

A-Engrossed
House Bill 3202

Ordered by the House April 17
Including House Amendments dated April 17

Sponsored by Representative HELM, Senator BURDICK, Representative LININGER; Representative DOHERTY

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.

Provides procedures and requirements for establishing criteria for siting of Southwest Corridor MAX Light Rail Project.

Provides procedures for review of criteria and land use decisions for siting of Southwest Corridor MAX Light Rail Project.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a Southwest Corridor MAX light rail project; and declaring an emergency.

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

4 **SECTION 1. As used in sections 1 to 12 of this 2017 Act, unless the context requires**
5 **otherwise:**

6 (1) **"Affected local governments" means the cities and the counties within which the**
7 **project improvements will be located.**

8 (2) **"Criteria" means the land use criteria established by the Land Conservation and De-**
9 **velopment Commission as provided in section 4 of this 2017 Act.**

10 (3) **"Development approval" means approval of a proposed development of land based on**
11 **discretionary standards designed to regulate the physical characteristics of a use permitted**
12 **outright, including but not limited to site review and design review.**

13 (4) **"Draft Statement" means the Draft Environmental Impact Statement for the project,**
14 **as may be amended from time to time, and any supplementary assessments or statements**
15 **prepared pursuant to regulations implementing the National Environmental Policy Act, 42**
16 **U.S.C. 4321 et seq.**

17 (5) **"Final Statement" means the Environmental Impact Statement for the project, as**
18 **may be amended from time to time, or any supplementary assessments or statements, pre-**
19 **pared pursuant to regulations implementing the National Environmental Policy Act, 42**
20 **U.S.C. 4321 et seq.**

21 (6) **"Full Funding Grant Agreement" means the contractual agreement entered into be-**
22 **tween the federal government and the local grant recipient establishing the maximum federal**
23 **financing contribution for construction of the project and setting forth terms, conditions and**
24 **limitations for federal financing of the project.**

25 (7) **"Highway improvements" means improvements to the highway, street and other an-**
26 **cillary facilities for the project and improvements related to construction or operation of the**

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 project. As used in this subsection:

2 (a) "Ancillary facilities" includes retaining walls, bridges, signals, electrification equip-
3 ment, lighting equipment, staging areas, facilities for bus or rail travel, stormwater facilities,
4 wetland mitigation facilities and facilities designed for vehicle, pedestrian and bicycle traffic.

5 (b) "Improvement" includes any development or alteration to land related to the project.

6 (8) "Land use final order" means a written order or orders of the Metro Council deciding
7 the project improvements for the project, including their locations.

8 (9) "Light rail route" means the light rail alignment selected from among light rail
9 alignment alternatives described in a Draft Statement or Final Statement to be included in
10 the project.

11 (10) "Locally Preferred Alternative Report" means a decision adopted in accordance with
12 federal requirements determining or amending an earlier decision whether or not to build the
13 Southwest Corridor MAX Light Rail Project and, if the decision adopted is to build, recom-
14 mending the project improvements, including their locations, to be included in the Southwest
15 Corridor MAX Light Rail Project.

16 (11) "Locations" means the boundaries within which the project improvements will be
17 located.

18 (12) "Measures" includes any mitigation measures, design features or other amenities or
19 improvements associated with the project.

20 (13) "Metro Council" means the elected governing body of Metro.

21 (14) "Project" means the portion of the Southwest Corridor MAX Light Rail Project
22 within Metro's urban growth boundary. "Project" includes:

23 (a) All project improvements described in the Locally Preferred Alternative Report, as
24 may be amended from time to time by a Draft Statement, Final Statement, Full Funding
25 Grant Agreement or similar document for the Southwest Corridor MAX Light Rail Project;
26 and

27 (b) All phases and extensions of the Southwest Corridor MAX Light Rail Project as de-
28 scribed in a Locally Preferred Alternative Report, Draft Statement, Final Statement, Full
29 Funding Grant Agreement or similar document.

30 (15) "Project improvements" means the light rail route, stations, lots and maintenance
31 facilities and the highway improvements related to the project as described in the Locally
32 Preferred Alternative Report, as may be amended from time to time by a Draft Statement,
33 Final Statement, Full Funding Grant Agreement or similar document for the Southwest
34 Corridor MAX Light Rail Project.

35 (16) "Stations, lots and maintenance facilities" means the light rail stations, light rail
36 park-and-ride lots and light rail vehicle maintenance facilities to be selected from among al-
37 ternatives described in a Draft Statement, Final Statement or similar document to be in-
38 cluded in the project.

39 (17) "TriMet" means the Tri-County Metropolitan Transportation District of Oregon, a
40 mass transit district created under ORS chapter 267.

41 **SECTION 2.** (1) The Legislative Assembly finds that there is a compelling state interest
42 in obtaining maximum federal funding for the Southwest Corridor MAX Light Rail Project
43 in order to:

44 (a) Enhance the statewide transportation network;

45 (b) Ensure the viability of the transportation system planned for the Portland metropol-

1 itan area;

2 (c) Complete construction of the project in a timely and cost-effective manner;

3 (d) Implement a significant portion of the Legislative Assembly's air quality and energy
4 efficiency strategies for the area; and

5 (e) Ensure that affected local governments will be able to implement significant parts of
6 their comprehensive plans.

7 (2) The Legislative Assembly further finds that, to maximize the ability of this state and
8 the Portland metropolitan area to obtain the highest available level of federal funding for the
9 Southwest Corridor MAX Light Rail Project, it is necessary to establish:

10 (a) A process to be used to establish criteria, make decisions and adopt a land use final
11 order related to the light rail route and other project improvements to be included in the
12 Southwest Corridor MAX Light Rail Project, including their locations;

13 (b) An expedited process for appellate review of a land use final order; and

14 (c) An exclusive process for appellate review.

15 (3) The Legislative Assembly further finds that residents of neighborhoods within TriMet
16 affected by land use decisions, limited land use decisions or land divisions resulting from the
17 siting, construction or operation of any light rail route or other project improvements, either
18 as individuals or through their neighborhood associations, shall have the opportunity to
19 participate in those decisions and divisions.

20 (4) The Legislative Assembly deems the procedures and requirements provided for in
21 sections 1 to 12 of this 2017 Act, under the unique circumstances of the Southwest Corridor
22 MAX Light Rail Project, to be equivalent in spirit and substance to the land use procedures
23 that otherwise would be applicable.

24 (5) Sections 1 to 12 of this 2017 Act shall be liberally construed to address the findings
25 enumerated in subsection (1) of this section.

26 **SECTION 3.** Notwithstanding ORS chapters 183, 192, 195, 197, 215 and 227 or any other
27 provision of law, the procedures and requirements provided for in sections 1 to 12 of this 2017
28 Act expressly preempt any vote requirements imposed by the charter of a local government
29 and are the only land use procedures and requirements to which land use decisions and land
30 use approvals of any kind related to the construction or operation of the project shall be
31 subject.

32 **SECTION 4.** (1) The Land Conservation and Development Commission shall establish
33 criteria, according to the procedure described in this section, to be used by the Metro
34 Council to make decisions in a land use final order on the project improvements for the
35 project, including their locations.

36 (2) The commission shall hold a public hearing on the criteria to be established by the
37 commission.

38 (3) The commission shall publish notice of a public hearing on criteria to be established
39 by the commission in a newspaper of general circulation within the Portland metropolitan
40 area at least 20 days prior to the public hearing. The notice shall state:

41 (a) The general subject matter of the hearing and the date, time and place of the hearing;

42 (b) That any criteria to be proposed to the commission must be filed at the Salem office
43 of the Department of Land Conservation and Development at least 10 days prior to com-
44 mencement of the hearing and will be available for public inspection following filing;

45 (c) That notice of adoption of an order establishing criteria will be provided only to per-

1 sons who provide oral or written testimony at the hearing and who also provide, in writing,
2 a request for written notice and a mailing address to which notice shall be sent;

3 (d) That persons whose names appear on petitions submitted into the public hearing re-
4 cord will not be considered by that action to have provided oral or written testimony at the
5 hearing;

6 (e) That failure by a person to raise an issue at the hearing in person or in writing, or
7 failure to provide sufficient specificity to afford the commission an opportunity to respond
8 to the issue raised, shall preclude appeal by that person on that issue; and

9 (f) That appeals from an order establishing criteria must be filed within seven days fol-
10 lowing the date written notice of the order is mailed to the persons described in subsection
11 (9)(b) of this section.

12 (4) The commission may provide additional notice as it deems appropriate to inform in-
13 terested persons of the public hearing.

14 (5) A copy of the staff report, if any, must be made available for public inspection at least
15 four days prior to the public hearing.

16 (6) At the commencement of the hearing, a statement shall be made to those in attend-
17 ance that:

18 (a) Identifies the general subject matter of the hearing;

19 (b) Submittal of proposed criteria at the hearing will not be accepted unless the proposed
20 criteria were filed at the Salem office of the department at least 10 days prior to the com-
21 mencement of the hearing;

22 (c) Failure by a person to raise an issue at the hearing in person or in writing, or failure
23 to raise an issue with sufficient specificity to afford the commission an opportunity to re-
24 spond to the issue raised, shall preclude appeal by that person on that issue;

25 (d) Notice of adoption of an order establishing criteria will be provided only to persons
26 who provide oral or written testimony at the hearing and who also provide a written request
27 for notice and a mailing address to which notice shall be sent;

28 (e) Persons whose names appear on petitions submitted into the public hearing record
29 will not be considered by that action to have provided oral or written testimony at the
30 hearing; and

31 (f) Appeals from an order establishing criteria must be filed within seven days following
32 the date written notice of the order is mailed.

33 (7)(a) The commission shall allow for the submission of oral and written testimony at the
34 hearing, subject to any hearing procedures that the commission deems necessary.

35 (b) The commission may exclude irrelevant, immaterial or unduly repetitious testimony.

36 (c) The commission may allow only the submission of proposed criteria at the hearing
37 that were filed at the Salem office of the Department of Land Conservation and Development
38 at least 10 days prior to the commencement of the hearing.

39 (d) The commission shall designate an individual to take minutes of the hearing.

40 (8)(a) Within 14 days following commencement of the hearing, the commission shall close
41 the hearing.

42 (b) The commission shall consider all statewide planning goals and plan policies that are
43 relevant to decisions regarding the project improvements and their locations in establishing
44 the criteria.

45 (c) The commission shall adopt an order establishing the criteria. The commission's or-

1 **der must include a brief statement explaining how the criteria established reasonably reflect**
2 **the statewide land use planning goals and plan policies that are relevant to decisions re-**
3 **garding the project improvements and their locations.**

4 **(9) As soon as reasonably practicable following establishment of the criteria, the com-**
5 **mission shall:**

6 **(a) Make copies of the order and the criteria available for public inspection at both the**
7 **Salem and Portland offices of the Department of Land Conservation and Development; and**

8 **(b) Provide notice of the order and the criteria to:**

9 **(A) The Metro Council;**

10 **(B) TriMet;**

11 **(C) The Department of Transportation;**

12 **(D) Each affected local government; and**

13 **(E) Any person who provided oral or written testimony at the hearing and who also**
14 **provided a written request for notice and a mailing address to which notice shall be sent.**

15 **SECTION 5. (1) Notwithstanding ORS 183.400, 183.482, 183.484, 197.825 or any other law**
16 **or regulation, exclusive jurisdiction to review a Land Conservation and Development Com-**
17 **mission order establishing criteria under section 4 of this 2017 Act is conferred on the Su-**
18 **preme Court.**

19 **(2) Proceedings for review of an order by the commission shall be initiated when any**
20 **person who is adversely affected by the order files a petition for judicial review with the**
21 **State Court Administrator. The petition must:**

22 **(a) Be filed within seven days following the date of the written notice of the order;**

23 **(b) State the nature of the order and the manner in which the commission rejected the**
24 **position raised by the petitioner before the commission; and**

25 **(c) Contain an affidavit stating facts that show how the petitioner is adversely affected**
26 **by the order.**

27 **(3) The petitioner shall personally deliver copies of the petition for judicial review to:**

28 **(a) The commission, at the Salem office of the Department of Land Conservation and**
29 **Development;**

30 **(b) The Salem office of the Department of Transportation;**

31 **(c) The Attorney General;**

32 **(d) The Metro Council, at the office of Metro's executive officer;**

33 **(e) TriMet, at the office of TriMet's general manager; and**

34 **(f) Each affected local government.**

35 **(4) Within seven days following filing of the petition for judicial review, the commission**
36 **shall personally deliver or electronically submit to the State Court Administrator a certified**
37 **copy of the record of the criteria proceedings. The record shall include only:**

38 **(a) The published notice of public hearing;**

39 **(b) The proposed criteria submitted as described in section 4 (6)(b) of this 2017 Act and**
40 **by written testimony submitted to the commission at the hearing;**

41 **(c) Any written report received by the commission from the Department of Land Con-**
42 **servation and Development at the hearing;**

43 **(d) Minutes of the hearing;**

44 **(e) The order establishing the criteria; and**

45 **(f) Proof of mailing to persons entitled to written notice of the order and the criteria**

1 under section 4 (9)(b) of this 2017 Act.

2 (5) Within 14 days following the filing of the petition for judicial review, the petitioner
3 shall file a petitioner's brief with the State Court Administrator. The brief must comply with
4 the specifications for opening briefs set forth in the rules of appellate procedure. The
5 petitioner shall personally deliver a copy of the brief to:

- 6 (a) The Attorney General;
- 7 (b) The Metro Council, at the office of Metro's executive officer;
- 8 (c) TriMet, at the office of TriMet's general manager; and
- 9 (d) Each affected local government.

10 (6) The court shall consider the petitioner to be adversely affected if:

11 (a) The petitioner provided oral or written testimony at the hearing; and

12 (b) The petitioner proposed criteria in the manner described in section 4 (6)(b) of this 2017
13 Act that the commission rejected in its order or the petitioner, in the petitioner's testimony
14 at the hearing, opposed the criteria that the commission established in its order.

15 (7) Within 28 days following the filing of the petition for judicial review, an answering
16 brief complying with the rules of appellate procedure may be filed by any of the following:

- 17 (a) The commission;
- 18 (b) Metro, unless Metro is the petitioner;
- 19 (c) TriMet, unless TriMet is the petitioner;
- 20 (d) The Department of Transportation, unless the Department of Transportation is the
21 petitioner; or
- 22 (e) Any affected local government, unless the local government is the petitioner.

23 (8) The court shall decide the matter at its earliest practicable convenience, consistent
24 with sections 1 to 12 of this 2017 Act. The court may decide the matter on the briefs or it
25 may hold oral arguments.

26 (9)(a) The court may reverse or remand the order only if the court finds that the order:

27 (A) Violates constitutional provisions;

28 (B) Exceeds the statutory authority of the commission; or

29 (C) Was adopted by the commission without substantial compliance with the procedures
30 in section 4 of this 2017 Act or in a manner that prejudiced the substantial rights of the
31 petitioner.

32 (b) Failure of the commission to notify a person entitled to written notice under section
33 4 (9)(b) of this 2017 Act is not grounds for reversal or remand if the commission provides
34 evidence of mailing the notice to that person.

35 (c) The court may not substitute its judgment for that of the commission as to any issue
36 of fact or as to any issue within the discretion of the commission.

37 (10) The court may not stay any action by the Metro Council under sections 1 to 12 of
38 this 2017 Act pending the court's review under this section.

39 **SECTION 6.** (1)(a) On or before the date the Land Conservation and Development Com-
40 mission adopts the order establishing the criteria under section 4 of this 2017 Act, Metro
41 shall establish a steering committee, the initial membership of which shall include a repre-
42 sentative from each of the following:

- 43 (A) Metro;
- 44 (B) TriMet;
- 45 (C) The Department of Transportation; and

1 (D) Each affected local government.

2 (b) The membership of the steering committee shall, at all times, include at least the
3 members described in paragraph (a) of this subsection. The steering committee may approve
4 additional members by majority vote.

5 (c) Metro shall staff the steering committee until the adoption of the initial land use final
6 order for the project.

7 (2)(a) The steering committee shall issue recommendations for the siting of the light rail
8 route and other project improvements and their locations to TriMet.

9 (b) TriMet shall apply to the Metro Council for a land use final order approving the
10 project improvements and their locations. The applied for locations must provide sufficient
11 boundaries to accommodate adjustments to the specific placements of the project improve-
12 ments for which need commonly arises upon the development of more detailed environmental
13 or engineering data following approval of a Full Funding Grant Agreement.

14 (3) The council shall apply the criteria established by the Land Conservation and Devel-
15 opment Commission under section 4 of this 2017 Act when making decisions in a land use
16 final order on the applied for project improvements, including their locations. The council
17 shall follow the procedures described in this section when adopting a land use final order.

18 (4) The council shall hold a public hearing on the project improvements, including their
19 locations, for which decisions will be made in the land use final order.

20 (5)(a) At least 14 days prior to the hearing, the council shall publish notice of a public
21 hearing on the project improvements, including their locations, in a newspaper of general
22 circulation within Metro's jurisdictional area. The notice shall state:

23 (A) The general subject matter of the hearing and all matters scheduled for consideration
24 at the hearing;

25 (B) The date, time and place of the hearing;

26 (C) The street address where a staff report and the criteria may be found;

27 (D) That failure by a person to raise an issue at the hearing in person or in writing, or
28 failure to provide sufficient specificity to afford the council an opportunity to respond to the
29 issue raised, shall preclude appeal by that person to the Land Use Board of Appeals based
30 on that issue;

31 (E) That persons whose names appear on petitions submitted into the public hearing re-
32 cord will not be considered by that action to have provided oral or written testimony at the
33 hearing;

34 (F) That notice of adoption of the land use final order will be provided only to persons
35 who provide oral or written testimony at the hearing and who also provide a written request
36 for notice and a mailing address to which notice shall be sent; and

37 (G) That appeals from decisions in a land use final order must be filed within 14 days
38 following the date the land use final order is reduced to writing and bears the necessary
39 signatures.

40 (b) The council also shall provide such other notice as the council deems necessary to
41 give notice to persons who may be substantially affected by its decision. No other form of
42 notice is required.

43 (6)(a) At least seven days prior to the hearing, the council shall make a copy of the staff
44 report available for public inspection. The staff report shall:

45 (A) Set forth the criteria established under section 4 of this 2017 Act;

1 (B) Include a description of the proposed boundaries within which the project improve-
2 ments will be located, as applied for by TriMet under subsection (2) of this section; and

3 (C) Address how the proposed boundaries comply with the criteria.

4 (b) Without providing additional notice, the council may amend the staff report prior to
5 the hearing as the staff considers necessary or desirable.

6 (7) At the commencement of the hearing, a statement shall be made to those in attend-
7 ance that:

8 (a) Lists the criteria or directs those present to a place at the hearing location where
9 any person may obtain a list of the criteria at no cost;

10 (b) Lists generally the project improvements, including their locations, for which deci-
11 sions will be made in the land use final order;

12 (c) Testimony shall be directed toward the application of the criteria to the project im-
13 provements, including their locations, to which decisions will be made in the land use final
14 order;

15 (d) Failure by a person to raise an issue at the hearing, in person or in writing, or failure
16 to raise an issue with sufficient specificity to afford the council an opportunity to respond
17 to the issue raised, shall preclude appeal by that person to the board based on that issue;

18 (e) Persons whose names appear on petitions submitted into the public hearing record
19 will not be considered by that action to have provided oral or written testimony at the
20 hearing;

21 (f) Notice of adoption of the land use final order will be provided only to the affected local
22 governments and to the persons who have provided oral or written testimony at the hearing
23 and who also have provided a written request for notice and a mailing address to which no-
24 tice shall be sent; and

25 (g) Appeals from decisions in a land use final order on the project improvements, in-
26 cluding their locations, must be filed within 14 days following the date the land use final or-
27 der is reduced to writing and bears the necessary signatures.

28 (8)(a) The council shall allow for the submission of oral and written testimony at the
29 hearing, subject to any hearing procedures the council deems necessary or appropriate for
30 the adoption of a land use final order.

31 (b) The council may exclude irrelevant, immaterial or unduly repetitious testimony.

32 (9) The council may take official notice at the hearing of any matter identified in ORS
33 40.065 and 40.090 or as authorized by resolution of the council establishing hearing proce-
34 dures for the adoption of land use final orders.

35 (10) The council is not required to provide any opportunities in addition to those de-
36 scribed in this section for interested persons to participate in the proceedings of the council
37 in adopting a land use final order. The council may establish by resolution additional proce-
38 dures to govern its proceedings in adopting a land use final order, subject to the provisions
39 of this section.

40 (11) The council shall close the hearing and shall adopt a land use final order by resolu-
41 tion or continue the matter as provided in section 7 (1) of this 2017 Act or as the council
42 otherwise considers necessary for the purpose of adopting a land use final order.

43 **SECTION 7.** (1)(a) Following a public hearing as provided in section 6 of this 2017 Act, the
44 Metro Council shall either:

45 (A) Adopt a land use final order establishing the project improvements and locations ap-

1 plied for by TriMet; or

2 (B) Continue the public hearing and refer the proposed project improvements and lo-
3 cations back to TriMet for further review.

4 (b) If the council refers the proposed locations back to TriMet for further review, TriMet
5 shall consider amendments to its proposed project improvements and locations and forward
6 the amended application to the council for hearing and adoption as described in this sub-
7 section.

8 (2)(a) The council shall adopt a land use final order establishing the project improve-
9 ments, including their locations, as provided in this section and section 6 of this 2017 Act.

10 (b) The council shall include with the land use final order a statement of findings dem-
11 onstrating how the decisions on the project improvements, including their locations, comply
12 with the criteria.

13 (c) Following adoption of a land use final order, the council as soon as reasonably prac-
14 ticable shall:

15 (A) Publish notice of the adoption in a newspaper of general circulation within Metro's
16 jurisdictional area;

17 (B) Provide notice of the adoption to each affected local government; and

18 (C) Provide notice of the adoption to persons who:

19 (i) Provided oral or written testimony at the hearing; and

20 (ii) Provided at the hearing a written request for notice and a mailing address to which
21 written notice shall be sent. Persons whose names appear on petitions submitted into the
22 public hearing record are not considered by that action to have provided oral or written
23 testimony at the hearing.

24 (3) The notice of adoption required under subsection (2) of this section shall:

25 (a) Include the date of adoption of the land use final order;

26 (b) Identify the place at and time during which a copy of the land use final order may
27 be obtained; and

28 (c) State that appeals from decisions in the land use final order must be filed within 14
29 days following adoption of the land use final order.

30 (4) Upon adoption of the initial land use final order, TriMet shall staff the steering com-
31 mittee until the completion of the Southwest Corridor MAX Light Rail Project.

32 (5) A land use final order issued under this section and section 6 of this 2017 Act is ef-
33 fective upon adoption.

34 (6) An amended land use final order or a new land use final order adopted in accordance
35 with the process provided for in this section is required for:

36 (a) Any siting of a project improvement outside the locations established in the land use
37 final order; or

38 (b) Any new project improvement.

39 **SECTION 8.** (1) The state, Metro, all affected local governments and any affected special
40 districts and political subdivisions shall:

41 (a) Amend their comprehensive, functional or regional framework plans, including public
42 facility plans, transportation system plans and all applicable land use regulations, as neces-
43 sary to be consistent with a land use final order adopted under sections 6 and 7 of this 2017
44 Act; and

45 (b) Issue the appropriate development approval, permit, license, certificate or other ap-

1 **proval necessary for the construction of the project or project improvements to implement**
2 **a land use final order as necessary to avoid significantly delaying the completion or imple-**
3 **mentation of the project. Development approvals, permits, licenses, certificates or other ap-**
4 **provals may be subject only to reasonable and necessary conditions of approval but those**
5 **conditions may not, by themselves or cumulatively, prevent implementation of a land use**
6 **final order.**

7 **(2) For the purposes of subsection (1)(b) of this section:**

8 **(a) An approval condition is not reasonable or necessary, or is considered to prevent**
9 **implementation of a land use final order, if the approval condition applies to a measure, im-**
10 **provement or development that:**

11 **(A) Is not included in the scope of the project in the Full Funding Grant Agreement;**

12 **(B) Does not qualify for federal New Starts funding pursuant to 49 U.S.C. 5309;**

13 **(C) Is not physically and functionally necessary for the project; or**

14 **(D) The steering committee established under section 6 of this 2017 Act has determined:**

15 **(i) To be infeasible using the federal, state and local funds within the project budget;**

16 **(ii) Will significantly delay the completion or otherwise prevent the timely implementa-**
17 **tion of the project; or**

18 **(iii) Will have a significant negative impact on the operations of the project.**

19 **(b) In the event that a land use approval is delayed causing significant delay of the**
20 **completion or implementation of the project, TriMet may pursue any remedy available in law**
21 **or equity. Not less than 10 days prior to commencing an action for relief under this section,**
22 **Trimet shall provide written notice to each local government to which TriMet submitted an**
23 **application for a land use decision relating to the project.**

24 **(3)(a) If the state, Metro or an affected local government, special district or political**
25 **subdivision does not take final action on an application for a development approval, permit,**
26 **license, certificate or other approval as required under subsection (1) of this section, TriMet**
27 **may file a petition for a writ of mandamus according to the procedures for cities described**
28 **in ORS 227.179.**

29 **(b) Notwithstanding ORS 227.179 (5), the court shall issue a peremptory writ unless the**
30 **governing body or any intervenor shows that the approval would violate the criteria adopted**
31 **by the Land Conservation and Development Commission under section 4 of this 2017 Act.**

32 **(4) Each affected local government, special district or political subdivision that issues a**
33 **development approval, permit, license, certificate or other approval for the project under**
34 **subsection (1)(b) of this section shall continue to exercise enforcement authority over the**
35 **development approval, permit, license, certificate or other approval.**

36 **(5) An amendment to the plan or a land use regulation required under subsection (1)(a)**
37 **of this section is not subject to review by any court or agency.**

38 **(6)(a) Development approvals issued under subsection (1)(b) of this section shall be**
39 **treated as land use decisions, but not as limited land use decisions.**

40 **(b) Development approvals, permits, licenses, certificates and other approvals issued un-**
41 **der subsection (1)(b) of this section may be the subject of administrative and judicial review**
42 **as provided by law.**

43 **(7) Steering committee determinations made under subsection (2)(a)(D) of this section**
44 **shall control in the event of a conflict and are not subject to review.**

45 **SECTION 9. (1) Notwithstanding ORS 183.482, 183.484 or 197.825 and as provided by**

1 sections 1 to 12 of this 2017 Act, the Land Use Board of Appeals and the Supreme Court have
2 exclusive jurisdiction for review of a land use final order adopted under section 7 of this 2017
3 Act relating to the project.

4 (2) Proceedings for review of a land use final order shall be initiated with the Land Use
5 Board of Appeals when any person with standing petitions for review under subsection (3)
6 of this section.

7 (3) The board shall consider a person to have standing if the person:

8 (a) Appeared before the Metro Council orally or in writing at the hearing described in
9 section 6 of this 2017 Act on the project; and

10 (b) Personally delivered a notice of intent to appeal the land use final order as described
11 by subsection (5) of this section within 14 days following the adoption of the land use final
12 order as described in section 6 (11) of this 2017 Act.

13 (4) A person's failure to raise an issue at the land use final order hearing, in person or
14 in writing, or failure to raise an issue with sufficient specificity to afford the council an op-
15 portunity to respond to the issue raised, shall preclude that person from petitioning for re-
16 view based on that issue.

17 (5)(a) A notice of intent to appeal shall:

18 (A) Contain an affidavit stating the facts that support the petitioner's standing as re-
19 quired by subsection (3) of this section;

20 (B) State with particularity the grounds on which the petitioner assigns error; and

21 (C) State the residence or business address of the petitioner to which documents may
22 be delivered and the telephone number where the petitioner may be reached during normal
23 business hours.

24 (b) The petitioner shall personally deliver copies of the notice of intent to appeal to:

25 (A) The board;

26 (B) Metro, at the office of Metro's executive officer; and

27 (C) Each affected local government.

28 (6) Only the following persons may intervene in and thereby be made a party to the re-
29 view proceedings:

30 (a) The board;

31 (b) Metro;

32 (c) TriMet;

33 (d) The Department of Transportation; and

34 (e) Any affected local government.

35 (7)(a) Within seven days following delivery of a notice of intent to appeal as required by
36 subsection (5) of this section, Metro shall personally deliver a certified copy of the record
37 of the council's land use final order proceedings to the board. The record shall consist of:

38 (A) The land use final order;

39 (B) The statement of findings included with the land use final order;

40 (C) The notice of public hearing on the land use final order;

41 (D) Audio recordings of the hearing, if any;

42 (E) A statement of matters that were officially noticed at the hearing;

43 (F) The staff report and any amendments thereto; and

44 (G) All documents accepted into the public hearing record.

45 (b) Metro shall make available a copy of the record for inspection by petitioners, and

1 shall provide a copy of the record to any petitioner upon request. Metro may not charge a
2 petitioner an amount greater than the actual copying costs for a copy of the record.

3 (8)(a) Within four days following delivery of the record to the board, a petitioner may
4 object to the record by personal delivery to the board and the residence or business ad-
5 dresses of the intervening parties.

6 (b) Within four days following delivery of the objections to the record, Metro shall re-
7 spond to the objections by personal delivery to the board and the residence or business ad-
8 dresses of the petitioners objecting.

9 (c) After delivery of the objections and the response, the board shall rule expeditiously
10 on the objections. The board's ruling on the objections does not affect the briefing schedule
11 or decision timelines set forth in sections 1 to 12 of this 2017 Act.

12 (9) Stays or continuances of proceedings are not permitted for the proceedings described
13 in this section.

14 (10)(a) Within 14 days following the filing of the notice of intent to appeal, a petitioner
15 shall personally deliver a petition for review and brief to each entity listed in subsection (6)
16 of this section that has filed a motion to intervene on the entity's own behalf in the review
17 proceedings.

18 (b) The petition for review and brief shall:

19 (A) Set out in detail each assignment of error; and

20 (B) Identify those portions of the record in which the petitioner raised the issues as to
21 which error is assigned during the land use final order hearing.

22 (c) The petition for review and brief shall comply with the specifications for opening
23 briefs set forth in the rules of appellate procedure.

24 (11)(a) Within 28 days following the filing of the notice of intent to appeal, Metro and any
25 intervening party shall personally deliver their briefs in response to a petition for review and
26 brief to the board and to any petitioner at the petitioner's residence or business address.

27 (b) Responding briefs shall comply with the specifications for answering briefs set forth
28 in the rules of appellate procedure.

29 (12)(a) Within 35 days following the filing of the notice of intent to appeal, the board shall
30 hear oral argument in the manner provided for in its administrative rules.

31 (b) Neither the board nor the court may substitute its judgment for that of the council
32 as to any issue of fact or any issue within the discretion of the council.

33 (13)(a) Within 28 days following oral argument, the board shall issue a final opinion af-
34 firming or remanding the council's land use final order and stating the reasons for the de-
35 cision.

36 (b) The board may remand the land use final order only if the board finds that the
37 council:

38 (A) Improperly construed the criteria;

39 (B) Exceeded its statutory or constitutional authority; or

40 (C) Made a decision in the land use final order on the project improvements, including
41 their locations, that was not supported by substantial evidence in the record.

42 (c) The existence in the record of substantial evidence supporting a different decision on
43 the project improvements, including their locations, is not grounds for remand if there was
44 also substantial evidence in the record supporting the land use final order.

45 (d) Failure to comply with statutory procedures, including notice requirements, is not

1 grounds for invalidating a land use final order.

2 (e) The board shall affirm all portions of the land use final order that it does not remand.

3 (14) Upon issuance of its final opinion under subsection (13) of this section, the board
4 shall:

5 (a) Transmit copies of the final opinion to the parties; and

6 (b) Inform the parties of the filing of the final opinion by telephone.

7 (15) Within seven days following issuance of its final opinion, the board shall personally
8 deliver or electronically submit a copy of the record of the board with the State Court Ad-
9 ministrator.

10 **SECTION 10.** (1)(a) Review of the final opinion of the Land Use Board of Appeals shall
11 be initiated when any person that appeared before the Land Use Board of Appeals under
12 section 9 of this 2017 Act petitions the Supreme Court to review the board's final opinion as
13 provided in this section.

14 (b) Within 14 days following the board's issuance of its final opinion, the petitioner shall
15 file a petition for judicial review and a brief with the State Court Administrator and serve
16 copies of the petition and the brief on the board and all parties.

17 (c) The petition must state a request for relief and include a copy of the board's final
18 opinion. The brief must state, with particularity and supporting authority, each reason as-
19 serted for remand of the board's final opinion.

20 (d) Upon request by the court, the board shall personally deliver or electronically submit
21 a transcript of the board's record.

22 (2)(a) Within 14 days after the petition filing date, any other person that appeared before
23 the board may, but need not, file a response in the form of a brief to the petition and brief
24 with the State Court Administrator and shall serve the response on the board and all parties.

25 (b) In the absence of a response, the court shall consider a person's brief before the
26 board to be the person's response.

27 (3) The court shall decide the matter at its earliest practicable convenience, consistent
28 with sections 1 to 12 of this 2017 Act. The court shall apply the standards for review set forth
29 in section 9 of this 2017 Act.

30 (4)(a) The court may decide the matter on the briefs or hold oral argument.

31 (b) The court may affirm or remand the land use final order, in whole or in part. The
32 court shall affirm all parts of the land use final order that it does not remand.

33 (5)(a) If the court affirms, the court may adopt the board's final opinion, affirm without
34 opinion or issue a separate opinion.

35 (b) If the court remands, the Metro Council shall:

36 (A) Respond as to those matters remanded by adopting by resolution a land use final
37 order on remand according to the provisions of sections 6 and 7 of this 2017 Act;

38 (B) Immediately file the land use final order on remand and the record of the council
39 with the State Court Administrator;

40 (C) Personally deliver copies of its land use final order on remand to the parties before
41 the court; and

42 (D) Inform the parties by telephone of the filing of the land use final order on remand.

43 (6) The court shall retain jurisdiction over any matters remanded.

44 (7) Within 14 days following adoption of a land use final order on remand, the parties
45 before the court may submit briefs to the court in response to the land use final order on

1 remand. Parties that submit briefs shall personally deliver copies of the briefs to other
2 parties before the court. The court may limit the length of briefs submitted under this sub-
3 section.

4 (8) The court shall affirm or remand the land use final order on remand according to the
5 standards for review set forth in section 9 of this 2017 Act.

6 **SECTION 11.** (1) Following execution of a Full Funding Grant Agreement, the Metro
7 Council shall amend the land use final order to be consistent with the terms and conditions
8 of the Full Funding Grant Agreement.

9 (2) The council shall remove, modify or defer one or more project improvements or
10 measures if:

11 (a) The federal government requires the removal, modification or deferral of portions of
12 the approved project, or the removal, modification or deferral of measures is expressly pro-
13 vided for in a Final Statement as a condition of executing a Full Funding Grant Agreement;
14 or

15 (b) Subsequent to execution of a Full Funding Grant Agreement, the steering committee
16 determines that additional removals, modifications or deferrals are appropriate due to in-
17 sufficient funds in the budget for the project.

18 (3) The following amendments to a land use final order are not subject to review by any
19 court or agency:

20 (a) Amendments resulting from adoption of a Final Statement;

21 (b) Amendments required to ensure consistency with an executed Full Funding Grant
22 Agreement; and

23 (c) Amendments to remove, modify or defer a portion of the project as provided for in
24 subsection (2) of this section.

25 **SECTION 12.** An action taken by the Land Conservation and Development Commission,
26 the Metro Council, the Land Use Board of Appeals or the Supreme Court under sections 1
27 to 12 of this 2017 Act is not invalid due to a failure to meet a timeline established under
28 sections 1 to 12 of this 2017 Act.

29 **SECTION 13.** The Land Conservation and Development Commission shall adopt the order
30 establishing the criteria described in section 4 (8) of this 2017 Act within 90 days following
31 the effective date of this 2017 Act.

32 **SECTION 14.** This 2017 Act being necessary for the immediate preservation of the public
33 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
34 on its passage.