

Chapter 197

1989 EDITION

Comprehensive Land Use Planning Coordination

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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 statewide 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 chapters 196 and 197. As used in ORS chapters 196 and 197, 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 statewide planning standards adopted by the commission pursuant to ORS chapters 196 and 197.

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

(10) "Land use decision":

(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; and

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

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

(B) Which approves, approves with conditions or denies a subdivision or partition, as described in ORS chapter 92, located within an urban growth boundary where the decision is consistent with land use standards; or

(C) Which approves or denies a building permit made under land use standards which do not require interpretation or the exercise of factual, policy or legal judgment.

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

(12) "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. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapter 197.

(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.

(17) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [1973 c.80 §3; 1977 c.664 §2; 1979 c.772 §7; 1981 c.748 §1; 1983 c.827 §1; 1989 c.761 §1; 1989 c.837 §23]

197.020 Land use decision considerations. Age, gender or physical disability shall not be an adverse consideration in making a land use decision as defined in ORS 197.015 (10). [1987 c.555 §5]

Note: 197.020 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 27, chapter 761, Oregon Laws 1989, provides:

Sec. 27. The department shall deliver a report to the Joint Land Use Committee by October 1, 1990, on the implementation of the appeal process described in this Act. [1989 c.761 §27]

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 chapters 196 and 197.

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 196 and 197. 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 chapters 196 and 197 any state-wide land use policies that it considers necessary to carry out ORS chapters 196 and 197. 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 chapters 196 and 197 and provide technical and other assistance, as it considers necessary, to each such committee.

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

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

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

(c) Prepare state-wide planning guidelines;

(d) Review comprehensive plans for compliance with goals;

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

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

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

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

(i) Perform other duties required by law. [1973 c.80 §§9, 11; 1977 c.664 §5; 1981 c.748 §22]

197.045 Powers of commission. The commission may:

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

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

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

(4) Perform other functions required to carry out ORS chapters 196 and 197.

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

197.050 Interstate agreements and compacts; commission powers. Except as provided in ORS 196.150 and 196.155, 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 197.465, 197.610 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; 1987 c.14 §6]

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 chapters 196 and 197.

(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]

197.065 Annual report analyzing uses of certain land; local government reports. (1) Prior to each legislative session, 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:

(A) ORS 215.213 (1)(e) and (g), (2)(a) and (b), (3) and (4), 215.283 (1)(e) and (f) and (3); and

(B) Any land zoned for forest use under any state-wide planning goal that relates to forest land;

(b) Divisions of land under:

(A) ORS 215.263 (2) and (4); and

(B) Any land zoned for forest use under any state-wide planning goal that relates to forest land;

(c) Dwellings and land divisions approved for marginal lands under:

(A) ORS 215.317 or 215.327; and

(B) Any land zoned for forest use under any state-wide planning goal that relates to forest land; and

(d) Such other matters pertaining to protection of agricultural or forest 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 department shall establish, after consultation with county governing bodies, an annual reporting period and may establish 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); or

(b) 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; 1987 c.555 §4; 1989 c.107 §1]

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

197.075 Department of Land Conservation and Development. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the director and their subordinate officers and employees. [1973 c.80 §4]

197.080 Department monthly report required. The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, local governments and other agencies in carrying out ORS chapters 196 and 197. [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 di-

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

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

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

(2) 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 chapters 196 and 197. 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 chapters 196 and 197.

(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 chairperson. The chairperson 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; 1987 c.158 §33]

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]

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 chapters 196 and 197 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 chapters 196 and 197 and the goals approved under ORS chapters 196 and 197. 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 chapters 196 and 197, each city and county in this state shall:

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

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

(c) If its comprehensive plan and land use regulations have not been acknowledged by the 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 au-

thorized 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; 1989 c.761 §18]

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 197.277 or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with goals adopted or amended pursuant to ORS chapters 196 and 197; 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 by December 31, 1990.

(6) The department shall report to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget, any agency that has failed to meet the requirements of subsection (5) of this section.

(7) Any agency that has failed to meet the requirements of subsection (5) of this section shall report the reasons therefor to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

(8) 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.

(9) 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.

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

(11) This section does not apply to rules, programs, decisions, determinations or activities carried out under ORS 527.610 to

527.730 and 527.990 (1). [1973 c.80 §21; 1977 c.664 §13; 1981 c.748 §16; 1983 c.827 §4; 1987 c.555 §1; 1987 c.919 §3; 1989 c.761 §19]

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 chapters 196 and 197.

(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 ORS chapters 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah,

Clackamas and Washington Counties for the areas within that district.

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

(3) Whenever counties and cities representing 51 percent of the population in their area petition the 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 Agency, 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]

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]

197.270 Copies of comprehensive plan and land use regulations; post review. Within six months following completion of the periodic review process, the affected local government shall file three complete and accurate copies of its comprehensive plan and land use regulations with the department. This document can be either a new printing or an up-to-date compilation of the required materials. [1987 c.729 §13]

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

197.277 Oregon Forest Practices Act; exclusion. (1) The goals and rules established in ORS chapters 196 and 197 do not apply to programs, rules, procedures, decisions, determinations or activities carried out under the Oregon Forest Practices Act administered under ORS 527.610 to 527.730 and 527.990 (1).

(2) No goal or rule shall be adopted, construed or administered in a manner to require or allow local governments to take any action prohibited by ORS 527.722.

(3) The commission shall amend goals and rules as necessary to implement ORS 197.180, 197.277, 197.825, 215.050, 447.090, 477.440, 477.455, 477.460, 526.009, 527.016, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.687, 527.715, 527.735, 527.990 and 527.992. [1987 c.919 §2]

Note: 197.277 was added to and made a part of ORS chapter 197 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

197.279 Approved wetland conservation plans comply with goals; exception. (1) Wetland conservation plans approved by the Director of the Division of State Lands pursuant to ORS chapter 541 shall be deemed to comply with the requirements of statewide planning goals relating to other than estuarine wetlands for those areas, uses and activities which are regulated by the wetland conservation plans.

(2) Wetland conservation plans shall be adopted and amended by local governments according to the procedures of ORS 197.610 to 197.625. [1989 c.837 §25]

Note: 197.279 and 197.283 were added to and made a part of ORS chapter 197 by legislative action but were not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

197.283 Commission to assure protection of ground water resources. (1) The commission shall take actions it considers necessary to assure that city and county comprehensive plans and land use regulations and state agency coordination programs are consistent with the goal set forth in ORS 468.692.

(2) The commission shall direct the Department of Land Conservation and Development to take actions the department considers appropriate to assure that any information contained in a city or county comprehensive plan that pertains to the ground water resource of Oregon shall be forwarded to the centralized repository established under ORS 536.125. [1989 c.833 §48]

Note: See note under 197.279.

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 and 197.475 to 197.490. As used in ORS 197.303 to 197.313 and 197.475 to 197.490:

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

(2) "Manufactured dwelling park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being

rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(3) "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.

(4) "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.

(5) "Mobile home park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Mobile home park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(6) "Periodic review" means the process and procedures as set forth in ORS 197.640.

(7) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan. [1981 c.884 §4; 1983 c.795 §1; 1987 c.785 §1; 1989 c.648 §51]

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;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and

(d) Manufactured dwellings on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.

(2) Paragraphs (a) and (d) 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; 1989 c.380 §1]

Note: Section 3, chapter 380, Oregon Laws 1989, provides:

Sec. 3. Notwithstanding the provisions of ORS 197.303 (1) relating to periodic review, the requirements of ORS 197.303 (1)(d) apply on January 1, 1991, or a jurisdiction's next periodic review, whichever comes first. [1989 c.380 §3]

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; placement standards for approval of manufactured dwellings. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for seasonal and year-round farm workers, 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, including housing for seasonal and year-round farm workers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay 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) In the areas identified by the needs analysis conducted under subsection (3) of this section, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured dwellings located outside mobile home or manufactured dwelling parks:

(a) The manufactured dwelling shall be multisectional and inclose a space of not less than 1,000 square feet.

(b) The manufactured dwelling shall be placed on an excavated and back-filled foundation and inclosed at the perimeter such that the manufactured dwelling is located not more than 12 inches above grade.

(c) The manufactured dwelling shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured dwelling shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured dwelling shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured dwelling shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured dwelling and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

(6) 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 dis-

couraging needed housing through unreasonable cost or delay. [1981 c.884 §5; 1983 c.795 §3; 1989 c.380 §2; 1989 c.964 §6]

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. (1) 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.

(2) No city or county may impose any approval standards, special conditions or procedures on seasonal and year-round farm-worker housing that are not clear and objective or have the effect, either in themselves or cumulatively, of discouraging seasonal and year-round farm-worker housing through unreasonable cost or delay or by discriminating against such housing. [1983 c.795 §5; 1989 c.964 §7]

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

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

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

(b) Request revisions to the local comprehensive plan, land use regulations or decision-making process which is the basis for the order.

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

(b) The requestor and the local government may enter into mediation to resolve issues in the request. The department shall provide mediation services when jointly requested by the local government and the requestor.

(c) If the local government does not act in a manner which the requestor believes is

adequate to address the issues raised in the request within the time period provided in paragraph (a) of this subsection, a petition may be presented to the commission under ORS 197.324. [1989 c.761 §4]

Note: 197.319, 197.324, 197.328 and 197.335 were added to and made a part of ORS chapter 197 by legislative action but were not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

197.320 Power of commission to order compliance with goals and plans. 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, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:

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

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

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

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

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

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

(7) A local government has failed to comply with a commission order entered under ORS 197.647 (4)(b); or

(8) A local government has failed to submit its proposed periodic review order or final periodic review order by the time established by the commission pursuant to ORS 197.640 to 197.647. [1977 c.664 §34; 1979 c.284 §123; 1981 c.748 §32; 1983 c.827 §58; 1987 c.729 §8; 1989 c.761 §2]

197.324 Proceedings prior to order of compliance with goals. (1) On its own mo-

tion, the commission may initiate a proceeding to carry out the provisions of ORS 197.320. If the commission proceeds on its own motion, it shall proceed as set forth in ORS 197.328.

(2)(a) After a person meets the requirements of ORS 197.319, the person may file a petition to request that the commission consider the matter. Filing occurs upon mailing the petition to the department.

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

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

(d) If the commission determines that there is good cause to proceed on the petition, the commission shall proceed as set forth in ORS 197.328. [1989 c.761 §5]

Note: See note under 197.319.

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

197.328 Procedures to consider order to comply with goals. If a proceeding is initiated under ORS 197.324, the following procedures apply:

(1) The commission shall hold a hearing to consider the petition or shall appoint a hearings officer to consider the petition under the provisions of ORS 183.310 to 183.550 applicable to contested cases, except as otherwise provided in this section.

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

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

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

(5) The commission shall adopt a final order relative to a petition no later than 120 days from the date the petition was filed. [1989 c.761 §6]

Note: See note under 197.319.

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

197.335 Order for compliance with goals; review of order; withholding grant funds; injunctions. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local government, state agency or special district shall set forth:

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

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

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply. In the case of a pattern or practice of decision-making that violates an acknowledged comprehensive plan or land use regulation, the commission may require revisions to the comprehensive plan, land use regulations or local procedures which the commission believes are necessary to correct the pattern or practice.

(2) Judicial review of a final order of the commission 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 sub-

stantial rights of any party were prejudiced thereby;

(b) The order to be unconstitutional;

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

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

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

(b) Any requirement 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 requirement is necessary to correct the violation.

(4) As part of its order under ORS 197.320 or subsection (2) of this section, the commission may withhold grant funds from the local government to which the order is directed. As part of an order issued under this section, the commission may notify the officer responsible for disbursing state-shared revenues to withhold that portion of state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.525, 366.800 and ORS chapter 471 which represents the amount of state planning grant moneys previously provided the local government by the commission. The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as outlined in this section and shall release funds to the local government or department when notified to so do by the commission or its designee. The commission may retain a portion of the withheld revenues to cover costs of providing services incurred under the order, including use of a hearings officer or staff resources to monitor land use decisions or conduct hearings. The remainder of the funds withheld under this provision shall be released to the local government upon

completion of requirements of the commission order.

(5) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1989 c.761 §7]

Note: See note under 197.319.

197.340 Weight given to goals in planning practice; regional diversity and needs. (1) The commission, the department and local governments shall give the goals equal weight in the planning process.

(2) The commission and the department shall consider and recognize regional diversity and differences in regional needs when making or reviewing a land use decision. [1981 c.748 §20; 1987 c.729 §1]

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 chapters 196 and 197. [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 desir-

ing 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 recommendation; committee review; approval by Legislative Assembly. (1) The commission may recommend to the committee the designation of areas of critical state concern. Each such recommendation:

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

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

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

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

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

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits

regulating specified uses of lands in the area, or both.

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

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

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

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

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29; 1981 c.748 §13]

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

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

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

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

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS chapters 196 and 197, 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 chapters 196 and 197 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]

SITING OF DESTINATION RESORTS

197.435 Definitions for ORS 197.435 to 197.465. As used in ORS 197.435 to 197.465: As used in ORS 197.435 to 197.465:

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

(2) "High value crop area" means an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of \$1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The "high value crop area" designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise the requirements of an agricultural land goal or administrative rules interpreting the goal.

(3) "Overnight lodgings" means permanent, separately rentable accommodations which are not available for residential use. Overnight lodgings include hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(4) "Self-contained development" means a development for which community sewer and water facilities are provided onsite and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-

contained development" shall have developed recreational facilities provided onsite.

(5) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities which are designed to and provide for the needs of visitors rather than year-round residents. [1987 c.886 §3; 1989 c.648 §52]

197.440 Legislative findings. The Legislative Assembly finds that:

(1) It is the policy of this state to promote Oregon as a vacation destination and to encourage tourism as a valuable segment of our state's economy;

(2) There is a growing need to provide year-round destination resort accommodations to attract visitors and encourage them to stay longer. The establishment of destination resorts will provide jobs for Oregonians and contribute to the state's economic development;

(3) It is a difficult and costly process to site and establish destination resorts in rural areas of this state; and

(4) The siting of destination resort facilities is an issue of state-wide concern. [1987 c.886 §2]

197.445 Destination resort criteria. A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.465, 215.213 and 215.283, a proposed development shall meet the following standards:

(1) The resort shall be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site shall be dedicated to permanent open space, excluding streets and parking areas.

(3) At least \$2 million, in 1984 dollars, shall be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.

(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. Accommodations available for residential use shall not exceed two such units for each unit of overnight lodging.

(5) Commercial uses allowed are limited to types and levels of use necessary to meet

the needs of visitors to the development. Industrial uses of any kind are not permitted.

(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth in subsection (7) of this section apply to a destination resort:

(a) On land that is not defined as agricultural or forest land under any state-wide planning goal;

(b) On land where there has been an exception to any state-wide planning goal on agricultural lands, forest lands, public facilities and services and urbanization; or

(c) On such secondary lands as the commission deems appropriate.

(7) The following standards apply to the provisions of subsection (6) of this section:

(a) The resort shall be located on a site of 20 acres or more.

(b) At least \$1 million, in 1984 dollars, shall be spent on improvements for onsite developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.

(c) At least 25 units, but not more than 75 units, of overnight lodging shall be provided.

(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging shall be provided.

(e) Residential uses shall be limited to those necessary for the staff and management of the resort.

(f) The county governing body or its designee has reviewed the resort proposed under this subsection and has determined that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(g) The resort shall be constructed and located so that it is not designed to attract highway traffic. Resorts shall not use any manner of outdoor advertising signing except:

(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(B) Onsite identification and directional signs. [1987 c.886 §4]

197.450 Siting without taking goal exception. In accordance with the provisions of ORS 30.947, 197.435 to 197.465, 215.213 and 215.283, a comprehensive plan may provide

for the siting of a destination resort on rural lands without taking an exception to statewide planning goals relating to agricultural lands, forest lands, public facilities and services or urbanization. [1987 c.886 §5]

197.455 Sites from which destination resort excluded. A destination resort shall not be sited in any of the following areas:

(1) Within 24 airmiles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

(2) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Soil Conservation Service; or within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort shall not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof.

(3) On predominantly Cubic Foot Site Class 1 or 2 forest lands as determined by the State Forestry Department, which are not subject to an approved goal exception.

(4) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.

(5) In a site designated for protection in an acknowledged comprehensive plan pursuant to an open spaces, scenic and historic areas and natural resources goal in an acknowledged comprehensive plan in spite of conflicting uses.

(6) In an especially sensitive big game habitat area as determined by the State Department of Fish and Wildlife in July 1984 or as designated in an acknowledged comprehensive plan. [1987 c.886 §6]

197.460 Compatibility with adjacent land uses; county measures. A county shall insure that a destination resort is compatible with the site and adjacent land uses through the following measures:

(1) Important natural features, including habitat of threatened or endangered species, streams, rivers and significant wetlands shall be retained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands shall be retained. Alteration of important natural features, including placement of structures which maintain the overall values of the feature may be allowed.

(2) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on inten-

sive farming operations in the area. At a minimum, measures to accomplish this shall include:

(a) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped areas and other similar types of buffers.

(b) Setbacks of structures and other improvements from adjacent land uses. [1987 c.886 §7]

197.465 Comprehensive plan implementing measures. An acknowledged comprehensive plan that allows for siting of a destination resort shall include implementing measures which:

(1) Map areas where a destination resort described in ORS 197.445 (1) to (5) is permitted pursuant to ORS 197.455;

(2) Limit uses and activities to those defined by ORS 197.435 and allowed by ORS 197.445; and

(3) Assure that developed recreational facilities and key facilities intended to serve the entire development and visitor-oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding. [1987 c.886 §8]

SITING OF MOBILE HOME AND MANUFACTURED DWELLING PARKS

197.475 Policy. The Legislative Assembly declares that it is the policy of this state to provide for mobile home or manufactured dwelling parks within all urban growth boundaries to allow persons and families a choice of residential settings. [1987 c.785 §3; 1989 c.648 §53]

197.480 Planning for parks; procedures; inventory. (1) Each city and county governing body shall provide, in accordance with urban growth management agreements, for mobile home or manufactured dwelling parks as an allowed use, by July 1, 1990, or by the next periodic review after January 1, 1988, whichever comes first:

(a) By zoning ordinance and by comprehensive plan designation on buildable lands within urban growth boundaries; and

(b) In areas planned and zoned for a residential density of six to 12 units per acre sufficient to accommodate the need established pursuant to subsections (2) and (3) of this section.

(2) A city or county shall establish a projection of need for mobile home or manufactured dwelling parks based on:

- (a) Population projections;
- (b) Household income levels;
- (c) Housing market trends of the region; and
- (d) An inventory of mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development.

(3) The inventory required by paragraph (d) of subsection (2) and subsection (4) of this section shall establish the need for areas to be planned and zoned to accommodate the potential displacement of the inventoried mobile home or manufactured dwelling parks.

(4) Notwithstanding the provisions of subsection (1) of this section, a city or county within a metropolitan service district, established pursuant to ORS chapter 268, shall inventory the mobile home or manufactured dwelling parks sited in areas planned and zoned or generally used for commercial, industrial or high density residential development no later than two years from September 27, 1987.

(5)(a) A city or county may establish clear and objective criteria and standards for the placement and design of mobile home or manufactured dwelling parks.

(b) If a city or county requires a hearing before approval of a mobile home or manufactured dwelling park, application of the criteria and standards adopted, pursuant to paragraph (a) of this subsection shall be the sole issue to be determined at the hearing.

(c) No criteria or standards established under paragraph (a) of this subsection shall be adopted which would preclude the development of mobile home or manufactured dwelling parks within the intent of ORS 197.295 and 197.475 to 197.490. [1987 c.785 §4; 1989 c.648 §54]

197.485 Prohibition on restrictions of manufactured dwelling. A jurisdiction shall not prohibit placement of a manufactured dwelling, due solely to its age, in a mobile home or manufactured dwelling park in a zone with a residential density of eight to 12 units per acre. A jurisdiction may impose reasonable safety and inspection requirements for homes which were not constructed in conformance with the National Manufactured Home Construction and Safety Standards Act of 1974. [1987 c.785 §5; 1989 c.648 §55]

197.490 Restriction on establishment of park. (1) Except as provided by ORS

446.105, a mobile home or manufactured dwelling park shall not be established on land, within an urban growth boundary, which is planned or zoned for commercial or industrial use.

(2) Notwithstanding the provisions of subsection (1) of this section, if no other access is available, access to a mobile home or manufactured dwelling park may be provided through a commercial or industrial zone. [1987 c.785 §6; 1989 c.648 §56]

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 short-

age of key facilities as defined in the statewide 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 chapters 196 and 197 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 statewide planning goals adopted under ORS chapters 196 and 197.

(5) The review of a moratorium on construction or land development under sub-

section (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), 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; 1989 c.761 §20]

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 comprehensive plan or land use regulation or the new land use regulation; and

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

(b) The notice required by this subsection shall:

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

(B) State the date of the decision;

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

(D) Explain the requirements for 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), 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), 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; 1989 c.761 §21]

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 (8), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not acknowledged unless the adopted amendment has been submitted to the director as required by ORS 197.610 to 197.625 and the 21-day appeal period has expired, the board affirms the decision or the appellate courts affirm the decision.

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

(3) 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 (8); 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.

(5) After issuance of the notice provided in ORS 197.640 (4), nothing in this section

shall prevent the commission from entering an order pursuant to ORS 197.647 (4)(b) to require a local government to respond to the standards of ORS 197.640 (3). [1981 c.748 §5b; 1983 c.827 §10; 1987 c.729 §6; 1989 c.761 §23]

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 four to seven 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. The commission may conduct segmented periodic reviews for joint planning areas such as areas within urban growth boundaries, estuarine and shorelands areas or in other circumstances where planning issues warrant such segmented reviews.

(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 shall submit its proposed review order to the department on or before the date set by the commission. The commission may establish a process and requirements for granting extensions. 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. If a new order is submitted, the director shall modify the periodic review schedule to designate a new date for submission of a final order. A local government may not submit more than two revised proposed orders without obtaining a schedule extension.

sion under the requirements of subsection (5) of this section.

(9) Notwithstanding subsection (1) of this section, Hood River and Wasco Counties, and Multnomah County for the land outside the metropolitan urban growth boundary acknowledged under ORS 197.251, may postpone review under this section for all or part of the county until land use ordinances are approved pursuant to the Columbia River Gorge National Scenic Area Act, P.L. 99-663. (16 U.S.C. 544, et. seq.) [1981 c.748 §9; 1983 c.827 §11; 1987 c.69 §1; 1987 c.729 §7; 1987 c.856 §8]

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 20 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 20 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 10 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; 1987 c.729 §8a]

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 from receipt of the final order by the department;

(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 not adequately respond to the applicable standards of ORS 197.640 (3). [1983 c.827 §11c; 1987 c.729 §9]

197.645 Review by director; notice of action taken; appeal to commission; revision after final order. (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;

(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; or

(c) Issue an order postponing final action because:

(A) The director requires additional time to complete the review due to extenuating circumstances; or

(B) The local government requests a delay in order to make changes to resolve objections or other issues relative to periodic review.

(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.

(3) Following submittal of a final order, the local government may make revisions to the order, findings, plan, land use regulations or other documents. The local government shall provide the director, objectors and other participants with at least 20 days' advance notice. The notice shall include the text of the proposed revisions or amendments. This notice shall also supersede notice requirements of ORS 197.610. Where such notice is given the director need not give any additional notice following submittal of the changed provision. Submittal shall also include notice required by ORS 197.615. The director shall revise the report prepared under subsection (1) of this section to reflect the revised local order, plan, regulations or other documents. [1983 c.827 §11d; 1987 c.729 §10]

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) unless extenuating circumstances exist, 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. Following issuance of the commission's order, subsequent reviews of local government actions pursuant to the order shall be limited to whether revisions meet the requirements of the commission's order. New objections may be raised only when required amendments affect other periodic review issues which could not have been raised previously.

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

(7) Notwithstanding the requirements of ORS 197.640 (3) to (8) and 197.643 to 197.647, the commission shall adopt rules establishing a periodic review that is both substantively simplified and procedurally expedited 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 §11c; 1987 c.69 §2; 1987 c.729 §11]

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) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or 197.643 and are appealing a commission order issued under ORS 197.251 or 197.647 (4);

(b) Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (5); or

(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or 197.643.

(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; 1989 c.761 §8]

SPECIAL RESIDENCES

197.660 Definitions. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283 and 443.422:

(1) "Residential facility" means a facility licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a home licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 which applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [1989 c.564 §2]

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

(1) It is the policy of this state that disabled persons and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for disabled persons and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area. [1989 c.564 §3]

197.665 Locations of residential homes. (1) Residential homes shall be a permitted use in:

(a) Any residential zone, including a residential zone which allows a single-family dwelling; and

(b) Any commercial zone which allows a single-family dwelling.

(2) A city or county shall not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263 (8). [1989 c.564 §4]

197.667 Location of residential facility; application and supporting documentation. (1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.

(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.

(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.

(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.496 to 192.530. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Resources for licensing of a residential facility. [1989 c.564 §5]

197.670 Zoning requirements and prohibitions for residential homes and residential facilities. (1) As of October 3, 1989, no city or county shall:

(a) Deny an application for the siting of a residential home in a residential or commercial zone described in ORS 197.665 (1).

(b) Deny an application for the siting of a residential facility in a zone where multifamily residential uses are allowed, unless

the city or county has adopted a siting procedure which implements the requirements of ORS 197.667.

(2) Every city and county shall amend its zoning ordinance to comply with ORS 197.660 to 197.667 as part of periodic land use plan review occurring after January 1, 1990. Nothing in this section prohibits a city or county from amending its zoning ordinance prior to periodic review. [1989 c.564 §6]

SEASONAL FARM-WORKER HOUSING

197.675 Definitions. As used in this chapter:

(1) "Seasonal farm worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including but not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(2) "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months a year. [1989 c.964 §4]

197.677 Policy. In that the agricultural workers in this state benefit the social and economic welfare of all of the people in Oregon by their unceasing efforts to bring a bountiful crop to market, the Legislative Assembly declares that it is the policy of this state to insure adequate agricultural labor accommodations commensurate with the housing needs of Oregon's workers that meet decent health, safety and welfare standards. To accomplish this objective in the interest of all of the people in this state, it is necessary that:

(1) Every state and local government agency that has powers, functions or duties with respect to housing, land use or enforcing health, safety or welfare standards, under this or any other law, shall exercise its powers, functions or duties consistently with the state policy declared by ORS 197.307, 197.312, 197.675 to 197.685, 215.213, 215.277, 215.283 and 455.380 and in such manner as will facilitate sustained progress in attaining the objectives established;

(2) Every state and local government agency that finds farm-worker activities within the scope of its jurisdiction must make every effort to alleviate insanitary, unsafe and overcrowded accommodations;

(3) Special efforts should be directed toward mitigating hazards to families and children; and

(4) All accommodations must provide for the rights of free association to seasonal farm workers in their places of accommodation. [1989 c.964 §2]

197.680 Legislative findings. The Legislative Assembly finds that:

(1) This state has a large stock of existing seasonal farm-worker housing that does not meet minimum health and safety standards and is in need of rehabilitation;

(2) It is not feasible to rehabilitate much of the existing seasonal farm-worker housing stock to meet building code standards;

(3) In order to assure that minimum standards are met in all farm-worker housing in this state, certain interim measures must be taken; and

(4) Limited rehabilitation, outside city boundaries, must be allowed to a lesser standard than that set forth in the existing building codes. [1989 c.964 §3]

197.685 Location of seasonal farm-worker housing; siting standards. (1) The availability of decent, safe and sanitary housing opportunities for seasonal farm workers is a matter of state-wide concern.

(2) When a need has been shown for seasonal farm-worker housing within the rural area of a county, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need. Counties shall consider rural centers and areas committed to nonresource uses in accommodating the identified need.

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

(a) Set approval standards under which seasonal farm-worker housing is permitted outright;

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

(c) Establish approval procedures.

(4) Any approval standards, special conditions and 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. [1989 c.964 §5]

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 196, 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 ex-

ception 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, board review under ORS 197.805 to 197.855 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; 1989 c.761 §9]

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]

197.762 [1987 c.729 §15; repealed by 1989 c.761 §10 (197.763 enacted in lieu of 197.762)]

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the board shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised with sufficient specificity so as to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(a) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(b) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(c) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public at the time notice provided in subsection (3) of this section is provided.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence is provided in support of the application, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be subject to the limitations of ORS 215.428 or 227.178.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

(6) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428 or 227.178.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence or testimony, any person may raise

new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television. [1989 c.761 §10a (enacted in lieu of 197.762)]

Note: 197.763 was enacted into law by the Legislative Assembly in lieu of ORS 197.762 which was not added to or made a part of ORS chapter 197 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

197.767 [1987 c.729 §4; repealed by 1989 c.837 §34]

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 ORS 197.320 and 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 department has review authority under ORS 197.430 to 197.455 and 197.640 to 197.650;

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

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.730 and 527.990 (1); and

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

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

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

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order. [1983 c.827 §30; 1987 c.729 §14; 1987 c.856 §9; 1987 c.919 §4; 1989 c.761 §11]

197.830 Review procedures; standing; deadlines; issues subject to review; 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) and (2), a person may petition the board for review of a 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) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing or the local government makes a land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by

the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4)(a) Except as provided in paragraph (b) of this subsection, the appeal period described in subsection 3 of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 215.416 (11) or ORS 227.175 (10) is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

(5) A local government shall maintain a registry, available to the public, of decisions made in the preceding 12 months described in subsection (3) of this section.

(6)(a) 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) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(7) 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.

(8) 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. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. Copies of the notice of intent to appeal 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 (9) and (10) 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.

(9) 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.

(10) 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 (12) of this section. Issues shall be limited to those raised by any participant before the local hearings body as provided in ORS 197.763. A petitioner may raise new issues to the board if:

(a) The local government failed to follow the requirements of ORS 197.763; or

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

(11) 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.

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

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

(b) In the case of disputed allegations of 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.

(14) 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.

(15)(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 (8) 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.

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

(17) 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.

(18) 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; 1987 c.278 §1; 1987 c.729 §16; 1989 c.761 §12]

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 (17). Disbursements of moneys from the account shall be approved by the chief referee of the board. [1985 c.119 §5; 1989 c.761 §24]

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) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.763. A petitioner may raise new issues to the board if:

(a) The local government failed to follow the requirements of ORS 197.763; or

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

(3) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

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

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

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

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

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

(7) In addition to the review under subsections (1) to (6) 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.

(8) 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 orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(9)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (7) of this section.

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

(10) 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.

(11) Subsection (10) 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.

(12) The board shall reverse or remand a land use decision which violates a commission order issued under ORS 197.328. [1983 c.827 §§32, 32a; 1985 c.811 §15; 1987 c.729 §2; 1989 c.648 §57; 1989 c.761 §13]

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 (14):

(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; 1989 c.761 §25]

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 (8). 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; 1989 c.761 §22]

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)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

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

(5) Within seven days after service of the petition, 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 (13).

(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 (15)(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 petition was filed with the Court of Appeals. [1983 c.827 §35; 1989 c.515 §1; 1989 c.761 §26]

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]

197.860 Stay of proceedings to allow mediation. All parties to an appeal may at any time prior to a final decision by the Court of Appeals under ORS 197.855 stipulate that the appeal proceeding be stayed for any period of time agreeable to the parties and the board or court to allow the parties to enter mediation. Following mediation, the board or the court may, at the request of the parties, dismiss the appeal or remand the decision to the board or the local government with specific instructions for entry of a final decision on remand. If the parties fail to agree to a stipulation for remand or dismissal through mediation within the time the appeal is stayed, the appeal shall proceed with such reasonable extension of appeal deadlines as the board or Court of Appeals considers appropriate. [1989 c.761 §14]