

# House Bill 2227

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

## 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 provisions for siting destination resorts.

Directs Land Conservation and Development Commission to evaluate destination resort policies and update key requirements.

Limits legal basis for claiming compensation for regulations restricting use of property by declaring that destination resort is not residential use of private real property.

## A BILL FOR AN ACT

1  
2 Relating to destination resorts; creating new provisions; amending ORS 197.440, 197.445, 197.450,  
3 197.455, 197.460, 197.462 and 197.825; and repealing ORS 197.435 and 197.465.

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

5 **SECTION 1.** ORS 197.440 is amended to read:

6 197.440. (1) The Legislative Assembly finds that:

7 [(1)] (a) It is the policy of this state to promote Oregon as a vacation destination and to en-  
8 courage tourism as a valuable segment of our state's economy[;].

9 [(2)] (b) There is a *[growing]* need to provide year-round destination resort accommodations to  
10 attract visitors and encourage them to stay longer. The establishment of destination resorts will  
11 provide jobs for Oregonians and contribute to the state's economic development[;].

12 [(3)] *It is a difficult and costly process to site and establish destination resorts in rural areas of this*  
13 *state; and]*

14 [(4)] (c) The siting of destination resort facilities is an issue of statewide concern.

15 (2) **The Legislative Assembly further finds that:**

16 (a) **In 1984, the Land Conservation and Development Commission adopted provisions of**  
17 **a goal relating to recreational needs that allowed the siting of destination resorts outside**  
18 **urban growth boundaries without taking an exception to goals relating to agricultural lands,**  
19 **forestlands, public facilities and services or urbanization.**

20 (b) **Because, in 1987, provisions of the goals relating to destination resorts were enacted**  
21 **into law:**

22 (A) **The commission has been limited in its authority to:**

23 (i) **Revise and update the goal relating to recreational needs; and**

24 (ii) **Update land use policy relating to destination resorts to account for changing cir-**  
25 **cumstances and differing conditions and needs in different regions of this state.**

26 (B) **Several problems have arisen, including:**

27 (i) **Destination resorts have become concentrated in close proximity to some Oregon**  
28 **cities and the number of destination resorts continues to increase without adequate assess-**  
29 **ment of the impacts that existing and planned resorts have on nearby urban and rural areas,**

**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 including areas under the jurisdiction of multiple local governments, transportation and  
 2 other public facilities, natural resources in the region, including water resources and fish and  
 3 wildlife habitat, prevention and suppression of wildfires and control or mitigation of other  
 4 natural hazards.

5 (ii) Extensive areas outside of, but in proximity to, urban growth boundaries are cur-  
 6 rently mapped and zoned to allow destination resort development, and additional resorts are  
 7 in the planning or approval process.

8 (iii) Increasingly, destination resorts have taken on the character of residential subdivi-  
 9 sions, rather than unique developments designed to attract tourism and serve visitors, and  
 10 have diminished the effect of land use policies intended to concentrate permanent develop-  
 11 ment in urban growth boundaries and contain urban sprawl and exurban development in  
 12 Oregon.

13 (iv) Siting criteria designed to ensure that high quality developed recreational amenities  
 14 anchor destination resorts have not been updated to account for present-day market and  
 15 inflation factors or revised to encourage recreational amenities that minimize impacts on the  
 16 availability of water and on farmland, forestland and other natural resources.

17 (v) Amendments to statutory requirements for destination resorts have diminished the  
 18 effect of safeguards provided in the original goal-based requirements for destination resorts,  
 19 including modifications to the ratio of permanent housing to overnight lodging and changes  
 20 that authorize amendments to maps of eligible lands at times other than the periodic review  
 21 of comprehensive plans.

22 **SECTION 2. (1) The Land Conservation and Development Commission shall:**

23 (a) Evaluate the state's destination resort policies and implementation of those policies;  
 24 and

25 (b) Update key requirements and address issues through special studies and, as neces-  
 26 sary, through the amendment of statewide land use planning goals or the adoption of ad-  
 27 ministrative rules.

28 (2) The issues to be addressed and the key requirements to be updated include, but are  
 29 not limited to:

30 (a) The adequacy of siting provisions to ensure that destination resorts function, as ori-  
 31 ginally intended, to attract tourism and serve visitors rather than to establish residential  
 32 subdivisions or to establish suburban communities that compete with urban areas.

33 (b) The impact of existing and planned destination resorts on nearby urban areas, in-  
 34 cluding the impact of large amounts of permanent, exurban housing on nearby communities,  
 35 on facilities and on service providers.

36 (c) The protection of important natural resources impacted by destination resorts, in-  
 37 cluding farm and forest resources, water resources and natural areas and habitats, and the  
 38 adequacy of requirements for identifying and evaluating the important natural resources  
 39 before resort approval.

40 (d) The effects of a concentration of destination resorts in particular regions of this state  
 41 and whether the number of destination resorts or the number of permanent dwelling units  
 42 allowed in resorts should be capped by region or county.

43 (e) Provisions to avoid or mitigate transportation and wildlife impacts caused by desti-  
 44 nation resorts.

45 (f) Whether to cap the size of destination resorts generally or the number of dwelling

1 **units allowed in destination resorts concentrated in a region or county.**

2 **(g) Whether to limit the expansion of existing destination resorts.**

3 **(h) Whether to allow conversion of existing rural residential development to destination**  
 4 **resort status.**

5 **(i) Equity among counties with regard to differing potential for destination resort devel-**  
 6 **opment and flexibility to adapt siting requirements to differing conditions in the different**  
 7 **regions of this state.**

8 **(j) Mitigation and control of natural hazards, including prevention and suppression of**  
 9 **wildfires, that may be exacerbated by destination resort siting.**

10 **(k) The availability of workforce housing and related transportation needs in destination**  
 11 **resorts and nearby communities.**

12 **SECTION 3.** ORS 197.445 is amended to read:

13 197.445. A destination resort is a self-contained development that provides [*for*] visitor-oriented  
 14 accommodations and developed recreational facilities in a setting with high natural amenities. To  
 15 qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a  
 16 proposed development must [*meet the following standards:*] **satisfy the requirements of a goal re-**  
 17 **lating to recreational needs and rules implementing the goal.**

18 [*(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean*  
 19 *shoreline where the site shall be 40 acres or more.*]

20 [*(2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets and*  
 21 *parking areas.*]

22 [*(3) At least \$7 million must be spent on improvements for on-site developed recreational facilities*  
 23 *and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads.*  
 24 *Not less than one-third of this amount must be spent on developed recreational facilities.*]

25 [*(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100*  
 26 *persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable*  
 27 *overnight lodging units may be phased in as follows:*]

28 [*(a) On lands not described in paragraph (b) of this subsection:*]

29 [(A) *A total of 150 units of overnight lodging must be provided.*]

30 [(B) *At least 75 units of overnight lodging, not including any individually owned homes, lots or*  
 31 *units, must be constructed or guaranteed through surety bonding or equivalent financial assurance*  
 32 *prior to the closure of sale of individual lots or units.*]

33 [(C) *The remaining overnight lodging units must be provided as individually owned lots or units*  
 34 *subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions*  
 35 *may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required*  
 36 *by this subsection.*]

37 [(D) *The number of units approved for residential sale may not be more than two units for each*  
 38 *unit of permanent overnight lodging provided under this paragraph.*]

39 [(E) *The development approval must provide for the construction of other required overnight lodg-*  
 40 *ing units within five years of the initial lot sales.*]

41 [*(b) On lands in eastern Oregon, as defined in ORS 321.805:*]

42 [(A) *A total of 150 units of overnight lodging must be provided.*]

43 [(B) *At least 50 units of overnight lodging must be constructed prior to the closure of sale of in-*  
 44 *dividual lots or units.*]

45 [(C) *At least 50 of the remaining 100 required overnight lodging units must be constructed or*

1 *guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot*  
 2 *sales.]*

3 *[(D) The remaining required overnight lodging units must be constructed or guaranteed through*  
 4 *surety bonding or equivalent financial assurances within 10 years of the initial lot sales.]*

5 *[(E) The number of units approved for residential sale may not be more than 2-1/2 units for each*  
 6 *unit of permanent overnight lodging provided under this paragraph.]*

7 *[(F) If the developer of a resort guarantees the overnight lodging units required under subpara-*  
 8 *graphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance,*  
 9 *the overnight lodging units must be constructed within four years of the date of execution of the surety*  
 10 *bond or other equivalent financial assurance.]*

11 *[(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of*  
 12 *visitors to the development. Industrial uses of any kind are not permitted.]*

13 *[(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth*  
 14 *in subsection (7) of this section apply to a destination resort:]*

15 *[(a) On land that is not defined as agricultural or forest land under any statewide planning*  
 16 *goal;]*

17 *[(b) On land where there has been an exception to any statewide planning goal on agricultural*  
 18 *lands, forestlands, public facilities and services and urbanization; or]*

19 *[(c) On such secondary lands as the Land Conservation and Development Commission deems ap-*  
 20 *propriate.]*

21 *[(7) The following standards apply to the provisions of subsection (6) of this section:]*

22 *[(a) The resort must be located on a site of 20 acres or more.]*

23 *[(b) At least \$2 million must be spent on improvements for on-site developed recreational facilities*  
 24 *and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads.*  
 25 *Not less than one-third of this amount must be spent on developed recreational facilities.]*

26 *[(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.]*

27 *[(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must*  
 28 *be provided.]*

29 *[(e) Residential uses must be limited to those necessary for the staff and management of the*  
 30 *resort.]*

31 *[(f) The governing body of the county or its designee has reviewed the resort proposed under this*  
 32 *subsection and has determined that the primary purpose of the resort is to provide lodging and other*  
 33 *services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such*  
 34 *recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.]*

35 *[(g) The resort must be constructed and located so that it is not designed to attract highway traffic.*  
 36 *Resorts may not use any manner of outdoor advertising signing except:]*

37 *[(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and]*

38 *[(B) On-site identification and directional signs.]*

39 *[(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The*  
 40 *spending required shall be adjusted to the year in which calculations are made in accordance with the*  
 41 *United States Consumer Price Index.]*

42 *[(9) When making a land use decision authorizing construction of a destination resort in eastern*  
 43 *Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the*  
 44 *resort developer to provide an annual accounting to document compliance with the overnight lodging*  
 45 *standards of this section. The annual accounting requirement commences one year after the initial lot*

1 or unit sales. The annual accounting must contain:]

2 [(a) Documentation showing that the resort contains a minimum of 150 permanent units of over-  
3 night lodging or, during the phase-in period, documentation showing the resort is not yet required to  
4 have constructed 150 units of overnight lodging.]

5 [(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of  
6 this section.]

7 [(c) For a resort counting individually owned units as qualified overnight lodging units, the num-  
8 ber of weeks that each overnight lodging unit is available for rental to the general public as described  
9 in ORS 197.435.]

10 **SECTION 4.** ORS 197.450 is amended to read:

11 197.450. In accordance with the provisions of ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and  
12 215.284 **and a goal relating to recreational needs and rules implementing the goal**, a compre-  
13 hensive plan may provide for the siting of a destination resort on rural lands without taking an  
14 exception to [statewide planning] goals relating to agricultural lands, forestlands, public facilities  
15 and services or urbanization.

16 **SECTION 5.** ORS 197.455 is amended to read:

17 197.455. [(1)] A destination resort must be sited on lands mapped as eligible for destination re-  
18 sort siting by the affected county. The county may not [allow destination resorts approved pursuant  
19 to ORS 197.435 to 197.467 to be sited in any of the following areas] **map lands as eligible for des-**  
20 **tination resort siting if the lands are:**

21 [(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or  
22 more unless residential uses are limited to those necessary for the staff and management of the  
23 resort.]

24 [(b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and  
25 mapped by the United States Natural Resources Conservation Service, or its predecessor agency.]

26 [(B) On a site within three miles of a high value crop area unless the resort complies with the re-  
27 quirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area  
28 than one-half mile for each 25 units of overnight lodging or fraction thereof.]

29 [(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry  
30 Department, which are not subject to an approved goal exception.]

31 [(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge  
32 National Scenic Act, P.L. 99-663.]

33 [(e) In an especially sensitive big game habitat area as determined by the State Department of Fish  
34 and Wildlife in July 1984 or as designated in an acknowledged comprehensive plan.]

35 [(2) In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive  
36 plan, a map consisting of eligible lands within the county. The map must be based on reasonably  
37 available information and may be amended pursuant to ORS 197.610 to 197.625, but not more fre-  
38 quently than once every 30 months. The county shall develop a process for collecting and processing  
39 concurrently all map amendments made within a 30-month planning period. A map adopted pursuant  
40 to this section shall be the sole basis for determining whether tracts of land are eligible for destination  
41 resort siting pursuant to ORS 197.435 to 197.467.]

42 **(1) Within 24 air miles of an urban growth boundary with a population of 100,000 or more**  
43 **on the date an application for destination resort approval is deemed complete under ORS**  
44 **215.427;**

45 **(2) On a site that is on high value farmland or within three miles of high value farmland**

1 as determined by the Land Conservation and Development Commission;

2 (3) On forestlands that are not subject to an approved goal exception and that are de-  
 3 termined by the State Forestry Department to be predominantly Cubic Foot Site Class 1 or  
 4 2 forestlands;

5 (4) In the Columbia River Gorge National Scenic Area as defined by the Columbia River  
 6 Gorge National Scenic Act, P.L. 99-663; or

7 (5) In an area of especially sensitive big game habitat as determined by the State De-  
 8 partment of Fish and Wildlife in July 1984, or as designated by the county in the acknowl-  
 9 edged comprehensive plan.

10 **SECTION 6.** ORS 197.460 is amended to read:

11 197.460. A county shall [*insure*] **ensure** that a destination resort is compatible with the site and  
 12 adjacent land uses [*through the following measures*]. **The county:**

13 (1) **Shall require that** important natural features, including habitat of threatened or endangered  
 14 species, streams, rivers and significant wetlands, [*shall be retained.*] **are protected.**

15 (2) **Shall require that** riparian vegetation within 100 feet of streams, rivers and significant  
 16 wetlands [*shall be retained. Alteration of important natural features, including placement of structures*  
 17 *which maintain the overall values of the feature may be allowed.*] **is protected, except as necessary**  
 18 **to implement restoration activities.**

19 [*(2) Improvements and activities shall be located and designed to avoid or minimize adverse effects*  
 20 *of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the*  
 21 *area. At a minimum, measures to accomplish this shall include:*]

22 (3) **Shall require that destination resorts are located, designed and operated to avoid or**  
 23 **mitigate direct and indirect adverse effects of the resort on other lands, including lands in**  
 24 **the jurisdiction of other local governments, particularly effects on intensive farming oper-**  
 25 **ations in the area. At a minimum, measures to accomplish this include:**

26 (a) Establishment and maintenance of buffers between the resort and adjacent land uses, in-  
 27 cluding natural vegetation and where appropriate, fences, berms, landscaped areas and other similar  
 28 types of buffers.

29 (b) Setbacks of structures and other improvements from adjacent land uses.

30 (c) **Avoidance or mitigation of adverse effects on state highways, county roads and city**  
 31 **streets.**

32 **SECTION 7. A destination resort authorized under ORS 197.435 to 197.467 is not a resi-**  
 33 **dential use of private real property for purposes of ORS 195.305.**

34 **SECTION 8. ORS 197.435 and 197.465 are repealed.**

35 **SECTION 9.** ORS 197.462 is amended to read:

36 197.462. A portion of a tract that is excluded from the site of a destination resort [*pursuant to*  
 37 *ORS 197.435 (7)*] shall not be used or operated in conjunction with the resort. Subject to this limi-  
 38 tation, the use of the excluded property shall be governed by otherwise applicable law.

39 **SECTION 10.** ORS 197.825 is amended to read:

40 197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the  
 41 Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or  
 42 limited land use decision of a local government, special district or a state agency in the manner  
 43 provided in ORS 197.830 to 197.845.

44 (2) The jurisdiction of the board:

45 (a) Is limited to those cases in which the petitioner has exhausted all remedies available by right

1 before petitioning the board for review;

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

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

5 (A) Submitted to the Department of Land Conservation and Development for acknowledgment  
6 under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government de-  
7 cision submitted to the department for acknowledgment, unless the Director of the Department of  
8 Land Conservation and Development, in the director's sole discretion, transfers the matter to the  
9 board; or

10 (B) Subject to the review authority of the department under ORS 197.430[, 197.445, 197.450 or  
11 197.455] **or 197.435 to 197.467** or a matter related to a local government decision subject to the re-  
12 view authority of the department under ORS 197.430[, 197.445, 197.450 or 197.455] **or 197.435 to**  
13 **197.467**;

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

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

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

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

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

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

27 (b) To enforce orders of the board in appropriate proceedings brought by the board or a party  
28 to the board proceeding resulting in the order.

29 **SECTION 11. (1) The amendments to ORS 197.440, 197.445, 197.450, 197.455, 197.460, 197.462**  
30 **and 197.825 by sections 1, 3 to 6, 9 and 10 of this 2009 Act, section 2 of this 2009 Act and the**  
31 **repeal of ORS 197.435 and 197.465 by section 8 of this 2009 Act apply to an application for**  
32 **approval of the siting of a destination resort first submitted under ORS 215.427 (3) on or after**  
33 **the effective date of this 2009 Act.**

34 **(2) Section 7 of this 2009 Act applies to a destination resort approved before, on or after**  
35 **the effective date of this 2009 Act.**

36