

Chapter 197

1979 REPLACEMENT PART

Comprehensive Planning Coordination

GENERAL PROVISIONS

- 197.005 Legislative findings
- 197.010 Policy
- 197.015 Definitions for ORS 197.005 to 197.430 and 469.350

LAND CONSERVATION AND DEVELOPMENT COMMISSION

- 197.030 Land Conservation and Development Commission; members, appointment, confirmation, term, vacancies
- 197.035 Commission officers, selection; quorum; compensation and expenses
- 197.040 Duties of commission, generally
- 197.045 Powers of commission
- 197.050 Interstate agreements and compacts; commission powers
- 197.060 Biennial report; draft submission to committee; contents

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

- 197.075 Department of Land Conservation and Development
- 197.080 Department monthly report required
- 197.085 Director; appointment; compensation and expenses
- 197.090 Duties of director
- 197.095 Land Conservation and Development Account; continuous appropriation; fees and other revenues to be deposited

JOINT LEGISLATIVE COMMITTEE ON LAND USE

- 197.125 Joint Legislative Committee on Land Use; executive secretary
- 197.130 Members; appointment; term; vacancies; majority vote required in actions
- 197.135 Duties of committee, generally

ADVISORY COMMITTEES

- 197.160 State Citizen Involvement Advisory Committee; county citizen advisory committees
- 197.165 Local Officials Advisory Committee

COMPREHENSIVE PLANNING RESPONSIBILITIES

- 197.175 Cities and counties planning responsibilities; compliance with state-wide goals and guidelines
- 197.180 State agency planning responsibilities; certain information to be submitted to department
- 197.185 Special district planning responsibilities; agreements with cities and counties
- 197.190 Regional coordination of planning activities; alternatives

STATE-WIDE GOALS AND GUIDELINES

- 197.225 Preparation; adoption
- 197.230 Considerations; priorities; finding of state-wide need required for adoption or revision of goal
- 197.235 Public hearings; notice; citizen involvement implementation; submission of proposals to commission
- 197.240 Commission action; public hearing; notice; revision; adoption
- 197.245 Commission revision
- 197.250 Compliance with state-wide planning goals required
- 197.251 Compliance acknowledgment; commission review; planning extension; compliance schedule
- 197.252 Application of state goals during period of compliance schedule; criteria for application; commission's powers cumulative
- 197.254 Bar to contesting compliance acknowledgment
- 197.255 County review of comprehensive plans required; compliance advice
- 197.260 County reports on comprehensive planning compliance required annually
- 197.265 State compensation for costs of defending compliance actions

INTERIM COMPREHENSIVE PLANNING

- 197.275 Existing plans and regulations remain in effect until revised; effect of compliance acknowledgment
- 197.285 City and county interim comprehensive plans to comply with interim goals; state-wide planning goals and guidelines after approval

ENFORCEMENT OF STATE-WIDE PLANNING GOALS

- 197.320 Power of commission to order compliance with goals; contents of order; hearing; procedure; appeals; injunctions

ACTIVITIES ON FEDERAL LAND

- 197.390 Activities on federal land; list; permit required; enjoining violations
- 197.395 Application for permit; city or county review and issuance; conditions; restrictions; review

ACTIVITIES OF STATE-WIDE SIGNIFICANCE

- 197.400 Activities of state-wide significance; designation; effect upon state agency responsibilities
- 197.405 Additional activities and areas of critical state concern; designation; commission recommendation; committee review; approval by Legislative Assembly

MISCELLANEOUS MATTERS

- 197.410 Planning and siting permit required; enjoining violations
- 197.415 Planning and siting permits required; application; city, county, state agency review and recommendation; issuance; conditions; restrictions
- 197.420 Joint application and permit where two or more permits required for activity
- 197.425 Binding letter of interpretation by commission; committee consultation required; request form
- 197.430 Enforcement powers

CROSS REFERENCES

- Airport Zoning Act, 492.510 to 492.710
- City planning functions, Ch. 227
- County planning functions, Ch. 215
- Economic development plan, county, coordination with other plans, 280.505
- Multiple-unit housing in urban areas, compliance with planning and zoning, 307.650
- Willamette River Greenway, 390.310 to 390.368
- 197.085
Geothermal well drilling applications, 522.065, 522.125
- 197.180
Recreational planning, 390.180
- 197.251
Subdivisions within acknowledged comprehensive plan exempt from Oregon Subdivision Control Law, 92.325

COMPREHENSIVE PLANNING COORDINATION

Note: Sections 1 to 6a and sections 28 and 29, chapter 772, Oregon Laws 1979, provide:

Sec. 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

Sec. 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

Sec. 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the Governor considers necessary. The members of the board first appointed by the Governor shall be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

Sec. 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

Sec. 3. As used in sections 4 to 6 of this 1979 Act

(1) "Land use decision" means.

(A) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

Sec. 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

(4) A notice of intent to appeal a land use decision shall be filed not later than 30 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or special district governing body or state agency and the applicant of record, if any, in the city, county or special district governing body or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs of \$150. In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the filing fee and deposit shall be awarded to the city, county, special district or state agency as cost of preparation of the record.

MISCELLANEOUS MATTERS

(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board may allow, the city, county or special district governing body or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record

(6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be reviewed and shall state.

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record which, 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 city, county or special district governing body or state agency for which there is substantial evidence in the whole record.

(8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is not issued within 90 days and no extension of time has been stipulated to by the parties, the decision being reviewed shall be considered affirmed and the decision may then be appealed in the manner provided in section 6a of this 1979 Act.

(9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the city, county or special district governing body or state agency whose decision is under review. The deposit required by subsection (4) of this section shall be applied to any costs charged against the petitioner.

(10) Orders issued under this section may be enforced in appropriate judicial proceedings.

(11) The board shall provide for the publication of its orders and those previously issued by the commission which are of general public interest in the form it deems best adapted for public convenience. Publications shall constitute the official reports of the board and the commission and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

(12) All fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

Sec. 5. (1) Where a petition for review contains only allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979 Act.

(2) Where a petition for review contains no allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding the decision.

(3) Where a petition for review contains both allegations that a land use decision violates the state-wide planning goals and other allegations of error, the board shall review the decision and proceed as provided in section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be issued until the commission has reviewed the recommendation of the board on the issues concerning the state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall incorporate the determination of the commission into the final order to be issued under this subsection

(4) The board shall reverse or remand the land use decision under review only if.

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

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

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

(D) Improperly construed the applicable law; or

(E) Made a decision that was unconstitutional; or

(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act

Sec. 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties

(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed.

COMPREHENSIVE PLANNING COORDINATION

The exceptions shall be filed with the board and submitted to the commission for review

(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

(5) If the commission receives a recommendation from the board concerning a petition alleging that a comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the state-wide goals, and the commission has received a request from the city or county which adopted such comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197 251, the commission may suspend its consideration of the request for compliance acknowledgment until it has issued its determination on the recommendation of the board and the board has issued a final order. In any event the commission shall issue its determination on the recommendation of the board within the time limits established in subsection (3) of this section.

(6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings brought before it for determination under this section

Sec. 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of this 1979 Act, may seek judicial review of a final order issued in those proceedings

(2) Notwithstanding the provisions of ORS 183 480 to 183 500, judicial review of orders issued under sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 30 days only following the date the order upon which the petition is based is served. Date of service shall be the date on which the board delivered or mailed its order.

(4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition shall be served by registered or certified mail upon the

board, and all other parties of record in the board proceeding.

(5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant the stay unless the board determines that substantial public harm will result if the order is stayed. If the board denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay

(c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish

(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review

(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

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

(b) The order to be unconstitutional; or

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

Sec. 28. (1) Sections 1 to 6a of this Act are repealed July 1, 1983

(2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals before July 1, 1983, that is still pending on that date,

shall be finally determined by the Land Use Board of Appeals under sections 4 to 6 of this Act

Sec. 29. The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the effective date of this Act [November 1, 1979].

GENERAL PROVISIONS

197.005 Legislative findings. The Legislative Assembly finds that:

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

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

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

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

(5) The impact of proposed development projects, constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state regulations prescribed for application for activities of state-wide significance throughout this state. [1973 c 80 §1, 1977 c.664 §1]

197.010 Policy. The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and

coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

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

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

(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans;

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

(5) Shall be regularly reviewed and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve. [1973 c.80 §2]

197.015 Definitions for ORS 197.005 to 197.430 and 469.350. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(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 state agency, city, county or special district 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 systems, 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" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

(9) "Guidelines" mean 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) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(11) "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. [1973 c 80 §3; 1977 c.664 §2; 1979 c 772 §7]

LAND CONSERVATION AND DEVELOPMENT COMMISSION

197.030 Land Conservation and Development Commission; members, appointment, confirmation, term, vacancies.

(1) There is established a Land Conservation and Development Commission consisting of seven members appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(2) In making appointments under subsection (1) of this section, the Governor shall select from residents of this state one member from each congressional district and the remaining members from the state at large reflecting the geographic and occupational

makeup of the state. At least one and no more than two members shall be from Multnomah County. At least one member shall be an elected city or county official at the time of appointment.

(3) 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.

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

197.035 Commission officers, selection; quorum; compensation and expenses.

(1) The commission shall select one of its members as chairman and another member as vice chairman, for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the commission shall act as the chairman of the commission in the absence of the chairman.

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

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

197.040 Duties of commission, generally.

(1) The commission shall:
 (a) Direct the performance by the director and his staff of their functions under ORS 197.005 to 197.430 and 469.350.

(b) In accordance with the provisions of ORS 183.310 to 183.500, promulgate rules that it considers necessary in carrying out ORS 197.005 to 197.430 and 469.350. In designing its administrative requirements, the commission shall allow for the diverse administrative and planning capabilities of local governments.

(c) 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.

(d) Appoint advisory committees to aid it in carrying out ORS 197.005 to 197.430 and

469.350 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS 197.005 to 197.430 and 469.350, the commission shall:

(a) Establish state-wide planning goals consistent with regional, county and city concerns;

(b) Issue permits for activities of state-wide significance;

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

(d) Prepare state-wide planning guidelines;

(e) Review comprehensive plans for conformance with state-wide planning goals;

(f) Coordinate planning efforts of state agencies to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans;

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

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

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

(j) Perform other duties required by law. [1973 c 80 §§9, 11, 1977 c.664 §5]

197.045 Powers of commission. The 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 employes or services by one to the other necessary in carrying out ORS 197.005 to 197.430 and 469.350.

(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 197.005 to 197.430 and 469.350.

(4) Perform other functions required to carry out ORS 197.005 to 197.430 and 469.350.

(5) Assist in development and preparation of model zoning, subdivision and other ordinances and regulations to guide state agen-

cies, cities, counties and special districts in implementing state-wide planning goals. [1973 c.80 §10; 1977 c.664 §6]

197.050 Interstate agreements and compacts; commission powers. If an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under ORS 197.005 to 197.430 and 469.350, the commission may:

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

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

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

197.060 Biennial report; draft submission to committee; contents. (1) Prior to the end of each even-numbered year, the department shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, commission, state agencies, cities, counties and special districts in carrying out ORS 197.005 to 197.430 and 469.350.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the committee 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. [1973 c 80 §56; 1977 c.664 §9]

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

197.075 Department of Land Conservation and Development. The Department of Land Conservation and Development is established. The department shall consist of

the Land Conservation and Development Commission, the director and their subordinate officers and employees. [1973 c.80 §4]

197.080 Department monthly report required. The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, counties and other agencies in carrying out ORS 197.005 to 197.430 and 469.350. [1973 c.80 §55; 1977 c.664 §10]

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

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

197.090 Duties of director. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

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

(3) Appoint, reappoint, assign and reassign all subordinate officers and employes of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) 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.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals. [1973 c 80 §14; 1979 c.772 §7d]

197.095 Land Conservation and Development Account; continuous appropriation; fees and other revenues to be deposited. (1) There is established in the Gener-

al Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS 197.005 to 197.430 and 469.350.

(2) All fees, moneys and other revenue received by the department or the committee shall be deposited in the Land Conservation and Development Account. [1973 c.80 §15; 1977 c.664 §11]

JOINT LEGISLATIVE COMMITTEE ON LAND USE

197.125 Joint Legislative Committee on Land Use; executive secretary. The Joint Legislative Committee on Land Use is established as a joint committee of the Legislative Assembly. The committee shall select an executive secretary who shall serve at the pleasure of the committee and under its direction. [1973 c.80 §22]

197.130 Members; appointment; term; vacancies; majority vote required in actions. (1) The Joint Legislative Committee on Land Use shall consist of four members of the House of Representatives appointed by the Speaker and three members of the Senate appointed by the President. No more than three House members of the committee shall be of the same political party. No more than two Senate members of the committee shall be of the same political party. If the Speaker of the House of Representatives or the President of the Senate is a member, either may designate from time to time an alternate from among the members of his house to exercise his powers as a member of the committee except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The chairman of the House and Senate Environment and Land Use Committees of the Fifty-seventh Legislative Assembly of the State of Oregon shall be two of the members appointed under subsection (1) of this section for the period beginning with October 5, 1973.

(3) The committee has a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions.

(4) The term of a member shall expire upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. When a

vacancy occurs in the membership of the committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum is the majority of the remaining members.

(5) The committee shall select a chairman. The chairman may, in addition to his other authorized duties, approve voucher claims.

(6) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee. [1973 c.80 §23; 1975 c.530 §6; 1977 c.891 §8]

197.135 Duties of committee, generally. The committee shall:

(1) Advise the department on all matters under the jurisdiction of the department;

(2) Review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of designations of activities of state-wide significance, and for designations of areas of critical state concern;

(3) Review and make recommendations to the Legislative Assembly on state-wide planning goals and guidelines approved by the commission;

(4) Study and make recommendations to the Legislative Assembly on the implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision or other ordinance or regulation regulating or restricting the use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use; and

(5) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon. [1973 c.80 §24]

ADVISORY COMMITTEES

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

(1) The commission shall appoint a State

Citizen Involvement Advisory Committee, broadly representative of geographic areas of the state and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the development of state-wide planning goals and guidelines.

(2) Within 90 days after October 5, 1973, each county governing body shall submit to the commission a program for citizen involvement in preparing, adopting and revising comprehensive plans within the county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(3) The state advisory committee appointed under subsection (1) of this section shall review the proposed programs submitted by each county and recommend to the commission whether or not the proposed program adequately provides for public involvement in the planning process. [1973 c.80 §35]

197.165 Local Officials Advisory Committee. For the purpose of promoting mutual understanding and cooperation between the commission and local government in the implementation of ORS 197.005 to 197.430 and the state-wide planning goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments. [1977 c.664 §7]

COMPREHENSIVE PLANNING RESPONSIBILITIES

197.175 Cities and counties planning responsibilities; compliance with state-wide goals and guidelines. (1) Cities and counties shall exercise their planning and zoning responsibilities, including, subject to subsection (2) of ORS 197.275, the annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 and the formation of and annexation of territory to any district authorized by ORS 198.010 to 198.915 or 451.010 to 451.600, in accordance with ORS 197.005 to 197.430 and 469.350 and the state-wide plan-

ning goals approved under ORS 197.005 to 197.430 and 469.350.

(2) Pursuant to ORS 197.005 to 197.430 and 469.350, each city and county in this state shall:

(a) Prepare and adopt comprehensive plans consistent with state-wide planning goals approved by the commission; and

(b) Enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.010 to 198.915 or 451.010 to 451.600.

[1973 c.80 §§17, 18; 1977 c 664 §12]

197.180 State agency planning responsibilities; certain information to be submitted to department. (1) 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 in accordance with state-wide planning goals approved pursuant to ORS 197.005 to 197.430 and 469.350.

(2) Upon request by the commission but not later than January 1, 1978, each state agency shall submit to the department the following information:

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

(b) A program for coordination pursuant to paragraph (f) of subsection (2) of ORS 197.040;

(c) A program for coordination pursuant to subsection (2) of ORS 197.090; and

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

(3) Within 90 days of receipt, the department shall review the information submitted pursuant to subsection (2) of this section and shall notify each agency if it believes the programs submitted are insufficient to assure conformance with state-wide planning goals and compatibility with city and county comprehensive plans.

(4) Within 90 days of receipt of notification specified in subsection (3) of this section, the agency shall revise the information and resubmit it to the commission for approval.

[1973 c.80 §21, 1977 c 664 §13]

197.185 Special district planning responsibilities; agreements with cities and counties. (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 the annexation of territory to a district pursuant to ORS 198.850 to 198.865, in accordance with state-wide planning goals approved pursuant to ORS 197.005 to 197.430 and 469.350.

(2) Each special district operating within the boundaries of a city or county assigned coordinative functions under subsection (1) of ORS 197.190 shall enter into a cooperative agreement with such city or county. Such agreements shall include a listing of the tasks which the special district must complete in order to bring its plan or programs into conformity with the state-wide goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a plan or programs which comply with the state-wide goals are to be adopted. In addition, a program to coordinate the development of the plan and programs of the district with other affected units of local government shall be included in the agreement. Such agreements shall be subject to review by the commission.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of territory to a district pursuant to ORS 198.850 to 198.865.

[1973 c 80 §20; 1977 c 664 §14]

197.190 Regional coordination of planning activities; alternatives. (1) In addition to the responsibilities stated in ORS 197.175, each county through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including those of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. For purposes of this subsection, the responsibility of the county described in this subsection shall not apply to cities having a population of 300,000 or more, and such cities shall exercise, within the incorporated limits thereof, the authority vested in counties by this subsection.

(2) For the purposes of carrying out ORS 197.005 to 197.430 and 469.350, counties may voluntarily join together with adjacent counties as authorized in ORS chapter 190.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area to form a regional planning agency. The election shall be conducted in the manner provided in ORS 255.005 to 255.035, 255.055 to 255.095 and 255.215 to 255.355. The county clerk shall be considered the election officer and the commission shall be considered the district election 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. [1973 c 80 §19, 1977 c 664 §15]

STATE-WIDE GOALS AND GUIDELINES

197.225 Preparation; adoption. Not later than January 1, 1975, the department shall prepare and the commission shall adopt state-wide planning goals and guidelines for use by state agencies, cities, counties and special districts in preparing, adopting, revising and implementing existing and future comprehensive plans. [1973 c 80 §33]

197.230 Considerations; priorities; finding of state-wide need required for adoption or revision of goal. (1) In preparing, adopting and revising state-wide planning goals and guidelines, the department and the commission shall:

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

(b) Give priority consideration to the following areas and activities:

(A) Those activities listed in ORS 197.400;

(B) Lands adjacent to freeway interchanges;

(C) Estuarine areas;

(D) Tide, marsh and wetland areas;

(E) Lakes and lakeshore areas;

(F) Wilderness, recreational and outstanding scenic areas;

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

(H) Wild and scenic rivers and related lands;

(I) Flood plains and areas of geologic hazard;

(J) Unique wildlife habitats; and

(K) Agricultural land.

(c) Make a finding of state-wide need for the adoption of any new goal or the revision of any existing goal.

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

(2) Goals shall not be land management regulations for specified geographic areas established through designation of an area of critical state concern under subsection (2) of ORS 197.405. Goals shall not be direct regulation of land uses of particular properties through a program of planning and siting permits established pursuant to a designated activity of state-wide significance under subsection (1) of ORS 197.405. [1973 c.80 §34; 1977 c.664 §17]

Note: Section 18, chapter 664, Oregon Laws 1977, provides.

Sec. 18. The amendment to ORS 197.230 by section 17 of this 1977 Act shall only apply to new goals adopted or revisions of existing goals made by the commission after the effective date of this 1977 Act [July 22, 1977], based on the prospective application of statutes

197.235 Public hearings; notice; citizen involvement implementation; submission of proposals to commission. (1) In preparing the state-wide planning goals and guidelines, the department shall:

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

(b) Implement any other provision for public involvement developed by the state advisory committee under subsection (1) of ORS 197.160 and approved by the commission.

(2) Upon completion of the preparation of the proposed state-wide planning goals and guidelines, the department shall submit them to the commission for approval. [1973 c 80 §36]

197.240 Commission action; public hearing; notice; revision; adoption. Upon receipt of the proposed state-wide planning goals and guidelines prepared and submitted to it by the department, the commission shall:

(1) Hold at least one public hearing on the proposed state-wide planning goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed state-wide planning goals and guidelines to the Governor, the committee, affected state agencies and special districts and to each city and county without charge. The department shall provide copies of such proposed goals and guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any revisions in the proposed state-wide planning goals and guidelines that it considers necessary and approve the proposed goals and guidelines as they may be revised by the commission. [1973 c 80 §37]

197.245 Commission revision. The commission may periodically revise, update and expand the initial state-wide planning goals and guidelines adopted under ORS 197.240. Such revisions, updates or expansions shall be made in the manner provided in ORS 197.235 and 197.240. [1973 c.80 §38]

197.250 Compliance with state-wide planning goals required. All comprehensive plans and any zoning, subdivision and other ordinances and regulations adopted by a city or county to carry out such plans and all plans, programs or regulations affecting land use adopted by a state agency or special district shall be in conformity with the state-

wide planning goals within one year from the date such goals are approved by the commission. [1973 c.80 §32, 1977 c.664 §19]

197.251 Compliance acknowledgment; commission review; planning extension; compliance schedule. Upon request by a city or county the commission may grant:

(1) A compliance acknowledgment which shall be an official order of the commission formally recognizing that the comprehensive plans or zoning, subdivision or other ordinances or regulations adopted by the city or county are in compliance with the state-wide planning goals. The commission shall evaluate the plan and ordinances and either grant or deny the request within 90 days of the date the request was received by the commission unless the commission finds that due to extenuating circumstances a specified period of time greater than 90 days is required to take action on a request for a compliance acknowledgment. The commission's order granting or denying a request for compliance acknowledgment shall include a clear statement of findings which set forth the basis for the approval or denial of the request. Any request for compliance acknowledgment which has not been granted or denied within the time required under this subsection shall be considered granted. The department shall notify the Real Estate Division of any grant of compliance acknowledgment issued under this section.

(2) A planning extension, which shall be a grant of additional time for a city or county to comply with the state-wide planning goals in accordance with a compliance schedule. A compliance schedule shall be a listing of the tasks which the city or county must complete in order to bring its comprehensive plans or implementing ordinances or regulations into conformity with the state-wide goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or implementing ordinances or regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county. Under a compliance schedule:

(a) The city or county shall agree to complete the tasks as listed in the compliance schedule in consideration for the commission's agreement to recognize that the city or county is making satisfactory progress toward preparing and adopting a comprehensive plan or

implementing ordinances or regulations in conformity with the state-wide planning goals.

(b) A change in circumstances subsequent to the signing of a compliance schedule which substantially impairs the ability of either party to perform as agreed therein shall constitute sufficient grounds for modification of the compliance schedule so long as reasonable efforts on progress towards compliance with the state-wide goals have been demonstrated. The compliance schedule shall remain in effect until the revision has been approved by the commission and the city or county.

(3) A temporary extension, which shall be an additional period of time not exceeding six months granted to a city or county to complete a request for a planning extension or a compliance acknowledgment. [1977 c.766 §18; 1979 c.242 §3]

197.252 Application of state goals during period of compliance schedule; criteria for application; commission's powers cumulative. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in achieving the state-wide planning goals through performance of the compliance schedule; or

(b) The commission finds that a past approval or denial was of more than local impact and substantially impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the compliance schedule.

(2) Conditions may be imposed under this section only at the time of:

(a) Annual phased review of the satisfactory progress of the city or county;

(b) Approval of a planning assistance grant agreement with the city or county; or

(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by the city or county.

(3) Nothing in this section is intended to limit or modify the powers of the commission or the board under ORS 197.251, 197.320 or sections 4 to 6, chapter 772, Oregon Laws 1979. The powers of the commission under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement Part) and 197.251 and 197.320. [1977 c.664 § 20a; 1979 c.772 §7a]

197.254 Bar to contesting compliance acknowledgment. (1) A state agency shall be barred, after January 1, 1978, or the date set for submission of programs by the commission as provided in subsection (2) of ORS 197.180, from contesting a request for compliance acknowledgment submitted by a city or county under ORS 197.251, if the commission finds that:

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

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

(2) A special district shall be barred from contesting a request for compliance acknowledgment submitted by a city or county under ORS 197.251, if the city or county assigned coordinative functions under subsection (1) of ORS 197.190 finds that:

(a) The special district has not entered into a cooperative agreement under ORS 197.185; or

(b) The special district has not coordinated its plans, programs or regulations affecting land use with the comprehensive plan or implementing ordinances or regulations of the city or county pursuant to its cooperative agreement made under ORS 197.185. [1977 c.664 §16]

197.255 County review of comprehensive plans required; compliance advice. Following the approval by the commission of state-wide planning goals and guidelines, each county governing body shall review all comprehensive plans for land conservation and development within the county, both those adopted and those being prepared. The county

governing body shall advise the state agency, city, county or special district preparing the comprehensive plans whether or not the comprehensive plans are in conformity with the state-wide planning goals. [1973 c.80 §39]

197.260 County reports on comprehensive planning compliance required annually. Upon the expiration of one year after the date of the approval of state-wide planning goals and guidelines and annually thereafter, each county governing body shall report to the commission on the status of comprehensive plans within each county. Each such report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of zoning and subdivision ordinances and regulations applied to those areas within the county listed in subsection (2) of ORS 197.230.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the state-wide planning goals. [1973 c.80 §44]

197.265 State compensation for costs of defending compliance actions. (1) As used in this section, "action or suit" includes but is not limited to a proceeding under sections 4 to 6, chapter 772, Oregon Laws 1979.

(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning, subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred by such city or county in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor. [1977 c.898 §2; 1979 c 772 §7b]

INTERIM COMPREHENSIVE PLANNING

197.275 Existing plans and regulations remain in effect until revised; effect of compliance acknowledgment. (1) Comprehensive plans and zoning, subdivision, and other ordinances and regulations adopted prior to October 5, 1973, shall remain in effect until revised under ORS 197.005 to 197.430

and 469.350. It is intended that existing planning efforts and activities shall continue and that such efforts be utilized in achieving the purposes of ORS 197.005 to 197.430 and 469.350.

note 3

(2) After the commission acknowledges a city or county comprehensive plan and implementing ordinances to be in compliance with the goals pursuant to ORS chapter 197 and any subsequent amendments to the goals, the goals shall apply to land conservation and development actions and annexations only through the acknowledged comprehensive plan and implementing ordinances unless:

(a) The acknowledged comprehensive plan and implementing ordinances do not control the action or annexation under consideration; or

(b) Substantial changes in conditions have occurred which render the comprehensive plan and implementing ordinances inapplicable to the action or annexation.

(3) As used in this section, "annexation" means the annexation of unincorporated territory by a city pursuant to ORS 222.111 to 222.750 and the formation of an annexation of territory to any district authorized by ORS 451.010 to 451.600. [1973 c.80 §40; 1977 c.664 §21]

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

197.285 City and county interim comprehensive plans to comply with interim goals; state-wide planning goals and guidelines after approval. Each city or county shall prepare and the city council or the county governing body shall adopt the comprehensive plans required under ORS 197.005 to 197.430 and 469.350 or by any other law in accordance with ORS 197.280 (1975 Replacement Part) for those plans adopted prior to the expiration of one year following the date the commission approves its state-wide planning goals and guidelines under ORS 197.240. Plans adopted by cities and counties after the expiration of one year following the date of approval of such goals and guidelines by the commission shall be designed to comply with such goals and any subsequent amendments thereto. [1973 c.80 §42]

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

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

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

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

ENFORCEMENT OF STATE-WIDE PLANNING GOALS

197.320 Power of commission to order compliance with goals; contents of order; hearing; procedure; appeals; injunctions. (1) The commission shall issue an order requiring a city, county, state agency or special district to take action necessary to bring its comprehensive plan or zoning, subdivision or other ordinance, regulation, plan or program into conformity with the state-wide planning goals if the commission has good cause to believe:

(a) A comprehensive plan, or zoning, subdivision or other ordinance or regulation adopted by a city, county not on a compliance schedule is not in conformity with the state-wide planning goals by the date set in ORS 197.250 for such conformity; or

(b) A plan, program or regulation affecting land use adopted by a state agency or special district is not in conformity with the state-wide planning goals by the date set in ORS 197.250 for such conformity; or

(c) A city or county is not making satisfactory progress toward performance of its compliance schedule; or

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

(e) A city or county has no comprehensive plan, or zoning, subdivision or other ordinance or regulation and is not on a compliance schedule directed to developing such plans, ordinances or regulations.

(2) An order issued under subsection (1) of this section and the copy of the order mailed to the city, county, 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, zoning, subdivision or other ordinance or regulation, if any, of a city or county that do not comply with state-wide planning 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 state-wide planning goals;

(b) The specific lands, if any, within a city or county for which the existing plan, ordinance or regulation, if any, do not comply with the state-wide goals; and

(c) The corrective action decided upon by the commission, including the specific requirements, with which the city, county, state agency or special district must comply.

(3) An order issued under subsection (1) of this section shall state that a hearing may be requested to contest the order. The city, county, state agency or special district affected by the order or any person or group of persons substantially affected by the order may request a hearing to contest the order. The order shall become final 20 days after the mailing unless within such 20-day period the city, county, state agency or special district to which it is directed or person or group of persons substantially affected, files with the commission a request for hearing. Where a hearing is requested, the commission shall set a date for the hearing to be held within 60 days after the receipt of the request, and shall give the city, county, state agency or special district and person or group of persons substantially affected, if any, notice of the hearing at least 30 days prior thereto. Where a hearing has been requested, the order shall become final when there is no right to further hearing before the commission. The hearing and judicial review of a final order shall be governed by the provisions of ORS 183.310 to 183.500 applicable to contested cases except as otherwise stated in this section. The commission's final order shall include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding subsection (3) of ORS 183.482 relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal, modification or remand unless the court shall find that substantial

rights of any party were prejudiced thereby; or

- (b) The order to be unconstitutional; or
- (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.

(4) If the commission finds that in the interim period during which a city, county, state agency or special district would be bringing itself into compliance with the commission's order under subsection (1) or (3) 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 conservation and development actions in one or more specified geographic areas, it may, as part of its order, require that such actions not be taken or allowed.

(5) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1977 c.664 §34; 1979 c.284 §123]

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

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

ACTIVITIES ON FEDERAL LAND

197.390 Activities on federal land; list; permit required; enjoining violations.

(1) The commission shall study and compile a list of all activities affecting land use planning which the state may regulate or control in any degree which occur upon federal land.

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

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

197.395 Application for permit; city or county review and issuance; conditions; restrictions; review. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control which occurs upon federal land shall apply to the cities or counties 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 city or county as prescribed by rule of the commission.

(2) If the city or county finds after review of the application that the proposed activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying therefor. Action shall be taken by the governing body within 60 days of receipt of the application, or the application is deemed approved.

(3) The city or county may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review under sections 4 to 6, chapter 772, Oregon Laws 1979. [1975 c.486 §3; 1977 c.664 §26; 1979 c.772 §7c]

ACTIVITIES OF STATE-WIDE SIGNIFICANCE

197.400 Activities of state-wide significance; designation; effect upon state agency responsibilities.

(1) The following activities may be designated by the commission as activities of state-wide significance if the commission determines that by their nature or magnitude they should be so considered:

(a) The planning and siting of public transportation facilities.

(b) The planning and siting of public sewerage systems, water supply systems and solid waste disposal sites and facilities.

(c) The planning and siting of public schools.

(2) Nothing in ORS 197.005 to 197.430 and 469.350 supersedes any duty, power or responsibility vested by statute in any state

agency relating to its activities described in subsection (1) of this section; except that, a state agency may neither implement any such activity nor adopt any plan relating to such an activity without the prior review and comment of the commission. [1973 c.80 §25; 1977 c.664 §27]

197.405 Additional activities and areas of critical state concern; designation; commission recommendation; committee review; approval by Legislative Assembly. (1) In addition to the activities of state-wide significance that are designated by the commission under ORS 197.400, the commission may recommend to the committee the designation of additional activities of state-wide significance. Each such recommendation:

(a) Shall specify the reasons for the implementation of state regulations controlling the planning and siting of the activity recommended for designation;

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

(c) May describe the local permit programs or regulation, if any, that would remain matters of local concern not subject to the proposed permit program; and

(d) May provide varying regulations and permit criteria for different geographic areas of the state reflecting differing conditions and effects in such areas of the activity.

(2) The commission may recommend to the committee the designation of areas of critical state concern. Each such recommendation:

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

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

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

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

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

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or

denial of designated state or local permits regulating specified uses of lands in the area, or both.

(3) The commission may act under subsections (1) and (2) of this section on its own motion or upon the recommendation of a state agency, city, county or special district. If the commission receives a recommendation from a state agency, city, county or special district and finds the proposed activity or area to be unsuitable for designation, it shall notify the state agency, city, county or special district of its decision and its reasons therefor.

(4) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an additional activity of state-wide significance or the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsections (1) and (2) of this section to the committee for its review.

(5) No proposed designation under subsection (1) or (2) of this section shall take effect unless it has first been submitted to the committee under subsection (4) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, revise or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28]

197.410 Planning and siting permit required; enjoining violations. (1) No project constituting an activity of state-wide significance shall be undertaken without a planning and siting permit issued under ORS 197.415.

(2) No use or activity subjected to state regulations required or allowed for a designated area of critical state concern shall be undertaken except in accordance with the applicable state regulations.

(3) Any person or agency acting in violation of subsection (1) or (2) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29]

197.415 Planning and siting permits required; application; city, county, state agency review and recommendation; issuance; conditions; restrictions. (1) No proposed project constituting an activity of state-wide significance may be initiated by any person or public agency without a planning and siting permit issued by the commission therefor.

(2) Any person or public agency desiring to initiate a project constituting an activity of state-wide significance shall apply to the department for a planning and siting permit for such project. The application shall contain the plans for the project and the manner in which such project has been designed to meet the state regulations for the activity and the comprehensive plans for the city and county within which the project is proposed, and any other information required by the commission as prescribed by rule of the commission.

(3) The department shall transmit copies of the application to affected county, city and state agencies for their review and recommendation.

(4) The county and city governing bodies and the state agencies shall review an application transmitted to it under subsection (3) of this section and shall, within 30 days after the date of the receipt of the application, submit their recommendations on the application to the commission.

(5) If the commission finds after review of the application and the comments submitted by the county or city governing body and state agencies that the proposed project complies with the state regulations for the activity of state-wide significance and the comprehensive plan for the city and county, it shall approve the application and issue a planning and siting permit for the proposed project to the person or public agency applying therefor. Action shall be taken by the commission within 30 days of the receipt of the recommendation of the county, city and state agencies.

(6) The commission may prescribe and include in the planning and siting permit such conditions or restrictions that it considers necessary to assure that the proposed project complies with the state regulations for the activity of state-wide significance and the comprehensive plans for the city and the county. [1973 c 80 §27; 1977 c.664 §30]

197.420 Joint application and permit where two or more permits required for activity. If the activity requiring a planning and siting permit under ORS 197.415 also requires any other permit from any state agency, the commission, with the cooperation and concurrence of the other agency, may provide a joint application form and permit to satisfy both the requirements of ORS 197.005 to 197.430 and 469.350 and any other requirements set by statute or by rule of the state agency. [1973 c 80 §28, 1977 c.664 §31]

197.425 Binding letter of interpretation by commission; committee consultation required; request form. (1) If any person or public agency is in doubt whether a proposed development project constitutes an activity of state-wide significance, the person or public agency may request a determination from the commission on the question. Within 60 days after the date of the receipt by it of such a request, the commission, with the advice of the city and county governing bodies for the area in which such activity is proposed, shall issue a binding letter of interpretation with respect to the proposed project.

(2) Requests for determinations under this section shall be made to the commission in writing and in such form and contain such information as may be prescribed by the commission. [1973 c.80 §29; 1977 c.664 §32]

197.430 Enforcement powers. If the county governing body or the commission determines the existence of an alleged violation under ORS 197.410, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS 197.005 to 197.430 and 469.350, as soon as possible.

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

(3) Conduct public hearings.

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

(5) Give notice of any order relating to a particular violation of the state regulations for the activity or area involved, a particular violation of the terms or conditions of a planning and siting permit for the activity or a particular violation of ORS 197.005 to 197.430 and 469.350 by mailing notice to the person or public body conducting or proposing to conduct the project affected in the manner provided by ORS 183.310 to 183.500. [1973 c.80 §31; 1977 c 664 §33]

197.705 [1973 c.482 §1; repealed by 1977 c.665 §24]

197.710 [1973 c 482 §3; repealed by 1977 c.665 §24]

197.715 [1973 c.482 §2; repealed by 1977 c 665 §24]

197.725 [1973 c.482 §4; repealed by 1977 c 665 §24]

197.730 [1973 c.482 §6; repealed by 1977 c.665 §24]

197.735 [1973 c 482 §7; repealed by 1977 c.665 §24]

197.740 [1973 c.482 §8; repealed by 1977 c.665 §24]

197.750 [1973 c.482 §5; repealed by 1977 c.665 §24]

197.755 [1973 c.482 §9; repealed by 1977 c.665 §24]

197.760 [1973 c.482 §9a; repealed by 1977 c.665 §24]

197.765 [1973 c.482 §2a, repealed by 1977 c.665 §24]

197.775 [1973 c.482 §11; repealed by 1977 c.665 §24]

197.780 [1973 c.482 §12; repealed by 1977 c.665 §24]

197.785 [1973 c.482 §13; repealed by 1977 c.665 §24]

197.790 [1973 c.482 §14; repealed by 1977 c.665 §24]

197.795 [1973 c.482 §10; repealed by 1977 c.665 §24]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel