

# House Bill 2230

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**.

Excludes from definition of "land use decision" local government decision that state agency permit is consistent with statewide land use planning goals and compatible with acknowledged comprehensive plan when local government decision is based on prior local approval of permit for substantially same action.

Directs Land Conservation and Development Commission to update and improve coordination of land use decision-making between state agencies and local governments.

## A BILL FOR AN ACT

1  
2 Relating to coordination of land use decision-making between state agencies and local governments;  
3 creating new provisions; and amending ORS 197.015, 197.180, 197.254 and 197.650.

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

5 **SECTION 1. The Legislative Assembly finds and declares that:**

6 (1) **Improving coordination and consistency between the duties and actions of state**  
7 **agencies that affect land use and the duties and actions of local governments under com-**  
8 **prehensive plans and land use regulations is required to ensure that the actions of state**  
9 **agencies complement both state and local land use planning objectives.**

10 (2) **Improved coordination is necessary to streamline state and local permitting proce-**  
11 **dures.**

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

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

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

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

23 **SECTION 2. ORS 197.015 is amended to read:**

24 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

25 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and  
26 land use regulations, land use regulation or plan or regulation amendment complies with the goals  
27 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,  
28 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-

**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 work plan comply with the [*statewide planning*] goals.

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

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

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

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

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

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

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

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

26 (10) "Land use decision":

27 (a) Includes:

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

30 (i) The goals;

31 (ii) A comprehensive plan provision;

32 (iii) A land use regulation; or

33 (iv) A new land use regulation;

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

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

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

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

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

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

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

- 1 (E) That is an expedited land division as described in ORS 197.360;
- 2 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal  
 3 of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal  
 4 under ORS 480.410 to 480.460; [or]
- 5 (G) That approves or denies approval of a final subdivision or partition plat or that determines  
 6 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or  
 7 partition plan; **or**
- 8 **(H) That a proposed state agency action subject to ORS 197.180 (1) complies with the**  
 9 **goals and is compatible with the acknowledged comprehensive plan and land use regulations**  
 10 **implementing the plan, if the local government has already made a land use decision au-**  
 11 **thorizing:**
- 12 (i) **A use or activity that encompasses the proposed state agency action; or**
- 13 (ii) **A use or activity that would be authorized, funded or undertaken by the proposed**  
 14 **state agency action;**
- 15 (c) Does not include a decision by a school district to close a school;
- 16 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or  
 17 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120  
 18 hours in any three-month period; and
- 19 (e) Does not include:
- 20 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;  
 21 [or]
- 22 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after  
 23 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; **or**
- 24 **(C) A state agency action subject to ORS 197.180 (1), if:**
- 25 (i) **The local government with land use jurisdiction over a use or activity that would be**  
 26 **authorized, funded or undertaken by the state agency as a result of the state agency action**  
 27 **has already made a land use decision approving the use or activity; or**
- 28 (ii) **A use or activity that would be authorized, funded or undertaken by the state agency**  
 29 **as a result of the state agency action is allowed without review under the acknowledged**  
 30 **comprehensive plan and land use regulations implementing the plan.**
- 31 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-  
 32 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for  
 33 implementing a comprehensive plan.
- 34 (12) "Limited land use decision":
- 35 (a) Means a final decision or determination made by a local government pertaining to a site  
 36 within an urban growth boundary that concerns:
- 37 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS  
 38 92.040 (1).
- 39 (B) The approval or denial of an application based on discretionary standards designed to reg-  
 40 ulate the physical characteristics of a use permitted outright, including but not limited to site re-  
 41 view and design review.
- 42 (b) Does not mean a final decision made by a local government pertaining to a site within an  
 43 urban growth boundary that concerns approval or denial of a final subdivision or partition plat or  
 44 that determines whether a final subdivision or partition plat substantially conforms to the tentative  
 45 subdivision or partition plan.

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

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

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

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

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

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

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

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

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

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

32 **SECTION 3.** ORS 197.180 is amended to read:

33 197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless ex-  
 34 pressly exempted by another statute from any of the requirements of this section, state agencies  
 35 shall carry out their planning duties, powers and responsibilities and take actions that are author-  
 36 ized by law with respect to programs affecting land use:

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

39 (b) In a manner compatible with **acknowledged comprehensive plans and land use regu-**  
 40 **lations.**[.]

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

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

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

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

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

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

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

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

12 (3) **Unless federal law or a provision of state law other than this section requires other-**  
 13 **wise, the commission, by rule, may require a local government to make a land use decision**  
 14 **before a state agency takes action that is subject to subsection (1) of this section if:**

15 (a) **The land use decision will determine whether to authorize a use or activity that would**  
 16 **be authorized, funded or undertaken by the proposed state agency action; and**

17 (b) **The state agency will rely on the determination of the local government that the**  
 18 **proposed state agency action complies with the goals and is compatibility with the acknowl-**  
 19 **edged comprehensive plan and land use regulations.**

20 [(3)] (4) Upon request by the Land Conservation and Development Commission, each state  
 21 agency shall submit to the Department of Land Conservation and Development the following infor-  
 22 mation:

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

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

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

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

27 [(4)] (5) Within 90 days of receipt, the Director of the Department of Land Conservation and  
 28 Development shall review the information submitted pursuant to subsection [(3)] (4) of this section  
 29 and shall notify each **state** agency if the director believes the **state agency** rules [*and*], **plans or**  
 30 **programs** submitted are insufficient to [*assure*] **ensure** compliance with goals and compatibility with  
 31 [*city and county*] **acknowledged** comprehensive plans and land use regulations.

32 [(5)] (6) Within 90 days of receipt of notification specified in subsection [(4)] (5) of this section,  
 33 the **state** agency may revise the **state agency** rules, **plans** or programs and resubmit them to the  
 34 director.

35 [(6)] (7) The director shall make findings under subsections [(4) and] (5) **and** (6) of this section  
 36 as to whether the **state agency** rules [*and*], **plans or** programs are sufficient to [*assure*] **ensure**  
 37 compliance with the goals and compatibility with acknowledged city and county comprehensive  
 38 plans and land use regulations[,] and shall forward the rules and **summaries of state agency plans**  
 39 **or** programs to the commission for its action. The commission shall either certify the **state agency**  
 40 rules [*and*], **plans or** programs as [*being in compliance*] **compliant** with the goals and compatible  
 41 with the **acknowledged** comprehensive plans and land use regulations of affected local governments  
 42 or shall determine the same to be insufficient [*by December 31, 1990*].

43 [(7)] (8) The department shall report, to the appropriate committee of the House and the Senate  
 44 and to the subcommittee of the Joint Ways and Means Committee that considers the **state** agency  
 45 budget, any agency that has failed to meet the requirements of subsection [(6)] (7) of this section.

1 [(8)] (9) Any **state** agency that has failed to meet the requirements of subsection [(6)] (7) of this  
 2 section shall report the reasons therefor to the appropriate committee of the House and the Senate  
 3 and to the subcommittee of the Joint Ways and Means Committee that considers the agency budget.

4 [(9)] (10) Until [*state agency*] rules and **state agency plans and** programs are certified as [*being*  
 5 *in compliance*] **compliant** with the goals and compatible with [*applicable city and county*] **the ac-**  
 6 **knowledge**d comprehensive plans and land use regulations **of affected local governments**, the  
 7 **state** agency shall make findings when adopting or amending its rules and **state agency plans and**  
 8 programs as to the applicability and application of the goals or acknowledged comprehensive plans,  
 9 as appropriate.

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

19 [(11)] (12) A state agency required to have a land use coordination program shall participate in  
 20 a local government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a  
 21 manner that is consistent with the coordination program, unless the agency[:]

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

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

25 [(12)] (13) [*In carrying out programs affecting land use, a state agency is*] **State agency rules,**  
 26 **plans or programs affecting land use are** not compatible with an acknowledged comprehensive  
 27 plan if [*it*] **the state agency** takes or approves an action that is not allowed under the **acknowl-**  
 28 **edged comprehensive** plan. However, a state agency may apply statutes and rules [*which the agency*  
 29 *is required by law to apply in order*] to deny, condition or further restrict an action of the state  
 30 agency or of any applicant before the state agency [*provided it*] **if the state agency** applies those  
 31 statutes and rules to the uses planned for in the acknowledged comprehensive plan.

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

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

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

38 [(13)] (15) This section does not apply to rules, **plans**, programs, decisions, determinations or  
 39 activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

40 **SECTION 4.** ORS 197.254 is amended to read:

41 197.254. (1) A state agency shall be barred after the date set for submission of programs by the  
 42 Land Conservation and Development Commission as provided in ORS 197.180 [(3)] (4), from con-  
 43 testing a request for acknowledgment submitted by a local government under ORS 197.251 or from  
 44 filing an appeal under ORS 197.620 (1) or (2), if the commission finds that:

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

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

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

8 (3) A special district shall be barred from contesting a request for initial compliance acknowl-  
9 edgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS  
10 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions  
11 under ORS 195.025 (1) finds that:

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

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

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

20 **SECTION 5.** ORS 197.650 is amended to read:

21 197.650. (1) A Land Conservation and Development Commission order may be appealed to the  
22 Court of Appeals in the manner provided in ORS 183.482 by the following persons:

23 (a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings  
24 under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS  
25 197.251 or 197.633, 197.636 or 197.644;

26 (b) Persons who submitted comments or objections pursuant to procedures adopted by the com-  
27 mission for certification of state agency coordination programs and are appealing a certification is-  
28 sued under ORS 197.180 [(6)] (7);

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

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

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

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

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