

**Enrolled**  
**House Bill 2229**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

CHAPTER .....

AN ACT

Relating to recommendations of Oregon Task Force on Land Use Planning; creating new provisions; amending ORS 197.010, 197.040, 197.650, 197.652, 197.654, 197.656, 197.747, 215.427 and 227.178; and declaring an emergency.

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

**SECTION 1.** ORS 197.010 is amended to read:

197.010. The Legislative Assembly declares that:

(1) In order to [*assure*] **ensure** the highest possible level of livability 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:

- (a) Must be adopted by the appropriate governing body at the local and state levels;
- (b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;
- (c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;
- (d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and
- (e) 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.

**(2)(a) The overarching principles guiding the land use program in the State of Oregon are to:**

- (A) Provide a healthy environment;**
- (B) Sustain a prosperous economy;**
- (C) Ensure a desirable quality of life; and**
- (D) Equitably allocate the benefits and burdens of land use planning.**

**(b) Additionally, the land use program should, but is not required to, help communities achieve sustainable development patterns and manage the effects of climate change.**

**(c) The overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection provide guidance to:**

- (A) The Legislative Assembly when enacting a law regulating land use.**
- (B) A public body, as defined in ORS 174.109, when the public body:**
  - (i) Adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197, 215 or 227; or**

(ii) **Interprets a law governing land use.**

**(d) Use of the overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable.**

[2)] (3) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.

**SECTION 2.** ORS 197.040 is amended to read:

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

(a) Direct the performance by the Director of the Department of Land Conservation and Development and the director's staff of their functions under ORS chapters 195, 196 and 197.

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

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

**(B) Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems;**

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

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

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

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

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

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

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

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

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

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

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

(c) Prepare statewide planning guidelines;

(d) Review comprehensive plans for compliance with goals;

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

(f) 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) Review the land use planning responsibilities and authorities given to the state, regions, counties and cities, review the resources available to each level of government and**

make recommendations to the Legislative Assembly to improve the administration of the statewide land use program; and

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

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

**NOTE:** Sections 3 and 4 were deleted by amendment. Subsequent sections were not renumbered.

**SECTION 5.** (1) For the purposes of correcting mapping errors made in the acknowledgment process and updating the designation of farmlands and forestlands for land use planning, a county may conduct a legislative review of lands in the county to determine whether the lands planned and zoned for farm use, forest use or mixed farm and forest use are consistent with the definitions of “agricultural lands” or “forest lands” in goals relating to agricultural lands or forestlands.

(2) A county may undertake the reacknowledgment process authorized by this section only if the Department of Land Conservation and Development approves a work plan, from the county, describing the expected scope of reacknowledgment. The department may condition approval of a work plan for reacknowledgment under this section to reflect the resources needed to complete the review required by sections 7 and 13 of this 2009 Act. The work plan of the county and the approval of the department are not final orders for purposes of review.

(3) A county that undertakes the reacknowledgment process authorized by this section shall provide an opportunity for all lands planned for farm use, forest use or mixed farm and forest use and all lands subject to an exception under ORS 197.732 to a goal relating to agricultural lands or forestlands to be included in the review.

(4) A county must plan and zone land reviewed under this section:

(a) For farm use if the land meets the definition of “agricultural land” in a goal relating to agricultural lands;

(b) For forest use if the land meets the definition of “forest land” used for comprehensive plan amendments in the goal relating to forestlands;

(c) For mixed farm and forest use if the land meets both definitions;

(d) For nonresource use, consistent with section 7 of this 2009 Act, if the land does not meet either definition; or

(e) For a use other than farm use or forest use as provided in a goal relating to land use planning process and policy framework and subject to an exception to the appropriate goals under ORS 197.732 (2).

(5) A county may consider the current land use pattern on adjacent and nearby lands in determining whether land meets the appropriate definition.

**SECTION 6.** (1) If a county amends its comprehensive plan or a land use regulation mapping zoning designations under sections 5 to 7 of this 2009 Act, the county shall review lands that are planned or rezoned as nonresource lands to determine whether the lands contain ecologically significant natural areas or resources. The county shall consider appropriate goals and the “Oregon Conservation Strategy” prepared in September of 2006 by the State Department of Fish and Wildlife.

(2) The county shall maintain an inventory in the comprehensive plan of nonresource lands that contain ecologically significant natural areas or resources and establish a program to protect the areas or resources from the adverse effects of new uses allowed by the planning or zoning changes. The county may use nonregulatory programs to protect the resources including, but not limited to, programs for the transfer of severable development interests to other lands that do not contain ecologically significant resources.

(3) If a county amends its comprehensive plan or a land use regulation mapping zoning designations under sections 5 to 7 of this 2009 Act, the county shall review lands that are planned or rezoned as nonresource lands to determine that the uses allowed by the planning

or zoning changes are consistent with the carrying capacity of the lands. The county shall ensure that:

(a) The amount, type, location and pattern of development on lands redesignated as nonresource lands:

(A) Will be rural in character and will not significantly interfere with orderly and efficient development of urban areas in the vicinity;

(B) Will not significantly conflict with existing or reasonably foreseeable farm or forest uses or with accepted farm or forest practices; and

(C) Will not lead to significant adverse effects including, but not limited to, adverse effects on:

(i) Water quality or the availability or cost of water supply;

(ii) Energy use;

(iii) State or local transportation facilities;

(iv) Fish or wildlife habitat or other ecologically significant lands;

(v) The risk of wildland fire or the cost of fire suppression;

(vi) The cost of public facilities or services; or

(vii) The fiscal health of a local government.

(b) Additional residential development on nonresource lands is, to the extent practicable, located and clustered to:

(A) Minimize the effects on farm and forest uses;

(B) Avoid lands subject to natural hazards; and

(C) Reduce the costs of public facilities and services.

**SECTION 7.** (1) A county shall submit decisions on planning and rezoning designations under sections 5 to 7 of this 2009 Act to the Department of Land Conservation and Development for review pursuant to the procedures set forth in this section and section 13 of this 2009 Act.

(2) The department shall coordinate with:

(a) The State Department of Agriculture in reviewing decisions on planning and rezoning designations for lands planned for farm use or mixed farm and forest use.

(b) The State Forestry Department in reviewing decisions on planning and rezoning designations for lands planned for forest use or mixed farm and forest use.

(3) The Land Conservation and Development Commission has exclusive jurisdiction for review of a county's decision made under sections 5 to 7 of this 2009 Act.

(4) A person who participated in the proceedings leading to the county's decisions under sections 5 to 7 of this 2009 Act may not raise an issue on review before the commission that was not raised in the local proceedings.

(5) The commission may adopt rules implementing sections 5 to 7 of this 2009 Act.

**SECTION 8.** ORS 197.652 is amended to read:

197.652. *[Programs of the collaborative regional problem-solving process described in ORS 197.654 and 197.656 shall be established in counties or regions geographically distributed throughout the state.]*

(1) At the request of a county and at least one other local government in a region, the Department of Land Conservation and Development, other state agencies, as defined in ORS 171.133, metropolitan planning organizations, special districts and advisory committees on transportation may participate with the local governments in a collaborative regional problem-solving process.

(2) If requested to participate, the department shall assist the county with the process and encourage regional efforts to resolve land use planning problems using the authorities described in ORS 197.652 to 197.658.

(3) The county, in cooperation with the other local governments, shall identify the land use planning problems to be addressed and the participants whose actions are necessary to resolve the land use planning problems.

(4) The county shall submit a proposed work scope and a proposed list of participants as a proposal to the Land Conservation and Development Commission for review. The commission shall review:

(a) The proposed work scope to determine whether it can reasonably be completed within the time allowed;

(b) The proposed participant list to determine whether it includes, at a minimum, all local governments that will need to amend a comprehensive plan provision or a land use regulation, or adopt a new provision or regulation, in order to resolve the land use planning problems identified in the work scope; and

(c) The proposed work scope and the proposed participant list for consistency.

(5) A county may initiate amendments of a comprehensive plan or land use regulation under ORS 197.652 to 197.658 only if the commission approves the work scope, the list of participants and a schedule for completion of the process. The schedule for completion of the process may:

(a) Not exceed three years except as provided in paragraph (b) of this subsection.

(b) Be extended by the commission for up to one year for good cause shown.

(6) The decision of a county to submit a proposal under this section, and the decision of the commission to approve a proposal, are not final actions subject to judicial review.

(7) If the commission approves a proposal under this section, the county must periodically report on the progress in carrying out the proposal, as specified by the commission.

(8) For purposes of ORS 197.654 and 197.656, the participants in a collaborative regional problem-solving process include all participants on the list of participants approved by the commission unless the commission subsequently approves the addition or removal of a participant.

**SECTION 9.** ORS 197.654 is amended to read:

197.654. (1) *[Local governments and those special districts that provide urban services may enter into a collaborative regional problem-solving process. A collaborative regional problem-solving process is a planning process directed toward resolution of land use problems in a region. The process must offer an opportunity to participate with appropriate state agencies and all local governments within the region affected by the problems that are the subject of the problem-solving process. The process must include:]*

*[(a) An opportunity for involvement by other stakeholders with an interest in the problem; and]*

*[(b) Efforts among the collaborators to agree on goals, objectives and measures of success for steps undertaken to implement the process as set forth in ORS 197.656.]*

*[(2) As used in ORS 197.652 to 197.658, "region" means an area of one or more counties, together with the cities within the county, counties, or affected portion of the county.]* **After the Land Conservation and Development Commission approves a proposal for regional problem-solving under ORS 197.652, the participants shall develop proposed actions to resolve the problems identified in the work scope. The participants must agree to:**

(a) Regional goals that describe how the region intends to resolve each regional problem described in the work scope;

(b) Actions necessary to achieve the regional goals, including changes to comprehensive plans or land use regulations;

(c) Measurable indicators of performance and a system for monitoring progress toward achievement of the regional goals;

(d) Incentives and disincentives to encourage successful implementation of the actions to achieve the regional goals;

(e) If the regional goals involve the management of an urban growth boundary, actions to coordinate the planning and provision of water, sewer and transportation facilities in the region; and

(f) A process for correction of actions if monitoring indicates that the actions are not achieving the regional goals.

**(2) A decision by a participant to enter into a regional problem-solving agreement under ORS 197.652 to 197.658 is not a final land use decision. However, a regional problem-solving agreement is not final and binding until:**

**(a) All local governments that are participants have adopted the provisions of the comprehensive plans or land use regulations contemplated in the agreement; and**

**(b) The commission has approved the comprehensive plan provisions and land use regulations as provided under ORS 197.656.**

**(3) Changes to provisions of comprehensive plans and land use regulations adopted to implement a regional problem-solving agreement take effect 60 days after the commission notifies all participants that the commission has approved all of the changes.**

**SECTION 10.** ORS 197.656 is amended to read:

197.656. (1) *[Upon invitation by the local governments in a region, the Land Conservation and Development Commission and other state agencies may participate with the local governments in a collaborative regional problem-solving process.]* **After the adoption of changes to comprehensive plans and land use regulations to implement a regional problem-solving agreement under ORS 197.652 to 197.658, the local governments that are participants shall submit the changes to the Land Conservation and Development Commission for review in the manner set forth in this section.**

(2) Following the procedures set forth in this subsection, the commission may *[acknowledge amendments]* **approve changes** to comprehensive plans and land use regulations, *[or new land use regulations,]* that do not fully comply with *[the rules of the commission that implement]* the statewide **land use** planning goals, without taking an exception **under ORS 197.732**, upon a determination that **the changes:**

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

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

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

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

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

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

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

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

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

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

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

**(a) Conform, on the whole, with the purposes of the goals, and any failure to meet individual goal requirements is technical or minor in nature;**

**(b) Are needed to achieve the regional goals specified by the participants; and**

(c) In combination with other actions agreed upon by the participants, are reasonably likely to achieve the regional goals.

(3) The commission:

(a) Shall review changes to the comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658 pursuant to the procedures set forth in this section and section 13 of this 2009 Act.

(b) Has exclusive jurisdiction for review of changes to comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658.

(4) A participant in the regional problem-solving process or a person who participated in the proceedings leading to the adoption of changes to the comprehensive plans or land use regulations may not raise an issue on review before the commission that was not raised in the local proceedings for adoption of the changes to the plans or regulations.

(5) If the commission [*denies an amendment or new regulation submitted pursuant to subsection (3) of this section*] **disapproves changes to the comprehensive plans or land use regulations adopted by a local government to implement a regional problem-solving agreement under ORS 197.652 to 197.658**, the commission shall issue a written statement describing the reasons for the [*denial*] **disapproval** and suggesting alternative methods for accomplishing the goals on a timely basis.

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

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

(8) **The commission may adopt rules to establish additional procedural and substantive requirements for review of changes to comprehensive plans and land use regulations adopted by local governments to implement a regional problem-solving agreement under ORS 197.652 to 197.658.**

**SECTION 11.** ORS 197.747 is amended to read:

197.747. For the purposes of acknowledgment under ORS 197.251, board review under ORS 197.805 to 197.855, [*and*] **review of a proposed regional problem-solving agreement under ORS 197.652 to 197.658** or periodic review under ORS 197.628 to 197.650, "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.

**SECTION 12.** Section 13 of this 2009 Act is added to and made a part of ORS chapter 197.

**SECTION 13.** (1) **The Land Conservation and Development Commission shall grant, deny or remand approval of proposed changes to a comprehensive plan or land use regulations adopted pursuant to sections 5 to 7 of this 2009 Act or ORS 197.652 to 197.658 within 120 days after the date that the local government submits the proposed changes.**

(2) **The Department of Land Conservation and Development shall prepare a report stating whether the proposed changes comply with applicable statutes, goals and commission rules. The department shall provide a reasonable opportunity for persons to prepare and submit written comments or objections to the report; however a person may not:**

(a) Submit written comments or objections to the report unless the person participated orally or in writing in the local government proceedings leading to the adoption of the proposed changes.

(b) Produce new evidence.

(3) After reviewing the proposed changes, the report and any written comments and objections to the report, the commission shall prepare a proposed final order. The commission shall afford the local government and persons who submitted written comments or objections to the report a reasonable opportunity to file written exceptions to the proposed final order. If timely exceptions are not filed, the proposed order becomes final.

(4) The commission's review under this section is confined to the record of proceedings before the local government, the report of the department and any comments, objections and exceptions filed under subsection (2) or (3) of this section and the proposed final order of the commission, including any responses to exceptions. The commission may entertain oral argument from the department and from persons who filed exceptions, and may consider new issues raised by its review. The commission may not allow additional evidence, argument or testimony that could have been presented to the local government but was not presented.

(5) A commission order granting, denying or remanding proposed changes must include a clear statement of findings that sets forth the basis for the approval, denial or remand, including:

(a) Identifying the statutes, goals and rules applicable to the proposed changes; and

(b) Supporting the determinations of compliance and noncompliance.

(6) A commission order granting approval may be limited to an identified geographic area described in the order if:

(a) The identified geographic area is the only area that is the subject of the proposed changes; or

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

(7) The commission may issue a limited approval order if a previously issued approval order is reversed or remanded by an appellate court. The limited approval order may deny approval of that part of the comprehensive plan or land use regulations that the court found not in compliance with the applicable statutes, goals or rules and grant approval of other parts of the proposed changes.

(8) A limited approval order is an approval for all purposes and is a final order for purposes of judicial review with respect to the approved geographic area. A limited order may be adopted in conjunction with a remand.

**SECTION 13a.** ORS 197.650 is amended to read:

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

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

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

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

(d) Persons who submitted comments or objections pursuant to sections 5 to 7 and 13 of this 2009 Act or proceedings under sections 5 to 7 and 13 of this 2009 Act and are appealing a commission order issued under sections 5 to 7 and 13 of this 2009 Act;

(e) Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and section 13 of this 2009 Act or proceedings under ORS 197.652 to 197.658 and section 13

**of this 2009 Act and are appealing a commission order issued under ORS 197.652 to 197.658 and section 13 of this 2009 Act; or**

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

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644 **or section 13 of this 2009 Act.**

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

**SECTION 14. In areas of the state that are growing rapidly, state agencies, as defined in ORS 171.133, cities and counties should, within constraints of applicable federal law and regulations, state law and rules and local ordinances:**

**(1) Consider directing major public infrastructure investments, including major transportation investments, to reinforce compact urban development; and**

**(2) Consider giving priority to investments that promote infill or redevelopment of existing urban areas to encourage the density necessary to support alternative modes of transportation.**

**SECTION 15.** ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), *[(and)]* (5) **and (10)** of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), *[(and)]* (5) **and (10)** of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, **except as provided in subsection (10) of this section for mediation**, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in **subsection (10) of this section or ORS 197.319 (2)(b)**.

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

**(10) The periods set forth in subsection (1) of this section and the period set forth in subsection (5) of this section may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.**

**SECTION 16.** ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), [and] (5) **and (11)** of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,

approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, **except as provided in subsection (11) of this section for mediation**, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in **subsection (11) of this section or ORS 197.319 (2)(b)**.

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The period set forth in subsection (1) of this section and the period set forth in subsection (5) of this section may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

**SECTION 17.** (1) The Land Conservation and Development Commission, in cooperation with the Oregon Law Commission and other public or private entities, may, as resources are available, appoint a work group to conduct a policy-neutral review and audit of ORS chapters 195, 196, 197, 215 and 227, the statewide land use planning goals and the rules of the commission implementing the goals.

(2) The commission shall sequence any review based on its judgment as to which aspects of the statewide land use program are most in need of updating.

(3) A review undertaken under this section should, but does not have to, include appropriate involvement of local government, professional land use planning, private legal and other representatives.

(4) Recommendations should, but do not have to, address major policies and key procedures that are most appropriate for enactment by law and what policies and procedures are most appropriate for adoption by statewide land use planning goals or rules to allow for greater variation between regions of the state over time and to reduce complexity.

**SECTION 18.** Section 13 of this 2009 Act and the amendments to ORS 197.652, 197.654, 197.656 and 197.747 by sections 8, 9, 10 and 11 of this 2009 Act apply to collaborative regional problem-solving processes commenced on or after the effective date of this 2009 Act.

**SECTION 19.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 8, 2009

Received by Governor:

Repassed by House June 17, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

.....  
Governor

Passed by Senate June 15, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

.....  
Secretary of State