

House Bill 2894

Sponsored by Representative BUEHLER, Senator KNOPP, Representative WHISNANT; Representative STARK

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**.

Permits cities to determine likelihood of development or redevelopment of land during review or evaluation of comprehensive plan or urban growth boundary expansion. Permits cities to modify analysis for determination of 20-year buildable land supply to account for land determined unlikely to be developed or redeveloped.

Applies to periodic reviews, legislative reviews and land evaluations commenced on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to analysis of buildable land supply by a city outside of Metro; creating new provisions;
3 and amending ORS 197.015.

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

5 **SECTION 1. (1) At periodic review pursuant to ORS 197.628 to 197.651 or at any other**
6 **legislative review of a comprehensive plan, or when evaluating land for inclusion in an urban**
7 **growth boundary pursuant to ORS 197.295 to 197.314 or 197A.300 to 197A.325, a city outside**
8 **of Metro may consider the development or redevelopment potential of lands within the city's**
9 **urban growth boundary or within the study area and may make a determination as to the**
10 **likelihood that an area of land will be developed or redeveloped within the planning period.**

11 **(2) In making a determination under subsection (1) of this section, a city shall apply ob-**
12 **jective criteria, including but not limited to:**

13 **(a) The existing degree and condition of development on or near the lands within the**
14 **city's urban growth boundary;**

15 **(b) The likely cost of providing facilities and services for the lands within the city's urban**
16 **growth boundary;**

17 **(c) Recorded easements, covenants, conditions or restrictions in a recorded declaration**
18 **that will prevent or limit development or redevelopment of the area of land; and**

19 **(d) Physical, topographical or other impediments to development or redevelopment of the**
20 **area of land.**

21 **(3) If a city includes an area of land within its urban growth boundary that the city de-**
22 **termined under subsection (1) of this section to be unlikely to be developed or redeveloped**
23 **during the planning period, when making a determination of the amount of buildable lands**
24 **needed to accommodate estimated housing needs for the next 20 years, the city may:**

25 **(a) Include the area of land in its analysis as an area of land with reduced development**
26 **potential; or**

27 **(b) Exclude the area of land in its analysis.**

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

29 **197.015. As used in ORS chapters 195, 196 and 197 and ORS 197A.300 to 197A.325 and section**

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 **1 of this 2017 Act**, unless the context requires otherwise:

2 (1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and
 3 land use regulations, land use regulation or plan or regulation amendment complies with the goals
 4 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
 5 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
 6 work 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 supports and not more
 9 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

10 (4) “Commission” means the Land Conservation and Development Commission.

11 (5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement
 12 of the governing body of a local government that:

13 (a) Interrelates all functional and natural systems and activities relating to the use of lands,
 14 including but not limited to sewer and water systems, transportation systems, educational facilities,
 15 recreational facilities, and natural resources and air and water quality management programs.
 16 [*“Comprehensive” means*]

17 (b) **Is** all-inclusive, both in terms of the geographic area covered and functional and natural
 18 activities and systems occurring in the area covered by the plan. [*“General nature” means a summary*
 19 *of policies and proposals in broad categories and does not necessarily indicate specific locations of any*
 20 *area, activity or use. A plan is “coordinated” when*]

21 (c) **Considers and accommodates as much as possible** the needs of all levels of governments,
 22 semipublic and private agencies and the citizens of Oregon [*have been considered and accommodated*
 23 *as much as possible*].

24 (d) [*“Land”*] Includes **land**, water, both surface and subsurface, and the air.

25 (6) “Department” means the Department of Land Conservation and Development.

26 (7) “Director” means the Director of the Department of Land Conservation and Development.

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

29 (9) “Guidelines” means suggested approaches designed to [*aid*] **advise, but not limit to a single**
 30 **approach**, cities and counties in preparation, adoption and implementation of comprehensive plans
 31 in compliance with goals and to aid state agencies and special districts in the preparation, adoption
 32 and implementation of plans, programs and regulations in compliance with goals. [*Guidelines shall*
 33 *be advisory and shall not limit state agencies, cities, counties and special districts to a single*
 34 *approach.*]

35 (10) “Land use decision”:

36 (a) Includes:

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

39 (i) The goals;

40 (ii) A comprehensive plan provision;

41 (iii) A land use regulation; or

42 (iv) A new land use regulation;

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

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

- 1 (b) Does not include a decision of a local government:
- 2 (A) That is made under land use standards that do not require interpretation or the exercise
3 of policy or legal judgment;
- 4 (B) That approves or denies a building permit issued under clear and objective land use stan-
5 dards;
- 6 (C) That is a limited land use decision;
- 7 (D) That determines final engineering design, construction, operation, maintenance, repair or
8 preservation of a transportation facility that is otherwise authorized by and consistent with the
9 comprehensive plan and land use regulations;
- 10 (E) That is an expedited land division as described in ORS 197.360;
- 11 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal
12 of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal
13 under ORS 480.410 to 480.460;
- 14 (G) That approves or denies approval of a final subdivision or partition plat or that determines
15 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or
16 partition plan; or
- 17 (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the ac-
18 knowledged comprehensive plan and land use regulations implementing the plan, if:
- 19 (i) The local government has already made a land use decision authorizing a use or activity that
20 encompasses the proposed state agency action;
- 21 (ii) The use or activity that would be authorized, funded or undertaken by the proposed state
22 agency action is allowed without review under the acknowledged comprehensive plan and land use
23 regulations implementing the plan; or
- 24 (iii) The use or activity that would be authorized, funded or undertaken by the proposed state
25 agency action requires a future land use review under the acknowledged comprehensive plan and
26 land use regulations implementing the plan;
- 27 (c) Does not include a decision by a school district to close a school;
- 28 (d) Does not include, except as provided in ORS 215.213 (13)(c) or 215.283 (6)(c), authorization
29 of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000
30 persons that is not anticipated to continue for more than 120 hours in any three-month period; and
- 31 (e) Does not include:
- 32 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
- 33 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
34 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or
- 35 (C) A state agency action subject to ORS 197.180 (1), if:
- 36 (i) The local government with land use jurisdiction over a use or activity that would be au-
37 thorized, funded or undertaken by the state agency as a result of the state agency action has already
38 made a land use decision approving the use or activity; or
- 39 (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a
40 result of the state agency action is allowed without review under the acknowledged comprehensive
41 plan and land use regulations implementing the plan.
- 42 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-
43 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
44 implementing a comprehensive plan.
- 45 (12) "Limited land use decision":

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

3 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
 4 92.040 (1).

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

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

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

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

16 (15) “Metro planning goals and objectives” means the land use goals and objectives that a met-
 17 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
 18 stitute a comprehensive plan.

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

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

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

29 (19) “Special district” means any unit of local government, other than a city, county, metropol-
 30 itan service district formed under ORS chapter 268 or an association of local governments per-
 31 forming land use planning functions under ORS 195.025, authorized and regulated by statute [and].
 32 “**Special district**” includes but is not limited to water control districts, domestic water associations
 33 and water cooperatives, irrigation districts, port districts, regional air quality control authorities,
 34 fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

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

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

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

43 **SECTION 3. Section 1 of this 2017 Act applies to periodic reviews, legislative reviews and**
 44 **land evaluations commenced on or after the effective date of this 2017 Act.**