



Oregon

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November 23, 2011

TO: Land Conservation and Development Commission (LCDC)
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 8, December 7-9, 2011, LCDC Meeting**

**PUBLIC HEARING AND POSSIBLE ADOPTION OF AMENDMENTS TO
ADMINISTRATIVE RULES REGARDING CHANGES TO
COMPREHENSIVE PLANS AND IMPLEMENTING ORDINANCES**

Under this item the commission will hold a public hearing on proposed amendments to current administrative rules (Attachment A to this report). The proposed amendments are intended to implement new legislation enacted by the 2011 Legislature (Attachment B). After receiving comments, the department recommends that the commission close the public hearing and adopt the rule amendments proposed in this report and Attachment A.

For additional information regarding this item, please contact Bob Rindy at 503-373-0050, ext. 229; or by email bob.rindy@state.or.us.

I. BACKGROUND

When local governments change their land use plans or zoning regulations, there is a process for these changes to become “acknowledged” as meeting state land use planning requirements. Basic elements of this process include notice of proposed and adopted plan and regulation amendments. State law requires various types of notice so that citizens and others may participate in the local amendment process. ORS 197.610 requires local governments to send proposed amendments to the Department of Land Conservation and Development (DLCD). DLCD reviews these proposals, provides advice and comments to local governments, and provides information to the public. After such amendments are adopted, local governments are required to send the amended versions to DLCD. A 21-day clock is started when amendments are final, and the amendments are “acknowledged” if no appeal is filed. If amendments are appealed, that appeal is to the Land Use Board of Appeals (LUBA), which must determine whether or not an amendment conforms to statute, goal, or rule.

Administrative rules at OAR 660, division 18, pertain to amendments to comprehensive plans and land use regulations. Often referred to as the Post-Acknowledgement Plan Amendment process or “the PAPA process,” this process was developed (and these rules were first adopted) in 1981. The rules have been amended at least six times since then. The rules implement statutes

at ORS 197.610 through 197.625. The proposed rule amendments subject to this report are due to 2011 legislative amendments to those statutes.

While the statutes provide the basic requirements for this process, these rules are intended to provide more detail, including definitions of terms and descriptions or requirements for various aspects of the department's process for receiving and publishing notices of proposed amendments.

Until this past legislative session, the plan amendment process, including applicable statutes, had not been reviewed in many years. Legal decisions elaborated on the statutory requirements in ways that are not necessarily known to most citizens and many local governments. As a result, the notice system is not transparent to most citizens. For citizens, the problems mean that they may not understand what is being proposed until very late in the local process. DLCD continues to receive many local notices that do not comply with existing procedures. For local governments, changes to plans and zoning requirements have been sent back for procedural errors, resulting in unnecessary delay and frustration.

To address these and other concerns, the department proposed amendments to ORS 197.610 through 197.625 in the 2011 legislative session – House Bill 2129. LCDC authorized the department to pursue this legislation in April of 2010. The legislation passed and was signed into law by Governor Kitzhaber and the new laws take affect on January 1, 2012.

The legislation was intended to clarify the procedures for post-acknowledgement plan amendments, to reduce costs, prevent unreasonable delay, and to make sure that notices serve their intended purposes. Some aspects of this legislation are minor, such as moving from a "paper" notice system to an on-line one, and eliminating the fee for paper notices.

More substantively, this legislation clarifies what happens when a local government alters a proposed plan or zoning amendment, often in response to citizen input. Such alterations might otherwise impact the opportunity for the public to review a proposal before it is finally adopted. The new process intends to alleviate that concern.

II. PROPOSED RULE AMENDMENTS

Below is a summary of proposed rule amendments shown in Attachment A. This report provides the department's reasons for the proposed amendments. In most cases, the proposed amendments are a direct reflection of new wording in the statutes.

Rule 0010: Definitions

Many of the proposed amendments to this rule are "wordsmithing" or "housekeeping" in nature. The word "amendment" is replaced by "change", as described in (a), below. The department is also proposing some reordering of the rule. Substantive amendments are described below:

(a) The amended statutes no longer use the term “post-acknowledgement plan amendment.” (This may or may not mean the demise of the term PAPA). Instead, the operative term is “a change” to a comprehensive plan or implementing land use regulation. The statute does not contain a definition of the term “change”, and the current rule does not define “amendment” (however, the current rule is named “Post-Acknowledgement Amendments” and the term “amendment” is used throughout). Therefore, the department has proposed a definition of the term “change”, based on language at the beginning of the amended ORS 107.610, which declares “before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall ...” The proposed definition is, in part, intended to make it clear that the term “change” is synonymous with the previous terminology “*to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation*”. The proposed definition makes it clear that “change” includes an amendment to the plan text or map, and includes additions and deletions to the acknowledged plan or regulations, the adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation.

(b) The department proposes minor modification to the term “final decision”, with additional wording derived from LUBA rules that also define this term.

(2) (deleted) “Electronic Copy”. The department does not currently have capacity to store electronic copies of plan and ordinance changes. The rule previously addressed the issue, and authorized submittal of electronic copies, but the department has been indicating to local governments for some time now that it will not accept such data. Reflecting this, the rule has eliminated authorization for electronic copies, and this term is not needed. However, the department is proposing to require electronic geospatial data; see proposed changes to rule 0040.

Rule 0020: Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation:

This rule implements the amended ORS 197.610(1), which requires that “*Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.*”

In other words, the statute requires that the commission adopt a rule to specify the time frame for submittal of notices by local governments in advance of adopting a proposed change. The commission must decide whether to require the notices at least 20 days, but not more than 35 days, in advance of the local government’s first evidentiary hearing. Note that the current requirement is 45 days, so the statute shortens the deadline for local submittal.

(1) The department proposes that this deadline be set at 35 days. While the statute authorizes a shorter time frame, the department will find it challenging to respond to amendments in 35 days. In the future, the commission may shorten this time frame if the department obtains the capacity to respond to proposed amendments more quickly than allowed by its current capabilities.

(2) The statute includes detailed requirements for the content of a local government submittal of a proposed change, in ORS 197.610(3). The amended section (2) of this rule is intended to reflect those requirements. The draft rule in the department's website notice (Attachment A) is not numbered correctly, in that a subsection (A) is inserted after (2). This numbering should be corrected as part of the commission's motion to adopt these rule amendments.

Other proposed amendments to this rule are wordsmithing or re-ordering of the rule, rather than new substantive provisions.

Rule 0021: Submittal of Joint Notices

Proposed amendments to the current rule are "wordsmithing," primarily to insert new terminology used in the amended statute. However, at the recommendation of department staff, amendments to this rule are proposed in order to clarify some of the circumstances where joint notices are required: adoption of a change to an urban growth boundary, and adoption of urban reserves, always requires adoption by the city and county. According to regional staff, the issue of joint adoption of UGB amendments has generated some debate and misunderstanding, notwithstanding a clear requirement in Goal 14 regarding UGB amendments.¹

Rule 0022: Exemptions to Notice Requirements

There are three exemptions to the 35-day DLCD notice requirements. Two of these exemptions – no applicable goals, commission rules or land use statutes, or because there are emergency circumstances – have been in statute for some time, but are slightly reworded in the new statute, as reflected in the proposed rule changes. The third exemption is new, concerning amendments to a plan "solely for the purpose of conforming the plan and regulations to new provisions in a land use statute, statewide land use planning goal or rule." In this case, the exemption is not to the notice, which still must be provided, but rather, to the required "35 days in advance of the final evidentiary hearing." Instead, for such amendments, the local government must provide the department with notice 35 days prior to the adoption of the change.

On the last point, local governments are regularly required to amend their comprehensive plan and land use regulations to conform to changes in state statutes or rules. When local amendments are required by the state, and there is no ability to alter the requirements at the local level regardless of public input, the public is frequently frustrated by the public hearing process. HB 2129 allows (but does not require) local governments to adopt conforming amendments to local codes in response to new state laws, goals, or rules without holding a public hearing. This is

¹ Goal 14 states that "An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located..."

intended to reduce costs and avoid confusion about whether local government has discretion to make changes in such cases.

This procedure first appeared in HB 2229 (“the Big Look bill) from the 2009 legislative session. That bill authorized counties to make certain changes to a local plan without a public hearing, provided the change was intended only to conform to new laws. The department’s bill in the 2011 session, HB 2129, broadened this provision so that it is available in any circumstance where a “change” is solely for the purpose of conforming the plan and regulations to new provisions in a land use statute, statewide land use planning goal or rule. However, the department must be provided notice of the change, and must affirm that the change is indeed the minimum necessary to conform to the new provisions.

The statute is not exactly clear as to when the department must send such confirmation to the local government. As such, the proposed rule clarifies that DLCD confirmation must be received by the local government prior to the final adoption. Since this is a matter open to interpretation, the commission may want to note this proposal and adjust according to input from interested parties.

Rule 0025: Requests for Department Notice of Proposed Changes

The department proposes two changes to the current requirements for department notices of local plan and regulation changes. These notices have historically been provided to persons who pay a fee to receive regular notices from the department indicating proposed local changes. For some time now (since about 2007), the department has been providing these notices electronically and on the DLCD website. As such, we currently have no individual subscribers to mailed notices. The department publishes notices on the website about once a week, so that notices are provided a week after the department receives them. The department does not charge a fee for electronic notices.

The new statute has some new wording regarding department notices. Previously the statute simply provided that “*the director shall notify persons who have requested notice that the proposal is pending.*” The rule provides more detail, including notice fee (see discussion under Rule 0040, below). The new statute specifies that the director (the department) must provide *notice of proposed changes to:*

- (a) Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and*
- (b) Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.*

The proposed amended rule is parallel to this new wording, indicating that DLCD will provide notice of proposed changes within 15 days of receipt of notice of the proposed change to persons

that have requested notice of such changes, and indicating that the department shall notify persons generally interested in proposed changes to acknowledged comprehensive plans by posting notices on a weekly basis on the department website using the Internet or a similar electronic method. NOTE: the requirement “on a weekly basis” is not in statute, but is the department’s current practice. DLCD expects to continue this current practice, and as such it is reflected here.

Rule 0030: Report to Commission

This rule requires that the director must report the department position to the commission regarding proposed local plan or regulation changes. There is no time frame specified in the rule. Historically the department provided an annual report on this to LCDC. More recently, DLCD practice has been to report participation under certain Key Performance Measure (KPM) process, as a part of the budget process and the KPM report to the legislature. As such, the department proposes repeal of this rule.

Rule 0035: Department Participation

The current rule requires that, if the department participates in a local proceeding to change a plan or regulation, that DLCD do so at least 15 days prior to the first evidentiary hearing. This was not required by statute; it was a self-imposed rule requirement. The new statute specifies that the department shall notify the local government of the concerns at least 15 days before the final evidentiary hearing, unless there is only one hearing or the proposed change has been modified to the extent that resubmission is required. This is waived when local government fails to provide a notice 35 days before the hearing, regardless of whether that failure is authorized under certain provisions of statute.

Since the new statute shortens local notice to 35 days, turn-around time by DLCD staff reviewing and responding to notices will be increasingly difficult. Nevertheless, the department intends to continue its practice of providing comments to a local government 15 days before the first evidentiary hearing when possible. However, in light of the new statutory provision, the department proposes to change this deadline to match the statute, and impose a mandatory deadline of 15 days before the final hearing. The proposed wording in this amended rule reflects the new wording in the statute.

Rule 0040: Submittal of Adopted Change

This is a key provision in the plan amendment process, specified by ORS 197.615: when a local government changes a plan or land use regulation, it shall submit the decision to the department, with the appropriate forms provided by the department, within 20 days after making the final decision. This amended rule reflects the amended statute. Note that this section operates in conjunction with the amended definition of “final decision” in rule 0010. The statute starts the 20 day clock from the “making” of this final decision by the local government. The proposed rule

should be clear that this deadline starts from the date the decision is final, as clarified in the definition.

We note that local decisions are acknowledged if no appeal is filed within 21 days of actual notice. Thus, extending the current requirement for notice to the department from five days (currently) to 20 days under the new statute will not adversely affect the department's opportunity to appeal a decision that it has participated in, should that be necessary.

The department is proposing a new requirement with regard to electronic files containing geospatial data. Increasingly, local government changes to plan or zoning maps involve geospatial data, such as GIS data. Although this capability is by no means available to all local governments, many local governments rely on it, and voluntarily provide it to the department. The department now has the capacity to collect and store such data if provided by the local government.

The amended rule would require local governments to provide this data to the department if that local government has such capability. The main purpose of this requirement is to make sure that data is received by DLCD in an electronic format compatible with the State's Geographic Information System (GIS) software standard specified in DAS rules at OAR 125-600-7550. DLCD is continuing to build its capacity to receive, store, and work with electronic geospatial data, recognizing that land use planning at both the state and local level is increasingly dependent on electronic mapping.

Rule 0045: Changes in Proposals

The amended statute includes a new procedure when a local government alters a proposal to change the plan or regulations after the initial notice is received by the department. It is anticipated that citizen input will often result in an altered proposal. However, if a proposal is substantially altered, the notice may not accurately describe the change that is ultimately adopted. For citizens, this means that they may not understand what is being proposed until very late in the local process, or after adoption. LUBA has dealt with this concern by sending back adopted plan amendments, as a procedural error, resulting in unnecessary delay and frustration.

DLCD continues to receive many local notices that do not comply with case law established on this issue. In response, the legislation clarifies what happens when a local government makes a substantial change to a proposed plan or zoning amendment (again, this is often in response to citizen input in the local hearing process, and is expected).

This new procedure for altered proposals is reflected in the proposed rule amendments at OAR 660-018-0045 (1) through (3). This procedure applies if a proposed change to an acknowledged comprehensive plan or land use regulation is altered to such an extent that the materials submitted no longer reasonably describe the proposed change. The wording is taken directly from the new statute except for (3)(C), which is proposed by the department. The procedure provides for a new notice, with a shortened review time frame.

Rule 0050: Local Government Notice of Adopted Changes

This rule concerns local government notice of adopted changes to persons other than the department. The department is proposing a slight change to the title of this rule, including the addition of the words “Local Government” not shown in the proposed rule published prior to the commission hearing. Also, there is a typo in the proposed rule, on page 10, line 33, the erroneous addition of the word “or”.

Local notice following adoption of a change is governed by ORS 197.615(4) and (5), as amended by HB 2129, and which requires that on the same day the local government submits the final decision to the department the local government shall mail or otherwise deliver notice of the decision to persons that participated in the local government proceedings and requested in writing that the local government provide them with notice of the adopted change.

The department’s proposed amendments to this rule are the same as in the new statute.

Rule 0055: Department Notice of Local Adoption

This rule requires the department to issue notices, both to persons who requested the department to issue notice to them, and to the public generally interested in such notices. The department is proposing the addition of the word “Department” in the rule title, as shown above. The provisions of this rule are the same as statute.

This longstanding provision requires that persons who want to receive department notices must pay a fee to be on the department’s mailing list (see OAR 660-018-0140). However, the new statute does not mention mailed notices, and the department has not been providing mailed notices for some time now. Nobody is currently on the department’s list to receive mailed notices. While the department could perhaps continue to authorize mailed notices, including the fee for such notices, it is proposed that provision for mailed notices be eliminated in the rule. The department intends to provide electronic notice, as is the current practice.

Rule 0060: Who May Appeal

This requirement has not changed, although the citations need to be updated, as proposed.

Rule 0085: Acknowledgement of a Change to a Plan or Land Use Regulation

An adopted change to a comprehensive plan or a land use regulation is deemed to be acknowledged when the 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to appeal has not been filed; or if an appeal has been timely filed, when LUBA affirms the local decision or an appellate court. While no substantive changes to this rule are required, the department proposes amendments to reflect the current statute as amended.

Rule 0140: Fee for Notice

The department proposes repeal of this rule. As described in rule 0055 above, the department proposes that mailed notice should no longer be provided. As such, the fees described in this rule would not apply.

Rule 0150: Time Limits Regarding Certified Industrial Sites

These provisions were the result of a 2003 law requiring the department to expedite industrial or traded sector development on certified industrial sites. No changes are proposed, but the rule should reference that 2003 statute, as proposed.

III. SUMMARY OF RULEMAKING CRITERIA AND PROCEDURES

The commission's procedures for amending administrative rules derive from ORS Chapter 183 and are specified in LCDC's procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule amendments. The commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The commission is also guided by ORS 197.040, as follows:

"197.040 Duties of commission; rules.

(1) The Land Conservation and Development Commission shall:

....

(b) In accordance with the provisions of ORS 183.310 to 183.550, 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) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

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

(D) 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 183.310 to 183.550 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 19, [and]

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .

(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.”

IV. NOTICE OF RULEMAKING

The department issued formal rulemaking notice for publication in the November 1, 2011, Secretary of State’s Bulletin, and has mailed notices to interested parties (See Attachment C).

The commission has also adopted “Citizen Involvement Guidelines for Policy Development” (the “CIG”) in order “... *to provide and promote clear procedures for public involvement in the development of Commission policy on land use,*” which LCDC has committed to follow “*to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.*” The CIG recommends that, as part of a rulemaking process, the department “*shall, to the extent practicable:*

- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”*

The department has followed the above guidelines with respect to this rulemaking (see Attachment C). We note that the CIG authorizes LCDC to “*choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.*” In this case (and in all previous LCDC “housekeeping” rulemaking), a workgroup was not appointed because this rulemaking is intended to implement new statutes or proposes minor and technical changes.

V. RECOMMENDATION

The department recommends the commission hold a public hearing on the proposed amendments described in this report, close the public hearing following testimony, and adopt the proposed rule amendments shown in the attachments to this report.

ATTACHMENTS

- A. Proposed Amendments to OAR 660, division 18**
- B. House Bill 2129**
- C. Notices**
- D. Comments Received (None as of November 22)**

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 18
POST-ACKNOWLEDGEMENT AMENDMENTS
DRAFT PROPOSED AMENDMENTS – November 14, 2011

1 **660-018-0005**

2 **Purpose**

3 This division is intended to implement provisions of ORS 197.610 through 197.625. The
4 overall purpose is to carry out the state policies outlined in ORS 197.010.

5 Stat. Auth.: ORS 197.040

6 Stats. Implemented: ORS 197.610 - 197.625

7 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2004, f. &
8 cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 10-19-11

9 **660-018-0010**

10 **Definitions**

11 **(1)** For the purpose of this division, the definitions [~~contained~~] in ORS 197.015 apply. In
12 addition, the following definitions apply:

13 **(a) “A change” means an amendment to an acknowledged comprehensive plan or**
14 **implementing land use regulations, including an amendment to the plan text or map. This**
15 **term includes additions and deletions to the acknowledged plan or regulations, the**
16 **adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation.**

17 [~~(1) “Computation of Time” means unless otherwise provided in this rule, the time within~~
18 ~~which an act is to be done, [is] computed by excluding the first day and including the last unless~~
19 ~~the last day falls upon any legal holiday, Saturday, or Sunday in which case the last day is also~~
20 ~~excluded.]~~

21 **(2)** “Electronic copy” means a computer file or files, which can be submitted as digital
22 media such as disc, electronic mail, or other method of file transfer.

23 **(3b)** “Final Decision” means the written, signed **adoption** [~~approval, or approval as~~
24 ~~modified], by the local government, of a [~~proposed amendment to, or adoption of,~~] **change to** a
25 comprehensive plan or land use regulation. **Except where adoption is required by law, a [A]**
26 denial of a proposed [~~amendment~~] **change** by the local government shall not be considered a
27 “Final Decision” and therefore is not subject to [~~review under~~] **this [administrative] rule**. The
28 date of the “Final Decision” [~~as described in OAR 660-018-0040~~] shall be the date on which the
29 local government takes final action on the **change** [~~amendment to, or adoption of, a~~
30 ~~comprehensive plan or land use regulation~~]. In order to be deemed final, the local government
31 action must include the adoption of all supplementary findings and data. In addition, the date of
32 final action shall be the day following exhaustion of all appeal rights before local government,
33 **unless a local rule or ordinance specifies that the decision becomes final at a later date, in**
34 **which case the decision is considered final as provided in the local rule or ordinance.**~~

OAR 660, division 18
Draft Proposed Amendments – November 14, 2011

1 (4c) “Final **Evidentiary** Hearing [~~on Adoption~~” as described in OAR 660-018-0020]
2 means the last hearing where all interested persons are allowed to present evidence and rebut
3 testimony [~~on the~~] **regarding a** proposal to [~~adopt or amend~~] **adopt a change to** a
4 comprehensive plan or land use regulation. [~~“Final Hearing on Adoption” shall not include a~~]A
5 hearing held solely on the record of a previous hearing held by the governing body or its
6 designated hearing body **is not a “final evidentiary hearing.”**

7 (5d) “First Evidentiary Hearing” means the first hearing a local government conducts that
8 allows [~~conducted by the local government where~~] interested persons [~~are allowed~~] to present
9 and rebut evidence and testimony on a proposal to adopt [~~or amend~~] **a change to a**
10 comprehensive plan or land use regulation. “First evidentiary hearing” does not include a work
11 session or briefing where testimony is not allowed.

12 (6e) “Map Change” [~~as used in OAR 660-018-0020~~] means a change in the designation
13 of an area as shown on the comprehensive plan map, zoning map or both, **including an area**
14 **added to or removed from a comprehensive plan or zoning map.**

15 [~~(7) Substantially Amended” as used in OAR 660-018-0045 shall mean any change in~~
16 ~~text that differs from the proposal submitted under OAR 660-018-0020 to such a degree that the~~
17 ~~notice under OAR 660-018-0020 did not reasonably describe the nature of the local government~~
18 ~~final action.~~]

19 **(2) Computation of time: for purposes of this division, the time within which a**
20 **particular act must be done, such as “35 days before,” is computed by excluding the first**
21 **day and including the last day unless the last day falls upon a Saturday, Sunday or a legal**
22 **holiday, in which case the last day is also excluded.**

23 Stat. Auth.: ORS 197.040

24 Stats. Implemented: ORS 197.610 - 197.625

25 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
26 ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD
27 1-2011, f. & cert. ef. 10-19-11

28 **660-018-0020**

29 **Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation Filing of a**
30 **Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation**
31 **with the Director**

32 (1) **Before adopting a change to an acknowledged comprehensive plan or a land use**
33 **regulation, unless circumstances described in OAR 660-018-0022 apply, a local government**
34 **shall submit the proposed change to the department, including the information described**
35 **in section (2). The local government must submit the proposed change to the director at the**
36 **department’s Salem office at least 35 days before holding the first evidentiary hearing on**
37 **adoption of the proposed change.**

OAR 660, division 18
Draft Proposed Amendments – November 14, 2011

1 ~~[A proposal to amend a local government acknowledged comprehensive plan or land use~~
2 ~~regulation or to adopt a new land use regulation must:]~~

3 ~~[(a) Be submitted to the director at least 45 days before the first evidentiary hearing on~~
4 ~~adoption. The submittal must be received by the department at its Salem office;~~

5 ~~(b) Be accompanied by appropriate forms provided by the department;~~

6 ~~(c) Contain two copies of the text and any supplemental information the local~~
7 ~~government believes is necessary to inform the director as to the effect of the proposal. One of~~
8 ~~the required copies may be an electronic copy;~~

9 ~~(d) Indicate the date of the final hearing on adoption. If a final hearing on adoption is~~
10 ~~continued or delayed, following proper procedures, the local government is not required to~~
11 ~~submit a new notice under OAR 660-018-0020.~~

12 ~~(e) In the case of a map change, include a map showing the area to be changed as well as~~
13 ~~the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-~~
14 ~~inch paper;~~

15 ~~(f) Where a goal exception is being proposed, include the proposed language of the~~
16 ~~exception. The Commission urges the local government to submit information that explains the~~
17 ~~relationship of the proposal to the acknowledged plan and the goals, where applicable.]~~

18 **(2) The submittal must include applicable forms provided by the department and**
19 **all of the following materials:**

20 **(a) The text of the proposed change to the comprehensive plan or land use**
21 **regulation implementing the plan, as provided in section (3);**

22 **(b) If a comprehensive plan map or zoning map is created or altered by the**
23 **proposed change:**

24 **(A) A copy of the map that is created or altered, preferably on 8 ½ by 11 inch paper;**

25 **(c) A brief narrative summary of the proposed change and any supplemental**
26 **information that the local government believes may be useful to inform the director and**
27 **members of the public of the effect of the proposed change;**

28 **(d) The date set for the first evidentiary hearing;**

29 **(e) The notice or a draft of the notice required under ORS 197.763 regarding a**
30 **quasi-judicial land use hearing, if applicable; and**

31 **(f) Any staff report on the proposed change or information that describes when the**
32 **staff report will be available and how a copy may be obtained.**

1 (23) The **proposed** text submitted to comply with subsection (2)(a)~~(1)(c) of this rule~~
2 must include **all of** the ~~[specific language being]~~ proposed **wording to be added to or deleted**
3 **from** ~~[as an addition to or deletion from]~~ the acknowledged plan or land use regulations. A
4 general description of the proposal or its purpose, **by itself**, is not sufficient. In the case of map
5 changes, the **submittal** ~~[text]~~ must include a graphic depiction of the change~~[- and not just]~~; a
6 legal description, tax account number, address or ~~[other]~~ similar general description, **by itself**, is
7 not sufficient. **If a goal exception is proposed, the submittal must include the proposed**
8 **wording of the exception.**

9 **(4) For purposes of computation of time for the 35-day notice under this rule and**
10 **OAR 660-018-0035 (1)(c), the proposed change is considered to have been “submitted” on**
11 **the day that paper copies of the applicable notice forms and other documents required by**
12 **section (2) this rule are received by the department in its Salem office.**

13 Stat. Auth.: ORS 197.040

14 Stats. Implemented: ORS 197.610 - 197.625

15 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
16 ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

17 **660-018-0021**

18 **Submittal of Joint Notices ~~[Amendments]~~**

19 **(1) Where two or more local governments are required to jointly consider [or] and agree**
20 **on a change to a comprehensive plan or land use regulation [amendment], the local governments**
21 **shall jointly submit the notices required in OAR 660-018-0020 and 660-018-0040 [proposed**
22 **amendment and action]. Notice of jointly proposed [amendments] changes must be provided [45]**
23 **at least 35 days prior to the first evidentiary hearing by whichever local government holds the**
24 **first evidentiary hearing.** For purposes of notice and appeal, the date of the final decision is the
25 date of ~~[the last local government's]~~ adoption **by whichever local government is the last to**
26 **adopt the change.**

27 **(2) Actions where two or more local governments are required to jointly consider**
28 **and agree on a change to a comprehensive plan or land use regulation include, but are not**
29 **limited to:**

30 **(a) Adoption or amendment of an urban growth boundary by all cities within the**
31 **boundary and by the county or counties within which the boundary is located, consistent**
32 **with intergovernmental agreements, as required by Goal 14;**

33 **(b) Adoption or amendment of an urban reserve by cities and counties**
34 **cooperatively, or by the Metropolitan Service District and applicable counties for the**
35 **Portland Metropolitan area, as provided under the requirements of OAR 660, division 21;**

36 **(c) Adoption or amendment of urban and rural reserves, by the Metropolitan**
37 **Service District and applicable counties for the Portland Metropolitan area, as provided**
38 **under the requirements of OAR 660, division 27.**

3 Stat. Auth.: ORS 197.040
4 Stats. Implemented: ORS 197.610 - 197.625
5 Hist.: LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f.
6 & cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 10-19-11

7 **660-018-0022**
8 **Exemptions to ~~[Filing]~~ Notice Requirements Under OAR 660-018-0020**

9 (1) When a local government determines that no goals, commission rules, or land use
10 statutes apply to a particular proposed **change** ~~[amendment or new regulation, filing]~~ **the notice**
11 **of a proposed change** under OAR 660-018-0020 is not required.

12 (2) ~~[In addition, a local government may submit an amendment or new regulation with~~
13 ~~less than 45 days' notice if the local government determines that there are emergency~~
14 ~~circumstances requiring expedited review] **If a local government determines that emergency**~~
15 ~~**circumstances beyond the control of the local government require expedited review such**~~
16 ~~**that the local government cannot submit the proposed change consistent with the 35-day**~~
17 ~~**deadline under OAR 660-018-0020, the local government may submit the proposed change**~~
18 ~~**to the department as soon as practicable. The submittal must include a description of the**~~
19 ~~**emergency circumstances.**~~

20 (3) **A local government may adopt a change to an acknowledged comprehensive plan**
21 **or a land use regulation solely for the purpose of conforming the plan and regulations to**
22 **new provisions in a land use statute, statewide land use planning goal or rule implementing**
23 **the statutes or goals without holding a public hearing, notwithstanding contrary provisions**
24 **of state and local law, provided:**

25 (a) **The local government gives notice to the department of the proposed change,**
26 **including the materials described in section (4), 35 days before the local government adopts**
27 **the proposed change, and**

28 (b) **The department confirms in writing prior to adoption that the only effect of the**
29 **proposed change is to conform the comprehensive plan or the land use regulations to the**
30 **new provisions.**

31 (4) **The local government notice and materials required to be submitted to the**
32 **department under section (3) must include:**

33 (a) **A brief narrative statement indicating that the local government does not intend**
34 **to hold a public hearing because the change is solely for the purpose of conforming the plan**
35 **and regulations to specified new provisions in a land use statute, statewide land use**
36 **planning goal, or rule implementing the statutes or goals;**

(b) **The forms and materials described in OAR 660-018-0020(2); and**

(c) **The proposed date of adoption of the proposed change.**

1 **(5)[(a)] A local government must submit any adopted change to an acknowledged**
2 **comprehensive plan or land use regulation to the department within 20 days after the final**
3 **adoption, regardless of the reason for not submitting the proposed change in advance,** [The
4 ~~amendment or new regulation shall be submitted after adoption]~~ as provided in **ORS 197.610**
5 **and** ORS 197.615(1) and (2); and

6 (6 [b]) Notwithstanding the requirements of ORS 197.830(2) to have appeared before
7 the local government in the proceedings concerning the proposal, **if a local government does**
8 **not provide the notice 35 days in advance of the first evidentiary hearing described in OAR**
9 **660-018-0020, regardless of the reason for not providing the notice,** the director or any other
10 person may appeal the decision to the board under ORS 197.830 to 197.845.

11 Stat. Auth.: ORS 197.040

12 Stats. Implemented: ORS 197.610(2)

13 Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. &
14 cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 10-19-11

15 **660-018-0025**

16 **Requests for Department Notice of Proposed Changes [Amendment to or Adoption of a**
17 **Comprehensive Plan or Land Use Regulation Sent to Those Requesting]**

18 ~~Persons requesting written notice of proposed amendments to acknowledged~~
19 ~~comprehensive plans or land use regulations [or proposed adoptions of new land use regulations]~~
20 ~~who have paid the fee established under the provisions of OAR 660-018-0140 shall be mailed a~~
21 ~~notice by the department of the proposed action within 15 days of the receipt of notice from local~~
22 ~~government required by OAR 660-018-0020. The department may provide such notice by~~
23 ~~electronic mail, in which case no fee is required. The department may provide the notice via the~~
24 ~~World Wide Web.~~

25 **(1) The department shall provide notice of a proposed change to an acknowledged**
26 **comprehensive plan or a land use regulation described under OAR 660-018-0020, within 15**
27 **days of receipt of notice of the proposed change to persons that have requested notice of**
28 **such changes. The department shall provide notice using electronic mail, electronic bulletin**
29 **board, electronic mailing list server or similar electronic method.**

30 **(2) The department shall notify persons that are generally interested in proposed**
31 **changes to acknowledged comprehensive plans by posting notices received under OAR 660-**
32 **018-0020 on a weekly basis on the department website using the Internet or a similar**
33 **electronic method.**

34 Stat. Auth.: ORS 197.040

35 Stats. Implemented: ORS 197.610 - 197.625

36 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. &
37 cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

38

1 ~~660-018-0030~~

2 ~~Report to Commission~~

3 [~~When the department participates in a local government proceeding on a proposed~~
4 ~~amendment to an acknowledged comprehensive plan or land use regulation, the director must~~
5 ~~report the department position on proposed comprehensive plan or land use regulation adoption~~
6 ~~or amendments to the commission. This report shall indicate whether the director believes the~~
7 ~~proposal violates the goals.]~~

8 [~~Stat. Auth.: ORS 197.040~~

9 ~~Stats. Implemented: ORS 197.610 – 197.625~~

10 ~~Hist.: LCDC 14 1981, f. & ef. 12 15 81; LCDC 12 1983, f. & ef. 12 29 83; LCDD 3 2008, f. &~~
11 ~~cert. ef. 4 18 08; LCDD 1 2011, f. & cert. ef. 10 19 11]~~

12 ~~660-018-0035~~

13 ~~Department Participation~~

14 [~~If the department participates in a local government proceeding for which notice was~~
15 ~~received under OAR 660-018-0020, the department shall do so at least 15 days prior to the first~~
16 ~~evidentiary hearing as specified in the notice received under OAR 660-018-0020, provided the~~
17 ~~director received the proposal at least 45 days prior to the first evidentiary hearing.]~~

18 **(1) When the department determines that a proposed change to an acknowledged**
19 **comprehensive plan or a land use regulation may not be in compliance with land use**
20 **statutes or the statewide land use planning goals, including administrative rules**
21 **implementing either the statutes or the goals, the department shall notify the local**
22 **government of the concerns at least 15 days before the final evidentiary hearing, unless**

23 **(a) The local government holds only one hearing on the proposal, in which case the**
24 **notification must occur prior to the close of the hearing;**

25 **(b) The proposed change has been modified to the extent that resubmission is**
26 **required under OAR 660-018-0045, or**

27 **(c) The local government did not submit the proposed change within 35 days in**
28 **advance of the final hearing in accordance with OAR 660-018-0020(1), regardless of the**
29 **circumstances that resulted in that delay.**

30 **(2) Notwithstanding section (1) of this rule, the department may provide advisory**
31 **recommendations to the local government concerning a proposed change to the**
32 **acknowledged comprehensive plan or land use regulation at any time prior to the adoption**
33 **of the change.**

34 Stat. Auth.: ORS 197.040

35 Stats. Implemented: ORS 197.610 - 197.625

1 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. &
2 cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 10-19-11

3 **660-018-0040**

4 **Submittal of Adopted Change [Material]**

5 ~~(1) Amendments to acknowledged comprehensive plans or land use regulations, new land~~
6 ~~use regulations adopted by local government, and findings to support the adoption shall be~~
7 ~~mailed or otherwise submitted to the director within five working days after the final decision by~~
8 ~~the governing body and shall be accompanied by appropriate forms provided by the department.~~
9 **When a local government adopts a proposed change to an acknowledged comprehensive**
10 **plan or a land use regulation it shall submit the decision to the department, with the**
11 **appropriate forms provided by the department, within 20 days after the final decision.** [If
12 the text and findings are mailed, they shall include a signed statement by the person mailing
13 them indicating the date of deposit in the mail.]

14 **(2) For purposes of the 20-day requirement under section (1) of this rule, the**
15 **proposed change is considered “submitted to the department” on the day the applicable**
16 **notice forms and other required documents are:**

17 **(a) Received by the department in its Salem office, if hand-delivered, or**

18 **(b) Postmarked, if the forms and documents are mailed.**

19 **(3) The submission to the department must include all of the following materials:**

20 **(a) A copy of the signed decision;**

21 **(b) The findings and the text of the change to the comprehensive plan or land use**
22 **regulation;**

23 **(c) If a comprehensive plan map or zoning map is created or altered by the**
24 **proposed change:**

25 **(A) A map showing the area changed and applicable designations, preferably on 8 ½**
26 **by 11 inch paper; and**

27 **(B) Electronic files containing geospatial data showing the area changed, as specified**
28 **in section (4) of this rule. The Director may waive this requirement for local governments**
29 **that lack the capacity to produce this data.**

30 **(d) A brief narrative summary of the decision, including a summary of substantive**
31 **differences from the proposed change submitted under OAR 660-018-0020 and any**
32 **supplemental information that the local government believes may be useful to inform the**
33 **director or members of the public of the effect of the actual change; and**

1 **(e) A statement by the individual transmitting the decision identifying the date of**
2 **the final decision and the date the submission was mailed to the department.**

3 **(4) Geospatial data submitted to the department (for example, electronic data for a**
4 **plan map or zoning map change) must meet the following standards:**

5 **(a) The product must be submitted in an electronic format compatible with the**
6 **State’s Geographic Information System (GIS) software standard (OAR 125-600-7550);**

7 **(b) The data must be free of topological errors;**

8 **(c) Metadata must meet the current State of Oregon metadata standards developed**
9 **by the Oregon Geographic Information Council (OGIC); and**

10 **(d) All data should have the attributes, units, map projection and relevant datums**
11 **documented in the metadata.**

12 ([2]5) Local government must notify the department of withdrawals or denials of
13 proposals previously sent to the department under requirements of OAR 660-018-0020.

14 ([3]6) **If an adopted change to a comprehensive plan or land use regulation was not**
15 **submitted to the department 35 days prior to adoption, as required by OAR 660-018-0020,**
16 [F]the local government must clearly indicate in its transmittal which provisions of [ORS
17 197.610] **OAR 660-018-022** are applicable [where the adopted amendment was not submitted
18 for review 45 days prior to the first evidentiary hearing on adoption].

19 **NOTE:** (ORS 197.610 clearly requires all adopted plan and land use regulation
20 amendments and new land use regulations to be submitted to the director even if they were not
21 required to be submitted for review prior to adoption.)

22 ~~(4) Where amendments or new land use regulations, including supplementary materials,~~
23 ~~exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements~~
24 ~~shall be included with the submittal to the director. Such amendments or new land use~~
25 ~~regulations may be submitted by electronic mail notwithstanding the requirement of OAR 660-~~
26 ~~018-0020 for at least one paper copy.]~~

27 Stat. Auth.: ORS 197.040

28 Stats. Implemented: ORS 197.610 - 197.625

29 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
30 ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD
31 1-2011, f. & cert. ef. 10-19-11

1 **660-018-0045**
2 **Changes in Proposals**

3 ~~(1) [If a proposed amendment to a comprehensive plan or land use regulation or new land~~
4 ~~use regulations is substantially amended after notice has been provided under OAR 660-018-~~
5 ~~0020 but before the amendment or new regulation is adopted, the local government must specify~~
6 ~~the changes that have been made in the notice of adoption provided in OAR 660-018-0040.] If,~~
7 ~~after initially submitting the notice and accompanying materials described in applicable~~
8 ~~provisions of OAR 660-018-0020, a proposed change to an acknowledged comprehensive~~
9 ~~plan or land use regulation is altered to such an extent that the materials submitted no~~
10 ~~longer reasonably describe the proposed change, the local government must, at least 10~~
11 ~~days before the final evidentiary hearing on the proposal,~~

12 ~~(a) Notify the department of the alterations to the proposed change, and~~

13 ~~(b) Provide a summary of the alterations along with any alterations to the proposed~~
14 ~~text or map and other materials described in OAR 660-018-0020.~~

15 ~~(2) When the department receives a notification of alteration of a proposal as~~
16 ~~described in section (1) of this rule, the department shall issue a new notice to persons that~~
17 ~~have requested notice in the manner described OAR 660-018-0025.~~

18 ~~(3) Circumstances requiring resubmission of a proposed change to a comprehensive~~
19 ~~plan or land use regulation under this rule may include, but are not limited to:~~

20 ~~(a) Alteration of the proposed principal uses that would be allowed under the~~
21 ~~proposed change to the comprehensive plan or land use regulations;~~

22 ~~(b) A significant change in the location at which the principal uses would be allowed,~~
23 ~~limited or prohibited;~~

24 ~~(c) A significant change in the conditions or restrictions that would be applied to a~~
25 ~~proposed use.~~

26 Stat. Auth.: ORS 197.040

27 Stats. Implemented: ORS 197.610 - 197.625

28 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2008, f. &
29 cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 10-19-11

30 **660-018-0050**
31 **Notice ~~[to Other Parties]~~ of Adopted Changes**

32 ~~(1) Notice of an adopted [~~plan amendments to parties~~] change to a comprehensive plan~~
33 ~~or land use regulation to or persons other than the department [~~director~~] is governed by ORS~~
34 ~~197.615(~~2~~)4 and (5), which requires that on the same day the local government submits~~

1 **the final decision to the director the local government shall mail or otherwise deliver notice**
2 **of the decision to persons that:**

3 **(a) Participated in the local government proceedings that led to the decision to adopt**
4 **the change to the acknowledged comprehensive plan or the land use regulation; and**

5 **(b) Requested in writing that the local government provide them with notice of the**
6 **change to the acknowledged comprehensive plan or the land use regulation.**

7 **(2) The notice to persons who participated and requested notice as required by**
8 **section (1) of this rule must clearly describe the final decision, the date of the decision, and**
9 **must state how and where the materials described in OAR 660-018-0040(3) may be**
10 **obtained and must:**

11 **(a) Include a statement by the individual delivering the notice that identifies the date**
12 **on which the notice was delivered and the individual delivering the notice;**

13 **(b) List the locations and times at which the public may review the decision and**
14 **findings; and**

15 **(c) Explain the requirements for appealing the land use decision under ORS 197.830**
16 **to 197.845.**

17 Stat. Auth.: ORS 197.040

18 Stats. Implemented: ORS 197.615(2)

19 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
20 ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

21 **660-018-0055**

22 **Notice of Local ~~[Government Action by the Director]~~ Adoption**

23 Within five working days of the receipt of **a local government notice of adoption of a**
24 **change to a comprehensive plan or a land use regulation described** under OAR 660-018-
25 0040, the **department** [director] shall provide notice **of the decision** [~~by mail or other~~
26 ~~submission to those who~~], **and an explanation of the requirements for appealing the land**
27 **use decision under ORS 197.830 to 197.845, to persons that** have requested notice ~~under OAR~~
28 ~~660-018-0055 and have paid the fee established under the provisions of OAR 660-018-0140.~~ **of**
29 **adopted changes.** Such notice may, with the requestor's consent, be provided by electronic mail
30 or the World Wide Web, in which case no fee is required. This notice shall explain the
31 requirements for appealing the local government action to the Land Use Board of Appeals and
32 indicate the locations where the adopted documents may be reviewed.] **The notice shall be**
33 **provided using electronic mail, electronic bulletin board, electronic mailing list server or**
34 **similar electronic method.**

1 **(2) The department shall notify persons that are generally interested in changes to**
2 **acknowledged comprehensive plans, by posting notices received under OAR 660-018-0040**
3 **periodically on the department website using the Internet or a similar electronic method.**

4 Stat. Auth.: ORS 197.040

5 Stats. Implemented: ORS 197.610 - 197.625

6 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
7 ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08

8 **660-018-0060**

9 **Who May Appeal**

10 Eligibility [fœ] **to** appeal [œf] a local government decision to adopt [~~or amend~~] a **change**
11 **to a** comprehensive plan or land use regulation is governed by ORS 197.620, **197.830, and**
12 **Section 6 of Or Laws 2011, Chap. 280**

13 Stat. Auth.: ORS 197.040

14 Stats. Implemented: ORS 197.610 - 197.845

15 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
16 ef. 11-12-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-
17 2008, f. & cert. ef. 4-18-08

18 **660-018-0085**

19 **[Action Where No Appeal or Objection is Timely Filed] Acknowledgement of a Change to a**
20 **Plan or Land Use Regulation**

21 **(1) Pursuant to ORS 197.625, if the Land Use Board of Appeals or the appellate courts**
22 **affirm a local government action, or no appeal is timely filed, a local action under this division is**
23 **considered acknowledged. an adopted change to a comprehensive plan or a land use**
24 **regulation is deemed to be acknowledged when the local government has complied with the**
25 **requirements of ORS 197.610 and 197.615 , the applicable requirements of this division,**
26 **and either:**

27 **(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of**
28 **intent to appeal has not been filed; or**

29 **(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the**
30 **local decision or, if an appeal of the decision of the board is timely filed, an appellate court**
31 **affirms the decision.**

32 **(2) Pursuant to ORS 197.625(2), prior to acknowledgment of an adopted change to**
33 **an acknowledged comprehensive plan or a land use regulation as provided in section (1) of**
34 **this rule, the adopted change is effective at the time specified by local government charter**
35 **or ordinance.**

1 Stat. Auth.: ORS 197.040
2 Stats. Implemented: ORS 197.610 - 197.625
3 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. &
4 ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

5 **660-018-0140**
6 **Fee for Notice**

7 ~~(1) An annual fee of \$300 to defray the costs of mailed notice provided under OAR 660-~~
8 ~~018-0025 is established. The fee shall be assessed for each fiscal year, or fraction thereof,~~
9 ~~commencing July 1, 2008. The fee is payable in advance of any notice being provided under~~
10 ~~OAR 660-018-0025. For each subsequent fiscal year, the department shall bill persons requesting~~
11 ~~such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of~~
12 ~~the invoice shall be deemed as having terminated the request for notice provided under OAR~~
13 ~~660-018-0025.~~

14 ~~(2) An annual fee of \$500 to defray the costs of mailed notice provided under OAR 660-~~
15 ~~018-0055 is established. The fee shall be assessed for each fiscal year, or fraction thereof,~~
16 ~~commencing July 1, 2008. The fee is payable in advance of any notice being provided under~~
17 ~~OAR 660-018-0055. For each subsequent fiscal year, the department shall bill persons requesting~~
18 ~~such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of~~
19 ~~the invoice shall be deemed as having terminated the request for notice provided under OAR~~
20 ~~660-018-0055.~~

21 Stat. Auth.: ORS 197.040
22 Stats. Implemented: ORS 197.610 –197.625
23 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2008, f. &
24 eert. ef. 4-18-08

25 **660-018-0150**
26 **Time Limits Regarding Certified Industrial Sites**

27 (1) Upon application for a comprehensive plan or land use regulation amendment or a
28 new land use regulation necessary to expedite and facilitate industrial or traded sector
29 development on any of the certified industrial sites identified and prioritized under Oregon Laws
30 2003, chapter 800, section 12, a local government shall take final action approving, approving
31 with modifications, or denying the application no later than 180 days after the date the
32 application is deemed complete by the local government.

33 (2) For purposes of this rule, “certified industrial sites” are those sites so designated by
34 the Economic Revitalization Team Regulatory Efficiency Group established by Oregon Laws
35 2003, chapter 800, section 2 in accordance with the requirements of Oregon Laws 2003, chapter
36 800, section 12.

37 (3) Persons, including the director, who participated in the local government proceedings
38 leading to the adoption of a comprehensive plan or land use regulation amendment or new land

OAR 660, division 18
Draft Proposed Amendments – November 14, 2011

1 use regulation described in section (1) of this rule may appeal the final decision by the local
2 government in accordance with requirements and time limits specified in ORS 197.610 through
3 197.625, except as provided in section (4) of this rule.

4 (4) For a final action to expand an urban growth boundary or designate an urban reserve
5 necessary to expedite and facilitate industrial or traded sector development on any of the certified
6 industrial sites identified and prioritized under Oregon Laws 2003, chapter 800, section 12, and
7 provided the decision is subject to ORS 197.626, the commission shall review the action
8 following the timelines and procedures specified in OAR 660-025-040, 660-025-140 through
9 660-025-160, and 660-025-175.

10 Stat. Auth.: ORS 197.040

11 Stats. Implemented: ORS 197.610 - 197.625 ;**Chapter 800, Oregon Laws 2003, Section 17(2).**

12 Hist.: LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

Enrolled House Bill 2129

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to procedure for post-acknowledgment change to local land use plans; creating new provisions; and amending ORS 197.254, 197.610, 197.615, 197.620, 197.625, 197.830, 215.427, 215.435, 227.178 and 227.181.

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

SECTION 1. ORS 197.610 is amended to read:

197.610. [(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 of the Department of Land Conservation and Development at least 45 days before the first evidentiary 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 notice shall include the date set for the first evidentiary hearing. 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 of Land Conservation and Development 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, the department shall notify the local government of:]

[(a) Any concerns the department has concerning the proposal; and]

[(b) Advisory recommendations on actions the department 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 Land Conservation and Development Commission on whether the director:]

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

[(b) Is participating in the local government proceeding.]

(1) Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.

(2) If a local government determines that emergency circumstances beyond the control of the local government require expedited review, the local government shall submit the proposed changes as soon as practicable, but may submit the proposed changes after the applicable deadline.

(3) Submission of the proposed change must include all of the following materials:

(a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;

(c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the proposed change;

(d) The date set for the first evidentiary hearing;

(e) The form of notice or a draft of the notice to be provided under ORS 197.763, if applicable; and

(f) Any staff report on the proposed change or information describing when the staff report will be available, and how a copy of the staff report can be obtained.

(4) The director shall cause notice of the proposed change to the acknowledged comprehensive plan or the land use regulation to be provided to:

(a) Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and

(b) Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.

(5) When a local government determines that the land use statutes, statewide land use planning goals and administrative rules of the commission that implement either the statutes or the goals do not apply to a proposed change to the acknowledged comprehensive plan and the land use regulations, submission of the proposed change under this section is not required.

(6) If, after submitting the materials described in subsection (3) of this section, the proposed change is altered to such an extent that the materials submitted no longer reasonably describe the proposed change, the local government must notify the Department of Land Conservation and Development of the alterations to the proposed change and provide a summary of the alterations along with any alterations to the proposed text or map to the director at least 10 days before the final evidentiary hearing on the proposal. The director shall cause notice of the alterations to be given in the manner described in subsection (4) of this section. Circumstances requiring resubmission of a proposed change may include, but are not limited to, a change in the principal uses allowed under the proposed change or a significant change in the location at which the principal uses would be allowed, limited or prohibited.

(7) When the director determines that a proposed change to an acknowledged comprehensive plan or a land use regulation may not be in compliance with land use statutes or the statewide land use planning goals, including administrative rules implementing either the

statutes or the goals, the department shall notify the local government of the concerns at least 15 days before the final evidentiary hearing, unless there is only one hearing or the proposed change has been modified to the extent that resubmission is required under subsection (6) of this section.

(8) Notwithstanding subsection (7) of this section, the department may provide advisory recommendations to the local government concerning the proposed change to the acknowledged comprehensive plan or land use regulation.

SECTION 2. ORS 197.615 is amended to read:

197.615. *[(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 of the Department of Land Conservation and Development 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. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.]*

[(2)(a) On the same day that the text and findings are mailed or delivered, 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) If delivered by mail, include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail;]

[(D) 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]

[(E) 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.]

(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the decision to the Director of the Department of Land Conservation and Development within 20 days after making the decision.

(2) The submission must contain the following materials:

(a) A copy of the signed decision, the findings and the text of the change to the comprehensive plan or land use regulation;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the map that is created or altered;

(c) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under ORS 197.610 and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and

(d) A statement by the individual transmitting the submission, identifying the date of the decision and the date of the submission.

(3) The director shall cause notice of the decision and an explanation of the requirements for appealing the land use decision under ORS 197.830 to 197.845 to be provided to:

(a) Persons that have requested notice of changes to the acknowledged comprehensive plan of the particular local government, using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method; and

(b) Persons that are generally interested in changes to acknowledged comprehensive plans, by posting notices periodically on a public website using the Internet or a similar electronic method.

(4) On the same day the local government submits the decision to the director, the local government shall mail, or otherwise deliver, notice to persons that:

(a) Participated in the local government proceedings that led to the decision to adopt the change to the acknowledged comprehensive plan or the land use regulation; and

(b) Requested in writing that the local government give notice of the change to the acknowledged comprehensive plan or the land use regulation.

(5) The notice required by subsection (4) of this section must state how and where the materials described in subsection (2) of this section may be obtained and must:

(a) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(b) List the locations and times at which the public may review the decision and findings; and

(c) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

SECTION 3. ORS 197.620 is amended to read:

197.620. (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 *[except where]* **unless** the amendment is necessary to address the requirements of a new or amended goal, rule or statute.

(2) *Notwithstanding the requirements of ORS 197.830 (2)[, the Director of the Department of Land Conservation and Development 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.]* **that a person have appeared before the local government orally or in writing to seek review of a land use decision, the Director of the Department of Land Conservation and Development or any other person may appeal the decision to the Land Use Board of Appeals if:**

(a) **The local government failed to submit all of the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced substantial rights of the Department of Land Conservation and Development or the person;**

(b) **Except as provided in subsection (3) of this section, the local government submitted the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline specified in ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Commission, whichever is applicable; or**

(c) **The decision differs from the proposed changes submitted under ORS 197.610 to such an extent that the materials submitted under ORS 197.610 do not reasonably describe the decision.**

(3) Subsection (2)(b) of this section does not authorize an appeal if the local government cures an untimely submission of materials as provided in this subsection. A local government may cure the untimely submission of materials by either:

(a) Postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or

(b) Holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. Additionally, the local government shall provide notice of the postponement or record extension to the Department of Land Conservation and Development.

SECTION 4. ORS 197.625 is amended to read:

197.625. *[(1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS 197.830 (9), 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 considered acknowledged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director of the Department of Land Conservation and Development and:]*

[(a) The 21-day appeal period has expired; or]

[(b) If an appeal is timely filed, 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)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.]

[(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.]

[(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.]

[(d) The provisions of this subsection apply to applications for land use decisions, expedited land divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan and land use regulation amendments adopted:]

[(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636;]

[(B) After June 1, 1991, to meet the requirements of ORS 197.646; and]

[(C) After November 4, 1993.]

[(4) 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 (9); or]

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

[(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five days of receiving a valid request from the local government.]

[(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the Land Conservation and Development Commission from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.]

(1) A local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615 and either:

(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) If the local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive plan or the land use regulation, as modified, is deemed to be acknowledged upon the date the decision of the board or the decision of an appellate court becomes final.

(3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a land use regulation:

(a) The change is effective at the time specified by local government charter or ordinance; and

(b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615, the local government shall apply the change to land use decisions, expedited land divisions and limited land use decisions unless a stay is granted under ORS 197.845.

(4) Approval of a land use decision, expedited land division or limited land use decision that is subject to an effective but unacknowledged provision of a comprehensive plan or a land use regulation must include findings of compliance with land use statutes, statewide land use planning goals and administrative rules of the Land Conservation and Development Commission implementing the statutes or goals that apply to the decision and that the unacknowledged provision implements.

(5) If an effective but unacknowledged provision of a comprehensive plan or a land use regulation fails to gain acknowledgment, a permit or zone change approved, in whole or in part, on the basis of the change does not justify retention of the improvements that were authorized by the permit or zone change.

(6) If requested by a local government, the Director of the Department of Land Conservation and Development shall issue certification of the acknowledgment upon receipt of an affidavit from:

(a) The local government, attesting that the change to the acknowledged comprehensive plan or the land use regulation was accomplished in compliance with ORS 197.610 and 197.615; and

(b) The Land Use Board of Appeals, stating either:

(A) That no notice of appeal was filed within the 21 days allowed under ORS 197.830 (9); or

(B) The date the decision of the board or the decision of an appellate court affirming the change to the acknowledged comprehensive plan or the land use regulation became final.

(7) The board shall issue an affidavit for the purposes of subsection (6) of this section within five days after receiving a valid request from the local government.

SECTION 5. Section 6 of this 2011 Act is added to and made a part of ORS 197.610 to 197.625.

SECTION 6. (1) Notwithstanding contrary provisions of state and local law, a local government that proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may take action to change the comprehensive plan or the land use regulation without holding a public hearing if:

(a) The local government gives notice to the Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615; and

(b) The department confirms in writing that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

(2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have appeared before the local government orally or in writing, a person that has not appeared may petition for review of the decision under subsection (1) of this section solely to determine whether the only effect of the local decision is to conform the comprehensive plan or the land use regulation to the new requirements.

SECTION 7. ORS 197.254 is amended to read:

197.254. (1) A state agency [*shall be*] **is** barred, after the date set for submission of programs by the Land Conservation and Development Commission as provided in ORS 197.180 (4), 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)*] **of a post-acknowledgement change under ORS 197.610 to 197.625 to a comprehensive plan or a land use regulation**, 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*] **is** barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or a 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*] **is** 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)*] **of a post-acknowledgement change under ORS 197.610 to 197.625 to a comprehensive plan or a land use regulation**, if the county or metropolitan service district assigned coordinative functions under ORS 195.025 (1) finds that:

(a) The special district has not entered into a cooperative agreement under ORS 195.020; 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 195.020.

(4) A special district [*shall be*] **is** barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or a 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.

SECTION 8. ORS 197.651 is added to and made a part of ORS 197.628 to 197.650.

SECTION 9. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited 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 or limited 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, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing 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) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided [*mailed*] notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives [*mailed*] notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the [*mailed*] notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives [*mailed*] notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited 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.

(6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections (3), (4) and (5) 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 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) 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.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) 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 and shall be accompanied by a filing fee of \$100.

(9) A notice of intent to appeal a land use decision or limited 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 notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a [*certificate of mailing with the notice mailed*] **statement identifying when, how and to whom notice was provided** under ORS 197.615 [*shall*] **does** not render the notice defective. 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 pro-

ceeding. 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 \$200 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 (10) and (11) 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.

(10)(a) 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; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) 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.

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

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(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 (9) of this section shall be applied to any costs charged against the petitioner.

(b) The board shall 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 in law or on factually supported information.

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

(17)(a) 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.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any 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.

SECTION 10. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (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), (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)]* **a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

(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 11. ORS 215.435 is amended to read:

215.435. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a county, the governing body of the county or its designee shall take final action on an application for a permit, limited land use decision or zone change within 90 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 90-day period established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand.

(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.

(3) The 90-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning *[an amendment to an acknowledged comprehensive plan or land use regulation or the 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]* **a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

SECTION 12. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (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)]* **a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

(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 13. ORS 227.181 is amended to read:

227.181. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 90 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the 90-day period established under this subsection shall not begin until final resolution of the judicial review.

(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand.

(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.

(3) The 90-day period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning [*an amendment to an acknowledged comprehensive plan or land use regulation or the 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*] **a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.**

SECTION 14. Section 6 of this 2011 Act and the amendments to ORS 197.254, 197.610, 197.615, 197.620, 197.625, 197.830, 215.427, 215.435, 227.178 and 227.181 by sections 1 to 4, 7 and 9 to 13 of this 2011 Act apply to proposed changes to an acknowledged comprehensive plan or a land use regulation that is first submitted to the Director of the Department of Land Conservation and Development on or after the effective date of this 2011 Act.

Passed by House April 26, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate May 26, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....
Kate Brown, Secretary of State

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Amendments to implement new laws regarding changes to comprehensive plans and land use regulations.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to implement new laws regarding changes to comprehensive plans and land use regulations.

Statutory Authority:

ORS 197.040

Other Authority:

Statewide Planning Goals (OAR 660, div 15)

Stats. Implemented:

ORS 197.610-197.625; Oregon Laws 2011, chapter 280

Need for the Rule(s):

The proposed amendments would modify rules pertaining to notice of changes to acknowledged comprehensive plans and land use regulations and related topics. The proposed amendments, including the repeal of two rules, are needed in order to implement new laws (Oregon Laws 2011, chapter 280) regarding changes to comprehensive plans and land use regulations and are needed in order to conform existing rules to these new laws.

The Commission may consider other minor and technical amendments to rules in the divisions specified above based on testimony and comments received during the public comment period, and may adopt amendments to these divisions that may be proposed during the public comment period.

Documents Relied Upon, and where they are available:

ORS 195.137-195.145; Statewide Planning Goals (OAR 660, division 15) - available from agency.

Fiscal and Economic Impact:

Statutory provisions (ORS 183.335(2)(b)(E) and (G), 183.540) require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business:

The proposed amendments will not have economic affects on business because the proposed amendments will generally conform existing rules to new statutes. The department cannot propose alternative rules that would achieve the underlying lawful governmental objective because the proposal is necessary to implement new laws. The proposed rule amendments apply only to notices concerning local plan and code amendments and are not substantially different than existing requirements, As such, economic and property interests will not be affected.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534). The proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (See ORS 183.534). The Housing Cost Impact Statement is attached and is incorporated into this statement by this reference.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments carry out new provisions that are substantially the same as existing provisions.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The rules subject to this rulemaking will not affect small businesses throughout the state because the rules apply to local government notices of local government actions.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The department receives notices required by these rules, and monitors plan and zoning amendments. These rule amendments will not substantially change current department procedures regarding the notice process, and no professional service costs are anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.

How were small businesses involved in the development of this rule?

If not, why?:

Because these amendments primarily concern implementation of technical amendments to an existing statute regarding notice procedures, and because those procedures concern local governments rather than small businesses, the department did not consult with small businesses.

Statutory provisions (ORS 197.040) also require the agency to "Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact." These requirements "shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

Economic interests and property owners will not be affected by the amended rules for the same reasons described above for small businesses.

Administrative Rule Advisory Committee consulted?: No

For the same reasons provided above concerning small business involvement.

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| <u>12-08-2011 Close of Hearing</u> | <u>Casaria Tuttle</u> | <u>casaria.r.tuttle@state.or.us</u> | <u>10-14-11 2:53 PM</u> |
| Last Day (m/d/yyyy) and Time for public comment | Printed Name | Email Address | Date Filed |

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007