

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 3202**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 through 14 and insert:

3 **“SECTION 1. As used in sections 1 to 12 of this 2017 Act, unless the**
4 **context requires otherwise:**

5 **“(1) ‘Affected local governments’ means the cities and the counties**
6 **within which the project improvements will be located.**

7 **“(2) ‘Criteria’ means the land use criteria established by the Land**
8 **Conservation and Development Commission as provided in section 4**
9 **of this 2017 Act.**

10 **“(3) ‘Development approval’ means approval of a proposed develop-**
11 **ment of land based on discretionary standards designed to regulate the**
12 **physical characteristics of a use permitted outright, including but not**
13 **limited to site review and design review.**

14 **“(4) ‘Draft Statement’ means the Draft Environmental Impact**
15 **Statement for the project, as may be amended from time to time, and**
16 **any supplementary assessments or statements prepared pursuant to**
17 **regulations implementing the National Environmental Policy Act, 42**
18 **U.S.C. 4321 et seq.**

19 **“(5) ‘Final Statement’ means the Environmental Impact Statement**
20 **for the project, as may be amended from time to time, or any supple-**
21 **mentary assessments or statements, prepared pursuant to regulations**

1 **implementing the National Environmental Policy Act, 42 U.S.C. 4321**
2 **et seq.**

3 **“(6) ‘Full Funding Grant Agreement’ means the contractual agree-**
4 **ment entered into between the federal government and the local grant**
5 **recipient establishing the maximum federal financing contribution for**
6 **construction of the project and setting forth terms, conditions and**
7 **limitations for federal financing of the project.**

8 **“(7) ‘Highway improvements’ means improvements to the highway,**
9 **street and other ancillary facilities for the project and improvements**
10 **related to construction or operation of the project. As used in this**
11 **subsection:**

12 **“(a) ‘Ancillary facilities’ includes retaining walls, bridges, signals,**
13 **electrification equipment, lighting equipment, staging areas, facilities**
14 **for bus or rail travel, stormwater facilities, wetland mitigation facili-**
15 **ties and facilities designed for vehicle, pedestrian and bicycle traffic.**

16 **“(b) ‘Improvement’ includes any development or alteration to land**
17 **related to the project.**

18 **“(8) ‘Land use final order’ means a written order or orders of the**
19 **Metro Council deciding the project improvements for the project, in-**
20 **cluding their locations.**

21 **“(9) ‘Light rail route’ means the light rail alignment selected from**
22 **among light rail alignment alternatives described in a Draft Statement**
23 **or Final Statement to be included in the project.**

24 **“(10) ‘Locally Preferred Alternative Report’ means a decision**
25 **adopted in accordance with federal requirements determining or**
26 **amending an earlier decision whether or not to build the Southwest**
27 **Corridor MAX Light Rail Project and, if the decision adopted is to**
28 **build, recommending the project improvements, including their lo-**
29 **cations, to be included in the Southwest Corridor MAX Light Rail**
30 **Project.**

1 “(11) ‘Locations’ means the boundaries within which the project
2 improvements will be located.

3 “(12) ‘Measures’ includes any mitigation measures, design features
4 or other amenities or improvements associated with the project.

5 “(13) ‘Metro Council’ means the elected governing body of Metro.

6 “(14) ‘Project’ means the portion of the Southwest Corridor MAX
7 Light Rail Project within Metro’s urban growth boundary. ‘Project’
8 includes:

9 “(a) All project improvements described in the Locally Preferred
10 Alternative Report, as may be amended from time to time by a Draft
11 Statement, Final Statement, Full Funding Grant Agreement or similar
12 document for the Southwest Corridor MAX Light Rail Project; and

13 “(b) All phases and extensions of the Southwest Corridor MAX
14 Light Rail Project as described in a Locally Preferred Alternative Re-
15 port, Draft Statement, Final Statement, Full Funding Grant Agree-
16 ment or similar document.

17 “(15) ‘Project improvements’ means the light rail route, stations,
18 lots and maintenance facilities and the highway improvements related
19 to the project as described in the Locally Preferred Alternative Report,
20 as may be amended from time to time by a Draft Statement, Final
21 Statement, Full Funding Grant Agreement or similar document for
22 the Southwest Corridor MAX Light Rail Project.

23 “(16) ‘Stations, lots and maintenance facilities’ means the light rail
24 stations, light rail park-and-ride lots and light rail vehicle mainte-
25 nance facilities to be selected from among alternatives described in a
26 Draft Statement, Final Statement or similar document to be included
27 in the project.

28 “(17) ‘TriMet’ means the Tri-County Metropolitan Transportation
29 District of Oregon, a mass transit district created under ORS chapter
30 267.

1 **“SECTION 2. (1) The Legislative Assembly finds that there is a**
2 **compelling state interest in obtaining maximum federal funding for**
3 **the Southwest Corridor MAX Light Rail Project in order to:**

4 **“(a) Enhance the statewide transportation network;**

5 **“(b) Ensure the viability of the transportation system planned for**
6 **the Portland metropolitan area;**

7 **“(c) Complete construction of the project in a timely and cost-**
8 **effective manner;**

9 **“(d) Implement a significant portion of the Legislative Assembly’s**
10 **air quality and energy efficiency strategies for the area; and**

11 **“(e) Ensure that affected local governments will be able to imple-**
12 **ment significant parts of their comprehensive plans.**

13 **“(2) The Legislative Assembly further finds that, to maximize the**
14 **ability of this state and the Portland metropolitan area to obtain the**
15 **highest available level of federal funding for the Southwest Corridor**
16 **MAX Light Rail Project, it is necessary to establish:**

17 **“(a) A process to be used to establish criteria, make decisions and**
18 **adopt a land use final order related to the light rail route and other**
19 **project improvements to be included in the Southwest Corridor MAX**
20 **Light Rail Project, including their locations;**

21 **“(b) An expedited process for appellate review of a land use final**
22 **order; and**

23 **“(c) An exclusive process for appellate review.**

24 **“(3) The Legislative Assembly further finds that residents of**
25 **neighborhoods within TriMet affected by land use decisions, limited**
26 **land use decisions or land divisions resulting from the siting, con-**
27 **struction or operation of any light rail route or other project im-**
28 **provements, either as individuals or through their neighborhood**
29 **associations, shall have the opportunity to participate in those deci-**
30 **sions and divisions.**

1 “(4) The Legislative Assembly deems the procedures and require-
2 ments provided for in sections 1 to 12 of this 2017 Act, under the
3 unique circumstances of the Southwest Corridor MAX Light Rail
4 Project, to be equivalent in spirit and substance to the land use pro-
5 cedures that otherwise would be applicable.

6 “(5) Sections 1 to 12 of this 2017 Act shall be liberally construed to
7 address the findings enumerated in subsection (1) of this section.

8 “SECTION 3. Notwithstanding ORS chapters 183, 192, 195, 197, 215
9 and 227 or any other provision of law, the procedures and requirements
10 provided for in sections 1 to 12 of this 2017 Act are the only land use
11 procedures and requirements to which land use decisions and ap-
12 provals of any kind related to the construction or operation of the
13 project shall be subject.

14 “SECTION 4. (1) The Land Conservation and Development Com-
15 mission shall establish criteria, according to the procedure described
16 in this section, to be used by the Metro Council to make decisions in
17 a land use final order on the project improvements for the project,
18 including their locations.

19 “(2) The commission shall hold a public hearing on the criteria to
20 be established by the commission.

21 “(3) The commission shall publish notice of a public hearing on
22 criteria to be established by the commission in a newspaper of general
23 circulation within the Portland metropolitan area at least 20 days prior
24 to the public hearing. The notice shall state:

25 “(a) The general subject matter of the hearing and the date, time
26 and place of the hearing;

27 “(b) That any criteria to be proposed to the commission must be
28 filed at the Salem office of the Department of Land Conservation and
29 Development at least 10 days prior to commencement of the hearing
30 and will be available for public inspection following filing;

1 “(c) That notice of adoption of an order establishing criteria will
2 be provided only to persons who provide oral or written testimony at
3 the hearing and who also provide, in writing, a request for written
4 notice and a mailing address to which notice shall be sent;

5 “(d) That persons whose names appear on petitions submitted into
6 the public hearing record will not be considered by that action to have
7 provided oral or written testimony at the hearing;

8 “(e) That failure by a person to raise an issue at the hearing in
9 person or in writing, or failure to provide sufficient specificity to af-
10 ford the commission an opportunity to respond to the issue raised,
11 shall preclude appeal by that person on that issue; and

12 “(f) That appeals from an order establishing criteria must be filed
13 within seven days following the date written notice of the order is
14 mailed to the persons described in subsection (9)(b) of this section.

15 “(4) The commission may provide additional notice as it deems ap-
16 propriate to inform interested persons of the public hearing.

17 “(5) A copy of the staff report, if any, must be made available for
18 public inspection at least four days prior to the public hearing.

19 “(6) At the commencement of the hearing, a statement shall be
20 made to those in attendance that:

21 “(a) Identifies the general subject matter of the hearing;

22 “(b) Submittal of proposed criteria at the hearing will not be ac-
23 cepted unless the proposed criteria were filed at the Salem office of the
24 department at least 10 days prior to the commencement of the hear-
25 ing;

26 “(c) Failure by a person to raise an issue at the hearing in person
27 or in writing, or failure to raise an issue with sufficient specificity to
28 afford the commission an opportunity to respond to the issue raised,
29 shall preclude appeal by that person on that issue;

30 “(d) Notice of adoption of an order establishing criteria will be

1 provided only to persons who provide oral or written testimony at the
2 hearing and who also provide a written request for notice and a mail-
3 ing address to which notice shall be sent;

4 “(e) Persons whose names appear on petitions submitted into the
5 public hearing record will not be considered by that action to have
6 provided oral or written testimony at the hearing; and

7 “(f) Appeals from an order establishing criteria must be filed within
8 seven days following the date written notice of the order is mailed.

9 “(7)(a) The commission shall allow for the submission of oral and
10 written testimony at the hearing, subject to any hearing procedures
11 that the commission deems necessary.

12 “(b) The commission may exclude irrelevant, immaterial or unduly
13 repetitious testimony.

14 “(c) The commission may allow only the submission of proposed
15 criteria at the hearing that were filed at the Salem office of the De-
16 partment of Land Conservation and Development at least 10 days prior
17 to the commencement of the hearing.

18 “(d) The commission shall designate an individual to take minutes
19 of the hearing.

20 “(8)(a) Within 14 days following commencement of the hearing, the
21 commission shall close the hearing.

22 “(b) The commission shall consider all statewide planning goals and
23 plan policies that are relevant to decisions regarding the project im-
24 provements and their locations in establishing the criteria.

25 “(c) The commission shall adopt an order establishing the criteria.
26 The commission’s order must include a brief statement explaining how
27 the criteria established reasonably reflect the statewide land use
28 planning goals and plan policies that are relevant to decisions regard-
29 ing the project improvements and their locations.

30 “(9) As soon as reasonably practicable following establishment of

1 the criteria, the commission shall:

2 “(a) Make copies of the order and the criteria available for public
3 inspection at both the Salem and Portland offices of the Department
4 of Land Conservation and Development; and

5 “(b) Provide notice of the order and the criteria to:

6 “(A) The Metro Council;

7 “(B) TriMet;

8 “(C) The Department of Transportation;

9 “(D) Each affected local government; and

10 “(E) Any person who provided oral or written testimony at the
11 hearing and who also provided a written request for notice and a
12 mailing address to which notice shall be sent.

13 **“SECTION 5. (1) Notwithstanding ORS 183.400, 183.482, 183.484,**
14 **197.825 or any other law or regulation, exclusive jurisdiction to review**
15 **a Land Conservation and Development Commission order establishing**
16 **criteria under section 4 of this 2017 Act is conferred on the Supreme**
17 **Court.**

18 “(2) Proceedings for review of an order by the commission shall be
19 initiated when any person who is adversely affected by the order files
20 a petition for judicial review with the State Court Administrator. The
21 petition must:

22 “(a) Be filed within seven days following the date of the written
23 notice of the order;

24 “(b) State the nature of the order and the manner in which the
25 commission rejected the position raised by the petitioner before the
26 commission; and

27 “(c) Contain an affidavit stating facts that show how the petitioner
28 is adversely affected by the order.

29 “(3) The petitioner shall personally deliver copies of the petition for
30 judicial review to:

1 “(a) The commission, at the Salem office of the Department of Land
2 Conservation and Development;

3 “(b) The Salem office of the Department of Transportation;

4 “(c) The Attorney General;

5 “(d) The Metro Council, at the office of Metro’s executive officer;

6 “(e) TriMet, at the office of TriMet’s general manager; and

7 “(f) Each affected local government.

8 “(4) Within seven days following filing of the petition for judicial
9 review, the commission shall personally deliver or electronically sub-
10 mit to the State Court Administrator a certified copy of the record of
11 the criteria proceedings. The record shall include only:

12 “(a) The published notice of public hearing;

13 “(b) The proposed criteria submitted as described in section 4 (6)(b)
14 of this 2017 Act and by written testimony submitted to the commission
15 at the hearing;

16 “(c) Any written report received by the commission from the De-
17 partment of Land Conservation and Development at the hearing;

18 “(d) Minutes of the hearing;

19 “(e) The order establishing the criteria; and

20 “(f) Proof of mailing to persons entitled to written notice of the
21 order and the criteria under section 4 (9)(b) of this 2017 Act.

22 “(5) Within 14 days following the filing of the petition for judicial
23 review, the petitioner shall file a petitioner’s brief with the State
24 Court Administrator. The brief must comply with the specifications
25 for opening briefs set forth in the rules of appellate procedure. The
26 petitioner shall personally deliver a copy of the brief to:

27 “(a) The Attorney General;

28 “(b) The Metro Council, at the office of Metro’s executive officer;

29 “(c) TriMet, at the office of TriMet’s general manager; and

30 “(d) Each affected local government.

1 **“(6) The court shall consider the petitioner to be adversely affected**
2 **if:**

3 **“(a) The petitioner provided oral or written testimony at the hear-**
4 **ing; and**

5 **“(b) The petitioner proposed criteria in the manner described in**
6 **section 4 (6)(b) of this 2017 Act that the commission rejected in its**
7 **order or the petitioner, in the petitioner’s testimony at the hearing,**
8 **opposed the criteria that the commission established in its order.**

9 **“(7) Within 28 days following the filing of the petition for judicial**
10 **review, an answering brief complying with the rules of appellate pro-**
11 **cedure may be filed by any of the following:**

12 **“(a) The commission;**

13 **“(b) Metro, unless Metro is the petitioner;**

14 **“(c) TriMet, unless TriMet is the petitioner;**

15 **“(d) The Department of Transportation, unless the Department of**
16 **Transportation is the petitioner; or**

17 **“(e) Any affected local government, unless the local government is**
18 **the petitioner.**

19 **“(8) The court shall decide the matter at its earliest practicable**
20 **convenience, consistent with sections 1 to 12 of this 2017 Act. The**
21 **court may decide the matter on the briefs or it may hold oral argu-**
22 **ments.**

23 **“(9)(a) The court may reverse or remand the order only if the court**
24 **finds that the order:**

25 **“(A) Violates constitutional provisions;**

26 **“(B) Exceeds the statutory authority of the commission; or**

27 **“(C) Was adopted by the commission without substantial compli-**
28 **ance with the procedures in section 4 of this 2017 Act or in a manner**
29 **that prejudiced the substantial rights of the petitioner.**

30 **“(b) Failure of the commission to notify a person entitled to written**

1 notice under section 4 (9)(b) of this 2017 Act is not grounds for reversal
2 or remand if the commission provides evidence of mailing the notice
3 to that person.

4 “(c) The court may not substitute its judgment for that of the
5 commission as to any issue of fact or as to any issue within the dis-
6 cretion of the commission.

7 “(10) The court may not stay any action by the Metro Council under
8 sections 1 to 12 of this 2017 Act pending the court’s review under this
9 section.

10 **“SECTION 6. (1)(a) On or before the date the Land Conservation
11 and Development Commission adopts the order establishing the crite-
12 ria under section 4 of this 2017 Act, Metro shall establish a steering
13 committee, the initial membership of which shall include a represen-
14 tative from each of the following:**

15 **“(A) Metro;**

16 **“(B) TriMet;**

17 **“(C) The Department of Transportation; and**

18 **“(D) Each affected local government.**

19 **“(b) The membership of the steering committee shall, at all times,
20 include at least the members described in paragraph (a) of this sub-
21 section. The steering committee may approve additional members by
22 majority vote.**

23 **“(c) Metro shall staff the steering committee until the adoption of
24 the initial land use final order for the project.**

25 **“(2)(a) The steering committee shall issue recommendations for the
26 siting of the light rail route and other project improvements and their
27 locations to TriMet.**

28 **“(b) TriMet shall apply to the Metro Council for a land use final
29 order approving the project improvements and their locations. The
30 applied for locations must provide sufficient boundaries to accommo-**

1 date adjustments to the specific placements of the project improve-
2 ments for which need commonly arises upon the development of more
3 detailed environmental or engineering data following approval of a
4 Full Funding Grant Agreement.

5 “(3) The council shall apply the criteria established by the Land
6 Conservation and Development Commission under section 4 of this
7 2017 Act when making decisions in a land use final order on the applied
8 for project improvements, including their locations. The council shall
9 follow the procedures described in this section when adopting a land
10 use final order.

11 “(4) The council shall hold a public hearing on the project im-
12 provements, including their locations, for which decisions will be made
13 in the land use final order.

14 “(5)(a) At least 14 days prior to the hearing, the council shall pub-
15 lish notice of a public hearing on the project improvements, including
16 their locations, in a newspaper of general circulation within Metro’s
17 jurisdictional area. The notice shall state:

18 “(A) The general subject matter of the hearing and all matters
19 scheduled for consideration at the hearing;

20 “(B) The date, time and place of the hearing;

21 “(C) The street address where a staff report and the criteria may
22 be found;

23 “(D) That failure by a person to raise an issue at the hearing in
24 person or in writing, or failure to provide sufficient specificity to af-
25 ford the council an opportunity to respond to the issue raised, shall
26 preclude appeal by that person to the Land Use Board of Appeals based
27 on that issue;

28 “(E) That persons whose names appear on petitions submitted into
29 the public hearing record will not be considered by that action to have
30 provided oral or written testimony at the hearing;

1 “(F) That notice of adoption of the land use final order will be
2 provided only to persons who provide oral or written testimony at the
3 hearing and who also provide a written request for notice and a mail-
4 ing address to which notice shall be sent; and

5 “(G) That appeals from decisions in a land use final order must be
6 filed within 14 days following the date the land use final order is re-
7 duced to writing and bears the necessary signatures.

8 “(b) The council also shall provide such other notice as the council
9 deems necessary to give notice to persons who may be substantially
10 affected by its decision. No other form of notice is required.

11 “(6)(a) At least seven days prior to the hearing, the council shall
12 make a copy of the staff report available for public inspection. The
13 staff report shall:

14 “(A) Set forth the criteria established under section 4 of this 2017
15 Act;

16 “(B) Include a description of the proposed boundaries within which
17 the project improvements will be located, as applied for by TriMet
18 under subsection (2) of this section; and

19 “(C) Address how the proposed boundaries comply with the criteria.

20 “(b) Without providing additional notice, the council may amend
21 the staff report prior to the hearing as the staff considers necessary
22 or desirable.

23 “(7) At the commencement of the hearing, a statement shall be
24 made to those in attendance that:

25 “(a) Lists the criteria or directs those present to a place at the
26 hearing location where any person may obtain a list of the criteria at
27 no cost;

28 “(b) Lists generally the project improvements, including their lo-
29 cations, for which decisions will be made in the land use final order;

30 “(c) Testimony shall be directed toward the application of the cri-

1 **teria to the project improvements, including their locations, to which**
2 **decisions will be made in the land use final order;**

3 **“(d) Failure by a person to raise an issue at the hearing, in person**
4 **or in writing, or failure to raise an issue with sufficient specificity to**
5 **afford the council an opportunity to respond to the issue raised, shall**
6 **preclude appeal by that person to the board based on that issue;**

7 **“(e) Persons whose names appear on petitions submitted into the**
8 **public hearing record will not be considered by that action to have**
9 **provided oral or written testimony at the hearing;**

10 **“(f) Notice of adoption of the land use final order will be provided**
11 **only to the affected local governments and to the persons who have**
12 **provided oral or written testimony at the hearing and who also have**
13 **provided a written request for notice and a mailing address to which**
14 **notice shall be sent; and**

15 **“(g) Appeals from decisions in a land use final order on the project**
16 **improvements, including their locations, must be filed within 14 days**
17 **following the date the land use final order is reduced to writing and**
18 **bears the necessary signatures.**

19 **“(8)(a) The council shall allow for the submission of oral and writ-**
20 **ten testimony at the hearing, subject to any hearing procedures the**
21 **council deems necessary or appropriate for the adoption of a land use**
22 **final order.**

23 **“(b) The council may exclude irrelevant, immaterial or unduly rep-**
24 **etitious testimony.**

25 **“(9) The council may take official notice at the hearing of any**
26 **matter identified in ORS 40.065 and 40.090 or as authorized by resol-**
27 **ution of the council establishing hearing procedures for the adoption**
28 **of land use final orders.**

29 **“(10) The council is not required to provide any opportunities in**
30 **addition to those described in this section for interested persons to**

1 participate in the proceedings of the council in adopting a land use
2 final order. The council may establish by resolution additional proce-
3 dures to govern its proceedings in adopting a land use final order,
4 subject to the provisions of this section.

5 “(11) The council shall close the hearing and shall adopt a land use
6 final order by resolution or continue the matter as provided in section
7 7 (1) of this 2017 Act or as the council otherwise considers necessary
8 for the purpose of adopting a land use final order.

9 “SECTION 7. (1)(a) Following a public hearing as provided in sec-
10 tion 6 of this 2017 Act, the Metro Council shall either:

11 “(A) Adopt a land use final order establishing the project improve-
12 ments and locations applied for by TriMet; or

13 “(B) Continue the public hearing and refer the proposed project
14 improvements and locations back to TriMet for further review.

15 “(b) If the council refers the proposed locations back to TriMet for
16 further review, TriMet shall consider amendments to its proposed
17 project improvements and locations and forward the amended appli-
18 cation to the council for hearing and adoption as described in this
19 subsection.

20 “(2)(a) The council shall adopt a land use final order establishing
21 the project improvements, including their locations, as provided in
22 this section and section 6 of this 2017 Act.

23 “(b) The council shall include with the land use final order a
24 statement of findings demonstrating how the decisions on the project
25 improvements, including their locations, comply with the criteria.

26 “(c) Following adoption of a land use final order, the council as
27 soon as reasonably practicable shall:

28 “(A) Publish notice of the adoption in a newspaper of general cir-
29 culation within Metro’s jurisdictional area;

30 “(B) Provide notice of the adoption to each affected local govern-

1 **ment; and**

2 **“(C) Provide notice of the adoption to persons who:**

3 **“(i) Provided oral or written testimony at the hearing; and**

4 **“(ii) Provided at the hearing a written request for notice and a**
5 **mailing address to which written notice shall be sent. Persons whose**
6 **names appear on petitions submitted into the public hearing record**
7 **are not considered by that action to have provided oral or written**
8 **testimony at the hearing.**

9 **“(3) The notice of adoption required under subsection (2) of this**
10 **section shall:**

11 **“(a) Include the date of adoption of the land use final order;**

12 **“(b) Identify the place at and time during which a copy of the land**
13 **use final order may be obtained; and**

14 **“(c) State that appeals from decisions in the land use final order**
15 **must be filed within 14 days following adoption of the land use final**
16 **order.**

17 **“(4) Upon adoption of the initial land use final order, TriMet shall**
18 **staff the steering committee until the completion of the Southwest**
19 **Corridor MAX Light Rail Project.**

20 **“(5) A land use final order issued under this section and section 6**
21 **of this 2017 Act is effective upon adoption.**

22 **“(6) An amended land use final order or a new land use final order**
23 **adopted in accordance with the process provided for in this section is**
24 **required for:**

25 **“(a) Any siting of a project improvement outside the locations es-**
26 **tablished in the land use final order; or**

27 **“(b) Any new project improvement.**

28 **“SECTION 8. (1) The state, Metro, all affected local governments**
29 **and any affected special districts and political subdivisions shall:**

30 **“(a) Amend their comprehensive, functional or regional framework**

1 **plans, including public facility plans, transportation system plans and**
2 **all applicable land use regulations, as necessary to be consistent with**
3 **a land use final order adopted under sections 6 and 7 of this 2017 Act;**
4 **and**

5 **“(b) Issue the appropriate development approval, permit, license,**
6 **certificate or other approval necessary for the construction of the**
7 **project or project improvements to implement a land use final order**
8 **as necessary to avoid significantly delaying the completion or imple-**
9 **mentation of the project. Development approvals, permits, licenses,**
10 **certificates or other approvals may be subject only to reasonable and**
11 **necessary conditions of approval but those conditions may not, by**
12 **themselves or cumulatively, prevent implementation of a land use**
13 **final order.**

14 **“(2) For the purposes of subsection (1)(b) of this section:**

15 **“(a) An approval condition is not reasonable or necessary, or is**
16 **considered to prevent implementation of a land use final order, if the**
17 **approval condition applies to a measure, improvement or development**
18 **that:**

19 **“(A) Is not included in the scope of the project in the Full Funding**
20 **Grant Agreement;**

21 **“(B) Does not qualify for federal New Starts funding pursuant to**
22 **49 U.S.C. 5309;**

23 **“(C) Is not physically and functionally necessary for the project; or**

24 **“(D) The steering committee established under section 6 of this 2017**
25 **Act has determined:**

26 **“(i) To be infeasible using the federal, state and local funds within**
27 **the project budget;**

28 **“(ii) Will significantly delay the completion or otherwise prevent**
29 **the timely implementation of the project; or**

30 **“(iii) Will have a significant negative impact on the operations of**

1 the project.

2 “(b) In the event that a land use approval is delayed causing sig-
3 nificant delay of the completion or implementation of the project,
4 TriMet may pursue any remedy available in law or equity. Not less
5 than 10 days prior to commencing an action for relief under this sec-
6 tion, Trimet shall provide written notice to each local government to
7 which TriMet submitted an application for a land use decision relating
8 to the project.

9 “(3)(a) If the state, Metro or an affected local government, special
10 district or political subdivision does not take final action on an appli-
11 cation for a development approval, permit, license, certificate or other
12 approval as required under subsection (1) of this section, TriMet may
13 file a petition for a writ of mandamus according to the procedures for
14 cities described in ORS 227.179.

15 “(b) Notwithstanding ORS 227.179 (5), the court shall issue a
16 peremptory writ unless the governing body or any intervenor shows
17 that the approval would violate the criteria adopted by the Land Con-
18 servation and Development Commission under section 4 of this 2017
19 Act.

20 “(4) Each affected local government, special district or political
21 subdivision that issues a development approval, permit, license, cer-
22 tificate or other approval for the project under subsection (1)(b) of this
23 section shall continue to exercise enforcement authority over the de-
24 velopment approval, permit, license, certificate or other approval.

25 “(5) An amendment to the plan or a land use regulation required
26 under subsection (1)(a) of this section is not subject to review by any
27 court or agency.

28 “(6)(a) Development approvals issued under subsection (1)(b) of this
29 section shall be treated as land use decisions, but not as limited land
30 use decisions.

1 “(b) Development approvals, permits, licenses, certificates and
2 other approvals issued under subsection (1)(b) of this section may be
3 the subject of administrative and judicial review as provided by law.

4 “(7) Steering committee determinations made under subsection
5 (2)(a)(D) of this section shall control in the event of a conflict and are
6 not subject to review.

7 “SECTION 9. (1) Notwithstanding ORS 183.482, 183.484 or 197.825 and
8 as provided by sections 1 to 12 of this 2017 Act, the Land Use Board
9 of Appeals and the Supreme Court have exclusive jurisdiction for re-
10 view of a land use final order adopted under section 7 of this 2017 Act
11 relating to the project.

12 “(2) Proceedings for review of a land use final order shall be initi-
13 ated with the Land Use Board of Appeals when any person with
14 standing petitions for review under subsection (3) of this section.

15 “(3) The board shall consider a person to have standing if the per-
16 son:

17 “(a) Appeared before the Metro Council orally or in writing at the
18 hearing described in section 6 of this 2017 Act on the project; and

19 “(b) Personally delivered a notice of intent to appeal the land use
20 final order as described by subsection (5) of this section within 14 days
21 following the adoption of the land use final order as described in sec-
22 tion 6 (11) of this 2017 Act.

23 “(4) A person’s failure to raise an issue at the land use final order
24 hearing, in person or in writing, or failure to raise an issue with suf-
25 ficient specificity to afford the council an opportunity to respond to
26 the issue raised, shall preclude that person from petitioning for review
27 based on that issue.

28 “(5)(a) A notice of intent to appeal shall:

29 “(A) Contain an affidavit stating the facts that support the
30 petitioner’s standing as required by subsection (3) of this section;

1 **“(B) State with particularity the grounds on which the petitioner**
2 **assigns error; and**

3 **“(C) State the residence or business address of the petitioner to**
4 **which documents may be delivered and the telephone number where**
5 **the petitioner may be reached during normal business hours.**

6 **“(b) The petitioner shall personally deliver copies of the notice of**
7 **intent to appeal to:**

8 **“(A) The board;**

9 **“(B) Metro, at the office of Metro’s executive officer; and**

10 **“(C) Each affected local government.**

11 **“(6) Only the following persons may intervene in and thereby be**
12 **made a party to the review proceedings:**

13 **“(a) The board;**

14 **“(b) Metro;**

15 **“(c) TriMet;**

16 **“(d) The Department of Transportation; and**

17 **“(e) Any affected local government.**

18 **“(7)(a) Within seven days following delivery of a notice of intent to**
19 **appeal as required by subsection (5) of this section, Metro shall per-**
20 **sonally deliver a certified copy of the record of the council’s land use**
21 **final order proceedings to the board. The record shall consist of:**

22 **“(A) The land use final order;**

23 **“(B) The statement of findings included with the land use final or-**
24 **der;**

25 **“(C) The notice of public hearing on the land use final order;**

26 **“(D) Audio recordings of the hearing, if any;**

27 **“(E) A statement of matters that were officially noticed at the**
28 **hearing;**

29 **“(F) The staff report and any amendments thereto; and**

30 **“(G) All documents accepted into the public hearing record.**

1 **“(b) Metro shall make available a copy of the record for inspection**
2 **by petitioners, and shall provide a copy of the record to any petitioner**
3 **upon request. Metro may not charge a petitioner an amount greater**
4 **than the actual copying costs for a copy of the record.**

5 **“(8)(a) Within four days following delivery of the record to the**
6 **board, a petitioner may object to the record by personal delivery to the**
7 **board and the residence or business addresses of the intervening par-**
8 **ties.**

9 **“(b) Within four days following delivery of the objections to the**
10 **record, Metro shall respond to the objections by personal delivery to**
11 **the board and the residence or business addresses of the petitioners**
12 **objecting.**

13 **“(c) After delivery of the objections and the response, the board**
14 **shall rule expeditiously on the objections. The board’s ruling on the**
15 **objections does not affect the briefing schedule or decision timelines**
16 **set forth in sections 1 to 12 of this 2017 Act.**

17 **“(9) Stays or continuances of proceedings are not permitted for the**
18 **proceedings described in this section.**

19 **“(10)(a) Within 14 days following the filing of the notice of intent**
20 **to appeal, a petitioner shall personally deliver a petition for review and**
21 **brief to each entity listed in subsection (6) of this section that has filed**
22 **a motion to intervene on the entity’s own behalf in the review pro-**
23 **ceedings.**

24 **“(b) The petition for review and brief shall:**

25 **“(A) Set out in detail each assignment of error; and**

26 **“(B) Identify those portions of the record in which the petitioner**
27 **raised the issues as to which error is assigned during the land use final**
28 **order hearing.**

29 **“(c) The petition for review and brief shall comply with the spec-**
30 **ifications for opening briefs set forth in the rules of appellate proce-**

1 **dure.**

2 **“(11)(a) Within 28 days following the filing of the notice of intent**
3 **to appeal, Metro and any intervening party shall personally deliver**
4 **their briefs in response to a petition for review and brief to the board**
5 **and to any petitioner at the petitioner’s residence or business address.**

6 **“(b) Responding briefs shall comply with the specifications for an-**
7 **swering briefs set forth in the rules of appellate procedure.**

8 **“(12)(a) Within 35 days following the filing of the notice of intent**
9 **to appeal, the board shall hear oral argument in the manner provided**
10 **for in its administrative rules.**

11 **“(b) Neither the board nor the court may substitute its judgment**
12 **for that of the council as to any issue of fact or any issue within the**
13 **discretion of the council.**

14 **“(13)(a) Within 28 days following oral argument, the board shall is-**
15 **sue a final opinion affirming or remanding the council’s land use final**
16 **order and stating the reasons for the decision.**

17 **“(b) The board may remand the land use final order only if the**
18 **board finds that the council:**

19 **“(A) Improperly construed the criteria;**

20 **“(B) Exceeded its statutory or constitutional authority; or**

21 **“(C) Made a decision in the land use final order on the project im-**
22 **provements, including their locations, that was not supported by sub-**
23 **stantial evidence in the record.**

24 **“(c) The existence in the record of substantial evidence supporting**
25 **a different decision on the project improvements, including their lo-**
26 **cations, is not grounds for remand if there was also substantial evi-**
27 **dence in the record supporting the land use final order.**

28 **“(d) Failure to comply with statutory procedures, including notice**
29 **requirements, is not grounds for invalidating a land use final order.**

30 **“(e) The board shall affirm all portions of the land use final order**

1 that it does not remand.

2 “(14) Upon issuance of its final opinion under subsection (13) of this
3 section, the board shall:

4 “(a) Transmit copies of the final opinion to the parties; and

5 “(b) Inform the parties of the filing of the final opinion by tele-
6 phone.

7 “(15) Within seven days following issuance of its final opinion, the
8 board shall personally deliver or electronically submit a copy of the
9 record of the board with the State Court Administrator.

10 **“SECTION 10. (1)(a) Review of the final opinion of the Land Use**
11 **Board of Appeals shall be initiated when any person that appeared**
12 **before the Land Use Board of Appeals under section 9 of this 2017 Act**
13 **petitions the Supreme Court to review the board’s final opinion as**
14 **provided in this section.**

15 “(b) Within 14 days following the board’s issuance of its final opin-
16 ion, the petitioner shall file a petition for judicial review and a brief
17 with the State Court Administrator and serve copies of the petition
18 and the brief on the board and all parties.

19 “(c) The petition must state a request for relief and include a copy
20 of the board’s final opinion. The brief must state, with particularity
21 and supporting authority, each reason asserted for remand of the
22 board’s final opinion.

23 “(d) Upon request by the court, the board shall personally deliver
24 or electronically submit a transcript of the board’s record.

25 “(2)(a) Within 14 days after the petition filing date, any other per-
26 son that appeared before the board may, but need not, file a response
27 in the form of a brief to the petition and brief with the State Court
28 Administrator and shall serve the response on the board and all par-
29 ties.

30 “(b) In the absence of a response, the court shall consider a

1 person's brief before the board to be the person's response.

2 “(3) The court shall decide the matter at its earliest practicable
3 convenience, consistent with sections 1 to 12 of this 2017 Act. The
4 court shall apply the standards for review set forth in section 9 of this
5 2017 Act.

6 “(4)(a) The court may decide the matter on the briefs or hold oral
7 argument.

8 “(b) The court may affirm or remand the land use final order, in
9 whole or in part. The court shall affirm all parts of the land use final
10 order that it does not remand.

11 “(5)(a) If the court affirms, the court may adopt the board's final
12 opinion, affirm without opinion or issue a separate opinion.

13 “(b) If the court remands, the Metro Council shall:

14 “(A) Respond as to those matters remanded by adopting by resolu-
15 tion a land use final order on remand according to the provisions of
16 sections 6 and 7 of this 2017 Act;

17 “(B) Immediately file the land use final order on remand and the
18 record of the council with the State Court Administrator;

19 “(C) Personally deliver copies of its land use final order on remand
20 to the parties before the court; and

21 “(D) Inform the parties by telephone of the filing of the land use
22 final order on remand.

23 “(6) The court shall retain jurisdiction over any matters remanded.

24 “(7) Within 14 days following adoption of a land use final order on
25 remand, the parties before the court may submit briefs to the court
26 in response to the land use final order on remand. Parties that submit
27 briefs shall personally deliver copies of the briefs to other parties be-
28 fore the court. The court may limit the length of briefs submitted
29 under this subsection.

30 “(8) The court shall affirm or remand the land use final order on

1 remand according to the standards for review set forth in section 9 of
2 this 2017 Act.

3 **“SECTION 11. (1) Following execution of a Full Funding Grant**
4 **Agreement, the Metro Council shall amend the land use final order to**
5 **be consistent with the terms and conditions of the Full Funding Grant**
6 **Agreement.**

7 **“(2) The council shall remove, modify or defer one or more project**
8 **improvements or measures if:**

9 **“(a) The federal government requires the removal, modification or**
10 **deferral of portions of the approved project, or the removal, modifi-**
11 **cation or deferral of measures is expressly provided for in a Final**
12 **Statement as a condition of executing a Full Funding Grant Agree-**
13 **ment; or**

14 **“(b) Subsequent to execution of a Full Funding Grant Agreement,**
15 **the steering committee determines that additional removals, modifi-**
16 **cations or deferrals are appropriate due to insufficient funds in the**
17 **budget for the project.**

18 **“(3) The following amendments to a land use final order are not**
19 **subject to review by any court or agency:**

20 **“(a) Amendments resulting from adoption of a Final Statement;**

21 **“(b) Amendments required to ensure consistency with an executed**
22 **Full Funding Grant Agreement; and**

23 **“(c) Amendments to remove, modify or defer a portion of the**
24 **project as provided for in subsection (2) of this section.**

25 **“SECTION 12. An action taken by the Land Conservation and De-**
26 **velopment Commission, the Metro Council, the Land Use Board of**
27 **Appeals or the Supreme Court under sections 1 to 12 of this 2017 Act**
28 **is not invalid due to a failure to meet a timeline established under**
29 **sections 1 to 12 of this 2017 Act.**

30 **“SECTION 13. The Land Conservation and Development Commis-**

1 sion shall adopt the order establishing the criteria described in section
2 4 (8) of this 2017 Act within 90 days following the effective date of this
3 2017 Act.

4 SECTION 14. This 2017 Act being necessary for the immediate
5 preservation of the public peace, health and safety, an emergency is
6 declared to exist, and this 2017 Act takes effect on its passage.”.

7
