

House Bill 2610

Sponsored by Representative SCHAUFLEER (at the request of Oregon Home Builders Association) (Pre-session 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 involving needed housing or industrial development within urban growth boundary or aggregate resources.

Authorizes discretionary award of attorney fees.

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, 215.412, 215.416, 227.170 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, for review of a land use decision or limited land use decision involving needed**
16 **housing or industrial development within an urban growth boundary or involving aggregate**
17 **resources, a person may petition the board for review of the land use decision or limited land**
18 **use decision if the person:**

19 (a) **Owns, leases or rents property within 1,000 feet of the use or real property that is the**
20 **subject of the land use decision or limited land use decision; or**

21 (b) **Factually substantiates that the person's property will be adversely economically af-**
22 **ected in excess of \$5,000.**

23 (4) **Subsection (3) of this section does not apply to local governments, special districts**
24 **or state agencies.**

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

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

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

3 [(4)] (6) If a local government makes a land use decision without a hearing pursuant to ORS
 4 215.416 (11) or 227.175 (10):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 [(8)] (10) If a state agency whose order, rule, ruling, policy or other action is at issue is not a
 45 party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be

1 due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

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

15 [(10)(a)] (12)(a) Within 21 days after service of the notice of intent to appeal, the local govern-
 16 ment, special district or state agency shall transmit to the board the original or a certified copy of
 17 the entire record of the proceeding under review. By stipulation of all parties to the review pro-
 18 ceeding the record may be shortened. The board may require or permit subsequent corrections to
 19 the record.[:] However, the board shall issue an order on a motion objecting to the record within
 20 60 days of receiving the motion. **Unless the board determines that the interests of justice re-
 21 quire otherwise, a correction to the record may not extend the time for filing a petitioner's
 22 brief or the board's deadline for decision in subsection (14) of this section for more than 60
 23 days.**

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

30 [(11)] (13) A petition for review of the land use decision or limited land use decision and sup-
 31 porting brief shall be filed with the board as required by the board under subsection [(13)] (15) of
 32 this section.

33 [(12)] (14) The petition shall include a copy of the decision sought to be reviewed and shall state:

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

35 (b) The date of the decision.

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

37 [(13)(a)] (15)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs
 38 and for oral argument.

39 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
 40 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the
 41 respondent's brief, the local government or state agency may withdraw its decision for purposes of
 42 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
 43 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
 44 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
 45 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-

1 ceed upon the revised order. An amended notice of intent shall not be required if the local govern-
 2 ment or state agency, on reconsideration, affirms the order or modifies the order with only minor
 3 changes.

4 [(14)] (16) The board shall issue a final order within 77 days after the date of transmittal of the
 5 record. If the order is not issued within 77 days the applicant may apply in Marion County or the
 6 circuit court of the county where the application was filed for a writ of mandamus to compel the
 7 board to issue a final order.

8 [(15)(a)] (17) Upon entry of its final order the board:

9 (a) May, in its discretion, award costs to the prevailing party including the cost of preparation
 10 of the record if the prevailing party is the local government, special district or state agency whose
 11 decision is under review. The deposit required by subsection [(9)] (11) of this section shall be applied
 12 to any costs charged against the petitioner.

13 (b) **May, in its discretion, award reasonable attorney fees and costs incurred by the pre-**
 14 **vailing party.**

15 [(b)] (c) [The board shall also] **Shall** award reasonable attorney fees and expenses to the pre-
 16 vailing party against any other party who the board finds presented a position without probable
 17 cause to believe the position was well-founded in law or on factually supported information.

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

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

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

24 [(18)] (20) Except for any sums collected for publication of board opinions, all fees collected by
 25 the board under this section that are not awarded as costs shall be paid over to the State Treasurer
 26 to be credited to the General Fund.

27 **SECTION 2.** ORS 215.412 is amended to read:

28 215.412. (1) The governing body of a county, by ordinance or order, shall adopt one or more
 29 procedures for the conduct of hearings **on permits and zone changes.**

30 (2) The governing body of a county, by ordinance or order, shall adopt rules stating that all
 31 decisions made by the governing body will be based on factual information, including [adopted] **ac-**
 32 **knowledged** comprehensive plans and land use regulations.

33 **SECTION 3.** ORS 227.170 is amended to read:

34 227.170. (1) The city council shall prescribe one or more procedures for the conduct of hearings
 35 on permits and zone changes.

36 (2) The city council shall prescribe one or more rules stating that all decisions made by the
 37 council on permits and zone changes will be based on factual information, including [adopted] **ac-**
 38 **knowledged** comprehensive plans and land use regulations.

39 **SECTION 4.** ORS 196.115 is amended to read:

40 196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission
 41 [shall be] **are** subject to review solely as provided in this section, except as otherwise provided by
 42 the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

43 (2)(a) A final action or order by the commission in a review or appeal of any action of the
 44 commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area
 45 Act, or a final action or order by the commission in a review or appeal of any action of a county

1 pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall
 2 be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided
 3 in subsections (3) and (4) of this section and ORS 183.482.

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

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

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

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

18 (f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the
 19 Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall
 20 not review land use decisions within the general management area or special management area for
 21 compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the
 22 Land Conservation and Development Commission decertifies the management plan pursuant to ORS
 23 196.107.

24 (3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a)
 25 of this section, the procedures to be followed by the parties, the commission and the court, and the
 26 court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490
 27 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L.
 28 99-663, otherwise provides.

29 (b) Notwithstanding any provision of ORS 183.482:

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

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

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

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

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

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

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

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

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

45 (e) The court shall set aside or remand the order if the court finds that the order is not sup-

1 ported by substantial evidence in the whole record.

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

7 (4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic
 8 Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this
 9 section, the procedures to be followed by the parties, the county and the court, and the court's re-
 10 view, shall be in accordance with those provisions governing review of county land use decisions
 11 by the Land Use Board of Appeals set forth in ORS 197.830 (2) to [(8), (10), (15) and (16)] **(10), (12),**
 12 **(17) and (18)** and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the
 13 enumerated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830
 14 [(10)] **(12)** shall refer to the petition described in subsection (2) of this section.

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

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

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

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

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

32 **SECTION 5.** ORS 197.625 is amended to read:

33 197.625. (1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS
 34 197.830 [(9)] **(11)**, the amendment to the acknowledged comprehensive plan or land use regulation
 35 or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day
 36 period. An amendment to an acknowledged comprehensive plan or land use regulation is not con-
 37 sidered acknowledged unless the notices required under ORS 197.610 and 197.615 have been sub-
 38 mitted to the Director of the Department of Land Conservation and Development and:

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

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

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

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

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

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

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

15 *[(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and*
 16 *197.636;]*

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

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

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

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

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

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

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

29 **SECTION 6.** ORS 197.796 is amended to read:

30 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-
 31 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed
 32 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance
 33 by an applicant for a land use decision, limited land use decision, expedited land division or permit
 34 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does
 35 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-
 36 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-
 37 dence of arrangements to pay the fee or to ensure compliance with the condition.

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

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

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

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

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

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

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

19 **SECTION 7.** ORS 197.832 is amended to read:

20 197.832. The Board Publications Account is established in the General Fund. All moneys in the
 21 account are appropriated continuously to the Land Use Board of Appeals to be used for paying ex-
 22 penses incurred by the board under ORS 197.830 [(17)] (19). Disbursements of moneys from the ac-
 23 count shall be approved by a member of the board.

24 **SECTION 8.** ORS 197.835 is amended to read:

25 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
 26 use decision and prepare a final order affirming, reversing or remanding the land use decision or
 27 limited land use decision. The board shall adopt rules defining the circumstances in which it will
 28 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

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

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

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

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

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

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

1 (5) The board shall reverse or remand a land use decision not subject to an acknowledged
 2 comprehensive plan and land use regulations if the decision does not comply with the goals. The
 3 board shall reverse or remand a land use decision or limited land use decision subject to an ac-
 4 knowledged comprehensive plan or land use regulation if the decision does not comply with the
 5 goals and the Land Conservation and Development Commission has issued an order under ORS
 6 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to
 7 apply the goals to the type of decision being challenged.

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

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

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

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

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

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

21 (a) The local government or special district:

22 (A) Exceeded its jurisdiction;

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

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

26 (D) Improperly construed the applicable law; or

27 (E) Made an unconstitutional decision; or

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

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

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

34 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
 35 215.427 or 227.178.

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

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

43 (b) Whenever the findings are defective because of failure to recite adequate facts or legal
 44 conclusions or failure to adequately identify the standards or their relation to the facts, but the
 45 parties identify relevant evidence in the record which clearly supports the decision or a part of the

1 decision, the board shall affirm the decision or the part of the decision supported by the record and
 2 remand the remainder to the local government, with direction indicating appropriate remedial
 3 action.

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

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

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

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

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

16 **(17) If the board remands a land use decision, the board shall specifically address and**
 17 **decide each issue raised in the appeal that, if standing alone, would have resulted in the re-**
 18 **mand. The board shall identify the specific deficiencies in each issue.**

19 **SECTION 9.** ORS 197.840 is amended to read:

20 197.840. (1) The following periods of delay shall be excluded from the 77-day period within which
 21 the board must make a final decision on a petition under ORS 197.830 [(14)] **(16)**:

22 (a) Any period of delay up to 120 days resulting from the board's deferring all or part of its
 23 consideration of a petition for review of a land use decision or limited land use decision that
 24 allegedly violates the goals if the decision has been:

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

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

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

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

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

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

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

44 (b) Whether the case is so unusual or so complex, due to the number of parties or the existence
 45 of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the

1 issues within the 77-day time limit.

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

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

11 **SECTION 10.** ORS 197.845 is amended to read:

12 197.845. (1) Upon application of the petitioner, the **Land Use Board of Appeals** may grant a stay
13 of a land use decision or limited land use decision under review if the petitioner demonstrates:

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

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

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

23 (3) If the board affirms a quasi-judicial land use decision or limited land use decision for which
24 a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable
25 attorney fees and actual damages resulting from the stay to the person who requested the land use
26 decision or limited land use decision from the local government, special district or state agency,
27 against the person requesting the stay in an amount not to exceed the amount of the undertaking.

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

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

35 197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830
36 to 197.845 may seek judicial review of a final order issued in those proceedings.

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

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

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

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

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

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

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

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

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

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

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

29 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
 30 riage of justice.

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

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

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

38 (b) The order to be unconstitutional; or

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

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

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

45 (12) A party must file with the board an undertaking with one or more sureties insuring that

1 the party will pay all costs, disbursements and attorney fees awarded against the party by the Court
2 of Appeals if:

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

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

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

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

13 **SECTION 12.** ORS 215.416 is amended to read:

14 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
15 an owner of land may apply in writing to such persons as the governing body designates, for a
16 permit, in the manner prescribed by the governing body. The governing body shall establish fees
17 charged for processing permits at an amount no more than the actual or average cost of providing
18 that service.

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

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

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

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

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

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

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

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

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

43 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing
44 need not be provided as set forth in subsection (6) of this section if the zoning permit would only
45 allow a structure less than 35 feet in height and the property is located outside the runway “ap-

1 proach surface” as defined by the Oregon Department of Aviation.

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

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

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

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

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

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

22 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall
23 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
24 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
25 section may appeal the decision by filing a written appeal in the manner and within the time period
26 provided in the county’s land use regulations. A county may not establish an appeal period that is
27 less than 12 days from the date the written notice of decision required by this subsection was
28 mailed. The notice shall state that the decision will not become final until the period for filing a
29 local appeal has expired. The notice also shall state that a person who is mailed written notice of
30 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
31 197.830.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (B) The date of the decision; and

25 (C) A description of the decision made.

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

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

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

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

35 **SECTION 13.** ORS 227.175 is amended to read:

36 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the
 37 hearings officer, or such other person as the city council designates, for a permit or zone change,
 38 upon such forms and in such a manner as the city council prescribes. The governing body shall es-
 39 tablish fees charged for processing permits at an amount no more than the actual or average cost
 40 of providing that service.

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

1 (3) Except as provided in subsection (10) 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 unless the proposed development of land would be in
 4 compliance with the comprehensive plan for the city and other applicable land use regulation or
 5 ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215
 6 or any city legislation.

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

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

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

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

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

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

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

22 (8) If an application would change the zone of property that includes all or part of a mobile
 23 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give
 24 written notice by first class mail to each existing mailing address for tenants of the mobile home
 25 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first
 26 hearing on the application. The governing body may require an applicant for such a zone change to
 27 pay the costs of such notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (B) The date of the decision; and

39 (C) A description of the decision made.

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

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

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

1 of appeal rights.

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

4 **SECTION 14. The amendments to ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835,**
5 **197.840, 197.845, 197.850, 215.412, 215.416, 227.170 and 227.175 by sections 1 to 13 of this 2011**
6 **Act apply to notices of intent to appeal filed with the Land Use Board of Appeals under ORS**
7 **197.830 (1) on or after the effective date of this 2011 Act.**

8
