

Senate Bill 676

Sponsored by Senator KRUSE

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**.

Requires governing body of local government to make final land use decision of local government when resolution of issues requires interpretation of provision of comprehensive plan, or land use regulation implementing plan, that governing body has not interpreted previously.

A BILL FOR AN ACT

1
2 Relating to conduct of quasi-judicial, local land use hearings; creating new provisions; and amending
3 ORS 195.314, 197.763, 197.796, 197.835, 215.416, 227.175, 469.370 and 469.373.

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

5 **SECTION 1.** ORS 197.763 is amended to read:

6 197.763. (1) The following procedures shall govern the conduct of quasi-judicial land use
7 hearings conducted before a local governing body, planning commission, hearings body or hearings
8 officer on application for a land use decision and shall be incorporated into the comprehensive plan
9 and land use regulations:

10 [(1)] (a) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall
11 be raised not later than the close of the record at or following the final evidentiary hearing on the
12 proposal before the local government. Such issues shall be raised and accompanied by statements
13 or evidence sufficient to afford the governing body, planning commission, hearings body or hearings
14 officer, and the parties an adequate opportunity to respond to each issue.

15 [(2)(a)] (b)(A) Notice of the hearings governed by this section shall be provided to the applicant
16 and to owners of record of property on the most recent property tax assessment roll where such
17 property is located:

18 [(A)] (i) Within 100 feet of the property which is the subject of the notice where the subject
19 property is wholly or in part within an urban growth boundary;

20 [(B)] (ii) Within 250 feet of the property which is the subject of the notice where the subject
21 property is outside an urban growth boundary and not within a farm or forest zone; or

22 [(C)] (iii) Within 500 feet of the property which is the subject of the notice where the subject
23 property is within a farm or forest zone.

24 [(b)] (B) Notice shall also be provided to any neighborhood or community organization recog-
25 nized by the governing body and whose boundaries include the site.

26 [(c)] (C) At the discretion of the applicant, the local government also shall provide notice to the
27 Department of Land Conservation and Development.

28 [(3)] (c) The notice provided by the jurisdiction shall:

29 [(a)] (A) Explain the nature of the application and the proposed use or uses which could be
30 authorized;

31 [(b)] (B) List the applicable criteria from the ordinance and the plan that apply to the applica-

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 tion at issue;

2 [(c)] (C) Set forth the street address or other easily understood geographical reference to the
3 subject property;

4 [(d)] (D) State the date, time and location of the hearing;

5 [(e)] (E) State that failure of an issue to be raised in a hearing, in person or by letter, or failure
6 to provide statements or evidence sufficient to afford the decision maker an opportunity to respond
7 to the issue precludes appeal to the board based on that issue;

8 [(f)] (F) Be mailed at least:

9 [(A)] (i) Twenty days before the evidentiary hearing; or

10 [(B)] (ii) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary
11 hearing;

12 [(g)] (G) Include the name of a local government representative to contact and the telephone
13 number where additional information may be obtained;

14 [(h)] (H) State that a copy of the application, all documents and evidence submitted by or on
15 behalf of the applicant and applicable criteria are available for inspection at no cost and will be
16 provided at reasonable cost;

17 [(i)] (I) State that a copy of the staff report will be available for inspection at no cost at least
18 seven days prior to the hearing and will be provided at reasonable cost; and

19 [(j)] (J) Include a general explanation of the requirements for submission of testimony and the
20 procedure for conduct of hearings.

21 [(4)(a)] (d)(A) All documents or evidence relied upon by the applicant shall be submitted to the
22 local government and be made available to the public.

23 [(b)] (B) Any staff report used at the hearing shall be available at least seven days prior to the
24 hearing. If additional documents or evidence are provided by any party, the local government may
25 allow a continuance or leave the record open to allow the parties a reasonable opportunity to re-
26 spond. Any continuance or extension of the record requested by an applicant shall result in a cor-
27 responding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

28 [(5)] (e) At the commencement of a hearing under a comprehensive plan or land use regulation,
29 a statement shall be made to those in attendance that:

30 [(a)] (A) Lists the applicable substantive criteria;

31 [(b)] (B) States that testimony, arguments and evidence must be directed toward the criteria
32 described in [paragraph (a) of this subsection] **subparagraph (A) of this paragraph** or other criteria
33 in the plan or land use regulation which the person believes to apply to the decision; and

34 [(c)] (C) States that failure to raise an issue accompanied by statements or evidence sufficient
35 to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal
36 to the board based on that issue.

37 [(6)(a)] (f)(A) Prior to the conclusion of the initial evidentiary hearing, any participant may re-
38 quest an opportunity to present additional evidence, arguments or testimony regarding the applica-
39 tion. The local hearings authority shall grant such request by continuing the public hearing
40 pursuant to [paragraph (b) of this subsection] **subparagraph (B) of this paragraph** or leaving the
41 record open for additional written evidence, arguments or testimony pursuant to [paragraph (c) of
42 this subsection] **subparagraph (C) of this paragraph**.

43 [(b)] (B) If the hearings authority grants a continuance, the hearing shall be continued to a date,
44 time and place certain at least seven days from the date of the initial evidentiary hearing. An op-
45 portunity shall be provided at the continued hearing for persons to present and rebut new evidence,

1 arguments or testimony. If new written evidence is submitted at the continued hearing, any person
 2 may request, prior to the conclusion of the continued hearing, that the record be left open for at
 3 least seven days to submit additional written evidence, arguments or testimony for the purpose of
 4 responding to the new written evidence.

5 [(c)] (C) If the hearings authority leaves the record open for additional written evidence, argu-
 6 ments or testimony, the record shall be left open for at least seven days. Any participant may file
 7 a written request with the local government for an opportunity to respond to new evidence submit-
 8 ted during the period the record was left open. If such a request is filed, the hearings authority shall
 9 reopen the record pursuant to [subsection (7) of this section] **paragraph (g) of this subsection.**

10 [(d)] (D) A continuance or extension granted pursuant to this section shall be subject to the
 11 limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or exten-
 12 sion is requested or agreed to by the applicant.

13 [(e)] (E) Unless waived by the applicant, the local government shall allow the applicant at least
 14 seven days after the record is closed to all other parties to submit final written arguments in sup-
 15 port of the application. The applicant's final submittal shall be considered part of the record, but
 16 shall not include any new evidence. This seven-day period shall not be subject to the limitations of
 17 ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

18 [(7)] (g) When a local governing body, planning commission, hearings body or hearings officer
 19 reopens a record to admit new evidence, arguments or testimony, any person may raise new issues
 20 which relate to the new evidence, arguments, testimony or criteria for decision-making which apply
 21 to the matter at issue.

22 [(8)] (h) The failure of the property owner to receive notice as provided in this section shall not
 23 invalidate such proceedings if the local government can demonstrate by affidavit that such notice
 24 was given. The notice provisions of this section shall not restrict the giving of notice by other
 25 means, including posting, newspaper publication, radio and television.

26 **(2) When resolution of issues presented in a quasi-judicial hearing requires the interpre-**
 27 **tation of a provision of a comprehensive plan, or a land use regulation implementing the**
 28 **plan, and the governing body has not interpreted the provision previously, the governing body**
 29 **shall make the final land use decision of the local government.**

30 [(9)] (3) For purposes of this section:

31 (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal
 32 standards or policy believed relevant by the proponent to a decision. "Argument" does not include
 33 facts.

34 (b) "Evidence" means facts, documents, data or other information offered to demonstrate com-
 35 pliance or noncompliance with the standards believed by the proponent to be relevant to the deci-
 36 sion.

37 **SECTION 2.** ORS 195.314 is amended to read:

38 195.314. (1) A public entity that receives a complete claim as described in ORS 195.312 shall
 39 provide notice of the claim at least 30 days before a public hearing on the claim or, if there will
 40 not be a public hearing, at least 30 days before the deadline for submission of written comments, to:

41 (a) All owners identified in the claim;

42 (b) All persons described in ORS 197.763 [(2)] (1)(b);

43 (c) The Department of Land Conservation and Development, unless the claim was filed with the
 44 department;

45 (d) Metro, if the property is located within the urban growth boundary of Metro;

1 (e) The county in which the property is located, unless the claim was filed with the county; and

2 (f) The city, if the property is located within the urban growth boundary or adopted urban
3 planning area of the city.

4 (2) The notice required under subsection (1) of this section must describe the claim and state:

5 (a) Whether a public hearing will be held on the claim, the date, time and location of the hear-
6 ing, if any, and the final date for submission of written evidence and arguments relating to the claim;

7 (b) That judicial review of the final determination of a public entity on the claim is limited to
8 the written evidence and arguments submitted to the public entity; and

9 (c) That judicial review is available only for issues that are raised with sufficient specificity to
10 afford the public entity an opportunity to respond.

11 (3) Except as provided in subsection (4) of this section, written evidence and arguments in pro-
12 ceedings on the claim must be submitted to the public entity not later than:

13 (a) The close of the final public hearing on the claim; or

14 (b) If a public hearing is not held, the date that is specified by the public entity in the notice
15 required under subsection (1) of this section.

16 (4) The claimant may request additional time to submit written evidence and arguments in re-
17 sponse to testimony or submittals. The request must be made before the close of testimony or the
18 deadline for submission of written evidence and arguments.

19 (5) A public entity shall make the record on review of a claim, including any staff reports,
20 available to the public before the close of the record as described in subsections (3) and (4) of this
21 section.

22 (6) A public entity shall mail a copy of the final determination to the claimant and to any person
23 who submitted written evidence or arguments before the close of the record. The public entity shall
24 forward to the county, and the county shall record, a memorandum of the final determination in the
25 deed records of the county in which the property is located.

26 **SECTION 3.** ORS 197.796 is amended to read:

27 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-
28 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed
29 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance
30 by an applicant for a land use decision, limited land use decision, expedited land division or permit
31 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does
32 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-
33 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-
34 dence of arrangements to pay the fee or to ensure compliance with the condition.

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

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

43 (b) In addition to the requirements of ORS 197.763 [(5)] (1)(e), at the commencement of the ini-
44 tial public hearing, a statement shall be made to the applicant that the failure of the applicant to
45 raise constitutional or other issues relating to proposed conditions of approval with sufficient

1 specificity to allow the local government or its designee to respond to the issue precludes an action
2 for damages in circuit court.

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

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

9 (5) In a proceeding in circuit court under this section, the court shall award costs and reason-
10 able attorney fees to a prevailing party. Notwithstanding ORS 197.830 (15), in a proceeding before
11 the Land Use Board of Appeals under this section, the board shall award costs and reasonable at-
12 torney fees to a prevailing party.

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

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

17 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
18 use decision and prepare a final order affirming, reversing or remanding the land use decision or
19 limited land use decision. The board shall adopt rules defining the circumstances in which it will
20 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

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

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

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

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

31 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195
32 (3)(c) or 197.763 [(3)(b)] (1)(c)(B), in which case a petitioner may raise new issues based upon ap-
33 plicable criteria that were omitted from the notice. However, the board may refuse to allow new
34 issues to be raised if it finds that the issue could have been raised before the local government; or

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

38 (5) The board shall reverse or remand a land use decision not subject to an acknowledged
39 comprehensive plan and land use regulations if the decision does not comply with the goals. The
40 board shall reverse or remand a land use decision or limited land use decision subject to an ac-
41 knowledged comprehensive plan or land use regulation if the decision does not comply with the
42 goals and the Land Conservation and Development Commission has issued an order under ORS
43 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to
44 apply the goals to the type of decision being challenged.

45 (6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment

1 is not in compliance with the goals.

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

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

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

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

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

13 (a) The local government or special district:

14 (A) Exceeded its jurisdiction;

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

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

18 (D) Improperly construed the applicable law; or

19 (E) Made an unconstitutional decision; or

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

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

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

26 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
27 215.427 or 227.178.

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

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

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

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

45 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision

1 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

2 (14) The board shall reverse or remand a land use decision or limited land use decision which
3 violates a commission order issued under ORS 197.328.

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

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

8 **SECTION 5.** ORS 215.416 is amended to read:

9 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
10 an owner of land may apply in writing to such persons as the governing body designates, for a
11 permit, in the manner prescribed by the governing body. The governing body shall establish fees
12 charged for processing permits at an amount no more than the actual or average cost of providing
13 that service.

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

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

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

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

28 (6) Notice of a public hearing on an application submitted under this section shall be provided
29 to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport"
30 if:

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

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

34 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
35 Department of Aviation to be a "visual airport"; or

36 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
37 Department of Aviation to be an "instrument airport."

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

42 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which
43 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county
44 and which shall relate approval or denial of a permit application to the zoning ordinance and com-
45 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-

1 dinance and comprehensive plan for the county as a whole.

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

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

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

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

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

17 (C) Notice under this subsection shall comply with ORS 197.763 [(3)(a), (c), (g) and (h)] **(1)(c)(A),**
18 **(C), (G) and (H)** and shall describe the nature of the decision. In addition, the notice shall state that
19 any person who is adversely affected or aggrieved or who is entitled to written notice under para-
20 graph (c) of this subsection may appeal the decision by filing a written appeal in the manner and
21 within the time period provided in the county's land use regulations. A county may not establish
22 an appeal period that is less than 12 days from the date the written notice of decision required by
23 this subsection was mailed. The notice shall state that the decision will not become final until the
24 period for filing a local appeal has expired. The notice also shall state that a person who is mailed
25 written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals
26 under ORS 197.830.

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

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

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

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

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

41 (b) If a local government provides only a notice of the opportunity to request a hearing, the
42 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
43 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
44 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
45 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made

1 by neighborhood or community organizations recognized by the governing body and whose bounda-
2 ries include the site.

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

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

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

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

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

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

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

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

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

19 (B) The date of the decision; and

20 (C) A description of the decision made.

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

23 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

24 (13) At the option of the applicant, the local government shall provide notice of the decision
25 described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 [(2)] **(1)(b)**, in which case
26 an appeal to the board shall be filed within 21 days of the decision. The notice shall include an ex-
27 planation of appeal rights.

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

30 **SECTION 6.** ORS 227.175 is amended to read:

31 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the
32 hearings officer, or such other person as the city council designates, for a permit or zone change,
33 upon such forms and in such a manner as the city council prescribes. The governing body shall es-
34 tablish fees charged for processing permits at an amount no more than the actual or average cost
35 of providing that service.

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

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

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

1 or any city legislation.

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

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

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

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

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

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

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

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

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

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

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

32 (C) Notice under this subsection shall comply with ORS 197.763 [(3)(a), (c), (g) and (h)] **(1)(c)(A),**
33 **(C), (G) and (H)** and shall describe the nature of the decision. In addition, the notice shall state that
34 any person who is adversely affected or aggrieved or who is entitled to written notice under para-
35 graph (c) of this subsection may appeal the decision by filing a written appeal in the manner and
36 within the time period provided in the city’s land use regulations. A city may not establish an appeal
37 period that is less than 12 days from the date the written notice of decision required by this sub-
38 section was mailed. The notice shall state that the decision will not become final until the period
39 for filing a local appeal has expired. The notice also shall state that a person who is mailed written
40 notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under
41 ORS 197.830.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (B) The date of the decision; and

35 (C) A description of the decision made.

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

38 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

39 (12) At the option of the applicant, the local government shall provide notice of the decision
 40 described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 [(2)] (1)(b), in which case
 41 an appeal to the board shall be filed within 21 days of the decision. The notice shall include an ex-
 42 planation of appeal rights.

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

45 **SECTION 7.** ORS 469.370 is amended to read:

1 469.370. (1) Based on its review of the application and the comments and recommendations on
2 the application from state agencies and local governments, the State Department of Energy shall
3 prepare and issue a draft proposed order on the application.

4 (2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold
5 one or more public hearings on the application for a site certificate in the affected area and else-
6 where, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days
7 before the hearing. The notice shall, at a minimum:

8 (a) Comply with the requirements of ORS 197.763 [(2)] (1)(b), with respect to the persons noti-
9 fied;

10 (b) Include a description of the facility and the facility's general location;

11 (c) Include the name of an agency representative to contact and the telephone number where
12 additional information may be obtained;

13 (d) State that copies of the application and draft proposed order are available for inspection at
14 no cost and will be provided at a reasonable cost; and

15 (e) State that failure to raise an issue in person or in writing prior to the close of the record
16 of the public hearing with sufficient specificity to afford the decision maker an opportunity to re-
17 spond to the issue precludes consideration of the issue in a contested case.

18 (3) Any issue that may be the basis for a contested case shall be raised not later than the close
19 of the record at or following the final public hearing prior to issuance of the department's proposed
20 order. Such issues shall be raised with sufficient specificity to afford the council, the department
21 and the applicant an adequate opportunity to respond to each issue. A statement of this requirement
22 shall be made at the commencement of any public hearing on the application.

23 (4) After reviewing the application, the draft proposed order and any testimony given at the
24 public hearing and after consulting with other agencies, the department shall issue a proposed order
25 recommending approval or rejection of the application. The department shall issue public notice of
26 the proposed order, that shall include notice of a contested case hearing specifying a deadline for
27 requests to participate as a party or limited party and a date for the prehearing conference.

28 (5) Following receipt of the proposed order from the department, the council shall conduct a
29 contested case hearing on the application for a site certificate in accordance with the applicable
30 provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be
31 a party to the contested case. The council may permit any other person to become a party to the
32 contested case in support of or in opposition to the application only if the person appeared in person
33 or in writing at the public hearing on the site certificate application. Issues that may be the basis
34 for a contested case shall be limited to those raised on the record of the public hearing under sub-
35 section (3) of this section, unless:

36 (a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

37 (b) The action recommended in the proposed order, including any recommended conditions of the
38 approval, differs materially from that described in the draft proposed order, in which case only new
39 issues related to such differences may be raised.

40 (6) If no person requests party status to challenge the department's proposed order, the proposed
41 order shall be forwarded to the council and the contested case hearing shall be concluded.

42 (7) At the conclusion of the contested case, the council shall issue a final order, either approving
43 or rejecting the application based upon the standards adopted under ORS 469.501 and any additional
44 statutes, rules or local ordinances determined to be applicable to the facility by the project order,
45 as amended. The council shall make its decision by the affirmative vote of at least four members

1 approving or rejecting any application for a site certificate. The council may amend or reject the
2 proposed order, so long as the council provides public notice of its hearing to adopt a final order,
3 and provides an opportunity for the applicant and any party to the contested case to comment on
4 material changes to the proposed order, including material changes to conditions of approval re-
5 sulting from the council's review. The council's order shall be considered a final order for purposes
6 of appeal.

7 (8) Rejection or approval of an application, together with any conditions that may be attached
8 to the certificate, shall be subject to judicial review as provided in ORS 469.403.

9 (9) The council shall either approve or reject an application for a site certificate:

10 (a) Within 24 months after filing an application for a nuclear installation, or for a thermal power
11 plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more
12 than 200,000 kilowatts;

13 (b) Within nine months after filing of an application for a site certificate for a combustion tur-
14 bine power plant, a geothermal-fueled power plant or an underground storage facility for natural
15 gas;

16 (c) Within six months after filing an application for a site certificate for an energy facility, if
17 the application is:

18 (A) To expand an existing industrial facility to include an energy facility;

19 (B) To expand an existing energy facility to achieve a nominal electric generating capacity of
20 between 25 and 50 megawatts; or

21 (C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

22 (d) Within 12 months after filing an application for a site certificate for any other energy facil-
23 ity.

24 (10) At the request of the applicant, the council shall allow expedited processing of an applica-
25 tion for a site certificate for an energy facility with an average electric generating capacity of less
26 than 100 megawatts. No notice of intent shall be required. Following approval of a request for ex-
27 pedited review, the department shall issue a project order, which may be amended at any time. The
28 council shall either approve or reject an application for a site certificate within six months after
29 filing the site certificate application if there are no intervenors in the contested case conducted
30 under subsection (5) of this section. If there are intervenors in the contested case, the council shall
31 either approve or reject an application within nine months after filing the site certificate applica-
32 tion. For purposes of this subsection, the generating capacity of a thermal power plant is the
33 nameplate rating of the electrical generator proposed to be installed in the plant.

34 (11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this
35 section shall not result in the automatic issuance or denial of a site certificate.

36 (12) The council shall specify in the site certificate a date by which construction of the facility
37 must begin.

38 (13) For a facility that is subject to and has been or will be reviewed by a federal agency under
39 the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its
40 site certificate review, to the maximum extent feasible, in a manner that is consistent with and does
41 not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

42 (a) Elimination of duplicative application, study and reporting requirements;

43 (b) Council use of information generated and documents prepared for the federal agency review;

44 (c) Development with the federal agency and reliance on a joint record to address applicable
45 council standards;

1 (d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame
2 consistent with the federal agency review; and

3 (e) To the extent consistent with applicable state standards, establishment of conditions in any
4 site certificate that are consistent with the conditions established by the federal agency.

5 **SECTION 8.** ORS 469.373 is amended to read:

6 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
7 an applicant may apply under the provisions of this section for expedited review of an application
8 for a site certificate for an energy facility if the energy facility:

9 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
10 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
11 power generation;

12 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
13 hensive plan, land use regulation or federal land use plan, and is located:

14 (A) At or adjacent to an existing energy facility; or

15 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

16 (ii) In an area currently zoned or designated for industrial use;

17 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new
18 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;
19 or

20 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in
21 the locating of associated transmission lines or new natural gas pipelines outside of existing rights
22 of way;

23 (d) Requires no new water right or water right transfer;

24 (e) Provides funds to a qualified organization in an amount determined by the council to be
25 sufficient to produce any required reduction in emissions as specified in ORS 469.503 (2)(c)(C) and
26 in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy
27 facility for the life of the energy facility; and

28 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
29 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
30 permit, if needed, within the expedited review process time frame and has written confirmation from
31 the wastewater facility permit holder that the additional wastewater load will be accommodated by
32 the facility without resulting in a significant thermal increase in the facility effluent or without re-
33 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
34 permit;

35 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
36 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
37 idence from the municipal corporation that:

38 (i) The municipal corporation has included, or intends to include, the process wastewater load
39 from the energy facility in an application for a National Pollutant Discharge Elimination System
40 permit; and

41 (ii) All conditions required of the energy facility to allow the discharge of process wastewater
42 from the energy facility will be satisfied; or

43 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-
44 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-
45 charge can likely be permitted within the expedited review process time frame and that the

1 discharge will not require:

2 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water
3 general permit for construction activities; or

4 (ii) A change in any effluent limit or discharge location under an existing National Pollutant
5 Discharge Elimination System or water pollution control facility permit.

6 (2) An applicant seeking expedited review under this section shall submit documentation to the
7 State Department of Energy, prior to the submission of an application for a site certificate, that
8 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
9 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
10 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

11 (3) If the department determines that the energy facility preliminarily qualifies for expedited
12 review, the applicant may submit an application for expedited review. Within 30 days after the date
13 that the application for expedited review is submitted, the department shall determine whether the
14 application is complete. If the department determines that the application is complete, the applica-
15 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
16 mination. If the department determines that the application is not complete, the department shall
17 notify the applicant of the deficiencies in the application and shall deem the application filed on the
18 date that the department determines that the application is complete. The department or the
19 council may request additional information from the applicant at any time.

20 (4) The State Department of Energy shall send a copy of a filed application to the Department
21 of Environmental Quality, the Water Resources Department, the State Department of Fish and
22 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
23 culture, the Department of Land Conservation and Development, the Public Utility Commission and
24 any other state agency, city, county or political subdivision of the state that has regulatory or ad-
25 visory responsibility with respect to the proposed energy facility. The State Department of Energy
26 shall send with the copy of the filed application a notice specifying that:

27 (a) In the event the council issues a site certificate for the energy facility, the site certificate
28 will bind the state and all counties, cities and political subdivisions in the state as to the approval
29 of the site, the construction of the energy facility and the operation of the energy facility, and that
30 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
31 certificate must be issued as required by ORS 469.401 (3); and

32 (b) The comments and recommendations of state agencies, counties, cities and political subdi-
33 visions concerning whether the proposed energy facility complies with any statute, rule or local
34 ordinance that the state agency, county, city or political subdivision would normally administer in
35 determining whether a permit, license or certificate required for the construction or operation of the
36 energy facility should be approved will be considered only if the comments and recommendations
37 are received by the department within a reasonable time after the date the application and notice
38 of the application are sent by the department.

39 (5) Within 90 days after the date that the application was filed, the department shall issue a
40 draft proposed order setting forth:

41 (a) A description of the proposed energy facility;

42 (b) A list of the permits, licenses and certificates that are addressed in the application and that
43 are required for the construction or operation of the proposed energy facility;

44 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
45 proval of any permit, license or certificate addressed in the application and that are required for the

1 construction or operation of the proposed energy facility; and

2 (d) Proposed findings specifying how the proposed energy facility complies with the applicable
3 standards and criteria for approval of a site certificate.

4 (6) The council shall review the application for site certification in the manner set forth in
5 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council
6 determines that the facility, with any required conditions to the site certificate, will comply with:

7 (a) The requirements for expedited review as specified in this section;

8 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
9 (L) to (o);

10 (c) The requirements of ORS 469.503 (3); and

11 (d) The requirements of ORS 469.504 (1)(b).

12 (7) Following submission of an application for a site certificate, the council shall hold a public
13 informational meeting on the application. Following the issuance of the proposed order, the council
14 shall hold at least one public hearing on the application. The public hearing shall be held in the area
15 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
16 to the hearing. The notice shall comply with the notice requirements of ORS 197.763 [(2)] (1)(b) and
17 shall include, but need not be limited to, the following:

18 (a) A description of the energy facility and the general location of the energy facility;

19 (b) The name of a department representative to contact and the telephone number at which
20 people may obtain additional information;

21 (c) A statement that copies of the application and proposed order are available for inspection
22 at no cost and will be provided at reasonable cost; and

23 (d) A statement that the record for public comment on the application will close at the conclu-
24 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
25 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
26 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
27 council's decision.

28 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
29 additional written evidence, arguments or testimony regarding the application. In the alternative,
30 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
31 application. If the applicant requests an opportunity to present written evidence, arguments or tes-
32 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
33 days after the date of the hearing. Following the close of the record, the department shall prepare
34 a draft final order for the council. If the applicant requests a contested case hearing, the council
35 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
36 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,
37 and the application shall be considered under the same contested case procedures used for a non-
38 expedited application for a site certificate.

39 (9) The council shall make its decision based on the record and the draft final order prepared
40 by the department. The council shall, within six months of the date that the application is deemed
41 filed:

42 (a) Grant the application;

43 (b) Grant the application with conditions;

44 (c) Deny the application; or

45 (d) Return the application to the site certification process required by ORS 469.320.

1 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
2 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
3 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
4 application based on those standards.

5 (11) Judicial review of the approval or rejection of a site certificate by the council under this
6 section shall be as provided in ORS 469.403.

7 **SECTION 9. The amendments to ORS 197.763 by section 1 of this 2013 Act apply to**
8 **quasi-judicial land use hearings before a local government conducted on or after the effective**
9 **date of this 2013 Act.**

10