Chapter 197

1985 REPLACEMENT PART

Comprehensive Land Use Planning Coordination

GENERAL PROVISIONS

197.005 Legislative findings

197.010 Policy

197.013 Implementation and enforcement of statewide concern

197.015 Definitions for ORS 197.005 to 197.855

LAND CONSERVATION AND DEVELOPMENT COMMISSION

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

197.035 Commission officers, selection; quorum; compensation and expenses

197.040 Duties of commission

197.045 Powers of commission

197.050 Interstate agreements and compacts; commission powers

197.060 Biennial report; draft submission to committee; contents

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

197.075 Department of Land Conservation and Development

197.080 Department monthly report required

197.085 Director; appointment; compensation and expenses

197.090 Duties and authority of director

197.095 Land Conservation and Development Account

JOINT LEGISLATIVE COMMITTEE ON LAND USE

197.125 Joint Legislative Committee on Land Use; executive secretary

197.130 Members; appointment; term; vacancies; majority vote required in actions

197.135 Duties of committee

ADVISORY COMMITTEES

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees

197.165 Local Officials Advisory Committee

COMPREHENSIVE PLANNING RESPONSIBILITIES

197.175 Cities and counties planning responsibilities; rules on incorporations; compliance with goals

197.180 State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans; rules

197.185 Special district planning responsibilities; agreements with local governments

197.190 Regional coordination of planning activities; alternatives

GOALS COMPLIANCE

197.225 Preparation; adoption

197.230 Considerations; finding of need required for adoption or amendment of goal

197.235 Public hearings; notice; citizen involvement implementation; submission of proposals

197.240 Commission action; public hearing; notice; amendment; adoption

197.245 Commission amendment of initial goals; adoption of new goals

197.247 Amendment of goals; marginal lands designation; effect on applicability of goals

197.250 Compliance with goals required

197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; compliance schedule

197.253 Participation in local proceedings required for submission of comments and objections

197.254 Bar to contesting acknowledgment, appealing or seeking amendment

197.255 County review of comprehensive plans required; compliance advice

197.260 Annual county reports on comprehensive planning compliance

197.265 State compensation for costs of defending compliance actions

NEEDED HOUSING IN URBAN GROWTH AREAS

197.295 Definitions for ORS 197.303 to 197.313

197.303 "Needed housing" defined

197.307 Effect of need for certain housing in urban growth area

197.312 Limitation on city and county authority to prohibit certain kinds of housing

197.313 Interpretation of ORS 197.312

ENFORCEMENT OF PLANNING GOALS

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

197.340 Weight given to goals in planning practice

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

ACTIVITIES ON FEDERAL LAND

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

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

AREAS OF CRITICAL CONCERN

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

197.410 Use and activities regulated; enjoining violations

197.430 Enforcement powers

MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT

197.505 Definitions for ORS 197.505 to 197.540

197.510 Legislative finding

197.520 Manner of declaring moratorium

197.530 Correction program; procedures

197.540 Review by Land Use Board of Appeals

POST ACKNOWLEDGMENT PROCEDURES

197.610 Local government notice of proposed amendment or new regulation; exemptions; report to commission

197.615 Local government notice of adopted amendment or new regulation; content; notice by director

197.620 Who may appeal

197.625 When amendment or new regulation considered acknowledged

197.640 Periodic commission review; schedule; limitations; scope of review; notice to local government; local government duties; notice of review; substitute order

197.641 Local government notice of final review order; submission to director

197.643 Who may file objections to final review order; form and content of objections

197.645 Review by director; notice of action taken; appeal to commission

197.647 Commission review; notice; procedures; rules; scope of review; simplified periodic review

197.649 Fees for notice; establishment by rules

197.650 Appeal to Court of Appeals; standing; petition content and service

ECONOMIC DEVELOPMENT

197.707 Legislative intent

197.712 Commission duties; comprehensive plan provisions; public facility plans; state agency coordination plans; compliance deadline

197.717 Technical assistance by state agencies; information from Economic Development Department; model ordinances

GOAL EXCEPTIONS

197.732 Goal exceptions; criteria; rules; review

MISCELLANEOUS

197.747 Meaning of "compliance with the goals" for certain purposes

197.752 Lands available for urban development

197.757 Acknowledgment deadline for newly incorporated cities

LAND USE BOARD OF APPEALS

197.805 Policy on review of land use decisions

197.810 Land Use Board of Appeals; appointment and removal of members; qualifications

197.815 Office location

197.820 Duty to conduct review proceedings; authority to issue orders

197.825 Jurisdiction of board; limitations; effect on circuit court jurisdiction

197.830 Review procedures; standing; deadlines; attorney fees and costs; publication of orders

197.832 Board Publications Account

197.835 Scope of review

197.840 Exceptions to deadline for final decision

197.845 Stay of land use decision being reviewed; criteria; undertaking; conditions; limitations

197.850 Judicial review of board order; procedures; scope of review; undertaking

197.855 Deadline for final court order; exceptions

CROSS REFERENCES

Airport Zoning Act, 492.510 to 492.710

City planning functions, Ch. 227

County planning functions, Ch. 215

Economic development plan, county, coordination with other plans, 280.505

Forest practices as nuisance; exceptions, remedies, 527.800 to 527.810

Multiple-unit housing in urban areas, compliance with planning and zoning, 307.650

Willamette River Greenway, 390.310 to 390.368

197.085

Geothermal well drilling applications, 522.065, 522.125

197.180

Recreational planning, 390.180

197.251

Subdivisions within acknowledged comprehensive plan exempt from Oregon Subdivision Control Law, 92.325

197.610 to 197.640

Hazardous environmental conditions, amendments to plans and regulations, 466.385

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 197.855. As used in ORS 197.005 to 197.855, 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 complies 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 state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.855.

(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. Guide-

lines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

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

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation; 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.

(b) Does not include a ministerial decision of a local government made under clear and objective standards contained in an acknowledged comprehensive plan or land use regulation and for which no right to a hearing is provided by the local government under ORS 215.402 to 215.438 or 227.160 to 227.185.

(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; 1983 c.827 §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 197.855.

(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 197.855. 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 197.855 any state-wide land use policies that it considers necessary to carry out ORS 197.005 to 197.855. 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 197.855 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS 197.005 to 197.855, 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]

Note: Section 11, chapter 811, Oregon Laws 1985, provides:

Sec. 11. The commission shall consider adoption of rules, amendment of the goals and recommendations for legislation that will provide a practical means of identifying secondary resource lands and allow specified uses of those lands. The commission shall complete and report its actions under this section to the committee before the beginning of the Sixty-fourth Legislative Assembly.

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 197.855.

(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 197.855.

(4) Perform other functions required to carry out ORS 197.005 to 197.855.

(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 197.855.

(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]

Note: Section 13, chapter 826, Oregon Laws 1983, provides.

Sec. 13. (1) The Land Conservation and Development Commission shall submit to the Joint Legislative Committee on Land Use a written report analyzing applications approved and denied for:

(a) New and replacement dwellings under ORS 215.213 (1)(e) and (g), (2)(a) and (b), (3) and (4), 215.283 (1)(e) and (f) and (3),

(b) Divisions of land under ORS 215.263 (2) and (4);

(c) Dwellings and land divisions approved for marginal lands under ORS 215.317 or 215.327, and

(d) Such other matters pertaining to protection of agricultural land as the commission deems appropriate

(2) The report required by subsection (1) of this section shall also describe how much land has been designated as marginal land under ORS 197.247.

(3) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the Joint Legislative Committee on Land Use under subsection (1) of this section. The county report shall include actions taken after July 1, 1985, and before July 1, 1986, and shall be submitted to the department by July 30, 1986. The department may establish, after consultation with county governing bodies, a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

(a) Dwellings authorized by ORS 215 213 (1)(e) or 215.283 (1)(e),

(b) Dwellings authorized by ORS 215.213 (1)(g) or 215 283 (1)(f) if approved on lots or parcels as large as or larger than a minimum lot size acknowledged by the commission under ORS 197 251; or

(c) Land divisions authorized by ORS 215 263 (2) creating parcels as large as or larger than a minimum lot size acknowledged by the commission under ORS 197.251.

(4) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsections (1) and (2) of this section. [1983 c 826 §13; 1985 c.811 §9]

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

197.075 Department of Land Conservation and Development. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the director and their subordinate officers and 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 197.855. [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 the office of the director at the pleasure of the commission and the salary of the director shall be fixed by the commission unless otherwise provided by law.

(2) In addition to 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 the director in the performance of official duties. [1973 c.80 §13]

197.090 Duties and authority of director. (1) Subject to policies adopted by the commission, the director shall:

(a) Be the administrative head of the department.

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

(c) Appoint, reappoint, assign and reassign all subordinate officers and employes of the

department, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.

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

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

(2) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of a land use decision involving the goals, acknowledged comprehensive plan or land use regulation or other matter within the statutory authority of the department or commission under ORS 197.005 to 197.855. The director shall report to the commission on each case in which the department participates and on the positions taken by the director in each case. [1973 c 80 §14; 1979 c.772 §7d; 1981 c 748 §21d; 1983 c.827 §2]

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 197.855.

(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: Sections 3 to 5, chapter 811, Oregon Laws 1985, provide:

Sec. 3. (1) The Legislative Assembly recognizes and finds that:

(a) The exercise of land use planning and zoning powers by local governments and the implementation of requirements of the state land use laws and goals can significantly affect the permissible uses and the economic value of privately owned property within this state. Some local actions may enhance the economic value of property and some such actions may diminish its value.

(b) Certain development standards and conditions may be properly imposed by local government in implementing land use laws and goals to protect public health and safety and provide for orderly development.

(c) Many local land use actions taken in the public interest may be proper notwithstanding the fact that the action may reduce the economic value of privately owned land or negate the landowner's expectations with regard to that land.

(d) In some circumstances, the local restrictions placed on the use of property in the furtherance of the public interest may be so severe as to deprive the landowner of the reasonable economic use of the property. Such severe restrictions, when imposed without just compensation to the landowner, may place an unreasonable burden on the landowner who individually bears the costs of serving the interests of the public as a whole

(2) The Legislative Assembly further recognizes and finds that state policy is not clear concerning land use actions which affect the economic value of privately owned property within this state.

Sec. 4. (1) To clarify state policy in this area and to achieve a balance between public and private interests, the Joint Legislative Committee on Land Use shall study the effect of local government land use regulations on the value of private property in the State of Oregon. The Joint Legislative Committee on Land Use shall make recommendations to the Sixty-fourth Legislative Assembly on whether to compensate owners when local regulations diminish the value of their private property and to assess owners when local regulations enhance the value of their private property.

(2) The Joint Legislative Committee on Land Use shall consider the creation of judicial remedies for compensation to owners for the effects of local land use regulations on their property and shall consider techniques to balance the effect of local regulations including, but not limited to purchase of scenic easements, purchase of development rights and transfer of development rights.

(3) The Joint Legislative Committee on Land Use may appoint an advisory committee to assist in accomplishing the duties imposed in subsections (1) and (2) of this section. The advisory committee shall include but need not be limited to members representing local governments, environmental groups and industry.

Sec. 5. The Joint Legislative Committee on Land Use shall report its findings with respect to work done pursuant to subsections (1) and (2) of section 4 of this Act not later than March 1, 1986. It shall report its findings to the presiding officers of the Legislative Assembly. The presiding officers shall consider those findings and prepare legislation for introduction in 1987.

ADVISORY COMMITTEES

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees. (1) To assure widespread citizen involvement in all phases of the planning process:

(a) 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.

(b) 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.

(c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this subsection 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.

(2) 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, 1983 c.740 §49]

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 197.855 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; rules on incorporations; 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 annexation of unincorporated territory by a city, the incorporation of a new city and the formation or change of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410 to 199.519 or 451.010 to 451.600, in accordance with ORS 197.005 to 197.855 and the goals approved under ORS 197.005 to 197.855. The commission shall adopt rules clarifying how the goals apply to the incorporation of a new city. Notwithstanding the provisions of section 15, chapter 827, Oregon Laws 1983, the rules shall take effect upon adoption by the commission. The applicability of rules promulgated under this section to the incorporation of cities prior to August 9, 1983, shall be determined under the laws of this state.

(2) Pursuant to ORS 197.005 to 197.855, 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 197.835 (7), 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 198.430 and 198.510 to 198.915 or 451.010 to 451.600. [1973 c.80 §§17, 18; 1977 c.664 §12; 1981 c.748 §15; 1983 c.827 §3]

197.180 State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans; rules. (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 197.855; and

(b) Except when a finding is made under ORS 197.640 (3)(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) 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 (1)(b); 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.

(7) The commission shall adopt rules establishing procedures to assure that state agency permits affecting land use are issued in compliance with the goals and compatible with acknowledged comprehensive plans and land use regulations, as required by subsection (1) of this section. The rules shall prescribe the circumstances in which state agencies may rely upon a determination of compliance or compatibility made by the affected city or county. The rules shall allow a state agency to rely upon a determination of compliance by a city or county without an acknowledged comprehensive plan and land use regulations only if the city or county determination is supported by written findings demonstrating compliance with the goals. Nothing in this subsection requires decisions made under ORS 197.835 (7) to be reviewed for or include findings showing compliance with the goals. [1973 c.80 §21; 1977 c.664 §13; 1981 c.748 §16; 1983 c.827 §4]

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 197.855.

(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 197.855, 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 on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the 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; 1983 c.350 §1]

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. (1) In preparing, adopting and amending goals and guidelines, the department and the commission shall:

(a) 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.

(b) 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.

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

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

(2) Goals shall not be land management regulations for specified geographic areas established through designation of an area of critical state concern under ORS 197.405. [1973 c 80 §34, 1977 c.664 §17; 1981 c 748 §17; 1983 c 740 §50]

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]

197.247 Amendment of goals; marginal lands designation; effect on applicability of goals. (1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this section:

(a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income; and

(b) The proposed marginal land also meets at least one of the following tests:

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or

(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001 (21).

(2) For the purposes of subparagraphs (A) and (B) of paragraph (b) of subsection (1) of this section:

(a) Lots and parcels located within an urban growth boundary adopted by a city shall not be included in the calculation; and

(b) Only one lot or parcel exists if:

(A) A lot or parcel included in the area defined in subparagraph (A) of paragraph (b) of subsection (1) of this section is adjacent to one or more such lots or parcels;

(B) On July 1, 1983, greater than possessory interests are held in those adjacent lots or parcels by the same person, parents, children, sisters, brothers or spouses, separately or in tenancy in common; and

(C) The interests are held by relatives described in subparagraph (B) of this paragraph, one relative held the interest in the adjacent lots or parcels before transfer to another relative.

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

(a) Lots or parcels are not "adjacent" if they are separated by a public road; and

(b) "Lot" and "parcel" have the meanings given those terms in ORS 92.010.

(4) For the purposes of subparagraph (B) of paragraph (b) of subsection (1) of this section, lots and parcels located within an area for which an exception has been adopted by the county shall not be included in the calculation.

(5) A county may use statistical information compiled by the Oregon State University Extension Service or other objective criteria to calculate income for the purposes of paragraph (a) of subsection (1) of this section.

(6) Notwithstanding the fact that only a certain amount of land is proposed to be designated as marginal for the purposes of establishing the test area under subparagraph (A) of paragraph (b) of subsection (1) of this section, any lot or parcel that is within the test area and meets the income test set out in paragraph (a) of subsection (1) of this section may be designated as marginal land.

(7) The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327.

(8) The provisions of this section shall not affect the applicability of any goal, except the

goals on agricultural and forest lands, to a land use decision.

(9) Any amendments to local government plans and regulations resulting from amendments to goals required by subsection (1) of this section shall become effective only after approval by the commission under ORS 197.251 or 197.610 to 197.855. [1983 c.826 §2]

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 compliance 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; 1983 c.827 §56a]

197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; 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 director'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) A commission order granting acknowledgment shall be limited to an identifiable geographic area described in the order if:

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

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

(7) The commission may issue a limited acknowledgment order only in the circumstances identified in subsection (6) of this section and all plans and regulations shall be acknowledged in their entirety no later than July 1, 1984, as required by ORS 197.757 (1).

(8) Notwithstanding the provisions of subsection (7) of this section and of subsection (1) of section 12, chapter 827, Oregon Laws 1983, the commission may issue or continue a limited acknowledgment order for a coastal area or for the area within an urban growth boundary and outside the city limits after July 1, 1984.

(9) Notwithstanding the provisions of subsection (7) of this section, the commission may issue a limited acknowledgment order when a previously issued acknowledgment order is reversed or remanded by the Court of Appeals or the Oregon Supreme Court. Such a limited acknowledgment order may deny or continue acknowledgment of the part of the comprehensive plan or land use regulations that the court found not in compliance with the goals and grant acknowledgment of all other parts of the comprehensive plan and land use regulations.

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

(11) 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.

(12) 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 compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county.

(13) As used in this section:

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

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

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

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

(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; 1983 c.827 §5; 1985 c.811 §13]

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

197.253 Participation in local proceedings required for submission of comments and objections. Notwithstanding the provisions of ORS 197.251 (2)(a), a person may not submit written comments and objections to the acknowledgment request of any city or county that submits its plan or regulations to the commission for acknowledgment for the first time after August 9, 1983, unless the person participated either orally or in writing in the local government proceedings leading to the adoption of the plan and regulations. [1983 c.827 §5a]

Note: Section 12, chapter 827, Oregon Laws 1983, provides:

Sec. 12. (1) Except as provided in section 13 of this Act, comprehensive plans and land use regulations required under ORS 197 175 shall be submitted to the commission for acknowledgment no later than January 1, 1984. Except as provided in section 13 of this Act or ORS 197.251 (8), all comprehensive plans and land use regulations shall be acknowledged in their entirety no later than July 1, 1984.

(2) If a local government does not submit its comprehensive plan and land use regulations for acknowledgment by January 1, 1984, or the comprehensive plan and land use regulations are not acknowledged in their entirety by July 1, 1984:

(a) The commission may enter an order under ORS 197.320; and

(b) If the local government is not making progress towards acknowledgment and a good faith effort to meet deadlines, the commission shall notify the officer responsible for disbursing state-shared revenues to withhold that portion of the state-shared revenues to which the local government is entitled under ORS 221 770, 323.455, 366.525, 366.800 or 471.810 which represents the proportion of total state planning grant moneys previously provided the local government by the commission to the amount of the local government comprehensive plan which is not submitted or acknowledged. If state-shared revenues are withheld, the local government may certify to the commission costs incurred after that withholding for completion of its comprehensive plan in accordance with the commission order. The commission shall review those costs and certify those costs it deems reasonable to the officer responsible for disbursing state-shared revenues The officer shall withhold the amount of state-shared revenues identified by the commission and release all of that amount when the officer receives notice from the commission that the plan and regulations have been submitted or acknowledged, whichever is applicable, or release those costs incurred by the local government which the commission certifies to the officer.

(3) If a local government's plan and regulations are not acknowledged in their entirety by July 1, 1984, at the request

of the local government, the department may complete the plan and regulations.

197.254 Bar to contesting acknowledgment, appealing 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 filing an appeal under ORS 197.620 (1) or (2), 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 (3)(c) and (7) requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the agency's plan or program unless the agency has first requested the amendment from the local government and has had its request denied.

(3) A special district shall be barred from contesting a request for initial compliance acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions under ORS 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 (3)(c) and 197.647 (4)(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; 1983 c.827 §57]

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 compliance with the goals. [1973 c.80 §39; 1981 c.748 §29b; 1983 c.827 §57a]

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" includes but is not limited to a proceeding under ORS 197.830 to 197.845.

(2) If any action is brought against a local government challenging any comprehensive plan, land use regulation or other action of the local government which was adopted or taken for the primary purpose of complying with the goals approved under ORS 197.240 and which does in fact comply with the goals, then the 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; 1983 c.827 §6]

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 197.303 to 197.313. As used in ORS 197.303 to 197.313:

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

(2) "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(3) "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.

(4) "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.

(5) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan. [1981 c.884 §4; 1983 c.795 §1]

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:

(a) 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; and

(b) Government assisted housing.

(2) Paragraph (a) of 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; 1983 c.795 §2]

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 affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income is a matter of state-wide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable decent, safe and sanitary housing.

(3) 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.

(4) Subsection (3) 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.

(5) 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; 1983 c.795 §3]

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

197.312 Limitation on city and county authority to prohibit certain kinds of housing. No city or county may by charter prohibit from all residential zones attached or detached single-family housing, multiple-family housing for both owner and renter occupancy or manufactured homes. No city or county may by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing. [1983 c.795 §5]

197.313 Interpretation of ORS 197.312. Nothing in ORS 197.312 or in the amendments to ORS 197.295, 197.303, 197.307 by sections 1, 2 and 3, chapter 795, Oregon Laws 1983, shall be construed to require a city or county to contribute to the financing, administration or sponsorship of government assisted housing. [1983 c.795 §6]

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 compliance 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 compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

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

(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 197.647 (4)(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, prohibit or require 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, 1983 c 827 §58]

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 197.855. [1981 c 748 §10a, 1983 c 827 §43]

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 ORS 197.830 to 197.845. [1975 c.486 §3; 1977 c.664 §26, 1979 c 772 §7c; 1981 c.748 §40, 1983 c 827 §44]

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 recommenda-

tion; 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 197.855, 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 197.855 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 Definitions for ORS 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]

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]

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]

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]

197.540 Review by Land Use Board of Appeals. (1) In the manner provided in ORS

197.830 to 197.845, the Land Use Board of Appeals 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 board determines that a moratorium or corrective program was not adopted in compliance with the provisions of ORS 197.505 to 197.530, the board shall issue an order invalidating the moratorium.

(3) All review proceedings conducted by the Land Use Board of Appeals under subsection (1) of this section shall be based on the administrative record, if any, that is the subject of the review proceeding. The board 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 197.855 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 197.855.

(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; 1983 c.827 §45]

POST ACKNOWLEDGMENT PROCEDURES

197.605 [1981 c.748 §3; repealed by 1983 c.827 §59]

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

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

(b) Notwithstanding the requirements of ORS 197.830 (2) and (3), the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845.

(3) 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.

(4) 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. [1981 c.748 §4; 1983 c.827 §7; 1985 c.565 §27]

197.615 Local government notice of adopted amendment or new regulation; content; notice by director. (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 compre-

hensive 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 appealing the action of the local government under ORS 197.830 to 197.845.

(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 appealing the action of the local government under ORS 197.830 to 197.845; and

(b) List the locations where the comprehensive plan or land use regulation amendment or new land use regulation may be reviewed. [1981 c 748 §5; 1983 c.827 §9]

197.620 Who may appeal. (1) Notwithstanding the requirements of ORS 197.830 (2) and (3), 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 appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new land use regulation is not appealable.

(2) Notwithstanding the requirements of ORS 197.830 (2) and (3), the director or any other person may file an appeal of the local government's decision under ORS 197.830 to 197.845, 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. [1981 c.748 §5a, 1983 c 827 §8]

197.625 When amendment or new regulation considered acknowledged. (1) If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (7), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

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

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

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (7); or

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

(4) The board shall issue an affidavit for the purposes of subsection (3) of this section within five days of receiving a valid request from the local government. [1981 c.748 §5b; 1983 c.827 §10]

197.630 [1981 c.748 §5c; repealed by 1983 c.827 §59]

197.635 [1981 c.748 §6, repealed by 1983 c.827 §59]

197.640 Periodic commission review; schedule; limitations; scope of review; notice to local government; local government duties; notice of review; substitute order. (1) After its decision to initially acknowledge a local government's comprehensive plan and land use regulations under ORS 197.251, the commission shall periodically 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. Periodic review shall be conducted in accordance with a schedule to be established by the commission, but unless requested at an earlier date by the local government:

(a) No review shall be conducted before July 1, 1984;

(b) No comprehensive plan and land use regulations shall be reviewed sooner than two years after the plan and regulations are acknowledged under ORS 197.251;

(c) The first periodic review shall be two to five years after acknowledgment under ORS 197.251; and

(d) All subsequent reviews shall be three to five years after the previous review.

(2) 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.

(3) The review required by this section shall be conducted in the manner provided in subsections (4) to (8) of this section and ORS 197.641 to 197.649. Through the review, the city or county shall determine if any of the following factors apply and take any action necessary to bring the plan and regulations into compliance with the goals or to make them consistent with state agency plans and programs:

(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.

(4) The department shall notify each local government in writing at least 180 days before the date established by the commission for periodic review of the local government plan and land use regulations. The notice shall:

(a) Notify the local government of its responsibility to conduct a review of its plan and regulations to determine whether the factors listed in subsection (3) of this section apply, and to submit a proposed review order to the department not later than the date established by the commission for periodic review; and

(b) Advise the local government of:

(A) Any goals adopted, or state-wide land use policies adopted as rules interpreting goals, subsequent to acknowledgment of the local government's plan and regulations;

(B) Any applicable state agency plan or program described in paragraph (c) of subsection (3) of this section; and

(C) Any additional planning responsibilities as described in paragraph (d) of subsection (3) of this section.

(5) The local government shall conduct a review of its plan and regulations and, on or before the date set by the commission, shall submit its proposed review order to the department. The local government shall notify the department of the date set for final hearing on the proposed order, which shall be at least 90 days after the date the proposed order is submitted to the department. The proposed review order shall be accompanied by:

(a) Findings that none of the factors in paragraphs (a) to (d) of subsection (3) of this section apply and the comprehensive plan and land use regulations continue to be in compliance with the goals and coordinated with state agency plans and programs; or

(b) Proposed amendments to the comprehensive plan or land use regulations or proposed new land use regulations that the local government finds necessary to bring the plan or regulations into compliance with the goals or with state agency plans or programs because of the applicability of one or more of the factors in paragraphs (a) to (d) of subsection (3) of this section.

(6) The director shall mail or otherwise submit notice to persons who have requested notice that the proposal is pending, of their opportunity to participate in the local government's proceedings, and of the times and places where the local government's proposal and accompanying documents may be reviewed.

(7) At least 30 days before the local government's final hearing on the proposed review

order, the department shall notify the local government of:

(a) Any concerns it has about the proposal's compliance with requirements identified by the department under paragraph (b) of subsection (4) of this section; and

(b) Advisory recommendations on actions it considers necessary to address the concerns, including, but not limited to, suggested corrections to meet these requirements.

(8) At any time before the local government adopts a final review order, the local government may submit another proposed review order to the department under subsection (5) of this section. The new proposal shall supersede the previous proposed review order and shall be subject to all the requirements of this section and ORS 197.641 to 197.649. [1981 c.748 §9; 1983 c.827 §11]

197.641 Local government notice of final review order; submission to director. (1) A local government shall mail or otherwise submit to the director a copy of the final review order, including the adopted text of any comprehensive plan provision or land use regulation, the findings adopted by the local government and any supplemental information the local government believes necessary to inform the director of the effect of the order. The order, text and findings shall be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed final review order, text or findings that the director received under ORS 197.640 (5) have 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 action, the local government shall also mail or otherwise submit notice to persons who:

(A) Participated in the proceedings leading to the adoption of the final review order; 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 final review order, findings and text may be reviewed; and

(D) Explain the requirements for the submission of written objections to the director under ORS 197.643.

(3) Not later than five working days after receipt of a final review order submitted under subsection (1) of this section, the director shall mail or otherwise submit notice to any persons who have requested notice. 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 final review order, findings and text may be reviewed. [1983 c.827 §11b]

197.643 Who may file objections to final review order; form and content of objections. (1) Except as provided in subsection (2) of this section, only persons who participated either orally or in writing in the local government proceedings leading to the adoption of the final review order may file an objection to the final review order with the director and the local government.

(2) Any person may file an objection to the final review order with the director and the local government if the final review order differs from the proposed order submitted under ORS 197.640 (5) to such a degree that the notice did not reasonably describe the nature of the local government's final action.

(3) An objection filed under this section shall:

(a) Be in writing;

(b) Be mailed or otherwise submitted not later than 30 days after the date of the final action by the local government;

(c) Be limited to those issues raised by the objector in the proceedings before the local government, unless the final review order differs from the proposed order to such a degree that the notice did not reasonably describe the nature of the local government's final action; and

(d) Specify the alleged grounds upon which the final review order does adequately respond to the applicable standards of ORS 197.640 (3). [1983 c.827 §11c]

197.645 Review by director; notice of action taken; appeal to commission. (1) The director shall review the local government's final review order and any objections filed with the director, and not later than 60 days after receipt of the final review order, take one of the following actions:

(a) Issue an order terminating periodic review, based on findings that the requirements of ORS 197.640 (3) are met or do not apply; or

(b) Prepare and submit to the commission a report addressing the standards of ORS 197.640 (3), the local government's final review order and any objections filed with the director, together with a recommendation for approval or for an order requiring amendments to the plan or regulations or adoption of new regulations.

(2) The director shall notify the local government and any objectors of the action taken under this section. Any objector may appeal to the commission the director's order terminating periodic review within 30 days following the mailing of notice by the director under this subsection. In any appeal under this subsection, the director shall prepare and submit a report in the manner provided in paragraph (b) of subsection (1) of this section. [1983 c.827 §11d]

197.647 Commission review; notice; procedures; rules; scope of review; simplified periodic review. (1) Within 60 days following the submittal of a report under ORS 197.645 (1)(b), 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.

(2) Commission review of a final review order shall be conducted as follows:

(a) Upon completion of the director's report and at least 20 days before the commission meeting at which the review of the final review order 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.

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

(c) In its review of the final review order, the commission shall provide for oral argument from the director, the local government and persons who filed objections.

(d) The commission's review of the final review order shall be confined to the record, which shall consist of:

(A) Any objections to the final review order filed with the director under ORS 197.643;

(B) The final review order, including findings, the text of any amendments or new regulations and other materials submitted by the local government;

(C) The acknowledged comprehensive plan and land use regulations of the local government; and

(D) 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) At the conclusion of the review under subsection (2) of this section, the commission shall enter an order:

(a) Affirming the final review order of the local government and terminating periodic review if the commission finds the final review order adequately responds to the applicable standards of ORS 197.640 (3); or

(b) Requiring the local government to amend its acknowledged comprehensive plan and land use regulations to adequately respond to the standards of ORS 197.640 (3).

(5) An order under paragraph (b) of subsection (4) of this section shall specify a reasonable time for the local government to bring its comprehensive plan and land use regulations into compliance with the commission's order.

(6) The director shall notify the Real Estate Division, the local government and all persons who filed comments or objections of the commission's order.

(7) Notwithstanding the requirements of ORS 197.640 (4) to (8) and 197.643 to 197.647, the commission shall adopt rules establishing a simplified and expedited periodic review procedure for:

(a) Cities with a population under 2,500 within the urban growth boundary;

(b) Counties with a population under 5,000; and

(c) Counties within which there are no cities with a population over 2,500 within the urban growth boundary. [1983 c.827 §11e]

197.649 Fees for notice; establishment by rules. The commission may establish by rule fees to cover the cost of notice given to persons by the director under ORS 197.610 (1), 197.615 (3), 197.640 (6) and 197.641 (3). [1983 c.827 §11f; 1985 c.565 §28]

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; or

(b) A person who is adversely affected or aggrieved by a commission order issued under ORS 197.251 or 197.647 (4).

(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); or

(b) 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; 1983 c.827 §52]

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

ECONOMIC DEVELOPMENT

197.707 Legislative intent. It was the intent of the Legislative Assembly in enacting ORS chapters 197, 215 and 227 not to prohibit, deter, delay or increase the cost of appropriate development, but to enhance economic development and opportunity for the benefit of all citizens. [1983 c.827 §16]

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

197.712 Commission duties; comprehensive plan provisions; public facility plans; state agency coordination plans; compliance deadline. (1) In addition to the findings and policies set forth in ORS 197.005, 197.010 and 215.243, the Legislative Assembly finds and declares that, in carrying out state-wide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.

(2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the commission shall implement all of the following:

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

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

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

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

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

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

(g) Local governments shall provide:

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

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

(3) A comprehensive plan and land use regulations shall be in compliance with this section by the first periodic review of that plan and regulations under ORS 197.640. [1983 c.827 §17]

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

197.717 Technical assistance by state agencies; information from Economic Development Department; model ordinances. (1) State agencies shall provide technical assistance to local governments in:

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

(b) Developing public facility plans; and

(c) Streamlining local permit procedures.

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

(3) The commission shall develop model ordinances to assist local governments in streamlining local permit procedures. [1983 c.827 §18]

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

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

GOAL EXCEPTIONS

197.732 Goal exceptions; criteria; rules; review. (1) A local government may adopt an exception to a goal when:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(2) Compatible, as used in subparagraph (D) of paragraph (c) of subsection (1) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) The commission shall adopt rules establishing under what circumstances particular reasons may or may not be used to justify an exception under subparagraph (A) of paragraph (c) of subsection (1) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards of subsection (1) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The board or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (1) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of subsection (1) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 (3).

(8) As used in this section, "exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with standards under subsection (1) of this section.

(9) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, shall continue to be valid and shall not be subject to this section. [1983 c.827 §19a]

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

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

MISCELLANEOUS

197.747 Meaning of "compliance with the goals" for certain purposes. For the purposes of acknowledgment under ORS 197.251 and periodic review under ORS 197.640 and 197.641

to 197.647, "compliance with the goals" means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. [1983 c.827 §14]

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

197.752 Lands available for urban development. (1) Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.

(2) Notwithstanding subsection (1) of this section, lands not needed for urban uses during the planning period may be designated for agricultural, forest or other nonurban uses. [1983 c.827 §19]

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

197.757 Acknowledgment deadline for newly incorporated cities. Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged under ORS 197.251 no later than four years after the date of incorporation. [1983 c:827 §13]

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]

LAND USE BOARD OF APPEALS

197.805 Policy on review of land use decisions. 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 ORS 197.805 to 197.855 to accomplish these objectives. [1979 c.772 §1a, 1983 c.827 §28]

197.810 Land Use Board of Appeals; appointment and removal of members; qualifications. (1) There is hereby created a Land Use Board of Appeals consisting of not more than three 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 chosen by the referees 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. [1979 c.772 §2; 1983 c.827 §28a]

197.815 Office location. The principal office of the board shall be in the state capital, but the board may hold hearings in any county or city in order to provide reasonable opportunities to parties to appear before the board with as little inconvenience and expense as is practicable. Upon request of the board, the county or city governing body shall provide the board with suitable rooms for hearings held in that city or county. [1983 c 827 §29]

197.820 Duty to conduct review proceedings; authority to issue orders. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in ORS 197.830.

(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.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under ORS 197.830 to 197.845. [1979 c.772 §2a; 1983 c.827 §28b]

197.825 Jurisdiction of board; limitations; effect on circuit court jurisdiction. (1) Except as provided in subsections (2) and (3) of this section, the board shall have exclusive jurisdiction to review any land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

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

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

(c) Does not include those matters over which the Land Conservation and Development Commission has review authority under ORS 197.005 to 197.455; and

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

(3) The provisions of paragraph (a) of subsection (2) of this section do not affect the authority of the board to decide issues not raised in the local government proceedings.

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

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

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order. [1983 c.827 §30]

197.830 Review procedures; standing; deadlines; attorney fees and costs; publication of orders. (1) Review of land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 (1), a person may petition the board for review of a legislative land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Is aggrieved or has interests adversely affected by the decision.

(3) Except as provided in ORS 197.620 (1), a person may petition the board for review of a quasi-judicial land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;

(b) Appeared before the local government, special district or state agency orally or in writing; and

(c) Meets one of the following criteria:

(A) Was entitled as of right to notice and hearing prior to the decision to be reviewed; or

(B) Is aggrieved or has interests adversely affected by the decision.

(4) For purposes of subsections (2), (3) and (5) of this section, the word "person" shall include the Land Conservation and Development Commission or its designate.

(5) Within a reasonable time after a petition for review has been filed with the board, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) or (3) of this section.

(6) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due.

(7) A notice of intent to appeal a land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district 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. If a petition for review is not filed with the board as required in subsections (8) and (9) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(8) Within 21 days after service of the notice of intent to appeal, the local government, special district 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.

(9) A petition for review of the land use decision and supporting brief shall be filed with

the board as required by the board under subsection (10) of this section. The petition shall include a copy of the decision sought to be reviewed and shall state:

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

(b) The date of the decision.

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

(10) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(11) Review of a decision under ORS 197.830 to 197.845 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, special district or state agency for which there is substantial evidence in the whole record.

(12) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(13)(a) 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, special district or state agency whose decision is under review. The deposit required by subsection (7) of this section shall be applied to any costs charged against the petitioner.

(b) The board may also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded, and primarily for a purpose other than to secure appropriate action by the board.

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

(15) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board. The board shall provide the publisher with a list of those public officers who shall receive the publications without charge. The board shall determine the sale prices, and all moneys collected or received from sales shall be paid into the Board Publications Account established by ORS 197.832.

(16) Except for those sums collected for publication of board opinions, 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. [1983 c.827 §31; 1985 c.119 §3]

197.832 Board Publications Account. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 (15). Disbursements of moneys from the account shall be approved by the chief referee of the board. [1985 c.119 §5]

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

(2) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals.

(3) The board shall reverse or remand a land use decision subject to an acknowledged comprehensive plan and land use regulations if the decision is not consistent with the acknowledged comprehensive plan and land use regulations.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, the board shall reverse or remand a decision to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation if the amendment or new regulation does not comply with the goals. The board shall find an amendment or new land use regulation in compliance with the goals, if:

(a) The board determines 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; or

(b) The amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, on the whole, comply with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.

(5) Notwithstanding the provisions of subsection (3) of this section, the board shall reverse or remand a decision adopting a small tract zoning map amendment to an acknowledged land use regulation if the decision does not comply with the goals and:

(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 commission has not reviewed the acknowledged comprehensive plan under ORS 197.640.

(6) If the board determines that an amendment described in subsection (5) of this section is consistent with specific related land use policies contained in the acknowledged comprehensive plan or land use regulations or it complies with the goals, the board shall find the amendment in compliance with the goals.

(7) Notwithstanding any other provision of ORS 197.005 to 197.855, the board shall not review a mobile home siting permit, septic tank permit or building permit issued under the state building code as defined in ORS 456.750 for compliance with the goals if the permit is issued:

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

(b) For land included within an urban growth boundary acknowledged under ORS 197.251;

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

(d) For land 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 the goals to building permits after that date.

(8) In addition to the review under subsections (1) to (7) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

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

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

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

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

(9) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds, based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances. If the board does reverse the decision and order the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(10) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (12), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (8) of this section.

(11) In reviewing a provision of a comprehensive plan or land use regulation that has also been submitted to the director under ORS 197.641, the board shall not review the plan provision or regulation for compliance with the requirements of ORS 197.640 (3).

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

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer. [1983 c.827 §§32, 32a; 1985 c.811 §15]

197.840 Exceptions to deadline for final decision. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (12):

(a) Any period of delay resulting from the board deferring 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 regulation submitted for acknowledgment under ORS 197.251; or

(B) A comprehensive plan or land use regulations that have been submitted for review under ORS 197.640.

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

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

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

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

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

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

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

(4) The board may defer all or part of its consideration of a land use decision described in paragraph (a) of subsection (1) of this section until the commission has disposed of the acknowledgment or periodic review proceeding described in subparagraph (A) or (B) of paragraph (a) of subsection (1) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation or land use decision under ORS 197.845. [1983 c.827 §33]

197.845 Stay of land use decision being reviewed; criteria; undertaking; conditions; limitations. (1) Upon application of the petitioner, the board may grant a stay of a land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of $5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (7). The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period. [1983 c.827 §34]

197.850 Judicial review of board order; procedures; scope of review; undertaking. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.550, judicial review of orders issued under ORS 197.830 to 197.845 shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is confer-

red upon the Court of Appeals. Proceedings for review shall be instituted by filing a notice of intent to appeal in the Court of Appeals. The notice shall be filed within 21 days following the date the board delivered or mailed the order upon which the notice is based.

(4) The notice shall state the nature of the order the petitioner desires reviewed. Copies of the notice shall be served by registered or certified mail upon the board, and all other parties of record in the board proceeding.

(5) Within seven days after service of the notice, 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.

(6) Petitions and briefs shall be filed within time periods and in a manner established by the Court of Appeals by rule.

(7) Within 42 days of the date of transmittal of the record, the court shall hear oral argument on the petition.

(8) Review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

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

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

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.830 (11).

(10) The Court of Appeals shall issue a final order on the petition for review with the greatest possible expediency.

(11) 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.

(12) A party shall file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (13)(b).

(13) The undertaking required in subsection (12) of this section shall be filed with the board and served on the opposing parties within 10 days after the date the notice of intent to appeal was filed with the Court of Appeals. [1983 c.827 §35]

197.855 Deadline for final court order; exceptions. (1) The Court of Appeals shall issue a final order on a petition for review filed under ORS 197.850 within 91 days after oral argument on the petition.

(2) The following periods of delay shall be excluded from the 91-day period within which the court must issue a final order on a petition:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 91 days.

(3) No period of delay resulting from a continuance granted by the court under paragraph (b) of subsection (2) of this section shall be excludable under this section unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 91 days. The factors the court shall consider in determining whether to grant a continuance under paragraph (b) of subsection (2) of this section in any case are as follows:

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

(b) Whether the case is so unusual or so complex, due to the number of parties or the

existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 91-day time limit.

(4) No continuance under paragraph (b) of subsection (2) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [1983 c.827 §35a]