

House Bill 3208

Sponsored by COMMITTEE ON RURAL COMMUNITIES, LAND USE, AND WATER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies 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

1
2 Relating to decisions affecting lands of district; creating new provisions; and amending ORS 197.015.

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

4 **SECTION 1.** ORS 197.015 is amended to read:

5 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

6 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
7 land use regulations, land use regulation or plan or regulation amendment complies with the goals
8 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
9 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
10 work plan comply with the goals.

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

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

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

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

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

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

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

30 (9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
31 adoption and implementation of comprehensive plans in compliance with goals and to aid state

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 agencies and special districts in the preparation, adoption and implementation of plans, programs
 2 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
 3 agencies, cities, counties and special districts to a single approach.

4 (10) "Land use decision":

5 (a) Includes:

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

8 (i) The goals;

9 (ii) A comprehensive plan provision;

10 (iii) A land use regulation; or

11 (iv) A new land use regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization
 43 of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000
 44 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

45 (e) Does not include:

- 1 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
- 2 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
3 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; [or]
- 4 (C) A state agency action subject to ORS 197.180 (1), if:
- 5 (i) The local government with land use jurisdiction over a use or activity that would be au-
6 thorized, funded or undertaken by the state agency as a result of the state agency action has already
7 made a land use decision approving the use or activity; or
- 8 (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a
9 result of the state agency action is allowed without review under the acknowledged comprehensive
10 plan and land use regulations implementing the plan; or
- 11 **(D) A decision of a district, as defined in ORS 540.505, pertaining to the construction,**
12 **operation, maintenance or improvement of water delivery infrastructure, including piping or**
13 **lining a canal, that is owned or operated by the district and that is within a right-of-way or**
14 **easement of the district.**
- 15 (11) “Land use regulation” means any local government zoning ordinance, land division ordi-
16 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
17 implementing a comprehensive plan.
- 18 (12) “Limited land use decision”:
- 19 (a) Means a final decision or determination made by a local government pertaining to a site
20 within an urban growth boundary that concerns:
- 21 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
22 92.040 (1).
- 23 (B) The approval or denial of an application based on discretionary standards designed to reg-
24 ulate the physical characteristics of a use permitted outright, including but not limited to site re-
25 view and design review.
- 26 (b) Does not mean a final decision made by a local government pertaining to a site within an
27 urban growth boundary that concerns approval or denial of a final subdivision or partition plat or
28 that determines whether a final subdivision or partition plat substantially conforms to the tentative
29 subdivision or partition plan.
- 30 (13) “Local government” means any city, county or metropolitan service district formed under
31 ORS chapter 268 or an association of local governments performing land use planning functions
32 under ORS 195.025.
- 33 (14) “Metro” means a metropolitan service district organized under ORS chapter 268.
- 34 (15) “Metro planning goals and objectives” means the land use goals and objectives that a met-
35 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
36 stitute a comprehensive plan.
- 37 (16) “Metro regional framework plan” means the regional framework plan required by the 1992
38 Metro Charter or its separate components. Neither the regional framework plan nor its individual
39 components constitute a comprehensive plan.
- 40 (17) “New land use regulation” means a land use regulation other than an amendment to an
41 acknowledged land use regulation adopted by a local government that already has a comprehensive
42 plan and land regulations acknowledged under ORS 197.251.
- 43 (18) “Person” means any individual, partnership, corporation, association, governmental subdi-
44 vision or agency or public or private organization of any kind. The Land Conservation and Devel-
45 opment Commission or its designee is considered a person for purposes of appeal under ORS

1 chapters 195 and 197.

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

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

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

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

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

18 197.015. As used in ORS chapters 195, 196 and 197 and ORS 197A.300 to 197A.325, unless the
 19 context requires otherwise:

20 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
 21 land use regulations, land use regulation or plan or regulation amendment complies with the goals
 22 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
 23 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
 24 work plan comply with the goals.

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

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 27 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

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 30 of the governing body of a local government that interrelates all functional and natural systems and
 31 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
 32 portation systems, educational facilities, recreational facilities, and natural resources and air and
 33 water quality management programs. "Comprehensive" means all-inclusive, both in terms of the
 34 geographic area covered and functional and natural activities and systems occurring in the area
 35 covered by the plan. "General nature" means a summary of policies and proposals in broad catego-
 36 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is "co-
 37 ordinated" when the needs of all levels of governments, semipublic and private agencies and the
 38 citizens of Oregon have been considered and accommodated as much as possible. "Land" includes
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41 (7) "Director" means the Director of the Department of Land Conservation and Development.

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

44 (9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
 45 adoption and implementation of comprehensive plans in compliance with goals and to aid state

1 agencies and special districts in the preparation, adoption and implementation of plans, programs
 2 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
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20 (C) That is a limited land use decision;

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 22 preservation of a transportation facility that is otherwise authorized by and consistent with the
 23 comprehensive plan and land use regulations;

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 26 of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal
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28 (G) That approves or denies approval of a final subdivision or partition plat or that determines
 29 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or
 30 partition plan; or

31 (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the ac-
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 44 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

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11 state officially designated by the Governor pursuant to the federal Office of Management and Budget
12 Circular A-95 as a regional clearinghouse.

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14 at a frequency and duration that are sufficient to support, and that under normal circumstances do
15 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

16 **SECTION 3. The amendments to ORS 197.015 by sections 1 and 2 of this 2015 Act apply**
17 **to decisions pertaining to the construction, operation, maintenance or improvement of water**
18 **delivery infrastructure that are made by districts, as defined in ORS 540.505, on or after the**
19 **effective date of this 2015 Act.**