



# Oregon

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January 10, 2011

TO: Land Conservation and Development Commission  
FROM: Richard Whitman, Director  
SUBJECT: **Agenda Item 6, January 12-13, 2011, LCDC Meeting**

## DIRECTOR'S REPORT

### I. INFORMATION UPDATES

#### A. PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS

ORS 197.090(2) requires the Director of the Department of Land Conservation and Development (DLCD) to report to the Land Conservation and Development Commission (the commission or LCDC) on each appellate case in which the department participates, and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires LCDC to review recent Land Use Board of Appeals (LUBA) and appellate court decisions to determine whether goal or rule amendments are needed.

#### 1. Department participation in appeals

Between November 16, 2010, and December 15, 2010, the department received copies of 5 notices of appeal filed with LUBA. The department filed none of these notices.

#### 2. LUBA opinions

Between November 16, 2010, and December 15, 2010, the department received copies of 10 recently issued LUBA opinions. Of these, LUBA dismissed 4, remanded 4, reversed 0, affirmed 2, invalidated no local decisions, and transferred no petitions to circuit court.

Three decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule:

- Friends of Yamhill County, et al v. City of Newberg, LUBA No. 2010-034, decision issued November 8, 2010: **OAR 660-008-0005(2) & (6), OAR 660-008-0010, ORS 197.307(3)(a)**,

**OAR 660-024-0030, ORS 195.034, OAR 660-024-0040(1) & (4), OAR 660-024-0050(1), and ORS 197.296:** LUBA remanded Newberg's revised comprehensive plan *housing element* for 4 reasons: (1) The city excluded floodplains from its buildable lands inventory without explaining why needed *park uses* could not be developed *in floodplains*; (2) A letter from Yamhill County agreeing with the city's proposed population forecast number did not constitute city and county adoption of a coordinated *population forecast* consistent with state law; (3) An explanation is required so that LUBA can understand how the city calculated *residential land need*; and (4) The *exclusion of land from the BLI* based on topography, location of buildings, and access is not supported by an adequate factual base. This decision also is addressed below, in a recommendation from the department that the commission consider rulemaking to clarify some of the issues raised.

- Rudell and Rudell v. City of Bandon, LUBA No. 2010-037, decision issued November 29, 2010: **Goal 10, Goal 18, ORS 197.303, and ORS 197.307(6):** DLCD intervened in this appeal of the city's denial of a conditional use permit to develop a single-family dwelling in the Controlled Development (CD-2) zone and Shoreland Overlay (SO) zone. LUBA remanded because: (1) The city's conclusion that the entire property is located on a foredune is not adequately supported; (2) The city's code criterion that geology and hydrology reports demonstrate that "it is safe to build" a single-family dwelling, which is "needed housing," is not clear and objective; (3) the same reasoning applies to the city's conclusion that the property is "unbuildable"; (4) the purpose of the CD-2 zone is not an approval criterion that can provide a basis for denial of the application; and (5) the zoning provision that allows single family dwellings in the CD-2 zone is not an independent approval criterion and does not provide an independent basis to deny the application.
- Devin Oil Co., Inc. v. Morrow County, LUBA Nos. 201-044 & 2010-046, decision issued November 19, 2010: **Goal 3, Goal 14, OAR 660-004-0018(4), OAR 660-004-0020, OAR 660-004-0022, OAR 660-014-0040, and OAR 660-012-0060(1) & (2):** LUBA remanded the county's approval of a reasons *exception to Goal 3* under the criteria in OAR 660-004-0020 and 660-004-0022, a reasons *exception to Goal 14* under the criteria in OAR 660-014-0040, plan text and map and zoning map amendments from industrial to tourist commercial, and a conditional use permit, in order to authorize truck and auto fueling stations, a convenience store, a restaurant, and a tire changing facility at the junction of ***I-84 and Tower Road*** on land within the Airport Approach Overlay zone for the Boardman Airport and 5 miles from Boardman's UGB. Key holdings: (1) Conditional zoning is not a method permitted in the county code to ensure that use of the property is limited to the uses justified in the exception. (2) The county's finding that the TPR is not triggered because the zone change will not significantly affect any transportation facility is not supported by substantial evidence.

The department believes that the commission should consider amendments to OAR 660, division 8 and/or division 24 rule amendments as a result of the Newberg decision. The department makes this recommendation for the following reasons:

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- 1) In DLCD v. McMinnville, LUBA No. 2001-03 (2001), LUBA agreed with the department that the current OAR 660-008-0005(4) (c) requirement that a housing needs projection must be consistent with Goal 14, means that local governments must proceed to address a residential land need deficiency at the same time the deficiency is identified; *i.e.*, adopt efficiency measures to reasonably accommodate need in the existing UGB, and, if a need still remains, expand the UGB. However, in GMK Development v. City of Madras, 225 Or App 1 (2008), LUBA (and the Court of Appeals) took a different approach. In cities with a population below 25,000 LUBA stated that cities do not have to address an identified housing need or residential land need at the time the housing need analysis is adopted (based on their reasoning that this form of concurrency is required only under ORS 197.296 (which only applies to cities larger than 25,000)).<sup>1</sup> In Newberg, which has a population of less than 25,000, the petitioners argued that division 8 and ORS 197.307(3) (a)<sup>2</sup> require Newberg to take action to address its identified housing needs at the time it adopts the need analysis. LUBA rejected petitioners' argument, relying on the reasoning of the Madras decisions. The department believes that the Madras decision is not consistent with the commission's intent, and that allowing cities to avoid addressing their housing needs indefinitely is contrary to other commission and legislative policy.
- 2) An LCDC rule, OAR 660-024-0050(4), which applies to *all* local governments and not just those under 25,000, contradicts the Court's opinion. That rule states:

If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local

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<sup>1</sup> "...[W]here ORS 197.296 does not apply, Goal 10 and its implementing statute and rules do not require the city to concurrently address a current, unmet need for more affordable housing when it conducts an evaluation of its residential land needs."

"[i]f Goal 10 already obligates local governments to amend urban growth boundaries to accommodate projected housing needs, as petitioners suggest, then ORS 197.296 is completely unnecessary and, in fact, a redundancy. \*\*\* The fact that the legislature enacted ORS 197.296 strongly suggests that the existing regulatory framework was understood *not* to impose the requirements that the petitioners now contend that it independently does. Moreover, the fact that the legislature expressly provided that the requirements of ORS 197.296(6) apply only to cities with population of 25,000 or more apply only to cities with a population of 25,000 or more strongly suggests that the same requirements [do] *not* apply to cities with smaller populations."

<sup>2</sup> "197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings.

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(3)(a) ***When a need has been shown*** for housing within an urban growth boundary at particular price ranges and rent levels, needed housing, including housing for farmworkers, shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones ***with sufficient buildable land to satisfy that need.***" (emphasis added)

government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and OAR 660-024-0060.

- 3) There is a long history of commission interpretation of Goal 10 that the Madras and Newberg decisions may overturn. For example, the Happy Valley acknowledgment enforcement order required that city to immediately allow needed housing types under clear and objective standards. That order also included unprecedented enforcement order remedies that required local land use approval of building permits. The department believes that the Happy Valley order would not have been upheld if Goal 10 did not require that a needed housing deficiency be addressed at the time it is identified, rather than in the indefinite future.
- 4) In a number of situations in recent years, the department has been concerned that cities that adopt a housing needs analysis before they determine how to address those needs are creating a more complicated, costly and time-consuming process than is necessary or desirable. By separating these two phases of a UGB amendment, with the first phase reviewed by LUBA and the second by LCDC, the city creates multiple appeals with potential conflicting results. Ultimately, the commission will review the housing needs analysis at the time it reviews any UGB amendment (for a city larger than 2,500 and an amendment of greater than 50 acres). Nevertheless, some cities continue this practice.
- 5) If a plan is initially adopted or amended with a clear analysis and statement of a housing need deficiency, Goal 10 and Goal 2 have historically required that the need be rectified as part of the plan adoption or amendment, because compliance with all of the goals is required at that time. This interpretive history may not have been adequately argued by the petitioners.

The department sees three options:

1. Urge cities to adopt housing needs analyses at the same time that they adopt a UGB expansion decision.
2. File a brief in a subsequent case and seek a different interpretation from LUBA;
3. Consider rulemaking to clarify division 8 and/or division 24 rules at the time the commission's policy agenda is revised in June – August of this year.

### **3. Appellate court opinions**

Between November 16, 2010, and December 15, 2010, the department received 4 copies of recently-issued opinions from the Court of Appeals, and one copy of a recent opinion from the Oregon Supreme Court.

- Foland v. Jackson County and ODOT, LUBA Nos. 2009-109, 2009-112 & 2009-113; Court of Appeals No. CA A145890, decision issued November 24, 2010: **Goal 3, Goal 11 and Goal 14, OAR 660-011-0060, and OAR 660-011-0065**: The Court affirmed LUBA's remand of the county's approval, based on exceptions to Goals 3 and 14, of an ODOT I-5 rest area welcome center on EFU land 500 feet from the south boundary of Ashland's UGB. The

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court agreed with LUBA and petitioners that Goal 11 prohibits the extension of city water services to serve an urban use on rural land without a Goal 11 exception. **NOTE: This opinion liberally interprets Goal 11 and its rules, which expressly prohibit the extension of sanitary sewer service outside a UGB.**<sup>3</sup>

- Columbia Riverkeeper, et al v. Clatsop County, LUBA No. 2009-100, Court of Appeals No. CA A145336, decision issued November 3, 2010: **Goals 16 & 17, OAR 660-017-0015(4) and 660-017-0025(3)(b)**: This is the 3<sup>rd</sup> appeal of county approval of the Bradford Landing liquefied natural gas terminal and pipeline. The Court affirmed LUBA's 2<sup>nd</sup> remand.
- Siporen, et al v. City of Medford and Wal-Mart Stores, Inc., LUBA No. 2008-185, Court of Appeals No. CA A142541, Supreme Court No. SC SO58025, decision issued November 18, 2010: **Goal 12**: The Court affirmed the Court of Appeals' reversal of LUBA's remand of county approval of a site plan and architectural review for a Wal-Mart store. The city's interpretation of its code regarding the level of traffic impact analysis required was plausible and therefore must be accepted.

## **B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS**

The department sent reminder letters to successful recipients of Planning Assistance grant awards requesting closeout accountings of grants to small cities and counties. Many recipients responded before the end of the year; to date it appears that the investment has resulted in many positive benefits for Oregon communities.

Recipients of larger technical assistance and periodic review grants are also working to complete work under grant contracts before the May 31 submittal deadline. DLCD staff, including

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<sup>3</sup> Here is the Court's reasoning: "[W]ith regard to water systems, the goal and the pertinent rule, OAR 660-011-0065(2), do not, as a general matter, categorically prohibit the establishment or extension of water systems to serve land outside of a UGB. \*\*\* [T]he *goal and the rule are silent* as to whether *Goal 11's underlying objectives* permit the extension of water systems to rural lands to serve a non-residential urban use without an exception." Citing its decision in Gisler v. Deschutes County, 149 Or App 528 (1997), which cited 1000 Friends of Oregon v. Curry County, 301 Or 447 (1986), the Court went on to state: "[W]e concluded [in Gisler] that 'the requirements of Goal 11 go well beyond' the limitations on sewer and water systems and that *more generally Goal 11* 'regulates the location, pace and direction of residential and other development, and it *limits* – and requires coordination between – *the placement of urban-level development and urban-level services and facilities on rural land.*' \*\*\* we reasoned that a proper understanding of Goal 11 required that we look at the goal in its entirety rather than with a view only to the particular proscriptions concerning water and sewer systems." In Foland, the Court went on to agree with LUBA that "the history of the enactment of that rule [OAR 660-011-0065(2)] indicates that *LCDC did not intend* to address the universe of concerns under Goal 11 in enacting the rule, or *to in all circumstances allow* a water system to serve non-residential urban uses on rural land without an exception to Goal 11. \*\*\* '[W]here an exception to Goal 14 is required in order to site an urban use on rural land, a corresponding exception to Goal 11 will be required [for] \*\*\* the provision of public sewage facilities and services \*\*\* and to extend water service.'" The Court also relied on the 1998 DLCD staff report for adoption of the division 11 rules: "The other general requirements of Goal 11, especially the definitions of rural facilities and services, *could be interpreted to mean that water systems to serve rural areas are inappropriate in some circumstances.* That question is not addressed by this report." (emphasis added)

individual grant managers, will continue to work closely with grant recipients through the remainder of the biennium.

## **II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES**

### **A. COASTAL MANAGEMENT PROGRAM**

The department's coastal staff played a major role in the December meeting of the Ocean Policy Advisory Council (OPAC) during which the OPAC approved the area designations for three marine reserves (Cape Falcon, Cascade Head, and Cape Perpetua) and approved a recommendation by Paul Klarin, Marine Affairs Coordinator, to start the next round of advisory committee work on the plan for ocean alternative energy. Andy Lanier and Tanya Haddad provide critical information and GIS assistance to the Department of Fish and Wildlife, Andy also provided staff support before and during the meeting, and Lorinda DeHaan provided critical administrative and logistical support.

Coastal staff continue to monitor several coastal erosion situations, including one at the southern edge of Gold Beach where, first, the mouth of Hunter Creek swung north in early summer and removed a sand dune in front of the Sebastian Shores development and second, the mouth of the creek has subsequently moved south but the absence of any dune means that ocean run-up is now lapping at the edge of the development. The department, in a 2005 letter from then-Director Shetterly to the City of Gold Beach, warned against this very thing happening and advising that the development would not qualify for rip-rap or other shorefront protective structure. The State Parks Department is now involved because rocks from the development are a safety hazard and are not permitted on the beach. Several property owners recently filed a multi-million dollar lawsuit against the project developers.

Tanya Haddad, coastal information technology specialist, recently spent three days at Woods Hole Oceanographic Institution at the invitation of the NOAA Coastal Services Center to assist in developing data standards to support a national system of marine spatial planning as directed by the Presidential Executive Order of July 2010 for a National Ocean Policy.

Dale Blanton, coastal policy analyst, continues to be very involved in discussions with the Corps of Engineers and other agencies about sediment management at the mouth of the Columbia River and the need to replenish the sediment supply in the nearshore area south of the south jetty of the river.

### **B. MEASURE 49**

The Measure 49 division is down to a few staff, work having been completed on all claims under Measure 49, including HB 3225. A small amount of work remains on claims allowed under SB 1049. Remaining staff have been working on organizing records, providing litigation support, and completing a significant report on the effects of Measures 37 and 49 (see agenda item 14).

### **C. COMMUNITY SERVICES AND PLANNING SERVICES**

Jon Jinings and Karen Swirsky continue to work with staff and consultants with the City of La Pine on its acknowledgment review submission. Similarly, Jennifer Donnelly continues to work with the City of Damascus on its most recent acknowledgment review submission.

Staff from both divisions have also been working on the remand of the City of Woodburn's UGB expansion (agenda item 4), Rogue Valley RPS, and several other items that likely will come before the commission in the near future.

### **D. DIRECTOR'S OFFICE**

In addition to the various policy matters addressed below, activities in the director's office during November and December included:

Week of November 22 – SB 1059 Management Steering Committee; meeting with representatives of the City of Springfield regarding their 2030 Refinement Plan; state agency directors meeting; meeting with Portland State University regarding the Urban Forum; Natural Resources Cabinet.

Week of November 29 – League of Oregon Cities Transportation Committee regarding SB 1059 financing; meeting with natural resource agencies regarding budget; meetings with various groups regarding legislative concepts and priorities; legislative workgroup on economic development (presentation on Goal 9); DLCD's rural team meeting; LCDC meeting.

Week of December 6 – Governor's agency advisors; SB 1059 committee roles and responsibilities; TPR/OHP subcommittee preparation meeting; meeting with Oregon AFSCME; meeting of state agency directors; attended farewell reception for Metro Councilor Rod Park; interviewed on OPB's Think Out Loud program on climate change; Natural Resources Cabinet; ERT Directors annual meeting with the City of Salem; DLCD joint Planning Services and Community Services Division meeting on work priorities; DLCD all-staff meeting; presentation on climate change adaptation framework to the Environmental Quality Commission; presentation at the Oregon Land Use Law Conference.

Week of December 13 – Participated in Oregon Business Summit; presentation on climate change adaptation framework to House Environment and Water Committee, and Senate Environment and Natural Resources (plus an update on the destination resorts work group to the senate committee); legislative workgroup on economic development; Destination Resorts work group; meeting with Representative Cowan regarding flood insurance program; natural resource agencies budget meetings; senior staff meeting with ODOT, OBDD and DLCD; SB 1059 Management Steering Committee.

Week of December 20 – Meeting with the City of Damascus; Target Rulemaking Advisory Committee; natural resource agencies budget meeting; meeting with Commissioner Worrix; legislative workgroup on economic development.

Week of December 27 – Meeting with Governor Kulongoski regarding marine spatial planning and the Territorial Sea Plan, meetings of a subgroup of the legislative workgroup on economic development.

#### **E. OPERATIONS SERVICES**

The Operations Services fiscal team continues preparing for implementation of GASB 54 (fund balance reporting requirements) and upcoming calendar and biennium year-end activities which roll into the state's Comprehensive Annual Financial Report (CAFR) and the Schedule of Expenditures of Federal Awards (SEFA) report.

The budget officer is working with the director's office and the operations services manager in continuing to ensure financial reporting accountability. Division managers continue their critical roles in ensuring timely expenditure projections. The department continues to await results from its DAS/Budget and Management appeal hearing. Additional budget development will continue throughout the winter and during the next legislative session. A Governor's Recommended Budget will likely occur in January/February 2011.

The information technology unit continues working with department management in evaluating and determining current and future technological needs for the department. The management team has approved the use of Skype to increase teleconferencing capacity for department staff. Roll-out of this new, free technology will occur in the coming months.

### **III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION**

#### **A. NEW STAFF AND PROMOTIONS**

No new staff or promotions.

#### **B. DEPARTING EMPLOYEES**

Nicole Kielsmeier, Program Analyst 2 in the M49 Division, accepted a new position with Oregon Housing and Community Services starting on December 8th. We appreciate all her work with Measure 37 and Measure 49, and wish her the best in her new position.

Kristin May, who has been serving as the M49 Division Manager, will be completing her limited duration assignment effective January 31st. We wish her the best on her next endeavors.

Jan Devito, Administrative Support Specialist in the Planning Services Division, is retiring January 31, 2011. Jan has worked for the State of Oregon for over 13 years, including almost six years at DLCD.

Gail Churchill, Procurement and Contracts Specialist in the Operations Services Division, also is retiring effective January 31, 2011. Gail has worked for DLCD for over seven years

Meg Fernekees, Planner 3 in the Community Services Division, resigned effective January 4, 2011.

### **C. RECRUITMENTS**

The department is currently recruiting for a half-time procurement and contracts specialist to replace Gail Churchill.

## **IV. LCDC POLICY AND RULEMAKING UPDATES**

### **A. LEGISLATION**

DAS and the Governor's office filed the department's four legislative concepts on December 15. These concepts were developed with small workgroups last spring and summer. Some of the final LC drafts need additional work, and the department is arranging a meeting with a broader set of stakeholders to help in the final shaping of the bills. The current LC drafts are attached.

### **B. POLICY AGENDA UPDATE**

The policy agenda provides that two coastal-related rulemakings should be complete this biennium (June 30):

- **Territorial Sea:** Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments were approved November 2009; map amendments are still in progress and will be scheduled for commission action about December 2011.
- **Federal Consistency rules:** Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act to address changes to NOAA federal consistency rules and other changes that have occurred since the last (1988) update of division 35. The department anticipates this rulemaking will be completed about July of 2011.

In summary, certain elements of these rulemakings, which were scheduled under the commission's Policy Agenda for the 2009-2011 biennium, cannot be completed this biennium.

### **C. CURRENT RULEMAKING**

Willamette River Greenway Plan – At the time of this report, the department has begun contacting prospective Rules Advisory Committee members. Appointment of a hearings officer is on the commission's business agenda for this meeting (see Item 7b).

Solar Energy Facilities on Agricultural Lands – Commissioners Jenkins and Pellet will give a short verbal update on this rulemaking.

Irrigation Reservoirs on Agricultural Lands – Commissioner Jenkins and Director Whitman will give a short verbal update on this rulemaking.

**D. OTHER POLICY ACTIVITIES**

Urban Forum – In adopting its 2009-2011 Policy Agenda, LCDC directed the department to organize an urban land use forum to address several fundamental aspects of Oregon’s land use planning program, and to develop consensus recommendations for updating the program. The three topics currently included in this effort concern (1) the use of population estimates in land use and transportation planning, (2) public facility finance and planning issues facing local governments, and (3) urban growth boundary amendment policies, procedures and requirements, including timelines and effectiveness. In November and December the director, Bob Rindy, Jim Rue and Darren Nichols met with PSU and the Consensus Center to explore potential university participation in this effort. That meeting also included an informal review of a draft “white paper” on population forecasting prepared by the department. The department has tentatively targeted late Spring of 2011 for initiation of the policy forum regarding population forecasting. PSU and the Consensus Center have agreed to participate in and assist the department with the forum and to coordinate student projects to help with the forum.

**V. ATTACHMENTS**

A. Legislative Concepts



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## HOUSE BILL 2129

**What the measure does:** Streamlines Post-Acknowledgement Plan Amendment Procedures

**Background:** When local governments change their land use plans or zoning requirements, they must be “acknowledged” as meeting state land use planning requirements. This normally happens automatically, if no appeal is filed with the state Land Use Board of Appeals. When local governments amend their plans or zoning, state law requires various types of notice so that citizens and others may participate in the local amendment process. ORS 197.610 - 197.625 requires local governments to send proposed amendments to the Department of Land Conservation and Development (DLCD). DLCD serves as a “clearing house” -- providing these notices to the public. In addition, subject to available resources, DLCD reviews proposed amendments and provides advice and comments to local governments.

The notice process has not been reviewed in many years. Legal decisions have elaborated on the statutory requirements in ways that are not necessarily known to most citizens and many local governments. As a result, the current notice system is not transparent to most. For local governments, this means that their changes to plans and zoning requirements often may be sent back for procedural errors, resulting in unnecessary delay and frustration. 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.

A related problem is that local governments are regularly required to amend their comprehensive plan and land use regulations to conform to changes in state statutes or rules. The current system does not function well when local amendments are required by the state (and there is no ability to alter the requirements at the local level).

**Solution:** LC 492 clarifies 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 proposed measure 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 proposal would clarify what happens when a local government makes a major change to a proposed plan or zoning amendment (often in response to citizen input).

As to state-required changes, the proposed legislation would allow (but not require) local governments to adopt conforming amendments to local codes in response to new state laws without holding a public hearing; reducing costs and avoiding confusion about whether local government has discretion to make changes in such cases.

**Contact:** Richard Whitman, DLCD Director (503) 373-0050 Ext 280; Bob Rindy, DLCD Legislative Coordinator (503) 373-0050 Ext 229.

# D R A F T

## SUMMARY

Modifies process for local government to make post-acknowledgment changes to comprehensive plans and land use regulations.

### A BILL FOR AN ACT

1  
2 Relating to procedure for post-acknowledgment change to local land use  
3 plans; creating new provisions; and amending ORS 197.254, 197.610,  
4 197.615, 197.620, 197.625, 197.649, 197.830, 215.427, 215.435, 227.178 and  
5 227.181.

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

7 **SECTION 1.** ORS 197.610 is amended to read:

8 197.610. *[(1) A proposal to amend a local government acknowledged com-*  
9 *prehensive plan or land use regulation or to adopt a new land use regulation*  
10 *shall be forwarded to the Director of the Department of Land Conservation and*  
11 *Development at least 45 days before the first evidentiary hearing on adoption.*  
12 *The proposal forwarded shall contain the text and any supplemental informa-*  
13 *tion that the local government believes is necessary to inform the director as*  
14 *to the effect of the proposal. The notice shall include the date set for the first*  
15 *evidentiary hearing. The director shall notify persons who have requested no-*  
16 *tice that the proposal is pending.]*

17 *[(2) When a local government determines that the goals do not apply to a*  
18 *particular proposed amendment or new regulation, notice under subsection (1)*  
19 *of this section is not required. In addition, a local government may submit an*  
20 *amendment or new regulation with less than 45 days' notice if the local gov-*  
21 *ernment determines that there are emergency circumstances requiring expedited*

1 review. In both cases:]

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

4 [(b) Notwithstanding the requirements of ORS 197.830 (2), the director or  
5 any other person may appeal the decision to the board under ORS 197.830 to  
6 197.845.]

7 [(3) When the Department of Land Conservation and Development partic-  
8 ipates in a local government proceeding, at least 15 days before the final  
9 hearing on the proposed amendment to the comprehensive plan or land use  
10 regulation or the new land use regulation, the department shall notify the local  
11 government of:]

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

13 [(b) Advisory recommendations on actions the department considers neces-  
14 sary to address the concerns, including, but not limited to, suggested cor-  
15 rections to achieve compliance with the goals.]

16 [(4) The director shall report to the Land Conservation and Development  
17 Commission on whether the director:]

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

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

20 **(1) Before the governing body of a local government adopts a**  
21 **change, including additions and deletions, under ORS 197.610 to 197.625**  
22 **to an acknowledged comprehensive plan or a land use regulation, the**  
23 **local government shall submit the proposed change to the Director of**  
24 **the Department of Land Conservation and Development. The Land**  
25 **Conservation and Development Commission shall specify, by rule, the**  
26 **deadline for submitting particular types of proposed changes, but in**  
27 **all cases the proposed change must be submitted at least 20 days be-**  
28 **fore and not more than 35 days before the local government holds the**  
29 **first evidentiary hearing on adoption of the proposed change.**

30 **(2) Submission of the proposed change must include all of the fol-**  
31 **lowing materials, if applicable:**

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

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

5 (c) A brief narrative summary of the proposed change and all sup-  
6 plemental information that the local government determines may be  
7 useful to inform the director and members of the public of the effect  
8 of the proposed change;

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

10 (e) The notice provided under ORS 197.763; and

11 (f) The staff report on the proposed change or information describ-  
12 ing when the staff report will be available, and how a copy of the staff  
13 report can be obtained.

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

17 (a) Persons that have requested notice of changes to the acknowl-  
18 edged comprehensive plan of the particular local government, using  
19 electronic mail, electronic bulletin board, electronic mailing list server  
20 or similar electronic method; and

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

24 (4) When land use statutes, statewide land use planning goals and  
25 administrative rules of the commission that implement either the  
26 statutes or the goals do not apply to a proposed change to the ac-  
27 knowledged comprehensive plan and the land use regulations, sub-  
28 mission of the proposed change under this section is not required.

29 (5) If, after submitting the materials described in subsection (2) of  
30 this section, the proposed change is altered to such an extent that the  
31 materials submitted no longer reasonably describe the proposed

1 change, the local government must resubmit the proposed change and  
2 the materials described in subsection (2) of this section to the director  
3 at least 10 days before the final evidentiary hearing on the proposal.  
4 The director shall cause notice of the resubmitted proposed change to  
5 be given in the manner described in subsection (3) of this section.  
6 Circumstances requiring resubmission of a proposed change include,  
7 but are not limited to, a change in the principal uses allowed under  
8 the proposed change or a significant change in the location at which  
9 the principal uses would be allowed, limited or prohibited.

10 (6) If a local government does not submit all of the applicable ma-  
11 terials described in subsection (2) of this section or submits the ma-  
12 terials after the deadline specified in subsection (1) or (5) of this  
13 section or in rules of the commission:

14 (a) The local government shall submit the materials as soon as  
15 practicable, but not later than the deadline specified in ORS 197.615 (1);  
16 and

17 (b) Notwithstanding the requirements of ORS 197.830 (2) that a  
18 person have appeared before the local government to seek review by  
19 the Land Use Board of Appeals of the decision, the director or any  
20 other person may appeal the land use decision under ORS 197.830 to  
21 197.845.

22 (7) When the Department of Land Conservation and Development  
23 determines that a proposed change to an acknowledged comprehensive  
24 plan or a land use regulation may not be in compliance with land use  
25 statutes or the statewide land use planning goals, including adminis-  
26 trative rules implementing either the statutes or the goals, the de-  
27 partment shall notify the local government of the concerns within 15  
28 days after the date on which the local government submitted the ma-  
29 terials described in subsection (2) of this section, unless the proposed  
30 change has been modified to the extent that resubmission is required  
31 under subsection (5) of this section.

1       **(8) Notwithstanding subsection (7) of this section, the department**  
2       **may provide advisory recommendations that the department considers**  
3       **desirable on a proposed change to the acknowledged comprehensive**  
4       **plan or a land use regulation.**

5       **SECTION 2.** ORS 197.615 is amended to read:

6       197.615. *[(1) A local government that amends an acknowledged comprehen-*  
7       *sive plan or land use regulation or adopts a new land use regulation shall*  
8       *mail or otherwise submit to the Director of the Department of Land Conser-*  
9       *vation and Development a copy of the adopted text of the comprehensive plan*  
10       *provision or land use regulation together with the findings adopted by the lo-*  
11       *cal government. The text and findings must be mailed or otherwise submitted*  
12       *not later than five working days after the final decision by the governing body.*  
13       *If the proposed amendment or new regulation that the director received under*  
14       *ORS 197.610 has been substantially amended, the local government shall*  
15       *specify the changes that have been made in the notice provided to the director.*  
16       *If the text and findings are mailed, they shall include a signed statement by*  
17       *the person mailing them indicating the date of deposit in the mail.]*

18       *[(2)(a) On the same day that the text and findings are mailed or delivered,*  
19       *the local government also shall mail or otherwise submit notice to persons*  
20       *who:]*

21       *[(A) Participated in the proceedings leading to the adoption of the amend-*  
22       *ment to the comprehensive plan or land use regulation or the new land use*  
23       *regulation; and]*

24       *[(B) Requested of the local government in writing that they be given such*  
25       *notice.]*

26       *[(b) The notice required by this subsection shall:]*

27       *[(A) Describe briefly the action taken by the local government;]*

28       *[(B) State the date of the decision;]*

29       *[(C) If delivered by mail, include a certificate of mailing containing a*  
30       *statement signed by the person mailing it indicating the date the notice was*  
31       *deposited in the mail;]*

1        *[(D) List the place where and the time when the amendment to the ac-*  
2 *knowledged comprehensive plan or land use regulation or the new land use*  
3 *regulation, and findings, may be reviewed; and]*

4        *[(E) Explain the requirements for appealing the action of the local govern-*  
5 *ment under ORS 197.830 to 197.845.]*

6        *[(3) Not later than five working days after receipt of an amendment to an*  
7 *acknowledged comprehensive plan or land use regulation or a new land use*  
8 *regulation submitted under subsection (1) of this section, the director shall*  
9 *notify by mail or other submission any persons who have requested notifica-*  
10 *tion. The notice shall:]*

11        *[(a) Explain the requirements for appealing the action of the local govern-*  
12 *ment under ORS 197.830 to 197.845; and]*

13        *[(b) List the locations where the comprehensive plan or land use regulation*  
14 *amendment or new land use regulation may be reviewed.]*

15        **(1) When the governing body of a local government adopts a pro-**  
16 **posed change under ORS 197.610 to 197.625 to an acknowledged com-**  
17 **prehensive plan or a land use regulation, the local government shall**  
18 **submit the decision of the governing body to the Director of the De-**  
19 **partment of Land Conservation and Development within 20 days after**  
20 **the governing body makes the decision.**

21        **(2) The submission must contain the following materials, if appli-**  
22 **cable:**

23        **(a) A copy of the signed decision and the findings of the governing**  
24 **body, and the text of the change to the comprehensive plan or land**  
25 **use regulation implementing the plan;**

26        **(b) A copy of a comprehensive plan map or zoning map that is**  
27 **created or altered by the change;**

28        **(c) A brief narrative summary of the decision of the governing**  
29 **body, including a summary of substantive differences from the pro-**  
30 **posed change submitted under ORS 197.610 and the supplemental in-**  
31 **formation that the local government determines may be useful to**

1 **inform the director or members of the public of the effect of the actual**  
2 **changes; and**

3 **(d) A statement by the individual transmitting the submission,**  
4 **identifying the date of the decision of the governing body and the date**  
5 **of the submission.**

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

9 **(a) Persons that have requested notice of changes to the acknowl-**  
10 **edged comprehensive plan of the particular local government, using**  
11 **electronic mail, electronic bulletin board, electronic mailing list server**  
12 **or similar electronic method; and**

13 **(b) Persons that are generally interested in changes to acknowl-**  
14 **edged comprehensive plans, by posting notices periodically on a public**  
15 **website using the Internet or a similar electronic method.**

16 **(4) On the same day the local government submits the decision of**  
17 **the governing body to the director, the local government shall mail,**  
18 **or otherwise deliver, notice to persons that:**

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

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

25 **(5) The notice required by subsection (4) of this section must con-**  
26 **tain the materials described in subsection (2) of this section and must:**

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

30 **(b) List the locations and times at which the public may review the**  
31 **decision and findings of the governing body; and**

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

3       **SECTION 3.** ORS 197.620 is amended to read:

4       197.620. *[(1) Notwithstanding the requirements of ORS 197.830 (2), persons*  
 5 *who participated either orally or in writing in the local government pro-*  
 6 *ceedings leading to the adoption of an amendment to an acknowledged com-*  
 7 *prehensive plan or land use regulation or a new land use regulation may*  
 8 *appeal the decision to the Land Use Board of Appeals under ORS 197.830 to*  
 9 *197.845. A decision to not adopt a legislative amendment or a new land use*  
 10 *regulation is not appealable except where the amendment is necessary to ad-*  
 11 *dress the requirements of a new or amended goal, rule or statute.]*

12       *[(2) Notwithstanding the requirements of ORS 197.830 (2), the Director of*  
 13 *the Department of Land Conservation and Development or any other person*  
 14 *may file an appeal of the local government's decision under ORS 197.830 to*  
 15 *197.845, if an amendment to an acknowledged comprehensive plan or land use*  
 16 *regulation or a new land use regulation differs from the proposal submitted*  
 17 *under ORS 197.610 to such a degree that the notice under ORS 197.610 did*  
 18 *not reasonably describe the nature of the local government final action.]*

19       **(1) A decision by a governing body of a local government not to take**  
 20 **action on a proposal to adopt a legislative amendment to the ac-**  
 21 **knowledged comprehensive plan or a land use regulation is not subject**  
 22 **to appeal unless the legislative amendment is necessary to address a**  
 23 **new requirement in a land use statute, statewide land use planning**  
 24 **goal or rule of the Land Conservation and Development Commission**  
 25 **that implements the statutes or goals.**

26       **(2) Notwithstanding the requirement in ORS 197.830 (2) that a per-**  
 27 **son have appeared before the local government to seek review of a**  
 28 **land use decision, the Director of the Department of Land Conserva-**  
 29 **tion and Development or any other person may appeal the decision of**  
 30 **the governing body to the Land Use Board of Appeals if:**

31       **(a) The local government failed to submit all of the materials de-**

1 scribed in ORS 197.610 (2);

2 (b) The local government submitted the materials described in ORS  
3 197.610 (2) after the deadline specified in ORS 197.610 (1) or (5) or rules  
4 of the commission, whichever is applicable; or

5 (c) The decision of the governing body differs from the proposed  
6 changes submitted under ORS 197.610 to such an extent that the ma-  
7 terials submitted under ORS 197.610 did not reasonably describe the  
8 decision.

9 **SECTION 4.** ORS 197.625 is amended to read:

10 197.625. *[(1) If a notice of intent to appeal is not filed within the 21-day*  
11 *period set out in ORS 197.830 (9), the amendment to the acknowledged com-*  
12 *prehensive plan or land use regulation or the new land use regulation shall*  
13 *be considered acknowledged upon the expiration of the 21-day period. An*  
14 *amendment to an acknowledged comprehensive plan or land use regulation is*  
15 *not considered acknowledged unless the notices required under ORS 197.610*  
16 *and 197.615 have been submitted to the Director of the Department of Land*  
17 *Conservation and Development and:]*

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

19 *[(b) If an appeal is timely filed, the board affirms the decision or the ap-*  
20 *pellate courts affirm the decision.]*

21 *[(2) If the decision adopting an amendment to an acknowledged compre-*  
22 *hensive plan or land use regulation or a new land use regulation is affirmed*  
23 *on appeal under ORS 197.830 to 197.855, the amendment or new regulation*  
24 *shall be considered acknowledged upon the date the appellate decision becomes*  
25 *final.]*

26 *[(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive*  
27 *plan provision or land use regulation or an amendment to a comprehensive*  
28 *plan or land use regulation is effective at the time specified by local govern-*  
29 *ment charter or ordinance and is applicable to land use decisions, expedited*  
30 *land divisions and limited land use decisions if the amendment was adopted*  
31 *in substantial compliance with ORS 197.610 and 197.615 unless a stay is*

1 *granted under ORS 197.845.]*

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

6 *[(c) The issuance of a permit under an effective but unacknowledged com-*  
 7 *prehensive plan or land use regulation shall not be relied upon to justify re-*  
 8 *tention of improvements so permitted if the comprehensive plan provision or*  
 9 *land use regulation does not gain acknowledgment.]*

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

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

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

17 *[(C) After November 4, 1993.]*

18 *[(4) The director shall issue certification of the acknowledgment upon re-*  
 19 *ceipt of an affidavit from the board stating either:]*

20 *[(a) That no appeal was filed within the 21 days allowed under ORS*  
 21 *197.830 (9); or]*

22 *[(b) The date the appellate decision affirming the adoption of the amend-*  
 23 *ment or new regulation became final.]*

24 *[(5) The board shall issue an affidavit for the purposes of subsection (4) of*  
 25 *this section within five days of receiving a valid request from the local gov-*  
 26 *ernment.]*

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

31 **(1) A decision adopting a change to an acknowledged comprehensive**

1 plan or a land use regulation is deemed to be acknowledged if the local  
2 government has complied with the requirements of ORS 197.610 and  
3 197.615 and either:

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

6 (b) If an appeal has been timely filed, the Land Use Board of Ap-  
7 peals or an appellate court affirms the decision.

8 (2) If the decision adopting a change to an acknowledged compre-  
9 hensive plan or a land use regulation is affirmed on appeal under ORS  
10 197.830 to 197.855, the comprehensive plan or the land use regulation,  
11 as modified, is deemed to be acknowledged upon the date the decision  
12 of the board or the decision of an appellate court becomes final.

13 (3) Prior to acknowledgment of a change to an acknowledged com-  
14 prehensive plan or a land use regulation:

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

17 (b) If the change was adopted in compliance with ORS 197.610 and  
18 197.615, the local government shall apply the change to land use deci-  
19 sions, expedited land divisions and limited land use decisions unless a  
20 stay is granted under ORS 197.845.

21 (4) Approval of a land use decision, expedited land division or lim-  
22 ited land use decision that is subject to an effective but unacknowl-  
23 edged provision of a comprehensive plan or a land use regulation must  
24 include findings of compliance with the applicable provisions of land  
25 use statutes, statewide land use planning goals and administrative  
26 rules of the Land Conservation and Development Commission imple-  
27 menting the statutes or goals.

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

1 authorized by the permit or zone change.

2 (6) If requested by a local government, the Director of the Depart-  
3 ment of Land Conservation and Development shall issue certification  
4 of the acknowledgment upon receipt of an affidavit from:

5 (a) The local government, attesting that the change to the ac-  
6 knowledged comprehensive plan or the land use regulation was ac-  
7 complished in compliance with ORS 197.610 and 197.615; and

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

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

11 (B) The date the decision of the board or the decision of an appel-  
12 late court affirming the change to the acknowledged comprehensive  
13 plan or the land use regulation became final.

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

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

19 SECTION 6. (1) Notwithstanding contrary provisions of state and  
20 local law, the governing body of a local government that proposes a  
21 change to an acknowledged comprehensive plan or a land use regu-  
22 lation solely for the purpose of conforming the plan and regulations  
23 to new requirements in a land use statute, statewide land use planning  
24 goal or rule of the Land Conservation and Development Commission  
25 implementing the statutes or goals may take action to change the  
26 comprehensive plan or the land use regulation without holding a pub-  
27 lic hearing if:

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

31 (b) The department confirms in writing that the only effect of the

1 thORIZED by the permit or zone change.

2 (6) If requested by a local government, the Director of the Depart-  
3 ment of Land Conservation and Development shall issue certification  
4 of the acknowledgment upon receipt of an affidavit from:

5 (a) The local government, attesting that the change to the ac-  
6 knowledged comprehensive plan or the land use regulation was ac-  
7 complished in compliance with ORS 197.610 and 197.615; and

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

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

11 (B) The date the decision of the board or the decision of an appel-  
12 late court affirming the change to the acknowledged comprehensive  
13 plan or the land use regulation became final.

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

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

19 SECTION 6. (1) Notwithstanding contrary provisions of state and  
20 local law, the <sup>governing</sup> ~~convening~~ body of a local government that proposes a  
21 change to an acknowledged comprehensive plan or a land use regu-  
22 lation solely for the purpose of conforming the plan and regulations  
23 to new requirements in a land use statute, statewide land use planning  
24 goal or rule of the Land Conservation and Development Commission  
25 implementing the statutes or goals may take action to change the  
26 comprehensive plan or the land use regulation without holding a pub-  
27 lic hearing if:

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

31 (b) The department confirms in writing that the only effect of the

1 **proposed change is to conform the comprehensive plan or the land use**  
 2 **regulations to the new requirements.**

3 **(2) Notwithstanding the requirement under ORS 197.830 (2) that a**  
 4 **person must have appeared before the local government, a person that**  
 5 **has not appeared may petition for review of the decision by which a**  
 6 **change to a comprehensive plan or a land use regulation was made**  
 7 **under this section solely to determine whether the only effect of the**  
 8 **decision was to conform the comprehensive plan or the land use reg-**  
 9 **ulation to the new requirements.**

10 **SECTION 7.** ORS 197.254 is amended to read:

11 197.254. (1) A state agency [*shall be*] **is** barred, after the date set for  
 12 submission of programs by the Land Conservation and Development Com-  
 13 mission as provided in ORS 197.180 (4), from contesting a request for ac-  
 14 knowledgment submitted by a local government under ORS 197.251 or from  
 15 filing an appeal [*under ORS 197.620 (1) or (2)*] **of a post-acknowledgement**  
 16 **change under ORS 197.610 to 197.625 to a comprehensive plan or a land**  
 17 **use regulation**, if the commission finds that:

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

19 (b) The state agency has not coordinated its plans, programs or rules af-  
 20 fecting land use with the comprehensive plan or land use regulations of the  
 21 city or county pursuant to a coordination program approved by the commis-  
 22 sion under ORS 197.180.

23 (2) A state agency [*shall be*] **is** barred from seeking a commission order  
 24 under ORS 197.644 requiring amendment of a local government comprehen-  
 25 sive plan or a land use regulation in order to comply with the agency's plan  
 26 or program unless the agency has first requested the amendment from the  
 27 local government and has had its request denied.

28 (3) A special district [*shall be*] **is** barred from contesting a request for  
 29 initial compliance acknowledgment submitted by a local government under  
 30 ORS 197.251 or from filing an appeal [*under ORS 197.620 (1) or (2)*] **of a**  
 31 **post-acknowledgement change under ORS 197.610 to 197.625 to a com-**

1 **prehensive plan or a land use regulation**, if the county or metropolitan  
2 service district assigned coordinative functions under ORS 195.025 (1) finds  
3 that:

4 (a) The special district has not entered into a cooperative agreement un-  
5 der ORS 195.020; or

6 (b) The special district has not coordinated its plans, programs or regu-  
7 lations affecting land use with the comprehensive plan or land use regu-  
8 lations of the local government pursuant to its cooperative agreement made  
9 under ORS 195.020.

10 (4) A special district [*shall be*] **is** barred from seeking a commission order  
11 under ORS 197.644 requiring amendment of a local government comprehen-  
12 sive plan or **a** land use regulation in order to comply with the special  
13 district's plan or program unless the special district has first requested the  
14 amendment from the local government and has had its request denied.

15 **SECTION 8.** ORS 197.649 is amended to read:

16 197.649. The Land Conservation and Development Commission may estab-  
17 lish by rule fees to cover the cost of notice given to persons by the Director  
18 of the Department of Land Conservation and Development under ORS 197.610  
19 [(1)] and 197.615 [(3)] **and to cover the cost of the department's review**  
20 **authorized by section 6 (1) of this 2011 Act.**

21 **SECTION 9.** ORS 197.651 is added to and made a part of ORS 197.628  
22 **to 197.650.**

23 **SECTION 10.** ORS 197.830 is amended to read:

24 197.830. (1) Review of land use decisions or limited land use decisions  
25 under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent  
26 to appeal with the Land Use Board of Appeals.

27 (2) Except as provided in ORS 197.620 [(1) and (2)], a person may petition  
28 the board for review of a land use decision or limited land use decision if  
29 the person:

30 (a) Filed a notice of intent to appeal the decision as provided in sub-  
31 section (1) of this section; and

1 (b) Appeared before the local government, special district or state agency  
2 orally or in writing.

3 (3) If a local government makes a land use decision without providing a  
4 hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the  
5 local government makes a land use decision that is different from the pro-  
6 posal described in the notice of hearing to such a degree that the notice of  
7 the proposed action did not reasonably describe the local government's final  
8 actions, a person adversely affected by the decision may appeal the decision  
9 to the board under this section:

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

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

13 (4) If a local government makes a land use decision without a hearing  
14 pursuant to ORS 215.416 (11) or 227.175 (10):

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

19 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or  
20 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may  
21 appeal the decision to the board under this section within 21 days after the  
22 expiration of the period for filing a local appeal of the decision established  
23 by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

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

29 (d) Except as provided in paragraph (c) of this subsection, a person who  
30 receives [*mailed*] notice of a decision made without a hearing under ORS  
31 215.416 (11) or 227.175 (10) may not appeal the decision to the board under

1 this section.

2 (5) If a local government makes a limited land use decision which is dif-  
3 ferent from the proposal described in the notice to such a degree that the  
4 notice of the proposed action did not reasonably describe the local  
5 government's final actions, a person adversely affected by the decision may  
6 appeal the decision to the board under this section:

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

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

10 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal  
11 periods described in subsections (3), (4) and (5) of this section shall not ex-  
12 ceed three years after the date of the decision.

13 (b) If notice of a hearing or an administrative decision made pursuant to  
14 ORS 197.195 or 197.763 is required but has not been provided, the provisions  
15 of paragraph (a) of this subsection do not apply.

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

21 (b) Persons who may intervene in and be made a party to the review  
22 proceedings, as set forth in subsection (1) of this section, are:

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

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

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

30 (8) If a state agency whose order, rule, ruling, policy or other action is  
31 at issue is not a party to the proceeding, it may file a brief with the board

1 as if it were a party. The brief shall be due on the same date the respondent's  
2 brief is due and shall be accompanied by a filing fee of \$100.

3 (9) A notice of intent to appeal a land use decision or limited land use  
4 decision shall be filed not later than 21 days after the date the decision  
5 sought to be reviewed becomes final. A notice of intent to appeal plan and  
6 land use regulation amendments processed pursuant to ORS 197.610 to  
7 197.625 shall be filed not later than 21 days after notice of the decision  
8 sought to be reviewed is mailed or otherwise submitted to parties entitled  
9 to notice under ORS 197.615. Failure to include a [*certificate of mailing with*  
10 *the notice mailed*] **statement identifying when, how and to whom notice**  
11 **was provided** under ORS 197.615 [*shall*] **does** not render the notice defective.  
12 Copies of the notice of intent to appeal shall be served upon the local gov-  
13 ernment, special district or state agency and the applicant of record, if any,  
14 in the local government, special district or state agency proceeding. The  
15 notice shall be served and filed in the form and manner prescribed by rule  
16 of the board and shall be accompanied by a filing fee of \$200 and a deposit  
17 for costs to be established by the board. If a petition for review is not filed  
18 with the board as required in subsections (10) and (11) of this section, the  
19 filing fee and deposit shall be awarded to the local government, special dis-  
20 trict or state agency as cost of preparation of the record.

21 (10)(a) Within 21 days after service of the notice of intent to appeal, the  
22 local government, special district or state agency shall transmit to the board  
23 the original or a certified copy of the entire record of the proceeding under  
24 review. By stipulation of all parties to the review proceeding the record may  
25 be shortened. The board may require or permit subsequent corrections to the  
26 record; however, the board shall issue an order on a motion objecting to the  
27 record within 60 days of receiving the motion.

28 (b) Within 10 days after service of a notice of intent to appeal, the board  
29 shall provide notice to the petitioner and the respondent of their option to  
30 enter into mediation pursuant to ORS 197.860. Any person moving to inter-  
31 vene shall be provided such notice within seven days after a motion to in-

1 tervene is filed. The notice required by this paragraph shall be accompanied  
2 by a statement that mediation information or assistance may be obtained  
3 from the Department of Land Conservation and Development.

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

7 (12) The petition shall include a copy of the decision sought to be re-  
8 viewed and shall state:

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

10 (b) The date of the decision.

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

12 (13)(a) The board shall adopt rules establishing deadlines for filing pe-  
13 titions and briefs and for oral argument.

14 (b) At any time subsequent to the filing of a notice of intent and prior  
15 to the date set for filing the record, or, on appeal of a decision under ORS  
16 197.610 to 197.625, prior to the filing of the respondent's brief, the local  
17 government or state agency may withdraw its decision for purposes of re-  
18 consideration. If a local government or state agency withdraws an order for  
19 purposes of reconsideration, it shall, within such time as the board may al-  
20 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied  
21 with the local government or agency action after withdrawal for purposes  
22 of reconsideration, the petitioner may refile the notice of intent and the re-  
23 view shall proceed upon the revised order. An amended notice of intent shall  
24 not be required if the local government or state agency, on reconsideration,  
25 affirms the order or modifies the order with only minor changes.

26 (14) The board shall issue a final order within 77 days after the date of  
27 transmittal of the record. If the order is not issued within 77 days the ap-  
28 plicant may apply in Marion County or the circuit court of the county where  
29 the application was filed for a writ of mandamus to compel the board to issue  
30 a final order.

31 (15)(a) Upon entry of its final order the board may, in its discretion,

1 award costs to the prevailing party including the cost of preparation of the  
2 record if the prevailing party is the local government, special district or  
3 state agency whose decision is under review. The deposit required by sub-  
4 section (9) of this section shall be applied to any costs charged against the  
5 petitioner.

6 (b) The board shall also award reasonable attorney fees and expenses to  
7 the prevailing party against any other party who the board finds presented  
8 a position without probable cause to believe the position was well-founded  
9 in law or on factually supported information.

10 (16) Orders issued under this section may be enforced in appropriate ju-  
11 dicial proceedings.

12 (17)(a) The board shall provide for the publication of its orders that are  
13 of general public interest in the form it deems best adapted for public con-  
14 venience. The publications shall constitute the official reports of the board.

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

17 (18) Except for any sums collected for publication of board opinions, all  
18 fees collected by the board under this section that are not awarded as costs  
19 shall be paid over to the State Treasurer to be credited to the General Fund.

20 **SECTION 11.** ORS 215.427 is amended to read:

21 215.427. (1) Except as provided in subsections (3), (5) and (10) of this sec-  
22 tion, for land within an urban growth boundary and applications for mineral  
23 aggregate extraction, the governing body of a county or its designee shall  
24 take final action on an application for a permit, limited land use decision  
25 or zone change, including resolution of all appeals under ORS 215.422, within  
26 120 days after the application is deemed complete. The governing body of a  
27 county or its designee shall take final action on all other applications for a  
28 permit, limited land use decision or zone change, including resolution of all  
29 appeals under ORS 215.422, within 150 days after the application is deemed  
30 complete, except as provided in subsections (3), (5) and (10) of this section.

31 (2) If an application for a permit, limited land use decision or zone change

1 is incomplete, the governing body or its designee shall notify the applicant  
2 in writing of exactly what information is missing within 30 days of receipt  
3 of the application and allow the applicant to submit the missing information.  
4 The application shall be deemed complete for the purpose of subsection (1)  
5 of this section upon receipt by the governing body or its designee of:

6 (a) All of the missing information;

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

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

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

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

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

27 (a) All of the missing information;

28 (b) Some of the missing information and written notice that no other in-  
29 formation will be provided; or

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

31 (5) The period set in subsection (1) of this section may be extended for a

1 specified period of time at the written request of the applicant. The total of  
2 all extensions, except as provided in subsection (10) of this section for me-  
3 diation, may not exceed 215 days.

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

5 (a) Only to decisions wholly within the authority and control of the gov-  
6 erning body of the county; and

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

9 (7) Notwithstanding subsection (6) of this section, the period set in sub-  
10 section (1) of this section does not apply to [*an amendment to an acknowl-*  
11 *edged comprehensive plan or land use regulation or adoption of a new land*  
12 *use regulation that was forwarded to the Director of the Department of Land*  
13 *Conservation and Development under ORS 197.610 (1)] **a decision of a gov-**  
14 **erning body of a local government making a change to an acknowl-**  
15 **edged comprehensive plan or a land use regulation that is submitted**  
16 **to the Director of the Department of Land Conservation and Develop-**  
17 **ment under ORS 197.610.***

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

29 (9) A county may not compel an applicant to waive the period set in  
30 subsection (1) of this section or to waive the provisions of subsection (8) of  
31 this section or ORS 215.429 as a condition for taking any action on an ap-

1 plication for a permit, limited land use decision or zone change except when  
2 such applications are filed concurrently and considered jointly with a plan  
3 amendment.

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

8 **SECTION 12.** ORS 215.435 is amended to read:

9 215.435. (1) Pursuant to a final order of the Land Use Board of Appeals  
10 under ORS 197.830 remanding a decision to a county, the governing body of  
11 the county or its designee shall take final action on an application for a  
12 permit, limited land use decision or zone change within 90 days of the ef-  
13 fective date of the final order issued by the board. For purposes of this sub-  
14 section, the effective date of the final order is the last day for filing a  
15 petition for judicial review of a final order of the board under ORS 197.850  
16 (3). If judicial review of a final order of the board is sought under ORS  
17 197.830, the 90-day period established under this subsection shall not begin  
18 until final resolution of the judicial review.

19 (2)(a) In addition to the requirements of subsection (1) of this section, the  
20 90-day period established under subsection (1) of this section shall not begin  
21 until the applicant requests in writing that the county proceed with the ap-  
22 plication on remand.

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

25 (3) The 90-day period established under subsection (1) of this section ap-  
26 plies only to decisions wholly within the authority and control of the gov-  
27 erning body of the county.

28 (4) Subsection (1) of this section does not apply to a remand proceeding  
29 concerning *[an amendment to an acknowledged comprehensive plan or land*  
30 *use regulation or the adoption of a new land use regulation that was for-*  
31 *warded to the Director of the Department of Land Conservation and Develop-*

1 *ment under ORS 197.610]* a decision of a governing body of a local  
 2 government making a change to an acknowledged comprehensive plan  
 3 or a land use regulation that is submitted to the Director of the De-  
 4 partment of Land Conservation and Development under ORS 197.610.

5 **SECTION 13.** ORS 227.178 is amended to read:

6 227.178. (1) Except as provided in subsections (3), (5) and (11) of this sec-  
 7 tion, the governing body of a city or its designee shall take final action on  
 8 an application for a permit, limited land use decision or zone change, in-  
 9 cluding resolution of all appeals under ORS 227.180, within 120 days after the  
 10 application is deemed complete.

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

17 (a) All of the missing information;

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

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

22 (3)(a) If the application was complete when first submitted or the appli-  
 23 cant submits the requested additional information within 180 days of the date  
 24 the application was first submitted and the city has a comprehensive plan  
 25 and land use regulations acknowledged under ORS 197.251, approval or de-  
 26 nial of the application shall be based upon the standards and criteria that  
 27 were applicable at the time the application was first submitted.

28 (b) If the application is for industrial or traded sector development of a  
 29 site identified under section 12, chapter 800, Oregon Laws 2003, and proposes  
 30 an amendment to the comprehensive plan, approval or denial of the applica-  
 31 tion must be based upon the standards and criteria that were applicable at

1 the time the application was first submitted, provided the application com-  
 2 plies with paragraph (a) of this subsection.

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

6 (a) All of the missing information;

7 (b) Some of the missing information and written notice that no other in-  
 8 formation will be provided; or

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

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

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

15 (a) Only to decisions wholly within the authority and control of the gov-  
 16 erning body of the city; and

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

19 (7) Notwithstanding subsection (6) of this section, the 120-day period set  
 20 in subsection (1) of this section does not apply to [*an amendment to an ac-*  
 21 *knowledged comprehensive plan or land use regulation or adoption of a new*  
 22 *land use regulation that was forwarded to the Director of the Department of*  
 23 *Land Conservation and Development under ORS 197.610 (1)] **a decision of a**  
 24 **governing body of a local government making a change to an ac-**  
 25 **knowledged comprehensive plan or a land use regulation that is sub-**  
 26 **mitted to the Director of the Department of Land Conservation and**  
 27 **Development under ORS 197.610.***

28 (8) Except when an applicant requests an extension under subsection (5)  
 29 of this section, if the governing body of the city or its designee does not take  
 30 final action on an application for a permit, limited land use decision or zone  
 31 change within 120 days after the application is deemed complete, the city

1 shall refund to the applicant, subject to the provisions of subsection (9) of  
2 this section, either the unexpended portion of any application fees or depos-  
3 its previously paid or 50 percent of the total amount of such fees or deposits,  
4 whichever is greater. The applicant is not liable for additional governmental  
5 fees incurred subsequent to the payment of such fees or deposits. However,  
6 the applicant is responsible for the costs of providing sufficient additional  
7 information to address relevant issues identified in the consideration of the  
8 application.

9 (9)(a) To obtain a refund under subsection (8) of this section, the appli-  
10 cant may either:

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

13 (B) Include the amount claimed in a mandamus petition filed under ORS  
14 227.179. The court shall award an amount owed under this section in its final  
15 order on the petition.

16 (b) Within seven calendar days of receiving a request for a refund, the  
17 city or its designee shall determine the amount of any refund owed. Payment,  
18 or notice that no payment is due, shall be made to the applicant within 30  
19 calendar days of receiving the request. Any amount due and not paid within  
20 30 calendar days of receipt of the request shall be subject to interest charges  
21 at the rate of one percent per month, or a portion thereof.

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

30 (10) A city may not compel an applicant to waive the 120-day period set  
31 in subsection (1) of this section or to waive the provisions of subsection (8)

1 of this section or ORS 227.179 as a condition for taking any action on an  
2 application for a permit, limited land use decision or zone change except  
3 when such applications are filed concurrently and considered jointly with a  
4 plan amendment.

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

9 **SECTION 14.** ORS 227.181 is amended to read:

10 227.181. (1) Pursuant to a final order of the Land Use Board of Appeals  
11 under ORS 197.830 remanding a decision to a city, the governing body of the  
12 city or its designee shall take final action on an application for a permit,  
13 limited land use decision or zone change within 90 days of the effective date  
14 of the final order issued by the board. For purposes of this subsection, the  
15 effective date of the final order is the last day for filing a petition for judi-  
16 cial review of a final order of the board under ORS 197.850 (3). If judicial  
17 review of a final order of the board is sought under ORS 197.830, the 90-day  
18 period established under this subsection shall not begin until final resolution  
19 of the judicial review.

20 (2)(a) In addition to the requirements of subsection (1) of this section, the  
21 90-day period established under subsection (1) of this section shall not begin  
22 until the applicant requests in writing that the city proceed with the appli-  
23 cation on remand.

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

26 (3) The 90-day period established under subsection (1) of this section ap-  
27 plies only to decisions wholly within the authority and control of the gov-  
28 erning body of the city.

29 (4) Subsection (1) of this section does not apply to a remand proceeding  
30 concerning *[an amendment to an acknowledged comprehensive plan or land*  
31 *use regulation or the adoption of a new land use regulation that was for-*

1 *warded to the Director of the Department of Land Conservation and Develop-*  
2 *ment under ORS 197.610] a decision of a governing body of a local*  
3 **government making a change to an acknowledged comprehensive plan**  
4 **or a land use regulation that is submitted to the Director of the De-**  
5 **partment of Land Conservation and Development under ORS 197.610.**

6 **SECTION 15. Section 6 of this 2011 Act and the amendments to ORS**  
7 **197.254, 197.610, 197.615, 197.620, 197.625, 197.649, 197.830, 215.427, 215.435,**  
8 **227.178 and 227.181 by sections 1 to 4, 7, 8 and 10 to 13 of this 2011 Act**  
9 **apply to proposed changes to an acknowledged comprehensive plan or**  
10 **a land use regulation that is first submitted to the Director of the**  
11 **Department of Land Conservation and Development on or after the**  
12 **effective date of this 2011 Act.**

13

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# Oregon

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## HOUSE BILL 2130

**What the measure does:** Streamlines the Process for State Review of Urban Growth Boundaries (UGBs) and Urban Reserves

**Background:** Authority to review “larger” urban growth boundary (UGB) amendments and all urban reserve decisions was transferred from the Land Use Board of Appeals (LUBA) to the Land Conservation and Development Commission (LCDC) in 1998. However, many of the procedures that exist for LUBA reviews do not exist for reviews by LCDC. As a result, there are gaps and ambiguities in the law concerning certain procedural requirements for reviewing these important local decisions. One example is that, while review of LUBA decisions by the Court of Appeals is “expedited,” that expedited court review does not exist (and was not transferred to LCDC) with regard to review of UGB amendments and urban reserve decisions. As a result, appeals of LCDC decisions regarding UGB and urban reserve amendments can take years, creating practical difficulties for cities and counties attempting to amend UGBs and plan for needed jobs and housing.

**Solution:** Under this concept, the Department of Land Conservation and Development (DLCD) is proposing various process changes to improve and streamline the agency’s review of local UGB and urban reserve decisions. This includes changes at the administrative level, to expedite DLCD review, and changes to the judicial review provisions applicable to these decisions. The specific elements of this concept are: (a) clarifying what the record consists of in such cases; (b) adding "raise it or waive it" requirements to such reviews, to assure concerns are raised and addressed at the local level before being raised at the LCDC review level; (c) clarifying the scope and standards for LCDC's review; and (d) adding back expedited judicial review provisions for appeals of UGB and urban reserve decisions (parallel to provisions for expedited court review of LUBA decisions). This latter requirement will have a fiscal impact on the Judicial Department. DLCD will join the Judicial Department in proposing a policy option package for funding this element of the concept, and/or explore substantive legislative amendments to achieve a neutral fiscal impact.

**Contact:** Richard Whitman, DLCD Director (503) 373-0050 Ext 280; Bob Rindy, DLCD Legislative Coordinator (503) 373-0050 Ext 229.

# D R A F T

## SUMMARY

Modifies provisions regulating periodic review of comprehensive plans and regional framework plans.

Modifies provisions regulating judicial review of orders of Land Conservation and Development Commission.

## A BILL FOR AN ACT

Relating to periodic review of land use planning; amending ORS 197.626, 197.633, 197.644, 197.646, 197.650 and 197.651.

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

**SECTION 1.** ORS 197.626 is amended to read:

197.626. **(1)** A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 195.145 [(1)(b)], a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.

**(2) A commission order under this section may be appealed to the Court of Appeals in the manner described in ORS 197.651.**

**SECTION 2.** ORS 197.633 is amended to read:

197.633. **(1)** The periodic review process is divided into two phases. Phase

1 one is the evaluation of the existing comprehensive plan, land use regu-  
 2 lations and citizen involvement program and, if necessary, the development  
 3 of a work program to make needed changes to the comprehensive plan or  
 4 land use regulations. Phase two is the completion of work tasks outlined in  
 5 the work program.

6 (2) The Land Conservation and Development Commission shall adopt rules  
 7 for conducting periodic review[. *The rules shall provide a process for*] **that**  
 8 **address:**

9 (a) Initiating periodic review;

10 (b) Citizen participation;

11 (c) The participation of state agencies;

12 (d) The preparation, review and approval of [*an evaluation of a compre-*  
 13 *hensive plan and land use regulations;*] **a work program; and**

14 [*e*] *Review of a work program; and*

15 [*f*] **(e) The preparation, review and approval** of [*completed*] work  
 16 tasks.

17 **(3) The rules adopted by the commission under this section may**  
 18 **include, but are not limited to, provisions concerning standing, re-**  
 19 **quirements to raise issues before local government as a precondition**  
 20 **to commission review and other provisions concerning the scope and**  
 21 **standard for commission review to simplify or speed the review.**

22 [(3)] **(4) A decision by the Director of the Department of Land Conserva-**  
 23 **tion and Development to approve a work program, that no work program is**  
 24 **necessary or that no further work is necessary is final and not subject to**  
 25 **appeal.**

26 [(4)] **(5) The director:**

27 (a) Shall take action on a work task not later than 120 days after the  
 28 local government submits the work task for review unless the local govern-  
 29 ment waives the 120-day deadline or the commission grants the director an  
 30 extension. If the director does not take action within the time period re-  
 31 quired by this subsection, the work task is deemed approved. The department

1 shall provide a letter to the local government certifying that the work task  
 2 is approved unless an interested party has filed a timely objection to the  
 3 work task consistent with administrative rules for conducting periodic re-  
 4 view. *[If a timely objection is filed, the director shall refer the work task to*  
 5 *the commission.]*

6 (b) May approve or remand a work task or refer the work task to the  
 7 commission for a decision. A decision by the director to approve or remand  
 8 a work task may be appealed to the commission.

9 ~~[(5)]~~ (6) Except as provided in this subsection, the commission shall take  
 10 action on the appeal or referral within 90 days of the appeal or referral.  
 11 Action by the commission in response to an appeal from a decision of the  
 12 director is a final order subject to judicial review in the manner provided in  
 13 ORS 197.650. The commission may extend the time for taking action on the  
 14 appeal or referral if the commission finds that:

15 (a) The appeal or referral is appropriate for mediation;

16 (b) The appeal or referral raises new or complex issues of fact or law that  
 17 make it unreasonable for the commission to give adequate consideration to  
 18 the issues within the 90-day limit; or

19 (c) The parties to the appeal and the commission agree to an extension,  
 20 not to exceed an additional 90 days.

21 ~~[(6)]~~ (7) The commission and a local government shall attempt to complete  
 22 periodic review within three years after approval of a work program. *[In*  
 23 *order]* To promote the timely completion of periodic review, the commission  
 24 shall establish a system of incentives to encourage local government com-  
 25 pliance with timelines in periodic review work programs.

26 **SECTION 3.** ORS 197.644 is amended to read:

27 197.644. (1) *[The Land Conservation and Development Commission may di-*  
 28 *rect or, upon request of the local government,]* The Director of the Department  
 29 of Land Conservation and Development may authorize **or direct** a local  
 30 government to modify an approved work program when:

31 (a) Issues of regional or statewide significance arising out of another lo-

1 cal government's periodic review require an enhanced level of coordination;

2 (b) Issues of goal compliance are raised as a result of completion of a  
 3 work [program] task resulting in a need to undertake further review or re-  
 4 visions;

5 (c) Issues relating to the organization of the work program, coordination  
 6 with affected agencies or persons, or orderly implementation of work tasks,  
 7 result in a need for further review or revision; or

8 (d) Issues relating to needed housing, employment, transportation or  
 9 public facilities and services were omitted from the work program but must  
 10 be addressed in order to ensure compliance with the statewide planning  
 11 goals.

12 (2) The **Land Conservation and Development** Commission shall have  
 13 exclusive jurisdiction for review of the evaluation, work program and com-  
 14 pleted work [program] tasks as set forth in ORS 197.628 to 197.650. [*The*  
 15 *commission shall adopt rules governing standing, the provision of notice, con-*  
 16 *duct of hearings, adoption of stays, extension of time periods and other matters*  
 17 *related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320,*  
 18 *197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416, 227.175*  
 19 *and 466.385.*]

20 (3)(a) Commission action pursuant to subsection [(1) or] (2) of this section  
 21 is a final order subject to judicial review in the manner provided in ORS  
 22 197.650 **or 197.651, whichever is applicable.**

23 (b) Action by the director pursuant to subsection (1) of this section may  
 24 be appealed to the commission pursuant to rules adopted by the commission.  
 25 Commission action under this paragraph is a final order subject to judicial  
 26 review in the manner provided in ORS 197.650.

27 **SECTION 4.** ORS 197.646 is amended to read:

28 197.646. (1) A local government shall amend its acknowledged compre-  
 29 hensive plan[,] **or acknowledged** regional framework plan and land use  
 30 regulations implementing either plan by a self-initiated post-acknowledgment  
 31 process under ORS 197.610 to 197.625 to comply with **a new requirement**

1 **in land use statutes, statewide land use planning goals or rules im-**  
 2 **plementing the statutes or the goals.[:]**

3 [(a) A new statutory requirement; or]

4 [(b) A new land use planning goal or rule requirement adopted by the Land  
 5 Conservation and Development Commission.]

6 [(2) Periodic review is not the implementation process for new statutory,  
 7 land use planning goal or rule requirements.]

8 [(3)(a)] (2) The Department of Land Conservation and Development shall  
 9 notify local governments when a new [statutory] requirement [or a new land  
 10 use planning goal or rule requirement adopted by the commission] **in land**  
 11 **use statutes, statewide land use planning goals or rules implementing**  
 12 **the statutes or the goals** requires changes to an acknowledged compre-  
 13 hensive plan, [a] **an acknowledged** regional framework plan [and] **or** land  
 14 use regulations implementing either plan.

15 (b) The **Land Conservation and Development** Commission shall estab-  
 16 lish, by rule, the time period within which an acknowledged comprehensive  
 17 plan, [a] **an acknowledged** regional framework plan and land use regu-  
 18 lations implementing either plan must be in compliance with:

19 (A) A new [statutory] requirement **in a land use statute**, if the legis-  
 20 lation does not specify a time period for compliance; and

21 (B) A new **requirement in a** land use planning goal or rule  
 22 [requirement] adopted by the commission.

23 [(4)] (3) When a local government does not adopt amendments to [a] **an**  
 24 **acknowledged** comprehensive plan, [a] **an acknowledged** regional frame-  
 25 work plan [and] **or** land use regulations implementing either plan, as re-  
 26 quired by subsection (1) of this section, the new [statutory, land use planning  
 27 goal or rule] requirements apply directly to the local government's land use  
 28 decisions. The failure to adopt amendments to [a] **an acknowledged** com-  
 29 prehensive plan, [a] **an acknowledged** regional framework plan [and] **or**  
 30 land use regulations implementing either plan required by subsection (1) of  
 31 this section is a basis for initiation of enforcement action pursuant to ORS

1 197.319 to 197.335.

2 **SECTION 5.** ORS 197.650 is amended to read:

3 197.650. (1) A Land Conservation and Development Commission order **on**  
4 **review of a work task under ORS 197.628 to 197.650** may be appealed to  
5 the Court of Appeals in the manner provided in ORS 183.482 by the following  
6 persons:

7 (a) Persons who submitted comments or objections pursuant to ORS  
8 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are ap-  
9 pealing a commission order issued under ORS 197.251 or 197.633, 197.636 or  
10 197.644;

11 (b) Persons who submitted comments or objections pursuant to procedures  
12 adopted by the commission for certification of state agency coordination  
13 programs and are appealing a certification issued under ORS 197.180 (7);

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

16 (d) Persons who submitted comments or objections pursuant to ORS  
17 197.659 and 215.788 to 215.794 or proceedings under ORS 197.659 and 215.788  
18 to 215.794 and are appealing a commission order issued under ORS 197.659  
19 and 215.788 to 215.794;

20 (e) Persons who submitted comments or objections pursuant to ORS  
21 197.652 to 197.658 and 197.659 or proceedings under ORS 197.652 to 197.658  
22 and 197.659 and are appealing a commission order issued under ORS 197.652  
23 to 197.658 and 197.659; or

24 (f) Persons who submitted oral or written testimony in a proceeding be-  
25 fore the commission pursuant to ORS 215.780.

26 (2) Notwithstanding ORS 183.482 (2) relating to contents of the petition,  
27 the petition shall state the nature of the order **the petitioner [desires] seeks**  
28 **to have reviewed, the issues the petitioner raised before the local gov-**  
29 **ernment and the commission that the petitioner seeks to have re-**  
30 **viewed** and whether the petitioner submitted comments or objections as  
31 provided in ORS 197.251 (2) or pursuant to ORS [197.633, 197.636, 197.644]

1 **197.628 to 197.650** or 197.659.

2 (3) Notwithstanding ORS 183.482 (2) relating to service of the petition,  
 3 copies of the petition [*shall*] **must** be served by registered or certified mail  
 4 upon the Department of Land Conservation and Development, the local gov-  
 5 ernment and all persons [*who*] **that** filed comments or objections.

6 **SECTION 6.** ORS 197.651 is amended to read:

7 197.651. (1) [*Notwithstanding ORS 197.650, a*] **Subject to rules of the**  
 8 Land Conservation and Development Commission, **a commission** order  
 9 concerning the designation of urban reserves under ORS 195.145 [(1)(b)] or  
 10 rural reserves under ORS 195.141 may be appealed to the Court of Appeals  
 11 [*by the persons described in ORS 197.650*].

12 (2) Judicial review of orders described in subsection (1) of this section is  
 13 as provided in this section.

14 (3) Jurisdiction for judicial review is conferred upon the Court of Appeals.  
 15 A proceeding for judicial review may be instituted by filing a petition in the  
 16 Court of Appeals. The petition must be filed within 21 days after the date  
 17 the commission delivered or mailed the order upon which the petition is  
 18 based.

19 (4) The filing of the petition, as [*set forth*] **described** in subsection (3) of  
 20 this section, and service of a petition on the persons [*who*] **that** submitted  
 21 oral or written testimony in the proceeding before the commission are ju-  
 22 risdictional and may not be waived or extended.

23 (5) The petition must state the nature of the order the petitioner seeks  
 24 to have reviewed. Copies of the petition must be served by registered or  
 25 certified mail upon the commission and the persons [*who*] **that** submitted  
 26 oral or written testimony in the proceeding before the commission.

27 (6) Within 21 days after service of the petition, the [*commission*] **De-**  
 28 **partment of Land Conservation and Development** shall transmit to the  
 29 Court of Appeals the original or a certified copy of the entire record of the  
 30 proceeding under review. However, by stipulation of the parties to the review  
 31 proceeding, the record may be shortened. The Court of Appeals may tax a

1 party that unreasonably refuses to stipulate to limit the record for the ad-  
2 ditional costs. The Court of Appeals may require or permit subsequent cor-  
3 rections or additions to the record. Except as specifically provided in this  
4 subsection, the Court of Appeals may not tax the cost of the record to the  
5 petitioner or an intervening party. However, the Court of Appeals may tax  
6 the costs to a party that files a frivolous petition for judicial review.

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

9 (8) The Court of Appeals shall:

10 (a) Hear oral argument within 49 days of the date of transmittal of the  
11 record unless the Court of Appeals determines that the ends of justice served  
12 by holding oral argument on a later day outweigh the best interests of the  
13 public and the parties. However, the Court of Appeals may not hold oral  
14 argument more than 49 days after the date of transmittal of the record be-  
15 cause of general congestion of the court calendar or lack of diligent prepa-  
16 ration or attention to the case by a member of the court or a party.

17 (b) Set forth in writing and provide to the parties a determination to hear  
18 oral argument more than 49 days from the date the record is transmitted,  
19 together with the reasons for the determination. The Court of Appeals shall  
20 schedule oral argument as soon as is practicable.

21 (c) Consider, in making a determination under paragraph (b) of this sub-  
22 section:

23 (A) Whether the case is so unusual or complex, due to the number of  
24 parties or the existence of novel questions of law, that 49 days is an unrea-  
25 sonable amount of time for the parties to brief the case and for the Court  
26 of Appeals to prepare for oral argument; and

27 (B) Whether the failure to hold oral argument at a later date likely would  
28 result in a miscarriage of justice.

29 (9) The court:

30 (a) Shall limit judicial review of an order reviewed under this section to  
31 the record.

1 (b) May not substitute its judgment for that of the Land Conservation and  
2 Development Commission as to an issue of fact.

3 (10) The Court of Appeals may affirm, reverse or remand an order re-  
4 viewed under this section. The Court of Appeals shall reverse or remand the  
5 order only if the court finds the order is:

6 (a) Unlawful in substance or procedure. However, error in procedure is  
7 not cause for reversal or remand unless the Court of Appeals determines that  
8 substantial rights of the petitioner were prejudiced.

9 (b) Unconstitutional.

10 (c) Not supported by substantial evidence in the whole record as to facts  
11 found by the commission.

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

14 (12) If the order of the commission is remanded by the Court of Appeals  
15 or the Supreme Court, the commission shall respond to the court's appellate  
16 judgment within 30 days.

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# Oregon

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## HOUSE BILL 2131

**What the measure does:** Cleans Up “Needed Housing” Statutes

**Background:** State laws under ORS 197.303 to 197.307, in conjunction with LCDC's Goal 10 (Housing), are intended to ensure that local governments provide sufficient land planned and zoned to accommodate all types and amounts of housing that will be needed over a 20-year planning period. This string of statutes includes provisions intended to prevent local regulatory barriers that may discourage needed housing types (such as multifamily attached housing or manufactured housing). The “needed housing” statutes require local standards to be “clear and objective” and that the local provisions not have the effect of precluding needed housing “through unreasonable cost or delay.” The requirements for needed housing are a core element of Oregon’s affordable housing policy.

The Land Conservation and Development Commission (LCDC) began requiring “needed housing” in 1975 (through Goal 10), and “clear and objective standards” in 1979. In 1981 these requirements were enacted into state law. However, since 1981, these laws have been amended repeatedly, resulting in a string of statutes that is no longer a clear, coherent statement. The statutes have been further clouded by a significant body of (sometimes conflicting) case law. This confuses the public, local government, and the courts. As an example, it is no longer abundantly clear whether and how these statutes apply to the local adoption of regulations for housing as opposed to site-specific housing decisions. While some of this is clearer in “case law” established by the courts, it should be clear in the statute. This confusion has become more apparent in recent case law, and in part that prompts this legislative proposal.

**Solution:** The department is proposing to clarify this string of statutes (ORS 197.303-197.307). The proposed changes would be “policy neutral,” consistent with the intent of these laws, and would incorporate case law interpreting these statutes. Some of this clarification may simply involve re-ordering or consolidating certain portions of these statutes and eliminating redundant but slightly different wording in various parts of the statutes.

In a related matter, in order to help the state monitor local government practices in approving needed housing, an existing provision of state law requires local governments to report on applications for and approval of housing development in urban areas. However, these reporting requirements are not being followed by local governments. This proposal would update existing reporting requirements so they are more streamlined and functional for local government, while providing critical information to the state about overall housing trends so we assure that we are providing land for needed housing. This includes a proposal limiting these requirements to larger or faster growing cities.

**Contact:** Richard Whitman, DLCD Director (503) 373-0050 Ext 280; Bob Rindy, DLCD Legislative Coordinator (503) 373-0050 Ext 229.

# D R A F T

## SUMMARY

Modifies criteria for establishment and review of needed housing within urban growth boundaries.

### A BILL FOR AN ACT

Relating to land use planning for needed housing; creating new provisions; and amending ORS 197.178, 197.303, 197.307, 197.312, 197.314, 197.732, 197.831, 307.651 and 446.200.

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

**SECTION 1.** ORS 197.178 is amended to read:

197.178. **(1)** [*A local government with a comprehensive plan or functional plan*] **Local governments with comprehensive plans or functional plans that are identified in ORS 197.296 (1) and cities with a population of 2,500 or more** shall compile and report annually to the Department of Land Conservation and Development the following information for all [*permit*] applications received under ORS 227.175 **for residential zone amendments, expedited land divisions and permits:**

[(1)] **(a)** The number of applications received for residential development, including the residential density proposed in the application and the maximum allowed residential density for the subject zone;

[(2)] **(b)** The number of applications approved, including the approved density; and

[(3)] **(c)** The date each application was received and the date it was approved or denied.

**(2) The report required by this section may be submitted electron-**

1 ically.

2 (3) A local government that fails to provide the report required by  
3 this section is not eligible to receive grants and technical assistance  
4 funding allocated by the Land Conservation and Development Com-  
5 mission under ORS 197.639 during the one-year period following the  
6 annual period for which the local government failed to report under  
7 this section.

8 **SECTION 2.** ORS 197.303 is amended to read:

9 197.303. (1) As used in ORS 197.307, [*until the beginning of the first peri-*  
10 *odic review of a local government's acknowledged comprehensive plan,*]  
11 "needed housing" means housing types determined to meet the need shown  
12 for housing within an urban growth boundary at particular price ranges and  
13 rent levels[. *On and after the beginning of the first periodic review of a local*  
14 *government's acknowledged comprehensive plan, "needed housing" also*  
15 *means*], **including the following housing types:**

16 (a) [*Housing that includes, but is not limited to,*] Attached and detached  
17 single-family housing and multiple family housing for both owner and renter  
18 occupancy;

19 (b) Government assisted housing;

20 (c) Mobile home or manufactured dwelling parks as provided in ORS  
21 197.475 to 197.490; [*and*]

22 (d) Manufactured homes on individual lots planned and zoned for single-  
23 family residential use that are in addition to lots within designated manu-  
24 factured dwelling subdivisions[.]; **and**

25 **(e) Housing for farmworkers.**

26 [(2) *Subsection (1)(a) and (d) of this section shall not apply to:*]

27 [(a) *A city with a population of less than 2,500.*]

28 [(b) *A county with a population of less than 15,000.*]

29 [(3)] (2) A local government may take an exception under ORS 197.732  
30 to the definition of "needed housing" in subsection (1) of this section in  
31 the same manner that an exception may be taken under the goals.

**SECTION 3.** ORS 197.307 is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

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

~~[(3)(a)]~~ **(3)** When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing~~[ including housing for farmworkers,]~~ shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

~~[(b) A local government shall attach only clear and objective approval standards or special conditions regulating, in whole or in part, appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402 or 227.160, for residential development. The standards or conditions may not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.]~~

**(4) A local government may adopt and apply only clear and objective standards, conditions and procedures in decisions regarding needed housing. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.**

~~[(c)]~~ **(5)** The provisions of ~~[paragraph (b) of this]~~ subsection **(4) of this section** do not apply to:

**(a)** An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

~~[(d) In addition to an approval process based on clear and objective standards as provided in paragraph (b) of this subsection, a local government may adopt an alternative approval process for residential applications and permits~~

1 *based on approval criteria that are not clear and objective provided the appli-*  
 2 *cant retains the option of proceeding under the clear and objective standards*  
 3 *or the alternative process and the approval criteria for the alternative process*  
 4 *comply with all applicable land use planning goals and rules.]*

5 *[(e) The provisions of this subsection shall not apply to applications or*  
 6 *permits]*

7 **(b) An application or permit** for residential development in historic  
 8 areas designated for protection under a land use planning goal protecting  
 9 historic areas.

10 **(6) In addition to an approval process for needed housing based on**  
 11 **clear and objective standards, conditions and procedures as provided**  
 12 **in subsection (4) of this section, a local government may adopt an al-**  
 13 **ternative approval process for applications and permits for residential**  
 14 **development based on approval criteria regulating, in whole or in part,**  
 15 **appearance or aesthetics that are not clear and objective if:**

16 **(a) The applicant retains the option of proceeding under the ap-**  
 17 **proval process that meets the requirements of subsection (4) of this**  
 18 **section;**

19 **(b) The approval criteria for the alternative approval process com-**  
 20 **ply with applicable statewide land use planning goals and rules; and**

21 **(c) The approval criteria for the alternative approval process au-**  
 22 **thorize a density at or above the density level authorized in the zone**  
 23 **under the approval process provided in subsection (4) of this section.**

24 *[(4)]* **(7) [Subsection (3) of this section shall not be construed as an in-**  
 25 *fringement]* **Subject to subsection (4) of this section, this section does**  
 26 **not infringe** on a local government's prerogative to:

27 **(a) Set approval standards under which a particular housing type is per-**  
 28 **mitted outright;**

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

31 **(c) Establish approval procedures.**

1        ~~[(5)]~~ **(8) In accordance with subsection (4) of this section and ORS**  
2 **197.314**, a jurisdiction may adopt any or all of the following placement  
3 standards, or any less restrictive standard, for the approval of manufactured  
4 homes located outside mobile home parks:

5        (a) The manufactured home shall be multisectional and enclose a space  
6 of not less than 1,000 square feet.

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

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

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

18       (e) The manufactured home shall be certified by the manufacturer to have  
19 an exterior thermal envelope meeting performance standards which reduce  
20 levels equivalent to the performance standards required of single-family  
21 dwellings constructed under the state building code as defined in ORS  
22 455.010.

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

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

1        *[(6) Any approval standards, special conditions and the procedures for ap-*  
 2 *proval adopted by a local government shall be clear and objective and may not*  
 3 *have the effect, either in themselves or cumulatively, of discouraging needed*  
 4 *housing through unreasonable cost or delay.]*

5        **SECTION 4.** ORS 197.312 is amended to read:

6        197.312. (1) A city or county may not by charter prohibit from all resi-  
 7 dential zones attached or detached single-family housing, multifamily hous-  
 8 ing for both owner and renter occupancy or manufactured homes. A city or  
 9 county may not by charter prohibit government assisted housing or impose  
 10 additional approval standards on government assisted housing that are not  
 11 applied to similar but unassisted housing.

12        *[(2) A city or county may not impose any approval standards, special con-*  
 13 *ditions or procedures on farmworker housing that are not clear and objective*  
 14 *or have the effect, either in themselves or cumulatively, of discouraging*  
 15 *farmworker housing through unreasonable cost or delay or by discriminating*  
 16 *against such housing.]*

17        *[(3)(a)]* **(2)(a)** A single-family dwelling for a farmworker and the  
 18 farmworker's immediate family is a permitted use in any residential or com-  
 19 mercial zone that allows single-family dwellings as a permitted use.

20        (b) A city or county may not impose a zoning requirement on the estab-  
 21 lishment and maintenance of a single-family dwelling for a farmworker and  
 22 the farmworker's immediate family in a residential or commercial zone de-  
 23 scribed in paragraph (a) of this subsection that is more restrictive than a  
 24 zoning requirement imposed on other single-family dwellings in the same  
 25 zone.

26        *[(4)(a)]* **(3)(a)** Multifamily housing for farmworkers and farmworkers' im-  
 27 mediate families is a permitted use in any residential or commercial zone  
 28 that allows multifamily housing generally as a permitted use.

29        (b) A city or county may not impose a zoning requirement on the estab-  
 30 lishment and maintenance of multifamily housing for farmworkers and  
 31 farmworkers' immediate families in a residential or commercial zone de-

1 scribed in paragraph (a) of this subsection that is more restrictive than a  
2 zoning requirement imposed on other multifamily housing in the same zone.

3 ~~[(5)]~~ (4) A city or county may not prohibit a property owner or developer  
4 from maintaining a real estate sales office in a subdivision or planned com-  
5 munity containing more than 50 lots or dwelling units for the sale of lots  
6 or dwelling units that remain available for sale to the public.

7 **SECTION 5.** ORS 197.314 is amended to read:

8 197.314. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302,  
9 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each  
10 city and county shall amend its comprehensive plan and land use regulations  
11 for all land zoned for single-family residential uses to allow for siting of  
12 manufactured homes as defined in ORS 446.003. A local government may only  
13 subject the siting of a manufactured home allowed under this section to  
14 regulation as set forth in ORS 197.307 ~~[(5)]~~ (8).

15 (2) Cities and counties shall adopt and amend comprehensive plans and  
16 land use regulations under subsection (1) of this section according to the  
17 provisions of ORS 197.610 to 197.650.

18 (3) Subsection (1) of this section does not apply to any area designated  
19 in an acknowledged comprehensive plan or land use regulation as a historic  
20 district or residential land immediately adjacent to a historic landmark.

21 (4) Manufactured homes on individual lots zoned for single-family resi-  
22 dential use in subsection (1) of this section shall be in addition to manufac-  
23 tured homes on lots within designated manufactured dwelling subdivisions.

24 (5) Within any residential zone inside an urban growth boundary where  
25 a manufactured dwelling park is otherwise allowed, a city or county shall  
26 not adopt, by charter or ordinance, a minimum lot size for a manufactured  
27 dwelling park that is larger than one acre.

28 (6) A city or county may adopt the following standards for the approval  
29 of manufactured homes located in manufactured dwelling parks that are  
30 smaller than three acres:

31 (a) The manufactured home shall have a pitched roof, except that no

1 standard shall require a slope of greater than a nominal three feet in height  
2 for each 12 feet in width.

3 (b) The manufactured home shall have exterior siding and roofing that,  
4 in color, material and appearance, is similar to the exterior siding and  
5 roofing material commonly used on residential dwellings within the commu-  
6 nity or that is comparable to the predominant materials used on surrounding  
7 dwellings as determined by the local permit approval authority.

8 (7) This section shall not be construed as abrogating a recorded restric-  
9 tive covenant.

10 **SECTION 6.** ORS 197.732 is amended to read:

11 197.732. (1) As used in this section:

12 (a) "Compatible" is not intended as an absolute term meaning no inter-  
13 ference or adverse impacts of any type with adjacent uses.

14 (b) "Exception" means a comprehensive plan provision, including an  
15 amendment to an acknowledged comprehensive plan, that:

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

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

20 (C) Complies with standards under subsection (2) of this section.

21 (2) A local government may adopt an exception to a goal if:

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

24 (b) The land subject to the exception is irrevocably committed as de-  
25 scribed by Land Conservation and Development Commission rule to uses not  
26 allowed by the applicable goal because existing adjacent uses and other rel-  
27 evant factors make uses allowed by the applicable goal impracticable; or

28 (c) The following standards are met:

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

31 (B) Areas that do not require a new exception cannot reasonably accom-

1 modate the use;

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

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

9 (3) The commission shall adopt rules establishing:

10 (a) That an exception may be adopted to allow a use authorized by a  
11 statewide planning goal that cannot comply with the approval standards for  
12 that type of use;

13 (b) Under what circumstances particular reasons may or may not be used  
14 to justify an exception under subsection (2)(c)(A) of this section; and

15 (c) Which uses allowed by the applicable goal must be found impractica-  
16 ble under subsection (2) of this section.

17 (4) A local government approving or denying a proposed exception shall  
18 set forth findings of fact and a statement of reasons that demonstrate that  
19 the standards of subsection (2) of this section have or have not been met.

20 (5) Each notice of a public hearing on a proposed exception shall specif-  
21 ically note that a goal exception is proposed and shall summarize the issues  
22 in an understandable manner.

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

24 (a) The Land Use Board of Appeals or the commission shall be bound by  
25 any finding of fact for which there is substantial evidence in the record of  
26 the local government proceedings resulting in approval or denial of the ex-  
27 ception;

28 (b) The board upon petition, or the commission, shall determine whether  
29 the local government's findings and reasons demonstrate that the standards  
30 of subsection (2) of this section have or have not been met; and

31 (c) The board or commission shall adopt a clear statement of reasons that

1 sets forth the basis for the determination that the standards of subsection  
2 (2) of this section have or have not been met.

3 (7) The commission shall by rule establish the standards required to jus-  
4 tify an exception to the definition of "needed housing" authorized by ORS  
5 197.303 [(3)].

6 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1)  
7 (1981 Replacement Part) on or before August 9, 1983, continues to be valid  
8 and is not subject to this section.

9 **SECTION 7.** ORS 197.831 is amended to read:

10 197.831. In a proceeding before the Land Use Board of Appeals or [*on ju-*  
11 *dicial review from an order of the board*] **an appellate court** that involves  
12 an ordinance required to contain clear and objective approval standards,  
13 **conditions and procedures** for [*a permit under ORS 197.307 and 227.175*]  
14 **needed housing**, the local government imposing the provisions of the ordi-  
15 nance shall demonstrate that the approval standards, **conditions and pro-**  
16 **cedures** are capable of being imposed only in a clear and objective manner.

17 **SECTION 8.** ORS 307.651 is amended to read:

18 307.651. As used in ORS 307.651 to 307.687, unless the context requires  
19 otherwise:

20 (1) "Distressed area" means a primarily residential area of a city desig-  
21 nated by a city under ORS 307.657 which, by reason of deterioration, inade-  
22 quate or improper facilities, the existence of unsafe or abandoned structures,  
23 including but not limited to a significant number of vacant or abandoned  
24 single or multifamily residential units, or any combination of these or simi-  
25 lar factors, is detrimental to the safety, health and welfare of the community.

26 (2) "Governing body" means the city legislative body having jurisdiction  
27 over the property for which an exemption may be applied for under ORS  
28 307.651 to 307.687.

29 (3) "Qualified dwelling unit" means a dwelling unit that, upon completion,  
30 has a market value (land and improvements) of no more than 120 percent,  
31 or a lesser percentage as adopted by the governing body by resolution, of the

1 median sales price of dwelling units located within the city.

2 (4) "Single-unit housing" means a newly constructed structure having one  
3 or more dwelling units that:

4 (a) Is, or will be, at the time that construction is completed, in conform-  
5 ance with all local plans and planning regulations, including special or  
6 district-wide plans developed and adopted pursuant to ORS chapters 195, 196,  
7 197 and 227.

8 (b) Is constructed on or after January 1, 1990, and is completed within two  
9 years after application for exemption is approved under ORS 307.674 or be-  
10 fore July 1, 2015, whichever is earlier.

11 (c) Upon completion, is designed for each dwelling unit within the struc-  
12 ture to be purchased by and lived in by one person or one family.

13 (d) Upon completion, has one or more qualified dwelling units within the  
14 single-unit housing.

15 (e) Is not a floating home, as defined in ORS 830.700, or a manufactured  
16 structure, as defined in ORS 446.561, other than a manufactured home de-  
17 scribed in ORS 197.307 [(5)(a)] **(8)(a)** to (f).

18 (5) "Structure" does not include the land, nor any site development to the  
19 land, as both are defined under ORS 307.010.

20 **SECTION 9.** ORS 446.200 is amended to read:

21 446.200. (1) Any manufactured structure that meets the requirements pre-  
22 scribed under ORS 446.003, 446.155 to 446.200 and 446.225 to 446.285:

23 (a) Is not required, **except as provided in ORS 197.307 (8) or 197.314 (6),**  
24 to comply with any ordinances of a city or county prescribing requirements  
25 for plumbing, heating, illuminating, mechanical, structural, transportation,  
26 thermal, fire and life safety, cooking or electrical equipment and material  
27 installed in manufactured structures.

28 (b) Is required to comply with this chapter and the administrative rules  
29 adopted thereunder regulating plumbing, heating, illuminating, mechanical,  
30 structural, transportation, thermal, fire and life safety, cooking and elec-  
31 trical equipment and material installed in manufactured structures.

1 (2) A manufactured dwelling that is constructed in conformity with the  
2 minimum safety standards provided by ORS 446.185 and which bears an  
3 insignia of compliance is not required to comply with any additional regu-  
4 lations if it is thereafter placed upon a permanent foundation and affixed to  
5 real property.

6 **SECTION 10. The Land Conservation and Development Commission**  
7 **shall adopt administrative rules defining the term “clear and**  
8 **objective” for the purposes of ORS 197.307, 215.416 (8) and 227.173 (2)**  
9 **on or before June 30, 2012.**

10



# Oregon

John A. Kitzhaber, Governor

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## HOUSE BILL 2132

**What the measure does:** Modifies Transfer of Development Rights Pilot Program

**Background:** Two laws were enacted in 2009 providing authorization and standards for transfers of development rights (TDRs), a voluntary market-driven land use process. One of these statutes, Chapter 636, Oregon Laws 2009, established a Transfer of Development Rights Pilot Program to be administered by the Department of Land Conservation and Development (DLCD). The program is intended to test TDRs as a method to conserve forest land for forest use including active timber management, and allows transfers of development rights from forest land to urban growth boundaries (UGBs), exception areas adjacent to UGBs and rural unincorporated communities under certain circumstances. The law authorized up to three “pilot projects” to test these TDR ideas on the ground.

Based on the department’s outreach efforts with local governments and forest land owners, some specific requirements of this pilot program are perceived by local governments and forest land owners as problematic to the point that land owners have not wanted to proceed with a TDR pilot project until the issues are resolved. At present there are no approved pilot projects. Although the market for any form of real estate development has been at historic lows, the department wants to be well-positioned to provide a real test of this concept when the market does improve.

**Solution:** The department is proposing to adjust the law with respect to the specific provisions that are problematic. The measure would authorize additional areas as “receiving areas” for transferred development rights, and would allow higher transfer ratios in certain circumstances. This legislative measure would also clarify public access provisions, and add provisions to resolve potential inter-jurisdictional ad valorem tax impacts when development rights are transferred from one jurisdiction to another.

**Contact:** Richard Whitman, DLCD Director (503) 373-0050 Ext 280; Bob Rindy, DLCD Legislative Coordinator (503) 373-0050 Ext 229.

# DRAFT

## SUMMARY

Modifies provisions of pilot program that authorizes transfer of development rights between properties in areas designated as sending areas and receiving areas.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to transfer of development pilot program; amending sections 6 and 7, chapter 636, Oregon Laws 2009; and declaring an emergency.

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

**SECTION 1.** Section 6, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 5, Oregon Laws 2010, is amended to read:

**Sec. 6.** (1) There is established the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development. Working with the State Forestry Department, the State Department of Agriculture and local governments and with other state agencies, as appropriate, the Department of Land Conservation and Development shall implement the pilot program.

(2) The Land Conservation and Development Commission shall adopt rules to implement the pilot program. The commission, by rule, may:

(a) Establish a maximum ratio of transferable development rights to severed development interests in a sending area for each pilot project. The maximum ratio:

(A) Must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending area to participate in the pilot project; [*and*]

1 (B) May not exceed one transferable development right to one severed  
2 development interest if the receiving area is outside of [an] urban growth  
3 [boundary] boundaries and outside unincorporated communities;

4 (C) May not exceed two transferable development rights to one  
5 severed development interest if the receiving area is in an unincor-  
6 porated community; and

7 (D) Must be consistent with plans for public facilities and services  
8 in the receiving area.

9 (b) Require participating owners of land in a sending area to grant con-  
10 servation easements pursuant to ORS 271.715 to 271.795, or otherwise obli-  
11 gate themselves, to ensure that additional residential development of their  
12 property does not occur.

13 [(c) Require participating owners of land in a sending area to allow rea-  
14 sonable public access to the property.]

15 (3) The commission, by rule, shall establish a process for selecting pilot  
16 projects from among potential projects nominated by local governments. The  
17 process must require local governments to nominate potential projects by  
18 submitting a concept plan for each proposed pilot project, including proposed  
19 amendments, if any, to the comprehensive plan and land use regulations im-  
20 plementing the plan that are necessary to implement the pilot project.

21 (4) When selecting a pilot project, the commission must find that the pilot  
22 project is:

23 (a) Reasonably likely to provide a net benefit to the forest economy or the  
24 agricultural economy of this state;

25 (b) Designed to avoid or minimize adverse effects on transportation, na-  
26 tural resources, public facilities and services, nearby urban areas and nearby  
27 farm and forest uses; and

28 (c) Designed so that new development authorized in a receiving area does  
29 not conflict with a resource or area inventoried under a statewide land use  
30 planning goal relating to natural resources, scenic and historic areas and  
31 open spaces, or with an area identified as a Conservation Opportunity Area

1 in the "Oregon Conservation Strategy" adopted by the State Fish and  
2 Wildlife Commission and published by the State Department of Fish and  
3 Wildlife in September of 2006.

4 (5) The commission may select up to three pilot projects for the transfer  
5 of development rights under sections 6 to 8, chapter 636, Oregon Laws 2009.

6 (6) A sending area for a pilot project under sections 6 to 8, chapter 636,  
7 Oregon Laws 2009:

8 (a) Must be planned and zoned for forest use;

9 (b) May not exceed 10,000 acres; and

10 (c) Must contain four or fewer dwelling units per square mile.

11 (7) The commission may establish additional requirements for sending  
12 areas.

13 (8)(a) Except as provided otherwise in paragraph (b) of this subsection, a  
14 local government participating in a pilot project shall select a receiving area  
15 for the pilot project based on the following priorities:

16 (A) First priority is lands within an urban growth boundary[;].

17 (B) Second priority is lands that are adjacent to an urban growth  
18 boundary and that are subject to an exception from a statewide land use  
19 planning goal relating to agricultural lands or forestlands[;].

20 (C) Third priority is lands that are:

21 (i) Within an urban unincorporated community or a rural community [*in*  
22 *an acknowledged comprehensive plan.*]; or

23 (ii) **In a resort community, or a rural service center, that contains**  
24 **at least 100 dwelling units at the time the pilot project is approved.**

25 (D) **Fourth priority is exception areas approved under ORS 197.732**  
26 **that are adjacent to urban unincorporated communities or rural**  
27 **communities, if the county agrees to bring the receiving area within**  
28 **the boundaries of the community and to provide the community with**  
29 **water and sewer service.**

30 (b) The commission may authorize a local government to select lower  
31 priority lands over higher priority lands for a receiving area in a pilot

1 project only if the local government has established, to the satisfaction of  
2 the commission, that selecting higher priority lands as the receiving area is  
3 not likely to result in the severance and transfer of a significant proportion  
4 of the development interests in the sending area within five years after the  
5 receiving area is established.

6 (c) *[If lands described in paragraph (a)(B) of this subsection are selected*  
7 *for use as a receiving area in a pilot project,]* The minimum residential density  
8 of development allowed *[under sections 6 to 8, chapter 636, Oregon Laws 2009,*  
9 *must be at least 10 dwelling units per net acre.]* **in receiving areas intended**  
10 **for residential development is:**

11 **(A) For second priority lands described in paragraph (a)(B) of this**  
12 **subsection, at least five dwelling units per net acre or 125 percent of**  
13 **the average residential density allowed within the urban growth**  
14 **boundary when the pilot project is approved by the commission,**  
15 **whichever is greater.**

16 **(B) For third priority and fourth priority lands described in para-**  
17 **graph (a)(C) and (D) of this subsection, at least 125 percent of the av-**  
18 **erage residential density allowed on land planned for residential use**  
19 **within the unincorporated community when the pilot project is ap-**  
20 **proved by the commission.**

21 **(d) For third and fourth priority lands described in paragraph (a)(C)**  
22 **and (D) of this subsection that are within one jurisdiction but adjacent**  
23 **to another jurisdiction, the written consent of the adjacent jurisdic-**  
24 **tion is required for designation of the receiving area.**

25 *[(d)]* (e) A receiving area may not be located within 10 miles of the  
26 Portland metropolitan area urban growth boundary.

27 (9) The commission may establish additional requirements for receiving  
28 areas.

29 (10) The commission, by rule, may provide a bonus in the form of a higher  
30 **transfer** ratio if a substantial portion of the new development in the re-  
31 ceiving area of the pilot project is affordable housing within an urban

1 growth boundary.

2 **SECTION 2.** Section 7, chapter 636, Oregon Laws 2009, is amended to  
3 read:

4 **Sec. 7.** (1) Notwithstanding contrary provisions of statewide land use  
5 planning goals relating to public facilities and services and urbanization, and  
6 notwithstanding ORS 215.700 to 215.780, a local government may change its  
7 comprehensive plan and land use regulations implementing the plan to allow  
8 residential development in a receiving area consistent with sections 6 to 8  
9 [*of this 2009 Act*], **chapter 636, Oregon Laws 2009**, if the Land Conservation  
10 and Development Commission has approved a concept plan for the pilot  
11 project.

12 (2) The local governments having land use jurisdiction over lands in-  
13 cluded in the sending area and the receiving area for the pilot project shall  
14 adopt amendments to their respective comprehensive plans and land use  
15 regulations implementing the plans that are consistent with subsection (3)  
16 of this section.

17 (3) When the commission has approved a proposed concept plan, the local  
18 governments having land use jurisdiction over the affected sending area and  
19 affected receiving area shall adopt overlay zone provisions and corresponding  
20 amendments to the comprehensive plan and land use regulations implement-  
21 ing the plan that identify the additional [*residential*] development allowed  
22 through participation in the pilot project. The Department of Land Conser-  
23 vation and Development shall review the overlay zones and corresponding  
24 comprehensive plan amendments in the manner of periodic review under ORS  
25 197.628 to 197.650.

26 (4) Notwithstanding ORS 197.296 and 197.298 and statewide land use  
27 planning goals relating to urbanization, a local government may amend its  
28 urban growth boundary to include adjacent lands in a receiving area, con-  
29 sistent with an approved concept plan, if the net residential density of de-  
30 velopment authorized in the receiving area is at least [*10 dwelling units per*  
31 *acre*] **five dwelling units per net acre or 125 percent of the average**

1 residential density allowed on land planned for residential use within  
2 the urban growth boundary when the pilot project is approved by the  
3 commission, whichever is greater.

4 (5) Local governments or other entities may establish a development  
5 rights bank or other system to facilitate the transfer of development rights.

6 (6) A county shall review an application for a pilot project under sections  
7 6 to 8 [*of this 2009 Act*], **chapter 636, Oregon Laws 2009**, as a comprehen-  
8 sive plan amendment. A county may apply other procedures, including master  
9 plan approval, site plan review or conditional use review as the county finds  
10 appropriate to subsequent phases of review of the pilot project.

11 (7) **When development rights transfers authorized by the pilot**  
12 **project under sections 6 to 8, chapter 636, Oregon Laws 2009, result in**  
13 **the transfer of development rights from the jurisdiction of one local**  
14 **government to another local government and cause a potential shift**  
15 **of ad valorem tax revenues between jurisdictions, the local govern-**  
16 **ments may enter into an intergovernmental agreement under ORS**  
17 **190.003 to 190.130 that provides for sharing between the local govern-**  
18 **ments of the prospective ad valorem tax revenues derived from new**  
19 **development in the receiving area.**

20 **SECTION 3. This 2011 Act being necessary for the immediate pres-**  
21 **ervation of the public peace, health and safety, an emergency is de-**  
22 **clared to exist, and this 2011 Act takes effect on its passage.**

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