

House Bill 3025

Sponsored by Representative MORGAN (at the request of Oregon Bankers Association, Association of Oregon Counties, League of Oregon Cities, Oregon Home Builders Association, City of Salem, Oregon Association of Realtors)

SUMMARY

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

Modifies definition of "land use decision" and "limited land use decision" to exclude decision of local government that approves or withholds approval of final subdivision or partition plat or that determines whether final subdivision or partition plat substantially conforms to tentative subdivision or partition plan.

A BILL FOR AN ACT

1
2 Relating to land use planning; creating new provisions; and amending ORS 197.015.

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

4 **SECTION 1.** ORS 197.015 is amended to read:

5 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

6 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
7 land use regulations, land use regulation or plan or regulation amendment complies with the goals
8 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
9 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
10 work plan comply with the statewide planning goals.

11 (2) "Board" means the Land Use Board of Appeals.

12 (3) "Carport" means a stationary structure consisting of a roof with its supports and not more
13 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

14 (4) "Commission" means the Land Conservation and Development Commission.

15 (5) "Committee" means the Joint Legislative Committee on Land Use.

16 (6) "Comprehensive plan" means a generalized, coordinated land use map and policy statement
17 of the governing body of a local government that interrelates all functional and natural systems and
18 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
19 portation systems, educational facilities, recreational facilities, and natural resources and air and
20 water quality management programs. "Comprehensive" means all-inclusive, both in terms of the
21 geographic area covered and functional and natural activities and systems occurring in the area
22 covered by the plan. "General nature" means a summary of policies and proposals in broad cate-
23 gories and does not necessarily indicate specific locations of any area, activity or use. A plan is "co-
24 ordinated" when the needs of all levels of governments, semipublic and private agencies and the
25 citizens of Oregon have been considered and accommodated as much as possible. "Land" includes
26 water, both surface and subsurface, and the air.

27 (7) "Department" means the Department of Land Conservation and Development.

28 (8) "Director" means the Director of the Department of Land Conservation and Development.

29 (9) "Goals" means the mandatory statewide planning standards adopted by the commission pur-

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 suant to ORS chapters 195, 196 and 197.

2 (10) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
 3 adoption and implementation of comprehensive plans in compliance with goals and to aid state
 4 agencies and special districts in the preparation, adoption and implementation of plans, programs
 5 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
 6 agencies, cities, counties and special districts to a single approach.

7 (11) "Land use decision":

8 (a) Includes:

9 (A) A final decision or determination made by a local government or special district that con-
 10 cerns the adoption, amendment or application of:

11 (i) The goals;

12 (ii) A comprehensive plan provision;

13 (iii) A land use regulation; or

14 (iv) A new land use regulation;

15 (B) A final decision or determination of a state agency other than the commission with respect
 16 to which the agency is required to apply the goals; or

17 (C) A decision of a county planning commission made under ORS 433.763;

18 (b) Does not include a decision of a local government:

19 (A) That is made under land use standards that do not require interpretation or the exercise
 20 of policy or legal judgment;

21 (B) That approves or denies a building permit issued under clear and objective land use stan-
 22 dards;

23 (C) That is a limited land use decision;

24 (D) That determines final engineering design, construction, operation, maintenance, repair or
 25 preservation of a transportation facility that is otherwise authorized by and consistent with the
 26 comprehensive plan and land use regulations;

27 (E) That is an expedited land division as described in ORS 197.360; *[or]*

28 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal
 29 of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal
 30 under ORS 480.410 to 480.460; **or**

31 **(G) That approves or denies approval of a final subdivision or partition plat or that de-**
 32 **termines whether a final subdivision or partition plat substantially conforms to the tentative**
 33 **subdivision or partition plan;**

34 (c) Does not include a decision by a school district to close a school;

35 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
 36 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
 37 hours in any three-month period; and

38 (e) Does not include:

39 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
 40 or

41 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
 42 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

43 (12) "Land use regulation" means any local government zoning ordinance, land division ordi-
 44 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
 45 implementing a comprehensive plan.

1 (13) “Limited land use decision” *[is]*:

2 (a) **Means** a final decision or determination made by a local government pertaining to a site
 3 within an urban growth boundary that concerns:

4 [(a)] (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
 5 92.040 (1).

6 [(b)] (B) The approval or denial of an application based on discretionary standards designed to
 7 regulate the physical characteristics of a use permitted outright, including but not limited to site
 8 review and design review.

9 (b) **Does not mean a final decision made by a local government pertaining to a site within**
 10 **an urban growth boundary that concerns approval or denial of a final subdivision or partition**
 11 **plat or that determines whether a final subdivision or partition plat substantially conforms**
 12 **to the tentative subdivision or partition plan.**

13 (14) “Local government” means any city, county or metropolitan service district formed under
 14 ORS chapter 268 or an association of local governments performing land use planning functions
 15 under ORS 195.025.

16 (15) “Metro” means a metropolitan service district organized under ORS chapter 268.

17 (16) “Metro planning goals and objectives” means the land use goals and objectives that a met-
 18 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
 19 stitute a comprehensive plan.

20 (17) “Metro regional framework plan” means the regional framework plan required by the 1992
 21 Metro Charter or its separate components. Neither the regional framework plan nor its individual
 22 components constitute a comprehensive plan.

23 (18) “New land use regulation” means a land use regulation other than an amendment to an
 24 acknowledged land use regulation adopted by a local government that already has a comprehensive
 25 plan and land regulations acknowledged under ORS 197.251.

26 (19) “Person” means any individual, partnership, corporation, association, governmental subdivi-
 27 sion or agency or public or private organization of any kind. The Land Conservation and Devel-
 28 opment Commission or its designee is considered a person for purposes of appeal under ORS
 29 chapters 195 and 197.

30 (20) “Special district” means any unit of local government, other than a city, county, metropol-
 31 itan service district formed under ORS chapter 268 or an association of local governments per-
 32 forming land use planning functions under ORS 195.025, authorized and regulated by statute and
 33 includes but is not limited to water control districts, domestic water associations and water coop-
 34 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,
 35 school districts, hospital districts, mass transit districts and sanitary districts.

36 (21) “Voluntary association of local governments” means a regional planning agency in this
 37 state officially designated by the Governor pursuant to the federal Office of Management and Budget
 38 Circular A-95 as a regional clearinghouse.

39 (22) “Wetlands” means those areas that are inundated or saturated by surface or ground water
 40 at a frequency and duration that are sufficient to support, and that under normal circumstances do
 41 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

42 **SECTION 2.** ORS 197.015, as amended by section 8, chapter 829, Oregon Laws 2005, is amended
 43 to read:

44 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

45 (1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and

1 land use regulations, land use regulation or plan or regulation amendment complies with the goals
 2 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
 3 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
 4 work plan comply with the statewide planning goals.

5 (2) “Board” means the Land Use Board of Appeals.

6 (3) “Carport” means a stationary structure consisting of a roof with its supports and not more
 7 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

8 (4) “Commission” means the Land Conservation and Development Commission.

9 (5) “Committee” means the Joint Legislative Committee on Land Use.

10 (6) “Comprehensive plan” means a generalized, coordinated land use map and policy statement
 11 of the governing body of a local government that interrelates all functional and natural systems and
 12 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
 13 portation systems, educational facilities, recreational facilities, and natural resources and air and
 14 water quality management programs. “Comprehensive” means all-inclusive, both in terms of the
 15 geographic area covered and functional and natural activities and systems occurring in the area
 16 covered by the plan. “General nature” means a summary of policies and proposals in broad catego-
 17 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is “co-
 18 ordinated” when the needs of all levels of governments, semipublic and private agencies and the
 19 citizens of Oregon have been considered and accommodated as much as possible. “Land” includes
 20 water, both surface and subsurface, and the air.

21 (7) “Department” means the Department of Land Conservation and Development.

22 (8) “Director” means the Director of the Department of Land Conservation and Development.

23 (9) “Goals” means the mandatory statewide planning standards adopted by the commission pur-
 24 suant to ORS chapters 195, 196 and 197.

25 (10) “Guidelines” means suggested approaches designed to aid cities and counties in preparation,
 26 adoption and implementation of comprehensive plans in compliance with goals and to aid state
 27 agencies and special districts in the preparation, adoption and implementation of plans, programs
 28 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
 29 agencies, cities, counties and special districts to a single approach.

30 (11) “Land use decision”:

31 (a) Includes:

32 (A) A final decision or determination made by a local government or special district that con-
 33 cerns the adoption, amendment or application of:

34 (i) The goals;

35 (ii) A comprehensive plan provision;

36 (iii) A land use regulation; or

37 (iv) A new land use regulation;

38 (B) A final decision or determination of a state agency other than the commission with respect
 39 to which the agency is required to apply the goals; or

40 (C) A decision of a county planning commission made under ORS 433.763;

41 (b) Does not include a decision of a local government:

42 (A) That is made under land use standards that do not require interpretation or the exercise
 43 of policy or legal judgment;

44 (B) That approves or denies a building permit issued under clear and objective land use stan-
 45 dards;

1 (C) That is a limited land use decision;

2 (D) That determines final engineering design, construction, operation, maintenance, repair or
3 preservation of a transportation facility that is otherwise authorized by and consistent with the
4 comprehensive plan and land use regulations;

5 (E) That is an expedited land division as described in ORS 197.360; *[or]*

6 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal
7 of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal
8 under ORS 480.410 to 480.460; **or**

9 **(G) That approves or denies approval of a final subdivision or partition plat or that de-**
10 **termines whether a final subdivision or partition plat substantially conforms to the tentative**
11 **subdivision or partition plan;**

12 (c) Does not include a decision by a school district to close a school;

13 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
14 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
15 hours in any three-month period; and

16 (e) Does not include:

17 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
18 or

19 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
20 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

21 (12) "Land use regulation" means any local government zoning ordinance, land division ordi-
22 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
23 implementing a comprehensive plan.

24 (13) "Limited land use decision" *[is]*:

25 **(a) Means** a final decision or determination made by a local government pertaining to a site
26 within an urban growth boundary that concerns:

27 *[(a)]* **(A)** The approval or denial of a tentative subdivision or partition plan, as described in ORS
28 92.040 (1).

29 *[(b)]* **(B)** The approval or denial of an application based on discretionary standards designed to
30 regulate the physical characteristics of a use permitted outright, including but not limited to site
31 review and design review.

32 **(b) Does not mean a final decision made by a local government pertaining to a site within**
33 **an urban growth boundary that concerns approval or denial of a final subdivision or partition**
34 **plat or that determines whether a final subdivision or partition plat substantially conforms**
35 **to the tentative subdivision or partition plan.**

36 (14) "Local government" means any city, county or metropolitan service district formed under
37 ORS chapter 268 or an association of local governments performing land use planning functions
38 under ORS 195.025.

39 (15) "Metro" means a metropolitan service district organized under ORS chapter 268.

40 (16) "Metro planning goals and objectives" means the land use goals and objectives that a met-
41 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
42 stitute a comprehensive plan.

43 (17) "Metro regional framework plan" means the regional framework plan required by the 1992
44 Metro Charter or its separate components. Neither the regional framework plan nor its individual
45 components constitute a comprehensive plan.

1 (18) "New land use regulation" means a land use regulation other than an amendment to an
2 acknowledged land use regulation adopted by a local government that already has a comprehensive
3 plan and land regulations acknowledged under ORS 197.251.

4 (19) "Person" means any individual, partnership, corporation, association, governmental subdi-
5 vision or agency or public or private organization of any kind. The Land Conservation and Devel-
6 opment Commission or its designee is considered a person for purposes of appeal under ORS
7 chapters 195 and 197.

8 (20) "Special district" means any unit of local government, other than a city, county, metropol-
9 itan service district formed under ORS chapter 268 or an association of local governments per-
10 forming land use planning functions under ORS 195.025, authorized and regulated by statute and
11 includes but is not limited to water control districts, domestic water associations and water coop-
12 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,
13 school districts, hospital districts, mass transit districts and sanitary districts.

14 (21) "Urban unincorporated community" means an area designated in a county's acknowledged
15 comprehensive plan as an urban unincorporated community after December 5, 1994.

16 (22) "Voluntary association of local governments" means a regional planning agency in this
17 state officially designated by the Governor pursuant to the federal Office of Management and Budget
18 Circular A-95 as a regional clearinghouse.

19 (23) "Wetlands" means those areas that are inundated or saturated by surface or ground water
20 at a frequency and duration that are sufficient to support, and that under normal circumstances do
21 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

22 **SECTION 3. The amendments to ORS 197.015 by sections 1 and 2 of this 2007 Act apply**
23 **to a decision by a local government on or after the effective date of this 2007 Act.**

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