

House Bill 3013

Sponsored by Representative NERON, Senator WOODS (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: This Act gives a process for revoking a permit based on an overturned land use plan or regulation. (Flesch Readability Score: 61.6).

Details the process by which a permit or zone change that is based on provisions of a comprehensive plan or land use regulation that fail to gain acknowledgment is voided and any resulting improvements or uses are removed or revoked.

A BILL FOR AN ACT

1
2 Relating to the effect of land use provisions that fail to gain acknowledgement; amending ORS
3 197.625 and 197.825.

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

5 **SECTION 1.** ORS 197.625 is amended to read:

6 197.625. (1) A local decision adopting a change to an acknowledged comprehensive plan or a
7 land use regulation is deemed to be acknowledged when the local government has complied with the
8 requirements of ORS 197.610 and 197.615 and either:

9 (a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to
10 appeal has not been filed; or

11 (b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision
12 or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

13 (2) If the local decision adopting a change to an acknowledged comprehensive plan or a land
14 use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive plan or the
15 land use regulation, as modified, is deemed to be acknowledged upon the date the decision of the
16 board or the decision of an appellate court becomes final.

17 (3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a land use
18 regulation:

19 (a) The change is effective at the time specified by local government charter or ordinance; and

20 (b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615, the local
21 government shall apply the change to land use decisions, expedited land divisions and limited land
22 use decisions unless a stay is granted under ORS 197.845.

23 (4) Approval of a land use decision, expedited land division or limited land use decision that is
24 subject to an effective but unacknowledged provision of a comprehensive plan or a land use regu-
25 lation must include findings of compliance with land use statutes, statewide land use planning goals
26 and administrative rules of the Land Conservation and Development Commission implementing the
27 statutes or goals that apply to the decision and that the unacknowledged provision implements.

28 (5)(a) If a **permit or zone change is based, in whole or in part, on** an effective but unac-
29 knowledged provision of a comprehensive plan or a land use regulation **that** fails to gain acknowl-

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 edgment:[, a permit or zone change approved, in whole or in part, on the basis of the change does not
2 justify retention of the improvements that were authorized by the permit or zone change.]

3 **(A) The permit or zone change is void and without further effect.**

4 **(B) Any improvements or use based on the permit or zone change must be halted and**
5 **removed.**

6 **(b) Any person who participated in an appeal of, or submitted testimony in opposition to,**
7 **the unacknowledged provision may bring a claim in circuit court, including under ORS**
8 **197.825 (3)(b):**

9 **(A) To revoke or declare void any permit or zone change based on the provision.**

10 **(B) To enjoin or remove any improvements or use based on the permit or zone change.**

11 **(C) For actual damages caused to the person by any improvements or use based on the**
12 **permit or zone change.**

13 **(c) A person has standing under paragraph (b) of this subsection without regard to**
14 **whether:**

15 **(A) The person appealed or sought a stay of the permit or zone change.**

16 **(B) The approval of the permit or zone change was a land use decision.**

17 (6) If requested by a local government, the Director of the Department of Land Conservation
18 and Development shall issue certification of the acknowledgment upon receipt of an affidavit from:

19 (a) The local government, attesting that the change to the acknowledged comprehensive plan
20 or the land use regulation was accomplished in compliance with ORS 197.610 and 197.615; and

21 (b) The Land Use Board of Appeals, stating either:

22 (A) That no notice of appeal was filed within the 21 days allowed under ORS 197.830 (9); or

23 (B) The date the decision of the board or the decision of an appellate court affirming the change
24 to the acknowledged comprehensive plan or the land use regulation became final.

25 (7) The board shall issue an affidavit for the purposes of subsection (6) of this section within five
26 days after receiving a valid request from the local government.

27 **SECTION 2.** ORS 197.825 is amended to read:

28 197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the
29 Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or
30 limited land use decision of a local government, special district or a state agency in the manner
31 provided in ORS 197.830 to 197.845.

32 (2) The jurisdiction of the board:

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

35 (b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Ap-
36 peals;

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

38 (A) Submitted to the Department of Land Conservation and Development for acknowledgment
39 under ORS 197.251, 197.626 or 197.628 to 197.651 or a matter arising out of a local government de-
40 cision submitted to the department for acknowledgment, unless the Director of the Department of
41 Land Conservation and Development, in the director's sole discretion, transfers the matter to the
42 board; or

43 (B) Subject to the review authority of the department under ORS 197.412, 197.445, 197.450 or
44 197.455 or a matter related to a local government decision subject to the review authority of the
45 department under ORS 197.412, 197.445, 197.450 or 197.455;

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

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

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

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

9 (3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain juris-
10 diction:

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

14 (b) To enforce orders of the board in appropriate proceedings brought by the board or a party
15 to the board proceeding resulting in the order, **including as provided in ORS 197.625 (5)**.

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