

Senate Bill 436

Sponsored by Senator GEORGE

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**.

Limits applicability of statewide land use planning goals to areas of critical state concern designated by Legislative Assembly.

A BILL FOR AN ACT

1
2 Relating to land use planning for areas of critical state concern; amending ORS 197.005, 197.015,
3 197.040, 197.175, 197.225, 197.610, 197.615, 197.628, 197.631 and 197.646.

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

5 **SECTION 1.** ORS 197.005 is amended to read:

6 197.005. The Legislative Assembly finds that:

7 (1) Uncoordinated use of lands within this state threatens the orderly development **of land**, the
8 environment of this state and the health, safety, order, convenience, prosperity and welfare of the
9 people of this state.

10 (2) To promote coordinated administration of land uses consistent with comprehensive plans
11 adopted throughout the state, it is necessary to establish a process for the review of state agency,
12 city, county and special district land conservation and development plans for compliance with
13 **statewide land use planning goals that apply in areas of critical state concern designated**
14 **pursuant to ORS 197.405.**

15 (3) Except as otherwise provided in subsection (4) of this section, cities and counties should re-
16 main as the agencies to consider, promote and manage the local aspects of land conservation and
17 development for the best interests of the people within their jurisdictions.

18 (4) The promotion of coordinated statewide land conservation and development requires the
19 creation of a statewide planning agency to prescribe planning goals and objectives to be applied by
20 state agencies, cities, counties and special districts [*throughout the state*] **in areas of critical state**
21 **concern designated pursuant to ORS 197.405.**

22 (5) City and county governments are responsible for the development of local comprehensive
23 plans. The purpose of ORS 195.065, 195.070 and 195.075 is to enhance coordination among cities,
24 counties and special districts to [*assure*] **ensure** effectiveness and efficiency in the delivery of urban
25 services required under those local comprehensive plans.

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

27 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

28 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
29 land use regulations, land use regulation or plan or regulation amendment complies with the goals
30 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
31 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 **that apply in areas**
20 **of critical state concern designated pursuant to ORS 197.405 and that are** adopted by the
21 commission pursuant to ORS chapters 195, 196 and 197.

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

27 (10) "Land use decision":

28 (a) Includes:

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

31 (i) The goals;

32 (ii) A comprehensive plan provision;

33 (iii) A land use regulation; or

34 (iv) A new land use regulation;

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

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

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

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

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

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

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

1 comprehensive plan and land use regulations;

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

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

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

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

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

13 (e) Does not include:

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

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

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

21 (12) "Limited land use decision":

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

24 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
25 92.040 (1).

26 (B) The approval or denial of an application based on discretionary standards designed to reg-
27 ulate the physical characteristics of a use permitted outright, including but not limited to site re-
28 view and design review.

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

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

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

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

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

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

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

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

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

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

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

19 **SECTION 3.** ORS 197.040 is amended to read:

20 197.040. (1) The Land Conservation and Development Commission shall:

21 (a) Direct the performance by the Director of the Department of Land Conservation and Devel-
22 opment and the director's staff of their functions under ORS chapters 195, 196 and 197.

23 (b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers neces-
24 sary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section,
25 in designing its administrative requirements, the commission shall:

26 (A) Allow for the diverse administrative and planning capabilities of local governments;

27 (B) Assess what economic and property interests will be, or are likely to be, affected by the
28 proposed rule;

29 (C) Assess the likely degree of economic impact on identified property and economic interests;
30 and

31 (D) Assess whether alternative actions are available that would achieve the underlying lawful
32 governmental objective and would have a lesser economic impact.

33 (c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under ORS chapters 195,
34 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters
35 195, 196 and 197 **in areas of critical state concern designated pursuant to ORS 197.405.**

36 (B) Adopt by rule in accordance with ORS chapter 183 any procedures necessary to carry out
37 ORS 215.402 (4)(b) and 227.160 (2)(b).

38 (C) Review decisions of the Land Use Board of Appeals and land use decisions of the Court of
39 Appeals and the Supreme Court within 120 days of the date the decisions are issued to determine
40 if goal or rule amendments are necessary.

41 (d) Cooperate with the appropriate agencies of the United States, this state and its political
42 subdivisions, any other state, any interstate agency, any person or groups of persons with respect
43 to land conservation and development.

44 (e) Appoint advisory committees to aid it in carrying out ORS chapters 195, 196 and 197 and
45 provide technical and other assistance, as it considers necessary, to each such committee.

1 (2) Pursuant to ORS chapters 195, 196 and 197, the commission shall:

2 (a) Adopt, amend and revise goals consistent with regional, county and city concerns **for areas**
 3 **of critical state concern designated pursuant to ORS 197.405;**

4 (b) Prepare, collect, provide or cause to be prepared, collected or provided land use inventories;

5 (c) Prepare statewide planning guidelines;

6 (d) Review comprehensive plans for compliance with goals;

7 (e) Coordinate planning efforts of state agencies to *[assure]* **ensure** compliance with goals and
 8 compatibility with city and county comprehensive plans;

9 (f) Insure widespread citizen involvement and input in all phases of the process;

10 (g) Review and recommend to the Legislative Assembly the designation of areas of critical state
 11 concern;

12 (h) Report periodically to the Legislative Assembly and to the committee; and

13 (i) Perform other duties required by law.

14 (3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an
 15 assessment for each lot or parcel that could be affected by the proposed rule.

16 **SECTION 4.** ORS 197.175 is amended to read:

17 197.175. (1) Cities and counties shall exercise their planning and zoning responsibilities, includ-
 18 ing, but not limited to, a city or special district boundary change which shall mean the annexation
 19 of unincorporated territory by a city, the incorporation of a new city and the formation or change
 20 of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410
 21 to 199.534 or 451.010 to 451.620, in accordance with ORS chapters 195, 196 and 197 and the goals
 22 approved under ORS chapters 195, 196 and 197. The Land Conservation and Development Commis-
 23 sion shall adopt rules clarifying how the goals apply to the incorporation of a new city **containing**
 24 **territory that includes areas of critical state concern designated pursuant to ORS 197.405.**
 25 Notwithstanding the provisions of section 15, chapter 827, Oregon Laws 1983, the rules *[shall]* take
 26 effect upon adoption by the commission. The applicability of rules promulgated under this section
 27 to the incorporation of cities prior to August 9, 1983, *[shall be]* **is** determined under the laws of this
 28 state.

29 (2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

30 (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved
 31 by the commission **when the plans apply to territory that includes areas of critical state con-**
 32 **cern designated pursuant to ORS 197.405;**

33 (b) Enact land use regulations to implement their comprehensive plans;

34 (c) If its comprehensive plan and land use regulations have not been acknowledged by the
 35 commission, make land use decisions and limited land use decisions in compliance with the goals
 36 **when the plan applies to territory that includes areas of critical state concern designated**
 37 **pursuant to ORS 197.405;**

38 (d) If its comprehensive plan and land use regulations have been acknowledged by the commis-
 39 sion, make land use decisions and limited land use decisions in compliance with the acknowledged
 40 plan and land use regulations; and

41 (e) Make land use decisions and limited land use decisions subject to an unacknowledged
 42 amendment to a comprehensive plan or land use regulation in compliance with those land use goals
 43 applicable to the amendment.

44 (3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own
 45 action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation

1 of and annexation of territory to any district authorized by ORS 198.510 to 198.915 or 451.010 to
2 451.620.

3 **SECTION 5.** ORS 197.225 is amended to read:

4 197.225. The Department of Land Conservation and Development shall prepare and the Land
5 Conservation and Development Commission shall adopt goals and guidelines for use by state agen-
6 cies, local governments and special districts in preparing, adopting, amending and implementing ex-
7 isting and future comprehensive plans **when the plans apply in territory that includes areas of**
8 **critical state concern designated pursuant to ORS 197.405.**

9 **SECTION 6.** ORS 197.610 is amended to read:

10 197.610. (1) **If** a proposal to amend a local government acknowledged comprehensive plan or land
11 use regulation or to adopt a new land use regulation [*shall be forwarded*] **applies to territory that**
12 **includes areas of critical state concern designated pursuant to ORS 197.405, the local gov-**
13 **ernment shall forward the proposal** to the Director of the Department of Land Conservation and
14 Development at least 45 days before the first evidentiary hearing on adoption. The proposal for-
15 warded shall contain the text and any supplemental information that the local government believes
16 is necessary to inform the director as to the effect of the proposal. The notice shall include the date
17 set for the first evidentiary hearing. The director shall notify persons who have requested notice
18 that the proposal is pending.

19 (2) When a local government determines that the goals do not apply to a particular proposed
20 amendment or new regulation, notice under subsection (1) of this section is not required. In addition,
21 a local government may submit an amendment or new regulation with less than 45 days' notice if
22 the local government determines that there are emergency circumstances requiring expedited re-
23 view. In both cases:

24 (a) The amendment or new regulation shall be submitted after adoption as provided in ORS
25 197.615 (1) and (2); and

26 (b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may
27 appeal the decision to the board under ORS 197.830 to 197.845.

28 (3) When the Department of Land Conservation and Development participates in a local gov-
29 ernment proceeding, at least 15 days before the final hearing on the proposed amendment to the
30 comprehensive plan or land use regulation or the new land use regulation, the department shall
31 notify the local government of:

32 (a) Any concerns the department has concerning the proposal; and

33 (b) Advisory recommendations on actions the department considers necessary to address the
34 concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.

35 (4) The director shall report to the Land Conservation and Development Commission on whether
36 the director:

37 (a) Believes the local government's proposal violates the goals; and

38 (b) Is participating in the local government proceeding.

39 **SECTION 7.** ORS 197.615 is amended to read:

40 197.615. (1) A local government that amends an acknowledged comprehensive plan or land use
41 regulation or adopts a new land use regulation **that applies to territory that includes areas of**
42 **critical state concern designated pursuant to ORS 197.405** shall mail or otherwise submit to the
43 Director of the Department of Land Conservation and Development a copy of the adopted text of
44 the comprehensive plan provision or land use regulation together with the findings adopted by the
45 local government. The text and findings must be mailed or otherwise submitted not later than five

1 working days after the final decision by the governing body. If the proposed amendment or new
 2 regulation that the director received under ORS 197.610 has been substantially amended, the local
 3 government shall specify the changes that have been made in the notice provided to the director.
 4 If the text and findings are mailed, they shall include a signed statement by the person mailing them
 5 indicating the date of deposit in the mail.

6 (2)(a) On the same day that the text and findings are mailed or delivered, the local government
 7 also shall mail or otherwise submit notice to persons who:

8 (A) Participated in the proceedings leading to the adoption of the amendment to the compre-
 9 hensive plan or land use regulation or the new land use regulation; and

10 (B) Requested of the local government in writing that they be given such notice.

11 (b) The notice required by this subsection shall:

12 (A) Describe briefly the action taken by the local government;

13 (B) State the date of the decision;

14 (C) If delivered by mail, include a certificate of mailing containing a statement signed by the
 15 person mailing it indicating the date the notice was deposited in the mail;

16 (D) List the place where and the time when the amendment to the acknowledged comprehensive
 17 plan or land use regulation or the new land use regulation, and findings, may be reviewed; and

18 (E) Explain the requirements for appealing the action of the local government under ORS
 19 197.830 to 197.845.

20 (3) Not later than five working days after receipt of an amendment to an acknowledged com-
 21 prehensive plan or land use regulation or a new land use regulation submitted under subsection (1)
 22 of this section, the director shall notify by mail or other submission any persons who have requested
 23 notification. The notice shall:

24 (a) Explain the requirements for appealing the action of the local government under ORS 197.830
 25 to 197.845; and

26 (b) List the locations where the comprehensive plan or land use regulation amendment or new
 27 land use regulation may be reviewed.

28 **SECTION 8.** ORS 197.628 is amended to read:

29 197.628. (1) It is the policy of the State of Oregon to require the periodic review of compre-
 30 hensive plans and land use regulations in order to respond to changes in local, regional and state con-
 31 ditions to ensure that the plans and regulations remain in compliance with the statewide planning
 32 goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate
 33 provision for economic development, needed housing, transportation, public facilities and services
 34 and urbanization **in areas of critical state concern designated pursuant to ORS 197.405.**

35 (2) The Land Conservation and Development Commission shall concentrate periodic review as-
 36 sistance to local governments on achieving compliance with those statewide land use planning laws
 37 and goals that address economic development, needed housing, transportation, public facilities and
 38 services and urbanization **in areas of critical state concern designated pursuant to ORS**
 39 **197.405.**

40 (3) The following conditions indicate the need for periodic review of comprehensive plans and
 41 land use regulations:

42 (a) There has been a substantial change in circumstances including but not limited to the con-
 43 ditions, findings or assumptions upon which the comprehensive plan or land use regulations were
 44 based, so that the comprehensive plan or land use regulations do not comply with the statewide
 45 planning goals relating to economic development, needed housing, transportation, public facilities

1 and services and urbanization **in areas of critical state concern designated pursuant to ORS**
2 **197.405;**

3 (b) Decisions implementing acknowledged comprehensive plan and land use regulations are in-
4 consistent with the goals relating to economic development, needed housing, transportation, public
5 facilities and services and urbanization **in areas of critical state concern designated pursuant**
6 **to ORS 197.405;**

7 (c) There are issues of regional or statewide significance, intergovernmental coordination or
8 state agency plans or programs affecting land use which must be addressed in order to bring com-
9 prehensive plans and land use regulations into compliance with the goals relating to economic de-
10 velopment, needed housing, transportation, public facilities and services and urbanization **in areas**
11 **of critical state concern designated pursuant to ORS 197.405;** or

12 (d) The local government, commission or Department of Land Conservation and Development
13 determines that the existing comprehensive plan and land use regulations are not achieving the
14 statewide planning goals relating to economic development, needed housing, transportation, public
15 facilities and services and urbanization **in areas of critical state concern designated pursuant**
16 **to ORS 197.405.**

17 **SECTION 9.** ORS 197.631 is amended to read:

18 197.631. In order to use state and local periodic review resources most efficiently and effectively
19 and to concentrate periodic review on adequate provision of economic development, needed housing,
20 transportation, public facilities and services and urbanization **in areas of critical state concern**
21 **designated pursuant to ORS 197.405,** the Land Conservation and Development Commission shall
22 adopt, amend or repeal the statewide land use planning goals, guidelines and corresponding rules
23 as necessary to facilitate periodic review and to provide for compliance by local governments with
24 those goals not described in ORS 197.628 (2) through the post-acknowledgment procedures of ORS
25 197.610 to 197.625.

26 **SECTION 10.** ORS 197.646 is amended to read:

27 197.646. (1) A local government shall amend its acknowledged comprehensive plan, regional
28 framework plan and land use regulations implementing either plan by a self-initiated post-
29 acknowledgment process under ORS 197.610 to 197.625 to comply with:

30 (a) A new statutory requirement; or

31 (b) A new land use planning goal or rule requirement adopted by the Land Conservation and
32 Development Commission.

33 (2) Periodic review is not the implementation process for new statutory, land use planning goal
34 or rule requirements.

35 (3)(a) The Department of Land Conservation and Development shall notify local governments
36 when a new statutory requirement or a new land use planning goal or rule requirement adopted by
37 the commission requires changes to an acknowledged comprehensive plan, a regional framework
38 plan and land use regulations implementing either plan.

39 (b) The commission shall establish, by rule, the time period within which an acknowledged
40 comprehensive plan, a regional framework plan and land use regulations implementing either plan
41 must be in compliance with:

42 (A) A new statutory requirement, if the legislation does not specify a time period for compliance;
43 and

44 (B) A new land use planning goal or rule requirement adopted by the commission.

45 (4) When a local government does not adopt amendments to a comprehensive plan, a regional

1 framework plan and land use regulations implementing either plan as required by subsection (1) of
2 this section, the new statutory, land use planning goal or rule requirements apply directly to the
3 local government's land use decisions **that apply to areas of critical state concern designated**
4 **pursuant to ORS 197.405.** The failure to adopt amendments to a comprehensive plan, a regional
5 framework plan and land use regulations implementing either plan required by subsection (1) of this
6 section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

7
