House Bill 3483

Sponsored by Representative DALLUM; Representatives ANDERSON, BERGER, FLORES, GARRARD, KRIEGER, P SMITH, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Establishes regional land use planning commissions. Modifies duties of Land Conservation and Development Commission so that commission establishes statewide land use planning goals and regional commissions ensure compliance of local and regional plans with goals.

A BILL FOR AN ACT

Relating to regional land use planning commissions; creating new provisions; and amending ORS 183.457, 183.530, 183.635, 195.020, 195.025, 195.040, 195.085, 195.120, 195.145, 195.225, 195.260, 196.107, 196.115, 196.435, 196.443, 196.471, 196.485, 196.681, 197.015, 197.030, 197.040, 197.045, 197.047, 197.060, 197.070, 197.075, 197.080, 197.090, 197.095, 197.175, 197.180, 197.225, 197.251, 197.253, 197.254, 197.265, 197.274, 197.283, 197.296, 197.299, 197.319, 197.320, 197.324, 197.328, 197.335, 197.340, 197.350, 197.395, 197.505, 197.610, 197.625, 197.626, 197.628, 197.629, 197.633, 197.636, 197.637, 197.638, 197.644, 197.646, 197.650, 197.656, 197.658, 197.712, 197.717, 197.768, 197.825, 197.835, 197.840, 215.213, 215.263, 215.275, 215.278, 215.282, 215.283, 215.304, 215.457, 215.459, 215.503, 215.740, 215.780, 223.317, 227.186, 244.050, 284.577, 285C.500, 308A.065, 308A.350, 308A.700, 383.017, 390.322, 456.571, 468A.363, 469.320, 469.501, 469.503 and 469.504.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) There are established six regional land use commissions, each consisting of seven members appointed by the Governor, subject to confirmation by the Senate in the manner provided by ORS 171.562 and 171.565.

(2) One regional commission shall operate in each of the following areas:

(a) Region 1, which consists of Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook Counties and those portions of Douglas and Lane Counties lying west of the summit of the Coast Range;

(b) Region 2, which consists of Clackamas, Multnomah and Washington Counties;

(c) Region 3, which consists of Benton, Linn, Marion, Polk and Yamhill Counties and that portion of Lane County lying east of the summit of the Coast Range;

(d) Region 4, which consists of Jackson and Josephine Counties and that portion of Douglas County lying east of the summit of the Coast Range;

(e) Region 5, which consists of Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties; and

(f) Region 6, which consists of Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County lying east of the summit

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

of the Coast Range.

(3) The Governor shall appoint seven individuals to each regional commission as follows:

(a) One local government official.

(b) One representative of business or industry.

(c) One representative of an environmental or wildlife organization.

(d) Four landowners, including:

(A) One voting member of a county agricultural organization.

(B) One voting member of a small woodlands organization.

(C) One real estate developer.

(D) One at-large selection.

(4) The term of office of each member of a regional commission is four years, but a member may be removed by the Governor for cause. Before the expiration of the term of a member, the Governor shall appoint a successor. A person may not serve more than two full terms as a member of a commission.

(5) The members of a regional commission shall elect a chair from among the members.

(6) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(7) Pursuant to ORS chapters 195, 196 and 197, a regional commission shall:

(a) Adopt, amend and revise rules necessary for the implementation of statewide land use planning goals in the region;

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

(c) Review comprehensive plans and regional framework plans for compliance with goals;

(d) Coordinate planning efforts of state agencies within the region to ensure compliance with goals and compatibility with city and county comprehensive plans;

(e) Ensure widespread citizen involvement and input in all phases of the process;

(f) Review and recommend to the Land Conservation and Development Commission the designation of areas within the region of critical state concern;

(g) In accordance with the provisions of ORS chapter 183, adopt rules that the regional commission considers necessary to carry out its duties under ORS chapters 195, 196 and 197. Except as provided in subsection (8) of this section, in designing its administrative requirements, a regional commission shall:

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

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

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

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

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

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

(j) Perform other duties required by law.

(8) The requirements of subsection (7)(g) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by a proposed rule.

(9) As used in this section, "landowner" means an individual who owns real property in the region that is specially assessed under ORS 308A.050 to 308A.128, 321.358, 321.709 or 321.839.

SECTION 3. ORS 197.015 is amended to read:

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

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

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

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

(4) "Committee" means the Joint Legislative Committee on Land Use.

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

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

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

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

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

(10) "Land use decision":

(a) Includes:

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

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission **or a regional**

commission with respect to which the agency is required to apply the goals; or

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

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

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

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

(C) Which is a limited land use decision;

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

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

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

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

(e) Does not include:

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

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

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

(12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:

(a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.

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

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

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

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

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

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

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

opment Commission**,** or its designee [*is*]**, and a regional commission established under section 2 of this 2005 Act are** considered [*a person*] **persons** for purposes of appeal under ORS chapters 195 and 197.

(19) "Regional commission" means a regional land use planning commission established under section 2 of this 2005 Act.

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

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

[*(21)*] **(22)** "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 4. ORS 197.030 is amended to read:

197.030. (1) There is established a Land Conservation and Development Commission [*consisting of seven members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution*]. **The members of the commission are:**

[*(2) The Governor shall appoint to the commission:*]

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

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

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

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

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

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

[*(3)*] **(a) The chairs of the six regional commissions established under section 2 of this 2005 Act; and**

(b) Three additional members appointed by the Governor, subject to Senate confirmation under ORS 171.562 and 171.565, at least one [*member shall be or have*] **of whom is or has** been an elected city official in Oregon and at least one [*member shall be*] **of whom is** an elected county official **in Oregon** at the time of appointment.

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

[*(5)*] **(3)** If there is a vacancy for any cause, the Governor shall make an appointment to become

immediately effective for the unexpired term.

SECTION 5. ORS 197.040 is amended to read:

197.040. (1) The Land Conservation and Development Commission shall:

(a) Direct the performance by **the regional land use commissions established by section 2 of this 2005 Act,** the Director of the Department of Land Conservation and Development and the director's staff of their functions under ORS chapters 195, 196 and 197.

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to **guide the regional land use commissions in the oversight of the implementation of the statewide land use planning goals in their respective regions and to guide the director and the department.** [*carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:*]

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

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

[*(C) Assess the likely degree of economic impact on identified property and economic interests; and*]

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

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

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

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

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

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

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

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

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

[*(c)*] **(b)** Prepare statewide planning guidelines;

[*(d) Review comprehensive plans for compliance with goals;*]

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

[*(f)*] **(c)** [*Insure*] **Ensure** widespread citizen involvement and input in all phases of the process;

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

[*(h)*] **(e)** Report periodically to the Legislative Assembly and to the committee;

(f) Review the activities of regional commissions to ensure that rules and decisions of each regional commission are consistent with the statewide land use planning goals; and

[*(i)*] **(g)** Perform other duties required by law.

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

SECTION 6. ORS 197.045 is amended to read:

197.045. The Land Conservation and Development Commission **or a regional commission** may:

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

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

(3) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carrying out its duties under ORS chapters 195, 196 and 197.

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

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

(6) Notwithstanding any other provision of law, review comprehensive plan and land use regulations related to the identification and designation of high-value farmland pursuant to chapter 792, Oregon Laws 1993, under procedures set forth in ORS 197.251.

SECTION 7. ORS 197.047 is amended to read:

197.047. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

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

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

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

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

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

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

risdiction.

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

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

_____

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

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

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

_____

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

_____

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

_____

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

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

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

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

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

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

(Check on the appropriate line:)

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

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

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

(Check on the appropriate line:)

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

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

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

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

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

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

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

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

(a) Contain substantially the following language in boldfaced type across the top of the face

page extending from the left margin to the right margin:

(Check on the appropriate line:)

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

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

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

(Check on the appropriate line:)

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

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

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

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

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

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

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

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

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

(11) The Department of Land Conservation and Development shall reimburse the local govern-

ment for:

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

(b) All usual and reasonable costs of providing the notices required under subsection (4) or (8) of this section.

SECTION 8. ORS 197.060 is amended to read:

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

(2) A draft of the report required by subsection (1) of this section shall be submitted to the Joint Legislative Committee on Land Use for its review and comment at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

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

SECTION 9. ORS 197.070 is amended to read:

197.070. **(1)** The Land Conservation and Development Commission shall keep on file and available for public inspection the assessments prepared pursuant to ORS [*197.040 and*] 197.230.

(2) A regional commission shall keep on file and available for public inspection the assessments prepared pursuant to section 2 (7)(g) of this 2005 Act.

SECTION 10. ORS 197.075 is amended to read:

197.075. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, **the regional commissions,** the Director of the Department of Land Conservation and Development and their subordinate officers and employees.

SECTION 11. ORS 197.080 is amended to read:

197.080. The Department of Land Conservation and Development shall report monthly to the Joint Legislative Committee on Land Use in order to keep the committee informed on progress made by the department, Land Conservation and Development Commission, **a regional commission,** local governments and other agencies in carrying out ORS chapters 195, 196 and 197.

SECTION 12. ORS 197.090 is amended to read:

197.090. (1) Subject to policies adopted by the Land Conservation and Development Commission, the Director of the Department of Land Conservation and Development shall:

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

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

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

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

(e) Provide clerical and other necessary support services for the board.

(2)(a) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of a land use decision, expedited land division or limited land use decision involving the goals, acknowledged comprehensive plan or land use regulation or other matter within the statutory authority of the department**, the commission** or **a regional** commission under ORS chapters 195, 196 and 197. The director shall report to the commission **or the regional commission, as appropriate,** on each case in which the department participates and on the positions taken by the director in each case.

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

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

(d) A decision by [*the*] **a regional** commission under this subsection is not subject to appeal.

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

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

(4) The director may intervene in an appeal of a land use decision, expedited land division or limited land use decision brought by another person in the manner provided for an appeal by the director under subsection (2)(b) and (c) of this section.

SECTION 13. ORS 197.095 is amended to read:

197.095. (1) There is established in the General Fund in the State Treasury the Land Conserva-

tion and Development Account. Moneys in the account are continuously appropriated **to the Department of Land Conservation and Development** for the purpose of carrying out ORS chapters 195, 196 and 197.

(2) All fees, moneys and other revenue received by the Department of Land Conservation and Development or the Joint Legislative Committee on Land Use shall be deposited in the Land Conservation and Development Account.

SECTION 14. ORS 197.175 is amended to read:

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

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

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

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

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

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

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

(3) Notwithstanding subsection (1) of this section, **neither** the commission [*shall not*] **nor a regional commission may** initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.510 to 198.915 or 451.010 to 451.620.

SECTION 15. ORS 197.180 is amended to read:

197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with goals adopted or amended pursuant to ORS chapters 195, 196 and 197; and

(b) In a manner compatible with:

(A) Comprehensive plans and land use regulations initially acknowledged under ORS 197.251;

(B) Amendments to acknowledged comprehensive plans or land use regulations or new land use

regulations acknowledged under ORS 197.625; and

(C) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged through periodic review.

(2) State agencies need not comply with subsection (1)(b) of this section if the comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time the local plan was acknowledged, and the agency has demonstrated:

(a) That the plan or program is mandated by state statute or federal law;

(b) That the plan or program is consistent with the goals;

(c) That the plan or program has objectives that cannot be achieved in a manner consistent with the comprehensive plan and land use regulations; and

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

(3) Upon request by [*the Land Conservation and Development Commission*] **a regional commission**, each state agency shall submit to the Department of Land Conservation and Development the following information **relating to the particular region**:

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

(b) A program for coordination pursuant to [*ORS 197.040 (2)(e)*] **section 2 (7)(d) of this 2005 Act**;

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

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

(4) Within 90 days of receipt, the Director of the Department of Land Conservation and Development shall review the information submitted pursuant to subsection (3) of this section and shall notify each agency if the director believes the rules and programs submitted are insufficient to assure compliance with goals and compatibility with city and county comprehensive plans and land use regulations.

(5) Within 90 days of receipt of notification specified in subsection (4) of this section, the agency may revise the rules or programs and resubmit them to the director.

(6) The director shall make findings under subsections (4) and (5) of this section as to whether the rules and programs are sufficient to assure compliance with the goals and compatibility with acknowledged city and county comprehensive plans and land use regulations, and shall forward the rules and programs to the **regional** commission for its action. The **regional** commission shall either certify the rules and programs as being in compliance with the goals and compatible with the comprehensive plans and land use regulations of affected local governments or shall determine the same to be insufficient by December 31, 1990.

(7) The department shall report to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget, any agency that has failed to meet the requirements of subsection (6) of this section.

(8) Any agency that has failed to meet the requirements of subsection (6) of this section shall report the reasons therefor to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

(9) Until state agency rules and programs are certified as being in compliance with the goals and compatible with applicable city and county comprehensive plans and land use regulations, the agency shall make findings when adopting or amending its rules and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

(10) [*The*] **A regional** commission shall adopt rules establishing procedures to [*assure*] **ensure**

that state agency permits affecting land use are issued in compliance with the goals and compatible with acknowledged comprehensive plans and land use regulations, as required by subsection (1) of this section. The rules shall prescribe the circumstances in which state agencies may rely upon a determination of compliance or compatibility made by the affected city or county. The rules shall allow a state agency to rely upon a determination of compliance by a city or county without an acknowledged comprehensive plan and land use regulations only if the city or county determination is supported by written findings demonstrating compliance with the goals.

(11) A state agency required to have a land use coordination program shall participate in a local government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a manner that is consistent with the coordination program, unless the agency:

(a) Is exempt from coordination program requirements; or

(b) Participated in the local government's periodic review pursuant to ORS 197.633 and raised the issue that is the basis for participation in the land use hearing.

(12) In carrying out programs affecting land use, a state agency is not compatible with an acknowledged comprehensive plan if it takes or approves an action that is not allowed under the plan. However, a state agency may apply statutes and rules which the agency is required by law to apply in order to deny, condition or further restrict an action of the state agency or of any applicant before the state agency provided it applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

(13) This section does not apply to rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

SECTION 16. ORS 197.225 is amended to read:

197.225. The Department of Land Conservation and Development shall prepare and the Land Conservation and Development Commission shall adopt goals and guidelines for use by **regional commissions to ensure that** state agencies, local governments and special districts [*in preparing, adopting, amending and implementing*] **prepare, adopt, amend and implement** existing and future comprehensive plans **in a manner that complies with the goals**.

SECTION 17. ORS 197.251 is amended to read:

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

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

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

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

(3) Upon completion of the report and before the **regional** commission meeting at which the director's report is to be considered, the director shall afford the local government and persons who

submitted written comments or objections a reasonable opportunity to file written exceptions to the report.

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

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

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

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

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

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

(b) Specific geographic areas do not comply with the applicable goals, and the goal requirements are not technical or minor in nature.

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

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

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

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

(11) As used in this section:

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

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

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

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

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

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

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

(C) Is used when the amendments or other changes required in the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations affect many goals and are likely to take a substantial period of time to complete.

SECTION 18. ORS 197.253 is amended to read:

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

SECTION 19. ORS 197.254 is amended to read:

197.254. (1) A state agency shall be barred after the date set for submission of programs by [*the Land Conservation and Development Commission*] **a regional commission** as provided in ORS 197.180 (3), from contesting a request for acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the **regional** commission finds that:

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

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

(2) A state agency shall be barred from seeking a **regional** commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the agency's plan or program unless the agency has first requested the amendment from the local government and has had its request denied.

(3) A special district shall be barred from contesting a request for initial compliance acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions under ORS 195.025 (1) finds that:

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

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

(4) A special district shall be barred from seeking a **regional** commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the special district's plan or program unless the special district has first re-

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

SECTION 20. ORS 197.265 is amended to read:

197.265. (1) As used in this section, "action" includes but is not limited to a proceeding under ORS 197.830 to 197.845.

(2) If any action is brought against a local government challenging any comprehensive plan, land use regulation or other action of the local government which was adopted or taken for the primary purpose of complying with the goals approved under ORS 197.240 and which does in fact comply with the goals, then the **Department of** Land Conservation and Development [*Commission*] shall pay reasonable attorney fees and court costs incurred by [*such*] **the** local government in the action or suit including any appeal, to the extent funds have been specifically appropriated to the [*commission therefor*] **department for that purpose**.

SECTION 21. ORS 197.274 is amended to read:

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

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

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

(B) Post-acknowledgment procedures under ORS 197.610 to 197.650; and

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

(2) With the prior consent of the [*Land Conservation and Development*] **regional** commission **for the region**, Metro may submit to the Department of Land Conservation and Development an amendment to the Metro regional framework plan or to a component of the regional framework plan in the manner provided for periodic review under ORS 197.628 to 197.650, if the amendment implements a program to meet the requirements of a land use planning statute, a statewide land use planning goal or an administrative rule corresponding to a statute or goal.

SECTION 22. ORS 197.283 is amended to read:

197.283. (1) The [*Land Conservation and Development*] **regional** commission **for the region** shall take actions it considers necessary to [*assure*] **ensure** that city and county comprehensive plans and land use regulations and state agency coordination programs **within the region** are consistent with the goal set forth in ORS 468B.155.

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

SECTION 23. ORS 197.296 is amended to read:

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

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

(2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

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

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

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Demographic and population trends;

(D) Economic trends and cycles; and

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

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

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

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

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

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

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

(7) Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

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

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

(9) In establishing that actions and measures adopted under subsections (6) or (7) of this section

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

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

(b) Financial incentives for higher density housing;

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

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

(e) Minimum density ranges;

(f) Redevelopment and infill strategies;

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

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

(i) Rezoning or redesignation of nonresidential land.

SECTION 24. ORS 197.299 is amended to read:

197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the initial inventory, determination and analysis required under ORS 197.296 (3) not later than January 1, 1998, and conduct the inventory and analysis at least every five years thereafter.

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

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

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

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

SECTION 25. ORS 197.319 is amended to read:

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

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

(b) Request:

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

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

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

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

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

SECTION 26. ORS 197.320 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 27. ORS 197.324 is amended to read:

197.324. (1) On its own motion, the Land Conservation and Development Commission may **direct a regional commission to** initiate a proceeding to carry out the provisions of ORS 197.320[. *If the commission proceeds on its own motion, it shall proceed*] as set forth in ORS 197.328.

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

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

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

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

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

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

SECTION 28. ORS 197.328 is amended to read:

197.328. If a proceeding is initiated under ORS 197.324, the following procedures apply:

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

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

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

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

(5) The **regional** commission shall adopt a final order relative to a petition no later than 120

days from the date the petition was filed.

SECTION 29. ORS 197.335 is amended to read:

197.335. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local government, state agency or special district shall set forth:

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

(b) The specific lands, if any, within a local government for which the existing plan or land use regulation, if any, does not comply with the goals; and

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

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

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

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

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

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

(b) The order to be unconstitutional;

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

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

(3)(a) If the **regional** commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the **regional**

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

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

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

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

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

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

(6) The **regional** commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the **regional** commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency

notice, hearing and order on an alleged violation.

SECTION 30. ORS 197.340 is amended to read:

197.340. (1) The [*Land Conservation and Development Commission, the*] Department of Land Conservation and Development, other state agencies and local governments shall give the goals equal weight in any matter in which the goals are required to be applied.

(2) The [*commission and the*] department shall consider and recognize regional diversity and differences in regional needs when making or reviewing a land use decision or otherwise applying the goals.

SECTION 31. ORS 197.350 is amended to read:

197.350. (1) A party appealing a land use decision or limited land use decision made by a local government to the board or **the Department of** Land Conservation and Development [*Commission*] has the burden of persuasion.

(2) A local government that claims an exception to a goal adopted by the **Land Conservation and Development** Commission has the burden of persuasion.

(3) There shall be no burden of proof in administrative proceedings under ORS chapters 195, 196 and 197.

SECTION 32. ORS 197.395 is amended to read:

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

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

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

(4) Actions pursuant to this section are subject to review under ORS 197.830 to 197.845.

SECTION 33. ORS 197.505 is amended to read:

197.505. As used in ORS 197.505 to 197.540:

(1) "Public facilities" means those public facilities for which a public facilities plan is required under ORS 197.712.

(2) "Special district" refers to only those entities as defined in ORS 197.015 [*(19)*] **(20)** which provide services for which public facilities plans are required.

SECTION 34. ORS 197.610 is amended to read:

197.610. (1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify

persons who have requested notice that the proposal is pending.

(2) When a local government determines that the goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:

(a) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615 (1) and (2); and

(b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845.

(3) When the Department of Land Conservation and Development participates in a local government proceeding, at least 15 days before the final hearing on the proposed amendment to the comprehensive plan or land use regulation or the new land use regulation, the department shall notify the local government of:

(a) Any concerns the department has concerning the proposal; and

(b) Advisory recommendations on actions the department considers necessary to address the concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.

(4) The director shall report to the [*Land Conservation and Development*] **regional** commission **for the region** on whether the director:

(a) Believes the local government's proposal violates the goals; and

(b) Is participating in the local government proceeding.

SECTION 35. ORS 197.625 is amended to read:

197.625. (1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowledged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director of the Department of Land Conservation and Development and:

(a) The 21-day appeal period has expired; or

(b) If an appeal is timely filed, the board affirms the decision or the appellate courts affirm the decision.

(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.

(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the

comprehensive plan provision or land use regulation does not gain acknowledgment.

(d) The provisions of this subsection apply to applications for land use decisions, expedited land divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan and land use regulation amendments adopted:

(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636;

(B) After June 1, 1991, to meet the requirements of ORS 197.646; and

(C) After November 4, 1993.

(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from the board stating either:

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (9); or

(b) The date the appellate decision affirming the adoption of the amendment or new regulation became final.

(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five days of receiving a valid request from the local government.

(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the [*Land Conservation and Development*] **regional** commission **for the region** from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.

SECTION 36. ORS 197.626 is amended to read:

197.626. A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve areas under ORS 195.145, shall submit the amendment or designation to the [*Land Conservation and Development*] **regional** commission **for the region** in the manner provided for periodic review under ORS 197.628 to 197.650.

SECTION 37. ORS 197.628 is amended to read:

197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230[,] and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services.

(2) [*The Land Conservation and Development*] **A regional** commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address needed housing, employment, transportation and public facilities and services.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals;

(c) There are issues of regional or statewide significance, intergovernmental coordination or

state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals; or

(d) The local government[*, commission*] or **the** Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals.

SECTION 38. ORS 197.629 is amended to read:

197.629. (1) The Land Conservation and Development Commission shall establish and maintain **by rule** a schedule for periodic review of comprehensive plans and land use regulations **by regional commissions**. Except as necessary to coordinate approved periodic review work programs and to account for special circumstances that from time to time arise, the schedule shall reflect the following timelines:

(a) A city with a population of less than 2,500 within its urban growth boundary shall not be required to conduct periodic review unless the city lies close enough to another city that has a population of 25,000 or more within its urban growth boundary that the smaller city is significantly affected by needed housing, employment, transportation or public facility and services decisions made by the larger city;

(b) Except as provided in subsection (2) of this section, a county with a population of less than 15,000 shall not be required to conduct periodic review;

(c) A county with a population of 15,000 or more but less than 50,000, or a city with a population of 2,500 or more but less than 25,000 inside its urban growth boundary, shall conduct periodic review every 5 to 15 years after completion of the previous periodic review; and

(d) A county with a population of 50,000 or more, or a metropolitan service district or a city with a population of 25,000 or more inside its urban growth boundary, shall conduct periodic review every 5 to 10 years after completion of the previous periodic review.

(2) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(4) [*The Land Conservation and Development*] **A regional** commission may schedule periodic review for a local government earlier than provided in subsection (1) of this section if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently.

(5) A city or county that is exempt from periodic review under subsection (1)(a) or (b) of this section may request periodic review by [*the*] **a regional** commission.

SECTION 39. ORS 197.633 is amended to read:

197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review. The rules shall provide a process for:

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of an evaluation of a comprehensive plan and land use regulations;

(e) Review of a work program; and

(f) Review of completed work tasks.

(3)(a) A decision by the Director of the Department of Land Conservation and Development to approve a work program or a work task, that no work program is necessary or that no further work is necessary, may be appealed to the **regional** commission **for the region** or referred to the **regional** commission by the director. Except as provided in paragraph (b) of this subsection, the **regional** commission **for the region** shall take action on the appeal or referral within 90 days of the appeal or referral. Action by the **regional** commission in response to an appeal from a decision of the director is a final order subject to judicial review in the manner provided in ORS 197.650.

(b) The **regional** commission may extend the time in paragraph (a) of this subsection for taking action on the appeal or referral if the **regional** commission finds that:

(A) The appeal or referral is appropriate for mediation; or

(B) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the **regional** commission to give adequate consideration to the issues within the 90-day limit.

(4) The **regional** commission and a local government shall attempt to complete periodic review within three years after approval of a work program. In order to promote the timely completion of periodic review, the **regional** commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs.

SECTION 40. ORS 197.636 is amended to read:

197.636. (1) Upon good cause shown by a local government, the Director of the Department of Land Conservation and Development may allow the local government an extension of time for submitting a work program or completing a work task. A decision by the director to grant or deny an extension may be appealed to the [*Land Conservation and Development*] **regional** commission **for the region** or may be referred to the **regional** commission by the director. The Department of Land Conservation and Development or the **regional** commission shall not extend the deadline for submitting a work program more than once nor for more than 90 days, and shall not extend the deadline for a work task more than once nor for more than one year.

(2) If a local government fails to submit a work program or to complete a work task by the deadline set by the director or the **regional** commission, including any extension that has been granted, the director shall schedule a hearing before the **regional** commission. The **regional** commission shall issue an order imposing one or more of the following sanctions until the work program or the work task receives final approval by the director or the **regional** commission:

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this paragraph only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task.

(c) Completion of the work program or work task by the department. The **regional** commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335 (4).

(d) Application of such interim measures as the **regional** commission deems necessary to ensure

compliance with the statewide planning goals.

(3) If the department receives a work program or work task completed in response to a **regional** commission order issued under subsection (2) of this section, the director shall evaluate and issue a decision on the work program or work task within 90 days.

(4) **Regional** commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650.

SECTION 41. ORS 197.637 is amended to read:

197.637. (1) Upon request of the Department of Land Conservation and Development, the Housing and Community Services Department shall review the inventory and analysis of housing, and measures taken to address the housing need, required of certain local governments under ORS 197.296. The review shall address the likely effect of measures developed by a local government under ORS 197.296 (6) or (7) on the adequacy of the supply of buildable land and opportunities to satisfy needs identified under ORS 197.296 (3).

(2) The [*Land Conservation and Development Commission and the Director of the*] Department of Land Conservation and Development shall consider the review and any recommendations of the Housing and Community Services Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.296.

SECTION 42. ORS 197.638 is amended to read:

197.638. (1) Upon request of the Department of Land Conservation and Development, the Economic and Community Development Department shall review the inventory and analysis of industrial and commercial land, and measures taken to address the land needs, required of certain local governments under ORS 197.712. The review shall address the likely effect of measures developed by a local government on the adequacy of the supply of sites and opportunities to satisfy needs identified under ORS 197.712.

(2) The [*Land Conservation and Development Commission and the Director of the*] Department of Land Conservation and Development shall consider the review and any recommendations of the Economic and Community Development Department when determining whether a local government has complied with the statewide land use planning goals and the requirements of ORS 197.712.

SECTION 43. ORS 197.644 is amended to read:

197.644. (1) [*The Land Conservation and Development*] **A regional** commission may direct or, upon request of the local government, the Director of the Department of Land Conservation and Development may authorize a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work program task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) [*The*] **A regional** commission shall have exclusive jurisdiction for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.650. The **regional** commission shall adopt rules governing standing, the provision of notice, conduct of hearings,

adoption of stays, extension of time periods and other matters related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416, 227.175 and 466.385.

(3)(a) **Regional** commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650.

(b) Action by the director pursuant to subsection (1) of this section may be appealed to the **regional** commission **for the region** pursuant to rules adopted by the **regional** commission. **Regional** commission action under this paragraph is a final order subject to judicial review in the manner provided in ORS 197.650.

SECTION 44. ORS 197.646 is amended to read:

197.646. (1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, **Department of** Land Conservation and Development [*Commission*] administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the Department of Land Conservation and Development as set forth in ORS 197.610 to 197.625.

(2) The department shall notify cities and counties of newly adopted **Land Conservation and Development** Commission goals and **rules and regional** commission rules, including the effective date, as they are adopted. The department shall notify cities and counties of newly adopted land use statutes following the legislative session when such statutes are adopted.

(3) When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions. The failure to adopt comprehensive plan and land use regulation amendments required by subsection (1) of this section may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

SECTION 45. ORS 197.650 is amended to read:

197.650. (1) A [*Land Conservation and Development*] **regional** commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are appealing a **regional** commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;

(b) Persons who submitted comments or objections pursuant to procedures adopted by [*the*] **a regional** commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (6);

(c) Persons who petitioned [*the*] **a regional** commission for an order under ORS 197.324 and whose petition was dismissed; or

(d) Persons who submitted oral or written testimony in a proceeding before [*the*] **a regional** commission pursuant to ORS 215.780.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644.

(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections.

SECTION 46. ORS 197.656 is amended to read:

197.656. (1) Upon invitation by the local governments in a region, the **Department of** Land Conservation and Development [*Commission*] and other state agencies may participate with the local governments in a collaborative regional problem-solving process.

(2) Following the procedures set forth in this subsection, the **regional** commission **for the region** may acknowledge amendments to comprehensive plans and land use regulations, or new land use regulations, that do not fully comply with the rules of the **regional** commission **for the region** that implement the statewide planning goals, without taking an exception, upon a determination that:

(a) The amendments or new provisions are based upon agreements reached by all local participants, the **regional** commission and other participating state agencies, in the collaborative regional problem-solving process;

(b) The regional problem-solving process has included agreement among the participants on:

(A) Regional goals for resolution of each regional problem that is the subject of the process;

(B) Optional techniques to achieve the goals for each regional problem that is the subject of the process;

(C) Measurable indicators of performance toward achievement of the goals for each regional problem that is the subject of the process;

(D) A system of incentives and disincentives to encourage successful implementation of the techniques chosen by the participants to achieve the goals;

(E) A system for monitoring progress toward achievement of the goals; and

(F) A process for correction of the techniques if monitoring indicates that the techniques are not achieving the goals; and

(c) The agreement reached by regional problem-solving process participants and the implementing plan amendments and land use regulations conform, on the whole, with the purposes of the statewide planning goals.

(3) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation in order to implement an agreement reached in a regional problem-solving process shall submit the amendment or new regulation to the **regional** commission **for the region** in the manner set forth in ORS 197.628 to 197.650 for periodic review or set forth in ORS 197.251 for acknowledgment.

(4) The **regional** commission **for the region** shall have exclusive jurisdiction for review of amendments or new regulations described in subsection (3) of this section. A participant or stakeholder in the collaborative regional problem-solving process shall not raise an issue before the **regional** commission on review that was not raised at the local level.

(5) If the **regional** commission denies an amendment or new regulation submitted pursuant to subsection (3) of this section, the **regional** commission shall issue a written statement describing the reasons for the denial and suggesting alternative methods for accomplishing the goals on a timely basis.

(6) If, in order to resolve regional land use problems, the participants in a collaborative regional problem-solving process decide to devote agricultural land or forestland, as defined in the statewide planning goals, to uses not authorized by those goals, the participants shall choose land that is not part of the region's commercial agricultural or forestland base, or take an exception to those goals pursuant to ORS 197.732. To identify land that is not part of the region's commercial agricultural or forestland base, the participants shall consider the recommendation of a committee of persons appointed by the affected county, with expertise in appropriate fields, including but not limited to

farmers, ranchers, foresters and soils scientists and representatives of the State Department of Agriculture, the State Department of Forestry and the Department of Land Conservation and Development.

(7) The Governor shall require all appropriate state agencies to participate in the collaborative regional problem-solving process.

SECTION 47. ORS 197.658 is amended to read:

197.658. In addition to the provisions of ORS 197.644, the [*Land Conservation and Development*] **regional** commission **for the region** may modify an approved work program when a local government has agreed to participate in a collaborative regional problem-solving process pursuant to ORS 197.654 and 197.656.

SECTION 48. ORS 197.712 is amended to read:

197.712. (1) In addition to the findings and policies set forth in ORS 197.005, 197.010 and 215.243, the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.

(2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the Land Conservation and Development Commission **and the regional commissions** shall implement all of the following:

(a) Comprehensive plans shall include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends.

(b) Comprehensive plans shall contain policies concerning the economic development opportunities in the community.

(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.

(d) Comprehensive plans and land use regulations shall provide for compatible uses on or near sites zoned for specific industrial and commercial uses.

(e) A city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The public facility plan shall include rough cost estimates for public projects needed to provide sewer, water and transportation for the land uses contemplated in the comprehensive plan and land use regulations. Project timing and financing provisions of public facility plans shall not be considered land use decisions.

(f) In accordance with ORS 197.180, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties. In addition, state agencies that issue permits affecting land use shall identify in their coordination programs how they will coordinate permit issuance with other state agencies and cities and counties.

(g) Local governments shall provide:

(A) Reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land base; and

(B) Reasonable opportunities for urban residential, commercial and industrial needs over time through changes to urban growth boundaries.

(3) A comprehensive plan and land use regulations shall be in compliance with this section by

the first periodic review of that plan and regulations.

SECTION 49. ORS 197.717 is amended to read:

197.717. (1) State agencies shall provide technical assistance to local governments in:

(a) Planning and zoning land adequate in amount, size, topography, transportation access and surrounding land use and public facilities for the special needs of various industrial and commercial uses;

(b) Developing public facility plans; and

(c) Streamlining local permit procedures.

(2) The Economic and Community Development Department shall provide a local government with "state and national trend" information to assist in compliance with ORS 197.712 (2)(a).

(3) The Land Conservation and Development Commission shall **and the regional commissions may** develop model ordinances to assist local governments in streamlining local permit procedures.

(4) The Department of Land Conservation and Development and the Economic and Community Development Department shall establish a joint program to assist rural communities with economic and community development services. The assistance shall include, but not be limited to, grants, loans, model ordinances and technical assistance. The purposes of the assistance are to remove obstacles to economic and community development and to facilitate that development. The departments shall give priority to communities with high rates of unemployment.

SECTION 50. ORS 197.768 is amended to read:

197.768. (1) As used in this section, "special district" has the meaning given that term in ORS 197.505.

(2)(a) A local government or special district may adopt a public facilities strategy if the public facilities strategy:

(A)(i) Is acknowledged under ORS 197.251; or

(ii) Is approved by the [*Land Conservation and Development*] **regional** commission **for the region** under ORS 197.628 to 197.650; and

(B) Meets the requirements of this section.

(b) If a special district seeks to implement a public facilities strategy, that special district is considered a local government for the purposes of ORS 197.251 and 197.628 to 197.650.

(3) A local government or special district may adopt a public facilities strategy only if the local government or special district:

(a) Makes written findings justifying the need for the public facilities strategy;

(b) Holds a public hearing on the adoption of a public facilities strategy and the findings that support the adoption of the public facilities strategy; and

(c) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing that is held to consider the adoption of the public facilities strategy.

(4) At a minimum, the findings under subsection (3) of this section must demonstrate that:

(a) There is a rapid increase in the rate or intensity of land development in a specific geographic area that was unanticipated at the time the original planning for that area was adopted or there has been a natural disaster or other catastrophic event in a specific geographic area;

(b) The total land development expected within the specific geographic area will exceed the planned or existing capacity of public facilities; and

(c) The public facilities strategy is structured to ensure that the necessary supply of housing and commercial and industrial facilities that will be impacted within the relevant geographic area

is not unreasonably restricted by the adoption of the public facilities strategy.

(5) A public facilities strategy shall include a clear, objective and detailed description of actions and practices a local government or special district may engage in to control the time and sequence of development approvals in response to the identified deficiencies in public facilities.

(6) A public facilities strategy shall be effective for no more than 24 months after the date on which it is adopted, but may be extended, subject to subsection (7) of this section, provided the local government or special district adopting the public facilities strategy holds a public hearing on the proposed extension and adopts written findings that:

(a) Verify that the problem giving rise to the need for a public facilities strategy still exists;

(b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the need for a public facilities strategy; and

(c) Set a specific duration for the extension of the public facilities strategy.

(7)(a) A local government or special district considering an extension of a public facilities strategy shall give the department notice at least 14 days prior to the date of the public hearing on the extension.

(b) A single extension may not exceed one year, and a public facilities strategy may not be extended more than three times.

SECTION 51. ORS 197.825 is amended to read:

197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review**:**

(a) Any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(b) A petition filed by the Land Conservation and Development Commission alleging that a rule or order of a regional commission is not consistent with the statewide land use planning goals adopted under ORS 197.225.

(2) The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

(c) Does not include those matters over which the Department of Land Conservation and Development**,** [*or*] the Land Conservation and Development Commission **or a regional commission** has review authority under ORS 197.251, 197.430, 197.445, 197.450, 197.455 and 197.628 to 197.650;

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663; and

(g) Does not include review of expedited land divisions under ORS 197.360.

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted

comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order.

SECTION 52. ORS 197.835 is amended to read:

197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the [*Land Conservation and Development*] **regional** commission **for the region** has issued an order under ORS 197.320 or **the Land Conservation and Development Commission** adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse

or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision which violates a **regional** commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.

SECTION 53. ORS 197.840 is amended to read:

197.840. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (14):

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its

consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) No period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) No continuance under subsection (1)(d) of this section shall be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in subsection (1)(a) of this section until the **Department of** Land Conservation and Development [*Commission*] has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845.

SECTION 54. ORS 183.457 is amended to read:

183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The State Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The State Fire Marshal in the Department of State Police.

(g) The Department of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The [*Land Conservation and Development Commission and the*] Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency.

SECTION 55. ORS 183.530 is amended to read:

183.530. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The **Department of** Land Conservation and Development [*Commission*];

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The State Department of Energy.

SECTION 56. ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) The Department of Education, the State Board of Education and the Superintendent of Public Instruction.

(b) Employment Appeals Board.

(c) Employment Relations Board.

(d) Public Utility Commission.

(e) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(f) **The Department of** Land Conservation and Development [*Commission*].

(g) Land Use Board of Appeals.

(h) Department of Revenue.

(i) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.

(j) State Accident Insurance Fund Corporation.

(k) Psychiatric Security Review Board.

(L) State Board of Parole and Post-Prison Supervision.

(m) Department of Corrections.

(n) Energy Facility Siting Council.

(o) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(p) Secretary of State.

(q) State Treasurer.

(r) Attorney General.

(s) Fair Dismissal Appeals Board.

(t) Department of State Police.

(u) Oregon Youth Authority.

(v) Boards of stewards appointed by the Oregon Racing Commission.

(w) The Department of Higher Education and the institutions of higher education listed in ORS 352.002.

(x) The Governor.

(y) State Land Board.

(z) Wage and Hour Commission.

(aa) State Apprenticeship and Training Council.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned

from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. The Director of the Department of Consumer and Business Services must use administrative law judges assigned from the office for all contested case hearings regarding matters other than those concerning a claim under ORS chapter 656, as provided in ORS 656.704 (2). Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS chapter 59;

(b) ORS 200.005 to 200.075;

(c) ORS chapter 455;

(d) ORS chapter 674;

(e) ORS chapters 706 to 716;

(f) ORS chapter 717;

(g) ORS chapters 722, 723, 725 and 726; and

(h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

SECTION 57. ORS 195.020 is amended to read:

195.020. (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 **Department of** 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 **regional** commission **for the region, as described in section 2 of this 2005 Act**. The **regional** commission may provide by rule for periodic submission and review of cooperative agreements to [*insure*] **ensure** that they are consistent with acknowledged comprehensive plans.

SECTION 58. ORS 195.025 is amended to read:

195.025. (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*] **ensure** 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 **Department of** 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 **regional** commission **for the region, as described in section 2 of this 2005 Act,** 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 **regional** 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.

SECTION 59. ORS 195.040 is amended to read:

195.040. 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*] **regional** commission **for the region, as described in section 2 of this 2005 Act**, shall report to the **regional** 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.

SECTION 60. ORS 195.085 is amended to read:

195.085. (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*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** 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.

SECTION 61. ORS 195.120 is amended to read:

195.120. (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 **Department of** 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 **Department of** 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*] **regional** commission **for the region, as described**

in section 2 of this 2005 Act, 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.

SECTION 62. ORS 195.145 is amended to read:

195.145. (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*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** 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 **regional** 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 **regional** commission **for the region, as described in section 2 of this 2005 Act,** 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 **regional** 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.

SECTION 63. ORS 195.225 is amended to read:

195.225. (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*] **regional** commission **for the region, as described in section 2 of this 2005 Act,**.

(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 **regional** 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 **regional** 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.

SECTION 64. ORS 195.260 is amended to read:

195.260. (1) In order to reduce the risk of serious bodily injury or death resulting from rapidly moving landslides, a local government:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Provide public education regarding landslide hazards.

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

(c) The **Department of** 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 195.260.

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

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

SECTION 65. ORS 196.107 is amended to read:

196.107. (1) The Legislative Assembly, considering the recommendations of the **Department of** Land Conservation and Development [*Commission*], finds that the management plan adopted pursuant to the Columbia River Gorge National Scenic Area Act achieves on balance the purposes of the statewide planning goals adopted pursuant to ORS 197.230.

(2) Land use decisions subject to review under ORS 197.835 for compliance with the goals for those portions of Multnomah, Hood River and Wasco Counties within the Columbia River Gorge National Scenic Area, except land within urban area boundaries, are exempt from the requirements of ORS 197.610 to 197.625. This exemption becomes effective in a county when that county or the

Columbia River Gorge Commission adopts and implements ordinances that are approved pursuant to sections 7(b) and 8(h) to 8(k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(3) The Director of the Department of Land Conservation and Development may petition the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** to decertify the management plan at any time. If the [*Land Conservation and Development*] **regional** commission receives a petition from the director, the [*Land Conservation and Development*] **regional** commission shall decertify the management plan within 120 days, if it determines that any part of the management plan does not achieve on balance the purposes of the statewide planning goals adopted pursuant to ORS 197.230.

SECTION 66. ORS 196.115 is amended to read:

196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission shall be subject to review solely as provided in this section, except as otherwise provided by the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2)(a) A final action or order by the commission in a review or appeal of any action of the commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, or a final action or order by the commission in a review or appeal of any action of a county pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided in subsections (3) and (4) of this section and ORS 183.482.

(b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals also shall review the action of the county that is the subject of the commission's order, if requested in the petition.

(c) The Court of Appeals shall issue a final order on review under this subsection within the time limits provided by ORS 197.855.

(d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent to appeal the county's action shall be filed not later than 21 days after the commission's order on the county action becomes final.

(e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d) of this subsection shall not include any issue relating to interpretation or implementation of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such interpretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this subsection.

(f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall not review land use decisions within the general management area or special management area for compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** decertifies the management plan pursuant to ORS 196.107.

(3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a) of this section, the procedures to be followed by the parties, the commission and the court, and the court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

(b) Notwithstanding any provision of ORS 183.482:

(A) The commission shall transmit the original record or the certified copy of the entire record within 21 days after service of a petition for judicial review is served on the commission; and

(B) The parties shall file briefs with the court within the times allowed by rules of the court.

(c) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(d) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position or a prior agency practice, unless the inconsistency is explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(e) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the whole record.

(f) Notwithstanding any other provision of this section, in any case where review of a county action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section, the court shall accept any findings of fact by the commission which the court finds to be supported by substantial evidence in the whole record, and such findings by the commission shall prevail over any findings by the county concerning the same or substantially the same facts.

(4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this section, the procedures to be followed by the parties, the county and the court, and the court's review, shall be in accordance with those provisions governing review of county land use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2) to (8), (10), (15) and (16) and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the enumerated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830 (10) shall refer to the petition described in subsection (2) of this section.

(b) In addition to the other requirements of service under this section, the petitioner shall serve the petition upon the persons and bodies described in ORS 197.830 (9), as a prerequisite to judicial review of the county action.

(c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a commission order and a county action shall file only one brief with the court, which shall address both the commission order and the county action.

(d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for which there is substantial evidence in the whole record. The court may appoint a master and follow the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for under ORS 197.835 (2).

(5) Approval of county land use ordinances by the commission pursuant to section 7 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

(6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the com-

mission shall be filed with the circuit court for the county in which the commission has a principal business office or in which the land involved in the proceeding is located.

SECTION 67. ORS 196.435 is amended to read:

196.435. (1) The Department of Land Conservation and Development is designated the primary agency for coordination of ocean resources planning. The department is designated the State Coastal Management Agency for purposes of carrying out and responding to the Coastal Zone Management Act of 1972. The department shall assist:

(a) The Governor with the Governor's duties and opportunities to respond to federal agency programs and activities affecting coastal and ocean resources; and

(b) The Ocean Policy Advisory Council.

(2) The provisions of ORS 196.405 to 196.515 do not change statutorily and constitutionally mandated responsibilities of other state agencies.

(3) ORS 196.405 to 196.515 do not provide the Land Conservation and Development Commission **or a regional commission, as defined in ORS 197.015,** with authority to adopt specific regulation of ocean resources or ocean uses.

SECTION 68. ORS 196.443 is amended to read:

196.443. (1) The purposes of the Ocean Policy Advisory Council are to:

(a) Periodically review the Territorial Sea Plan and submit recommendations for the plan to state agencies represented on the council. The council shall recommend deletions to the Territorial Sea Plan of all site designations and management prescriptions to the **Department of** Land Conservation and Development [*Commission*].

(b) Advance the policies of ORS 196.420 to the federal government and any multistate bodies.

(c) Provide a forum for discussing ocean resource policy, planning and management issues and, when appropriate, mediating disagreements.

(d) Recommend amendments to the Oregon Ocean Resources Management Plan as needed. If the recommended amendments to the plan incorporate the establishment of a system of limited marine reserves or other protected areas, the council also shall perform an economic analysis of short-term and long-term effects that the establishment of such areas would have on coastal communities. Any recommended amendments related to marine reserves or marine protected areas shall be submitted to the State Fish and Wildlife Commission for review and approval.

(e) Offer advice to the Governor, the State Land Board, state agencies and local governments on specific ocean resources management issues.

(f) Encourage participation of federal agencies in discussion and resolution of ocean resources planning and management issues affecting Oregon.

(2) The Ocean Policy Advisory Council may not, except to the extent of fulfilling its advisory capacity under subsection (1)(e) of this section, establish fishing seasons, harvest allocations, geographic restrictions or other harvest restrictions.

SECTION 69. ORS 196.471 is amended to read:

196.471. (1) The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments:

(a) Carry out the policies of ORS 196.405 to 196.515; and

(b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals.

(2) After making the findings required by subsection (1) of this section, the **regional** commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program.

(3) If the **regional** commission does not make the findings required by subsection (1) of this section, the **regional** commission shall return the plan or amendments to the council for revision. The **regional** commission may specify any needed revisions.

(4) Upon adoption of the Territorial Sea Plan or subsequent amendments the **regional** commission may, after consultation with affected state agencies, identify amendments to agency ocean or coastal resource management programs necessary to conform to the provisions of the adopted plan.

SECTION 70. ORS 196.485 is amended to read:

196.485. (1) If a state agency incorporates the Oregon Ocean Resources Management Plan and Territorial Sea Plan by reference in its coordination program and, upon a finding by the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** that the agency has amended its rules, procedures and standards to conform with the objectives and requirements of the plan and Territorial Sea Plan, the state agency shall satisfy the requirements of state agency planning and coordination required by ORS 197.180 for ocean planning.

(2) If a state agency does not incorporate the plan or Territorial Sea Plan in its coordination program, the agency shall be subject to the state agency coordination requirements of ORS chapters 195, 196 and 197 for state agency programs, procedures and standards that in any way affect ocean resources.

(3) State agency programs or rules for management of ocean resources or ocean uses shall be consistent with the Oregon Ocean Resources Management Plan and the Territorial Sea Plan.

SECTION 71. ORS 196.681 is amended to read:

196.681. (1) In accordance with rules adopted pursuant to this chapter, the Department of State Lands shall:

(a) Review any proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan against the standards in this section;

(b) Prepare a proposed order that approves, approves with conditions or denies the proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan;

(c) Provide notice and the opportunity for public hearing and comment on the proposed order;

(d) Consult with affected local, state and federal agencies; and

(e) Consider the applicable findings made in the order of acknowledgment issued by the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act**.

(2) The Director of the Department of State Lands may approve by order a wetland conservation plan that includes the necessary elements of ORS 196.678 (2) and meets the standards of subsections (3) and (4) of this section.

(3) A wetland conservation plan shall comply with the following standards:

(a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound policies of conservation and will not interfere with public health and safety;

(b) Uses and activities permitted in the plan including fill or removal, or both, are not inconsistent with the protection, conservation and best use of the water resources of this state and the use of state waters for navigation, fishing and public recreation; and

(c) Designation of wetlands for protection, conservation and development is consistent with the resource functions and values of the area and the capability of the wetland area to withstand al-

terations and maintain important functions and values.

(4) Wetland areas may be designated for development including fill or removal, or both, only if they meet the following standards:

(a) There is a public need for the proposed uses set forth in the acknowledged comprehensive plan for the area;

(b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of wetland functions and values or in an estuarine area, estuarine resource replacement is consistent with ORS 196.830; and

(c) Practicable, less damaging alternatives, including alternative locations for the proposed use are not available.

(5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption by the affected local governments of comprehensive plan policies and land use regulations consistent with and sufficient to implement the wetland conservation plan. Appropriate implementing measures may include the following planning and zoning requirements regulating:

(a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions and values, including riparian vegetation, and the uses to be allowed in those areas;

(b) Sites for mitigation of impacts from development activities;

(c) Upland areas adjacent to wetlands; and

(d) Activities or location of buildings, structures and improvements which may affect wetland values or functions, such as storm water runoff.

(6) The director shall issue an order approving, approving with conditions or denying a wetland conservation plan, including a clear statement of findings which sets forth the basis for the approval, conditioning or denial. The order shall include:

(a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been developed;

(b) The findings in support of the determination of compliance or noncompliance with the standards in subsections (3) and (4) of this section; and

(c) The conditions under which fill or removal or both may occur.

(7) The director may, as a part of an order approving a plan, authorize site-specific fill or removal without an individual permit as required by ORS 196.810 provided that:

(a) The director adopts findings demonstrating that fill or removal for any proposed project complies with ORS 196.682 (1)(a) to (e); or

(b) The director adopts findings that specific areas of fill or removal within areas designated as development in the plan meet the following standards:

(A) The fill or removal approved by the order will result in minimal impacts to the wetland system in the planning area;

(B) The public need for the proposed area of fill or removal outweighs the environmental damage likely to result from full development;

(C) The director conditions any such order as necessary to ensure that the fill or removal, or both, is designed to minimize impacts from implementing the project; and

(D) Full replacement of wetland losses is provided through creation, restoration or enhancement of wetlands with comparable functions and values.

(8) Upon a finding by the director that a fill or removal, or both, authorized under subsection (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the wetland system considering required mitigation conditions, the director shall revise the order to

require individual permit review according to ORS 196.682 or provide additional conditions to ensure that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684.

SECTION 72. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e)(A) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

(B) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use if the dwellings are on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in

annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the **regional** commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found

to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation. Notwithstanding the soil type or value of the site or expansion area, if a site that is approved under this paragraph before January 1, 2002, is lawfully used for the disposal of nonputrescible solid waste, the county shall allow the site, together with equipment, facilities or buildings necessary for its operation, to be maintained, expanded or enhanced as necessary for the disposal of the incoming solid waste.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic and insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort which is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u)(A) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary.

(B) As used in this paragraph:

(i) "Living history museum" means a facility designed to depict and interpret everyday life and

culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(ii) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-

ceived, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act** [*as provided in section 3, chapter 529, Oregon Laws 1993*].

SECTION 73. ORS 215.213, as amended by section 2, chapter 260, Oregon Laws 2001, and section 2, chapter 247, Oregon Laws 2003, is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e)(A) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

(B) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under

ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use if the dwellings are on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing

activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the **regional** commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic and insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort which is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u)(A) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary.

(B) As used in this paragraph:

(i) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(ii) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act** [*as provided in section 3, chapter 529, Oregon Laws 1993*].

SECTION 74. ORS 215.263 is amended to read:

215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780.

(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) In western Oregon, as defined in ORS 321.257, but not in the Willamette Valley, as defined in ORS 215.010, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and

(ii) Composed of at least 90 percent Class VI through VIII soils;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and

(ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act**, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the **regional** commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands

that differ in acreage and productivity level;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(7) This section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(8) The governing body of a county may not approve any proposed division of a lot or parcel described in ORS 215.213 (1)(e) or (k), 215.283 (1)(e) or (2)(L) or 215.284 (1), or a proposed division that separates a processing facility from the farm operation specified in ORS 215.213 (1)(x) or 215.283 (1)(u).

(9) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used:

(a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

(b) For historic property that meets the requirements of ORS 215.213 (1)(q) and 215.283 (1)(o).

(10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may approve a proposed division of land provided:

(A) The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and

(B) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

(b) A parcel created pursuant to this subsection that does not contain a dwelling:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling;

(C) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

(D) May not be smaller than 25 acres unless the purpose of the land division is:

(i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

(11) The governing body of a county or its designee may approve a division of land smaller than the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone provided:

(a) The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;

(b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

(c) The newly created lot or parcel is not larger than five acres; and

(d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or parcel.

(12) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10) or (11) of this section unless any additional tax imposed for the change in use has been paid.

(13) Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur.

SECTION 75. ORS 215.275 is amended to read:

215.275. (1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (1)(d) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public health and safety; and

(f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(d) or 215.283 (1)(d) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(d) or 215.283 (1)(d) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy

Regulatory Commission.

SECTION 76. ORS 215.278 is amended to read:

215.278. (1) The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall revise administrative rules regarding dwellings customarily provided in conjunction with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings needed to provide opportunities for farmworker housing for individuals primarily engaged in farm use whose assistance in the management of the farm is or will be required by the farm operator on the farm unit.

(2) As used in this section, "farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

SECTION 77. ORS 215.282 is amended to read:

215.282. The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall consider the findings of ORS 215.281 and adopt rules that provide standards for the review of a primary or accessory dwelling customarily provided in conjunction with a commercial dairy farm. Notwithstanding any other administrative rule establishing a gross farm income standard, the rules adopted under this section shall allow the siting of a dwelling on a commercial dairy farm prior to the dairy earning any gross farm income.

SECTION 78. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e)(A) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

(B) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732

(1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for

the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the **regional** commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned

to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort which is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x)(A) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary.

(B) As used in this paragraph:

(i) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(ii) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act** [*as provided in section 3, chapter 529, Oregon Laws 1993*].

SECTION 79. ORS 215.304 is amended to read:

215.304. (1) The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall not adopt or implement any rule to identify or designate small-scale farmland or secondary land.

(2) Amendments required to conform rules to the provisions of subsection (1) of this section and ORS 215.700 to 215.780 shall be adopted by March 1, 1994.

(3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213, 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700 to 215.780 on March 1, 1994:

(a) Shall not be implemented or enforced; and

(b) Has no legal effect.

SECTION 80. ORS 215.457 is amended to read:

215.457. A person may establish a youth camp on land zoned for forest use or mixed farm and forest use, consistent with rules adopted by the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act** [*under section 3, chapter 586, Oregon Laws 1999*].

SECTION 81. ORS 215.459 is amended to read:

215.459. (1)(a) Subject to the approval of the county governing body or its designee, a private campground may be established in an area zoned for forest use or mixed farm and forest use. Subject to the approval of the county governing body or its designee, the campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

(b) A public park or campground may be established as provided in ORS 195.120 in an area zoned for forest use or mixed farm and forest use.

(2) Upon request of a county governing body, the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the **regional** commission determines that the increase will comply with the standards described in ORS 215.296 (1).

(3) As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

SECTION 82. ORS 215.503 is amended to read:

215.503. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.

(3) Except as provided in subsection (6) of this section and in addition to the notice required by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on

an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to adopt a new comprehensive plan, the governing body of a county shall cause a written individual notice of land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the governing body of the county and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

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

_____

This is to notify you that (governing body of the county) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

_____

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

_____

On (date of public hearing), (governing body) will hold a public hearing regarding the adoption of Ordinance Number _____. The (governing body) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ is available for inspection at the_____ County Courthouse located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (governing body) Planning Department at_____-_____.

_____

(6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use regulation by the governing body of a county pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633 and 197.636, the governing body of the county shall cause a written individual notice of the land use change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment may affect the use of the property. The notice also shall:

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

_____

This is to notify you that (governing body of the county) has proposed a land use that may affect

the permissible uses of your property and other properties.

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

As a result of an order of the **Department of** Land Conservation and Development [*Commission*], (governing body) has proposed Ordinance Number _____. (Governing Body) has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ will become effective on (date).

Ordinance Number _____ is available for inspection at the_____ County Courthouse located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (governing body) Planning Department at_____-_____.

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(7) Notice provided under this section may be included with the tax statement required under ORS 311.250.

(8) Notwithstanding subsection (7) of this section, the governing body of a county may provide notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is required under subsections (3) and (4) of this section.

(9) For purposes of this section, property is rezoned when the governing body of the county:

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

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

(10) The provisions of this section do not apply to legislative acts of the governing body of the county resulting from action of the Legislative Assembly**,** [*or*] the Land Conservation and Development Commission **or a regional commission, as defined in ORS 197.015,** for which notice is provided under ORS 197.047, or resulting from an order of a court of competent jurisdiction.

(11) The governing body of the county is not required to provide more than one notice under this section to a person who owns more than one lot or parcel affected by a change to the local comprehensive plan or land use regulation.

(12) The Department of Land Conservation and Development shall reimburse the governing body of a county for all usual and reasonable costs incurred to provide notice required under subsection (6) of this section.

SECTION 83. ORS 215.740 is amended to read:

215.740. (1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:

(a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of this section; or

(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

(3)(a) An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.

(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

(c) The [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section.

SECTION 84. ORS 215.780 is amended to read:

215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

(a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

(b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

(c) For land designated forestland, at least 80 acres.

(2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

(a) By demonstrating to the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act,** that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

(b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed farm and forest use, subject to the following requirements:

(A) The parcel established shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

(B) The dwelling existed prior to June 1, 1995;

(C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone; or

(ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone; and

(D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal.

(c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for mixed farm and forest use the following requirements apply:

(A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

(B) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.

(C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

(A) Shall not be eligible for siting of a new dwelling;

(B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of resource lands;

(D) Shall not result in a parcel of less than 35 acres, except:

(i) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency; or

(ii) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

(E) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum lot or parcel size of the zone.

(e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(t) or 215.283 (1)(s);

(C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this paragraph; and

(E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record shall be readily available to the public.

(4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under a statewide planning goal protecting forestland.

(5) A county with a minimum lot or parcel size acknowledged by the **regional** commission **for the region, as described in section 2 of this 2005 Act,** pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628, 197.633 and

197.636 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

(6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. An applicant for the creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily available to the public.

(7) A landowner allowed a land division under subsection (2) of this section shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

SECTION 85. ORS 223.317 is amended to read:

223.317. (1) Notwithstanding any other law, a local government may apportion a final assessment levied by it against a single tract or parcel of real property among all the parcels formed from a subsequent partition or other division of that tract or parcel, if the subsequent partition or division is in accordance with ORS 92.010 to 92.190 and is consistent with all applicable comprehensive plans as acknowledged by the [*Land Conservation and Development*] **regional** commission **for the region** under ORS 197.251. The proportionate distribution of a final assessment authorized under this subsection may be made whenever the final assessment remains wholly or partially unpaid, and full payment or an installment payment is not due.

(2) A local government shall apportion a final assessment under this section when requested to do so by any owner, mortgagee or lienholder of a parcel of real property that was formed from the partition or other division of the larger tract of real property against which the final assessment was originally levied. When the deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the parcel has not been recorded by the county clerk of the county in which the parcel is situated, the local government shall not apportion the final assessment unless the applicant files a true copy of that deed, mortgage or instrument with the local government.

(3) Apportionment of a final assessment under this section shall be done in accordance with an order or resolution of the governing body of the local government. The order or resolution shall describe each parcel of real property affected by the apportionment, the amount of the final assessment levied against each parcel, the owner of each parcel and such additional information as is required to keep a permanent and complete record of the final assessments and the payments thereon. A copy of the order or resolution shall be filed with the recorder required to maintain the lien docket for the local government, who shall make any necessary changes or entries in the lien docket for the local government.

SECTION 86. ORS 227.186 is amended to read:

227.186. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

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

_____

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

_____

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

_____

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number _____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at _____-_____.

_____

(6) At least 30 days prior to the adoption or amendment of a comprehensive plan or land use regulation by a city pursuant to a requirement of periodic review of the comprehensive plan under ORS 197.628, 197.633 and 197.636, the city shall cause a written individual notice of the land use change to be mailed to the owner of each lot or parcel that will be rezoned as a result of the

adoption or enactment. The notice shall describe in detail how the ordinance or plan amendment may affect the use of the property. The notice also shall:

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

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

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

As a result of an order of the Land Conservation and Development Commission **or the regional commission for the region, as described in section 2 of this 2005 Act**, (city) has proposed Ordinance Number _____. (City) has determined that the adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property.

Ordinance Number _____ will become effective on (date).

Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____.

For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at _____-_____.

---

(7) Notice provided under this section may be included with the tax statement required under ORS 311.250.

(8) Notwithstanding subsection (7) of this section, a city may provide notice of a hearing at any time provided notice is mailed by first class mail or bulk mail to all persons for whom notice is required under subsections (3) and (4) of this section.

(9) For purposes of this section, property is rezoned when the city:

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

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

(10) The provisions of this section do not apply to legislative acts of the governing body of the city resulting from action of the Legislative Assembly**,** [*or*] the Land Conservation and Development Commission **or a regional commission, as defined in ORS 197.015,** for which notice is provided under ORS 197.047 or resulting from an order of a court of competent jurisdiction.

(11) The governing body of the city is not required to provide more than one notice under this section to a person who owns more than one lot or parcel affected by a change to the local comprehensive plan or land use regulation.

(12) The Department of Land Conservation and Development shall reimburse a city for all usual and reasonable costs incurred to provide notice required under subsection (6) of this section.

SECTION 87. ORS 244.050 is amended to read:

244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon Government Standards and Practices Commission a verified statement of economic interest as required under this chapter:

(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.

(b) Any judicial officer, including justices of the peace and municipal judges, except municipal judges in those cities where a majority of the votes cast in the subject city in the 1974 general election was in opposition to the ballot measure provided for in section 10, chapter 68, Oregon Laws 1974 (special session), and except any pro tem judicial officer who does not otherwise serve as a judicial officer.

(c) Any candidate for an office designated in paragraph (a) or (b) of this subsection.

(d) The Deputy Attorney General.

(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) Director of the Oregon State Fair and Exposition Center.

(H) State Fish and Wildlife Director.

(I) State Forester.

(J) State Geologist.

(K) Director of Human Services.

(L) Director of the Department of Consumer and Business Services.

(M) Director of the Department of State Lands.

(N) State Librarian.

(O) Administrator of Oregon Liquor Control Commission.

(P) Superintendent of State Police.

(Q) Director of the Public Employees Retirement System.

(R) Director of Department of Revenue.

(S) Director of Transportation.

(T) Public Utility Commissioner.

(U) Director of Veterans' Affairs.

(V) Executive Director of Oregon Government Standards and Practices Commission.

(W) Director of the State Department of Energy.

(X) Director and each assistant director of the Oregon State Lottery.

(h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.

(i) Every elected city or county official except elected officials in those cities or counties where

a majority of votes cast in the subject city or county in any election on the issue of filing statements of economic interest under this chapter was in opposition.

(j) Every member of a city or county planning, zoning or development commission except such members in those cities or counties where a majority of votes cast in the subject city or county at any election on the issue of filing statements of economic interest under this chapter was in opposition to the ballot measure provided for in section 10, chapter 68, Oregon Laws 1974 (special session).

(k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county except such employees in those cities or counties where a majority of votes cast in the subject city or county in an election on the issue of filing statements of economic interest under this chapter was in opposition.

(L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.

(m) Every member of a governing body of a metropolitan service district and the executive officer thereof.

(n) Each member of the board of directors of the State Accident Insurance Fund Corporation.

(o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.

(p) Every member of the following state boards and commissions:

(A) Capitol Planning Commission.

(B) Board of Geologic and Mineral Industries.

(C) Oregon Economic and Community Development Commission.

(D) State Board of Education.

(E) Environmental Quality Commission.

(F) Fish and Wildlife Commission of the State of Oregon.

(G) State Board of Forestry.

(H) Oregon Government Standards and Practices Commission.

(I) Oregon Health Policy Commission.

(J) State Board of Higher Education.

(K) Oregon Investment Council.

(L) Land Conservation and Development Commission **or a regional commission, as defined in ORS 197.015**.

(M) Oregon Liquor Control Commission.

(N) Oregon Short Term Fund Board.

(O) State Marine Board.

(P) Mass transit district boards.

(Q) Energy Facility Siting Council.

(R) Board of Commissioners of the Port of Portland.

(S) Employment Relations Board.

(T) Public Employees Retirement Board.

(U) Oregon Racing Commission.

(V) Oregon Transportation Commission.

(W) Wage and Hour Commission.

(X) Water Resources Commission.

(Y) Workers' Compensation Board.

(Z) Oregon Facilities Authority.

(AA) Oregon State Lottery Commission.

(BB) Pacific Northwest Electric Power and Conservation Planning Council.

(CC) Columbia River Gorge Commission.

(DD) Oregon Health and Science University Board of Directors.

(q) The following officers of the State Treasury:

(A) Chief Deputy State Treasurer.

(B) Executive Assistant to the State Treasurer.

(C) Director of the Investment Division.

(r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 and 777.915 to 777.953.

(2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(3) By April 15 next after the filing date for the primary election, each candidate for elective public office described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(4) Within 30 days after the filing date for the general election, each candidate for elective public office described in subsection (1) of this section who was not a candidate in the preceding primary election shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(5) The Legislative Assembly shall maintain a continuing review of the operation of this chapter and from time to time may add to or delete from the list of boards and commissions in subsections (1) to (3) of this section as in the judgment of the Legislative Assembly is consistent with the purposes of this chapter.

(6) Subsections (1) to (5) of this section apply only to persons who are incumbent, elected or appointed officials as of April 15 and to persons who are candidates for office on April 15. Those sections also apply to persons who do not become candidates until 30 days after the filing date for the statewide general election.

(7)(a) Failure to file the statement required by this section subjects a person to a civil penalty that may be imposed as specified in ORS 183.745, but the enforcement of this subsection does not require the Oregon Government Standards and Practices Commission to follow the procedures in ORS 244.260 before finding that a violation of this section has occurred.

(b) Failure to file the required statement in timely fashion shall be prima facie evidence of a violation of this section.

(c) If within five days after the date on which the statement is to be filed under this section the statement has not been received by the commission, the commission shall notify the public official and give the public official not less than 15 days to comply with the requirements of this section. If the public official fails to comply by the date set by the commission, the commission may impose a civil penalty of $5 for each day the statement is late beyond the date fixed by the commission. The maximum penalty that may be accrued under this section is $1,000.

(d) A civil penalty imposed under this subsection is in addition to and not in lieu of sanctions that may be imposed under ORS 244.380.

SECTION 88. ORS 284.577 is amended to read:

284.577. In furtherance of the state economic development strategy developed under ORS 284.570, the [*Land Conservation and Development*] **regional** commission **for the region, as described**

in section 2 of this 2005 Act, shall:

(1) Provide local governments with basic and advanced methods for identifying, analyzing and providing for industrial, commercial and retail development sites.

(2) Develop and provide guidebooks and other appropriate materials to assist local governments in identifying and analyzing potential industrial, commercial and retail development sites.

(3) Provide local governments with technical assistance to assist in completing the identification and analysis and in amending comprehensive plans and land use regulations based on the identification and analysis.

(4) Provide grants to local governments in a manner that furthers the implementation of the state economic development strategy.

(5) Adopt, amend or repeal administrative rules and procedures as necessary to ensure that the following actions can be accomplished in a timely manner:

(a) Expansion of urban growth boundaries where necessary to accommodate industrial or traded sector development;

(b) Review of amendments to comprehensive plans and land use regulations and periodic review of comprehensive plans and land use regulations; and

(c) Focus the resources of the Department of Land Conservation and Development on issues related to land supply within urban growth boundaries and transportation and public facilities necessary to stimulate economic growth.

SECTION 89. ORS 285C.500 is amended to read:

285C.500. As used in ORS 285C.500 to 285C.506:

(1) "Business firm" has the meaning given that term in ORS 285C.050.

(2) "County per capita personal income" means the per capita personal income level published by the Bureau of Economic Analysis of the United States Department of Commerce for a county.

(3) "County unemployment rate" means the most recently available unemployment rate for the county, as determined by the Employment Department.

(4) "Facility" means the land, real property improvements and personal property that are used by a business firm to conduct business operations, and that are the subject of an application for preliminary certification under ORS 285C.503 or annual certification under ORS 285C.506.

(5) "Qualified location" means any area that is:

(a) Within the urban growth boundary of a city that has 15,000 or fewer residents or is land zoned for industrial use; and

(b) Located in a county that, during either of the two years preceding the date an application for preliminary certification is filed under ORS 285C.503, had both:

(A) A county unemployment rate that was in the highest quartile of county unemployment rates in this state; and

(B) A county per capita personal income that was in the lowest third of county per capita personal incomes in this state.

(6) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the [*Land Conservation and Development*] **regional** commission **for the region** pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district under ORS 268.390 (3).

SECTION 90. ORS 308A.065 is amended to read:

308A.065. (1) Upon written request of the county assessor or county governing body, the county counsel shall review the zoning ordinances of the county that purport to establish exclusive farm

use zones to determine if any zone mentioned in the ordinance is not an exclusive farm use zone. If the county counsel is in doubt as to whether a zone is an exclusive farm use zone, the county counsel shall request the assistance of the Department of Revenue under ORS 305.110. The county counsel shall promptly notify the county assessor and county governing body by letter of the findings of the county counsel.

(2) If the assessor discovers any land that has been granted farm use special assessment under ORS 308A.062 that is not qualified for such assessment because the zone is not an exclusive farm use zone, the assessor shall immediately notify the county governing body of this fact.

(3) Within six months from the date the county governing body receives notice from the assessor or from the **Department of** Land Conservation and Development [*Commission*] that a farm use zone is not an exclusive farm use zone, the county governing body shall qualify the zone as an exclusive farm use zone within the meaning of ORS 308A.062. The assessor shall continue to assess the land at the special assessment provided in ORS 308A.107 until the county governing body qualifies the zone or the land is disqualified under ORS 308A.113.

(4) Subsections (1) to (3) of this section shall provide the exclusive procedure for correcting the erroneous granting of farm use special assessment as exclusive farm use zone farmland when the zone does not meet the definition of an exclusive farm use zone under ORS 308A.053.

SECTION 91. ORS 308A.350 is amended to read:

308A.350. As used in ORS 308A.350 to 308A.383:

(1) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" means the contract vendee under a recorded contract.

(2) "Department" means the State Department of Fish and Wildlife.

(3) "Designated riparian land" means the beds of streams, the adjacent vegetation communities, and the land thereunder, which are predominantly influenced by their association with water, not to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately owned and which qualify for exemption under ORS 308A.350 to 308A.383.

(4) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the [*Land Conservation and Development*] **regional** commission **for the region** pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3).

SECTION 92. ORS 308A.700 is amended to read:

308A.700. As used in ORS 308A.700 to 308A.733:

(1) "Disqualification" includes the removal of forestland designation under ORS 321.359, 321.712, 321.716 or 321.842.

(2) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the [*Land Conservation and Development*] **regional** commission **for the region** pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district under ORS 268.390 (3).

SECTION 93. ORS 383.017 is amended to read:

383.017. (1) The Department of Transportation may award any contract, franchise, license or agreement related to a tollway project, other than a concession for the provision of goods or services at a rest area, under a competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation without regard to any other laws concerning the procurement of goods or services for projects of the state.

(2) When using a competitive process for the award of a tollway project contract, the department shall consider the following factors in addition to the proposer's estimate of cost:

(a) The quality of the design, if applicable, submitted by a proposer. In considering the quality of the design of a tollway project, the department shall take into consideration:

(A) The structural integrity of the design, including the probable effect of the design on the future costs of maintenance of the tollway;

(B) The aesthetic qualities of the design, including such factors as the width of lane separators, landscaping and sound walls;

(C) The traffic capacity of the design;

(D) The aspects of the design that affect safety, such as the lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and the changes in elevation; and

(E) The ease with which traffic will be able to pass through the toll collection facilities.

(b) The extent to which small businesses will be involved in the tollway project. The department shall encourage participation by small businesses to the maximum extent the department determines is practicable. As used in this paragraph, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for nonconstruction firms over the last three years.

(c) The financial stability of the proposer and the ability of the proposer to provide funding for the tollway project and surety for its performance and financial obligations with respect to the tollway project.

(d) The experience of the proposer and its subcontractors in building and operating projects such as the tollway project.

(e) The terms of the financial arrangement proposed or accepted by the proposer with respect to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate of return from its operation or maintenance of the tollway.

(3)(a) The department may adopt rules and procedures for the award of franchises, licenses, leases or other concessions for rest areas without regard to any other laws concerning the procurement of goods or services for projects of the state. All such franchises, licenses, leases or other concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to maintain the subject premises in accordance with all applicable state and federal health and safety standards, to maintain one or more policies of casualty and property insurance and adequate workers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or claims that are levied, assessed or charged against the premises or concession or that may become a lien upon the premises. The rules shall encourage participation by small businesses to the maximum extent the department determines is practicable. The department may grant any small business a 10 percent or greater bid advantage in any bidding process for a concession.

(b) As used in this subsection, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $300,000. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $300,000 over the last three years. "Small business" also does not

include a franchise of any business that has average aggregate annual gross receipts in excess of $300,000 over the last three years.

(4) Notwithstanding any other provision of this section, the department may use any method for the award of any contract, franchise, license or agreement that is necessary to comply with the requirements of any grant or other funding source.

(5) If public funds are involved in the project, construction of a tollway project shall be subject to the prevailing wage requirements of ORS 279.348 to 279.380.

(6) For purposes of complying with applicable state and local land use laws, including statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215, 221, 222 and 227, and any requirement imposed by the **Department of** Land Conservation and Development [*Commission*], a tollway project shall be treated as a project of the Department **of Transportation** and not as a project of any other person or entity.

(7) Tollways, and any related facilities that would normally be purchased, constructed or installed by the department if the tollway were a conventional highway that was constructed and operated by the department, shall be exempt from ad valorem property taxation.

(8) Tollways are considered state highways for purposes of law enforcement and application of the Oregon Vehicle Code.

SECTION 94. ORS 383.017, as amended by section 269, chapter 794, Oregon Laws 2003, is amended to read:

383.017. (1) The Department of Transportation may award any contract, franchise, license or agreement related to a tollway project, other than a concession for the provision of goods or services at a rest area, under a competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation without regard to any other laws concerning the procurement of goods or services for projects of the state.

(2) When using a competitive process for the award of a tollway project contract, the department shall consider the following factors in addition to the proposer's estimate of cost:

(a) The quality of the design, if applicable, submitted by a proposer. In considering the quality of the design of a tollway project, the department shall take into consideration:

(A) The structural integrity of the design, including the probable effect of the design on the future costs of maintenance of the tollway;

(B) The aesthetic qualities of the design, including such factors as the width of lane separators, landscaping and sound walls;

(C) The traffic capacity of the design;

(D) The aspects of the design that affect safety, such as the lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and the changes in elevation; and

(E) The ease with which traffic will be able to pass through the toll collection facilities.

(b) The extent to which small businesses will be involved in the tollway project. The department shall encourage participation by small businesses to the maximum extent the department determines is practicable. As used in this paragraph, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for nonconstruction firms over the last three years.

(c) The financial stability of the proposer and the ability of the proposer to provide funding for the tollway project and surety for its performance and financial obligations with respect to the tollway project.

(d) The experience of the proposer and its subcontractors in building and operating projects such as the tollway project.

(e) The terms of the financial arrangement proposed or accepted by the proposer with respect to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate of return from its operation or maintenance of the tollway.

(3)(a) The department may adopt rules and procedures for the award of franchises, licenses, leases or other concessions for rest areas without regard to any other laws concerning the procurement of goods or services for projects of the state. All such franchises, licenses, leases or other concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to maintain the subject premises in accordance with all applicable state and federal health and safety standards, to maintain one or more policies of casualty and property insurance and adequate workers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or claims that are levied, assessed or charged against the premises or concession or that may become a lien upon the premises. The rules shall encourage participation by small businesses to the maximum extent the department determines is practicable. The department may grant any small business a 10 percent or greater bid advantage in any bidding process for a concession.

(b) As used in this subsection, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $300,000. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $300,000 over the last three years. "Small business" also does not include a franchise of any business that has average aggregate annual gross receipts in excess of $300,000 over the last three years.

(4) Notwithstanding any other provision of this section, the department may use any method for the award of any contract, franchise, license or agreement that is necessary to comply with the requirements of any grant or other funding source.

(5) If public funds are involved in the project, construction of a tollway project shall be subject to the prevailing wage requirements of ORS 279C.800 to 279C.870.

(6) For purposes of complying with applicable state and local land use laws, including statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215, 221, 222 and 227, and any requirement imposed by the **Department of** Land Conservation and Development [*Commission*], a tollway project shall be treated as a project of the Department **of Transportation** and not as a project of any other person or entity.

(7) Tollways, and any related facilities that would normally be purchased, constructed or installed by the department if the tollway were a conventional highway that was constructed and operated by the department, shall be exempt from ad valorem property taxation.

(8) Tollways are considered state highways for purposes of law enforcement and application of the Oregon Vehicle Code.

SECTION 95. ORS 390.322 is amended to read:

390.322. (1) Following the preparation of the plan or any segment thereof under ORS 390.318, the State Parks and Recreation Department shall submit such plan or segment to the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005**

Act. The **regional** commission shall investigate and review such plan or segment as it considers necessary. If the **regional** commission **for the region** finds that the plan or segment complies with ORS 390.310 to 390.368, it shall approve the plan or segment. If the **regional** commission **for the region** finds revision of any part of the submitted plan or segment to be necessary, it may revise the plan or segment itself or require such revision by the department and units of local government.

(2) Upon approval of the plan for the Willamette River Greenway or segment thereof, the **regional** commission **for the region** shall cause copies of such plan or segment to be filed with the recording officer for each county having lands within the Willamette River Greenway situated within its boundaries. Such plan or segment filed as required by this subsection shall be retained in the office of the county recording officer open for public inspection during reasonable business hours.

(3) If the plan for the Willamette River Greenway is prepared and approved in segments, the total of all such approved segments shall constitute the plan for the Willamette River Greenway for the purposes of ORS 390.310 to 390.368. The department and units of local government, with the approval of the **regional** commission **for the region**, may revise the plan for the Willamette River Greenway from time to time.

SECTION 96. ORS 456.571 is amended to read:

456.571. (1) The State Housing Council shall, with the advice of the Director of the Housing and Community Services Department, develop policies to aid in stimulating and increasing the supply of housing for persons and families of lower income.

(2)(a) The council shall review each single-family home ownership loan in excess of $150,000 and all other housing loans or grants in excess of $100,000 proposed to be made by the Director of the Housing and Community Services Department under the Housing and Community Services Department's housing programs. The council may approve or disapprove any loan or grant the council reviews. The director shall submit each single-family home ownership loan in excess of $150,000, and all other housing loans or grants in excess of $100,000 the department proposes to make, to the council for review. The director shall not make any single-family home ownership loans in excess of $150,000 or any other housing loans or grants in excess of $100,000 that have not been approved by the council.

(b) Council review of loan or grant proposals shall be held at a public hearing of the council. Notice of a loan or grant review shall be provided the loan or grant applicant not less than five days before the review hearing. The loan or grant review, naming the subject of and parties to the loan or grant, shall be included in the published notice required by ORS 192.640.

(3) The council shall make special effort to respond to both private and public actions which may raise the cost of the housing supply in the open market, as the open market is the source of housing for the preponderance of lower income households.

(4) The council shall be responsible for studying and commenting upon, and advising, the department, Governor, Legislative Assembly, other state agencies and local governments concerning local, state and federal legislation or rules that affect the cost and supply of housing, both before and after they are enacted. Such legislation or rules include but are not limited to those which would:

(a) Provide financing for the construction or rehabilitation of housing;

(b) Subsidize new or existing housing costs for lower income households by income support, tax credit, or support service methods;

(c) Regulate the division of land;

(d) Regulate the use of land;

(e) Regulate building construction standards;

(f) Regulate fees for inspection services, permits, or professional services related to housing;

(g) Encourage alternatives that increase housing choices;

(h) Create or avert overlapping jurisdictional functions and their concomitant increased costs which are reflected in housing prices;

(i) Create or avoid conflicting state and federal regulations which deprive lower income households of assistance; and

(j) Help or hinder compliance with the housing goals established by the [*Land Conservation and Development*] **regional** commission **for the region** under ORS 197.240.

(5) The council, with the approval of the Governor, may initiate legal proceedings in its own name to further its purposes under this section.

(6) The council shall exercise its responsibilities and powers in a manner which expedites the acquisition, construction, improvement or rehabilitation of housing.

SECTION 97. ORS 468A.363 is amended to read:

468A.363. The Legislative Assembly declares the purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300 is to:

(1) [*Insure*] **Ensure** that the health of citizens in the Portland area is not threatened by recurring air pollution conditions.

(2) Provide necessary authority to the Environmental Quality Commission to implement one of the critical elements of the air quality maintenance strategy for the Portland area related to improvements in the motor vehicle inspection program.

(3) [*Insure*] **Ensure** that the Department of Environmental Quality is able to submit an approvable air quality maintenance plan for the Portland area through the year 2006 to the Environmental Protection Agency as soon as possible so that area can again be designated as an attainment area and impediments to industrial growth imposed in the Clean Air Act can be removed.

(4) Direct the Environmental Quality Commission to use existing authority to incorporate the following programs for emission reduction credits into the air quality maintenance plan for the Portland area:

(a) California or United States Environmental Protection Agency emission standards for new lawn and garden equipment sold in the Portland area.

(b) Transportation-efficient land use requirements of the transportation planning rule adopted by the [*Land Conservation and Development*] **regional** commission **for the region, as described in section 2 of this 2005 Act**.

(c) Improvements in the vehicle inspection program as authorized in ORS 468A.350 to 468A.400, including emission reduction from on-road vehicles resulting from enhanced testing, elimination of exemptions for 1974 and later model year vehicles, and expansion of inspection program boundaries.

(d) An employer trip reduction program that provides an emission reduction from on-road vehicles.

(e) A parking ratio program that limits the construction of new parking spaces for employment, retail and commercial locations.

(f) Emission reductions resulting from any new federal motor vehicle fuel tax.

(g) State and federal alternative fuel vehicles fleet programs that result in emission reductions.

(h) Installation of maximum achievable control technology by major sources of hazardous air pollutants as required by the federal Clean Air Act, as amended, resulting in emission reductions.

(i) As a safety margin, or as a substitute in whole or in part for other elements of the plan, emission reductions resulting from any new state gasoline tax or for any new vehicle registration fee that allows use of revenue for air quality improvement purposes.

SECTION 98. ORS 469.320 is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the **Department of** Land Conservation and Development [*Commission*] that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge.

(g) A temporary energy generating facility, if the facility complies with all applicable carbon dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and

the applicant agrees to provide funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS 469.501. To support the council's finding that the facility complies with all applicable carbon dioxide emissions standards, the applicant shall provide proof acceptable to the council that shows the contracted nominal electric generating capacity of the facility and the contracted heat rate in higher heating value. The applicant shall pay the funds to the qualified organization before commencing construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

(h) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the **Department of** Land Conservation and Development [*Commission*];

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (h) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface

facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 30 days of receiving all of the information necessary to support the determination. Such exemption shall provide that the applicant may not begin construction of the temporary energy generating facility until the facility has received the required local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the **Department of** Land Conservation and Development [*Commission*]. The exemption shall also require that the temporary energy generating facility cease operation no later than 24 months after the date of first commercial operation or January 2, 2006, whichever is earlier. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the order may not be stayed and review by the Supreme Court is limited to the record made by the council.

(b) The council may not grant an exemption for a temporary energy generating facility pursuant to subsection (2)(g) of this section after July 1, 2003.

(c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant shall report the total actual fuel used during commercial operation of the temporary energy generating facility. Based on the total actual fuel used during commercial operation, the council shall determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection funds are owed to the qualified organization. If the council determines that additional offset funds are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the council's order determining the amount of additional funds.

(d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease operation within 24 months of first commercial operation, if the owner of a temporary energy generating facility submits an application for a site certificate prior to the last day of the period constituting the exemption or January 1, 2005, whichever date is earlier, the council shall extend the period constituting the exemption and shall allow the temporary energy generating facility to continue operation until the council concludes its review of the site certificate application. The council may specify a date by which the application must be completed. If the application is not completed by the date specified by the council, or is rejected by the council, the energy facility shall cease operation on the specified date. An energy facility operating pursuant to this paragraph shall cease operation if the applicant for the site certificate suspends the application.

(8) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable

of being interconnected with the transmission grid.

(b) "Temporary energy generating facility" means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.

(c) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(d) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(9) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

SECTION 99. ORS 469.320, as amended by section 8, chapter 683, Oregon Laws 2001, and section 77, chapter 186, Oregon Laws 2003, is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the **Department of** Land Conservation and Development [*Commission*] that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge.

(g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the **Department of** Land Conservation and Development [*Commission*];

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site

certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

SECTION 100. ORS 469.501 is amended to read:

469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment,

water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503.

(m) Compliance with the statewide planning goals [*adopted by*] **of** the **Department of** Land Conservation and Development [*Commission*] as specified by ORS 469.503.

(n) Soil protection.

(o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

(3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

SECTION 101. ORS 469.503 is amended to read:

469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council

shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

(A) Promote facility fuel efficiency;

(B) Promote efficiency in the resource mix;

(C) Reduce net carbon dioxide emissions;

(D) Promote cogeneration that reduces net carbon dioxide emissions;

(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

(F) Minimize transaction costs;

(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

(H) Allow either the applicant or third parties to implement offsets;

(I) Be attainable and economically achievable for various types of power plants;

(J) Promote public participation in the selection and review of offsets;

(K) Promote prompt implementation of offset projects;

(L) Provide for monitoring and evaluation of the performance of offsets; and

(M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in

sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement off-

sets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first $500,000 of the offset funds and 4.286 percent of any offset funds in excess of $500,000. This amount shall not be less than $50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information

the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) and (D).

(E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

(H) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and (E) to (I).

(I) "Offset" means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

(J) "Offset funds" means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

(K) "Qualified organization" means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that will result in the direct reduction, elimination, sequestration

or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(4) The facility complies with the statewide planning goals [*adopted by*] **of** the **Department of** Land Conservation and Development [*Commission*].

SECTION 102. ORS 469.504 is amended to read:

469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any **Department of** Land Conservation and Development [*Commission*] administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646 (3);

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable state-

wide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the **Department of** Land Conservation and Development [*Commission*] pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the **Department of** Land Conservation and Development [*Commission*] to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.
