

Enrolled Senate Bill 967

Sponsored by COMMITTEE ON COMMERCE

CHAPTER

AN ACT

Relating to statutorily created legislative committees; amending ORS 94.508, 196.795, 196.910, 197.015, 197.060, 197.065, 197.095, 197.235, 197.240, 197.352, 197.405, 197.505, 197.825, 285A.522, 285A.708, 285B.144, 285B.260, 455.446, 496.118, 509.590, 509.595, 541.396, 541.405, 541.407, 541.409, 541.411, 541.413, 541.420 and 777.100; and repealing ORS 171.535, 171.540, 171.545, 171.550, 171.551, 171.553, 171.595, 171.600, 171.800, 171.805, 171.825, 171.830, 171.833, 171.835, 171.840, 171.845, 171.850, 197.080, 197.125, 197.130, 197.135, 468B.066 and 543.257.

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

SECTION 1. ORS 171.535, 171.540, 171.545, 171.550, 171.551, 171.553, 171.595, 171.600, 171.800, 171.805, 171.825, 171.830, 171.833, 171.835, 171.840, 171.845, 171.850, 197.080, 197.125, 197.130, 197.135, 468B.066 and 543.257 are repealed.

SECTION 2. ORS 196.795 is amended to read:

196.795. (1) The Department of State Lands shall continue to pursue methods to streamline the process for administering permits for the removal of material from the bed or banks of any waters of this state or for filling the waters of this state, reducing paperwork, eliminating duplication, increasing certainty and timeliness and enhancing resource protection. The efforts of the Department of State Lands shall include but need not be limited to applying to the United States Army Corps of Engineers for a state program general permit as authorized in federal regulations implementing section 404 of the Federal Water Pollution Control Act, and section 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with these activities, the Department of State Lands may continue to investigate the possibility of assuming the federal regulatory program under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act.

(2) The department shall report periodically to the [*Joint Legislative Committee on Land Use*] **appropriate legislative committee** on the progress in implementing subsection (1) of this section.

SECTION 3. ORS 196.910 is amended to read:

196.910. The Department of State Lands shall:

(1) Monitor removal and fill activities, including but not limited to prospecting and placer mining, within designated essential indigenous anadromous salmonid habitat areas to determine the effects of such activities on salmonid spawning and rearing habitat and compile the results in an annual report.

(2) Cooperate with the State Department of Fish and Wildlife and other interested parties to develop and distribute public education and information materials designed to increase understanding and awareness of permit requirements and acceptable removal and fill practices related to prospecting and placer mining.

(3) Report periodically to the [*Joint Legislative Committee on Land Use*] **appropriate legislative committee** on the progress of the Department of State Lands in implementing ORS 196.810.

SECTION 4. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) "Commission" means the Land Conservation and Development Commission.

[(5) "*Committee*" means the *Joint Legislative Committee on Land Use*.]

[(6)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[(7)] (6) "Department" means the Department of Land Conservation and Development.

[(8)] (7) "Director" means the Director of the Department of Land Conservation and Development.

[(9)] (8) "Goals" means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

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

[(11)] (10) "Land use decision":

(a) Includes:

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

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

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

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360; or

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(c) Does not include a decision by a school district to close a school;

(d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

or

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

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

[(13)] (12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(a) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

[(14)] (13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

[(15)] (14) "Metro" means a metropolitan service district organized under ORS chapter 268.

[(16)] (15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

[(17)] (16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

[(18)] (17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

[(19)] (18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

[(20)] (19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[(21)] (20) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

[22] (21) “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 5. ORS 197.015, as amended by section 8, chapter 829, Oregon Laws 2005, is amended to read:

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

(2) “Board” means the Land Use Board of Appeals.

(3) “Carport” means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

(4) “Commission” means the Land Conservation and Development Commission.

[5] “Committee” means the Joint Legislative Committee on Land Use.]

[6] (5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “General nature” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.

[7] (6) “Department” means the Department of Land Conservation and Development.

[8] (7) “Director” means the Director of the Department of Land Conservation and Development.

[9] (8) “Goals” means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

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

[11] (10) “Land use decision”:

(a) Includes:

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

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

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

(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

(D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;

(E) That is an expedited land division as described in ORS 197.360; or

(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;

(c) Does not include a decision by a school district to close a school;

(d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

or

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

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

[(13)] (12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

(a) The approval or denial of a tentative subdivision or partition plan, as described in ORS 92.040 (1).

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

[(14)] (13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

[(15)] (14) "Metro" means a metropolitan service district organized under ORS chapter 268.

[(16)] (15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

[(17)] (16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

[(18)] (17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

[(19)] (18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

[(20)] (19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[21] (20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

[22] (21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

[23] (22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 6. ORS 197.060 is amended to read:

197.060. (1) Prior to the end of each even-numbered year, the Department of Land Conservation and Development shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, Land Conservation and Development Commission, state agencies, local governments and special districts in carrying out ORS chapters 195, 196 and 197.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the [*Joint Legislative Committee on Land Use for its review and comment*] **appropriate legislative committee** at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section.

(4) The department shall include in its biennial report:

(a) A description of its activities implementing ORS 197.631; and

(b) An accounting of new statutory, land use planning goal and rule requirements and local government compliance with the new requirements pursuant to ORS 197.646.

SECTION 7. ORS 197.065 is amended to read:

197.065. (1) Prior to each legislative session, the Land Conservation and Development Commission shall submit to the [*Joint Legislative Committee on Land Use*] **appropriate legislative committee** a written report analyzing applications approved and denied for:

(a) New and replacement dwellings under:

(A) ORS 215.213 (1)(e) and (g), (2)(a) and (b), (3) and (4), 215.283 (1)(e) and (f), 215.284 and 215.705; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

(b) Divisions of land under:

(A) ORS 215.263 (2), (4) and (5); and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland;

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

(A) ORS 215.317 or 215.327; and

(B) Any land zoned for forest use under any statewide planning goal that relates to forestland; and

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

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

(a) Dwellings authorized by ORS 215.213 (1)(e) or 215.283 (1)(e); or

(b) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum size established by the commission under ORS 215.780.

(3) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsection (1) of this section.

SECTION 8. ORS 197.095 is amended to read:

197.095. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS chapters 195, 196 and 197.

(2) All fees, moneys and other revenue received by the Department of Land Conservation and Development [*or the Joint Legislative Committee on Land Use*] shall be deposited in the Land Conservation and Development Account.

SECTION 9. ORS 197.235 is amended to read:

197.235. (1) In preparing the goals and guidelines, the Department of Land Conservation and Development shall:

(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing. At least two public hearings must be held in each congressional district.

(b) Implement any other provision for public involvement developed by the State Citizen Involvement Advisory Committee under ORS 197.160 (1) and approved by the Land Conservation and Development Commission.

(2) Upon completion of the preparation of the proposed goals and guidelines, or amendments to those goals and guidelines, the department shall submit them to the commission, the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the [*Joint Legislative Committee on Land Use*] **appropriate legislative committee** for review.

(3) The commission shall consider the comments of the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and [*the Joint Legislative Committee on Land Use*] **the legislative committee** before the adoption and amendment of the goals and guidelines.

(4) Notwithstanding subsection (1)(a) of this section, when a legislative enactment or an initiative measure is inconsistent with the adopted goals and guidelines or directs the commission to make a specific change to the adopted goals and guidelines, the commission may amend the goals and guidelines after only one public hearing, at a location determined by the commission, if the proposed amendment:

(a) Is necessary to conform the goals and guidelines to the legislative enactment or the initiative measure; and

(b) Makes no change other than the conforming changes unless the change corrects an obvious scrivener's error.

SECTION 10. ORS 197.240 is amended to read:

197.240. Upon receipt of the proposed goals and guidelines prepared and submitted to it by the Department of Land Conservation and Development, the Land Conservation and Development Commission shall:

(1) Hold at least one public hearing on the proposed goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed goals and guidelines to the Governor, the [*Joint Legislative Committee on Land Use*] **appropriate legislative committee**, affected state agencies and special districts and to each local government without charge. The department shall provide copies of such proposed goals and guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any amendments to the proposed goals and guidelines that

it considers necessary and approve the proposed goals and guidelines as they may be amended by the commission.

SECTION 11. ORS 197.405 is amended to read:

197.405. (1) The Land Conservation and Development Commission may recommend to [*the Joint Legislative Committee on Land Use*] **appropriate legislative committees** the designation of areas of critical state concern. Each such recommendation:

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

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

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

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

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

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.

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

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

(4) No proposed designation under subsection (1) of this section shall take effect unless it has first been submitted to [*the committee*] **appropriate legislative committees** under subsection (3) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or reject the proposed designation.

SECTION 12. ORS 285A.522 is amended to read:

285A.522. (1) The Department of Community Colleges and Workforce Development shall prepare an annual report concerning plant closings and mass layoffs in this state. The report shall describe in detail each plant closing or mass layoff during the period covered by the report and the assistance and services provided to the affected employers, workers and communities. The report shall also contain the most recent information available relating to the current status of the employer, workers and community affected by each plant closing or mass layoff.

(2) The report prepared under this section shall be presented to the Governor, the President of the Senate, the Speaker of the House of Representatives and [*the joint Legislative Committee on Trade and Economic Development*] **appropriate legislative committees**.

SECTION 13. ORS 285A.708 is amended to read:

285A.708. (1) There is created within the State Treasury a revolving fund known as the Oregon Port Revolving Fund, separate and distinct from the General Fund. Moneys in this fund are continuously appropriated to the Oregon Economic and Community Development Commission for the following purposes:

(a) Administrative expenses of the commission in processing applications and investigating proposed projects.

(b) Payment of loans to port districts pursuant to ORS 285A.666 to 285A.732.

(c) Administrative expenses of the Ports Division relating to ports. In any one year, administrative expenses charged under this paragraph may not be greater than the total revenues received in that year from fees provided for in subsection (2)(a) of this section, plus three percent of the total asset value of the fund.

- (2) The fund created by subsection (1) of this section shall consist of:
- (a) Application fees required by ORS 285A.672 (2).
 - (b) Repayment of moneys loaned to port districts or others from the Oregon Port Revolving Fund, including interest on such moneys.
 - (c) Payment of such moneys as may be appropriated to the fund by the Legislative Assembly.
 - (d) Moneys obtained from any interest accrued from such funds.
- (3) Outstanding debt on the fund shall not exceed 95 percent of all deposits, accounts payable, and other assets of the fund.
- (4) No money shall be expended from the Oregon Port Revolving Fund for any economic development study costing more than \$25,000 unless a work plan and budget for such study has been provided to [*the joint Legislative Committee on Trade and Economic Development*] **appropriate legislative committees.**

SECTION 14. ORS 285B.144 is amended to read:

285B.144. (1) The Economic and Community Development Department shall annually prepare a report conforming to generally accepted accounting principles that describes the financial condition of the Capital Access Fund.

(2) The reports required under this section shall be submitted to the Governor and to [*the joint Legislative Committee on Trade and Economic Development*] **appropriate legislative committees.**

SECTION 15. ORS 285B.260 is amended to read:

285B.260. (1) There is created a Regional Investment Fund, separate and distinct from the General Fund, to consist of all moneys credited thereto, including moneys from the Administrative Services Economic Development Fund, and all interest earned on the Regional Investment Fund. The fund is continuously appropriated to the Economic and Community Development Department to be used for grants to implement ORS [171.845,] 280.518 and 285B.230 to 285B.269.

(2) The department may use moneys in the Regional Investment Fund to pay for the administrative expenses of operating the regional investment program under ORS 285B.230 to 285B.269.

(3) The fund shall not be used to retire any debt or to reimburse any person or municipality for expenditures made or expenses incurred prior to the adoption of a regional investment strategy.

SECTION 16. ORS 496.118 is amended to read:

496.118. (1) Subject to policy direction by the State Fish and Wildlife Commission, the State Fish and Wildlife Director shall:

- (a) Be the administrative head of the State Department of Fish and Wildlife;
- (b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;
- (c) Administer and enforce the wildlife laws of the state;
- (d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the wildlife resources of this state;
- (e) Establish such sections and divisions as are necessary to properly carry out the work of the commission;
- (f) Be responsible for the collection, application and dissemination of information pertinent to the management of the wildlife resources, and to the regulation of the uses of such resources; and
- (g) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) In addition to any other duties assigned to the director, the director shall report quarterly on the activities of the department to the [*joint legislative committee established pursuant to ORS 171.551*] **appropriate legislative committee.**

(4) The director may delegate to any employee of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of a person so acting in the director's name and by the director's authority shall be considered to be an official act of the director.

(5) The director may restrict or otherwise limit the participation of an employee of the department in any program administered by the department to ensure that the programs of the department are administered in a fair and equitable manner and that no employee of the department gains an advantage over the public.

(6) Notwithstanding the provisions of ORS 496.112 (3), in times of emergency or with respect to regulating wildlife taking, the director may exercise the full powers of the commission until such times as the emergency ends or the commission meets in formal session.

SECTION 17. ORS 509.590 is amended to read:

509.590. (1) The State Fish and Wildlife Director shall establish a Fish Passage Task Force to advise the director and the State Department of Fish and Wildlife on matters related to fish passage in Oregon, including but not limited to funding, cost sharing and prioritization of efforts. The director shall determine the members and the specific duties of the task force by rule.

(2) The department shall provide staff necessary for the performance of the functions of the task force.

(3) A member of the task force may not receive compensation for services as a member of the task force. In accordance with ORS 292.495, a member of the task force may receive reimbursement for actual and necessary travel or other expenses incurred in the performance of official duties.

(4) The task force shall report semiannually [*to the joint legislative committee created under ORS 171.551, or*] to the appropriate [*interim*] legislative committee with responsibility for salmon restoration or species recovery, to advise the committee on matters related to fish passage.

SECTION 18. ORS 509.595 is amended to read:

509.595. The State Fish and Wildlife Director shall report to the Governor, the Speaker of the House of Representatives, the President of the Senate and [*the joint interim committee established pursuant to ORS 171.551 or*] the appropriate [*interim*] legislative committee with responsibility for salmon restoration or species recovery:

(1) Prior to the adoption of rules relating to fish passage;

(2) Prior to the establishment of the general criteria for determining the adequacy of fish passage and of alternatives to fish passage required to be established under ORS 509.585 (7)(c); and

(3) Semiannually on the progress that the director has made in implementing ORS 509.580 to 509.590.

SECTION 19. ORS 541.396 is amended to read:

541.396. (1) In accordance with the applicable provisions of ORS chapter 183, the Oregon Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Grant application requirements and review and selection criteria for projects to receive assistance or funding from the board, including funding from the Flexible Incentives Account established under ORS 541.381.

(b) Criteria for distributing to those entities specified in ORS 541.375 those funds appropriated to the board for funding projects. The criteria shall include a process for periodic review of the distribution by the [*joint*] **appropriate** legislative committee [*created pursuant to ORS 171.551*].

(c) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency providing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project.

SECTION 20. ORS 541.405 is amended to read:

541.405. (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by the Independent Multidisciplinary Science Team, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly [*and oversight as set forth in ORS 171.551 and 171.553*].

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection.

SECTION 21. ORS 541.407 is amended to read:

541.407. (1) The Governor, the President of the Senate and the Speaker of the House of Representatives shall appoint a statewide Healthy Streams Partnership. The Healthy Streams Partnership shall consist of 21 persons. Membership shall include:

(a) Seven members who represent watershed groups or soil and water conservation districts;

(b) One member who represents tribal governments and who resides east of the summit of the Cascade Mountain Range;

(c) One member who represents tribal governments and who resides west of the summit of the Cascade Mountain Range;

(d) Two members who represent environmental advocacy or wildlife conservation groups; and

(e) Ten members who represent different in-stream and out-of-stream beneficial uses of water, including but not limited to agricultural, recreational, industrial, municipal and silvicultural uses.

(2) The members of the Healthy Streams Partnership shall serve for four years and may be re-appointed for no more than two consecutive terms, but any person may be appointed again to the partnership after an interval of four years.

(3) The Healthy Streams Partnership shall elect a chairperson and vice chairperson for a term of one year and shall determine the duties of the officers.

(4) A majority of the members of the Healthy Streams Partnership constitutes a quorum for the transaction of business. The Healthy Streams Partnership shall operate in accordance with procedures adopted by the members.

(5) The office of the Governor shall provide administrative support and services to the Healthy Streams Partnership.

(6) The duties of the Healthy Streams Partnership shall include but need not be limited to:

(a) Providing information to the *[joint]* **appropriate** legislative committee *[created pursuant to ORS 171.551]* about the implementation of the programs from a local and regional perspective; and

(b) Recommending changes necessary to facilitate more efficient implementation of the initiative and other stream improvement programs at the local level.

(7) Members of the Healthy Streams Partnership shall not be compensated for their services but are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

SECTION 22. ORS 541.409 is amended to read:

541.409. (1) There is created an Independent Multidisciplinary Science Team consisting of up to seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. The Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the Independent Multidisciplinary Science Team. The decision to appoint a member of the team shall be a unanimous decision by the appointing authorities. The members of the Independent Multidisciplinary Science Team shall serve for four years and may be reappointed for a subsequent term. The team shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the National Academy of Sciences.

(2) The Independent Multidisciplinary Science Team shall:

(a) Review implementation of the Oregon Plan and other programs for achieving healthy streams as described in ORS 541.405.

(b) Prepare and submit to the Governor, the Legislative Assembly and the public an annual report on the implementation of the Oregon Plan, including any recommendations for changes or adjustments to the initiative.

(c) Serve as an independent scientific peer review panel to the state agencies responsible for developing and implementing the Oregon Plan and other salmon or stream enhancement programs throughout this state.

(d) Report regularly to the *[joint]* **appropriate** legislative committee *[created pursuant to ORS 171.551]* concerning the duties described under this subsection and other requests by *[that joint legislative]* **the** committee.

(3) If the Independent Multidisciplinary Science Team submits suggestions to an agency responsible for implementing a portion of the Oregon Plan, the agency shall respond in writing to the team, explaining how the agency intends to implement the suggestion or why the agency does not implement the suggestion. The team shall include any agency responses in its report *[to the joint legislative committee created pursuant to ORS 171.551]* **under subsection (2)(b) of this section.**

(4) Members of the Independent Multidisciplinary Science Team shall be compensated for their services and are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

(5) Compensation for members of the Independent Multidisciplinary Science Team shall be *[cooperatively]* determined by the appointing authorities *[and the joint legislative committee created pursuant to ORS 171.551]*.

(6) The office of the Governor shall provide administrative support and services to the Independent Multidisciplinary Science Team.

SECTION 23. ORS 541.411 is amended to read:

541.411. Any state agency participating in the programs and activities described in ORS 541.405 shall:

(1) Upon request of any person who believes the person's private property rights may be adversely affected by the Oregon Plan, provide the person with written information about the agency's dispute resolution services available pursuant to ORS 183.502.

(2) Report to the *[joint]* **appropriate** legislative committee *[created pursuant to ORS 171.551]* any dispute resolution services requested under this section, and the outcome of such dispute resolution.

SECTION 24. ORS 541.413 is amended to read:

541.413. Notwithstanding any other provision of law, if during the interim between legislative sessions any agency responsible for implementing a portion of the Oregon Plan or a program for the enhancement or restoration of streams throughout the state requires additional funding or an adjustment to the agency's expenditure limitations as approved by the Legislative Assembly to complete implementation of the Oregon Plan, the agency shall first submit a report to the *[joint]*

appropriate legislative committee [*created pursuant to ORS 171.551*]. The committee shall review the request and present a recommendation to the Emergency Board at the time the agency submits its request to the Emergency Board.

SECTION 25. ORS 541.420 is amended to read:

541.420. (1) The Oregon Watershed Enhancement Board shall, by January 15 of each odd-numbered year, submit a report to the Governor and to the appropriate committee or committees of the Legislative Assembly that assesses the implementation and effectiveness of the Oregon Plan in the state. The report shall address each drainage basin in the state and shall include, but need not be limited to:

(a) A status report on watershed and key habitat conditions in the drainage basin based on available information;

(b) An assessment of data and information needs deemed critical to monitoring and evaluating watershed and habitat enhancement programs and efforts;

(c) An overview of state agency programs addressing watershed conditions;

(d) An overview of voluntary restoration activities addressing watershed conditions;

(e) A summary of investments made by the board from funds received under section 4b, Article XV of the Oregon Constitution, and all other sources; and

(f) The recommendations of the board for enhancing the effectiveness of Oregon Plan implementation in each drainage basin.

(2) In order to provide the board with the information necessary to complete the report described in subsection (1) of this section, each natural resources agency shall provide information requested by the board in the format and at the times determined by the board.

(3) For purposes of this section, "natural resources agency" includes:

(a) Department of Environmental Quality;

(b) State Department of Agriculture;

(c) State Department of Fish and Wildlife;

(d) State Forestry Department;

(e) Department of State Lands;

(f) Water Resources Department;

(g) Department of Land Conservation and Development;

(h) State Department of Geology and Mineral Industries;

(i) Oregon Watershed Enhancement Board;

(j) Fish and Wildlife Division of the Department of State Police;

(k) Department of Transportation;

(l) State Parks and Recreation Department;

(m) Economic and Community Development Department;

(n) State Marine Board; and

(o) Any other state agency that is required to manage, allocate or protect natural resources, either as the primary responsibility of the agency or in conjunction with the primary responsibilities of the agency.

(4) In addition to the report specified under subsection (1) of this section, the Oregon Watershed Enhancement Board shall report regularly during the interim on the implementation of the Oregon Plan to the [*joint*] **appropriate** legislative committee [*created under ORS 171.551*].

SECTION 26. ORS 777.100 is amended to read:

777.100. Annually, the directors of any agreeing ports and the Director of the Department of State Lands shall report to [*the Legislative Committee on Trade and Economic Development*] **appropriate legislative committees** the nature of all agreements made under ORS 777.090 and accomplishments thereunder.

SECTION 27. ORS 94.508 is amended to read:

94.508. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 [(11)(b)] **(10)(b)**, the approval or amendment of a development agreement is a land use decision under ORS chapter 197.

SECTION 28. ORS 197.352 is amended to read:

197.352. The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to December 2, 2004, that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this section.

(3) Subsection (1) of this section shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this section;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this section shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(5) For claims arising from land use regulations enacted prior to December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of December 2, 2004, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after December 2, 2004, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this section, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this section in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this section, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this section.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this section, in lieu of payment of just compensation under this section, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this section shall not be considered a land use decision as defined in ORS 197.015 [(11)] (10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this section. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this section. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this section is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this section are declared invalid by a court of competent jurisdiction, the remaining portions of this section shall remain in full force and effect.

SECTION 29. ORS 197.505 is amended to read:

197.505. As used in ORS 197.505 to 197.540:

(1) "Public facilities" means those public facilities for which a public facilities plan is required under ORS 197.712.

(2) "Special district" refers to only those entities as defined in ORS 197.015 [(20)] (19) that provide services for which public facilities plans are required.

SECTION 30. ORS 197.825 is amended to read:

197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

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

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

(c) Does not include a local government decision that is:

(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board; or

(B) Subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455 or a matter related to a local government decision subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455;

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

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

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

(g) Does not include review of expedited land divisions under ORS 197.360.

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

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 [(11)(b)] **(10)(b)** or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order.

SECTION 31. ORS 455.446 is amended to read:

455.446. (1)(a) New essential facilities described in ORS 455.447 (1)(a)(A), (B) and (G) and new special occupancy structures described in ORS 455.447 (1)(e)(B), (C) and (E) may not be constructed in the tsunami inundation zone established under paragraph (c) of this subsection. The provisions of this paragraph apply to buildings with a capacity greater than 50 individuals for every public, private or parochial school through secondary level and child care centers.

(b) The State Department of Geology and Mineral Industries shall establish the parameters of the area of expected tsunami inundation based on scientific evidence that may include geologic field data and tsunami modeling.

(c) The governing board of the State Department of Geology and Mineral Industries, by rule, shall determine the tsunami inundation zone based on the parameters established by the department. The board shall adopt the zone as determined by the department under paragraph (b) of this subsection except as modified by the board under paragraph (d) of this subsection.

(d) The board may grant exceptions to restrictions in the tsunami inundation zone established under paragraph (c) of this subsection after public hearing and a determination by the board that the applicant has demonstrated that the safety of building occupants will be ensured to the maximum reasonable extent:

(A) By addressing the relative risks within the zone.

(B) By balancing competing interests and other considerations.

(C) By considering mitigative construction strategies.

(D) By considering mitigative terrain modification.

(e) The provisions of paragraph (a) of this subsection do not apply:

(A) To fire or police stations where there is a need for strategic location; and

(B) To public schools if there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.

(f) All materials supporting an application for an exception to the tsunami inundation zone are public records under ORS 192.005 to 192.170 and must be retained in the library of the department for periods of time determined by its governing board.

(g) The applicant for an exception to the tsunami inundation zone established under paragraph (c) of this subsection shall pay any costs for department review of the application and the costs, if any, of the approval process.

(2) The definitions in ORS 455.447 apply to this section.

(3) The provisions of this section do not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.

(4) Decisions made under this section are not land use decisions under ORS 197.015 [(11)] (10).

Passed by Senate May 3, 2007

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Secretary of Senate

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President of Senate

Passed by House May 18, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State