

Enrolled House Bill 2230

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CHAPTER

AN ACT

Relating to coordination of land use decision-making between state agencies and local governments; creating new provisions; and amending ORS 197.015, 197.180, 197.254 and 197.650.

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

SECTION 1. The Legislative Assembly finds and declares that:

(1) Improving coordination and consistency between the duties and actions of state agencies that affect land use and the duties and actions of local governments under comprehensive plans and land use regulations is required to ensure that the actions of state agencies complement both state and local land use planning objectives.

(2) Improved coordination is necessary to streamline state and local permitting procedures.

(3) The Department of Land Conservation and Development has not engaged in a formal and concerted effort to update state agency land use coordination programs since 1989, and that state agency rules, plans and programs affecting land use and local government comprehensive plans and land use regulations have changed substantially since that time.

(4) Rules of the Land Conservation and Development Commission regarding state agency land use coordination and state permit compliance and compatibility should be:

(a) Reviewed to eliminate unclear or conflicting provisions and to ensure that local land use decisions authorizing a use generally precede state agency decisions on permits for the use or for aspects of the use; and

(b) Updated regularly to maintain a high level of coordination between state agencies and local governments in reviewing authorizations for a use of property.

SECTION 2. ORS 197.015 is amended to read:

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

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the [*statewide planning*] goals.

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

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

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

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

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

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

(8) "Goals" means the mandatory statewide **land use** planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

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

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

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

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

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

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

(B) That approves or denies a building permit issued under clear and objective land use standards;

(C) That is a limited land use decision;

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

(E) That is an expedited land division as described in ORS 197.360;

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

(G) That approves or denies approval of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan; **or**

(H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the acknowledged comprehensive plan and land use regulations implementing the plan, if:

(i) The local government has already made a land use decision authorizing a use or activity that encompasses the proposed state agency action;

(ii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan; or

(iii) The use or activity that would be authorized, funded or undertaken by the proposed state agency action requires a future land use review under the acknowledged comprehensive plan and land use regulations implementing the plan;

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

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

(e) Does not include:

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

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

(C) A state agency action subject to ORS 197.180 (1), if:

(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or

(ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision":

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

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

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

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

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

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

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

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

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

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Devel-

opment Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

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

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

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

SECTION 3. ORS 197.180 is amended to read:

197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with *[goals adopted or amended pursuant to ORS chapters 195, 196 and 197]* **the goals, rules implementing the goals and rules implementing this section;** and

(b) In a manner compatible with **acknowledged comprehensive plans and land use regulations.***[:]*

[(A) Comprehensive plans and land use regulations initially acknowledged under ORS 197.251;]

[(B) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged under ORS 197.625; and]

[(C) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged through periodic review.]

(2) State agencies need not comply with subsection (1)(b) of this section if *[the comprehensive plan or land use regulations are inconsistent with]* a state agency **rule**, plan or program relating to land use *[that]* was not in effect *[at the time the local plan]* **when the comprehensive plan provision or land use regulation with which the action would be incompatible** was acknowledged*[,]* and the agency has demonstrated **that**:

(a) *[That]* The **state agency rule**, plan or program is mandated by state statute or federal law;

(b) *[That]* The **state agency rule**, plan or program is consistent with the goals;

(c) *[That]* The **state agency rule**, plan or program has objectives that cannot be achieved in a manner *[consistent]* **compatible** with the **acknowledged** comprehensive plan and land use regulations; and

(d) *[That]* The agency has complied with its certified state agency coordination program.

(3) Unless federal or state law requires otherwise, the commission, by rule, may specify the sequence of a local government land use decision and a state agency action concerning the same, similar or related uses or activities.

[(3)] **(4)** Upon request by the Land Conservation and Development Commission, each state agency shall submit to the Department of Land Conservation and Development the following information:

(a) Agency rules and summaries of **state agency plans and** programs affecting land use;

(b) A program for coordination pursuant to ORS 197.040 (2)(e);

(c) A program for coordination pursuant to ORS 197.090 (1)(b); and

(d) A program for cooperation with and technical assistance to local governments.

[(4)] (5) Within 90 days of receipt, the Director of the Department of Land Conservation and Development shall review the information submitted pursuant to subsection [(3)] (4) of this section and shall notify each **state agency** if the director believes the **state agency** rules [and], **plans or programs** submitted are insufficient to [assure] **ensure** compliance with goals and compatibility with [city and county] **acknowledged** comprehensive plans and land use regulations.

[(5)] (6) Within 90 days of receipt of notification specified in subsection [(4)] (5) of this section, the **state agency** may revise the **state agency** rules, **plans** or programs and resubmit them to the director.

[(6)] (7) The director shall make findings under subsections [(4) and] (5) **and** (6) of this section as to whether the **state agency** rules [and], **plans or programs** are sufficient to [assure] **ensure** compliance with the goals and compatibility with acknowledged city and county comprehensive plans and land use regulations[,] and shall forward the rules and **summaries of state agency plans or programs** to the commission for its action. The commission shall either certify the **state agency** rules [and], **plans or programs** as [being in compliance] **compliant** with the goals and compatible with the **acknowledged** comprehensive plans and land use regulations of affected local governments or shall determine the same to be insufficient [by December 31, 1990].

[(7)] (8) The department shall report, to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the **state agency** budget, any agency that has failed to meet the requirements of subsection [(6)] (7) of this section.

[(8)] (9) Any **state agency** that has failed to meet the requirements of subsection [(6)] (7) of this section shall report the reasons therefor to the appropriate committee of the House and the Senate and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

[(9)] (10) Until [state agency] rules and **state agency plans and programs** are certified as [being in compliance] **compliant** with the goals and compatible with [applicable city and county] **the acknowledged** comprehensive plans and land use regulations **of affected local governments**, the **state agency** shall make findings when adopting or amending its rules and **state agency plans and programs** as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

[(10)] (11) The commission shall adopt rules establishing procedures to [assure] **ensure** that state agency permits affecting land use are issued in compliance with the goals and compatible with acknowledged comprehensive plans and land use regulations, as required by subsection (1) of this section. The rules [shall] **must** prescribe the circumstances in which state agencies may rely upon a determination of compliance [or compatibility made by the affected city or county. The rules shall allow a state agency to rely upon a determination of compliance by a city or county without an acknowledged comprehensive plan and land use regulations only if the city or county determination is supported by written findings demonstrating compliance with the goals.] **with the goals or compatibility with the acknowledged comprehensive plan.**

[(11)] (12) A state agency required to have a land use coordination program shall participate in a local government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a manner that is consistent with the coordination program, unless the agency[:]

[(a) Is exempt from coordination program requirements; or]

[(b)] participated in the local government's periodic review pursuant to ORS 197.633 and raised the issue that is the basis for participation in the land use hearing.

[(12)] (13) [In carrying out programs affecting land use, a state agency is] **State agency rules, plans or programs affecting land use are** not compatible with an acknowledged comprehensive plan if [it] **the state agency** takes or approves an action that is not allowed under the **acknowledged comprehensive** plan. However, a state agency may apply statutes and rules [which the agency is required by law to apply in order] to deny, condition or further restrict an action of the state agency or of any applicant before the state agency [provided it] **if the state agency** applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

(14) **In cooperation with local governments and state agencies whose rules, plans or programs affect land use, the department periodically shall:**

(a) Identify aspects of coordination related to uses that require the issuance of multiple permits from state agencies and local governments.

(b) Update and improve rules regulating the effectiveness and efficiency of state agency coordination programs.

[(13)] (15) This section does not apply to rules, **plans**, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

SECTION 4. ORS 197.254 is amended to read:

197.254. (1) A state agency shall be barred after the date set for submission of programs by the Land Conservation and Development Commission as provided in ORS 197.180 [(3)] (4), from contesting a request for acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the commission finds that:

(a) The state agency has not complied with ORS 197.180; or

(b) The state agency has not coordinated its plans, programs or rules affecting land use with the comprehensive plan or land use regulations of the city or county pursuant to a coordination program approved by the commission under ORS 197.180.

(2) A state agency shall be barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the agency's plan or program unless the agency has first requested the amendment from the local government and has had its request denied.

(3) A special district shall be barred from contesting a request for initial compliance acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions under ORS 195.025 (1) finds that:

(a) The special district has not entered into a cooperative agreement under ORS 195.020; or

(b) The special district has not coordinated its plans, programs or regulations affecting land use with the comprehensive plan or land use regulations of the local government pursuant to its cooperative agreement made under ORS 195.020.

(4) A special district shall be barred from seeking a commission order under ORS 197.644 requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the special district's plan or program unless the special district has first requested the amendment from the local government and has had its request denied.

SECTION 5. ORS 197.650 is amended to read:

197.650. (1) A Land Conservation and Development Commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;

(b) Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 [(6)] (7);

(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed; or

(d) Persons who submitted oral or written testimony in a proceeding before the commission pursuant to ORS 215.780.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644.

(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections.

SECTION 6. The amendments to ORS 197.015 by section 2 of this 2009 Act apply to local government decisions made on or after the effective date of this 2009 Act.

Passed by House March 10, 2009

Repassed by House June 10, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 4, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State