Chapter 195

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Local Government Planning Coordination

COORDINATION AGREEMENTS

(Agreements Generally)



(Urban Service Agreements)



(School Facility Planning)



PARKS



URBAN RESERVE AREAS



URBAN SERVICE PROVIDER ANNEXATION

LANDSLIDE HAZARD AREAS



CROSS-REFERENCES

Definitions relating to manufactured dwellings and manufactured dwelling parks, 446.003

Exemption of hazardous waste or PCB disposal site from state or local laws pertaining to sale or deeding of property, 466.153

195.205 to 195.235

Annexation, 199.466 to 199.534, Ch. 222

COORDINATION AGREEMENTS

(Agreements Generally)

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

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

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

enter into a cooperative agreement with any other special district operating within an urban growth boundary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Copies of comprehensive plans reviewed by the county governing body and copies of land use regulations

applied to areas of critical state concern within the county.

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

(Urban Service Agreements)

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

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

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

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

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

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

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

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

(d) Assign responsibilities for:

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

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

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

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

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

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

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

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

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

(a) Sanitary sewers;

(b) Water;

(c) Fire protection;

(d) Parks;

(e) Open space;

(f) Recreation; and

(g) Streets, roads and mass transit.

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

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

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

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

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

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

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

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

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

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

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

(j) Economies of scale.

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

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

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

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

(b) Rates;

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

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

**195.080 Application of comprehensive plans and land use regulations.** Nothing in ORS 195.020, 195.060 to 195.085, 195.145 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304 shall be construed to prevent planning for, installation of or connection to public facilities or services consistent with acknowledged comprehensive plans and land use regulations. [1993 c.804 s.6]

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

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

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

(School Facility Planning)

**195.110 School facility plan for high growth school districts.** (1)(a) A county or city containing a high growth school district shall include as an element of its comprehensive plan a school facility plan prepared by the high growth district in cooperation with the city or county.

(b) A county or city containing a high growth area shall initiate planning activities with a school district to

accomplish planning as required under ORS 195.020.

(c) The provisions of paragraph (a) of this subsection do not apply to a city that contains less than 10 percent of the total population of a high growth school district.

(2) As used in this section, "high growth school district" means any school district that has an enrollment of over 5,000 students and had an increase in student enrollment of six percent or more during the three most recent school years, based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.

(3) The school facility plan shall identify school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan. The plan shall be updated during periodic review and may be updated more frequently by mutual agreement between the school district and the county or city.

(4)(a) In the school facility plan, a high growth school district shall assess the capacity of school facilities on the basis of objective criteria that are formally approved by the school board. In an agreement under ORS 195.020, the school district and the city or county shall agree, to the greatest extent possible, on the criteria for the capacity of school facilities. After a school district formally adopts criteria for the capacity of school facilities, a county or city shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

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

(c) The provisions of paragraph (b) of this subsection apply to an action that involves:

(A) High growth school districts;

(B) Light rail planning in an area that is not a high growth school district; or

(C) The addition of 1,000 or more residential units in an area that is not a high growth school district.

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

(6) Any school district not defined as high growth in subsection (2) of this section may adopt a plan for school facilities as set forth in this section, subject to cooperation with the affected cities or counties.

(7) The school facility plan shall include but need not be limited to the following elements:

(a) Population projections by school age group;

(b) Identification by both the city or county and the school district of desirable school sites;

(c) Physical improvements needed to bring existing schools up to the school district's minimum standards;

(d) Financial plans to meet school facility needs;

(e) An analysis of the alternatives to new school construction and major renovation;

(f) Five-year capital improvement plans; and

(g) Site acquisition schedules and programs.

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

(9) This section and ORS 197.015 do not confer any power to a school district to declare a building moratorium.

(10) Notwithstanding any other provision of state or local law, school capacity shall not be the sole basis for the approval or denial of any residential development application, unless the application involves changes to the local government comprehensive plan or land use regulations. [1993 c.550 s.2; 1995 c.508 s.1]

PARKS

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

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

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

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

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

parks.

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

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

(b) Recreational trails and boating facilities;

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

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

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

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

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

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

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

(1) The repair and renovation of existing facilities;

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

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

URBAN RESERVE AREAS

**195.145 Urban reserve areas; when required; limitation.** (1) To ensure that the supply of land available for urbanization is maintained, local governments may cooperatively designate lands outside urban growth boundaries as urban reserve areas, subject to ORS 197.610 to 197.625.

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

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

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

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

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

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

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

(4) For purposes of this section, “urban reserve area” means lands outside an urban growth boundary that will provide for:

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

(b) The cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary. [1993 c.804 s.19; 1999 c.622 s.6]

URBAN SERVICE PROVIDER ANNEXATION

**195.205 Annexation by provider; prerequisites to vote; public hearing.** (1) A city or district that provides an urban service may annex territory under ORS 195.020, 195.060 to 195.085, 195.145 to 195.235, 197.005, 197.319,

197.320, 197.335 and 223.304 that:

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

(b) Is contained within an annexation plan adopted pursuant to ORS 195.020, 195.060 to 195.085, 195.145 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304.

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

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

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

(B) They expressly state that they may be relied upon as a prerequisite of the annexation method authorized by ORS 195.020, 195.060 to 195.085, 195.145 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304; and

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

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

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

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

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

(2) The notice of an annexation plan election shall be given as provided in ORS 254.095 and 254.205, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed. [1993 c.804 s.14; 1995 c.79 s.72; 1995 c.534 s.9]

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

(2) Annexation of particular tracts of territory shall take effect in accordance with the provisions of the adopted annexation plan. [1993 c.804 s.15]

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

(a) The timing and sequence of annexation.

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

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

(d) The effects on existing urban services providers.

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

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

**195.225 Boundary commission review; action; plan amendment; election.** (1) In areas subject to the jurisdiction

of a local government boundary commission, the boundary commission shall conduct an advisory review of an annexation plan for conformity with annexation plan requirements set forth in ORS 195.220, 199.462 and the rules of procedure of the Land Conservation and Development Commission.

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

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

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

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

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

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

LANDSLIDE HAZARD AREAS

**195.250 Definitions for ORS 195.250 to 195.275.** As used in ORS 195.250 to 195.275:

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

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

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

**Note:** 195.250 to 195.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 195 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

(2) In keeping with the concept of shared responsibility where individuals are primarily responsible for making sound decisions to protect personal interests, regulation applied pursuant to ORS 195.250 to 195.270 shall be restricted to reducing the risk of serious bodily injury or death that may result from rapidly moving landslides.

(3) In recognition of the need for consistent treatment and coordination of actions relating to rapidly moving landslides and because of the potential for serious bodily injury or death as a result of rapidly moving landslides and the effect of rapidly moving landslides on the ability of people to use their property, ORS 195.250 to 195.270 shall be regarded as the controlling policy of this state for rapidly moving landslides. [1999 c.1103 s.2]

**Note:** See note under 195.250.

**195.256 Findings.** The Legislative Assembly finds that:

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

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

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

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

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

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

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

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

**Note:** See note under 195.250.

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

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

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

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

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

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

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

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

(3) Forest practice rules adopted under ORS 527.710 (11) shall not apply to risk situations arising solely from the construction of a building permitted under subsection (1)(c) of this section after October 23, 1999.

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

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

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

(B) Provide public education regarding landslide hazards.

(b) The State Forestry Department shall regulate forest operations to reduce the risk of serious bodily injury or death from rapidly moving landslides directly related to forest operations, and assist local governments in the siting review of permanent dwellings on and adjacent to forestlands in further review areas pursuant to subsection (1)(b) of this section.

(c) The Land Conservation and Development Commission may take steps under its existing authority to assist local

governments to appropriately apply the requirements of subsection (1)(c) of this section.

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

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

(5) Notwithstanding any other provision of law, any state or local agency adopting rules related to the risk of serious bodily injury or death from rapidly moving landslides shall do so only in conformance with the policies and provisions of ORS 195.250 to 195.270.

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

(7) Except as provided in ORS 527.710 or in Oregon's ocean and coastal land use planning goals, no state agency may adopt criteria regulating activities for the purpose of reducing risk of serious bodily injury or death from rapidly moving landslides on lands subject to the provisions of ORS 195.250 to 195.270 that are more restrictive than the criteria adopted by a local government pursuant to subsection (1)(c) of this section. [1999 c.1103 s.4]

**Note:** See note under 195.250.

**195.263 Dwellings in landslide hazard areas; mitigation measures and development standards.** (1) Regulations adopted by a local government to regulate the siting of dwellings and other structures designed for human occupancy through mitigation measures and site development standards as required under ORS 195.260 (1)(c) shall include the following decision process:

(a) A determination that the dwelling or other structure is allowed under applicable land use regulations and whether the proposed site for the dwelling or other structure is located within a portion of the further review area that poses a risk of serious bodily injury or death resulting from a rapidly moving landslide.

(b) If an alternative site on the same lot or parcel that does not require mitigation is available:

(A) The local government first shall require the property owner to site the dwelling or other structure at the alternative site, so long as the cost of relocating does not exceed $20,000.

(B) If the cost of relocating exceeds $20,000, and the local government has adopted a transfer of development rights program that complies with ORS 195.266 and 195.270, the local government shall allow the property owner either to:

(i) Participate in the local government's transfer of development rights program; or

(ii) Construct the dwelling or other structure on the alternative site even though the cost of relocating exceeds $20,000.

(C) If the cost of relocating exceeds $20,000, and the local government has not adopted a transfer of development rights program, the local government shall allow the property owner either to:

(i) Construct the dwelling or other structure at the alternative site; or

(ii) Pursue mitigation available under paragraph (c) of this subsection.

(c) If an alternative site on the same lot or parcel that does not require mitigation is not available and if development of the site complies with all other applicable requirements:

(A) If the cost of adequate mitigation is less than $10,000, the local government shall allow construction of the dwelling or other structure if the property owner completes the mitigation measures.

(B) If the cost of adequate mitigation exceeds $10,000, and the local government has adopted a transfer of development rights program, the local government shall allow the property owner to:

(i) Participate in the local government's transfer of development rights program; or

(ii) Construct the dwelling or other structure on the proposed site and complete adequate mitigation even though the cost of mitigation exceeds $10,000.

(C) If the cost of adequate mitigation exceeds $10,000, and the local government has not adopted a transfer of development rights program, the local government shall allow the property owner to take either of the following actions:

(i) Site the dwelling or other structure at an alternative site in the further review area and implement mitigation measures. The local government may not require the property owner to incur a combined relocation and mitigation

cost of more than $20,000 if the property owner proceeds with this option.

(ii) Site the dwelling or other structure at the original proposed site and implement mitigation measures. The local government may not require the property owner to incur more than $10,000 in costs for implementing mitigation measures if the property owner proceeds with this option.

(2) Nothing in this section prohibits a property owner from constructing a dwelling or other structure on the lot or parcel and agreeing to pay mitigation costs that exceed the amount established under subsection (1) of this section. [1999 c.1103 s.5]

**Note:** See note under 195.250.

**195.266 Transfer of development rights program; adoption by local government; requirements; effect; registry of affected parcels.** (1) For a further review area, a local government may not impose mitigation requirements under ORS 195.260 (1)(c) that require a property owner to implement mitigation measures for which the cost exceeds $10,000 or require the property owner to expend more than $20,000 in site development costs resulting from changing the site of a dwelling or other structure unless the local government has adopted a transfer of development rights program.

(2) A transfer of development rights program established pursuant to this section shall:

(a) Allow a development right to be transferred from a lot or parcel that is located within a further review area to another area within the city or county and that is not otherwise eligible for an additional dwelling under existing comprehensive plan and zoning designations.

(b) Provide that the transfer opportunity is available to a property owner only after:

(A) An application for a dwelling or other structure on a lot or parcel located within a further review area establishes that the dwelling or structure would be authorized under applicable local ordinances in effect on January 1, 1999, and under statutes and administrative rules;

(B) The local government determines that there are no alternative building sites on the same lot or parcel where mitigation would not be required or where site development costs resulting from changing the site exceed the limit established under ORS 195.263 (1)(b); and

(C) The local government determines that the cost of mitigation requirements will exceed $10,000 or the site development costs resulting from changing the site will exceed $20,000.

(3) In adopting a transfer of development rights program, the local government shall identify one or more areas on plan and zoning maps as receiving areas for transferred development rights. Receiving areas shall authorize new dwelling opportunities that are not otherwise eligible for an additional dwelling under existing comprehensive plan and zoning designations transferred in accordance with this section. New dwelling opportunities shall include but need not be limited to a second dwelling opportunity on the same lot or parcel and the creation of additional parcels or lots, provided such new dwelling opportunities and land divisions are allowed under ORS chapters 197, 215 and 227, and goals and rules adopted thereunder, but were not allowed by state law or local land use regulations prior to October 23, 1999.

(4) The local government shall adopt findings demonstrating that the number of dwelling opportunities provided exceeds the projected number of transferred rights based on the further review areas that are inside the boundaries of the local government.

(5) A local government shall monitor the transfer of development rights program and make adjustments as necessary to ensure an adequate supply of financially equitable transfer opportunities in designated receiving areas.

(6) A person who transfers or conveys the development rights to a lot or parcel under a transfer of development rights program established pursuant to this section shall record in the deed records for the county where the lot or parcel is located a nonrevocable deed restriction prohibiting future development of the lot or parcel.

(7) The governing body of a city or county may establish a system to facilitate the transfer of development rights by purchasing any number of such rights and subsequently offering them for sale.

(8) A city or county with a transfer of development rights program established pursuant to this section shall maintain a registry of all lots or parcels from which rights have been transferred, the lots or parcels to which rights have been transferred and the allowable development level for each lot or parcel following transfer. [1999 c.1103 s.6]

**Note:** See note under 195.250.

**195.270 Agreement among local governments for transfer of development rights.** In establishing a transfer of

development rights program under ORS 195.266, a local government may enter into an intergovernmental agreement with another local government to allow for transferred development rights that are outside the boundaries of the local government. [1999 c.1103 s.7]

**Note:** See note under 195.250.

**195.275 Moratorium on siting of dwellings in landslide hazard areas.** (1) The Legislative Assembly finds that it is in the public interest to limit the siting in further review areas of dwellings and other structures designed for human occupancy. In order to further this public interest, it is necessary to postpone the siting of dwellings and other structures in further review areas until local governments have an opportunity to enact regulations as required under ORS 195.260 (1)(c) and if the local government chooses, a transfer of development rights program pursuant to ORS 195.263 to 195.270.

(2) The Legislative Assembly declares that, notwithstanding the provisions of ORS 195.263, for the 10-month period following the date the State Department of Geology and Mineral Industries notifies the local government that all identification and mapping of further review areas under ORS 195.260 (4)(a) are prepared for the local government, that local government shall not allow the siting of a dwelling or other structure in a further review area without adequate mitigation unless the local government has adopted the regulations required under ORS 195.260 (1)(c) and a transfer of development rights program that satisfies the requirements of ORS 195.263 to 195.270.

(3) Within 10 months after a local government receives notification under subsection (2) of this section, the local government shall adopt the regulations required under ORS 195.263 to 195.270. [1999 c.1103 s.9]

**Note:** See note under 195.250.

**Note:** Sections 8, 15 and 19, chapter 1103, Oregon Laws 1999, provide:

**Sec. 8.** The Department of Land Conservation and Development shall award a grant to a local government for the purpose of developing a model program for the mitigation of hazards and transfer of development rights that may be adopted by other local governments in order to satisfy the requirements of sections 5 to 7 of this 1999 Act [195.263 to 195.270]. The pilot program shall include the development of model ordinances, regulations and procedures for mitigation of hazards and for allowing the transfer of development rights under sections 5 to 7 of this 1999 Act. [1999 c.1103 s.8]

**Sec. 15.** On or before January 1, 2001, the State Department of Geology and Mineral Industries, State Forestry Department and the Department of Land Conservation and Development shall report to the Seventy-first Legislative Assembly on the implementation of sections 1 to 9 of this 1999 Act [195.250 to 195.275]. The report shall include at a minimum:

(1) The results of the work of the State Department of Geology and Mineral Industries to identify and map further review areas under section 4 (4)(a) of this 1999 Act [195.260 (4)(a)];

(2) Information about the pilot program to develop a model program for the mitigation of hazards and transfer of development rights pursuant to section 8 of this 1999 Act; and

(3) Recommendations for any specific changes necessary to the programs established pursuant to sections 1 to 7 of this 1999 Act [195.250 to 195.270]. [1999 c.1103 s.15]

**Sec. 19.** Section 8 of this 1999 Act is repealed on June 30, 2001. [1999 c.1103 s.19]

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