

Chapter 197

1981 REPLACEMENT PART

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COMPREHENSIVE PLANNING COORDINATION

Note: Sections 1 to 6a and sections 28 and 29, chapter 772, Oregon Laws 1979, as amended by chapter 748, Oregon Laws 1981, provide

Sec. 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197 005 to 197 430 and 197 605 to 197 650

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 171 562 and 171.565. 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 183.550. 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 183 550

(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. 4. (1) Review of land use decisions under sections 4 to 6, chapter 772, Oregon Laws 1979, 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, chapter 772, Oregon Laws 1979, relating to judicial review by the Court of Appeals and except as otherwise provided in section 3 of this 1981 Act [ORS 197 605], the board shall have exclusive jurisdiction to review any land use decision of a local government or special district governing body or a state agency in the manner provided in sections 5 and 6, chapter 772, Oregon Laws 1979

(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. Subject to the provisions of subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision 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 local government 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 local government or special district governing body or state agency and the applicant of record, if any, in the local government 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 to be established by the board. 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 local government, special district or state agency as cost of preparation of the record

(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board may allow, the local government 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

MISCELLANEOUS MATTERS

(c) The issues the petitioner seeks to have reviewed

(7) Review of a decision under sections 4 to 6, chapter 772, Oregon Laws 1979, 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 local government 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, chapter 772, Oregon Laws 1979.

(9)(a) Notwithstanding the 90-day limitation specified in subsection (8) of this section, the board may defer all or part of its consideration of a petition for review of a land use decision that allegedly violates the goals if the decision involves

(A) A comprehensive plan or land use regulations submitted for acknowledgment under ORS 197.251;

(B) A comprehensive plan or land use regulations that were acknowledged under ORS 197.251 and have been submitted for review in a periodic review proceeding under section 9 of this 1981 Act; or

(C) An amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation upon which an appeal to the commission is pending under sections 5a to 5c of this 1981 Act.

(b) The board may defer all or part of its consideration of a land use decision described in paragraph (a) of this subsection until the commission has disposed of the acknowledgment, periodic review or appeal proceeding described in subparagraph (A), (B) or (C) of paragraph (a) of this subsection. Upon application of a party, the board may grant a stay of the comprehensive plan provision, land use regulation or land use decision under review. The stay shall be granted only upon a showing of:

(A) Irreparable injury to the party making the application; and

(B) A colorable claim of error relating to goal compliance.

(10) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government 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.

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

(12) 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.

(13) 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.

Note: Section 61, chapter 748, Oregon Laws 1981, provides:

Sec. 61. The amendments to section 4, chapter 772, Oregon Laws 1979, made by section 35 of this Act apply to petitions for review of land use decisions filed on or after the effective date of this Act [August 21, 1981].

Sec. 5. (1) Where a petition for review contains only allegations that a land use decision violates the goals, the board shall review the decision and proceed as provided in section 6, chapter 772, Oregon Laws 1979.

(2) Where a petition for review contains no allegations that a land use decision violates the 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 goals and other allegations of error, the board shall review the decision and proceed as provided in section 6, chapter 772, Oregon Laws 1979, with respect to the allegations of violation of the goals, and prepare an order addressing all issues not related to the goals. The decision of the board concerning any issues not related to the 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 goals under section 6, chapter 772, Oregon Laws 1979, 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 local government 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, chapter 772, Oregon Laws 1979, the commission has determined that the local government or special district governing body or state agency violated the goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a, chapter 772, Oregon Laws 1979.

Sec. 6. (1) At the conclusion of a review proceeding under sections 4 and 5, chapter 772, Oregon Laws 1979, the board shall prepare a recommendation to the commis-

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sion concerning any allegations of violation of the 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 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. 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 local government, 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, chapter 772, Oregon Laws 1979, 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, chapter 772, Oregon Laws 1979. 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 land use regulation is in violation of the goals, and the commission has received a request from the local government which adopted such comprehensive plan provision or land use regulation asking that the commission grant acknowledgment pursuant to ORS 197.251, the commission may suspend its consideration of the request for 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, chapter 772, Oregon Laws 1979, 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, chapter 772, Oregon Laws 1979, shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under sections 4 to 6, chapter 772, Oregon Laws 1979, 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, chapter 772, Oregon Laws 1979, 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 rever-

sal 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

(9) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's mandate within 30 days.

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

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 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. [1973 c 80 §1; 1977 c 664 §1, 1981 c 748 §21]

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 and land use regulations 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, amended to keep them consistent with the changing needs and desires of the public they are designed to serve. [1973 c 80 §2, 1981 c 748 §21a]

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

197.015 Definitions for ORS 197.005 to 197.430 and 197.605 to 197.650. As used in ORS 197.005 to 197.430 and 197.605 to 197.650, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment conforms with the goals.

(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 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” mean the mandatory statewide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430 and 197.605 to 197.650.

(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) “Land use decision” means:

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

- (A) The goals;
- (B) A comprehensive plan provision; or
- (C) A land use regulation; or

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

(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. “Land use regulation” does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(12) “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 197.190.

(13) “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.

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

(15) “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 197.190 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.

(16) “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, 1981 c 748 §1]

LAND CONSERVATION AND DEVELOPMENT COMMISSION

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

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

(2) 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 unless required to comply with requirement that a member come from each congressional district. 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; 1981 c.545 §4]

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. (1) The commission shall:

(a) Direct the performance by the director and the director's staff of their functions under ORS 197.005 to 197.430 and 197.605 to 197.650.

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS 197.005 to 197.430 and 197.605 to 197.650. In designing its administrative requirements, the commission shall allow for the diverse administrative and planning capabilities of local governments.

(c) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS 197.005 to 197.430 and 197.605 to 197.650 any state-wide land use policies that it considers necessary to carry out ORS 197.005 to 197.430 and 197.605 to 197.650. Any state-wide land use policies adopted by the commission before August 21, 1981, shall be adopted

by goal or rule within one year after August 21, 1981.

(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 197.005 to 197.430 and 197.605 to 197.650 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS 197.005 to 197.430 and 197.605 to 197.650, the commission shall:

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

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

(c) Prepare state-wide planning guidelines;

(d) Review comprehensive plans for compliance with goals;

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

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

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

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

(i) Perform other duties required by law.

[1973 c.80 §§9, 11, 1977 c.664 §5; 1981 c.748 §22]

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 197.605 to 197.650.

(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 197.605 to 197.650.

(4) Perform other functions required to carry out ORS 197.005 to 197.430 and 197.605 to 197.650.

(5) Assist in development and preparation of model land use regulations to guide state agencies, cities, counties and special districts in implementing goals. [1973 c.80 §10; 1977 c 664 §6, 1981 c 748 §22a]

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, 197.605 to 197.650 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, local governments and special districts in carrying out ORS 197.005 to 197.430 and 197.605 to 197.650.

(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, 1981 c 748 §21b]

**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 employes. [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, local governments and other agencies in carrying out ORS 197.005 to 197.430 and 197.605 to 197.650. [1973 c.80 §55, 1977 c 664 §10, 1981 c 748 §21c]

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, local governments 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 Personnel Relations 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 board. [1973 c.80 §14; 1979 c.772 §7d; 1981 c.748 §21d]

197.095 Land Conservation and Development Account. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS 197.005 to 197.430 and 197.605 to 197.650.

(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, 1981 c 748 §21e]

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 the appropriate house to exercise powers as a member of the committee except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The committee shall have 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.

(3) 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.

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

(5) 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, 1981 c 748 §23]

197.135 Duties of committee. 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 designation of areas of critical state concern;

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

(4) Study and make recommendations to the Legislative Assembly on the political, economic and other effects of the state land use planning program on local government, public and private landowners and the citizens of Oregon;

(5) Study and make recommendations to the Legislative Assembly on improvements to the land use appeals process;

(6) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon; and

(7) Study the availability and adequacy of industrially designated or zoned lands within urban and urbanizable areas. [1973 c 80 §24, 1981 c 748 §24]

Note: Section 246, chapter 748, Oregon Laws 1981, provides

Sec. 24b. (1) By September 1, 1982, each county shall report to the committee its decisions, together with the findings supporting those decisions and such other information as the county may choose to submit, issued in the preceding 12 months on each application for

(a) A dwelling authorized by ORS 215.213 (1)(e), 215.213 (1)(f) or 215.213 (3); or

(b) A division of land required to be reviewed by the county under ORS 215.263.

(2) The committee may request information relating to whatever additional issues pertaining to farmland protection the committee may wish to consider

(3) The department shall provide the support services the committee requires in carrying out the provisions of this section.

ADVISORY COMMITTEES

197.160 State Citizen Involvement Advisory Committee; city and 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 adoption and amendment of the goals and guidelines.

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

(3) The State Citizen Involvement Advisory Committee appointed under subsection (1) of this section shall review the proposed programs submitted by each city and county and report to the commission whether or not the proposed program adequately provides for public involvement in the planning process, and, if it does not so provide, in what respects it is inadequate.

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

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 197.605 to 197.650 and the goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments. [1977 c 664 §7, 1981 c 748 §25a]

COMPREHENSIVE PLANNING RESPONSIBILITIES

197.175 Cities and counties planning responsibilities; compliance with goals. (1) Cities and counties shall exercise their planning and zoning responsibilities, including, but not limited to, a city or special district boundary change which shall mean the incorporation or annexation of unincorporated territory by a 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 199.519 or 451.010 to 451.600, in accordance with ORS 197.005 to 197.430 and 197.605 to 197.650 and the goals approved under ORS 197.005 to 197.430 and 197.605 to 197.650.

(2) Pursuant to ORS 197.005 to 197.430 and 197.605 to 197.650, 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) Except as provided in ORS 197.605 (6), if its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions in compliance with the goals; and

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

(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, 1981 c 748 §15]

197.180 State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans. (1) Except as provided in ORS 527.722, 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 197.005 to 197.430 and 197.605 to 197.650; and

(b) Except when a finding is made under ORS 197.640 (2)(c), in a manner compatible with:

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

(B) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged under ORS 197.625 (2) or 197.630 (1) and (4).

(2) Upon request by the commission, 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 ORS 197.040 (2)(e);

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

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

(3) Within 90 days of receipt, the director shall review the information submitted pursuant to subsection (2) 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.

(4) Within 90 days of receipt of notification specified in subsection (3) of this section, the agency may revise the rules or programs and resubmit them to the director.

(5) The director shall make findings under subsections (3) and (4) 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 commission for its action. The 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.

(6) 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. [1973 c 80 §21, 1977 c 664 §13, 1981 c 748 §16]

197.185 Special district planning responsibilities; agreements with local governments. (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 197.005 to 197.430 and 197.605 to 197.650.

(2) Each special district operating within the boundaries of a county assigned coordinative functions under ORS 197.190 (1), or within the boundaries of the Metropolitan Service District, which is assigned coordinative functions for Multnomah, Washington and Clackamas counties by ORS 197.190 (1), shall enter into a cooperative agreement with the county or the metropolitan district. Such agreements shall include a listing of the tasks which the special district must complete in order to bring its plans or programs into compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when the plans or programs which comply with the 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. The commission may provide by rule for periodic submission and review of special district plans and programs to assure that the plans or programs are in compliance with the goals or, if a city or county comprehensive plan for the area within which the district lies is acknowledged, the plans and programs of the districts are coordinated with the acknowledged comprehensive plan. [1973 c 80 §20, 1977 c 664 §14; 1981 c 748 §26]

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 planning activities of the county, cities, special districts and state

agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of this chapter 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 197.005 to 197.430 and 197.605 to 197.650, 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 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, 1981 c 748 §27]

GOALS COMPLIANCE

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

197.230 Considerations; finding of need required for adoption or amendment of goal. In preparing, adopting and amending

goals and guidelines, the department and the commission shall:

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

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

(a) Lands adjacent to freeway interchanges;

(b) Estuarine areas;

(c) Tide, marsh and wetland areas;

(d) Lakes and lakeshore areas;

(e) Wilderness, recreational and outstanding scenic areas;

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

(g) Wild and scenic rivers and related lands;

(h) Flood plains and areas of geologic hazard;

(i) Unique wildlife habitats; and

(j) Agricultural land.

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

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

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

[1973 c 80 §34, 1977 c 664 §17, 1981 c 748 §17]

197.235 Public hearings; notice; citizen involvement implementation; submission of proposals. (1) In preparing the 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. At least two public hearings shall be held in each congressional district.

(b) Implement any other provision for public involvement developed by the State

Citizen Involvement Advisory Committee under ORS 197.160 (1) and approved by the commission.

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

(3) The commission shall consider the comments of the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the Joint Legislative Committee on Land Use before the adoption and amendment of goals or guidelines. [1973 c 80 §36, 1981 c 748 §28]

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

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

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

197.245 Commission amendment of initial goals; adoption of new goals. The commission may periodically amend the initial goals and guidelines adopted under ORS 197.240 and adopt new goals and guidelines. The adoption of amendments to or of new

goals shall be done in the manner provided in ORS 197.235 and 197.240 and shall specify with particularity those goal provisions that are applicable to land use decisions before plan revision. Absent a compelling reason, the commission shall not require a comprehensive plan, new or amended land use regulation or land use decision to be consistent with a new or amended goal until the time of the periodic review required under ORS 197.640 or one year after the date of adoption, whichever is later. [1973 c.80 §38, 1981 c.748 §29]

Note: Section 31, chapter 748, Oregon Laws 1981, provides:

Sec. 31. The commission shall not adopt a new goal until after June 30, 1983, and may amend an existing goal only under the provisions of ORS 197.245.

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

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

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

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

(b) Authorize the director to investigate and in the report to resolve issues raised in the comments and objections or by the direc-

tor's own review of the comprehensive plan and land use regulations.

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

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

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

(a) Identify the goals with which the comprehensive plan and land use regulations comply and those with which they do not comply; and

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

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

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

resources and capabilities of the city or county.

(8) As used in this section:

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

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

(B) Specifies amendments or other action that must be completed 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 goals with which the plan, regulations or both the plan and regulations are in compliance.

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

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

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

(C) Is used when the amendments or other changes required in the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations affect many goals and are likely to take a substantial period of time to complete. [1977 c 766 §18, 1979 c 242 §3, 1981 c 748 §7]

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

197.254 Bar to contesting acknowledgment or seeking amendment. (1) A state agency shall be barred after the date set for submission of programs by the commission as provided in ORS 197.180 (2), from contesting a request for acknowledgment submitted by a local government under ORS 197.251 or from submitting an objection under ORS 197.620 (1) or (3), if the commission finds that:

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

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

(2) A state agency shall be barred from seeking a commission order under ORS 197.640 (2)(c) and (6)(a)(B) 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 submitting an objection under ORS 197.620 (1) or (3), if the county or Metropolitan Service District assigned coordinative functions under ORS 197.190 (1) 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 land use regulations of the local government pursuant to its cooperative agreement made under ORS 197.185.

(4) A special district shall be barred from seeking a commission order under ORS 197.640 (2)(c) and (6)(a)(B) 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 requested the amendment from the local government and has had its request denied. [1977 c 664 §16, 1981 c 748 §11]

197.255 County review of comprehensive plans required; compliance advice. Following the approval by the commission of 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 local government preparing the comprehensive plans whether or not the comprehensive plans are in conformity with the goals. [1973 c 80 §39, 1981 c 748 29b]

197.260 Annual county reports on comprehensive planning compliance. Upon the expiration of one year after the date of the approval of the goals and guidelines and annually thereafter, each county governing body, upon request of the commission, shall report to the commission on the status of

comprehensive plans within each county. Each report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of land use regulations applied to areas of critical state concern within the county.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the goals. [1973 c 80 §44; 1981 c.748 §29c]

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, as amended by sections 35 to 36a, chapter 748, Oregon Laws.

(2) If any suit or 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 such goals, then the commission shall pay reasonable attorney fees and court costs incurred by such local government in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor. [1977 c 898 §2; 1979 c.772 §7b, 1981 c 748 §39]

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

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

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

NEEDED HOUSING IN URBAN GROWTH AREAS

197.295 Definitions for ORS 197.013, 197.303 and 197.307. As used in ORS 197.013, 197.303 and 197.307:

(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses.

(2) "Manufactured homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 et seq.), as amended on August 22, 1981.

(3) "Periodic review" means the review of an acknowledged comprehensive plan and land use regulations by a local government in accordance with the schedule for plan review and revision adopted as part of the acknowledged comprehensive plan.

(4) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan. [1981 c 884 §4]

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

197.303 "Needed housing" defined. (1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy and manufactured homes, as defined in ORS 197.295, located in either mobile home parks or subdivisions.

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

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

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

(3) A local government may take an exception to subsection (1) of this section in the same manner that an exception may be taken under the goals. [1981 c 884 §6]

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

197.307 Effect of need for certain housing in urban growth areas. (1) The availability of housing opportunities for persons of lower, middle and fixed income is a matter of state-wide concern.

(2) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need.

(3) Subsection (2) of this section shall not be construed as an infringement on a local government's prerogative to:

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

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

(c) Establish approval procedures.

(4) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. [1981 c 884 §5]

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

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

ENFORCEMENT OF 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 local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation or other land use decisions into conformity with the goals if the commission has good cause to believe:

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

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

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

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

(e) 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;

(f) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation; or

(g) A local government has failed to comply with a commission order entered under ORS 197.640 (6)(a)(B).

(2) An order issued under subsection (1) of this section 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;

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

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

(3) An order issued under subsection (1) of this section shall state that a hearing may be requested to contest the order. The local government, state agency or special district affected by the order or any person or group of persons substantially affected or aggrieved 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 local government, state agency or special district to which it is directed or person or group of persons substantially affected or aggrieved, 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 local government, state agency or special district and person or group of persons substantially affected or aggrieved, 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 183.550 applicable to contested cases except as otherwise stated in this section. The commission's final order shall include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the

entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal, modification or remand unless the court shall find that substantial rights of any party were prejudiced thereby; 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 local government, 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 use decisions in one or more specified geographic areas, it may, as part of its order, limit or prohibit the approval by the local government of applications for subdivisions, partitions or building permits until the plan or land use regulation is brought into compliance. Any restriction under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the restriction is necessary to correct the violation. A restriction imposed under this subsection shall apply only to the geographic area that is the subject of the violation.

(5) As part of its order under subsection (1) or (3) of this section, the commission may withhold grant funds from the local government to which the order is directed.

(6) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located

to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1977 c 664 §34, 1979 c 284 §123, 1981 c 748 §32]

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

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

197.340 Weight given to goals in planning practice. The commission, the department and local governments shall give the goals equal weight in the planning process. [1981 c 748 §20]

197.350 Burden of persuasion or proof in appeal to board or commission.

(1) A party appealing a land use decision made by a local government to the board or commission has the burden of persuasion.

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

(3) There shall be no burden of proof in administrative proceedings under ORS 197.005 to 197.430 and 197.605 to 197.650. [1981 c 748 §10a]

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 occur on federal land and which the state may regulate or control in any degree.

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

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

197.395 Application for permit; review and issuance; conditions; restrictions; review.

(1) Any person or public agency desiring to initiate an activity which the state may regulate or control and which occurs upon federal land shall apply to the local government in which the activity will take

place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the local government as prescribed by rule of the commission.

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

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

(4) Actions pursuant to this section are subject to review under sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981. [1975 c.486 §3, 1977 c 664 §26; 1979 c 772 §7c; 1981 c.748 §40]

AREAS OF CRITICAL CONCERN

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

197.405 Designation of areas of critical state concern; commission recommendation; committee review; approval by Legislative Assembly.

(1) 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.

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

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

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

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

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon.

[1973 c 80 §30; 1977 c 664 §29; 1981 c.748 §13]

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

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

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

197.430 Enforcement powers. If the county governing body or the 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 197.605 to 197.650, as soon as possible.

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

(3) Conduct public hearings.

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

(5) Give notice of any order relating to a particular violation of the state regulations for the area involved or a particular violation of ORS 197.005 to 197.430 and 197.605 to 197.650 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 183.550. [1973 c.80 §31, 1977 c 664 §33; 1981 c 748 §14]

MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT

197.505 Definition for 197.505 to 197.540. As used in ORS 197.505 to 197.540, "moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or residential construction on, urban or urbanizable land. It does not include actions engaged in, or practices in accordance with a comprehensive plan or implementing ordinances acknowledged by the Land Conservation and Development Commission under ORS 197.251, nor does it include denial or delay of permits or authorizations because they are inconsistent with applicable zoning or other laws or ordinances. [1980 c.2 §2]

Note: ORS 197 505 to 197 540 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation

197.510 Legislative findings. The Legislative Assembly finds and declares that:

(1) The declaration of moratoria on construction and land development by cities, counties and special districts may have a negative effect on the housing policies and goals of other local governments within the

state, and therefore, is a matter of state-wide concern.

(2) Such moratoria, particularly when limited in duration and scope, and adopted pursuant to growth management systems that further the state-wide planning goals and local comprehensive plans, may be both necessary and desirable.

(3) Clear state standards should be established to assure that the need for moratoria is considered and documented, the impact on housing is minimized, and necessary and properly enacted moratoria are not subjected to undue litigation. [1980 c.2 §1]

Note: See note under 197.505

197.520 Manner of declaring moratorium. (1) No city, county or special district may adopt a moratorium on construction or land development unless it first makes written findings justifying the need for the moratorium in the manner provided for in this section.

(2) A moratorium may be justified by demonstration of a need to prevent a shortage of key facilities as defined in the state-wide planning goals which would otherwise occur during the effective period of the moratorium. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

(a) Showing the extent of need beyond the estimated capacity of existing key facilities expected to result from new land development, including identification of any key facilities currently operating beyond capacity, and the portion of such capacity already committed to development;

(b) That the moratorium is reasonably limited to those areas of the city, county or special district where a shortage of key public facilities would otherwise occur; and

(c) That the housing needs of the area affected have been accommodated as much as possible in any program for allocating any remaining key facility capacity.

(3) A moratorium not based on a shortage of key facilities under subsection (2) of this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

(a) That application of existing development ordinances or regulations and other

applicable law is inadequate to prevent irrevocable public harm from residential development in affected geographical areas;

(b) That the moratorium is sufficiently limited to insure that a needed supply of affected housing types within or in proximity to the city, county or special district is not unreasonably restricted by the adoption of the moratorium;

(c) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(d) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

(e) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

(4) No moratorium adopted under subsection (3) of this section shall be effective for a period longer than 120 days, but such a moratorium may be extended provided the city, county or special district adopting the moratorium:

(a) Finds that the problem giving rise to the need for a moratorium still exists;

(b) Demonstrates that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and

(c) Sets a specific duration for the renewal of the moratorium. A moratorium may be extended more than once but no single extension may be for a period longer than six months. [1980 c.2 §3]

Note: See note under ORS 197.505.

197.530 Correction program; procedures. A city, county or special district that adopts a moratorium on construction or land development in conformity with ORS 197.520 (1) and (2) shall within 60 days after the effective date of the moratorium adopt a program which seeks to correct the problem creating the moratorium. The program shall be presented at a public hearing. The city, county

or special district shall give advance notice of the time and date of the public hearing. [1980 c 2 §4]

Note: See note under ORS 197 505

197.540 Review by Land Conservation and Development Commission. (1) In the manner provided in ORS 197.305 to 197.315 (1977 Replacement Part), the Land Conservation and Development Commission shall review upon petition by a county, city or special district governing body or state agency or a person or group of persons whose interests are substantially affected, any moratorium on construction or land development or a corrective program alleged to have been adopted in violation of the provisions of ORS 197.505 to 197.530.

(2) If the commission determines that a moratorium or corrective program was not adopted in compliance with the provisions of ORS 197.505 to 197.530, the commission shall issue an order invalidating the moratorium.

(3) All review proceedings conducted by the Land Conservation and Development Commission under subsection (1) of this section shall be based on the administrative record, if any, that is the subject of the review proceeding. The commission shall not substitute its judgment for a finding solely of fact for which there is substantial evidence in the whole record.

(4) Notwithstanding any provision of ORS 197.005 to 197.430 and 197.605 to 197.650 to the contrary, the sole standard of review of a moratorium on construction or land development or a corrective program is under the provisions of this section, and such a moratorium shall not be reviewed for compliance with the state-wide planning goals adopted under ORS 197.005 to 197.430 and 197.605 to 197.650.

(5) The review of a moratorium on construction or land development under subsection (1) of this section shall be the sole authority for review of such a moratorium, and there shall be no authority for review in the circuit courts of this state. [1980 c 2 §5]

Note: See note under ORS 197 505

POST ACKNOWLEDGMENT PROCEDURES

197.605 Review of amendment, decision to amend, small tract zoning map amendment and other land use decision; exceptions. (1) An amendment to an acknowledged comprehensive plan is subject to review for compliance with the goals under ORS 197.610 to 197.630.

(2) An amendment to an acknowledged land use regulation or a new land use regulation is subject to review for compliance with the goals under ORS 197.610 to 197.630. However, if the commission determines under ORS 197.625 (1) that the amendment to an acknowledged land use regulation or the new land use regulation is consistent with specific related land use policies contained in the acknowledged comprehensive plan, the amendment or new land use regulation shall be considered to be in compliance with the goals.

(3) A local government land use decision to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is subject to review on grounds other than compliance with the goals and those provided for in ORS 197.625 (1) in the manner provided in sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981.

(4)(a) A small tract zoning map amendment is subject to review for compliance with the goals in the manner provided in sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981, if:

(A) The amendment applies to land outside an acknowledged urban growth boundary;

(B) The local government has a comprehensive plan that was acknowledged before July 1, 1981; and

(C) The acknowledged comprehensive plan has not been reviewed under ORS 197.640.

(b) If the board determines that an amendment described in paragraph (a) of this subsection is consistent with specific related land use policies contained in the acknowledged comprehensive plan or land use regulations, the amendment shall be considered to be in compliance with the goals.

(5) A land use decision other than an amendment to an acknowledged comprehensive plan or land use regulation or a new land

use regulation is subject to review for consistency with the acknowledged comprehensive plan and land use regulations under sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981.

(6) Notwithstanding any other provision of ORS 197.005 to 197.430 and 197.605 to 197.650, a mobile home siting permit, septic tank permit or building permit issued under the state building code as defined in ORS 456.750 is not subject to review for compliance with the goals under sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981, if the permit is issued:

(a) For lands subject to an acknowledged comprehensive plan and land use regulations;

(b) For lands included within an urban growth boundary acknowledged by the commission under ORS 197.251;

(c) For lands within the corporate limits of a city on August 21, 1981;

(d) For lands subject to an acknowledged estuarine plan element; or

(e) After June 30, 1983, unless the commission has issued an order under ORS 197.320 requiring a local government to continue to apply goals to building permits after that date. [1981 c 748 §3]

197.610 Procedure for review. (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 at least 45 days before the final 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 director shall notify persons who have requested notice that the proposal is pending.

(2) When the department 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, it shall notify the local government of:

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

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

(3) The director shall report to the commission on whether the director:

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

(b) Is participating in the local government proceeding.

(4) The commission may establish by rule a fee to cover the cost of notice given to persons by the director under subsection (1) of this section. [1981 c 748 §4]

197.615 Local government notice of amendment or new regulation; content; notice by director; fee. (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the director a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director.

(2)(a) Not later than five working days after the final decision, the local government also shall mail or otherwise submit notice to persons who:

(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and

(B) Requested of the local government in writing that they be given such notice

(b) The notice required by this subsection shall:

(A) Describe briefly the action taken by the local government;

(B) State the date of the decision;

(C) List the place where and the time when the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, and findings, may be reviewed; and

(D) Explain the requirements for the submission of written objections to the director under ORS 197.620.

(3) Not later than five working days after receipt of an amendment to an acknowledged

comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this section, the director shall notify by mail or other submission any persons who have requested notification. The notice shall:

(a) Explain the requirements for the submission of written objections;

(b) State the deadline by which objections must be received by the director and the local government; and

(c) List the locations where the comprehensive plan or land use regulation amendment or new land use regulation may be reviewed.

(4) The commission may establish by rule a fee to cover the cost of notice given to persons by the director under subsection (3) of this section. [1981 c 748 §5]

197.620 Objections; appeal by director; form and scope. (1)(a) Persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may mail or otherwise submit written objections to the director and the local government not later than 30 days after the date of the final decision by the local government.

(b) The director may permit persons to mail or otherwise submit written objections on grounds that the director raised in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation. The objections must be mailed or otherwise submitted to the director and the local government not later than 30 days after the date of the final decision by the local government. However, the director shall not allow a filing under this paragraph unless the director finds that the person filing the objection:

(A) Was adversely affected or aggrieved by the final decision; and

(B) Has demonstrated good cause why that person did not participate either orally or in writing in the local government proceedings leading to the final adoption.

(c) An objection filed under this subsection or subsection (3) of this section shall be treated in the same manner as an appeal by the director under subsection (2) or (3) of this section.

(2) Not later than 30 days after the final decision by the local government to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, the director may file an appeal of the amendment or new land use regulation with the commission if the department participated either orally or in writing in the local government proceedings leading to the final adoption.

(3) The director may file an appeal of the local government's decision with the commission and any person may file an objection to that decision with the director if an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action.

(4)(a) Except as provided in subsection (3) of this section, neither the director nor a person appealing by filing an objection may appeal on grounds which that party did not raise in the local government proceedings leading to the final adoption.

(b) An objection under subsection (1) of this section or an appeal under subsection (2) of this section shall specify the alleged grounds of noncompliance of the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation with the goals. [1981 c 748 §5a]

197.625 Dismissal of appeal or objection; when amendment or regulation final; notice to local government if objection or appeal filed; form and content; local government record; referral to commission; costs. (1) The commission shall dismiss any appeal or objection filed under ORS 197.620 if it determines at any time after the submission and notice required by ORS 197.615 (1) that an amendment to an acknowledged land use regulation or a new land use regulation is consistent with specific related land use policies contained in the acknowledged comprehensive plan. A dismissal under this subsection is a final order.

(2) If no appeal or objection is filed under ORS 197.620, 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 30-day period following the final decision by the local government. The director,

upon request, shall issue certification of the acknowledgment after the expiration of the 30-day period.

(3)(a) If an objection or appeal is filed under ORS 197.620, within 35 days after the final decision the director shall mail notice to the local government listing all objections and appeals concerning the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation and requesting that a record be submitted. The local government shall file the record of proceedings relating to the grounds raised in the objections and appeals not later than 60 days after the final decision of the local government. Upon receipt of the record, the director shall notify all persons who submitted objections that the record has been received and of the location where the record may be reviewed.

(b) The commission may prescribe by rule the form and content of records. However, the form, content and time for filing or supplementing the record may be determined by stipulation of all the parties.

(4) Within five days after receipt of the record from the local government, the director shall refer the objection or appeal to the commission for action. The referral shall consist of:

- (a) The text, the findings and any other materials the local government has submitted;
- (b) The objections received by and the appeals initiated by the director; and
- (c) The record before the local government.

(5) The commission shall establish by rule a deposit to be paid by a person filing an objection to cover the cost of preparation of the record by the local government. The amount of the deposit shall not exceed \$50. The local government shall be awarded the deposit if the commission acknowledges the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation under ORS 197.630. The deposit shall be refunded to the person who filed the objection if the commission invalidates the amendment or new land use regulation under ORS 197.630. [1981 c 748 §5b]

197.630 Commission's final order; procedure for review. (1) Within 60 days of the referral of an objection or appeal under ORS 197.625 (4), or within such other time as

may be stipulated by all the parties, the commission shall issue a final order in accordance with subsection (4) of this section either acknowledging or invalidating the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation.

(2) Commission review of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation on which an objection or appeal has been filed shall be conducted as follows:

(a) The director shall prepare a report on the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation. The report shall be based on:

- (A) The issues raised in an appeal initiated by the director and in objections submitted by other persons;
- (B) The record of proceedings submitted by the local government;
- (C) The text, findings and other materials submitted by the local government; and
- (D) The acknowledged comprehensive plan and land use regulations of the local government.

(b) Upon completion of the report and at least 20 days before the commission meeting at which the review of the amendment or the new land use regulation is to be considered, the director shall afford the local government and persons who submitted objections a reasonable opportunity to review the director's report and the objections and to submit written exceptions to the report and the objections.

(c) The local government and persons who submitted objections shall be afforded reasonable written notice of the time and place of the commission's review.

(d) In its review of the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, the commission shall provide for oral argument from the director, the local government and persons who filed objections.

(e) The commission's review of the amendment or new land use regulation shall be confined to the record. The record shall consist of the items listed in subparagraphs (A) to (D) of paragraph (a) of this subsection, the director's report, the written exceptions filed to the director's report and the oral arguments.

(3) The commission may adopt rules for the conduct of the review described in subsection (2) of this section.

(4) The commission's order acknowledging or invalidating the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall include a clear statement of findings that sets forth the basis for and supports the acknowledgment or invalidation. The findings shall address:

(a) The issues raised in the appeal and the director's report; and

(b) The objections, exceptions and oral argument before the commission. [1981 c 748 §5c]

197.635 Who may seek compliance review; who may appeal to court. (1) No person may seek review for compliance with the goals, in the manner provided in sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981, of a local government amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation required to be submitted to the director under ORS 197.610 and 197.615. Except as provided in ORS 197.605 (6), review of other land use decisions for compliance with the goals shall be undertaken only in the manner provided in sections 4 to 6, chapter 772, Oregon Laws 1979, as amended by sections 35 to 36a, chapter 748, Oregon Laws 1981.

(2) Only a person who submitted objections pursuant to ORS 197.620 (1) or (3) or a local government adversely affected or aggrieved by a commission decision under ORS 197.630 may appeal to the Court of Appeals a commission order issued under ORS 197.630 (1) and (4).

(3) Only a person who participated either orally or in writing in the local government proceedings resulting in the adoption of the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation may appeal to the Court of Appeals a commission order issued under ORS 197.625 (1). [1981 c 748 §6]

Note: Section 58, chapter 748, Oregon Laws 1981, provides

Sec. 58. (1) Sections 3 to 6 of this Act apply to any application proposing the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation filed with a local government on or after January 1, 1982. Sections 3 to 6 of this Act do not apply to any application proposing the adoption of such an amendment or new land use regulation filed with a local government before January 1, 1982.

(2) When a proposal for the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is initiated by the local government rather than by an application from another source, sections 3 to 6 of this Act apply to the proposal if the amendment or new land use regulation is not adopted by the local government before January 1, 1982. Sections 3 to 6 of this Act do not apply to such a proposal initiated by a local government if the amendment or new land use regulation is adopted by the local government before January 1, 1982.

(3) As used in this section, "comprehensive plan," "land use regulation," "local government" and "new land use regulation" have the meaning given those terms in ORS 197.015

197.640 Periodic commission review; when action authorized; procedure. (1) Not later than two years after its decision to initially acknowledge a local government's comprehensive plan and land use regulations pursuant to ORS 197.251 and periodically thereafter on a schedule to be established by it but in no case less frequently than once every five years, the commission shall review each local government's comprehensive plan and land use regulations to insure that they are in compliance with the goals and are coordinated with the plans and programs of state agencies. When feasible, the schedule for periodic review shall be based upon the dates contained in acknowledged comprehensive plans. In addition, the commission shall attempt to schedule the review on a regional basis in order that the county and city plans in a geographic area of common interest will be reviewed together.

(2) The review required by this section shall be conducted in the manner provided in subsections (3) to (5) of this section. Upon completion of its review, the commission shall take action as provided in subsection (6) of this section if it finds that:

(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 goals;

(b) Previously acknowledged provisions of the comprehensive plan or land use regulations do not comply with the goals because of goals subsequently adopted or state-wide land use policies adopted as rules interpreting goals under ORS 197.040;

(c) 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 government's comprehensive plan was acknowledged, and the agency has demonstrated that the plan or program:

(A) Is mandated by state statute or federal law;

(B) Is consistent with the goals; and

(C) Has objectives that cannot be achieved in a manner consistent with the comprehensive plan or land use regulations; or

(d) The city or county has not performed additional planning that:

(A) Was required in the comprehensive plan or land use regulations at the time of initial acknowledgment or that was agreed to by the city or county in the receipt of state grant funds for review and update; and

(B) Is necessary to make the comprehensive plan or land use regulations comply with the goals.

(3) In accordance with procedural rules of the commission, the director shall prepare a report addressing the considerations stated in paragraphs (a) to (d) of subsection (2) of this section. The procedural rules of the commission shall:

(a) Provide a reasonable opportunity for persons to prepare and submit to the director written comments and objections addressing considerations stated in paragraphs (a) to (d) of subsection (2) of this section; 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.

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

(5) The commission's review shall be confined to the record of any proceedings before the local government held in preparation for periodic review, any comments, objections or exceptions filed under subsections (3) and (4) of this section and the director's report. The commission may entertain oral argument from the director and from persons who filed comments or objections. However, the commission shall not allow additional evidence or testimony.

(6)(a) At the conclusion of the review under subsection (5) of this section, the commission shall enter an order that:

(A) Terminates periodic review if it finds that none of the conditions stated in paragraphs (a) to (d) of subsection (2) of this section exist; or

(B) Requires the local government to amend its acknowledged comprehensive plan and land use regulations to comply with the commission's findings.

(b) An order under subparagraph (B) of paragraph (a) of this subsection shall specify a reasonable time for the local government to bring its comprehensive plan and land use regulations into compliance with the commission's findings.

(7) The director shall notify the Real Estate Division, the local government and all persons who filed comments or objections of the commission's order. [1981 c 748 §9]

Note: Sections 9a and 59, chapter 748, Oregon Laws 1981, provide

Sec. 9a. If a comprehensive plan and land use regulations are scheduled for periodic review on or after the effective date of this 1981 Act [August 21, 1981] and before July 1, 1983, the periodic review shall be rescheduled to occur after June 30, 1983. The commission, however, shall review a comprehensive plan and land use regulations under section 9 of this 1981 Act before July 1, 1983, if requested by a county that has a comprehensive plan that was acknowledged before July 1, 1981

Sec. 59. (1) Section 9 of this Act applies on or after the effective date of this Act [August 21, 1981] to a county that

(a) Has a comprehensive plan that was acknowledged before July 1, 1981, and

(b) Makes a request under section 9a of this Act for the conduct of the first periodic review

(2) Section 9 of this Act applies on or after July 1, 1983, to a local government not referred to in subsection (1) of this section

197.650 Appeal to Court of Appeals; standing; petition content and service. (1) A commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) A person who submitted comments or objections pursuant to ORS 197.251 (2) and is appealing a commission order issued under ORS 197.251;

(b) A person who is adversely affected or aggrieved by a commission order issued under ORS 197.251 or 197.640;

(c) A person who is entitled under ORS 197.635 (2) to appeal a commission order issued under ORS 197.630 (1) and (4); or

(d) A person who is entitled under ORS 197.635 (3) to appeal a commission order issued under ORS 197.625 (1).

(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:

(a) Submitted comments or objections as provided in ORS 197.251 (2);

(b) Submitted objections as provided in ORS 197.620 (1) or (3);

(c) Participated either orally or in writing in the local government proceedings as provided in ORS 197.635 (3); or

(d) Is seeking judicial review as a person adversely affected or aggrieved by the order.

(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, the local government and all persons who filed comments or objections. [1981 c 748 §10]

Note: Section 60, chapter 748, Oregon Laws 1981, provides

Sec. 60. Section 10 of this Act applies to orders issued on or after the effective date of this Act [August 21, 1981]

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]