

# House Bill 2182

Sponsored by Representative KRIEGER; Representatives ESQUIVEL, SCHAUFLEER (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies basis for petitioning Land Use Board of Appeals for review of land use decisions or limited land use decisions. Requires person that does not own real property adjacent to use or to real property that is subject of land use decision or limited land use decision to post deposit to cover attorney fees and costs of expert witnesses required by applicant to establish that use or change to real property meets applicable standards.

## A BILL FOR AN ACT

1  
2 Relating to land use appeals; creating new provisions; and amending ORS 196.115, 197.625, 197.796,  
3 197.830, 197.832, 197.835, 197.840, 197.845, 197.850, 215.416 and 227.175.

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

5 **SECTION 1.** ORS 197.830 is amended to read:

6 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to  
7 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-  
8 peals.

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

11 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;  
12 and

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

14 (3) **Except as provided in ORS 197.620, in addition to the requirements of subsection (2)**  
15 **of this section, if a person does not own, or have an ownership interest in, real property that**  
16 **is adjacent to a use or to real property that is a subject of the land use decision or limited**  
17 **land use decision to be reviewed by the board, the person may petition for review of the de-**  
18 **cision only after making a deposit with the board, as determined by rule of the board, to**  
19 **cover the cost of expert witnesses and attorney fees required by the applicant to establish**  
20 **that the use or the change to the real property meets the applicable standards.**

21 (4) **Subsection (3) of this section does not apply to local governments, special districts,**  
22 **state agencies or the applicant before the local government.**

23 [(3)] (5) If a local government makes a land use decision without providing a hearing, except as  
24 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision  
25 that is different from the proposal described in the notice of hearing to such a degree that the notice  
26 of the proposed action did not reasonably describe the local government's final actions, a person  
27 adversely affected by the decision may appeal the decision to the board under this section:

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1        [(4)] **(6)** If a local government makes a land use decision without a hearing pursuant to ORS  
 2 215.416 (11) or 227.175 (10):

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

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

10        (c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416  
 11 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of re-  
 12 ceiving actual notice of the nature of the decision, if the mailed notice of the decision did not rea-  
 13 sonably describe the nature of the decision.

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

17        [(5)] **(7)** If a local government makes a limited land use decision which is different from the  
 18 proposal described in the notice to such a degree that the notice of the proposed action did not  
 19 reasonably describe the local government’s final actions, a person adversely affected by the decision  
 20 may appeal the decision to the board under this section:

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

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

24        [(6)(a)] **(8)(a)** Except as provided in paragraph (b) of this subsection, the appeal periods de-  
 25 scribed in subsections [(3), (4) and] (5), **(6) and (7)** of this section shall not exceed three years after  
 26 the date of the decision.

27        (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763  
 28 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-  
 29 ply.

30        [(7)(a)] **(9)(a)** Within 21 days after a notice of intent to appeal has been filed with the board  
 31 under subsection (1) of this section, any person described in paragraph (b) of this subsection may  
 32 intervene in and be made a party to the review proceeding by filing a motion to intervene and by  
 33 paying a filing fee of \$100.

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

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

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

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

42        [(8)] **(10)** If a state agency whose order, rule, ruling, policy or other action is at issue is not a  
 43 party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be  
 44 due on the same date the respondent’s brief is due and shall be accompanied by a filing fee of \$100.

45        [(9)] **(11)** A notice of intent to appeal a land use decision or limited land use decision shall be

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

13 ~~[(10)(a)]~~ **(12)(a)** Within 21 days after service of the notice of intent to appeal, the local govern-  
 14 ment, special district or state agency shall transmit to the board the original or a certified copy of  
 15 the entire record of the proceeding under review. By stipulation of all parties to the review pro-  
 16 ceeding the record may be shortened. The board may require or permit subsequent corrections to  
 17 the record.[:] However, the board shall issue an order on a motion objecting to the record within  
 18 60 days of receiving the motion.

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

25 ~~[(11)]~~ **(13)** A petition for review of the land use decision or limited land use decision and sup-  
 26 porting brief shall be filed with the board as required by the board under subsection ~~[(13)]~~ **(15)** of  
 27 this section.

28 ~~[(12)]~~ **(14)** The petition shall include a copy of the decision sought to be reviewed and shall state:

- 29 (a) The facts that establish that the petitioner has standing.
- 30 (b) The date of the decision.
- 31 (c) The issues the petitioner seeks to have reviewed.

32 ~~[(13)(a)]~~ **(15)(a)** The board shall adopt rules establishing deadlines for filing petitions and briefs  
 33 and for oral argument.

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

44 ~~[(14)]~~ **(16)** The board shall issue a final order within 77 days after the date of transmittal of the  
 45 record. If the order is not issued within 77 days the applicant may apply in Marion County or the

1 circuit court of the county where the application was filed for a writ of mandamus to compel the  
 2 board to issue a final order.

3 [(15)(a)] (17)(a) Upon entry of its final order the board may, in its discretion, award costs to the  
 4 prevailing party including the cost of preparation of the record if the prevailing party is the local  
 5 government, special district or state agency whose decision is under review. The deposit required  
 6 by subsection [(9)] (11) of this section shall be applied to any costs charged against the petitioner.

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

10 [(16)] (18) Orders issued under this section may be enforced in appropriate judicial proceedings.

11 [(17)(a)] (19)(a) The board shall provide for the publication of its orders that are of general  
 12 public interest in the form it deems best adapted for public convenience. The publications shall  
 13 constitute the official reports of the board.

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

16 [(18)] (20) Except for any sums collected for publication of board opinions, all fees collected by  
 17 the board under this section that are not awarded as costs shall be paid over to the State Treasurer  
 18 to be credited to the General Fund.

19 **SECTION 2.** ORS 196.115 is amended to read:

20 196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission  
 21 [shall be] **are** subject to review solely as provided in this section, except as otherwise provided by  
 22 the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

23 (2)(a) A final action or order by the commission in a review or appeal of any action of the  
 24 commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area  
 25 Act, or a final action or order by the commission in a review or appeal of any action of a county  
 26 pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall  
 27 be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided  
 28 in subsections (3) and (4) of this section and ORS 183.482.

29 (b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals  
 30 also shall review the action of the county that is the subject of the commission's order, if requested  
 31 in the petition.

32 (c) The Court of Appeals shall issue a final order on review under this subsection within the  
 33 time limits provided by ORS 197.855.

34 (d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action  
 35 may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent  
 36 to appeal the county's action shall be filed not later than 21 days after the commission's order on  
 37 the county action becomes final.

38 (e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d)  
 39 of this subsection shall not include any issue relating to interpretation or implementation of the  
 40 Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such inter-  
 41 pretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this  
 42 subsection.

43 (f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the  
 44 Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall  
 45 not review land use decisions within the general management area or special management area for

1 compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the  
 2 Land Conservation and Development Commission decertifies the management plan pursuant to ORS  
 3 196.107.

4 (3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a)  
 5 of this section, the procedures to be followed by the parties, the commission and the court, and the  
 6 court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490  
 7 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L.  
 8 99-663, otherwise provides.

9 (b) Notwithstanding any provision of ORS 183.482:

10 (A) The commission shall transmit the original record or the certified copy of the entire record  
 11 within 21 days after service of a petition for judicial review is served on the commission; and

12 (B) The parties shall file briefs with the court within the times allowed by rules of the court.

13 (c) The court may affirm, reverse or remand the order. If the court finds that the agency has  
 14 erroneously interpreted a provision of law and that a correct interpretation compels a particular  
 15 action, the court shall:

16 (A) Set aside or modify the order; or

17 (B) Remand the case to the agency for further action under a correct interpretation of the pro-  
 18 vision of law.

19 (d) The court shall remand the order to the agency if the court finds the agency's exercise of  
 20 discretion to be:

21 (A) Outside the range of discretion delegated to the agency by law;

22 (B) Inconsistent with an agency rule, an officially stated agency position or a prior agency  
 23 practice, unless the inconsistency is explained by the agency; or

24 (C) Otherwise in violation of a constitutional or statutory provision.

25 (e) The court shall set aside or remand the order if the court finds that the order is not sup-  
 26 ported by substantial evidence in the whole record.

27 (f) Notwithstanding any other provision of this section, in any case where review of a county  
 28 action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section,  
 29 the court shall accept any findings of fact by the commission which the court finds to be supported  
 30 by substantial evidence in the whole record, and such findings by the commission shall prevail over  
 31 any findings by the county concerning the same or substantially the same facts.

32 (4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic  
 33 Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this  
 34 section, the procedures to be followed by the parties, the county and the court, and the court's re-  
 35 view, shall be in accordance with those provisions governing review of county land use decisions  
 36 by the Land Use Board of Appeals set forth in ORS 197.830 (2) to [(8), (10), (15) and (16)] **(10), (12),**  
 37 **(17) and (18)** and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the  
 38 enumerated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830  
 39 [(10)] **(12)** shall refer to the petition described in subsection (2) of this section.

40 (b) In addition to the other requirements of service under this section, the petitioner shall serve  
 41 the petition upon the persons and bodies described in ORS 197.830 [(9)] **(11)**, as a prerequisite to  
 42 judicial review of the county action.

43 (c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a com-  
 44 mission order and a county action shall file only one brief with the court, which shall address both  
 45 the commission order and the county action.

1 (d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject  
 2 to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for  
 3 which there is substantial evidence in the whole record. The court may appoint a master and follow  
 4 the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for  
 5 under ORS 197.835 (2).

6 (5) Approval of county land use ordinances by the commission pursuant to section 7 of the  
 7 Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Ap-  
 8 peals as provided in ORS 183.482.

9 (6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the com-  
 10 mission shall be filed with the circuit court for the county in which the commission has a principal  
 11 business office or in which the land involved in the proceeding is located.

12 **SECTION 3.** ORS 197.625 is amended to read:

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

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

20 (b) If an appeal is timely filed, the **Land Use Board of Appeals** affirms the decision or the ap-  
 21 pellate courts affirm the decision.

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

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

31 (b) Any approval of a land use decision, expedited land division or limited land use decision  
 32 subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall in-  
 33 clude findings of compliance with [*those*] **the statewide** land use goals applicable to the amendment.

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

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

40 [(A) *After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and*  
 41 *197.636;]*

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

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

44 (4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from  
 45 the board stating either:

1 (a) That no appeal was filed within the 21 days allowed under ORS 197.830 [(9)] (11); or

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

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

6 (6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent  
7 the Land Conservation and Development Commission from entering an order pursuant to ORS  
8 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.

9 **SECTION 4.** ORS 197.796 is amended to read:

10 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-  
11 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed  
12 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance  
13 by an applicant for a land use decision, limited land use decision, expedited land division or permit  
14 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does  
15 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-  
16 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-  
17 dence of arrangements to pay the fee or to ensure compliance with the condition.

18 (2) Any action for damages under this section shall be filed in the circuit court of the county  
19 in which the application was submitted within 180 days of the date of the decision.

20 (3)(a) A challenge filed pursuant to this section may not be dismissed on the basis that the ap-  
21 plicant did not request a variance to the condition of approval or any other available form of re-  
22 consideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1)  
23 prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit  
24 court and must exhaust all local appeals provided in the local comprehensive plan and land use  
25 regulations before proceeding under this section.

26 (b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public  
27 hearing, a statement shall be made to the applicant that the failure of the applicant to raise con-  
28 stitutional or other issues relating to proposed conditions of approval with sufficient specificity to  
29 allow the local government or its designee to respond to the issue precludes an action for damages  
30 in circuit court.

31 (c) An applicant is not required to raise an issue under this subsection unless the condition of  
32 approval is stated with sufficient specificity to enable the applicant to respond to the condition prior  
33 to the close of the final local hearing.

34 (4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth  
35 Amendment to the United States Constitution, the local government shall have the burden of dem-  
36 onstrating compliance with the constitutional requirements for imposing the condition.

37 (5) In a proceeding in circuit court under this section, the court shall award costs and reason-  
38 able attorney fees to a prevailing party. Notwithstanding ORS 197.830 [(15)] (17), in a proceeding  
39 before the Land Use Board of Appeals under this section, the board shall award costs and reason-  
40 able attorney fees to a prevailing party.

41 (6) This section applies to appeals by the applicant of a condition of approval and claims filed  
42 in state court seeking damages for the unlawful imposition of conditions of approval in a land use  
43 decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

44 **SECTION 5.** ORS 197.832 is amended to read:

45 197.832. The Board Publications Account is established in the General Fund. All moneys in the

1 account are appropriated continuously to the Land Use Board of Appeals to be used for paying ex-  
 2 penses incurred by the board under ORS 197.830 [(17)] (19). Disbursements of moneys from the ac-  
 3 count shall be approved by a member of the board.

4 **SECTION 6.** ORS 197.835 is amended to read:

5 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land  
 6 use decision and prepare a final order affirming, reversing or remanding the land use decision or  
 7 limited land use decision. The board shall adopt rules defining the circumstances in which it will  
 8 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

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

10 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte  
 11 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities  
 12 not shown in the record that, if proved, would warrant reversal or remand, the board may take ev-  
 13 idence and make findings of fact on those allegations. The board shall be bound by any finding of  
 14 fact of the local government, special district or state agency for which there is substantial evidence  
 15 in the whole record.

16 (3) Issues shall be limited to those raised by any participant before the local hearings body as  
 17 provided by ORS 197.195 or 197.763, whichever is applicable.

18 (4) A petitioner may raise new issues to the board if:

19 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195  
 20 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applica-  
 21 ble criteria that were omitted from the notice. However, the board may refuse to allow new issues to be  
 22 raised if it finds that the issue could have been raised before the local government; or

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

26 (5) The board shall reverse or remand a land use decision not subject to an acknowledged  
 27 comprehensive plan and land use regulations if the decision does not comply with the goals. The  
 28 board shall reverse or remand a land use decision or limited land use decision subject to an ac-  
 29 knowledged comprehensive plan or land use regulation if the decision does not comply with the  
 30 goals and the Land Conservation and Development Commission has issued an order under ORS  
 31 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to  
 32 apply the goals to the type of decision being challenged.

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

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

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

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

41 (8) The board shall reverse or remand a decision involving the application of a plan or land use  
 42 regulation provision if the decision is not in compliance with applicable provisions of the compre-  
 43 hensive plan or land use regulations.

44 (9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse  
 45 or remand the land use decision under review if the board finds:



1 (a) The local government or special district:

2 (A) Exceeded its jurisdiction;

3 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-  
4 diced the substantial rights of the petitioner;

5 (C) Made a decision not supported by substantial evidence in the whole record;

6 (D) Improperly construed the applicable law; or

7 (E) Made an unconstitutional decision; or

8 (b) The state agency made a decision that violated the goals.

9 (10)(a) The board shall reverse a local government decision and order the local government to  
10 grant approval of an application for development denied by the local government if the board finds:

11 (A) Based on the evidence in the record, that the local government decision is outside the range  
12 of discretion allowed the local government under its comprehensive plan and implementing ordi-  
13 nances; or

14 (B) That the local government's action was for the purpose of avoiding the requirements of ORS  
15 215.427 or 227.178.

16 (b) If the board does reverse the decision and orders the local government to grant approval of  
17 the application, the board shall award attorney fees to the applicant and against the local govern-  
18 ment.

19 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent  
20 possible consistent with the time requirements of ORS 197.830 [(14)] (16), the board shall decide all  
21 issues presented to it when reversing or remanding a land use decision described in subsections (2)  
22 to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

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

29 (12) The board may reverse or remand a land use decision under review due to ex parte contacts  
30 or bias resulting from ex parte contacts with a member of the decision-making body, only if the  
31 member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever  
32 is applicable.

33 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision  
34 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

35 (14) The board shall reverse or remand a land use decision or limited land use decision [*which*]  
36 **that** violates a commission order issued under ORS 197.328.

37 (15) In cases in which a local government provides a quasi-judicial land use hearing on a limited  
38 land use decision, the requirements of subsections (12) and (13) of this section apply.

39 (16) The board may decide cases before it by means of memorandum decisions and shall prepare  
40 full opinions only in such cases as it deems proper.

41 **SECTION 7.** ORS 197.840 is amended to read:

42 197.840. (1) The following periods of delay shall be excluded from the 77-day period within which  
43 the board must make a final decision on a petition under ORS 197.830 [(14)] (16):

44 (a) Any period of delay up to 120 days resulting from the board's deferring all or part of its  
45 consideration of a petition for review of a land use decision or limited land use decision that

1 allegedly violates the goals if the decision has been:

2 (A) Submitted for acknowledgment under ORS 197.251; or

3 (B) Submitted to the Department of Land Conservation and Development as part of a periodic  
4 review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowledged.

5 (b) Any period of delay resulting from a motion, including but not limited to, a motion disputing  
6 the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities  
7 not shown in the record.

8 (c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

9 (d) Any reasonable period of delay resulting from a continuance granted by a member of the  
10 board on the member's own motion or at the request of one of the parties, if the member granted  
11 the continuance on the basis of findings that the ends of justice served by granting the continuance  
12 outweigh the best interest of the public and the parties in having a decision within 77 days.

13 (2) [No] A period of delay resulting from a continuance granted by the board under subsection  
14 (1)(d) of this section [shall be] **is not** excludable under this section unless the board sets forth in the  
15 record, either orally or in writing, its reasons for finding that the ends of justice served by granting  
16 the continuance outweigh the best interests of the public and the other parties in a decision within  
17 the 77 days. The factors the board shall consider in determining whether to grant a continuance  
18 under subsection (1)(d) of this section in any case are as follows:

19 (a) Whether the failure to grant a continuance in the proceeding would be likely to make a  
20 continuation of the proceeding impossible or result in a miscarriage of justice; or

21 (b) Whether the case is so unusual or so complex, due to the number of parties or the existence  
22 of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the  
23 issues within the 77-day time limit.

24 (3) [No] A continuance under subsection (1)(d) of this section [shall] **may not** be granted because  
25 of general congestion of the board calendar or lack of diligent preparation or attention to the case  
26 by any member of the board or any party.

27 (4) The board may defer all or part of its consideration of a land use decision or limited land  
28 use decision described in subsection (1)(a) of this section until the Land Conservation and Develop-  
29 ment Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of  
30 this section. If the board deferred all or part of its consideration of a decision under this subsection,  
31 the board may grant a stay of the comprehensive plan provision, land use regulation, limited land  
32 use decision or land use decision under ORS 197.845.

33 **SECTION 8.** ORS 197.845 is amended to read:

34 197.845. (1) Upon application of the petitioner, the **Land Use Board of Appeals** may grant a stay  
35 of a land use decision or limited land use decision under review if the petitioner demonstrates:

36 (a) A colorable claim of error in the land use decision or limited land use decision under review;  
37 and

38 (b) That the petitioner will suffer irreparable injury if the stay is not granted.

39 (2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision  
40 approving a specific development of land, it shall require the petitioner requesting the stay to give  
41 an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and  
42 deposit for costs required under ORS 197.830 [(9)] (11). The board may impose other reasonable  
43 conditions such as requiring the petitioner to file all documents necessary to bring the matter to  
44 issue within specified reasonable periods of time.

45 (3) If the board affirms a quasi-judicial land use decision or limited land use decision for which

1 a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable  
 2 attorney fees and actual damages resulting from the stay to the person who requested the land use  
 3 decision or limited land use decision from the local government, special district or state agency,  
 4 against the person requesting the stay in an amount not to exceed the amount of the undertaking.

5 (4) The board shall limit the effect of a stay of a legislative land use decision to the geographic  
 6 area or to particular provisions of the legislative decision for which the petitioner has demonstrated  
 7 a colorable claim of error and irreparable injury under subsection (1) of this section. The board may  
 8 impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or  
 9 other undertaking or a requirement that the petitioner file all documents necessary to bring the  
 10 matter to issue within a specified reasonable time period.

11 **SECTION 9.** ORS 197.850 is amended to read:

12 197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830  
 13 to 197.845 may seek judicial review of a final order issued in those proceedings.

14 (2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued  
 15 under ORS 197.830 to 197.845 is solely as provided in this section.

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

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

23 (4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the  
 24 petition must be served by first class, registered or certified mail on the board and all other parties  
 25 of record in the board proceeding.

26 (5) Within seven days after service of the petition, the board shall transmit to the court the  
 27 original or a certified copy of the entire record of the proceeding under review, but, by stipulation  
 28 of all parties to the review proceeding, the record may be shortened. The court may tax a party that  
 29 unreasonably refuses to stipulate to limit the record for the additional costs. The court may require  
 30 or permit subsequent corrections or additions to the record when deemed desirable. Except as spe-  
 31 cifically provided in this subsection, the court may not tax the cost of the record to the petitioner  
 32 or any intervening party. However, the court may tax such costs and the cost of transcription of  
 33 record to a party filing a frivolous petition for judicial review.

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

36 (7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

37 (b) The court may hear oral argument more than 49 days from the date of transmittal of the  
 38 record provided the court determines that the ends of justice served by holding oral argument on  
 39 a later day outweigh the best interests of the public and the parties. The court shall not hold oral  
 40 argument more than 49 days from the date of transmittal of the record because of general congestion  
 41 of the court calendar or lack of diligent preparation or attention to the case by any member of the  
 42 court or any party.

43 (c) The court shall set forth in writing a determination to hear oral argument more than 49 days  
 44 from the date the record is transmitted, together with the reasons for its determination, and shall  
 45 provide a copy to the parties. The court shall schedule oral argument as soon as practicable there-

1 after.

2 (d) In making a determination under paragraph (b) of this subsection, the court shall consider:

3 (A) Whether the case is so unusual or complex, due to the number of parties or the existence  
4 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief  
5 the case and for the court to prepare for oral argument; and

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

8 (8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

10 (9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

12 (a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced  
13 thereby;

15 (b) The order to be unconstitutional; or

16 (c) The order is not supported by substantial evidence in the whole record as to facts found by  
17 the board under ORS 197.835 (2).

18 (10) The Court of Appeals shall issue a final order on the petition for judicial review with the  
19 greatest possible expediency.

20 (11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the  
21 board shall respond to the court's appellate judgment within 30 days.

22 (12) A party must file with the board an undertaking with one or more sureties insuring that  
23 the party will pay all costs, disbursements and attorney fees awarded against the party by the Court  
24 of Appeals if:

25 (a) The party appealed a decision of the board to the Court of Appeals; and

26 (b) In making the decision being appealed to the Court of Appeals, the board awarded attorney  
27 fees and expenses against that party under ORS 197.830 [(15)(b)] **(17)(b)**.

28 (13) Upon entry of its final order, the court shall award attorney fees and expenses to a party  
29 who prevails on a claim that an approval condition imposed by a local government on an application  
30 for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I,  
31 Oregon Constitution, or the Fifth Amendment to the United States Constitution.

32 (14) The undertaking required in subsection (12) of this section must be filed with the board and  
33 served on the opposing parties within 10 days after the date the petition was filed with the Court  
34 of Appeals.

35 **SECTION 10.** ORS 215.416 is amended to read:

36 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,  
37 an owner of land may apply in writing to such persons as the governing body designates, for a  
38 permit, in the manner prescribed by the governing body. The governing body shall establish fees  
39 charged for processing permits at an amount no more than the actual or average cost of providing  
40 that service.

41 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-  
42 ply at one time for all permits or zone changes needed for a development project. The consolidated  
43 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-  
44 dure shall be available for use at the option of the applicant no later than the time of the first pe-  
45 riodic review of the comprehensive plan and land use regulations.

1 (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least  
 2 one public hearing on the application.

3 (4) The application shall not be approved if the proposed use of land is found to be in conflict  
 4 with the comprehensive plan of the county and other applicable land use regulation or ordinance  
 5 provisions. The approval may include such conditions as are authorized by statute or county legis-  
 6 lation.

7 (5) Hearings under this section shall be held only after notice to the applicant and also notice  
 8 to other persons as otherwise provided by law and shall otherwise be conducted in conformance  
 9 with the provisions of ORS 197.763.

10 (6) Notice of a public hearing on an application submitted under this section shall be provided  
 11 to the owner of an airport defined by the Oregon Department of Aviation as a “public use airport”  
 12 if:

13 (a) The name and address of the airport owner has been provided by the Oregon Department  
 14 of Aviation to the county planning authority; and

15 (b) The property subject to the land use hearing is:

16 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon  
 17 Department of Aviation to be a “visual airport”; or

18 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon  
 19 Department of Aviation to be an “instrument airport.”

20 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing  
 21 need not be provided as set forth in subsection (6) of this section if the zoning permit would only  
 22 allow a structure less than 35 feet in height and the property is located outside the runway “ap-  
 23 proach surface” as defined by the Oregon Department of Aviation.

24 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which  
 25 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county  
 26 and which shall relate approval or denial of a permit application to the zoning ordinance and com-  
 27 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-  
 28 dinance and comprehensive plan for the county as a whole.

29 (b) When an ordinance establishing approval standards is required under ORS 197.307 to provide  
 30 only clear and objective standards, the standards must be clear and objective on the face of the  
 31 ordinance.

32 (9) Approval or denial of a permit or expedited land division shall be based upon and accompa-  
 33 nied by a brief statement that explains the criteria and standards considered relevant to the deci-  
 34 sion, states the facts relied upon in rendering the decision and explains the justification for the  
 35 decision based on the criteria, standards and facts set forth.

36 (10) Written notice of the approval or denial shall be given to all parties to the proceeding.

37 (11)(a)(A) The hearings officer or such other person as the governing body designates may ap-  
 38 prove or deny an application for a permit without a hearing if the hearings officer or other desig-  
 39 nated person gives notice of the decision and provides an opportunity for any person who is  
 40 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,  
 41 to file an appeal.

42 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)  
 43 of this subsection.

44 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall  
 45 describe the nature of the decision. In addition, the notice shall state that any person who is ad-

1 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-  
 2 section may appeal the decision by filing a written appeal in the manner and within the time period  
 3 provided in the county's land use regulations. A county may not establish an appeal period that is  
 4 less than 12 days from the date the written notice of decision required by this subsection was  
 5 mailed. The notice shall state that the decision will not become final until the period for filing a  
 6 local appeal has expired. The notice also shall state that a person who is mailed written notice of  
 7 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS  
 8 197.830.

9 (D) An appeal from a hearings officer's decision made without hearing under this subsection  
 10 shall be to the planning commission or governing body of the county. An appeal from such other  
 11 person as the governing body designates shall be to a hearings officer, the planning commission or  
 12 the governing body. In either case, the appeal shall be to a de novo hearing.

13 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial  
 14 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board  
 15 of Appeals. At the de novo hearing:

16 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-  
 17 ments and evidence as they would have had in a hearing under subsection (3) of this section before  
 18 the decision;

19 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised  
 20 in a notice of appeal; and

21 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are  
 22 accepted at the hearing.

23 (b) If a local government provides only a notice of the opportunity to request a hearing, the  
 24 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing  
 25 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,  
 26 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the  
 27 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made  
 28 by neighborhood or community organizations recognized by the governing body and whose bounda-  
 29 ries include the site.

30 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-  
 31 plicant and to the owners of record of property on the most recent property tax assessment roll  
 32 where such property is located:

33 (i) Within 100 feet of the property that is the subject of the notice when the subject property  
 34 is wholly or in part within an urban growth boundary;

35 (ii) Within 250 feet of the property that is the subject of the notice when the subject property  
 36 is outside an urban growth boundary and not within a farm or forest zone; or

37 (iii) Within 750 feet of the property that is the subject of the notice when the subject property  
 38 is within a farm or forest zone.

39 (B) Notice shall also be provided to any neighborhood or community organization recognized by  
 40 the governing body and whose boundaries include the site.

41 (C) At the discretion of the applicant, the local government also shall provide notice to the  
 42 Department of Land Conservation and Development.

43 (12) A decision described in ORS 215.402 (4)(b) shall:

44 (a) Be entered in a registry available to the public setting forth:

45 (A) The street address or other easily understood geographic reference to the subject property;

1 (B) The date of the decision; and

2 (C) A description of the decision made.

3 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a  
4 limited land use decision.

5 (c) Be subject to the appeal period described in ORS 197.830 [(5)(b)] **(7)(b)**.

6 (13) At the option of the applicant, the local government shall provide notice of the decision  
7 described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal  
8 to the board shall be filed within 21 days of the decision. The notice shall include an explanation  
9 of appeal rights.

10 (14) Notwithstanding the requirements of this section, a limited land use decision shall be sub-  
11 ject to the requirements set forth in ORS 197.195 and 197.828.

12 **SECTION 11.** ORS 227.175 is amended to read:

13 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the  
14 hearings officer, or such other person as the city council designates, for a permit or zone change,  
15 upon such forms and in such a manner as the city council prescribes. The governing body shall es-  
16 tablish fees charged for processing permits at an amount no more than the actual or average cost  
17 of providing that service.

18 (2) The governing body of the city shall establish a consolidated procedure by which an appli-  
19 cant may apply at one time for all permits or zone changes needed for a development project. The  
20 consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consol-  
21 idated procedure shall be available for use at the option of the applicant no later than the time of  
22 the first periodic review of the comprehensive plan and land use regulations.

23 (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least  
24 one public hearing on the application.

25 (4) The application shall not be approved unless the proposed development of land would be in  
26 compliance with the comprehensive plan for the city and other applicable land use regulation or  
27 ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215  
28 or any city legislation.

29 (5) Hearings under this section may be held only after notice to the applicant and other inter-  
30 ested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

31 (6) Notice of a public hearing on a zone use application shall be provided to the owner of an  
32 airport, defined by the Oregon Department of Aviation as a “public use airport” if:

33 (a) The name and address of the airport owner has been provided by the Oregon Department  
34 of Aviation to the city planning authority; and

35 (b) The property subject to the zone use hearing is:

36 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon  
37 Department of Aviation to be a “visual airport”; or

38 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon  
39 Department of Aviation to be an “instrument airport.”

40 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing  
41 need only be provided as set forth in subsection (6) of this section if the permit or zone change  
42 would only allow a structure less than 35 feet in height and the property is located outside of the  
43 runway “approach surface” as defined by the Oregon Department of Aviation.

44 (8) If an application would change the zone of property that includes all or part of a mobile  
45 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give

1 written notice by first class mail to each existing mailing address for tenants of the mobile home  
 2 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first  
 3 hearing on the application. The governing body may require an applicant for such a zone change to  
 4 pay the costs of such notice.

5 (9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not  
 6 invalidate any zone change.

7 (10)(a)(A) The hearings officer or such other person as the governing body designates may ap-  
 8 prove or deny an application for a permit without a hearing if the hearings officer or other desig-  
 9 nated person gives notice of the decision and provides an opportunity for any person who is  
 10 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,  
 11 to file an appeal.

12 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)  
 13 of this subsection.

14 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall  
 15 describe the nature of the decision. In addition, the notice shall state that any person who is ad-  
 16 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-  
 17 section may appeal the decision by filing a written appeal in the manner and within the time period  
 18 provided in the city's land use regulations. A city may not establish an appeal period that is less  
 19 than 12 days from the date the written notice of decision required by this subsection was mailed.  
 20 The notice shall state that the decision will not become final until the period for filing a local appeal  
 21 has expired. The notice also shall state that a person who is mailed written notice of the decision  
 22 cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

23 (D) An appeal from a hearings officer's decision made without hearing under this subsection  
 24 shall be to the planning commission or governing body of the city. An appeal from such other person  
 25 as the governing body designates shall be to a hearings officer, the planning commission or the  
 26 governing body. In either case, the appeal shall be to a de novo hearing.

27 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial  
 28 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board  
 29 of Appeals. At the de novo hearing:

30 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-  
 31 ments and evidence as they would have had in a hearing under subsection (3) of this section before  
 32 the decision;

33 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised  
 34 in a notice of appeal; and

35 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are  
 36 accepted at the hearing.

37 (b) If a local government provides only a notice of the opportunity to request a hearing, the  
 38 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing  
 39 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,  
 40 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the  
 41 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made  
 42 by neighborhood or community organizations recognized by the governing body and whose bounda-  
 43 ries include the site.

44 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-  
 45 plicant and to the owners of record of property on the most recent property tax assessment roll



1 where such property is located:

2 (i) Within 100 feet of the property that is the subject of the notice when the subject property  
3 is wholly or in part within an urban growth boundary;

4 (ii) Within 250 feet of the property that is the subject of the notice when the subject property  
5 is outside an urban growth boundary and not within a farm or forest zone; or

6 (iii) Within 750 feet of the property that is the subject of the notice when the subject property  
7 is within a farm or forest zone.

8 (B) Notice shall also be provided to any neighborhood or community organization recognized by  
9 the governing body and whose boundaries include the site.

10 (C) At the discretion of the applicant, the local government also shall provide notice to the  
11 Department of Land Conservation and Development.

12 (11) A decision described in ORS 227.160 (2)(b) shall:

13 (a) Be entered in a registry available to the public setting forth:

14 (A) The street address or other easily understood geographic reference to the subject property;

15 (B) The date of the decision; and

16 (C) A description of the decision made.

17 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a  
18 limited land use decision.

19 (c) Be subject to the appeal period described in ORS 197.830 [(5)(b)] **(7)(b)**.

20 (12) At the option of the applicant, the local government shall provide notice of the decision  
21 described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal  
22 to the board shall be filed within 21 days of the decision. The notice shall include an explanation  
23 of appeal rights.

24 (13) Notwithstanding other requirements of this section, limited land use decisions shall be  
25 subject to the requirements set forth in ORS 197.195 and 197.828.

26 **SECTION 12. The amendments to ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835,**  
27 **197.840, 197.845, 197.850, 215.416 and 227.175 by sections 1 to 11 of this 2011 Act apply to no-**  
28 **tices of intent to appeal filed with the Land Use Board of Appeals under ORS 197.830 (1) on**  
29 **or after the effective date of this 2011 Act.**

30