands.

(c) Provide for an orderly and efficient transition from rural to urban land uses by establishing locations at which residential development rights or development opportunities transferred from forestlands may be used.

(d) Provide for a limited number of demonstration projects for small-scale recreation communities that:

(A) Create incentives for economic development in areas that are in need of long-term job creation;

(B) Enhance the state's leadership in sustainability and natural resource stewardship;

(C) Encourage appropriate public access to and stewardship of recreational resources on public lands consistent with the carrying capacity of the lands and resources; and

(D) Provide for additional sources of long-term funding for stewardship of natural resources. [2009 c.636 §1]

Sec. 1a. Sections 1 to 9 of this 2009 Act may be cited as the Rural Unemployment Reductions and Living-Wage Job Opportunities Bring Stability Act or the RURAL JOBS Act. [2009 c.636 §1a]

Sec. 2. As used in sections 2 to 5 of this 2009 Act:

(1) "Management plan" means the management plan for the Metolius River Basin that was recommended to the Legislative Assembly on April 2, 2009, by the Land Conservation and Development Commission.

(2) "Metolius resort site" means land mapped as eligible for destination resort siting under ORS 197.455 by Jefferson County that has not been developed as a resort.

(3) "Overnight lodgings" has the meaning given that term in ORS 197.435.

(4) "Tract" has the meaning given that term in ORS 215.010. [2009 c.636 §2]

Sec. 3. (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation communities may be established as specified in sections 2 to 5, chapter 636, Oregon Laws 2009.

(2) If, within one year after June 29, 2009, the owner of a Metolius resort site notifies the Department of Land Conservation and Development that it has elected to seek approval of a small-scale recreation community, the owner may, within six years after June 29, 2009, apply to a county for approval of a small-scale recreation community.

(3) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws 2009, may be established only in conjunction with a transfer of development opportunity from a Metolius resort site. A transfer of development opportunity must be carried out through an agreement between the owner of a Metolius resort site and the owner of the site proposed for development of a small-scale recreation community. In the agreement, the owner of the Metolius resort site must:

(a) Agree to limit the use of the Metolius resort site, consistent with the management plan in consideration for the opportunity to participate in the development of the small-scale recreation community; and

(b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:

(A) Limits the use of the Metolius resort site to be consistent with the management plan;

(B) Allows public access to that portion of the site that is not developed; and

(C) Contains other provisions, as required by the Department of Land Conservation and Development, that are necessary to ensure that the conservation easement is enforceable.

(4) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws 2009, must be sited on land that is within a county that has, on June 29, 2009, a seasonally adjusted average annual unemployment rate over the preceding 10 calendar years that is more than 110 percent of the unemployment rate for the entire state over the same period, as reported by the Employment Department and that is either:

(a) Planned and zoned for forest use; or

(b) Rural and not subject to statewide land use planning goals relating to agricultural lands or forestlands.

(5) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws 2009, may not be sited on land that is:

(a) Within an area identified as "Area 1" or "Area 2" in the management plan.

(b) Within an area described in ORS 197.455 in which destination resorts may not be sited.

(c) Within an area protected by or inventoried as a significant resource in an acknowledged comprehensive plan provision implementing statewide land use planning goals relating to:

(A) Open space, scenic and historic areas and natural resources;

(B) Estuarine resources;

(C) Coastal shorelands; or

(D) Beaches and dunes.

(d) Within an area identified as subject to a natural hazard by an acknowledged comprehensive plan provision implementing a statewide land use planning goal relating to protection from natural hazards. [2009 c.636 §3; 2009 c.888 §1; 2011 c.404 §1]

Sec. 4. (1) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws 2009, must meet the following development standards:

(a) The community must be located on a tract that contains 320 or fewer acres of land.

(b) The community must consist of 240 or fewer units and have as its primary purpose the provision of overnight lodging units.

(c) The community may contain one restaurant containing 5,000 or fewer square feet, and accessory uses necessary to the operation of the community, including accessory recreational facilities.

(d) The owner of the property must spend at least $1.5 million on off-site resource enhancement or restoration projects on nearby public lands that will be used by individuals from the community.

(e) The community may not include a golf course or related facilities.

(f) The community must be developed and operated in a sustainable manner by meeting the following criteria:

(A) When fully developed, the community must use reclaimed water as the primary source of water for any irrigation of grounds.

(B) Facilities for snowmobiling or other motorized recreational activities are not permitted.

(C) At least 50 percent of the tract on which the community is located must be dedicated to permanent open space that is contiguous and demonstrates the biological viability of the site as habitat or that provides ecosystem services to the area.

(D) Significant natural resource functions and values on the site must be preserved.

(E) Impervious surfaces, including rooftops and paved roads, trails and parking areas may not exceed 35 percent of the total site area.

(F) Potable water usage must achieve a 20 percent reduction below standard code-built developments. Reclaimed water usage for nonpotable water needs may account for the entire reduction required.

(G) Stormwater must be managed on-site. Off-site runoff must be limited to predevelopment runoff rates.

(H) A restaurant, lodge or other nonresidential building must be designed and constructed to meet regionally or nationally recognized design standards for sustainable design that are acceptable to the county having land use jurisdiction over the proposed development site.

(I) Residential buildings must be designed and constructed to meet regionally or nationally recognized design standards for sustainable design that are acceptable to the county having land use jurisdiction over the proposed development site. The developer must achieve certification for all buildings, with at least 50 percent of the buildings achieving a top-tier rating under the rating system selected.

(J) Additional housing capable of housing at least 50 percent of the peak season employees must be provided on-site.

(2) In addition to the development standards described in subsection (1) of this section, a small-scale recreation community must:

(a) Develop an environmental operations manual that describes core practices for operating the small-scale recreation community, including:

(A) Waste reduction, recycling and diversion practices.

(B) Cleaning and site maintenance practices.

(C) Staff education practices.

(D) Commitment of the community to environmental stewardship.

(b) Establish a conservation stewardship organization, as a separate nonprofit entity funded through income generated by the development, that is charged with:

(A) Development of a baseline study that establishes the current level and condition of the local environment. As part of the baseline study, the organization must develop a long-term stewardship plan that targets net creation and rehabilitation of resources, on-site and off-site.

(B) Ongoing review, election and management of habitat restoration projects that implement the goal of the long-term stewardship plan.

(C) Education and outreach on environmental stewardship.

(c) Organize and manage volunteers working to conserve local resources.

(d) Monitor performance of energy and water usage and site development standards versus actual practice.

(e) Audit and publish annually a report of the community's performance result for the preceding year. [2009 c.636 §4; 2009 c.888 §2]

Sec. 5. (1) An application for a small-scale recreation community under sections 2 to 5, chapter 636, Oregon Laws 2009, may be filed only by the owner of a Metolius resort site and the owner of the site on which development of the small-scale recreation community is proposed and must be filed jointly by the owners. The owners shall file a copy of the application with the Department of Land Conservation and Development at the same time that the owners file the application with the county having land use jurisdiction over the proposed development site.

(2) A county shall review an application for a small-scale recreation community under sections 2 to 5, chapter 636, Oregon Laws 2009, as a conditional use in a forest zone and as a land division under ORS chapter 92.

(3) In addition to the standards set forth in sections 2 to 5, chapter 636, Oregon Laws 2009, the small-scale recreation community must meet the land division standards and other development standards of the county, including standards for streets, utilities and services, unless the standards conflict with sections 2 to 5, chapter 636, Oregon Laws 2009. If the development standards of the county are dependent on the zoning of the site, the county shall apply the development standards for the county's most dense rural residential zone.

(4) If more than two applications for a small-scale recreation community are filed under sections 2 to 5, chapter 636, Oregon Laws 2009, and a county has not yet approved an application, the department shall determine which of the applications may proceed, taking into consideration:

(a) The time at which each application was filed;

(b) The unemployment rate in the counties, if more than one county is involved; and

(c) The findings set forth in section 1, chapter 636, Oregon Laws 2009.

(5) When two applications for small-scale recreation communities have been approved, additional applications may not be considered.

(6) A county may charge a fee to cover the costs of processing an application. [2009 c.636 §5; 2009 c.888 §3]

Sec. 6. (1) There is established the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development. Working with the State Forestry Department, the State Department of Agriculture and local governments and with other state agencies, as appropriate, the Department of Land Conservation and Development shall implement the pilot program.

(2) The Land Conservation and Development Commission shall adopt rules to implement the pilot program. The commission, by rule, may:

(a) Establish a maximum ratio of transferable development rights to severed development interests in a sending area for each pilot project. The maximum ratio:

(A) Must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending area to participate in the pilot project;

(B) May not exceed one transferable development right to one severed development interest if the receiving area is outside of urban growth boundaries and outside unincorporated communities;

(C) May not exceed two transferable development rights to one severed development interest if the receiving area is in an unincorporated community; and

(D) Must be consistent with plans for public facilities and services in the receiving area.

(b) Require participating owners of land in a sending area to grant conservation easements pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional residential development of their property does not occur.

(3) The commission, by rule, shall establish a process for selecting pilot projects from among potential projects nominated by local governments. The process must require local governments to nominate potential projects by submitting a concept plan for each proposed pilot project, including proposed amendments, if any, to the comprehensive plan and land use regulations implementing the plan that are necessary to implement the pilot project.

(4) When selecting a pilot project, the commission must find that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state;

(b) Designed to avoid or minimize adverse effects on transportation, natural resources, public facilities and services, nearby urban areas and nearby farm and forest uses; and

(c) Designed so that new development authorized in a receiving area does not conflict with a resource or area inventoried under a statewide land use planning goal relating to natural resources, scenic and historic areas and open spaces, or with an area identified as a Conservation Opportunity Area in the "Oregon Conservation Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department of Fish and Wildlife in September of 2006.

(5) The commission may select up to three pilot projects for the transfer of development rights under sections 6 to 8, chapter 636, Oregon Laws 2009.

(6) A sending area for a pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009:

(a) Must be planned and zoned for forest use;

(b) May not exceed 10,000 acres; and

(c) Must contain four or fewer dwelling units per square mile.

(7) The commission may establish additional requirements for sending areas.

(8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government participating in a pilot project shall select a receiving area for the pilot project based on the following priorities:

(A) First priority is lands within an urban growth boundary.

(B) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception from a statewide land use planning goal relating to agricultural lands or forestlands.

(C) Third priority is lands that are:

(i) Within an urban unincorporated community or a rural community; or

(ii) In a resort community, or a rural service center, that contains at least 100 dwelling units at the time the pilot project is approved.

(D) Fourth priority is exception areas approved under ORS 197.732 that are adjacent to urban unincorporated communities or rural communities, if the county agrees to bring the receiving area within the boundaries of the community and to provide the community with water and sewer service.

(b) The commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a pilot project only if the local government has established, to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(c) The minimum residential density of development allowed in receiving areas intended for residential development is:

(A) For second priority lands described in paragraph (a)(B) of this subsection, at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(B) For third priority and fourth priority lands described in paragraph (a)(C) and (D) of this subsection, at least 125 percent of the average residential density allowed on land planned for residential use within the unincorporated community when the pilot project is approved by the commission.

(d) For third and fourth priority lands described in paragraph (a)(C) and (D) of this subsection that are within one jurisdiction but adjacent to another jurisdiction, the written consent of the adjacent jurisdiction is required for designation of the receiving area.

(e) A receiving area may not be located within 10 miles of the Portland metropolitan area urban growth boundary.

(9) The commission may establish additional requirements for receiving areas.

(10) The commission, by rule, may provide a bonus in the form of a higher transfer ratio if a substantial portion of the new development in the receiving area of the pilot project is affordable housing within an urban growth boundary. [2009 c.636 §6; 2010 c.5 §3; 2011 c.144 §1]

Sec. 7. (1) Notwithstanding contrary provisions of statewide land use planning goals relating to public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use regulations implementing the plan to allow residential development in a receiving area consistent with sections 6 to 8, chapter 636, Oregon Laws 2009, if the Land Conservation and Development Commission has approved a concept plan for the pilot project.

(2) The local governments having land use jurisdiction over lands included in the sending area and the receiving area for the pilot project shall adopt amendments to their respective comprehensive plans and land use regulations implementing the plans that are consistent with subsection (3) of this section.

(3) When the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations implementing the plan that identify the additional development allowed through participation in the pilot project. The Department of Land Conservation and Development shall review the overlay zones and corresponding comprehensive plan amendments in the manner of periodic review under ORS 197.628 to 197.650 [series became 197.628 to 197.651].

(4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relating to urbanization, a local government may amend its urban growth boundary to include adjacent lands in a receiving area, consistent with an approved concept plan, if the net residential density of development authorized in the receiving area is at least five dwelling units per net

acre or 125 percent of the average residential density allowed on land planned for residential use within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(5) Local governments or other entities may establish a development rights bank or other system to facilitate the transfer of development rights.

(6) A county shall review an application for a pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009, as a comprehensive plan amendment. A county may apply other procedures, including master plan approval, site plan review or conditional use review as the county finds appropriate to subsequent phases of review of the pilot project.

(7) When development rights transfers authorized by the pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights from the jurisdiction of one local government to another local government and cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving area. [2009 c.636 §7; 2011 c.144 §2]

Sec. 8. (1) The Department of Land Conservation and Development, the State Forestry Department, a local government participating in the Oregon Transfer of Development Rights Pilot Program or a third-party holder identified by the Department of Land Conservation and Development may hold, monitor or enforce a conservation easement pursuant to ORS 271.715 to 271.795 or other property interest to ensure that lands in sending areas do not retain residential development rights transferred under sections 6 to 8 of this 2009 Act.

(2) An entity that is eligible to be a holder of a conservation easement may acquire, from a willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry out a use of land authorized under rules of the Land Conservation and Development Commission implementing the pilot program. [2009 c.636 §8]

Sec. 9. (1) As used in this section:

(a) "Community forestlands" has the meaning given that term in ORS 530.600.

(b) "Skyline Forest" means that certain real property consisting of approximately 33,000 contiguous acres in Deschutes County owned on June 1, 2009, by Cascade Timberlands (Oregon) LLC and located within sections 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, township 16 south, range 10 east; sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 35 and 36, township 17 south, range 10 east; and sections 6, 7, 8, 9, 17, 18, 19, 20, 29, 30, 31, 32 and 33, township 17 south, range 11 east.

(c) "Skyline Forest Sustainable Development Area" means a portion of up to 3,000 contiguous acres of the tract known as the Skyline Forest that is located in township 16 south, range 10 east, Deschutes County: portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 7; portions of the northwest quarter, southwest quarter, southeast quarter of section 8; portions of the southwest quarter of section 16; portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 17; portions of the northwest quarter, southwest quarter, southeast quarter, northeast quarter of section 18; section 19; portions of the northwest quarter, southwest quarter, northeast quarter of section 20; portions of the northwest quarter of section 21; portions of the northwest quarter of section 29; and portions of the north half of section 30.

(d) "Skyline Conservation Tract" means the portion of the Skyline Forest consisting of approximately 30,000 contiguous acres that is not included within the Skyline Forest Sustainable Development Area.

(e) "Southern Conservation Tract" means that certain real property consisting of approximately 34,700 acres in Deschutes and Klamath Counties owned on June 1, 2009, by Cascade Timberlands (Oregon) LLC and located within one of the following areas:

(A) "Area one" consists of approximately 14,000 acres of land located within sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34 and 35 of township 22 south, range 9 east, Deschutes County; and sections 5, 6, 7, 8, 17, 18, 30 and 31 of township 22 south, range 10 east, Deschutes County;

(B) "Area two" consists of approximately 9,700 acres of land located within sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 17, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33 and 34 of township 23 south, range 9 east, Klamath County and the portion of Parcel 3, Partition Plat No. 34-08 located in township 23 south, range 9 east, Klamath County; and

(C) "Area three" consists of approximately 11,000 acres of land located within sections 14, 23, 24, 25, 26, 34 and 35 of township 23 south, range 9 east; sections 3, 4, 8, 9 and 17 of township 24 south, range 9 east; section 1 of township 25 south, range 7 east; sections 1, 2, 3, 4, 9, 10, 12, 13, 14, 15, 16 and 17 of township 25 south, range 8 east; Parcel 1, Partition Plat No. 34-08 located in township 24 south, ranges 7 and 8 east, and township 25 south, range 8 east, Klamath County; and the portion of Parcel 3, Partition Plat No. 34-08 located in township 24 south, ranges 8 and 9 east, Klamath County and lying west of U.S. Route 97.

(f) "Land trust" means the Deschutes Land Trust, an Oregon nonprofit corporation or another nonprofit conservation organization that is either accredited by the Land Trust Accreditation Commission or is nationally recognized as a land conservation organization, the primary mission of which is land conservation.

(2) Contingent upon satisfaction of the requirements of subsection (3) of this section, the Skyline Forest Sustainable Development Area may be developed and used for the following purposes:

(a) The Skyline Forest Sustainable Development Area may contain up to 282 residential units, a caretaker's residence, a restaurant, a small community store, a small-scale community conference center, an equestrian facility, small-scale recreational, commercial and basic service uses, and all utility, maintenance and security facilities necessary to support the development. The residential units may be permanent residences, rental units or lodging units. The specific number of residential units allowed within the Skyline Forest Sustainable Development Area, up to a maximum of 282, is dependent upon the number of acres of the Skyline Conservation Tract and the Southern Conservation Tract conveyed to a land trust or a federal or state agency pursuant to this section. Up to:

(A) 137 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract to a land trust;

(B) 183 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract and area one of the Southern Conservation Tract to a land trust or to a federal or state agency;

(C) 224 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation Tract, area one and area two of the Southern Conservation Tract to a land trust or to a federal or state agency; or

(D) 282 residential units shall be allowed within the Skyline Forest Sustainable Development Area in exchange for the conveyance of the Skyline Conservation

Tract, area one, area two and area three of the Southern Conservation Tract to a land trust or to a federal or state agency.

(b) The Skyline Forest Sustainable Development Area may not contain a golf course or golf-related facilities.

(c) All development, not including access roads and utility lines to the Skyline Forest Sustainable Development Area and up to five acres for maintenance and security facilities, shall be located on 1,200 contiguous acres within the Skyline Forest Sustainable Development Area. The owner shall use the remaining undeveloped 1,800 acres of the Skyline Forest Sustainable Development Area for the primary purposes of minimizing the risk of wildfire and maintaining wildlife habitat value. However, an equestrian facility may be located within the otherwise undeveloped 1,800 acres if the facility is located on no more than 40 acres contiguous to the developed portion of the Skyline Forest Sustainable Development Area. The owner shall cause a conservation easement pursuant to ORS 271.715 to 271.795 to be recorded on the entirety of the undeveloped 1,800 acres prohibiting partitions and development, but allowing access roads, utility lines, maintenance and security facilities and recreational uses, such as picnic grounds, trails, the equestrian facility and restrooms. The conservation easement must be held by a land trust and shall contain terms agreed to by the State Department of Fish and Wildlife and the State Forestry Department.

(d) Roads, utility corridors and all utility facilities necessary to serve the Skyline Forest Sustainable Development Area shall be allowed as outright permitted uses within the Skyline Forest Sustainable Development Area, the Skyline Forest and on nearby lands regardless of the comprehensive plan or zoning designation of the lands.

(e) The uses allowed by this subsection shall be allowed only upon approval of a master plan as provided by subsection (5) of this section. The master plan shall contain design criteria and standards to ensure that sustainability principles will be incorporated into the development and operation of uses within the Skyline Forest Sustainable Development Area. The design criteria and standards shall promote sustainable building design, water conservation and energy conservation.

(f) The master plan described in subsection (5) of this section shall incorporate design criteria and standards to ensure that there will be negligible visual impacts under normal daylight viewing conditions from Awbrey Butte and the Plainview scenic turnout located on the McKenzie-Bend Highway No. 17, also known as U.S. Route 20, near milepost 9. The design criteria and standards shall also require all outdoor lighting to be downward facing, to the extent practicable.

(g) The Skyline Forest Sustainable Development Area shall be served by one primary access route and by one or more emergency and secondary access routes that use existing roads as much as practicable. The access routes may be private or public roads, including roads managed by the United States Forest Service. The primary access route shall intersect the McKenzie-Bend Highway No. 17, also known as U.S. Route 20, between mileposts 3 and 6 to provide access from the eastern boundary of the Skyline Forest Sustainable Development Area to the referenced highway.

(h) The Skyline Forest Sustainable Development Area, including all access roads, must be developed in consultation with the State Department of Fish and Wildlife to minimize impacts on wildlife, particularly deer and elk populations.

(i) The Skyline Forest Sustainable Development Area, including all access roads, must be developed in consultation with the State Forestry Department and the United States Forest Service to minimize wildfire risks.

(j) The owner of the Skyline Forest Sustainable Development Area shall provide adequate firefighting facilities and services to address the needs of the development. All structures shall be designed and maintained consistent with the default wildfire safety standards of the Oregon Forestland-Urban Interface Fire Protection Act of 1997, as set forth in administrative rules of the State Forestry Department.

(k) Any wells used to provide water for uses within the Skyline Forest Sustainable Development Area shall be sited to minimize impacts of groundwater use on Whychus Creek and Melvin Springs.

(3) The land uses described in subsection (2) of this section shall be allowed within the Skyline Forest Sustainable Development Area upon the satisfaction of the following conditions:

(a) The owner of the Skyline Forest and the Southern Conservation Tract transfers:

(A) The Skyline Conservation Tract to a land trust for the purpose of creating community forestlands; and

(B) The Southern Conservation Tract, whether to a single buyer or multiple buyers, to a land trust for the purpose of creating community forestlands or to a federal or state agency. However, the owner may choose to retain all or a portion of the Southern Conservation Tract, in which case the number of residential units allowed within the Skyline Forest Sustainable Development Area shall be limited as set forth in subsection (2)(a) of this section.

(b) The consideration for any transfer does not exceed the fair market value of the property as established by an appraisal based on the hypothetical condition or assumption that all development rights on the properties, whether actual or potential, have been extinguished as contemplated by subsection (7) of this section. The appraisal must comply with the Uniform Standards of Professional Appraisal Practice. The appraisal shall comply with the Uniform Appraisal Standards for Federal Land Acquisitions if:

(A) The land trust or state agency proposes, in part or in whole, to use federal funds to purchase the property and has demonstrated a reasonable likelihood that federal funds will be secured for the purchase; or

(B) The property is being conveyed to a federal agency.

(c) The Skyline Conservation Tract and the Southern Conservation Tract will be managed so that wildlife and recreational values are safeguarded and the overall forest health, including sustainable timber production and wildfire prevention, is maintained over the long term.

(d) The owner of the Skyline Forest Sustainable Development Area obtains the land use approvals required by subsection (5) of this section.

(4) The uses authorized by subsection (2) of this section shall be allowed as outright permitted uses by Deschutes County, following approval of the master plan required by subsection (5) of this section by Deschutes County. The uses allowed by subsection (2) of this section are allowed notwithstanding those provisions of ORS 215.700 to 215.780 relating to lot size and dwelling standards on forestlands, those statewide land use planning goals relating to agricultural lands, forestlands, public facilities and services, transportation and urbanization and those provisions of Deschutes County's comprehensive plan and land use regulations limiting uses of forestlands. Approval of the master plan and land division applications required by subsection (5) of this section for the development and use of the Skyline Forest Sustainable Development Area and all associated road and utility corridors does not require exceptions to any statewide planning goal or amendment of any local comprehensive plan or land use regulation. Deschutes County shall apply only the

provisions of this section as standards and criteria for an application for, or amendment to, a master plan or land division application or other development permit applications submitted pursuant to this section.

(5) The owner of the Skyline Forest Sustainable Development Area may submit an application to Deschutes County for approval of a master plan for the development and use of the area. The application must be submitted within five years after the effective date of chapter 636, Oregon Laws 2009 [June 29, 2009], subject to the following:

(a) The master plan shall demonstrate compliance with subsection (2) of this section and include a tentative land division application to create the lots within the Skyline Forest Sustainable Development Area.

(b) Deschutes County shall process the master plan and all land division applications pursuant to the procedural review provisions of its local land use regulations. However, Deschutes County shall approve the master plan and any tentative or final land division applications if the applications are consistent with subsections (2) and (3) of this section. No additional land use or land division standards shall apply to the approval and development of the Skyline Forest Sustainable Development Area.

(c) Deschutes County shall condition final approval of the master plan and land division applications on the execution of an agreement to record a conservation easement in accordance with subsection (2)(c) of this section, an agreement to transfer the Skyline Conservation Tract to a land trust for the purpose of creating community forestlands and, if applicable, an agreement to transfer all or a portion of the Southern Conservation Tract either to a land trust for the purpose of creating community forestland or to a federal or state agency. The agreements shall specify that recordation of the conservation easement, transfer of the Skyline Conservation Tract and transfer of all or a portion of the Southern Conservation Tract shall be contingent upon the following terms:

(A) The owner of the Skyline Forest Sustainable Development Area shall obtain all federal, state and local licenses, permits, rights and other entitlements necessary for development of the Skyline Forest Sustainable Development Area, each of which shall be final and no longer subject to appeal;

(B) The land trust or the federal or state agencies, as applicable, shall obtain adequate funding to purchase the Skyline Conservation Tract or the Southern Conservation Tract, as applicable, in accordance with subsection (3)(b) of this section; and

(C) The land trust or the federal or state agencies shall develop and implement management standards that provide reasonable assurance to the owner of the Skyline Forest Sustainable Development Area that the Skyline Conservation Tract and the Southern Conservation Tract will be managed to establish forest health, manage wildfire risk and maintain compatibility with the Skyline Forest Sustainable Development Area.

(d) The master plan and all associated land division plans shall govern development of the Skyline Forest Sustainable Development Area in perpetuity and shall not expire. Regulations requiring the submittal of final plats within a specified time period following tentative plan approval shall not apply to the Skyline Forest Sustainable Development Area. The master plan may be amended at any time following an administrative review by Deschutes County. Deschutes County shall approve the amendments if the amended master plan remains consistent with subsections (2) and (3) of this section.

(6) The Deschutes Land Trust, an Oregon nonprofit corporation, shall have a right of first opportunity to purchase the Skyline Conservation Tract and the Southern Conservation Tract, and any purchase agreement shall provide a minimum of three years for the Deschutes Land Trust to obtain funding for any purchase. If at any time after two years from the date of any purchase agreement or the date of filing of a master plan under subsection (5) of this section, whichever is later, the Deschutes Land Trust has failed to demonstrate a reasonable likelihood it will be able to obtain the funds necessary to complete the purchase, the owner of the Skyline Conservation Tract and the Southern Conservation Tract may seek alternative buyers for any property that is the subject of a purchase agreement under this subsection. The Deschutes Land Trust will in good faith notify the owner of the Skyline Conservation Tract and the Southern Conservation Tract if at any time during the period of any purchase agreement the Deschutes Land Trust concludes it does not wish to complete the purchase or will be unable to obtain the necessary funding to complete the purchase.

(7) Development and construction of uses within the Skyline Forest Sustainable Development Area may proceed according to the approved master plan once the transfer of fee title of the Skyline Conservation Tract and, as applicable, all or a portion of the Southern Conservation Tract, is complete. Following transfer of fee title of the Skyline Conservation Tract and, as applicable, all or a portion of the Southern Conservation Tract, all development rights on the conveyed lands are extinguished and the conveyed lands shall be thereafter managed as community forestlands or as federal or state forestlands.

(8) At any time within five years after the effective date of chapter 636, Oregon Laws 2009, the owner of the Skyline Forest Sustainable Development Area may either file an application for a master plan pursuant to subsection (5) of this section, or submit written notice to Deschutes County and the Deschutes Land Trust stating the owner's intent to relinquish the development opportunities authorized by this section. Until the owner of the Skyline Forest Sustainable Development Area files a master plan application or submits a notice of relinquishment under this subsection, the owner may not divide, develop, obtain a lot of record determination or prohibit public access to any portion of the Skyline Forest. If the owner of the Skyline Forest Sustainable Development Area submits a notice of relinquishment under this subsection, or the owner allows the five-year time period to elapse without taking any action under this subsection, the development opportunities authorized by this section shall expire and the owner may divide, develop and prohibit public access to any portion of Skyline Forest pursuant to the laws in effect at that time.

(9) If the owner of the Skyline Forest Sustainable Development Area does not file a master plan within five years of the effective date of chapter 636, Oregon Laws 2009, or if Deschutes County does not approve a master plan as provided in subsection (5) of this section within 10 years of the effective date of chapter 636, Oregon Laws 2009, then the provisions of subsection (2) of this section shall cease to have any force or effect.

(10) The development opportunities provided by this section are fully transferable and will run with the land in the event of a change of ownership of the Skyline Forest or all or a portion of the Southern Conservation Tract. [2009 c.636 §9; 2009 c.888 §4]

Sec. 10. On or before February 1, 2013, the Department of Land Conservation and Development shall make a report to the Seventy-seventh Legislative Assembly, in the manner described in ORS 192.245:

(1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in sections 6 to 8 of this 2009 Act; and

(2) Recommending whether the pilot program should be continued, modified, expanded or terminated. [2009 c.636 §10]

(Temporary provisions relating to residential and recreational development)

Note: Sections 1 and 2, chapter 686, Oregon Laws 2011, provide:

Sec. 1. The Legislative Assembly finds and declares that:

(1) Working farms and cattle ranches make vital contributions to Oregon by:

(a) Providing jobs, timber, agricultural products, tax base, tourism and other social and economic benefits;

(b) Helping to maintain soil, air and water resources;

(c) Reducing levels of carbon dioxide in the atmosphere; and

(d) Providing habitat for wildlife and aquatic life.

(2) New methods must be developed to facilitate continued management of private farms and cattle ranches as population growth, escalating land values, increasing risks from wildfire and invasive species, and changes in land ownership or management objectives result in increased conflict with dispersed residential development.

(3) The public policy of the State of Oregon is to:

(a) Encourage, and explore alternative methods to encourage, the continued management of private farm and forest lands for timber production, agricultural production and cattle ranching.

(b) Protect water quality, wildlife habitat and other important natural resources by limiting location of dispersed residential development on farm and forest land. [2011 c.686 §1]

Sec. 2. (1) As used in this section:

(a) "Associated property" means real property, and improvements, that is contiguous to and in common ownership with the development area.

(b) "Development area" means certain property containing a guest ranch and consisting of approximately 5,000 acres in common ownership that are located in township 17 south, range 31 east and township 17 south, range 32 east, Grant County.

(2) Subject to approval of a master plan submitted to Grant County, the guest ranch may be expanded in the development area in one or more phases to include the uses authorized under this section if Grant County finds that the master plan for the development area meets the standards set forth in subsections (4), (5) and (6) of this section, notwithstanding:

(a) Sections 2 and 3, chapter 84, Oregon Laws 2010.

(b) Statewide land use planning goals and rules implementing the goals and without taking an exception under ORS 197.732 to a goal.

(c) The lot size and dwelling standards of ORS 215.700 to 215.780.

(d) Provisions of the acknowledged comprehensive plan or land use regulations of Grant County except as:

(A) Provided otherwise in this section; or

(B) Necessary to protect the public health and safety.

(3) The development area may:

(a) Contain up to 575 units of overnight accommodations, including but not limited to lodging units, cabins, townhomes and fractional ownerships. Overnight accommodations that are not lodging units, timeshares or fractional ownerships must be subject to deed restrictions that limit use of the accommodations to use as overnight accommodations.

(b) Include restaurants, meeting and conference facilities and commercial uses to meet the needs of visitors to the development area and associated property.

(c) Include developed recreational facilities including, but not limited to, tennis courts, spa facilities, equestrian facilities, swimming pools and bicycle paths.

(d) Not include sites for new residential dwellings unless otherwise permitted under existing law or developed for employees of the guest ranch or other uses allowed in the development area.

(4) The uses authorized by this section that are to be developed on or after January 1, 2010, must be constructed in the development area.

(5) Roads, utility corridors and utility facilities necessary to serve the development area are authorized uses. Roads in the development area:

(a) Must be all-weather roads.

(b) Must remain unpaved to the greatest extent practicable to discourage car use in most parts of the development area.

(c) Must be wide enough to accommodate emergency equipment.

(6) Upon receipt of an application for approval of a master plan for the development and use of the development area, Grant County shall approve the master plan if the county finds that the master plan:

(a) Demonstrates that the important natural features of the development area and associated property, including but not limited to habitat of threatened or endangered species, streams, rivers and significant wetlands, will be retained. Grant County may authorize alteration of important natural features, including the placement of structures that maintain the overall values of the natural features, under the county's applicable acknowledged comprehensive plan and land use regulations.

(b) Demonstrates that the development area and associated property will be managed to provide significant public benefits in the form of:

(A) Wildlife and aquatic habitat improvements, including tree planting, enhancement of riparian areas and restoration of meadows for wildlife; and

(B) Training and education programs.

(c) Demonstrates that the development area and associated property will be managed to provide a significant number of permanent jobs in Grant and Harney Counties, to encourage the growth of ancillary and support businesses in Grant and Harney Counties, to encourage expansion of tourism opportunities for Grant and Harney Counties, and to provide opportunities to educate the public about sustainable ranching and wildlife rehabilitation in conjunction with Oregon State University or another educational institution in the State of Oregon.

(d) Contains design criteria and standards that promote sustainability in the development area. The criteria and standards must promote energy and water conservation, reduce, based on consultation with the State Department of Fish and Wildlife, adverse impacts of development on wildlife and reduce, based on consultation with the State Forestry Department, wildfire risk.

(e) Demonstrates that overnight accommodations will be clustered to minimize adverse impacts on fish and wildlife.

(f) Includes a proposed plat to create lots for the first phase of development in the development area.

(7) The planning director of Grant County may:

(a) Approve by administrative review an amendment to an approved master plan or an associated land division plan; or

(b) If the planning director determines that the proposed change may impact the findings made pursuant to subsection (6) of this section, refer the amendment to the Grant County Court for review. If the planning director refers a proposed amendment to the court, the court shall approve the proposed change if the master plan, as amended, or the associated land division plan, as amended, remains consistent with the requirements of this section.

(8) Grant County shall:

(a) Apply only the provisions of this section and the master plan as standards and criteria for approval or amendment of the master plan and associated land division applications and development permit applications submitted pursuant to this section.

(b) Process the master plan and associated land division applications pursuant to the procedural review provisions of the acknowledged comprehensive plan and land use regulations. [2011 c.686 §2]

SITING SPEEDWAY DESTINATION

197.431 Expansion of speedway destination site. (1) If the site described in ORS 197.433 (1) is developed and used as a major motor speedway with sanctioned, premier, high speed automobile racing within five years after the county issues a certificate of occupancy for the major motor speedway, the site may be expanded to include additional lands that are adjacent to the site if the additional lands are:

(a) Located in Morrow County within township 4 north, range 24 east of the Willamette Meridian, sections 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21 and 22 and the northeast quarter section of section 27; and

(b) Approved as part of a master plan as provided in this section.

(2) After the major motor speedway is developed and used for sanctioned, premier, high speed automobile racing, the governing body of Morrow County may authorize inclusion of the following uses on the speedway destination site that are proposed in a master plan:

(a) Speedway supporting uses and facilities.

(b) Associated uses and facilities not previously authorized pursuant to ORS 197.433 (4).

(c) A speedway theme park not previously authorized pursuant to ORS 197.433 (4).

(d) A speedway destination resort, if the speedway destination resort is approved by Morrow County, subject to the requirements of ORS 197.435 to 197.467, except that the proposed speedway destination resort site need not be included on a map of eligible lands for destination resorts within the county otherwise required under ORS 197.455, but the proposed speedway destination resort site must meet the siting criteria of ORS 197.455.

(3) The Port of Morrow or its designee may apply to the governing body of Morrow County for approval to expand the site described in ORS 197.433 (1) or to amend the uses allowed on the speedway destination site by submission of a master plan as provided in this section. A master plan must:

(a) Set forth the discretionary approvals, if any, required for completion of the development specified in the plan;

(b) Identify the conditions, terms, restrictions and requirements for discretionary approvals;

(c) Establish a process for amending the plan;

(d) If the proposed development of the speedway destination site is to be constructed in phases, specify the dates on which each phase of phased construction is projected to begin and end;

(e) Except as otherwise provided in this section, comply with the Morrow County comprehensive plan and land use regulations in existence at the time of the application; and

(f) Identify proposed comprehensive plan amendments or zone changes that are necessary to authorize development of a speedway destination site and uses proposed as part of the plan.

(4) The governing body of Morrow County shall review a master plan and proposed changes to the acknowledged comprehensive plan and land use regulations that are necessary to implement a proposed master plan as provided in ORS 197.610 to 197.625 and may approve the master plan and the proposed changes if at the time of approval:

(a) The major motor speedway is used for sanctioned, premier, high speed automobile racing; and

(b) The master plan conforms to the requirements of this section and other applicable laws and specifies:

(A) The duration and phasing of development proposed by the plan.

(B) A description, including location, of the proposed uses on the site, including:

(i) The proposed changes to the major motor speedway;

(ii) The proposed associated uses and facilities;

(iii) The proposed speedway supporting uses and facilities;

(iv) A speedway destination resort;

(v) A speedway theme park;

(vi) Sewage works for the speedway destination site, including all facilities neces-

sary for collecting, pumping, treating and disposing of sewage;

(vii) Drainage works for the speedway destination site, including facilities necessary for collecting, pumping and disposing of storm and surface water;

(viii) Water supply works and service for the speedway destination site, including the facilities necessary for tapping natural sources of domestic and industrial water, treating and protecting the quality of the water and transmitting it to the site;

(ix) Public parks and recreation facilities, including land and facilities that are necessary for administering and maintaining the public parks, recreation facilities and recreation services;

(x) Public transportation, including public depots, public parking, storage and maintenance facilities and other equipment necessary for the transportation of users and patrons of the major motor speedway and their personal property; and

(xi) Public and private roads.

(C) A description, including location, of additional uses that are not specified in this section, if the additional uses are proposed and approved in accordance with applicable laws, statewide land use planning goals and the provisions of the comprehensive plan and land use regulations implementing the comprehensive plan.

(D) The density and intensity of proposed uses.

(E) A schedule and plan for obtaining local government review of permits and other authorizations required for the development of allowed uses.

(F) The parties responsible for providing speedway destination site infrastructure and services. [2007 c.819 §4]

Note: 197.431 to 197.434 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.432 Definitions for ORS 197.431 to 197.434. As used in ORS 197.431 to 197.434:

(1) "Associated uses and facilities" means:

(a) Speedway-related and accessory uses and facilities identified in the findings; and

(b) Road course garage units.

(2) "Findings" means the Morrow County Findings of Fact and Conclusions of Law, dated June 21, 2002, and September 24, 2003, in the matter of an application by the Port of Morrow for comprehensive plan and zoning amendments to allow the siting of a speedway and related facilities at the Port of Morrow.

(3) "Major motor speedway" means one or more race tracks including, at a minimum:

(a) An asphalt oval super speedway of at least seven-eighths mile with grandstand seating capacity of 20,000 or more; or

(b) An asphalt road course of at least two miles with grandstand seating capacity of 20,000 or more.

(4) "Premier, high speed automobile racing" means automobile racing that is projected to attract 20,000 or more spectators to a race.

(5) "Road course garage unit" means a facility consisting of garages and residential spaces not intended for overnight use.

(6) "Sanctioned" means subject to contractual agreements with one or more major professional automobile racing organizations that may include, but are not limited to:

(a) Champ Car;

(b) Indy Racing League (IRL);

(c) National Association for Stock Car Auto Racing, Inc. (NASCAR);

(d) World of Outlaws (WoO);

(e) National Hot Rod Association (NHRA);

(f) International Hot Rod Association (IHRA);

(g) Sports Car Club of America (SCCA);

(h) Grand American Road Racing Association (Grand Am);

(i) Automobile Club de l'Ouest (American Le Mans); and

(j) Fédération Internationale de l'Automobile (FIA).

(7) "Speedway destination resort" means a destination resort within the boundaries of the speedway destination site that is approved under ORS 197.431 and 197.435 to 197.467.

(8) "Speedway destination site" means a site containing a major motor speedway, associated uses and facilities and speedway supporting uses and facilities.

(9) "Speedway supporting uses and facilities" means transient lodging, restaurants, meeting facilities and other commercial uses limited to the types and levels of use necessary to meet the needs of users and patrons of a major motor speedway.

(10) "Speedway theme park" means an amusement park associated with a major motor speedway and based on a speedway theme that:

(a) Is developed and operated primarily for the purpose of entertaining users and patrons of the major motor speedway, but available, as well, to the general public; and

(b) Consists of a collection of entertainment uses and facilities commonly associated with outdoor fairs and theme parks:

(A) Including mechanical rides, games, go-cart tracks, miniature golf courses, BMX bicycle tracks, water parks and athletic fields; and

(B) Not including cinemas, bowling alleys, theaters, concert halls or similar recreational or entertainment uses commonly allowed inside urban growth boundaries.

(11) "Transient lodging" means a unit consisting of a room or a suite of rooms that is available for a period of occupancy that typically does not exceed 30 days and for which the lodging operator:

(a) Charges on a daily basis and does not collect more than six days in advance; and

(b) Provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy. [2005 c.842 §1; 2007 c.819 §1]

Note: See note under 197.431.

197.433 Development of major motor speedway. (1) On a site approved for development of a major motor speedway, pursuant to an exception to statewide land use planning goals relating to agricultural lands, public facilities and services and urbanization that was acknowledged before September 2, 2005, if the site is developed and used as a major motor speedway with sanctioned, premier, high speed automobile racing within five years after the county issues a certificate of occupancy for the major motor speedway, the governing body of Morrow County or its designee may authorize the ancillary development of transient lodging, associated uses and facilities and a speedway theme park that were not previously authorized under subsection (4) of this section:

(a) Without taking further exception to the statewide land use planning goals relating to agricultural lands, public facilities and services and urbanization.

(b) Primarily for the use of users and patrons of the major motor speedway but available, as well, to the general public.

(c) Without regard to the limitations on the size or occupancy of speedway-related and accessory uses and facilities specified in the findings.

(d) Without regard to use limitations specified in section H (10) of the June 21, 2002, findings for a multipurpose recreational facility.

(e) Without regard to the limitation on hours of operation specified in the findings for outdoor recreational facilities.

(2) The major motor speedway authorized in the findings and by this section may be developed:

(a) Without taking further exception to the statewide land use planning goals relating to agricultural lands, public facilities and services and urbanization.

(b) Without regard to the specific size, placement or configuration of the tracks specified in the findings.

(3) Subject to the requirements of ORS 197.610 to 197.625, notwithstanding the local process for review and approval of a proposal to amend the acknowledged comprehensive plan and land use regulations that is contained in an acknowledged comprehensive plan and land use regulations, the governing body of Morrow County may review and approve a proposal to make the changes to the acknowledged comprehensive plan and land use regulations to allow the uses authorized by this section on the site described in subsection (1) of this section through an expedited local review and approval process in which the final approval of the county may be granted after only one evidentiary hearing.

(4) Notwithstanding subsection (1) of this section, the governing body of Morrow County may approve the development, in conjunction with the development of the major motor speedway, but prior to the establishment of sanctioned, premier, high speed automobile racing at the major motor speedway, of up to 250 road course garage units, 100 units of transient lodging with an associated restaurant and public facilities necessary to support those uses.

(5) Impacts of a speedway destination site, adjacent residential development and transient lodging on the transportation system must be mitigated to the satisfaction of the Department of Transportation at the time of development. [2005 c.842 §2; 2007 c.819 §2]

Note: See note under 197.431.

197.434 Traffic impacts of speedway destination. (1) The private developer of the speedway destination site is financially responsible for addressing, through traffic infrastructure improvements and upgrades, adverse traffic impacts that cannot be adequately mitigated, in the judgment of road authorities, through the use of temporary traffic management measures.

(2) The private developer, or the organizer of a specific event or activity at the speedway destination site, is financially responsible for temporary traffic management measures required to mitigate the adverse traffic impacts of events or activities at the speedway destination site.

(3) Notwithstanding subsections (1) and (2) of this section, transportation infrastructure projects required by the establishment and use of the major motor speedway may receive funding from any source of moneys for transportation infrastructure projects. [2005 c.842 §3]

Note: See note under 197.431.

SITING OF DESTINATION RESORTS

197.435 Definitions for ORS 197.435 to 197.467. As used in ORS 197.435 to 197.467:

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

(2) "High value crop area" means an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The "high value crop area" designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise the requirements of an agricultural land goal or administrative rules interpreting the goal.

(3) "Map of eligible lands" means a map of the county adopted pursuant to ORS 197.455.

(4) "Open space" means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, lands preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

(5) "Overnight lodgings" means:

(a) With respect to lands not identified in paragraph (b) of this subsection, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(b) With respect to lands in eastern Oregon, as defined in ORS 321.805, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(6) "Self-contained development" means a development for which community sewer and water facilities are provided on-site and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

(7) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

(8) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities that are designed to and provide for the needs of visitors rather than year-round residents. [1987 c.886 §3; 1989 c.648 §52; 1993 c.590 §1; 2003 c.812 §1; 2005 c.22 §140]

197.440 Legislative findings. The Legislative Assembly finds that:

(1) It is the policy of this state to promote Oregon as a vacation destination and to encourage tourism as a valuable segment of our state's economy;

(2) There is a growing need to provide year-round destination resort accommodations to attract visitors and encourage them to stay longer. The establishment of destination resorts will provide jobs for Oregonians and contribute to the state's economic development;

(3) It is a difficult and costly process to site and establish destination resorts in rural areas of this state; and

(4) The siting of destination resort facilities is an issue of statewide concern. [1987 c.886 §2]

197.445 Destination resort criteria; phase-in requirements; annual accounting. A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets and parking areas.

(3) At least $7 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable overnight lodging units may be phased in as follows:

(a) On lands not described in paragraph (b) of this subsection:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, must be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under this paragraph.

(E) The development approval must provide for the construction of other required overnight lodging units within five years of the initial lot sales.

(b) On lands in eastern Oregon, as defined in ORS 321.805:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.

(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under this paragraph.

(F) If the developer of a resort guarantees the overnight lodging units required under subparagraphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth in subsection (7) of this section apply to a destination resort:

(a) On land that is not defined as agricultural or forest land under any statewide planning goal;

(b) On land where there has been an exception to any statewide planning goal on agricultural lands, forestlands, public facilities and services and urbanization; or

(c) On such secondary lands as the Land Conservation and Development Commission deems appropriate.

(7) The following standards apply to the provisions of subsection (6) of this section:

(a) The resort must be located on a site of 20 acres or more.

(b) At least $2 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must be provided.

(e) Residential uses must be limited to those necessary for the staff and management of the resort.

(f) The governing body of the county or its designee has reviewed the resort proposed under this subsection and has determined that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(g) The resort must be constructed and located so that it is not designed to attract highway traffic. Resorts may not use any manner of outdoor advertising signing except:

(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(B) On-site identification and directional signs.

(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

(9) When making a land use decision authorizing construction of a destination resort in eastern Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this section. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of this section.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in ORS 197.435. [1987 c.886 §4; 1993 c.590 §2; 2003 c.812 §2; 2005 c.22 §141; 2007 c.593 §1]

197.450 Siting without taking goal exception. In accordance with the provisions of ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a comprehensive plan may provide for the siting of a destination resort on rural lands without taking an exception to statewide planning goals relating to agricultural lands, forestlands, public facilities and services or urbanization. [1987 c.886 §5]

197.455 Siting of destination resorts; sites from which destination resort excluded. (1) A destination resort may be sited only on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

(b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

(B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof.

(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.

(e) In an especially sensitive big game habitat area:

(A) As determined by the State Department of Fish and Wildlife in July 1984, and in additional especially sensitive big game habitat areas designated by a county in an acknowledged comprehensive plan; or

(B) If the State Fish and Wildlife Commission amends the 1984 determination with respect to an entire county and the county amends its comprehensive plan to reflect the commission's subsequent determination, as designated in the acknowledged comprehensive plan.

(f) On a site in which the lands are predominantly classified as being in Fire Regime Condition Class 3, unless the county approves a wildfire protection plan that demonstrates the site can be developed without being at a high overall risk of fire.

(2) In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information and may be amended pursuant to ORS 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467. [1987 c.886 §6; 1993 c.590 §3; 1997 c.249 §57; 2003 c.812 §3; 2005 c.22 §142; 2005 c.205 §1; 2010 c.32 §1]

197.460 Compatibility with adjacent land uses; county measures; economic impact analysis; traffic impact analysis. A county shall ensure that a destination resort is compatible with the site and adjacent land uses through the following measures:

(1) Important natural features, including habitat of threatened or endangered species, streams, rivers and significant wetlands shall be retained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be retained. Alteration of important natural features, including placement of structures that maintain the overall values of the feature may be allowed.

(2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:

(a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers.

(b) Setbacks of structures and other improvements from adjacent land uses.

(3) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit an economic impact analysis of the proposed development that includes analysis of the projected impacts within the county and within cities whose urban growth boundaries are within the distance specified in this subsection.

(4) If the site is west of the summit of the Coast Range and within 10 miles of an urban growth boundary, or if the site is east of the summit of the Coast Range and within 25 miles of an urban growth boundary, the county shall require the applicant to submit a traffic impact analysis of the proposed development that includes measures to avoid or mitigate a proportionate share of adverse effects of transportation on state highways and other transportation facilities affected by the proposed development, including transportation facilities in the county and in cities whose urban growth boundaries are within the distance specified in this subsection. [1987 c.886 §7; 2010 c.32 §2]

197.462 Use of land excluded from destination resort. A portion of a tract that is excluded from the site of a destination resort pursuant to ORS 197.435 (7) shall not be used or operated in conjunction with the resort. Subject to this limitation, the use of the excluded property shall be governed by otherwise applicable law. [1993 c.590 §7]

197.465 Comprehensive plan implementing measures. An acknowledged comprehensive plan that allows for siting of a destination resort shall include implementing measures which:

(1) Map areas where a destination resort described in ORS 197.445 (1) to (5) is permitted pursuant to ORS 197.455;

(2) Limit uses and activities to those defined by ORS 197.435 and allowed by ORS 197.445; and

(3) Assure that developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding. [1987 c.886 §8]

197.467 Conservation easement to protect resource site. (1) If a tract to be used as a destination resort contains a resource site designated for protection in an acknowledged comprehensive plan pursuant to open spaces, scenic and historic areas and natural resource goals in an acknowledged comprehensive plan, that tract of land shall preserve that site by conservation easement sufficient to protect the resource values of the resource site as set forth in ORS 271.715 to 271.795.

(2) A conservation easement under this section shall be recorded with the property records of the tract on which the destination resort is sited. [1993 c.590 §5]

MOBILE HOME, MANUFACTURED DWELLING AND RECREATIONAL VEHICLE PARKS

197.475 Policy. The Legislative Assembly declares that it is the policy of this state to provide for mobile home or manufactured dwelling parks within all urban growth boundaries to allow persons and families a choice of residential settings. [1987 c.785 §3; 1989 c.648 §53]

197.480 Planning for parks; procedures; inventory. (1) Each city and county governing body shall provide, in accordance with urban growth management agreements, for mobile home or manufactured dwelling parks as an allowed use, by July 1, 1990, or by the next periodic review after January 1, 1988, whichever comes first:

(a) By zoning ordinance and by comprehensive plan designation on buildable lands within urban growth boundaries; and

(b) In areas planned and zoned for a residential density of six to 12 units per acre sufficient to accommodate the need established pursuant to subsections (2) and (3) of this section.

(2) A city or county shall establish a projection of need for mobile home or manufactured dwelling parks based on:

(a) Population projections;

(b) Household income levels;

(c) Housing market trends of the region; and

(d) An inventory of mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development.

(3) The inventory required by subsection (2)(d) and subsection (4) of this section shall establish the need for areas to be planned and zoned to accommodate the potential displacement of the inventoried mobile home or manufactured dwelling parks.

(4) Notwithstanding the provisions of subsection (1) of this section, a city or county within a metropolitan service district, established pursuant to ORS chapter 268, shall inventory the mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development no later than two years from September 27, 1987.

(5)(a) A city or county may establish clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks.

(b) If a city or county requires a hearing before approval of a mobile home or manufactured dwelling park, application of the criteria and standards adopted pursuant to paragraph (a) of this subsection shall be the sole issue to be determined at the hearing.

(c) No criteria or standards established under paragraph (a) of this subsection shall be adopted which would preclude the development of mobile home or manufactured dwelling parks within the intent of ORS 197.295 and 197.475 to 197.490. [1987 c.785 §4; 1989 c.648 §54]

197.485 Prohibition on restrictions of manufactured dwelling. (1) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, in a mobile home or manufactured dwelling park in a zone with a residential density of eight to 12 units per acre.

(2) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, on a buildable lot or parcel located outside urban growth boundaries or on a space in a mobile home or manufactured dwelling park, if the manufactured dwelling is being relocated due to the closure of a mobile home or manufactured dwelling park or a portion of a mobile home or manufactured dwelling park.

(3) A jurisdiction may impose reasonable safety and inspection requirements for homes that were not constructed in conformance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403). [1987 c.785 §5; 1989 c.648 §55; 2005 c.22 §143; 2005 c.826 §12; 2007 c.906 §10]

197.490 Restriction on establishment of park. (1) Except as provided by ORS 446.105, a mobile home or manufactured dwelling park shall not be established on land, within an urban growth boundary, which is planned or zoned for commercial or industrial use.

(2) Notwithstanding the provisions of subsection (1) of this section, if no other access is available, access to a mobile home or manufactured dwelling park may be provided through a commercial or industrial zone. [1987 c.785 §6; 1989 c.648 §56]

197.492 Definitions for ORS 197.492 and 197.493. As used in this section and ORS 197.493:

(1) "Manufactured dwelling park," "mobile home park" and "recreational vehicle" have the meaning given those terms in ORS 446.003.

(2) "Recreational vehicle park":

(a) Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:

(A) The renting of space and related facilities for a charge or fee; or

(B) The provision of space for free in connection with securing the patronage of a person.

(b) Does not mean:

(A) An area designated only for picnicking or overnight camping; or

(B) A manufactured dwelling park or mobile home park. [2005 c.619 §11]

Note: 197.492 and 197.493 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.493 Placement and occupancy of recreational vehicle. (1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:

(a) Located in a manufactured dwelling park, mobile home park or recreational vehicle park;

(b) Occupied as a residential dwelling; and

(c) Lawfully connected to water and electrical supply systems and a sewage disposal system.

(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle. [2005 c.619 §12]

Note: See note under 197.492.

MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT

197.505 Definitions for ORS 197.505 to 197.540. As used in ORS 197.505 to 197.540:

(1) "Public facilities" means those public facilities for which a public facilities plan is required under ORS 197.712.

(2) "Special district" refers to only those entities as defined in ORS 197.015 (19) that provide services for which public facilities plans are required. [1980 c.2 §2; 1991 c.839 §1; 1993 c.438 §4; 1995 c.463 §1; 1999 c.838 §1; 2005 c.22 §144; 2007 c.354 §29]

197.510 Legislative findings. The Legislative Assembly finds and declares that:

(1) The declaration of moratoria on construction and land development by cities, counties and special districts may have a negative effect not only on property owners, but also on the housing and economic development policies and goals of other local governments within the state, and therefore, is a matter of statewide concern.

(2) Such moratoria, particularly when limited in duration and scope, and adopted pursuant to growth management systems that further the statewide planning goals and local comprehensive plans, may be both necessary and desirable.

(3) Clear state standards should be established to ensure that:

(a) The need for moratoria is considered and documented;

(b) The impact on property owners, housing and economic development is minimized; and

(c) Necessary and properly enacted moratoria are not subjected to undue litigation. [1980 c.2 §1; 1991 c.839 §2; 1995 c.463 §2]

197.520 Manner of declaring moratorium. (1) No city, county or special district may adopt a moratorium on construction or land development unless it first:

(a) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium;

(b) Makes written findings justifying the need for the moratorium in the manner provided for in this section; and

(c) Holds a public hearing on the adoption of the moratorium and the findings which support the moratorium.

(2) For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of public facilities which would otherwise occur during the effective period of the moratorium. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

(a) Showing the extent of need beyond the estimated capacity of existing public facilities expected to result from new land development, including identification of any public facilities currently operating beyond capacity, and the portion of such capacity already committed to development;

(b) That the moratorium is reasonably limited to those areas of the city, county or special district where a shortage of key public facilities would otherwise occur; and

(c) That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining public facility capacity.

(3) A moratorium not based on a shortage of public facilities under subsection (2) of

this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information and shall include, but need not be limited to, findings:

(a) For urban or urbanizable land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city, county or special district are not unreasonably restricted by the adoption of the moratorium;

(C) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(D) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

(E) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

(b) For rural land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and

(D) That the city, county or special district proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

(4) No moratorium adopted under subsection (3)(a) of this section shall be effective for a period longer than 120 days, but such a moratorium may be extended provided the city, county or special district adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

(a) Verify the problem giving rise to the need for a moratorium still exists;

(b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and

(c) Set a specific duration for the renewal of the moratorium. No extension may be for a period longer than six months.

(5) Any city, county or special district considering an extension of a moratorium shall give the department at least 14 days' notice of the time and date of the public hearing on the extension. [1980 c.2 §3; 1991 c.839 §3; 1995 c.463 §3]

197.522 Local government to approve subdivision, partition or construction; conditions. A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through the imposition of reasonable conditions of approval. [1999 c.838 §4]

197.524 Local government to adopt moratorium or public facilities strategy following pattern or practice of delaying or stopping issuance of permits. (1) When a local government engages in a pattern or practice of delaying or stopping the issuance of permits, authorizations or approvals necessary for the subdivision or partitioning of, or construction on, any land, including delaying or stopping issuance based on a shortage of public facilities, the local government shall:

(a) Adopt a public facilities strategy under ORS 197.768; or

(b) Adopt a moratorium on construction or land development under ORS 197.505 to 197.540.

(2) The provisions of subsection (1) of this section do not apply to the delay or stopping of the issuance of permits, authorizations or approvals because they are inconsistent with the local government's comprehensive plan or land use regulations. [1999 c.838 §3]

197.530 Correction program; procedures. (1) A city, county or special district that adopts a moratorium on construction or land development in conformity with ORS 197.520 (1) and (2) shall within 60 days after the effective date of the moratorium adopt a program to correct the problem creating the moratorium. The program shall be presented at a public hearing. The city, county or special district shall give at least 14 days' advance notice to the Department of Land Conservation and Development of the time and date of the public hearing.

(2) No moratorium adopted under ORS 197.520 (2) shall be effective for a period longer than six months from the date on which the corrective program is adopted, but such a moratorium may be extended provided the city, county or special district adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

(a) Verify that the problem giving rise to the moratorium still exists;

(b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and

(c) Set a specific duration for the renewal of the moratorium.

(3) No single extension under subsection (2) of this section may be for a period longer than six months, and no moratorium shall be extended more than three times.

(4) Any city, county or special district considering an extension of a moratorium shall give the department at least 14 days' notice of the time and date of the public hearing on the extension. [1980 c.2 §4; 1991 c.839 §4]

197.540 Review by Land Use Board of Appeals. (1) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall review upon petition by a county, city or special district governing body or state agency or a person or group of persons whose interests are substantially affected, any moratorium on construction or land development or a corrective program alleged to have been adopted in violation of the provisions of ORS 197.505 to 197.540.

(2) If the board determines that a moratorium or corrective program was not adopted in compliance with the provisions of ORS 197.505 to 197.540, the board shall issue an order invalidating the moratorium.

(3) All review proceedings conducted by the Land Use Board of Appeals under subsection (1) of this section shall be based on the administrative record, if any, that is the subject of the review proceeding. The board shall not substitute its judgment for a finding solely of fact for which there is substantial evidence in the whole record.

(4) Notwithstanding any provision of ORS chapters 195, 196 and 197 to the contrary, the sole standard of review of a moratorium on construction or land development or a corrective program is under the provisions of this section, and such a moratorium shall not be reviewed for compliance with the statewide planning goals adopted under ORS chapters 195, 196 and 197.

(5) The review of a moratorium on construction or land development under subsection (1) of this section shall be the sole authority for review of such a moratorium, and there shall be no authority for review in the circuit courts of this state. [1980 c.2 §5; 1983 c.827 §45; 2001 c.672 §9]

197.550 [1995 s.s. c.3 §20; repealed by 1996 c.12 §14]

197.553 [1995 s.s. c.3 §19; repealed by 1996 c.12 §14]

197.556 [1995 s.s. c.3 §21; repealed by 1996 c.12 §14]

197.559 [1995 s.s. c.3 §23; repealed by 1996 c.12 §14]

197.562 [1995 s.s. c.3 §24; repealed by 1996 c.12 §14]

197.565 [1995 s.s. c.3 §22; repealed by 1996 c.12 §14]

197.568 [1995 s.s. c.3 §25; repealed by 1996 c.12 §14]

197.571 [1995 s.s. c.3 §26; repealed by 1996 c.12 §14]

197.574 [1995 s.s. c.3 §27; repealed by 1996 c.12 §14]

197.577 [1995 s.s. c.3 §28; repealed by 1996 c.12 §14]

197.581 [1995 s.s. c.3 §29; repealed by 1996 c.12 §14]

197.584 [1995 s.s. c.3 §30; repealed by 1996 c.12 §14]

197.587 [1995 s.s. c.3 §30a; 1997 c.800 §10; renumbered 267.334 in 1997]

197.590 [1995 s.s. c.3 §31; repealed by 1996 c.12 §14]

197.605 [1981 c.748 §3; repealed by 1983 c.827 §59]

POST-ACKNOWLEDGMENT PROCEDURES

197.610 Submission of proposed comprehensive plan or land use regulation changes to Department of Land Conservation and Development; rules. (1) Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.

(2) If a local government determines that emergency circumstances beyond the control of the local government require expedited

review, the local government shall submit the proposed changes as soon as practicable, but may submit the proposed changes after the applicable deadline.

(3) Submission of the proposed change must include all of the following materials:

(a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;

(c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the proposed change;

(d) The date set for the first evidentiary hearing;

(e) The form of notice or a draft of the notice to be provided under ORS 197.763, if applicable; and

(f) Any staff report on the proposed change or information describing when the staff report will be available, and how a copy of the staff report can be obtained.

(4) The director shall cause notice of the proposed change to the acknowledged comprehensive plan or the land use regulation to be provided to:

(a) Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and

(b) Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.

(5) When a local government determines that the land use statutes, statewide land use planning goals and administrative rules of the commission that implement either the statutes or the goals do not apply to a proposed change to the acknowledged comprehensive plan and the land use regulations, submission of the proposed change under this section is not required.

(6) If, after submitting the materials described in subsection (3) of this section, the proposed change is altered to such an extent that the materials submitted no longer reasonably describe the proposed change, the local government must notify the Department of Land Conservation and Development of the alterations to the proposed change and provide a summary of the alterations along with any alterations to the proposed text or map to the director at least 10 days before the final evidentiary hearing on the proposal. The director shall cause notice of the alterations to be given in the manner described in subsection (4) of this section. Circumstances requiring resubmission of a proposed change may include, but are not limited to, a change in the principal uses allowed under the proposed change or a significant change in the location at which the principal uses would be allowed, limited or prohibited.

(7) When the director determines that a proposed change to an acknowledged comprehensive plan or a land use regulation may not be in compliance with land use statutes or the statewide land use planning goals, including administrative rules implementing either the statutes or the goals, the department shall notify the local government of the concerns at least 15 days before the final evidentiary hearing, unless there is only one hearing or the proposed change has been modified to the extent that resubmission is required under subsection (6) of this section.

(8) Notwithstanding subsection (7) of this section, the department may provide advisory recommendations to the local government concerning the proposed change to the acknowledged comprehensive plan or land use regulation. [1981 c.748 §4; 1983 c.827 §7; 1985 c.565 §27; 1989 c.761 §20; 1999 c.622 §1; 2011 c.280 §1]

197.612 Comprehensive plan or land use regulation changes to conform plan or regulations to new requirement in statute, goal or rule. (1) Notwithstanding contrary provisions of state and local law, a local government that proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may take action to change the comprehensive plan or the land use regulation without holding a public hearing if:

(a) The local government gives notice to the Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615; and

(b) The department confirms in writing that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

(2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have appeared before the local government orally or in writing, a person that has not appeared may petition for review of the decision under

subsection (1) of this section solely to determine whether the only effect of the local decision is to conform the comprehensive plan or the land use regulation to the new requirements. [2011 c.280 §6]

197.615 Submission of adopted comprehensive plan or land use regulation changes to Department of Land Conservation and Development. (1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the decision to the Director of the Department of Land Conservation and Development within 20 days after making the decision.

(2) The submission must contain the following materials:

(a) A copy of the signed decision, the findings and the text of the change to the comprehensive plan or land use regulation;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;

(c) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under ORS 197.610 and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and

(d) A statement by the individual transmitting the submission, identifying the date of the decision and the date of the submission.

(3) The director shall cause notice of the decision and an explanation of the requirements for appealing the land use decision under ORS 197.830 to 197.845 to be provided to:

(a) Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and

(b) Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.

(4) On the same day the local government submits the decision to the director, the local government shall mail, or otherwise deliver, notice to persons that:

(a) Participated in the local government proceedings that led to the decision to adopt the change to the acknowledged comprehensive plan or the land use regulation; and

(b) Requested in writing that the local government give notice of the change to the acknowledged comprehensive plan or the land use regulation.

(5) The notice required by subsection (4) of this section must state how and where the materials described in subsection (2) of this section may be obtained and must:

(a) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(b) List the locations and times at which the public may review the decision and findings; and

(c) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845. [1981 c.748 §5; 1983 c.827 §9; 1999 c.255 §1; 2011 c.280 §2]

197.620 Appeal of certain comprehensive plan or land use regulation decision-making. (1) A decision to not adopt a legislative amendment or a new land use regulation is not appealable unless the amendment is necessary to address the requirements of a new or amended goal, rule or statute.

(2) Notwithstanding the requirements of ORS 197.830 (2) that a person have appeared before the local government orally or in writing to seek review of a land use decision, the Director of the Department of Land Conservation and Development or any other person may appeal the decision to the Land Use Board of Appeals if:

(a) The local government failed to submit all of the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced substantial rights of the Department of Land Conservation and Development or the person;

(b) Except as provided in subsection (3) of this section, the local government submitted the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline specified in ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Commission, whichever is applicable; or

(c) The decision differs from the proposed changes submitted under ORS 197.610 to such an extent that the materials submitted under ORS 197.610 do not reasonably describe the decision.

(3) Subsection (2)(b) of this section does not authorize an appeal if the local government cures an untimely submission of materials as provided in this subsection. A local government may cure the untimely submission of materials by either:

(a) Postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or

(b) Holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. Additionally, the local government shall provide notice of the postponement or record extension to the Department of Land Conservation and Development. [1981 c.748 §5a; 1983 c.827 §8; 1989 c.761 §21; 1991 c.612 §13a; 2011 c.280 §3]

197.625 Acknowledgment of comprehensive plan or land use regulation changes; application prior to acknowledgment. (1) A local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615 and either:

(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) If the local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive plan or the land use regulation, as modified, is deemed to be acknowledged upon the date the decision of the board or the decision of an appellate court becomes final.

(3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a land use regulation:

(a) The change is effective at the time specified by local government charter or ordinance; and

(b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615, the local government shall apply the change to land use decisions, expedited land divisions and limited land use decisions unless a stay is granted under ORS 197.845.

(4) Approval of a land use decision, expedited land division or limited land use decision that is subject to an effective but unacknowledged provision of a comprehensive plan or a land use regulation must include findings of compliance with land use statutes, statewide land use planning goals and administrative rules of the Land Conservation and Development Commission implementing the statutes or goals that apply to the decision and that the unacknowledged provision implements.

(5) If an effective but unacknowledged provision of a comprehensive plan or a land use regulation fails to gain acknowledgment, a permit or zone change approved, in whole or in part, on the basis of the change does not justify retention of the improvements that were authorized by the permit or zone change.

(6) If requested by a local government, the Director of the Department of Land Conservation and Development shall issue certification of the acknowledgment upon receipt of an affidavit from:

(a) The local government, attesting that the change to the acknowledged comprehensive plan or the land use regulation was accomplished in compliance with ORS 197.610 and 197.615; and

(b) The Land Use Board of Appeals, stating either:

(A) That no notice of appeal was filed within the 21 days allowed under ORS 197.830 (9); or

(B) The date the decision of the board or the decision of an appellate court affirming the change to the acknowledged comprehensive plan or the land use regulation became final.

(7) The board shall issue an affidavit for the purposes of subsection (6) of this section within five days after receiving a valid request from the local government. [1981 c.748 §5b; 1983 c.827 §10; 1987 c.729 §6; 1989 c.761 §23; 1991 c.612 §14; 1993 c.792 §44; 1995 c.595 §25; 1999 c.348 §9; 1999 c.621 §5; 2003 c.793 §3; 2011 c.280 §4]

197.626 Submission of land use decisions that expand urban growth boundary or designate urban or rural reserves. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

(2) A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651. [1999 c.622 §14; 2001 c.672 §10; 2003 c.793 §4; 2007 c.723 §7; 2011 c.469 §1]

197.628 Periodic review; policy; conditions that indicate need for periodic review. (1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services and urbanization.

(2) The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address economic development, needed housing, transportation, public facilities and services and urbanization.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The local government, commission or Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization. [1991 c.612 §2; 1999 c.622 §2; 2005 c.829 §1]

197.629 Schedule for periodic review; coordination. (1) The Land Conservation and Development Commission shall establish and maintain a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary to coordinate approved periodic review work programs and to account for special circumstances that from time to time arise, the schedule shall reflect the following timelines:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review; and

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(2) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(4) If the Land Conservation and Development Commission pays the costs of a local government that is not subject to subsection (1) of this section to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation Commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

(5) The Land Conservation and Development Commission may schedule periodic review for a local government earlier than provided in subsection (1) of this section if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(6) A city or county that is not required to complete periodic review under subsection (1) of this section may request periodic review by the commission.

(7) As used in this section, "metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c). [1999 c.622 §10; 2001 c.527 §3; 2005 c.829 §2]

197.630 [1981 c.748 §5c; repealed by 1983 c.827 §59]

197.631 Commission to amend regulations to facilitate periodic review. In order to use state and local periodic review resources most efficiently and effectively and to concentrate periodic review on adequate provision of economic development, needed housing, transportation, public facilities and services and urbanization, the Land Conservation and Development Commission shall adopt, amend or repeal the statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic review and to provide for compliance by local governments with those goals not described in ORS 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625. [1999 c.622 §11; 2005 c.829 §3]

197.633 Two phases of periodic review; rules; appeal of decision on work program; schedule for completion; extension of time on appeal. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review that address:

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of a work program; and

(e) The preparation, review and approval of work tasks, including:

(A) The amendment of an urban growth boundary.

(B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:

(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, "complies" has the

meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

(4) A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.

(5) The director:

(a) Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review.

(b) May approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.

(6) Except as provided in this subsection, the commission shall take action on the appeal or referral of a work task within 90 days of the appeal or referral. Action by the commission in response to an appeal from a decision of the director or a referral is a final order subject to judicial review in the manner provided in ORS 197.650 and 197.651. The commission may extend the time for taking action on the appeal or referral if the commission finds that:

(a) The appeal or referral is appropriate for mediation;

(b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or

(c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

(7) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. To promote the timely completion of periodic review, the commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs. [1991 c.612 §3; 1993 c.18 §38; 1999 c.622 §3; 2001 c.527 §1; 2005 c.829 §4; 2011 c.469 §2]

197.635 [1981 c.748 §6; repealed by 1983 c.827 §59]

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

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

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

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

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

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

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

(4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 §4; 1999 c.622 §4; 2001 c.527 §2; 2005 c.829 §5]

197.637 Department of Land Conservation and Development may request review by Housing and Community Services Department of certain local housing measures. (1) Upon request of the Department of Land Conservation and Development, the Housing and Community Services Department shall review the inventory and analysis of housing, and measures taken to address the housing need, required of certain local governments under ORS 197.296. The review shall address the likely effect of measures developed by a local government under ORS 197.296 (6) or (7) on the adequacy of the supply of buildable land and opportunities to satisfy needs identified under ORS 197.296 (3).

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Housing and Community Services Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.296. [1999 c.622 §12; 2001 c.908 §4]

197.638 Department of Land Conservation and Development may request review by Oregon Business Development Department of local inventory and analysis of industrial and commercial land. (1) Upon request of the Department of Land Conservation and Development, the Oregon Business Development Department shall review the inventory and analysis of industrial and commercial land, and measures taken to address the land needs, required of certain local governments under ORS 197.712. The review shall address the likely effect of measures developed by a local government on the adequacy of the supply of sites and opportunities to satisfy needs identified under ORS 197.712.

(2) The Land Conservation and Development Commission and the Director of the Department of Land Conservation and Development shall consider the review and any recommendations of the Oregon Business Development Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.712. [1999 c.622 §13]

197.639 State assistance teams; alternative coordination process; grant and technical assistance funding; advisory committee. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the Department of Land Conservation and Development may establish one or more state assistance teams made up of representatives of various agencies and local governments, utilize the Economic Revitalization Team established under ORS 284.555 or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review.

(3) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process and in complying with new statutory requirements or new land use planning goal or rule requirements adopted by the Land Conservation and Development Commission outside the periodic review process.

(4) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds.

(5) The commission shall establish an advisory committee composed, at a minimum, of representatives from the League of Oregon Cities, the Association of Oregon Counties, metropolitan service districts, the Special Districts Association of Oregon, land use planning public interest groups and developer interest groups. The advisory committee shall advise the commission and the department on the allocation of grants and technical assistance funding from General Fund sources and other issues assigned by the commission. [1991 c.612 §5; 2003 c.793 §5; 2005 c.829 §6]

197.640 [1981 c.748 §9; 1983 c.827 §11; 1987 c.69 §1; 1987 c.729 §7; 1987 c.856 §8; repealed by 1991 c.612 §23]

197.641 [1983 c.827 §11b; 1987 c.729 §8a; repealed by 1991 c.612 §23]

197.643 [1983 c.827 §11c; 1987 c.729 §9; repealed by 1991 c.612 §23]

197.644 Modification of work program; exclusive jurisdiction of Land Conservation and Development Commission. (1) The Director of the Department of Land Conservation and Development may authorize or direct a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks, result in a need for further review or revision; or

(d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) The Land Conservation and Development Commission shall have exclusive jurisdiction for review of the completed work tasks as set forth in ORS 197.628 to 197.651.

(3) Commission action pursuant to subsection (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650 and 197.651. [1991 c.612 §6; 1997 c.634 §1; 1999 c.622 §5; 2011 c.469 §3]

197.645 [1983 c.827 §11d; 1987 c.729 §10; repealed by 1991 c.612 §23]

197.646 Implementation of new requirement in goal, rule or statute; rules. (1) A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.

(2)(a) The Department of Land Conservation and Development shall notify local governments when a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals requires changes to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan.

(b) The Land Conservation and Development Commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, an acknowledged regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new requirement in a land use statute, if the legislation does not specify a time period for compliance; and

(B) A new requirement in a land use planning goal or rule adopted by the commission.

(3) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1991 c.612 §7; 2005 c.829 §7; 2007 c.71 §67; 2011 c.469 §4]

Note: 197.646, 197.649 and 197.650 were added to and made a part of ORS chapter 197 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

197.647 [1983 c.827 §11e; 1987 c.69 §2; 1987 c.729 §11; repealed by 1991 c.612 §23]

197.649 Fees for notice; rules. The Land Conservation and Development Commission may establish by rule fees to cover the cost of notice given to persons by the Director of the Department of Land Conservation and Development under ORS 197.610 (1) and 197.615 (3). [1983 c.827 §11f; 1985 c.565 §28; 1991 c.612 §15]

Note: See note under 197.646.

197.650 Appeal to Court of Appeals; standing. (1) A Land Conservation and Development Commission final order issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 may be appealed to the Court of Appeals by persons who participated in proceedings, if any, that led to issuance of the final order being appealed.

(2) Jurisdiction for judicial review of a final order of the commission issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is conferred upon the Court of Appeals. [1981 c.748 §10; 1983 c.827 §52; 1989 c.761 §8; 1991 c.612 §16; 1997 c.247 §1; 1999 c.622 §7; 2009 c.606 §5; 2009 c.873 §13a; 2011 c.469 §5]

Note: See note under 197.646.

197.651 Appeal to Court of Appeals for judicial review of final order of Land Conservation and Development Commission. (1) Judicial review of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 is as provided in subsections (3) to (12) of this section.

(2) Judicial review of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

(3) A proceeding for judicial review under this section may be instituted by filing a petition in the Court of Appeals. The petition

must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

(6) Within 21 days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(8) The Court of Appeals shall:

(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than 49 days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

(b) Set forth in writing and provide to the parties a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

(c) Consider, in making a determination under paragraph (b) of this subsection:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(9) The court:

(a) Shall limit judicial review of an order reviewed under this section to the record.

(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

(b) Unconstitutional.

(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

(11) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days. [2007 c.723 §9; 2011 c.469 §6]

COLLABORATIVE REGIONAL PROBLEM SOLVING

197.652 Regional problem-solving process. (1) At the request of a county and at least one other local government in a region, the Department of Land Conservation and Development, other state agencies, as defined in ORS 171.133, metropolitan planning organizations, special districts and advisory committees on transportation may participate with the local governments in a collaborative regional problem-solving process.

(2) If requested to participate, the department shall assist the county with the process and encourage regional efforts to resolve land use planning problems using the authorities described in ORS 197.652 to 197.658.

(3) The county, in cooperation with the other local governments, shall identify the land use planning problems to be addressed and the participants whose actions are nec-

essary to resolve the land use planning problems.

(4) The county shall submit a proposed work scope and a proposed list of participants as a proposal to the Land Conservation and Development Commission for review. The commission shall review:

(a) The proposed work scope to determine whether it can reasonably be completed within the time allowed;

(b) The proposed participant list to determine whether it includes, at a minimum, all local governments that will need to amend a comprehensive plan provision or a land use regulation, or adopt a new provision or regulation, in order to resolve the land use planning problems identified in the work scope; and

(c) The proposed work scope and the proposed participant list for consistency.

(5) A county may initiate amendments of a comprehensive plan or land use regulation under ORS 197.652 to 197.658 only if the commission approves the work scope, the list of participants and a schedule for completion of the process. The schedule for completion of the process may:

(a) Not exceed three years except as provided in paragraph (b) of this subsection.

(b) Be extended by the commission for up to one year for good cause shown.

(6) The decision of a county to submit a proposal under this section, and the decision of the commission to approve a proposal, are not final actions subject to judicial review.

(7) If the commission approves a proposal under this section, the county must periodically report on the progress in carrying out the proposal, as specified by the commission.

(8) For purposes of ORS 197.654 and 197.656, the participants in a collaborative regional problem-solving process include all participants on the list of participants approved by the commission unless the commission subsequently approves the addition or removal of a participant. [1996 c.6 §3; 1997 c.365 §1; 2009 c.873 §8]

197.654 Regional problem-solving goals, actions and agreements; implementation. (1) After the Land Conservation and Development Commission approves a proposal for regional problem-solving under ORS 197.652, the participants shall develop proposed actions to resolve the problems identified in the work scope. The participants must agree to:

(a) Regional goals that describe how the region intends to resolve each regional problem described in the work scope;

(b) Actions necessary to achieve the regional goals, including changes to comprehensive plans or land use regulations;

(c) Measurable indicators of performance and a system for monitoring progress toward achievement of the regional goals;

(d) Incentives and disincentives to encourage successful implementation of the actions to achieve the regional goals;

(e) If the regional goals involve the management of an urban growth boundary, actions to coordinate the planning and provision of water, sewer and transportation facilities in the region; and

(f) A process for correction of actions if monitoring indicates that the actions are not achieving the regional goals.

(2) A decision by a participant to enter into a regional problem-solving agreement under ORS 197.652 to 197.658 is not a final land use decision. However, a regional problem-solving agreement is not final and binding until:

(a) All local governments that are participants have adopted the provisions of the comprehensive plans or land use regulations contemplated in the agreement; and

(b) The commission has approved the comprehensive plan provisions and land use regulations as provided under ORS 197.656.

(3) Changes to provisions of comprehensive plans and land use regulations adopted to implement a regional problem-solving agreement take effect 60 days after the commission notifies all participants that the commission has approved all of the changes. [1996 c.6 §4; 2009 c.873 §9]

197.656 Commission approval of comprehensive plans not in compliance with goals; written statement of disapproval; participation by state agencies; use of resource lands; rules. (1) After the adoption of changes to comprehensive plans and land use regulations to implement a regional problem-solving agreement under ORS 197.652 to 197.658, the local governments that are participants shall submit the changes to the Land Conservation and Development Commission for review in the manner set forth in this section.

(2) Following the procedures set forth in this subsection, the commission may approve changes to comprehensive plans and land use regulations that do not fully comply with the statewide land use planning goals, without taking an exception under ORS 197.732, upon a determination that the changes:

(a) Conform, on the whole, with the purposes of the goals, and any failure to meet individual goal requirements is technical or minor in nature;

(b) Are needed to achieve the regional goals specified by the participants; and

(c) In combination with other actions agreed upon by the participants, are reasonably likely to achieve the regional goals.

(3) The commission:

(a) Shall review changes to the comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658 pursuant to the procedures set forth in this section and ORS 197.659.

(b) Has exclusive jurisdiction for review of changes to comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658.

(4) A participant in the regional problem-solving process or a person who participated in the proceedings leading to the adoption of changes to the comprehensive plans or land use regulations may not raise an issue on review before the commission that was not raised in the local proceedings for adoption of the changes to the plans or regulations.

(5) If the commission disapproves changes to the comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658, the commission shall issue a written statement describing the reasons for the disapproval and suggesting alternative methods for accomplishing the goals on a timely basis.

(6) If, in order to resolve regional land use problems, the participants in a collaborative regional problem-solving process decide to devote agricultural land or forestland, as defined in the statewide planning goals, to uses not authorized by those goals, the participants shall choose land that is not part of the region's commercial agricultural or forestland base, or take an exception to those goals pursuant to ORS 197.732. To identify land that is not part of the region's commercial agricultural or forestland base, the participants shall consider the recommendation of a committee of persons appointed by the affected county, with expertise in appropriate fields, including but not limited to farmers, ranchers, foresters and soils scientists and representatives of the State Department of Agriculture, the State Forestry Department and the Department of Land Conservation and Development.

(7) The Governor may require all appropriate state agencies to participate in the collaborative regional problem-solving process.

(8) The commission may adopt rules to establish additional procedural and substantive requirements for review of changes to comprehensive plans and land use regulations adopted by local governments to implement a regional problem-solving agreement under ORS 197.652 to 197.658. [1996 c.6 §5; 2001 c.672 §11; 2009 c.873 §10]

197.658 Modifying local work plan. In addition to the provisions of ORS 197.644, the Land Conservation and Development Commission may modify an approved work program when a local government has agreed to participate in a collaborative regional problem-solving process pursuant to ORS 197.654 and 197.656. [1996 c.6 §6]

197.659 Commission approval of certain changes in comprehensive plans or land use regulations. (1) The Land Conservation and Development Commission shall grant, deny or remand approval of proposed changes to a comprehensive plan or land use regulations adopted pursuant to ORS 197.652 to 197.658 or 215.788 to 215.794 within 120 days after the date that the local government submits the proposed changes.

(2) The Department of Land Conservation and Development shall prepare a report stating whether the proposed changes comply with applicable statutes, goals and commission rules. The department shall provide a reasonable opportunity for persons to prepare and submit written comments or objections to the report; however a person may not:

(a) Submit written comments or objections to the report unless the person participated orally or in writing in the local government proceedings leading to the adoption of the proposed changes.

(b) Produce new evidence.

(3) After reviewing the proposed changes, the report and any written comments and objections to the report, the commission shall prepare a proposed final order. The commission shall afford the local government and persons who submitted written comments or objections to the report a reasonable opportunity to file written exceptions to the proposed final order. If timely exceptions are not filed, the proposed order becomes final.

(4) The commission's review under this section is confined to the record of proceedings before the local government, the report of the department and any comments, objections and exceptions filed under subsection (2) or (3) of this section and the proposed final order of the commission, including any responses to exceptions. The commission may entertain oral argument from the department and from persons who filed exceptions, and may consider new issues

raised by its review. The commission may not allow additional evidence, argument or testimony that could have been presented to the local government but was not presented.

(5) A commission order granting, denying or remanding proposed changes must include a clear statement of findings that sets forth the basis for the approval, denial or remand, including:

(a) Identifying the statutes, goals and rules applicable to the proposed changes; and

(b) Supporting the determinations of compliance and noncompliance.

(6) A commission order granting approval may be limited to an identified geographic area described in the order if:

(a) The identified geographic area is the only area that is the subject of the proposed changes; or

(b) Specific geographic areas do not comply with the applicable statutes, goals or rules, and the requirements are not technical or minor in nature.

(7) The commission may issue a limited approval order if a previously issued approval order is reversed or remanded by an appellate court. The limited approval order may deny approval of that part of the comprehensive plan or land use regulations that the court found not in compliance with the applicable statutes, goals or rules and grant approval of other parts of the proposed changes.

(8) A limited approval order is an approval for all purposes and is a final order for purposes of judicial review with respect to the approved geographic area. A limited order may be adopted in conjunction with a remand. [2009 c.873 §13]

SPECIAL RESIDENCES

197.660 Definitions. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

(1) "Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [1989 c.564 §2; 1991 c.801 §6; 2001 c.900 §47; 2005 c.22 §145; 2009 c.595 §174]

197.663 Legislative findings. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for persons with disabilities and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area. [1989 c.564 §3; 2007 c.70 §54]

197.665 Locations of residential homes. (1) Residential homes shall be a permitted use in:

(a) Any residential zone, including a residential zone which allows a single-family dwelling; and

(b) Any commercial zone which allows a single-family dwelling.

(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section

that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263 (9). [1989 c.564 §4; 2001 c.704 §5]

197.667 Location of residential facility; application and supporting documentation. (1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility. [1989 c.564 §5; 1991 c.801 §8; 2001 c.900 §48; 2003 c.86 §15]

197.670 Zoning requirements and prohibitions for residential homes and residential facilities. (1) As of October 3, 1989, no city or county shall:

(a) Deny an application for the siting of a residential home in a residential or commercial zone described in ORS 197.665 (1).

(b) Deny an application for the siting of a residential facility in a zone where multifamily residential uses are allowed, unless the city or county has adopted a siting procedure which implements the requirements of ORS 197.667.

(2) Every city and county shall amend its zoning ordinance to comply with ORS 197.660 to 197.667 as part of periodic land use plan review occurring after January 1, 1990. Nothing in this section prohibits a city or county from amending its zoning ordinance prior to periodic review. [1989 c.564 §6]

197.675 [1989 c.964 §4; repealed by 2001 c.613 §1]

FARMWORKER HOUSING

197.677 Policy. In that the agricultural workers in this state benefit the social and economic welfare of all of the people in Oregon by their unceasing efforts to bring a bountiful crop to market, the Legislative Assembly declares that it is the policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards. To accomplish this objective in the interest of all of the people in this state, it is necessary that:

(1) Every state and local government agency that has powers, functions or duties with respect to housing, land use or enforcing health, safety or welfare standards, under this or any other law, shall exercise its powers, functions or duties consistently with the state policy declared by ORS 197.307, 197.312, 197.677 to 197.685, 215.213, 215.277, 215.283, 215.284 and 455.380 and in such manner as will facilitate sustained progress in attaining the objectives established;

(2) Every state and local government agency that finds farmworker activities within the scope of its jurisdiction must make every effort to alleviate insanitary, unsafe and overcrowded accommodations;

(3) Special efforts should be directed toward mitigating hazards to families and children; and

(4) All accommodations must provide for the rights of free association to farmworkers in their places of accommodation. [1989 c.964 §2; 2001 c.613 §11]

197.680 Legislative findings. The Legislative Assembly finds that:

(1) This state has a large stock of existing farmworker housing that does not meet minimum health and safety standards and is in need of rehabilitation;

(2) It is not feasible to rehabilitate much of the existing farmworker housing stock to meet building code standards;

(3) In order to assure that minimum standards are met in all farmworker housing in this state, certain interim measures must be taken; and

(4) Limited rehabilitation, outside city boundaries, must be allowed to a lesser standard than that set forth in the existing building codes. [1989 c.964 §3; 2001 c.613 §12]

197.685 Location of farmworker housing; approval standards. (1) The availability of decent, safe and sanitary housing opportunities for farmworkers is a matter of statewide concern.

(2) Farmworker housing within the rural area of a county shall be permitted in a zone or zones in rural centers and areas committed to nonresource uses.

(3) Any approval standards, special conditions and procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. [1989 c.964 §5; 2001 c.613 §4]

197.705 [1973 c.482 §1; repealed by 1977 c.665 §24]

ECONOMIC DEVELOPMENT

(Temporary provisions relating to transportation planning rule)

Note: Sections 1 to 4, chapter 432, Oregon Laws 2011, provide:

Sec. 1. (1) The Legislative Assembly finds that the growth and economic development of this state requires an appropriate balance between economic development and transportation planning.

(2) The Legislative Assembly finds that the Oregon Transportation Commission and the Land Conservation and Development Commission have initiated a joint review of the transportation planning rule, the Oregon Highway Plan and the associated guidance documents. [2011 c.432 §1]

Sec. 2. (1) The Oregon Transportation Commission and the Land Conservation and Development Commission shall jointly review the administrative rules, plans and associated guidance documents to better balance economic development and the efficiency of urban development with consideration of development of the transportation infrastructure in consultation with local governments and transportation and economic development stakeholders.

(2) The commissions shall consider revisions to the transportation planning rule (OAR 660-012), the Oregon Highway Plan and the associated guidance documents that streamline, simplify and clarify the requirements in the following areas:

(a) The planning requirements placed on zone changes that are consistent with locally adopted comprehensive plans.

(b) The development of practical methods that may be used to mitigate the transportation impacts of economic development.

(c) The planning requirements placed on zone changes within urban centers.

(d) The analysis required for transportation impacts of urban growth boundary changes.

(e) Clarification of planning periods and requirements for update of local transportation system plans.

(f) Thresholds for required analysis of transportation impacts of project proposals.

(g) The use of average trip generation rates.

(h) The development of mobility standards, including but not limited to volume to capacity ratios or corridor or area mobility standards.

(i) The analysis required for transportation impacts of comprehensive plan amendments that require improvements to avoid further degradation of transportation facility performance by the time of development. [2011 c.432 §2]

Sec. 3. (1) The Land Conservation and Development Commission shall adopt revisions of the transportation planning rule consistent with the results of the review of the rule required in section 2 of this 2011 Act prior to January 1, 2012.

(2) The Oregon Transportation Commission shall adopt revisions to the Oregon Highway Plan consistent with the results of the review required in section 2 of this 2011 Act prior to January 1, 2012. [2011 c.432 §3]

Sec. 4. The Oregon Transportation Commission and the Land Conservation and Development Commission shall report to the Legislative Assembly on the review of the transportation planning rule, the Oregon Highway Plan and the associated guidance documents and on the actions taken prior to February 1, 2012. [2011 c.432 §4]

197.707 Legislative intent. It was the intent of the Legislative Assembly in enacting ORS chapters 195, 196, 197, 215 and 227 not to prohibit, deter, delay or increase the cost of appropriate development, but to enhance economic development and opportunity for the benefit of all citizens. [1983 c.827 §16]

197.710 [1973 c.482 §3; repealed by 1977 c.665 §24]

197.712 Commission duties; comprehensive plan provisions; public facility plans; state agency coordination plans; compliance deadline; rules. (1) In addition to the findings and policies set forth in ORS 197.005, 197.010 and 215.243, the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.

(2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the Land Conservation and Development Commission shall implement all of the following:

(a) Comprehensive plans shall include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends.

(b) Comprehensive plans shall contain policies concerning the economic development opportunities in the community.

(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.

(d) Comprehensive plans and land use regulations shall provide for compatible uses on or near sites zoned for specific industrial and commercial uses.

(e) A city or county shall develop and adopt a public facility plan for areas within

an urban growth boundary containing a population greater than 2,500 persons. The public facility plan shall include rough cost estimates for public projects needed to provide sewer, water and transportation for the land uses contemplated in the comprehensive plan and land use regulations. Project timing and financing provisions of public facility plans shall not be considered land use decisions.

(f) In accordance with ORS 197.180, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties. In addition, state agencies that issue permits affecting land use shall identify in their coordination programs how they will coordinate permit issuance with other state agencies and cities and counties.

(g) Local governments shall provide:

(A) Reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land base; and

(B) Reasonable opportunities for urban residential, commercial and industrial needs over time through changes to urban growth boundaries.

(3) A comprehensive plan and land use regulations shall be in compliance with this section by the first periodic review of that plan and regulations. [1983 c.827 §17; 1991 c.612 §17]

197.713 Industrial development on industrial lands outside urban growth boundaries; exceptions. (1) Notwithstanding statewide land use planning goals relating to urbanization or to public facilities and services, a county or its designee may authorize:

(a) Industrial development, including accessory uses subordinate to the industrial development, in buildings of any size and type, subject to the permit approval process described in ORS 215.402 to 215.438 and to applicable building codes, in an area planned and zoned for industrial use on January 1, 2004, subject to the territorial limits described in subsections (2) and (3) of this section.

(b) On-site sewer facilities to serve the industrial development authorized under this section, including accessory uses subordinate to the industrial development.

(2) Subject to subsection (3) of this section, a county or its designee may consider the following land for industrial development under this section:

(a) Land more than three miles outside the urban growth boundary of every city with a population of 20,000 individuals or more; and

(b) Land outside the urban growth boundary of every city with a population of fewer than 20,000 individuals.

(3) A county or its designee may not authorize industrial development under this section on land within the Willamette Valley as defined in ORS 215.010.

(4) A county or its designee may not authorize under this section retail, commercial or residential development in the area zoned for industrial use. [2003 c.688 §1; 2005 c.666 §1]

Note: 197.713 and 197.714 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.714 Cooperation of county and city concerning industrial development. (1) Notwithstanding the authority granted in ORS 197.713 to allow industrial development, including accessory uses subordinate to the industrial development, in areas zoned for industrial use, when a county or its designee considers action under ORS 197.713 (1) for land within 10 miles of the urban growth boundary of a city, the county or its designee shall give notice to the city at least 21 days prior to taking action.

(2) If the city objects to the authorization of industrial development under ORS 197.713, the city and county shall negotiate to establish conditions on the industrial development or changes in the development necessary to mitigate concerns raised by the city's objection. [2003 c.688 §2]

Note: See note under 197.713.

197.715 [1973 c.482 §2; repealed by 1977 c.665 §24]

197.717 Technical assistance by state agencies; information from Oregon Business Development Department; model ordinances; rural economic development. (1) State agencies shall provide technical assistance to local governments in:

(a) Planning and zoning land adequate in amount, size, topography, transportation access and surrounding land use and public facilities for the special needs of various industrial and commercial uses;

(b) Developing public facility plans; and

(c) Streamlining local permit procedures.

(2) The Oregon Business Development Department shall provide a local government with "state and national trend" information to assist in compliance with ORS 197.712 (2)(a).

(3) The Land Conservation and Development Commission shall develop model ordinances to assist local governments in streamlining local permit procedures.

(4) The Department of Land Conservation and Development and the Oregon Business Development Department shall establish a joint program to assist rural communities with economic and community development services. The assistance shall include, but not be limited to, grants, loans, model ordinances and technical assistance. The purposes of the assistance are to remove obstacles to economic and community development and to facilitate that development. The departments shall give priority to communities with high rates of unemployment. [1983 c.827 §18; 1995 s.s. c.3 §36h; 1996 c.6 §10]

197.719 Industrial use of abandoned or diminished mill sites; amendment of comprehensive plans and land use regulations; sewer facilities. (1) As used in this section, "abandoned or diminished mill site" means a mill, plant or other facility engaged in the processing or manufacturing of wood products, including sawmills and facilities for the production of plywood, veneer, hardboard, panel products, pulp and paper, that:

(a) Is located outside of urban growth boundaries;

(b) Was closed after January 1, 1980, or has been operating at less than 25 percent of capacity since January 1, 2003; and

(c) Contains or contained permanent buildings used in the production or manufacturing of wood products.

(2) Notwithstanding statewide land use planning goals protecting agricultural lands or forestlands or administrative rules implementing those goals, the governing body of a county may amend the county's comprehensive plan and land use regulations to allow an abandoned or diminished mill site to be zoned for industrial use.

(3) Notwithstanding a statewide land use planning goal relating to urbanization or administrative rules implementing that goal, the governing body of a county may amend the county's comprehensive plan and land use regulations to allow an abandoned or diminished mill site to be zoned for any level of industrial use.

(4) Notwithstanding a statewide land use planning goal relating to public facilities and services or administrative rules implementing that goal, the governing body of a county or its designee may approve:

(a) The extension of sewer facilities to lands that on June 10, 2003, are zoned for industrial use and that contain an abandoned or diminished mill site. The sewer facilities may serve only industrial uses authorized for the mill site and contiguous lands zoned for industrial use.

(b) The extension of sewer facilities to an abandoned or diminished mill site that is rezoned for industrial use under this section only as necessary to serve industrial uses authorized for the mill site.

(c) The establishment of on-site sewer facilities to serve an area that on June 10, 2003, is zoned for industrial use and that contains an abandoned or diminished mill site or to serve an abandoned or diminished mill site that is rezoned for industrial use under this section. The sewer facilities may serve only industrial uses authorized for the mill site and contiguous lands zoned for industrial use.

(5)(a) A local government, as defined in ORS 174.116, may not authorize a connection to any portion of a sewer facility located between an urban growth boundary or the boundary of an unincorporated community and the boundary of the mill site or the industrial zone containing the mill site, except as provided under a statewide land use planning goal relating to public facilities and services or under ORS 197.732.

(b) Sewer facilities approved under subsection (4) of this section shall be limited in size to meet the needs of authorized industrial uses and may not provide service to retail, commercial or residential development, except as provided under a statewide land use planning goal relating to public facilities and services or under ORS 197.732. The presence of the sewer facilities may not be used to justify an exception to statewide land use planning goals protecting agricultural lands or forestlands or relating to urbanization.

(6)(a) The governing body of a county or its designee shall determine the boundary of an abandoned or diminished mill site. For an abandoned or diminished mill site that is rezoned for industrial use under this section, land within the boundary of the mill site may include only those areas that were improved for the processing or manufacturing of wood products.

(b) For an abandoned or diminished mill site subject to subsection (2), (3) or (4) of this section, the governing body of a city or county or its designee may approve a permit, as defined in ORS 215.402 or 227.160, only for industrial development and accessory uses subordinate to such development on the mill site. The governing body or its designee may not approve a permit for retail, commercial or residential development on the mill site.

(7) For land that on June 10, 2003, is zoned under statewide land use planning

goals protecting agricultural lands or forestlands and that is rezoned for industrial use under subsections (2) and (3) of this section, the governing body of the county or its designee may not later rezone the land for retail, commercial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732. [2003 c.252 §2; 2003 c.688 §3]

197.722 Definitions for ORS 197.722 to 197.728. As used in ORS 197.722 to 197.728:

(1) "Industrial use" means employment activities, including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010.

(2) "Regionally significant industrial area" means an area planned and zoned for industrial use that:

(a) Contains vacant sites, including brownfields, that are suitable for the location of new industrial uses or the expansion of existing industrial uses and that collectively can provide significant additional employment in the region;

(b) Has site characteristics that give the area significant competitive advantages that are difficult or impossible to replicate in the region;

(c) Has superior access to transportation and freight infrastructure, including, but not limited to, rail, port, airport, multimodal freight or transshipment facilities, and other major transportation facilities or routes; and

(d) Is located in close proximity to major labor markets. [2011 c.564 §6]

Note: 197.722 to 197.728 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

197.723 Designation of regionally significant industrial areas; rules. (1) Within three years after June 28, 2011, in cooperation with local governments and private industry, the Economic Recovery Review Council, by rule, shall designate at least five and not more than 15 regionally significant industrial areas. The council shall base the designation of regionally significant industrial areas on the criteria in the definition of "regionally significant industrial area" and the judgment of the council concerning the relative importance of the areas in terms of potential, long-term job creation.

(2) A local government may nominate a regionally significant industrial area for designation by the council.

(3) An area containing multiple sites certified by the Oregon Business Development Department as ready for development within six months or less is eligible for designation by the council if the area is a regionally significant industrial area.

(4) In addition to demonstrating compliance with other provisions of law, including, but not limited to, a statewide land use planning goal concerning economic development and rules implementing the goal, the future employment potential of a regionally significant industrial area shall be protected from conflicting development in the following ways:

(a) A local government may not adopt a provision of a comprehensive plan or land use regulation that prevents industrial uses within the area.

(b) A local government may not adopt a provision of a comprehensive plan or land use regulation that allows new nonindustrial uses within the area that conflict with existing or planned industrial uses.

(c) A local government may not decrease the land area planned or zoned for industrial uses within the regionally significant industrial area.

(d) A local government may adopt a provision of a comprehensive plan or land use regulation, including development standards or overlay zones, that restricts the type or extent of current or future industrial uses within the area, but only if the local government mitigates at the same time the effect of the new provision by:

(A) Clearly maintaining or increasing the industrial employment potential of the area; and

(B) Clearly maintaining the important site characteristics and functions that led to the designation of the site as a regionally significant industrial area.

(5) Subsection (4) of this section does not apply to a provision of a comprehensive plan or land use regulation that is necessary:

(a) To protect public health or safety; or

(b) To implement federal law.

(6) If 50 percent of the developable land within a regionally significant industrial area has not been developed within 10 years after designation of the area, the council shall remove the designation, unless landowners representing a majority of the land within the area request that the designation be continued.

(7) Within a regionally significant industrial area, a new industrial use or the expansion of an existing industrial use is eligible for an expedited industrial land use permit issued under ORS 197.724 if the new or expanded use does not require a change to the acknowledged comprehensive plan or land use regulations.

(8) In addition to other criteria for distribution of available funds, the Oregon Infrastructure Finance Authority and the Oregon Transportation Commission may consider the designation of an area as a regionally significant industrial area in prioritizing funding for transportation and other public infrastructure.

(9) ORS 197.722 to 197.728 do not apply to land in the Willamette River Greenway Plan boundary between river mile 1 and river mile 11. [2011 c.564 §7]

Note: See note under 197.722.

197.724 Review of application for land use permit within regionally significant industrial area. (1) An applicant for a new industrial use or the expansion of an existing industrial use located within a regionally significant industrial area may request that an application for a land use permit be reviewed as an application for an expedited industrial land use permit under this section if the proposed use does not require:

(a) An exception taken under ORS 197.732 to a statewide land use planning goal;

(b) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the new or expanded industrial use would occur; or

(c) A federal environmental impact statement under the National Environmental Policy Act.

(2) If the applicant makes a request that complies with subsection (1) of this section, the local government shall review the applications for land use permits for the proposed industrial use by applying the standards and criteria that otherwise apply to the review and by using the procedures set forth for review of an expedited land division in ORS 197.365 and 197.370. [2011 c.564 §8]

Note: See note under 197.722.

197.725 [1973 c.482 §4; repealed by 1977 c.665 §24]

197.726 Jurisdiction on appeal; standing. (1) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects of decisions or actions taken under ORS 197.722 to 197.728.

(2) An appeal of a decision on an application for an expedited industrial land use permit made under ORS 197.724 may be made in the manner set forth in ORS 197.375 for appeal of a decision on an expedited land division. Notwithstanding ORS 197.375:

(a) The applicant and a person who filed written comments in the time period established under ORS 197.365 may file an appeal;

(b) If an appeal is filed, the referee shall hold a hearing on the appeal; and

(c) The referee shall issue a written decision within 56 days after the appeal was filed.

(3) A party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the manner provided for review of final orders of the Land Use Board of Appeals in ORS 197.850 and 197.855. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds that:

(a) The local government's decision clearly does not concern an application for an expedited industrial land use permit as described in ORS 197.724 and the appellant raised this issue in proceedings before the referee;

(b) The referee's decision contains a clear, material error of fact based on the record, and the appellant raised the issue in proceedings before the referee;

(c) The referee's decision contains a clear, material error of law, giving deference to any interpretations of law by the referee, and the appellant raised the issue in proceedings before the referee; or

(d) The decision of the local government or the referee is unconstitutional. [2011 c.564 §9]

Note: See note under 197.722.

197.727 Fee for review. Each city and county with land use jurisdiction within a regionally significant industrial area designated by the Economic Recovery Review Council may establish a fee for review of an application for an expedited industrial land use permit. The fee must be set at a level estimated to recover the full cost of processing an application, including the cost of appeals to a referee under ORS 197.726, based on the estimated cost of the use proposed in the application. [2011 c.564 §10]

Note: See note under 197.722.

197.728 Rules. The Land Conservation and Development Commission shall administer regionally significant industrial areas and may adopt rules as necessary to implement ORS 197.722 to 197.728. [2011 c.564 §11]

Note: See note under 197.722.

(Temporary provisions relating to industrial development projects of state significance)

Note: Sections 1, 2, 3, 4, 5, 12 and 13, chapter 564, Oregon Laws 2011, provide:

Sec. 1. The Legislative Assembly finds and declares that:

(1) Industrial development that provides above-average wages and employs a skilled workforce is of such significance to the economic recovery of the State of Oregon that the development merits an expedited project review process.

(2) Expedited project review for proposed industrial development projects of state significance bolsters the economies of local communities and contributes to the economic recovery of the State of Oregon as a whole. [2011 c.564 §1]

Sec. 2. (1) As used in this section:

(a) "Discretionary local permit" includes local land use permits and licenses.

(b) "Discretionary state permit" does not include a permit or license issued by a state permitting agency pursuant to a federally delegated program.

(c) "Industrial use" means employment activities generating income from:

(A) The production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development; and

(B) Services sold in a traded sector, as defined in ORS 285A.010.

(d) "State permitting agencies" means the Department of Environmental Quality, the Department of State Lands and the Department of Transportation.

(2) Industrial development projects of state significance are projects that:

(a) Create jobs with average wages above 180 percent of the minimum wage.

(b) Create a large number of new jobs in relation to the economy and population of the area directly impacted by the development.

(c) Create permanent jobs in industrial uses.

(d) Involve a significant investment of capital in relation to the economy and population of the area directly impacted by the development.

(e) Have community support, as indicated by a resolution of the governing body of the local government within whose land use jurisdiction the industrial development project would occur.

(f) Do not require:

(A) An exception taken under ORS 197.732 to a statewide land use planning goal;

(B) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the industrial development project would occur; or

(C) A federal environmental impact statement under the National Environmental Policy Act.

(3) In lieu of filing an application for a discretionary local permit under ORS 215.402 to 215.438 or 227.160 to 227.186, and in lieu of filing an application otherwise required by law for a discretionary state permit from a state permitting agency, a person may file an application with the Economic Recovery Review Council for expedited project review of an industrial development project after first filing with the council a notice of intent to seek expedited project review that includes evidence that the proposed project meets the criteria for state significance set forth in subsection (2) of this section.

(4) The Economic Recovery Review Council, established under section 3 of this 2011 Act, may expedite the permitting of up to 10 industrial development projects of state significance per biennium through an expedited project review process in which the council reviews the proposed project to determine whether the project complies with the standards and criteria for applicable discretionary local permits and discretionary state permits. The expedited project review by the council must include:

(a) Review of the notice of intent filed under subsection (3) of this section and a preliminary determination of whether the proposed project qualifies as an industrial development project of state significance.

(b) Preparation and issuance of a project order, if on review of the notice of intent the proposed project appears to qualify as an industrial development project of state significance, that sets forth:

(A) The applicable standards and criteria for approval of each discretionary local permit or discretionary state permit that will be addressed in the expedited project review; and

(B) The deadline for an applicant to file a complete application.

(c) Review of the complete application.

(5) If the applicant files a complete application within the time specified by the council, the council shall:

(a) Provide notice of the application in the manner required by ORS 197.763 for a land use decision or in the manner required for a conditional use permit in the applicable acknowledged land use regulations of the local government within whose land use jurisdiction the proposed project would occur, whichever results in broader notice;

(b) Provide for a public hearing on the proposed project in the land use jurisdiction in which the proposed project would occur;

(c) Consider recommendations of the local government and state permitting agencies that would otherwise have jurisdiction to review the discretionary local permits and discretionary state permits for the proposed project in determining whether the project complies with applicable standards and criteria and in determining whether to impose conditions of approval for the project; and

(d) Apply the standards and criteria for each discretionary local permit and discretionary state permit required for the construction and operation of the proposed project and determine, within 120 days after the date a complete application is filed and based on the record and the applicable law, whether the project complies with the applicable standards and criteria.

(6) The council has jurisdiction to approve discretionary local permits and discretionary state permits. The council may not waive standards and criteria that apply to issuance of a discretionary local permit or a discretionary state permit. If the council determines that the proposed project complies with the applicable standards and criteria, the council shall issue a project certificate approving the development project. In addition to other conditions reasonably necessary to ensure that the proposed project complies with applicable standards and criteria, the council may impose a condition requiring commencement of construction by a date calculated to ensure that a particular site is developed for the project within a specific time period. If the council determines that the project does not, or can not, comply with applicable standards and criteria, the council shall issue a final order denying the application and explaining why the application was not approved.

(7) A state permitting agency or a local government may recommend conditions of approval reasonably necessary to ensure that the development project complies with applicable standards and criteria.

(8) Expedited project review of an industrial development project is not subject to ORS 183.413 to 183.470.

(9) Issuance of a project certificate:

(a) Binds public bodies, as defined in ORS 174.109, in regard to approval of construction and operation of the development project.

(b) Satisfies requirements imposed on a state permitting agency by ORS 197.180 and administrative rules implementing ORS 197.180.

(10) After the council issues a project certificate, state permitting agencies and local governments shall:

(a) Issue discretionary local permits and discretionary state permits as required in the certificate; and

(b) Exercise enforcement authority over the permits, including conditions imposed in the certificate.

(11) The council shall charge the applicant a fee calculated to recover the costs reasonably incurred to conduct expedited project review, including the costs incurred by state permitting agencies and local governments that make recommendations to the council concerning whether the proposed project complies with applicable standards and criteria. If the fee charged by the council includes costs incurred by a state permitting agency or a local government, the council shall pay or reimburse the state permitting agency or the local government in the manner provided by ORS 469.360. The council may require the applicant to pay all or a portion of the fee before initiation of the expedited project review and may require progress payments as the review proceeds. The fee required by this section is in lieu of any fee or fees otherwise required for review of a discretionary local permit or a discretionary state permit addressed in the project certificate. The council shall deposit moneys received under this section in the Economic Recovery Review Council Fund established under section 5 of this 2011 Act.

(12) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects of decisions or actions taken under sections 1 to 5 of this 2011 Act.

(13) A person who participated in the proceedings before the council may appeal a final order of the council to the Court of Appeals. The appeal shall proceed in the manner provided by ORS 197.850, 197.855 and 197.860. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds that:

(a) The council's determination that the proposed project qualifies as an industrial development project of state significance under subsection (2) of this section was clearly in error;

(b) There is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d) or a basis for modification or correction of an award as described in ORS 36.710; or

(c) The decision was unconstitutional. [2011 c.564 §2]

Sec. 3. (1) There is established an Economic Recovery Review Council, consisting of five members who serve in their respective roles as the directors of:

(a) The Oregon Business Development Department.

(b) The Department of Land Conservation and Development.

(c) The Department of Transportation.

(d) The Department of Environmental Quality.

(e) The Department of State Lands.

(2) Each member serves during the member's tenure in the role described in subsection (1) of this section.

(3) If a local government with land use jurisdiction requests to participate, the council shall designate one elected official of the local government as a voting member of the council for purposes of:

(a) Review of a proposed industrial development project of state significance under section 2 of this 2011 Act.

(b) Designation of a regionally significant industrial area pursuant to section 7 of this 2011 Act [197.723].

(4) Members of the council are not entitled to compensation, but at the discretion of the council may be reimbursed, from funds available to the council, for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

(5) The council shall select one of its members as chairperson and another as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the council determines.

(6) A majority of the members of the council constitutes a quorum for the transaction of business. [2011 c.564 §3]

Sec. 4. (1) The Economic Recovery Review Council is an independent council that reports directly to the Governor. For the purposes of the responsibilities of the council, the members of the council are not responsible to the boards or commissions to which the members report as directors of their respective state agencies.

(2) The Oregon Business Development Department shall provide administrative support and office space for the council.

(3) The council may employ a program manager.

(4) The designation of the program manager must be by written order, filed with the Secretary of State.

(5) Subject to any applicable provisions of ORS chapter 240, the program manager shall appoint all subordinate officers and employees of the council, prescribe their duties and fix their compensation.

(6) The council may establish advisory and technical committees the council considers necessary to aid and advise the council in the performance of council functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms and organization of the committees and shall appoint the committees' members.

(7) Members of the committees are not entitled to compensation, but at the discretion of the council may be reimbursed, from funds available to the council, for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

(8) In accordance with applicable provisions of ORS chapter 183, the council may adopt rules necessary for the administration of sections 1 to 5 of this 2011 Act. [2011 c.564 §4]

Sec. 5. (1) The Economic Recovery Review Council Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Economic Recovery Review Council Fund shall be credited to the fund.

(2) Moneys in the Economic Recovery Review Council Fund are continuously appropriated to the Economic Recovery Review Council for the purpose of administering the provisions of sections 1 to 7 of this 2011 Act [197.722 and 197.723 and sections 1 to 5 of this 2011 Act].

(3) The Economic Recovery Review Council Fund consists of moneys:

(a) Collected by the council from the fees authorized by section 2 (11) of this 2011 Act.

(b) Any other moneys appropriated to the council. [2011 c.564 §5]

Sec. 12. (1) On the date specified in section 13 of this 2011 Act:

(a) The Economic Recovery Review Council established under section 3 of this 2011 Act is abolished and the tenure of office of the members of the council, the program manager for the council and all employees ceases.

(b) The Economic Recovery Review Council Fund established under section 5 of this 2011 Act is abolished. The Economic Recovery Review Council shall transfer the unexpended balance of moneys in the fund to the General Fund.

(2) The members of the council shall allocate and deliver to the respective state agencies whose directors served as members of the council all records and property within the jurisdiction of the council, and the state agencies whose directors served on the council shall take possession of the records and property. The Governor shall resolve any dispute relating to the allocation and delivery of records and property under this section and the Governor's decision is final.

(3) The abolishment of the council does not relieve a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers of the council abolished by this section. The Oregon Department of Administrative Services may undertake the collection or enforcement of any such liability, duty or obligation.

(4) The rights and obligations of the council legally incurred under contracts, leases and business transactions executed, entered into or begun before the date specified in section 13 of this 2011 Act are transferred to the Oregon Department of Administrative Services. For the purpose of succession to these rights and obligations, the department is a continuation of the council and not a new authority.

(5) Notwithstanding the repeal of sections 1 to 5 of this 2011 Act by section 13 of this 2011 Act, members of the council may take action under this section that are necessary to wind down the operations of the council before, on or after the date of the repeal of sections 1 to 5 of this 2011 Act. [2011 c.564 §12]

Sec. 13. Sections 1 to 5 of this 2011 Act are repealed on January 2 of the first even-numbered year after the Employment Department notifies the Economic Recovery Review Council and the Office of the Legislative Counsel that the annual average unemployment rate for the most recent calendar year in Oregon is less than six percent. [2011 c.564 §13]

197.730 [1973 c.482 §6; repealed by 1977 c.665 §24]

GOAL EXCEPTIONS

197.732 Goal exceptions; criteria; rules; review. (1) As used in this section:

(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(3) The commission shall adopt rules establishing:

(a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

(b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section; and

(c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (2) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons that sets forth the basis for the determination that the standards of subsection (2) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303.

(8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, continues to be valid and is not subject to this section. [1983 c.827 §19a; 1995 c.521 §3; 2005 c.67 §1; 2007 c.71 §68; 2011 c.354 §6]

197.735 [1973 c.482 §7; repealed by 1977 c.665 §24]

197.736 Commission implementation of ORS 197.340 and 197.732; rules. The Land Conservation and Development Commission shall amend goals, in accordance with ORS 197.240 and 197.245, and amend and adopt rules and guidelines, as necessary, to implement the provisions of this section and ORS 197.340 and 197.732. [1995 c.521 §4]

197.740 [1973 c.482 §8; repealed by 1977 c.665 §24]

MISCELLANEOUS

197.747 Meaning of "compliance with the goals" for certain purposes. For the purposes of acknowledgment under ORS 197.251, board review under ORS 197.805 to 197.855, review of a proposed regional problem-solving agreement under ORS 197.652 to 197.658 or periodic review under ORS 197.628 to 197.651, "compliance with the goals" means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. [1983 c.827 §14; 1989 c.761 §9; 1991 c.612 §18; 2009 c.873 §11]

197.750 [1973 c.482 §5; repealed by 1977 c.665 §24]

197.752 Lands available for urban development. (1) Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.

(2) Notwithstanding subsection (1) of this section, lands not needed for urban uses during the planning period may be designated for agricultural, forest or other nonurban uses. [1983 c.827 §19]

197.754 Land identified for urban services; capital improvement plan; tax assessment. (1) A local government may identify land inside an urban growth boundary for which the local government intends to provide urban services within the next five to seven years. The local government may evidence its intent by adopting a capital improvement plan reasonably designed to provide the urban services.

(2) A local government that identifies an area for planned urban services and adopts a capital improvement plan may zone the area for urban uses. A city that identifies land that is outside the city's boundary but inside the urban growth boundary shall coordinate with the appropriate county to zone the area for urban uses.

(3)(a) Land in an area zoned for urban uses under this section shall not be subject to additional taxes under ORS 308A.700 to 308A.733 if the land ceases to be used for farm use within the five years following the date the area is zoned for urban uses.

(b) A lot or parcel in an area zoned for urban use under subsection (2) of this section shall not be assessed at its value for farm use under ORS 308A.050 to 308A.128 unless the lot or parcel was receiving the farm use assessment at the time the area was zoned for urban uses. [1999 c.503 §3; 2001 c.104 §68]

197.755 [1973 c.482 §9; repealed by 1977 c.665 §24]

197.756 Farm use assessment in area identified for urban services. (1) Upon the sale of a lot or parcel located inside an urban growth boundary that is assessed at its value for farm use under ORS 308A.050 to 308A.128, the lot or parcel shall be disqualified for farm use assessment if:

(a) The lot or parcel is in an area identified for urban services under ORS 197.754; and

(b) The urban services are available by ordinance for urbanization.

(2) Disqualification under subsection (1) of this section shall not apply to the sale of a lot or parcel to the owner's spouse, parent, stepparent, grandparent, sister, brother, daughter, son, stepchild or grandchild, or sale to a lessee of the owner if the lessee is conducting farm use as defined in ORS 215.203 on the lot or parcel at the time of sale. [1999 c.503 §6; 2001 c.104 §69]

197.757 Acknowledgment deadline for newly incorporated cities. Cities incorporated after January 1, 1982, shall have their

comprehensive plans and land use regulations acknowledged under ORS 197.251 no later than four years after the date of incorporation. [1983 c.827 §13]

197.760 [1973 c.482 §9a; repealed by 1977 c.665 §24]

197.762 [1987 c.729 §15; repealed by 1989 c.761 §10 (197.763 enacted in lieu of 197.762)]

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use reg-

ulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

197.764 Application to remove property from within urban growth boundary; conditions. (1) A local government may approve an application to remove a lot or parcel from within an urban growth boundary if:

(a) The application is submitted by the owner of the lot or parcel;

(b)(A) The lot or parcel is adjacent to the edge of the urban growth boundary; or

(B) The lot or parcel is adjacent to another lot or parcel that is removed under this section;

(c) The lot or parcel is assessed under ORS 308A.050 to 308A.128 for its value for farm use;

(d) The lot or parcel is not within the boundaries of a city; and

(e) The lot or parcel is not included in an area identified for urban services under ORS 197.754.

(2) A local government, in deciding whether to approve an application under subsection (1) of this section, shall consider:

(a) The projected costs and other consequences of extending urban services to the affected lot or parcel;

(b) The potential value in the investment of providing urban services to the affected lot or parcel;

(c) Any requirement for expanding the urban growth boundary in other areas to compensate for any loss in buildable lands; and

(d) The projected costs and other consequences of providing urban services to other areas brought in under an expanded urban growth boundary.

(3)(a) Land that is removed from within an urban growth boundary pursuant to an application approved under this section shall be removed from any inventory of buildable lands maintained by the local government.

(b) A local government that approves an application under this section shall either expand the urban growth boundary to compensate for any resulting reduction in available buildable lands or increase the development capacity of the remaining supply of buildable lands. [1999 c.503 §1; 2001 c.104 §70]

197.765 [1973 c.482 §2a; repealed by 1977 c.665 §24]

197.766 Laws applicable to certain local decisions regarding urban growth boundary. (1) A decision of a local government to expand an urban growth boundary shall comply with the provisions of ORS 197.296.

(2) A decision of a local government under ORS 197.764 (1) is a land use decision. [1999 c.503 §2]

197.767 [1987 c.729 §4; repealed by 1989 c.837 §34]

197.768 Local government or special district adoption of public facilities strategy; public hearing; written findings. (1) As used in this section, "special district" has the meaning given that term in ORS 197.505.

(2)(a) A local government or special district may adopt a public facilities strategy if the public facilities strategy:

(A)(i) Is acknowledged under ORS 197.251; or

(ii) Is approved by the Land Conservation and Development Commission under ORS 197.628 to 197.651; and

(B) Meets the requirements of this section.

(b) If a special district seeks to implement a public facilities strategy, that special district is considered a local government for the purposes of ORS 197.251 and 197.628 to 197.651.

(3) A local government or special district may adopt a public facilities strategy only if the local government or special district:

(a) Makes written findings justifying the need for the public facilities strategy;

(b) Holds a public hearing on the adoption of a public facilities strategy and the findings that support the adoption of the public facilities strategy; and

(c) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing that is held to consider the adoption of the public facilities strategy.

(4) At a minimum, the findings under subsection (3) of this section must demonstrate that:

(a) There is a rapid increase in the rate or intensity of land development in a specific geographic area that was unanticipated at the time the original planning for that area was adopted or there has been a natural disaster or other catastrophic event in a specific geographic area;

(b) The total land development expected within the specific geographic area will exceed the planned or existing capacity of public facilities; and

(c) The public facilities strategy is structured to ensure that the necessary supply of housing and commercial and industrial facilities that will be impacted within the relevant geographic area is not unreasonably restricted by the adoption of the public facilities strategy.

(5) A public facilities strategy shall include a clear, objective and detailed description of actions and practices a local government or special district may engage in to control the time and sequence of development approvals in response to the identified deficiencies in public facilities.

(6) A public facilities strategy shall be effective for no more than 24 months after the date on which it is adopted, but may be extended, subject to subsection (7) of this section, provided the local government or special district adopting the public facilities strategy holds a public hearing on the proposed extension and adopts written findings that:

(a) Verify that the problem giving rise to the need for a public facilities strategy still exists;

(b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the need for a public facilities strategy; and

(c) Set a specific duration for the extension of the public facilities strategy.

(7)(a) A local government or special district considering an extension of a public facilities strategy shall give the department notice at least 14 days prior to the date of the public hearing on the extension.

(b) A single extension may not exceed one year, and a public facilities strategy may

not be extended more than three times. [1995 c.463 §5; 2001 c.557 §1]

197.770 Firearms training facilities. (1) Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

(2) For purposes of this section, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required:

(a) For law enforcement personnel;

(b) By the State Department of Fish and Wildlife; or

(c) By nationally recognized programs that promote shooting matches, target shooting and safety. [1995 c.475 §2]

197.772 Consent for designation as historic property. (1) Notwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation at any point during the designation process. Such refusal to consent shall remove the property from any form of consideration for historic property designation under ORS 358.480 to 358.545 or other law except for consideration or nomination to the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

(2) No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner's refusal to consent.

(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government. [1995 c.693 §21; 2001 c.540 §19]

197.775 [1973 c.482 §11; repealed by 1977 c.665 §24]

197.780 [1973 c.482 §12; repealed by 1977 c.665 §24]

197.785 [1973 c.482 §13; repealed by 1977 c.665 §24]

197.790 [1973 c.482 §14; repealed by 1977 c.665 §24]

197.794 Notice to railroad company upon certain applications for land use decision, limited land use decision or expedited land use decision. (1) As used in this section, "railroad company" has the meaning given that term in ORS 824.200.

(2) If a railroad-highway crossing provides or will provide the only access to land that is the subject of an application for a land use decision, a limited land use decision or an expedited land division, the applicant must indicate that fact in the application submitted to the decision maker.

(3) The decision maker shall provide notice to the Department of Transportation and the railroad company whenever the decision maker receives the information described under subsection (2) of this section. [2003 c.145 §2]

197.795 [1973 c.482 §10; repealed by 1977 c.665 §24]

197.796 Applicant for certain land use decisions may accept and appeal condition imposed on application; procedure; attorney fees. (1) An applicant for a land use decision, limited land use decision or expedited land division or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance by an applicant for a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condition may include but is not limited to paying a fee, performing an act or providing satisfactory evidence of arrangements to pay the fee or to ensure compliance with the condition.

(2) Any action for damages under this section shall be filed in the circuit court of the county in which the application was submitted within 180 days of the date of the decision.

(3)(a) A challenge filed pursuant to this section may not be dismissed on the basis that the applicant did not request a variance to the condition of approval or any other available form of reconsideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1) prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit court and must exhaust all local appeals provided in the local comprehensive plan and land use regulations before proceeding under this section.

(b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public hearing, a statement shall be made to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.

(c) An applicant is not required to raise an issue under this subsection unless the condition of approval is stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing.

(4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth Amendment to the United States Constitution, the local government shall have the burden of demonstrating compliance with the constitutional requirements for imposing the condition.

(5) In a proceeding in circuit court under this section, the court shall award costs and reasonable attorney fees to a prevailing party. Notwithstanding ORS 197.830 (15), in a proceeding before the Land Use Board of Appeals under this section, the board shall award costs and reasonable attorney fees to a prevailing party.

(6) This section applies to appeals by the applicant of a condition of approval and claims filed in state court seeking damages for the unlawful imposition of conditions of approval in a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178. [1999 c.1014 §5]

LAND USE BOARD OF APPEALS

197.805 Policy on review of land use decisions. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting ORS 197.805 to 197.855 to accomplish these objectives. [1979 c.772 §1a; 1983 c.827 §28]

197.810 Land Use Board of Appeals; appointment and removal of members; qualifications. (1) There is hereby created a Land Use Board of Appeals consisting of not more than three positions. Board members shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The board shall consist of a board chairperson chosen by the board members and such other board members as the Governor considers necessary. The members of the board shall serve terms of four years. A member is eligible for reappointment. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS chapter 183. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.540.

(3) Board members appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar. [1979 c.772 §2; 1983 c.827 §28a; 1997 c.436 §1; 1999 c.257 §1]

197.815 Office location; proceedings may be conducted by telephone. (1) The principal office of the Land Use Board of Appeals shall be in the state capital, but the board may hold hearings in any county or city in order to provide reasonable opportunities to parties to appear before the board with as little inconvenience and expense as is practicable. Upon request of the board, the county or city governing body shall provide the board with suitable rooms for hearings held in that city or county.

(2) For the convenience of one or more of the parties, the board may hold hearings by telephone. [1983 c.827 §29; 1999 c.257 §2]

197.820 Duty to conduct review proceedings; authority to issue orders; rules. (1) The Land Use Board of Appeals shall conduct review proceedings upon petitions filed in the manner prescribed in ORS 197.830.

(2) In conducting review proceedings the members of the board may sit together or separately as the board chairperson shall decide.

(3) The board chairperson shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions.

(4) The board shall adopt rules governing:

(a) The conduct of review proceedings brought before it under ORS 197.830 to 197.845.

(b) The transfer of a matter to the board by the Director of the Department of Land Conservation and Development under ORS 197.825 (2)(c). [1979 c.772 §2a; 1983 c.827 §28b; 1997 c.436 §2; 1999 c.257 §3; 2005 c.245 §2; 2005 c.829 §11]

197.825 Jurisdiction of board; limitations; effect on circuit court jurisdiction. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state

agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

(c) Does not include a local government decision that is:

(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.651 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board; or

(B) Subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455 or a matter related to a local government decision subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455;

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663; and

(g) Does not include review of expedited land divisions under ORS 197.360.

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order. [1983 c.827 §30; 1987 c.729 §14; 1987 c.856 §9; 1987 c.919 §4; 1989 c.761 §11; 1991 c.817 §4; 1995 c.595 §26; 1999 c.348 §16; 2005 c.22 §146; 2005 c.245 §1; 2005 c.829 §10; 2007 c.354 §30]

197.828 Board review of limited land use decision. (1) The Land Use Board of Appeals shall either reverse, remand or affirm a limited land use decision on review.

(2) The board shall reverse or remand a limited land use decision if:

(a) The decision is not supported by substantial evidence in the record. The existence of evidence in the record supporting a different decision shall not be grounds for reversal or remand if there is evidence in the record to support the final decision;

(b) The decision does not comply with applicable provisions of the land use regulations;

(c) The decision is:

(A) Outside the scope of authority of the decision maker; or

(B) Unconstitutional; or

(d) The local government committed a procedural error which prejudiced the substantial rights of the petitioner. [1991 c.817 §2]

197.829 Board to affirm certain local government interpretations. (1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

(2) If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct. [1993 c.792 §43; 1995 c.595 §4]

197.830 Review procedures; standing; fees; deadlines; rules; issues subject to review; attorney fees and costs; publication of orders; mediation. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) The appeal periods described in subsections (3), (4) and (5) of this section:

(a) May not exceed three years after the date of the decision, except as provided in paragraph (b) of this subsection.

(b) May not exceed 10 years after the date of the decision if notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of $100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of $100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a statement identifying when, how and to whom notice was provided under ORS 197.615 does not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special

district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of $200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15)(a) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection (9) of this section shall be applied to any costs charged against the petitioner.

(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund. [1983 c.827 §31; 1985 c.119 §3; 1987 c.278 §1; 1987 c.729 §16; 1989 c.761 §12; 1991 c.817 §7; 1993 c.143 §1; 1993 c.310 §1; 1995 c.160 §1; 1995 c.595 §3; 1997 c.187 §1; 1997 c.452 §1; 1999 c.255 §2; 1999 c.348 §17; 1999 c.621 §3; 2003 c.791 §28; 2003 c.793 §6; 2009 c.885 §38; 2011 c.280 §9; 2011 c.483 §1]

Note: Section 2, chapter 483, Oregon Laws 2011, provides:

Sec. 2. The amendments to ORS 197.830 by section 1 of this 2011 Act apply to a judicial or quasi-judicial review of land use decisions or limited land use decisions that has not been reduced to a final judgment subject to no further appeal. [2011 c.483 §2]

197.831 Appellate review of clear and objective approval standards, conditions and procedures for needed housing. In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner. [1999 c.357 §5; 2011 c.354 §7]

197.832 Board Publications Account. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 (17). Disbursements of moneys from the account shall be approved by a member of the board. [1985 c.119 §5; 1989 c.761 §24; 1995 c.595 §17; 1997 c.436 §3; 1999 c.257 §4; 1999 c.621 §6]

197.835 Scope of review; rules. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the Land Conservation and Development Commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision which violates a commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper. [1983 c.827 §§32,32a; 1985 c.811 §15; 1987 c.729 §2; 1989 c.648 §57; 1989 c.761 §13; 1991 c.817 §13; 1995 c.595 §§3a,5; 1995 c.812 §5; 1997 c.844 §3; 1999 c.621 §7]

197.840 Exceptions to deadline for final decision. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (14):

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.651 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) No period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision

within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) No continuance under subsection (1)(d) of this section shall be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in subsection (1)(a) of this section until the Land Conservation and Development Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845. [1983 c.827 §33; 1989 c.761 §25; 1991 c.612 §19; 1991 c.817 §27; 1995 c.595 §18; 1999 c.348 §18; 1999 c.621 §8]

197.845 Stay of decision being reviewed; criteria; undertaking; conditions; limitations. (1) Upon application of the petitioner, the board may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision or limited land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of $5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (9). The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision or limited land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision or limited land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period. [1983 c.827 §34; 1989 c.761 §22; 1991 c.817 §28; 1999 c.621 §9]

197.850 Judicial review of board order; procedures; scope of review; attorney fees; undertaking. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 is solely as provided in this section.

(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that

unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court shall not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the court to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835 (2).

(10) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

(12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (15)(b).

(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution.

(14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals. [1983 c.827 §35; 1989 c.515 §1; 1989 c.761 §26; 1995 c.595 §19; 1997 c.733 §1; 1999 c.575 §1; 1999 c.621 §10; 2009 c.25 §1]

197.855 Deadline for final court order; exceptions. (1) The Court of Appeals shall issue a final order on a petition for review filed under ORS 197.850 within 91 days after oral argument on the petition.

(2) The following periods of delay shall be excluded from the 91-day period within which the court must issue a final order on a petition:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 91 days.

(3) No period of delay resulting from a continuance granted by the court under sub-

section (2)(b) of this section shall be excludable under this section unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 91 days. The factors the court shall consider in determining whether to grant a continuance under subsection (2)(b) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 91-day time limit.

(4) No continuance under subsection (2)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [1983 c.827 §35a]

197.860 Stay of proceedings to allow mediation. All parties to an appeal may at any time prior to a final decision by the Court of Appeals under ORS 197.855 stipulate that the appeal proceeding be stayed for any period of time agreeable to the parties and the board or court to allow the parties to enter mediation. Following mediation, the board or the court may, at the request of the parties, dismiss the appeal or remand the decision to the board or the local government with specific instructions for entry of a final decision on remand. If the parties fail to agree to a stipulation for remand or dismissal through mediation within the time the appeal is stayed, the appeal shall proceed with such reasonable extension of appeal deadlines as the board or Court of Appeals considers appropriate. [1989 c.761 §14]