

# Chapter 197A

2017 EDITION

## Comprehensive Land Use Planning II

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**AMENDMENT OF URBAN GROWTH BOUNDARIES OUTSIDE METRO**

**197A.300 Definitions for ORS 197A.300 to 197A.325.** As used in ORS 197A.300 to 197A.325:

(1) "Buildable lands" means land in urban or urbanizable areas that are suitable for urban uses.

(2) "Serviceable" means, with respect to land, that:

(a) Adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or

(b) Committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development. [2013 c.575 §1]

**Note:** Definitions in 197.015 also apply to ORS 197A.300 to 197A.325.

**197A.302 Purposes; rules.** The purpose of ORS 197A.300 to 197A.325 is to direct the Land Conservation and Development Commission to develop and adopt simplified methods for a city that is outside Metro to evaluate or amend the urban growth boundary of the city. The commission should design the methods to:

(1) Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage the urban growth boundaries of the cities;

(2) Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;

(3) Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;

(4) Encourage cities to increase the development capacity within the urban growth boundaries of the cities;

(5) Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and

(6) Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth. [2013 c.575 §2]

**Note:** See note under 197A.300.

**197A.305 Amendment of urban growth boundaries outside Metro; rules.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the

statewide land use planning goals, the Land Conservation and Development Commission shall adopt by rule methods by which a city that is outside Metro may evaluate or amend the urban growth boundary of the city.

(2) A city outside Metro may use the methods adopted pursuant to:

(a) ORS 197A.310 if the city has a population of less than 10,000.

(b) ORS 197A.312 if the city has a population of 10,000 or more.

(3) A city that elects to include land within the urban growth boundary of the city under a method established pursuant to ORS 197A.310 or 197A.312:

(a) May use the method again when:

(A) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or

(B) At least one-half of the lands identified as buildable lands during the previous use of the method by the city have been developed.

(b) Shall evaluate whether the city needs to include within the urban growth boundary additional land for residential or employment uses before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the previous use of the method by the city.

(4) A city that elects to use a method established pursuant to ORS 197A.310 or 197A.312 shall notify the Department of Land Conservation and Development of the election in the manner required by ORS 197.610 for notice of a post-acknowledgment plan amendment. The city may revoke the election until the city makes a final decision whether to amend the urban growth boundary of the city. A city that has initiated, but not completed, an amendment of its urban growth boundary before January 1, 2014, may withdraw the proposed amendment and use a method established pursuant to ORS 197A.310 or 197A.312 by filing notice of the election with the department in the manner required by ORS 197.610 and 197.615 for notice of a post-acknowledgment plan amendment.

(5) Beginning on or before January 1, 2023, the commission shall:

(a) Evaluate, every five years, the impact of the implementation of ORS 197A.310 (2) and 197A.312 (2) on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;

(b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and

(c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes. [2013 c.575 §3]

**Note:** See note under 197A.300.

**197A.310 Cities with population of less than 10,000; rules.** (1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of less than 10,000 may evaluate or amend its urban growth boundary.

(2) The commission shall design the method so that:

(a) A city using the method:

(A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.

(B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.

(b) The urban population per square mile will continue, subject to market conditions, to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.

(c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.

(3) Under the method adopted by the commission:

(a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

(b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:

(A) A simple inventory of vacant and partially vacant buildable lands within the urban growth boundary;

(B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and

(C) Simple factors established by the commission for forecasting:

(i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and

(ii) The redevelopment capacity of developed urban lands within the urban growth boundary.

(c) A city's determination of the supply and development capacity of lands the city proposes to include within the urban growth boundary must be based on:

(A) A simple inventory of vacant and partially vacant lands; and

(B) Simple factors established by the commission for forecasting the development and redevelopment capacity of the lands.

(d) A city shall demonstrate that lands included within the urban growth boundary:

(A) Include sufficient serviceable land for at least a seven-year period.

(B) Can all be serviceable over a 14-year period.

(e) Lands included within the urban growth boundary:

(A) Must be planned and zoned for categories of land uses in amounts that are roughly proportional to the land need determined for each category of use;

(B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;

(C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and

(D) May be either:

(i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or

(ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.

(4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in ORS 195.033. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employ-

ment and other categories of uses. The factors must:

(a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;

(b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and

(d) Provide a range of policy choices for a city about the form of its future growth.

(5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:

(a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or

(b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

(8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance. [2013 c.575 §4; 2013 c.575 §9]

**Note:** See note under 197A.300.

**197A.312 Cities with population of 10,000 or more; rules.**

(1) In addition to and not in lieu of the method prescribed in ORS 197.295 to 197.314 and the statewide land use planning goals, the Land Conservation and Development Commission shall adopt a method by which a city outside Metro that has a population of 10,000 or more may evaluate or amend its urban growth boundary.

(2) The commission shall design the method so that:

(a) A city using the method:

(A) Will have within its boundaries sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, to meet the growth in population and employment forecast to occur over a 14-year period.

(B) Will not become less efficient in its use of land as a result of a change to the urban growth boundary.

(b) The urban population per square mile will continue to increase over time on a statewide basis and in major regions of the state, including that portion of the Willamette Valley outside of Metro.

(c) The rate of conversion of agricultural and forest lands to urban uses does not increase over time in any major region of the state.

(3) Under the method adopted by the commission:

(a) A city's determination of the amount of buildable lands needed for housing, employment and other urban uses must be based on the population and employment growth forecast to occur over a 14-year period.

(b) A city's determination of the supply and development capacity of lands within its urban growth boundary must be based on:

(A) An inventory of vacant and partially vacant buildable lands within the urban growth boundary;

(B) The comprehensive plan designation and the zoning of the portion of the buildable lands that is urban; and

(C) Factors established by the commission for forecasting:

(i) The development and redevelopment capacity of urbanizable lands within the urban growth boundary; and

(ii) The redevelopment capacity of developed urban lands within the urban growth boundary.

(c) A city's determination of the supply and development capacity of lands the city proposes to include within the urban growth boundary must be based on:

(A) An inventory of vacant and partially vacant lands; and

(B) Factors established by the commission for forecasting the development and redevelopment capacity of the lands.

(d) A city shall consider a range or combination of measures identified by rule of the commission to accommodate future need for land within the urban growth boundary and implement at least one measure or satisfy an alternate performance standard established by the commission. The commission shall design the alternate performance standard so that the standard is satisfied when the city:

(A) Has a development code that contains specified provisions designed to encourage the development of needed housing; and

(B) Demonstrates that, during the preceding planning period, the city:

(i) If located in the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more in the Willamette Valley that are outside of the boundaries of Metro by an amount set by commission rule; and

(ii) If located outside of the Willamette Valley, exceeded the median rate of redevelopment and infill for cities with a population of 10,000 or more that are outside the Willamette Valley by an amount set by commission rule.

(e) A city shall demonstrate that lands included within the urban growth boundary:

(A) Include sufficient serviceable land for at least a seven-year period.

(B) Can all be serviceable over a 14-year period.

(f) Lands included within the urban growth boundary:

(A) Must be planned and zoned for categories of land uses in amounts that are

roughly proportional to the land need determined for each category of use;

(B) Must be planned and zoned for an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed;

(C) Must be planned and zoned to meet the requirements for needed housing, and those requirements must be specified by rule of the commission in a manner that is as objective as practicable; and

(D) May be either:

(i) Planned and zoned, or otherwise conditioned, to avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan; or

(ii) Allowed to significantly affect a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan subject to mitigation, consistent with rules of the commission, if the lands are planned and zoned for compact urban development or industrial uses.

(4) For purposes of subsection (3)(a) of this section, population growth must be forecast as provided in ORS 195.033. Employment growth must be forecast based on the population growth forecast for the city or the employment growth forecast issued by the Employment Department for the county or region. The commission shall establish factors, by rule, for converting the forecasted population and employment growth into forecasts of land need for housing, employment and other categories of uses. The factors must:

(a) Be based on an empirical evaluation of the relation between population and employment growth and the rate and trends of land utilization in the recent past in the applicable major region of the state;

(b) Reflect consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Be designed to encourage an increase in the land use efficiency of a city, subject to market conditions; and

(d) Provide a range of policy choices for a city about the form of its future growth.

(5) For purposes of subsection (3)(b) of this section, the commission shall establish factors for supply and development capacity that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in that major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(6) For purposes of subsection (3)(c) of this section, the commission shall establish factors that are:

(a) Based on an empirical evaluation of the population and employment growth that has occurred on similarly situated lands through development and redevelopment;

(b) Based on consideration by the commission of any significant changes occurring or expected to occur in the markets for urban land uses in each major region of the state;

(c) Designed to encourage an increase in the land use efficiency of the city, subject to market conditions; and

(d) Designed to provide a range of policy choices for a city about the form of its future growth.

(7) For lands that are included within an urban growth boundary pursuant to this section and not made serviceable within 20 years after the date of their inclusion, the commission may provide by rule that:

(a) The lands must be removed from within the urban growth boundary the next time the city evaluates the urban growth boundary; or

(b) The planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

(8) When lands included within the urban growth boundary pursuant to this section are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use unless a rule of the commission allows a change in planning and zoning based on a significant change in circumstance. [2013 c.575 §5; 2013 c.575 §10; 2015 c.248 §1]

**Note:** See note under 197A.300.

**197A.315 Expansion study areas; notice; urban service agreements.** (1) As used in this section, “district” means:

(a) A domestic water supply district organized under ORS chapter 264.

(b) A parks and recreation district organized under ORS chapter 266.

(c) A sanitary district organized under ORS 450.005 to 450.245.

(d) A rural fire protection district organized under ORS chapter 478.

(2) When a city evaluates or amends the urban growth boundary of the city under ORS 197A.312, the city shall notify:

(a) Each district that has territory within the study area established under ORS 197A.320.

(b) Each county that has land use jurisdiction over any portion of the study area.

(3) The notification must:

(a) Include a map showing the study area; and

(b) State that, in order to execute or amend an urban service agreement concerning the study area, the district shall respond to the notice within 60 days of the date the notice is mailed if the district enters into or amends an urban service agreement concerning the study area.

(4) An urban service agreement executed under this section must satisfy the requirements of ORS 195.065 (1)(a) to (f). When a city and a district execute an urban service agreement pursuant to this section, the city and the district are not required to participate in the negotiation of an urban service agreement under ORS 195.065 to 195.085.

(5) Before executing the urban service agreement, the city and the district shall consult with community planning organizations that are recognized by the governing body of the city and whose boundaries include territory in the study area that may be affected by the urban service agreement.

(6) If the special district chooses not to negotiate an urban service agreement or does not respond to the notice within 60 days, the city may withdraw from the service territory of the district any portion of the study area that is included within the urban growth boundary of the city and annexed to the city.

(7) If the district responds in writing to the notice within 60 days and requests to execute an urban service agreement for the study area with the city, the city and the district shall meet to develop the urban service agreement within 60 days after the district responds.

(8) If the city and district are unable to develop the urban service agreement within 180 days after the date of the first meeting, the city or the district may require mediation. If mediation is required, the city and the district shall each designate an individual to work with the city and the district to develop an urban service agreement. The city and the district are each responsible for the costs of the mediator it selects.

(9) If the city and the district are unable to develop the urban service agreement after an additional 180 days, the city or the district may require arbitration. The mediators selected under subsection (8) of this section shall jointly select a third individual, and the three individuals shall constitute an arbitration panel to develop the urban service agreement. If the mediators are unable to agree on the third individual, the Director of the Department of Land Conservation and Development shall select an individual from a list of qualified arbitrators provided by the Land Conservation and Development Commission. The city and the district shall bear the cost of the third individual equally. The arbitration panel:

(a) Shall consider the provisions of ORS 222.460, 222.465, 222.510 to 222.570, 222.575 and 222.580; and

(b) May not:

(A) Require the city or the district to pay the other party as part of the urban service agreement unless:

(i) The urban service agreement requires a transfer of physical assets, in which case the urban service agreement may require the payment of fair market value for the assets; or

(ii) A party has offered a payment as part of prior negotiations and the arbitrators incorporate all or a portion of the negotiated payment in the urban service agreement;

(B) Prevent a city from including land within the urban growth boundary of the city; or

(C) Prohibit a city from annexing territory that is within the urban growth boundary of the city.

(10) A city may not withdraw territory from the service territory of a district:

(a) Unless the district does not respond to the notice required by subsection (2) of this section; or

(b) Until the city and the district develop an urban service agreement under this section.

(11) Decisions related to the execution of an urban service agreement under this section are not land use decisions subject to the jurisdiction of the Land Use Board of Appeals. [2013 c.575 §6; 2015 c.27 §20]

**Note:** See note under 197A.300.

**197A.320 Priority of land to be included within urban growth boundaries outside Metro; rules.** (1) Notwithstanding the priority in ORS 197.298 for inclusion of land within an urban growth boundary, a city outside of Metro shall comply with this section when determining which lands to in-

clude within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314, 197A.310 or 197A.312.

(2) The Land Conservation and Development Commission shall provide, by rule, that:

(a) When evaluating lands for inclusion within the urban growth boundary, the city shall establish a study area that includes all land that is contiguous to the urban growth boundary and within a distance specified by commission.

(b) The city shall evaluate all land in the study area for inclusion in the urban growth boundary as provided in subsection (4) of this section, except for land excluded from the study area because:

(A) It is impracticable, as provided in subsection (3) of this section, to provide necessary public facilities or services to the land.

(B) The land is subject to significant development hazards, including a risk of land slides, a risk of flooding because the land is within the 100-year floodplain or is subject to inundation during storm surges or tsunamis, and other risks determined by the commission.

(C) The long-term preservation of significant scenic, natural, cultural or recreational resources requires limiting or prohibiting urban development of the land that contains the resources.

(D) The land is owned by the federal government and managed primarily for rural uses.

(c) When evaluating the priority of land for inclusion under paragraph (b) of this subsection:

(A) The city shall evaluate the land within the study area that is designated as an urban reserve under ORS 195.145 in an acknowledged comprehensive plan, land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.

(B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate the land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations.



(C) If the amount of land appropriate for selection under subparagraphs (A) and (B) of this paragraph is not sufficient to satisfy the amount of land needed, the city shall evaluate land within the study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the need for land:

(i) Using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations; and

(ii) Using the predominant capability classification system or the predominant cubic site class, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic site class lands first.

(D) If the amount of land appropriate for selection under subparagraphs (A) to (C) of this paragraph is not sufficient to satisfy the need for land, the city shall evaluate land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high value farmland and select as much of that land as necessary to satisfy the need for land. A local government may not select land that is predominantly made up of prime or unique farm soils, as defined by the United States Department of Agriculture Natural Resources Conservation Service, unless there is an insufficient amount of other land to satisfy its land need.

(3) For purposes of subsection (2)(b)(A) of this section, the commission shall determine impracticability by rule, considering the likely amount of development that could occur on the lands within the planning period, the likely cost of facilities and services, physical, topographical or other impediments to service provision and whether urban development has occurred on similarly situated lands such that it is likely that the lands will be developed at an urban level during the planning period. When impracticability is primarily a result of existing development patterns, the rules of the commission shall require that the lands be included within the study area, but may allow the development capacity forecast for the lands to be specified at a lower level over the planning period. The rules of the commission must be based on an evaluation of how similarly situated lands have, or have not, developed over time.

(4) For purposes of subsection (2)(b)(C) of this section, the commission by rule shall

determine the circumstances in which and the resources to which this exclusion will apply.

(5) Notwithstanding subsection (2)(c)(D) of this section, the rules must allow land that would otherwise be excluded from an urban growth boundary to be included if:

(a) The land contains a small amount of resource land that is not important to the commercial agricultural enterprise in the area and the land must be included to connect a nearby and significantly larger area of land of higher priority for inclusion within the urban growth boundary; or

(b) The land contains a small amount of resource land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the urban growth boundary.

(6) When the primary purpose for expansion of the urban growth boundary is to accommodate a particular industry use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics and the site characteristics may be found in only a small number of locations, the city may limit the study area to land that has, or could be improved to provide, the required site characteristics. Lands included within an urban growth boundary for a particular industrial use, or a particular public facility, must remain planned and zoned for the intended use:

(a) Except as allowed by rule of the commission that is based on a significant change in circumstance or the passage of time; or

(b) Unless the city removes the land from within the urban growth boundary.

(7) Notwithstanding any other provision of this section, the commission may adopt rules that specify circumstances under which a city may exchange land within the urban growth boundary of the city for land that is outside of the urban growth boundary and that is designed to avoid adverse effects of an exchange on agricultural or forest operations in the surrounding area. [2013 c.575 §7]

**Note:** See note under 197A.300.

**Note:** Section 1, chapter 81, Oregon Laws 2016, provides:

**Sec. 1.** Notwithstanding ORS 197A.320, a city outside of Metro that submitted to the Director of the Department of Land Conservation and Development, pursuant to ORS 197.610, a proposed change to an acknowledged comprehensive plan or a land use regulation that included an evaluation or an amendment of its urban growth boundary, or that received approval of a periodic review work program that included a work task to amend or evaluate its urban growth boundary pursuant to ORS 197.633, prior to January 1, 2016, but did not complete the evaluation or amendment of its

urban growth boundary prior to January 1, 2016, may complete the evaluation or amendment pursuant to statutes and administrative rules in effect on June 30, 2013. [2016 c.81 §1]

**197A.325 Review of final decision of city; rules.** (1) Notwithstanding ORS 197.626, when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312, the Land Use Board of Appeals has jurisdiction for review of a final decision of the city.

(2) The board shall review the final decision of the city under ORS 197A.300 to 197A.325 as provided in ORS 197.805 to 197.855, except that:

(a) In circumstances in which the Land Conservation and Development Commission has specified by rule a number or a range of numbers that the city may use:

(A) The city is not required to adopt findings to support the use of the number or a number within the range of numbers; and

(B) The board's review of the number may determine only that the city has used a number that is allowed by the rule.

(b) The board shall affirm an interpretation by a local government of its comprehensive plan or land use regulations unless that interpretation is clearly erroneous.

(3) Notwithstanding ORS 197.628 and 197.629, when a city evaluates or amends the urban growth boundary of the city pursuant to ORS 197A.310 or 197A.312, the city is not required to commence or complete periodic review. The commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs. [2013 c.575 §8]

**Note:** See note under 197A.300.

**197A.405 City economic development pilot program.** (1) The Land Conservation and Development Commission shall establish and implement an economic development pilot program. Notwithstanding any statewide land use planning goal provisions specifying requirements for amending urban growth boundaries, the commission shall adopt rules to implement the pilot program. The pilot program is intended to:

(a) Promote economic development in a rural area; and

(b) Promote industry growth and job creation.

(2) Under the rules adopted under this section, the commission shall establish a site selection process by which the commission shall select one pilot program site from a city located not less than 100 miles from a city with a population of 300,000 or more and

located in a county with at least eight percent unemployment over the preceding five-year period.

(3) A city may nominate a site adjacent to its urban growth boundary for participation in the pilot program.

(4) When nominating a pilot program site for the site selection process, a city shall:

(a) Submit a concept plan for the pilot program, including a list of goals for the master plan for economic development of the proposed site and any proposed amendments to the comprehensive plan or land use regulations required to implement the master plan; and

(b) Demonstrate that the proposed pilot program site meets the requirements described in subsection (5) of this section.

(5) The commission shall select a pilot program site that is:

(a) Adjacent to the city's existing urban growth boundary;

(b) Adjacent to an airport with an approved airport master plan;

(c) Near public facilities and services, including roadways; and

(d) Planned and zoned for commercial or industrial uses that are compatible with aviation uses, as determined by the commission. [2017 c.709 §1]

**197A.407 Inclusion of pilot program site within urban growth boundary.** (1) Notwithstanding ORS 197.298 and without regard to whether an urban growth boundary already contains a 20-year supply of buildable lands, the Land Conservation and Development Commission by rule may establish an expedited process for amending urban growth boundaries to include the pilot program site selected under ORS 197A.405.

(2) An amendment to an urban growth boundary pursuant to this section must identify the specific goal and rule requirements related to urban growth boundaries from which the city is exempt for the purpose of implementing the pilot program.

(3) A pilot program site included within an urban growth boundary amended pursuant to this section must:

(a) Be dedicated to economic development; and

(b) Remain planned and zoned for commercial or industrial uses that are compatible with aviation uses as otherwise provided in rules adopted pursuant to ORS 197A.405. [2017 c.709 §2]

**197A.409 Protection of pilot program site from conversion.** (1) The city selected to participate in the pilot program by the Land Conservation and Development Com-

mission under ORS 197A.405 shall protect the pilot program site from conversion to other uses before, during and after the implementation of the master plan for economic development, except as provided otherwise in rules adopted by the commission under ORS 197A.405 and 197A.407.

(2) The city selected for participation in the pilot program by the commission shall ensure that the commercial or industrial developments on the pilot program site continue to be used to implement the master plan for economic development for a period of at least 50 years after the selection of the pilot program site through:

- (a) Zoning restrictions; or
- (b) Other regulations, provisions or conditions determined by the city.

(3) The city selected for participation in the pilot program by the commission may:

- (a) Annex the land included in the pilot program site.
- (b) Rezone the land, or any portion thereof, included in the pilot program site to accommodate the provisions of the city's master plan for economic development. [2017 c.709 §3]

**197A.411 High-value farmland excluded.** (1) A city may not use ORS 197A.405 to 197A.409 to bring high-value farmland, as determined by the commission, within its urban growth boundary.

(2) ORS 197A.405 to 197A.409 do not constitute a statutory contract. A pilot program site selected under ORS 197A.405 and a master plan for economic development implemented on a selected pilot program site remain subject to new or additional regulatory requirements authorized by law, statewide land use planning goals and land use regulations implementing the goals. [2017 c.709 §4]

**197A.413 City Economic Development Pilot Program Fund.** (1) The City Economic Development Pilot Program Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the City Economic Development Pilot Program Fund shall be credited to the fund. All moneys credited to the City Economic Development Pilot Program Fund are continuously appropriated to the Land Conservation and Development Commission for the purposes described in subsection (3) of this section.

- (2) The fund shall consist of:
  - (a) Moneys appropriated by the Legislative Assembly for deposit in the fund;
  - (b) Any gifts, contributions or donations made to the State of Oregon for deposit in the fund; and

(c) Earnings on moneys in the fund.

(3) The commission may use the moneys in the fund to finance the establishment and implementation of the pilot program established under ORS 197A.405.

(4) The commission is authorized to accept gifts, contributions or donations from any person, including any public body as defined in ORS 174.109, for deposit in the fund. [2017 c.709 §6]

**Note:** Section 5, chapter 709, Oregon Laws 2017, provides:

**Sec. 5. Report on pilot program.** (1) The Land Conservation and Development Commission shall report on the progress of the pilot program, in the manner provided in ORS 192.245, to the committees of the Legislative Assembly related to housing and human services during the 2022 regular session of the Legislative Assembly.

(2) The commission's report shall, at a minimum, include:

- (a) A summary of the pilot program's impact on the city, county and region;
- (b) The number of jobs created by the pilot program;
- (c) The number of new businesses established within the boundaries of the pilot program site; and
- (d) An analysis of the economic growth of the city and county since the implementation of the pilot program. [2017 c.709 §5]

**SOUTHWEST CORRIDOR  
MAX LIGHT RAIL PROJECT**

**197A.500 Definitions for ORS 197A.500 to 197A.521.** As used in ORS 197A.500 to 197A.521, unless the context requires otherwise:

(1) "Affected local governments" means the cities and the counties within which the project improvements will be located.

(2) "Criteria" means the land use criteria established by the Land Conservation and Development Commission as provided in ORS 197A.505.

(3) "Development approval" means approval of a proposed development of land 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.

(4) "Draft Statement" means the Draft Environmental Impact Statement for the project, as may be amended from time to time, and any supplementary assessments or statements prepared pursuant to regulations implementing the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(5) "Final Statement" means the Environmental Impact Statement for the project, as may be amended from time to time, or any supplementary assessments or statements, prepared pursuant to regulations implement-

ing the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(6) “Full Funding Grant Agreement” means the contractual agreement entered into between the federal government and the local grant recipient establishing the maximum federal financing contribution for construction of the project and setting forth terms, conditions and limitations for federal financing of the project.

(7) “Highway improvements” means improvements to the highway, street and other ancillary facilities for the project and improvements related to construction or operation of the project. As used in this subsection:

(a) “Ancillary facilities” includes retaining walls, bridges, signals, electrification equipment, lighting equipment, staging areas, facilities for bus or rail travel, stormwater facilities, wetland mitigation facilities and facilities designed for vehicle, pedestrian and bicycle traffic.

(b) “Improvement” includes any development or alteration to land related to the project.

(8) “Land use final order” means a written order or orders of the Metro Council deciding the project improvements for the project, including their locations.

(9) “Light rail route” means the light rail alignment selected from among light rail alignment alternatives described in a Draft Statement or Final Statement to be included in the project.

(10) “Locally Preferred Alternative Report” means a decision adopted in accordance with federal requirements determining or amending an earlier decision whether or not to build the Southwest Corridor MAX Light Rail Project and, if the decision adopted is to build, recommending the project improvements, including their locations, to be included in the Southwest Corridor MAX Light Rail Project.

(11) “Locations” means the boundaries within which the project improvements will be located.

(12) “Measures” includes any mitigation measures, design features or other amenities or improvements associated with the project.

(13) “Metro Council” means the elected governing body of Metro.

(14) “Project” means the portion of the Southwest Corridor MAX Light Rail Project within Metro’s urban growth boundary. “Project” includes:

(a) All project improvements described in the Locally Preferred Alternative Report, as may be amended from time to time by a Draft Statement, Final Statement, Full

Funding Grant Agreement or similar document for the Southwest Corridor MAX Light Rail Project; and

(b) All phases and extensions of the Southwest Corridor MAX Light Rail Project as described in a Locally Preferred Alternative Report, Draft Statement, Final Statement, Full Funding Grant Agreement or similar document.

(15) “Project improvements” means the light rail route, stations, lots and maintenance facilities and the highway improvements related to the project as described in the Locally Preferred Alternative Report, as may be amended from time to time by a Draft Statement, Final Statement, Full Funding Grant Agreement or similar document for the Southwest Corridor MAX Light Rail Project.

(16) “Stations, lots and maintenance facilities” means the light rail stations, light rail park-and-ride lots and light rail vehicle maintenance facilities to be selected from among alternatives described in a Draft Statement, Final Statement or similar document to be included in the project.

(17) “TriMet” means the Tri-County Metropolitan Transportation District of Oregon, a mass transit district created under ORS chapter 267. [2017 c.714 §1]

**197A.502 Legislative findings; equivalency of project procedures and requirements to certain land use procedures; construe liberally.** (1) The Legislative Assembly finds that there is a compelling state interest in obtaining maximum federal funding for the Southwest Corridor MAX Light Rail Project in order to:

(a) Enhance the statewide transportation network;

(b) Ensure the viability of the transportation system planned for the Portland metropolitan area;

(c) Complete construction of the project in a timely and cost-effective manner;

(d) Implement a significant portion of the Legislative Assembly’s air quality and energy efficiency strategies for the area; and

(e) Ensure that affected local governments will be able to implement significant parts of their comprehensive plans.

(2) The Legislative Assembly further finds that, to maximize the ability of this state and the Portland metropolitan area to obtain the highest available level of federal funding for the Southwest Corridor MAX Light Rail Project, it is necessary to establish:

(a) A process to be used to establish criteria, make decisions and adopt a land use final order related to the light rail route and

other project improvements to be included in the Southwest Corridor MAX Light Rail Project, including their locations;

(b) An expedited process for appellate review of a land use final order; and

(c) An exclusive process for appellate review.

(3) The Legislative Assembly further finds that residents of neighborhoods within TriMet affected by land use decisions, limited land use decisions or land divisions resulting from the siting, construction or operation of any light rail route or other project improvements, either as individuals or through their neighborhood associations, shall have the opportunity to participate in those decisions and divisions.

(4) The Legislative Assembly deems the procedures and requirements provided for in ORS 197A.500 to 197A.521, under the unique circumstances of the Southwest Corridor MAX Light Rail Project, to be equivalent in spirit and substance to the land use procedures that otherwise would be applicable.

(5) ORS 197A.500 to 197A.521 shall be liberally construed to address the findings enumerated in subsection (1) of this section. [2017 c.714 §2]

**197A.503 Preemptive effect of ORS 197A.500 to 197A.521.** Notwithstanding ORS chapters 183, 192, 195, 197, 215 and 227 or any other provision of law, the procedures and requirements provided for in ORS 197A.500 to 197A.521 expressly preempt any vote requirements imposed by the charter of a local government and are the only land use procedures and requirements to which land use decisions and land use approvals of any kind related to the construction or operation of the project shall be subject. [2017 c.714 §3]

**197A.505 Establishment of criteria for decisions in land use final order.** (1) The Land Conservation and Development Commission shall establish criteria, according to the procedure described in this section, to be used by the Metro Council to make decisions in a land use final order on the project improvements for the project, including their locations.

(2) The commission shall hold a public hearing on the criteria to be established by the commission.

(3) The commission shall publish notice of a public hearing on criteria to be established by the commission in a newspaper of general circulation within the Portland metropolitan area at least 20 days prior to the public hearing. The notice shall state:

(a) The general subject matter of the hearing and the date, time and place of the hearing;

(b) That any criteria to be proposed to the commission must be filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to commencement of the hearing and will be available for public inspection following filing;

(c) That notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice shall be sent;

(d) That persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(e) That failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person on that issue; and

(f) That appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed to the persons described in subsection (9)(b) of this section.

(4) The commission may provide additional notice as it deems appropriate to inform interested persons of the public hearing.

(5) A copy of the staff report, if any, must be made available for public inspection at least four days prior to the public hearing.

(6) At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Identifies the general subject matter of the hearing;

(b) Submittal of proposed criteria at the hearing will not be accepted unless the proposed criteria were filed at the Salem office of the department at least 10 days prior to the commencement of the hearing;

(c) Failure by a person to raise an issue at the hearing in person or in writing, or failure to raise an issue with sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person on that issue;

(d) Notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide a written request for notice and a mailing address to which notice shall be sent;

(e) Persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to

have provided oral or written testimony at the hearing; and

(f) Appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed.

(7)(a) The commission shall allow for the submission of oral and written testimony at the hearing, subject to any hearing procedures that the commission deems necessary.

(b) The commission may exclude irrelevant, immaterial or unduly repetitious testimony.

(c) The commission may allow only the submission of proposed criteria at the hearing that were filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to the commencement of the hearing.

(d) The commission shall designate an individual to take minutes of the hearing.

(8)(a) Within 14 days following commencement of the hearing, the commission shall close the hearing.

(b) The commission shall consider all statewide planning goals and plan policies that are relevant to decisions regarding the project improvements and their locations in establishing the criteria.

(c) The commission shall adopt an order establishing the criteria. The commission's order must include a brief statement explaining how the criteria established reasonably reflect the statewide land use planning goals and plan policies that are relevant to decisions regarding the project improvements and their locations.

(9) As soon as reasonably practicable following establishment of the criteria, the commission shall:

(a) Make copies of the order and the criteria available for public inspection at both the Salem and Portland offices of the Department of Land Conservation and Development; and

(b) Provide notice of the order and the criteria to:

- (A) The Metro Council;
- (B) TriMet;
- (C) The Department of Transportation;
- (D) Each affected local government; and

(E) Any person who provided oral or written testimony at the hearing and who also provided a written request for notice and a mailing address to which notice shall be sent. [2017 c.714 §4]

**197A.507 Procedure for review of established criteria.** (1) Notwithstanding ORS 183.400, 183.482, 183.484, 197.825 or any other

law or regulation, exclusive jurisdiction to review a Land Conservation and Development Commission order establishing criteria under ORS 197A.505 is conferred on the Supreme Court.

(2) Proceedings for review of an order by the commission shall be initiated when any person who is adversely affected by the order files a petition for judicial review with the State Court Administrator. The petition must:

(a) Be filed within seven days following the date of the written notice of the order;

(b) State the nature of the order and the manner in which the commission rejected the position raised by the petitioner before the commission; and

(c) Contain an affidavit stating facts that show how the petitioner is adversely affected by the order.

(3) The petitioner shall personally deliver copies of the petition for judicial review to:

(a) The commission, at the Salem office of the Department of Land Conservation and Development;

(b) The Salem office of the Department of Transportation;

(c) The Attorney General;

(d) The Metro Council, at the office of Metro's executive officer;

(e) TriMet, at the office of TriMet's general manager; and

(f) Each affected local government.

(4) Within seven days following filing of the petition for judicial review, the commission shall personally deliver or electronically submit to the State Court Administrator a certified copy of the record of the criteria proceedings. The record shall include only:

(a) The published notice of public hearing;

(b) The proposed criteria submitted as described in ORS 197A.505 (6)(b) and by written testimony submitted to the commission at the hearing;

(c) Any written report received by the commission from the Department of Land Conservation and Development at the hearing;

(d) Minutes of the hearing;

(e) The order establishing the criteria; and

(f) Proof of mailing to persons entitled to written notice of the order and the criteria under ORS 197A.505 (9)(b).

(5) Within 14 days following the filing of the petition for judicial review, the petitioner shall file a petitioner's brief with the State Court Administrator. The brief must comply

with the specifications for opening briefs set forth in the rules of appellate procedure. The petitioner shall personally deliver a copy of the brief to:

- (a) The Attorney General;
- (b) The Metro Council, at the office of Metro's executive officer;
- (c) TriMet, at the office of TriMet's general manager; and
- (d) Each affected local government.

(6) The court shall consider the petitioner to be adversely affected if:

- (a) The petitioner provided oral or written testimony at the hearing; and
- (b) The petitioner proposed criteria in the manner described in ORS 197A.505 (6)(b) that the commission rejected in its order or the petitioner, in the petitioner's testimony at the hearing, opposed the criteria that the commission established in its order.

(7) Within 28 days following the filing of the petition for judicial review, an answering brief complying with the rules of appellate procedure may be filed by any of the following:

- (a) The commission;
- (b) Metro, unless Metro is the petitioner;
- (c) TriMet, unless TriMet is the petitioner;
- (d) The Department of Transportation, unless the Department of Transportation is the petitioner; or
- (e) Any affected local government, unless the local government is the petitioner.

(8) The court shall decide the matter at its earliest practicable convenience, consistent with ORS 197A.500 to 197A.521. The court may decide the matter on the briefs or it may hold oral arguments.

(9)(a) The court may reverse or remand the order only if the court finds that the order:

- (A) Violates constitutional provisions;
- (B) Exceeds the statutory authority of the commission; or
- (C) Was adopted by the commission without substantial compliance with the procedures in ORS 197A.505 or in a manner that prejudiced the substantial rights of the petitioner.

(b) Failure of the commission to notify a person entitled to written notice under ORS 197A.505 (9)(b) is not grounds for reversal or remand if the commission provides evidence of mailing the notice to that person.

(c) The court may not substitute its judgment for that of the commission as to

any issue of fact or as to any issue within the discretion of the commission.

(10) The court may not stay any action by the Metro Council under ORS 197A.500 to 197A.521 pending the court's review under this section. [2017 c.714 §5]

**197A.509 Development of land use final order; steering committee; application to council for land use final order; council procedures; public hearing; notice; staff report.** (1)(a) On or before the date the Land Conservation and Development Commission adopts the order establishing the criteria under ORS 197A.505, Metro shall establish a steering committee, the initial membership of which shall include a representative from each of the following:

- (A) Metro;
- (B) TriMet;
- (C) The Department of Transportation; and
- (D) Each affected local government.

(b) The membership of the steering committee shall, at all times, include at least the members described in paragraph (a) of this subsection. The steering committee may approve additional members by majority vote.

(c) Metro shall staff the steering committee until the adoption of the initial land use final order for the project.

(2)(a) The steering committee shall issue recommendations for the siting of the light rail route and other project improvements and their locations to TriMet.

(b) TriMet shall apply to the Metro Council for a land use final order approving the project improvements and their locations. The applied for locations must provide sufficient boundaries to accommodate adjustments to the specific placements of the project improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement.

(3) The council shall apply the criteria established by the Land Conservation and Development Commission under ORS 197A.505 when making decisions in a land use final order on the applied for project improvements, including their locations. The council shall follow the procedures described in this section when adopting a land use final order.

(4) The council shall hold a public hearing on the project improvements, including their locations, for which decisions will be made in the land use final order.

(5)(a) At least 14 days prior to the hearing, the council shall publish notice of a

public hearing on the project improvements, including their locations, in a newspaper of general circulation within Metro's jurisdictional area. The notice shall state:

(A) The general subject matter of the hearing and all matters scheduled for consideration at the hearing;

(B) The date, time and place of the hearing;

(C) The street address where a staff report and the criteria may be found;

(D) That failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the Land Use Board of Appeals based on that issue;

(E) That persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(F) That notice of adoption of the land use final order will be provided only to persons who provide oral or written testimony at the hearing and who also provide a written request for notice and a mailing address to which notice shall be sent; and

(G) That appeals from decisions in a land use final order must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures.

(b) The council also shall provide such other notice as the council deems necessary to give notice to persons who may be substantially affected by its decision. No other form of notice is required.

(6)(a) At least seven days prior to the hearing, the council shall make a copy of the staff report available for public inspection. The staff report shall:

(A) Set forth the criteria established under ORS 197A.505;

(B) Include a description of the proposed boundaries within which the project improvements will be located, as applied for by TriMet under subsection (2) of this section; and

(C) Address how the proposed boundaries comply with the criteria.

(b) Without providing additional notice, the council may amend the staff report prior to the hearing as the staff considers necessary or desirable.

(7) At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Lists the criteria or directs those present to a place at the hearing location where any person may obtain a list of the criteria at no cost;

(b) Lists generally the project improvements, including their locations, for which decisions will be made in the land use final order;

(c) Testimony shall be directed toward the application of the criteria to the project improvements, including their locations, to which decisions will be made in the land use final order;

(d) Failure by a person to raise an issue at the hearing, in person or in writing, or failure to raise an issue with sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(e) Persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing;

(f) Notice of adoption of the land use final order will be provided only to the affected local governments and to the persons who have provided oral or written testimony at the hearing and who also have provided a written request for notice and a mailing address to which notice shall be sent; and

(g) Appeals from decisions in a land use final order on the project improvements, including their locations, must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures.

(8)(a) The council shall allow for the submission of oral and written testimony at the hearing, subject to any hearing procedures the council deems necessary or appropriate for the adoption of a land use final order.

(b) The council may exclude irrelevant, immaterial or unduly repetitious testimony.

(9) The council may take official notice at the hearing of any matter identified in ORS 40.065 and 40.090 or as authorized by resolution of the council establishing hearing procedures for the adoption of land use final orders.

(10) The council is not required to provide any opportunities in addition to those described in this section for interested persons to participate in the proceedings of the council in adopting a land use final order. The council may establish by resolution additional procedures to govern its proceedings in adopting a land use final order, subject to the provisions of this section.



(11) The council shall close the hearing and shall adopt a land use final order by resolution or continue the matter as provided in ORS 197A.511 (1) or as the council otherwise considers necessary for the purpose of adopting a land use final order. [2017 c.714 §6]

**197A.511 Land use final order; notice.**

(1)(a) Following a public hearing as provided in ORS 197A.509, the Metro Council shall either:

(A) Adopt a land use final order establishing the project improvements and locations applied for by TriMet; or

(B) Continue the public hearing and refer the proposed project improvements and locations back to TriMet for further review.

(b) If the council refers the proposed locations back to TriMet for further review, TriMet shall consider amendments to its proposed project improvements and locations and forward the amended application to the council for hearing and adoption as described in this subsection.

(2)(a) The council shall adopt a land use final order establishing the project improvements, including their locations, as provided in this section and ORS 197A.509.

(b) The council shall include with the land use final order a statement of findings demonstrating how the decisions on the project improvements, including their locations, comply with the criteria.

(c) Following adoption of a land use final order, the council as soon as reasonably practicable shall:

(A) Publish notice of the adoption in a newspaper of general circulation within Metro's jurisdictional area;

(B) Provide notice of the adoption to each affected local government; and

(C) Provide notice of the adoption to persons who:

(i) Provided oral or written testimony at the hearing; and

(ii) Provided at the hearing a written request for notice and a mailing address to which written notice shall be sent. Persons whose names appear on petitions submitted into the public hearing record are not considered by that action to have provided oral or written testimony at the hearing.

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

(a) Include the date of adoption of the land use final order;

(b) Identify the place at and time during which a copy of the land use final order may be obtained; and

(c) State that appeals from decisions in the land use final order must be filed within 14 days following adoption of the land use final order.

(4) Upon adoption of the initial land use final order, TriMet shall staff the steering committee until the completion of the Southwest Corridor MAX Light Rail Project.

(5) A land use final order issued under this section and ORS 197A.509 is effective upon adoption.

(6) An amended land use final order or a new land use final order adopted in accordance with the process provided for in this section is required for:

(a) Any siting of a project improvement outside the locations established in the land use final order; or

(b) Any new project improvement. [2017 c.714 §7]

**197A.513 Plan amendments; approvals; petition for writ of mandamus.**

(1) The state, Metro, all affected local governments and any affected special districts and political subdivisions shall:

(a) Amend their comprehensive, functional or regional framework plans, including public facility plans, transportation system plans and all applicable land use regulations, as necessary to be consistent with a land use final order adopted under ORS 197A.509 and 197A.511; and

(b) Issue the appropriate development approval, permit, license, certificate or other approval necessary for the construction of the project or project improvements to implement a land use final order as necessary to avoid significantly delaying the completion or implementation of the project. Development approvals, permits, licenses, certificates or other approvals may be subject only to reasonable and necessary conditions of approval but those conditions may not, by themselves or cumulatively, prevent implementation of a land use final order.

(2) For the purposes of subsection (1)(b) of this section:

(a) An approval condition is not reasonable or necessary, or is considered to prevent implementation of a land use final order, if the approval condition applies to a measure, improvement or development that:

(A) Is not included in the scope of the project in the Full Funding Grant Agreement;

(B) Does not qualify for federal New Starts funding pursuant to 49 U.S.C. 5309;

(C) Is not physically and functionally necessary for the project; or

(D) The steering committee established under ORS 197A.509 has determined:

(i) To be infeasible using the federal, state and local funds within the project budget;

(ii) Will significantly delay the completion or otherwise prevent the timely implementation of the project; or

(iii) Will have a significant negative impact on the operations of the project.

(b) In the event that a land use approval is delayed causing significant delay of the completion or implementation of the project, TriMet may pursue any remedy available in law or equity. Not less than 10 days prior to commencing an action for relief under this section, TriMet shall provide written notice to each local government to which TriMet submitted an application for a land use decision relating to the project.

(3)(a) If the state, Metro or an affected local government, special district or political subdivision does not take final action on an application for a development approval, permit, license, certificate or other approval as required under subsection (1) of this section, TriMet may file a petition for a writ of mandamus according to the procedures for cities described in ORS 227.179.

(b) Notwithstanding ORS 227.179 (5), the court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate the criteria adopted by the Land Conservation and Development Commission under ORS 197A.505.

(4) Each affected local government, special district or political subdivision that issues a development approval, permit, license, certificate or other approval for the project under subsection (1)(b) of this section shall continue to exercise enforcement authority over the development approval, permit, license, certificate or other approval.

(5) An amendment to the plan or a land use regulation required under subsection (1)(a) of this section is not subject to review by any court or agency.

(6)(a) Development approvals issued under subsection (1)(b) of this section shall be treated as land use decisions, but not as limited land use decisions.

(b) Development approvals, permits, licenses, certificates and other approvals issued under subsection (1)(b) of this section may be the subject of administrative and judicial review as provided by law.

(7) Steering committee determinations made under subsection (2)(a)(D) of this section shall control in the event of a conflict and are not subject to review. [2017 c.714 §8]

**197A.515 Land Use Board of Appeals review of land use final order.** (1) Notwithstanding ORS 183.482, 183.484 or 197.825 and as provided by ORS 197A.500 to 197A.521, the Land Use Board of Appeals and the Supreme Court have exclusive jurisdiction for review of a land use final order adopted under ORS 197A.511 relating to the project.

(2) Proceedings for review of a land use final order shall be initiated with the Land Use Board of Appeals when any person with standing petitions for review under subsection (3) of this section.

(3) The board shall consider a person to have standing if the person:

(a) Appeared before the Metro Council orally or in writing at the hearing described in ORS 197A.509 on the project; and

(b) Personally delivered a notice of intent to appeal the land use final order as described by subsection (5) of this section within 14 days following the adoption of the land use final order as described in ORS 197A.509 (11).

(4) A person's failure to raise an issue at the land use final order hearing, in person or in writing, or failure to raise an issue with sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude that person from petitioning for review based on that issue.

(5)(a) A notice of intent to appeal shall:

(A) Contain an affidavit stating the facts that support the petitioner's standing as required by subsection (3) of this section;

(B) State with particularity the grounds on which the petitioner assigns error; and

(C) State the residence or business address of the petitioner to which documents may be delivered and the telephone number where the petitioner may be reached during normal business hours.

(b) The petitioner shall personally deliver copies of the notice of intent to appeal to:

(A) The board;

(B) Metro, at the office of Metro's executive officer; and

(C) Each affected local government.

(6) Only the following persons may intervene in and thereby be made a party to the review proceedings:

(a) The board;

(b) Metro;

(c) TriMet;

(d) The Department of Transportation; and

(e) Any affected local government.

(7)(a) Within seven days following delivery of a notice of intent to appeal as required by subsection (5) of this section, Metro shall personally deliver a certified copy of the record of the council's land use final order proceedings to the board. The record shall consist of:

- (A) The land use final order;
- (B) The statement of findings included with the land use final order;
- (C) The notice of public hearing on the land use final order;
- (D) Audio recordings of the hearing, if any;
- (E) A statement of matters that were officially noticed at the hearing;
- (F) The staff report and any amendments thereto; and
- (G) All documents accepted into the public hearing record.

(b) Metro shall make available a copy of the record for inspection by petitioners, and shall provide a copy of the record to any petitioner upon request. Metro may not charge a petitioner an amount greater than the actual copying costs for a copy of the record.

(8)(a) Within four days following delivery of the record to the board, a petitioner may object to the record by personal delivery to the board and the residence or business addresses of the intervening parties.

(b) Within four days following delivery of the objections to the record, Metro shall respond to the objections by personal delivery to the board and the residence or business addresses of the petitioners objecting.

(c) After delivery of the objections and the response, the board shall rule expeditiously on the objections. The board's ruling on the objections does not affect the briefing schedule or decision timelines set forth in ORS 197A.500 to 197A.521.

(9) Stays or continuances of proceedings are not permitted for the proceedings described in this section.

(10)(a) Within 14 days following the filing of the notice of intent to appeal, a petitioner shall personally deliver a petition for review and brief to each entity listed in subsection (6) of this section that has filed a motion to intervene on the entity's own behalf in the review proceedings.

(b) The petition for review and brief shall:

- (A) Set out in detail each assignment of error; and
- (B) Identify those portions of the record in which the petitioner raised the issues as

to which error is assigned during the land use final order hearing.

(c) The petition for review and brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(11)(a) Within 28 days following the filing of the notice of intent to appeal, Metro and any intervening party shall personally deliver their briefs in response to a petition for review and brief to the board and to any petitioner at the petitioner's residence or business address.

(b) Responding briefs shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(12)(a) Within 35 days following the filing of the notice of intent to appeal, the board shall hear oral argument in the manner provided for in its administrative rules.

(b) Neither the board nor the court may substitute its judgment for that of the council as to any issue of fact or any issue within the discretion of the council.

(13)(a) Within 28 days following oral argument, the board shall issue a final opinion affirming or remanding the council's land use final order and stating the reasons for the decision.

(b) The board may remand the land use final order only if the board finds that the council:

- (A) Improperly construed the criteria;
- (B) Exceeded its statutory or constitutional authority; or
- (C) Made a decision in the land use final order on the project improvements, including their locations, that was not supported by substantial evidence in the record.

(c) The existence in the record of substantial evidence supporting a different decision on the project improvements, including their locations, is not grounds for remand if there was also substantial evidence in the record supporting the land use final order.

(d) Failure to comply with statutory procedures, including notice requirements, is not grounds for invalidating a land use final order.

(e) The board shall affirm all portions of the land use final order that it does not remand.

(14) Upon issuance of its final opinion under subsection (13) of this section, the board shall:

- (a) Transmit copies of the final opinion to the parties; and
- (b) Inform the parties of the filing of the final opinion by telephone.

(15) Within seven days following issuance of its final opinion, the board shall personally deliver or electronically submit a copy of the record of the board with the State Court Administrator. [2017 c.714 §9]

**197A.517 Supreme Court review of Land Use Board of Appeals opinion on land use final order.** (1)(a) Review of the final opinion of the Land Use Board of Appeals shall be initiated when any person that appeared before the Land Use Board of Appeals under ORS 197A.515 petitions the Supreme Court to review the board's final opinion as provided in this section.

(b) Within 14 days following the board's issuance of its final opinion, the petitioner shall file a petition for judicial review and a brief with the State Court Administrator and serve copies of the petition and the brief on the board and all parties.

(c) The petition must state a request for relief and include a copy of the board's final opinion. The brief must state, with particularity and supporting authority, each reason asserted for remand of the board's final opinion.

(d) Upon request by the court, the board shall personally deliver or electronically submit a transcript of the board's record.

(2)(a) Within 14 days after the petition filing date, any other person that appeared before the board may, but need not, file a response in the form of a brief to the petition and brief with the State Court Administrator and shall serve the response on the board and all parties.

(b) In the absence of a response, the court shall consider a person's brief before the board to be the person's response.

(3) The court shall decide the matter at its earliest practicable convenience, consistent with ORS 197A.500 to 197A.521. The court shall apply the standards for review set forth in ORS 197A.515.

(4)(a) The court may decide the matter on the briefs or hold oral argument.

(b) The court may affirm or remand the land use final order, in whole or in part. The court shall affirm all parts of the land use final order that it does not remand.

(5)(a) If the court affirms, the court may adopt the board's final opinion, affirm without opinion or issue a separate opinion.

(b) If the court remands, the Metro Council shall:

(A) Respond as to those matters remanded by adopting by resolution a land use final order on remand according to the provisions of ORS 197A.509 and 197A.511;

(B) Immediately file the land use final order on remand and the record of the council with the State Court Administrator;

(C) Personally deliver copies of its land use final order on remand to the parties before the court; and

(D) Inform the parties by telephone of the filing of the land use final order on remand.

(6) The court shall retain jurisdiction over any matters remanded.

(7) Within 14 days following adoption of a land use final order on remand, the parties before the court may submit briefs to the court in response to the land use final order on remand. Parties that submit briefs shall personally deliver copies of the briefs to other parties before the court. The court may limit the length of briefs submitted under this subsection.

(8) The court shall affirm or remand the land use final order on remand according to the standards for review set forth in ORS 197A.515. [2017 c.714 §10]

**197A.519 Amendments to land use final order.** (1) Following execution of a Full Funding Grant Agreement, the Metro Council shall amend the land use final order to be consistent with the terms and conditions of the Full Funding Grant Agreement.

(2) The council shall remove, modify or defer one or more project improvements or measures if:

(a) The federal government requires the removal, modification or deferral of portions of the approved project, or the removal, modification or deferral of measures is expressly provided for in a Final Statement as a condition of executing a Full Funding Grant Agreement; or

(b) Subsequent to execution of a Full Funding Grant Agreement, the steering committee determines that additional removals, modifications or deferrals are appropriate due to insufficient funds in the budget for the project.

(3) The following amendments to a land use final order are not subject to review by any court or agency:

(a) Amendments resulting from adoption of a Final Statement;

(b) Amendments required to ensure consistency with an executed Full Funding Grant Agreement; and

(c) Amendments to remove, modify or defer a portion of the project as provided for in subsection (2) of this section. [2017 c.714 §11]

**197A.521 Failure to meet timeline.** An action taken by the Land Conservation and Development Commission, the Metro Council, the Land Use Board of Appeals or the

Supreme Court under ORS 197A.500 to 197A.521 is not invalid due to a failure to meet a timeline established under ORS 197A.500 to 197A.521. [2017 c.714 §12]

**Note:** Section 13, chapter 714, Oregon Laws 2017, provides:

**Sec. 13.** The Land Conservation and Development Commission shall adopt the order establishing the criteria described in section 4 (8) of this 2017 Act [197A.505 (8)] within 90 days following the effective date of this 2017 Act [August 15, 2017]. [2017 c.714 §13]

**MISCELLANEOUS MATTERS**

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