

D R A F T

SUMMARY

Modifies definition of “land use decision” to exclude decisions pertaining to construction, operation, maintenance or improvement of water delivery infrastructure that are made by districts for irrigation, drainage, water improvement or water control.

A BILL FOR AN ACT

Relating to decisions affecting lands of district; creating new provisions; and amending ORS 197.015.

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

SECTION 1. 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 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

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

14 (6) “Department” means the Department of Land Conservation and De-
15 velopment.

16 (7) “Director” means the Director of the Department of Land Conserva-
17 tion and Development.

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

20 (9) “Guidelines” means suggested approaches designed to aid cities and
21 counties in preparation, adoption and implementation of comprehensive plans
22 in compliance with goals and to aid state agencies and special districts in
23 the preparation, adoption and implementation of plans, programs and regu-
24 lations in compliance with goals. Guidelines shall be advisory and shall not
25 limit state agencies, cities, counties and special districts to a single ap-
26 proach.

27 (10) “Land use decision”:

28 (a) Includes:

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

31 (i) The goals;

- 1 (ii) A comprehensive plan provision;
- 2 (iii) A land use regulation; or
- 3 (iv) A new land use regulation;
- 4 (B) A final decision or determination of a state agency other than the
5 commission with respect to which the agency is required to apply the goals;
6 or
- 7 (C) A decision of a county planning commission made under ORS 433.763;
- 8 (b) Does not include a decision of a local government:
- 9 (A) That is made under land use standards that do not require interpre-
10 tation or the exercise of policy or legal judgment;
- 11 (B) That approves or denies a building permit issued under clear and ob-
12 jective land use standards;
- 13 (C) That is a limited land use decision;
- 14 (D) That determines final engineering design, construction, operation,
15 maintenance, repair or preservation of a transportation facility that is oth-
16 erwise authorized by and consistent with the comprehensive plan and land
17 use regulations;
- 18 (E) That is an expedited land division as described in ORS 197.360;
- 19 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation,
20 maintenance or removal of a liquefied petroleum gas container or receptacle
21 regulated exclusively by the State Fire Marshal under ORS 480.410 to
22 480.460;
- 23 (G) That approves or denies approval of a final subdivision or partition
24 plat or that determines whether a final subdivision or partition plat sub-
25 stantially conforms to the tentative subdivision or partition plan; or
- 26 (H) That a proposed state agency action subject to ORS 197.180 (1) is
27 compatible with the acknowledged comprehensive plan and land use regu-
28 lations implementing the plan, if:
- 29 (i) The local government has already made a land use decision authorizing
30 a use or activity that encompasses the proposed state agency action;
- 31 (ii) The use or activity that would be authorized, funded or undertaken

1 by the proposed state agency action is allowed without review under the
2 acknowledged comprehensive plan and land use regulations implementing the
3 plan; or

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

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

9 (d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283
10 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735,
11 or other gathering of fewer than 3,000 persons that is not anticipated to
12 continue for more than 120 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
15 215.429 or 227.179;

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

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

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

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

28 **(D) A decision of a district, as defined in ORS 540.505, pertaining to**
29 **the construction, operation, maintenance or improvement of water**
30 **delivery infrastructure, including piping or lining a canal, that is**
31 **owned or operated by the district and that is within a right-of-way or**

1 **easement of the district.**

2 (11) “Land use regulation” means any local government zoning ordinance,
3 land division ordinance adopted under ORS 92.044 or 92.046 or similar gen-
4 eral ordinance establishing standards for implementing a comprehensive
5 plan.

6 (12) “Limited land use decision”:

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

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

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

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

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

22 (14) “Metro” means a metropolitan service district organized under ORS
23 chapter 268.

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

27 (16) “Metro regional framework plan” means the regional framework plan
28 required by the 1992 Metro Charter or its separate components. Neither the
29 regional framework plan nor its individual components constitute a compre-
30 hensive plan.

31 (17) “New land use regulation” means a land use regulation other than

1 an amendment to an acknowledged land use regulation adopted by a local
2 government that already has a comprehensive plan and land regulations ac-
3 knowledged under ORS 197.251.

4 (18) “Person” means any individual, partnership, corporation, association,
5 governmental subdivision or agency or public or private organization of any
6 kind. The Land Conservation and Development Commission or its designee
7 is considered a person for purposes of appeal under ORS chapters 195 and
8 197.

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

17 (20) “Urban unincorporated community” means an area designated in a
18 county’s acknowledged comprehensive plan as an urban unincorporated
19 community after December 5, 1994.

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

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

28 **SECTION 2.** ORS 197.015, as amended by section 11, chapter 575, Oregon
29 Laws 2013, is amended to read:

30 197.015. As used in ORS chapters 195, 196 and 197 and ORS 197A.300 to
31 197A.325, unless the context requires otherwise:

1 (1) "Acknowledgment" means a commission order that certifies that a
2 comprehensive plan and land use regulations, land use regulation or plan or
3 regulation amendment complies with the goals or certifies that Metro land
4 use planning goals and objectives, Metro regional framework plan, amend-
5 ments to Metro planning goals and objectives or amendments to the Metro
6 regional framework plan comply with the goals.

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

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

11 (4) "Commission" means the Land Conservation and Development Com-
12 mission.

13 (5) "Comprehensive plan" means a generalized, coordinated land use map
14 and policy statement of the governing body of a local government that
15 interrelates all functional and natural systems and activities relating to the
16 use of lands, including but not limited to sewer and water systems, trans-
17 portation systems, educational facilities, recreational facilities, and natural
18 resources and air and water quality management programs.

19 "Comprehensive" means all-inclusive, both in terms of the geographic area
20 covered and functional and natural activities and systems occurring in the
21 area covered by the plan. "General nature" means a summary of policies and
22 proposals in broad categories and does not necessarily indicate specific lo-
23 cations of any area, activity or use. A plan is "coordinated" when the needs
24 of all levels of governments, semipublic and private agencies and the citizens
25 of Oregon have been considered and accommodated as much as possible.

26 "Land" includes water, both surface and subsurface, and the air.

27 (6) "Department" means the Department of Land Conservation and De-
28 velopment.

29 (7) "Director" means the Director of the Department of Land Conserva-
30 tion and Development.

31 (8) "Goals" means the mandatory statewide land use planning standards

1 adopted by the commission pursuant to ORS chapters 195, 196 and 197.

2 (9) "Guidelines" means suggested approaches designed to aid cities and
3 counties in preparation, adoption and implementation of comprehensive plans
4 in compliance with goals and to aid state agencies and special districts in
5 the preparation, adoption and implementation of plans, programs and regu-
6 lations in compliance with goals. Guidelines shall be advisory and shall not
7 limit state agencies, cities, counties and special districts to a single ap-
8 proach.

9 (10) "Land use decision":

10 (a) Includes:

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

13 (i) The goals;

14 (ii) A comprehensive plan provision;

15 (iii) A land use regulation; or

16 (iv) A new land use regulation;

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

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

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

22 (A) That is made under land use standards that do not require interpre-
23 tation or the exercise of policy or legal judgment;

24 (B) That approves or denies a building permit issued under clear and ob-
25 jective land use standards;

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

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

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

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

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

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

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

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

17 (iii) The use or activity that would be authorized, funded or undertaken
18 by the proposed state agency action requires a future land use review under
19 the acknowledged comprehensive plan and land use regulations implementing
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22 (d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283
23 (6)(c), authorization of an outdoor mass gathering as defined in ORS 433.735,
24 or other gathering of fewer than 3,000 persons that is not anticipated to
25 continue for more than 120 hours in any three-month period; and

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29 (B) Any local decision or action taken on an application subject to ORS
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1 (C) A state agency action subject to ORS 197.180 (1), if:

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

10 **(D) A decision of a district, as defined in ORS 540.505, pertaining to**
11 **the construction, operation, maintenance or improvement of water**
12 **delivery infrastructure, including piping or lining a canal, that is**
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26 outright, including but not limited to site review and design review.

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28 to a site within an urban growth boundary that concerns approval or denial
29 of a final subdivision or partition plat or that determines whether a final
30 subdivision or partition plat substantially conforms to the tentative subdi-
31 vision or partition plan.

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2 district formed under ORS chapter 268 or an association of local governments
3 performing land use planning functions under ORS 195.025.

4 (14) “Metro” means a metropolitan service district organized under ORS
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25 under ORS 195.025, authorized and regulated by statute and includes but is
26 not limited to water control districts, domestic water associations and water
27 cooperatives, irrigation districts, port districts, regional air quality control
28 authorities, fire districts, school districts, hospital districts, mass transit
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31 county’s acknowledged comprehensive plan as an urban unincorporated

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4 to the federal Office of Management and Budget Circular A-95 as a regional
5 clearinghouse.

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

10 **SECTION 3. The amendments to ORS 197.015 by sections 1 and 2 of**
11 **this 2015 Act apply to decisions pertaining to the construction, opera-**
12 **tion, maintenance or improvement of water delivery infrastructure**
13 **that are made by districts, as defined in ORS 540.505, on or after the**
14 **effective date of this 2015 Act.**

15 _____