

B-Engrossed House Bill 4012

Ordered by the Senate February 26
Including House Amendments dated February 17 and Senate Amendments
dated February 26

Sponsored by Representative CLEM; Representatives HELT, ZIKA (Presession filed.)

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.

Requires Department of Land Conservation and Development to approve City of Bend's expansion of urban growth boundary, and allows department to approve other land use regulations for city on specified lands, if owner of land possesses development opportunity transferred from Metolius resort site owner and city meets other conditions. Sunsets provisions on January 2, [2027] **2030**.

Sunsets, on July 1, 2020, laws allowing Metolius resort site owners to use development opportunity to develop small-scale recreation communities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to use of land; creating new provisions; repealing sections 2, 3, 4 and 5, chapter 636,
3 Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 9 of this 2020 Act are added to and made a part of ORS chapter**
6 **197.**

7 **SECTION 2. Definitions. As used in sections 2 to 9 of this 2020 Act:**

8 (1) "City" means the City of Bend.

9 (2) "Council" has the meaning given that term in ORS 227.010.

10 (3) "Planning commission" means a planning commission described in ORS 227.030.

11 (4) "Stevens Road planning amendments" means amendments to the city's comprehen-
12 sive plans, land use regulations or zoning maps that affect the development of the Stevens
13 Road tract.

14 (5) "Stevens Road tract" means land that:

15 (a) Is located in tax lot 100 of section 11, township 18 south, range 12 east of the
16 Willamette Meridian in Deschutes County;

17 (b) Was conveyed to the Department of State Lands through a lot line adjustment bar-
18 gain and sale deed recorded on October 17, 2019, in the deed records of Deschutes County
19 under recorder number 2019-39926; and

20 (c) Consists of 261.66 acres, more or less.

21 **SECTION 3. Stevens Road planning generally. (1) Actions taken under sections 2 to 9 of**
22 **this 2020 Act:**

23 (a) Are not land use decisions, as defined in ORS 197.015.

24 (b) If taken by the city, are not subject to any review except by the Department of Land
25 Conservation and Development under sections 2 to 9 of this 2020 Act.

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 (c) If taken by the department, are not considered rulemaking and are not subject to
2 ORS 183.325 to 183.410 or 183.710 to 183.730 and, notwithstanding ORS 183.484 or 183.485, are
3 appealable directly to the Court of Appeals.

4 (d) If taken under an exercise of discretion authorized under sections 2 to 9 of this 2020
5 Act, are a final action, are entitled to deference and are not subject to an evidentiary review
6 on appeal notwithstanding ORS 34.040 (1)(c), 183.482 (8)(c) or 183.484 (5)(c).

7 (2) If the department approves Stevens Road planning amendments under sections 7 to
8 9 of this 2020 Act:

9 (a) Any subsequent land use decision within the Stevens Road tract is a land use decision
10 subject to the ordinary procedures and requirements of ORS chapters 197 and 227, statewide
11 land use planning goals, rules adopted by the Land Conservation and Development Commis-
12 sion or the department, the city's comprehensive plan and land use regulations plus the re-
13 quirements set forth in section 9 (1) of this 2020 Act.

14 (b) Violations of sections 2 to 9 of this 2020 Act may be the basis for the initiation of
15 enforcement action under ORS 197.319 to 197.335.

16 **SECTION 4. Transfer of development opportunity.** (1) As used in this section:

17 (a) "Development opportunity" means the unused active right to apply to a county for
18 approval of the establishment of a small-scale recreation community under section 3 (2),
19 chapter 636, Oregon Laws 2009.

20 (b) "Holder of a development opportunity" or "holder" means either the owner of a de-
21 velopment opportunity or the person granted the exclusive right to use a development op-
22 portunity conveyed by written contract from the holder of a development opportunity.

23 (2) The holder of a development opportunity may convey the development opportunity to
24 another person only by a written contract. If the holder of a development opportunity applies
25 to a county for the approval of the establishment of a small-scale recreation community
26 under sections 2 to 5, chapter 636, Oregon Laws 2009, on or before June 29, 2020, the devel-
27 opment opportunity is void and the holder may not act under this section.

28 (3) The Department of Land Conservation and Development may not approve an urban
29 growth boundary amendment or Stevens Road planning amendments under sections 6 to 9
30 of this 2020 Act unless:

31 (a) On or before June 29, 2020, a holder of a development opportunity has submitted a
32 letter to the owner of the Stevens Road tract and to the city expressing the holder's non-
33 binding interest in selling or conveying the development opportunity to the owner of the
34 Stevens Road tract;

35 (b) On or before July 31, 2020, the owner of the Stevens Road tract has submitted a letter
36 to a holder of a development opportunity under paragraph (a) of this subsection and to the
37 city expressing the owner's nonbinding interest in purchasing or acquiring the development
38 opportunity; and

39 (c) At the time of the department's approval, the owner of the Stevens Road tract is the
40 holder of a development opportunity.

41 **SECTION 5. Conceptual plan approval.** (1) As used in this section, "conceptual plan"
42 means an ordinance or resolution adopted by the city's council that:

43 (a) Explains in general terms the expected Stevens Road planning amendments, including
44 intended uses and zoning of the Stevens Road tract; and

45 (b) Explains the factual basis and reasons for the expected Stevens Road planning

1 amendments.

2 (2) At least 14 days before each opportunity for public participation under subsection (3)
3 of this section, the city must provide published notice of the opportunity.

4 (3) Before consideration of a conceptual plan, the city must provide opportunities for
5 public participation, including at least:

6 (a) A public open house;

7 (b) A meeting of the city's planning commission where public testimony is considered;

8 (c) A meeting of the city's council where public testimony is considered; and

9 (d) A public comment period.

10 (4) Before consideration of a conceptual plan, the city must consult with, and provide the
11 opportunity for written comment from, the owner of the Stevens Road Tract and the De-
12 partment of Land Conservation and Development.

13 (5) The city may not submit an approved conceptual plan to the department after March
14 31, 2021.

15 (6) The department may approve the conceptual plan, if:

16 (a) The city has received the letters described in section 4 (3)(a) and (b) of this 2020 Act;
17 and

18 (b) In the department's discretion, considering the conceptual plan along with any sup-
19 porting documentation and relevant public comment, the proposed development of the
20 Stevens Road tract would be capable of meeting the requirements of sections 7 to 9 of this
21 2020 Act.

22 (7) The department may not approve an urban growth boundary expansion or Stevens
23 Road planning amendments under sections 6 to 9 of this 2020 Act unless the department has
24 approved the city's conceptual plan under this section.

25 (8) No later than 90 days after receiving a conceptual plan, the department shall approve
26 or remand the conceptual plan by written notice delivered to the city.

27 (9) No later than 120 days after receiving a notice of remand, the city may approve and
28 submit an amended conceptual plan to the department for review under this section.

29 **SECTION 6. Stevens Road urban growth boundary expansion.** (1) Notwithstanding ORS
30 197.286 to 197.314, 197.626 or 197A.320 or any statewide land use planning goal related to
31 housing or urbanization, the Department of Land Conservation and Development shall ap-
32 prove an expansion of the urban growth boundary submitted by the city and approved by the
33 city by ordinance, if the department determines that:

34 (a) The owner of the Stevens Road tract is the holder of the development opportunity
35 under section 4 (3)(c) of this 2020 Act;

36 (b) The department has approved the city's conceptual plan under section 5 of this 2020
37 Act; and

38 (c) The proposed urban growth boundary expansion adds all of the Stevens Road tract
39 and no other lands to the area within the city's urban growth boundary.

40 (2) Lands that are added within the city's urban growth boundary under this section may
41 not be included within an adopted inventory of buildable lands under ORS 197.296 (3)(a) before
42 the earlier of:

43 (a) January 1, 2026; or

44 (b) The date that the lands are no longer owned or managed by the Department of State
45 Lands.

1 **SECTION 7. Department approval of Stevens Road proposed planning amendments.** (1)
2 Notwithstanding ORS 197.612, the Department of Land Conservation and Development shall
3 approve Stevens Road planning amendments submitted by the city if:

4 (a) The owner of the Stevens Road tract is the holder of a development opportunity under
5 section 4 (3)(c) of this 2020 Act;

6 (b) The department has approved the city's conceptual plan under section 5 of this 2020
7 Act;

8 (c) The department has approved an expansion of the city's urban growth boundary under
9 section 6 of this 2020 Act;

10 (d) The proposed Stevens Road planning amendments were approved by the city through
11 an ordinance adopted and submitted to the department under section 8 of this 2020 Act;

12 (e) The proposed Stevens Road planning amendments comply with the requirements and
13 standards in section 9 of this 2020 Act; and

14 (f) The Stevens Road planning amendments are submitted on or before January 1, 2026.

15 (2) The Stevens Road planning amendments submitted under sections 7 to 9 of this 2020
16 Act are not operable until approved by the department.

17 (3) The department may consider public comments and testimony before considering ap-
18 proval of the Stevens Road planning amendments.

19 (4) The department shall approve, remand or remand in part the Stevens Road planning
20 amendments within 180 days. Notwithstanding subsection (1)(f) of this section, within 180
21 days of a remand, the city may resubmit Stevens Road planning amendments for approval
22 under sections 7 to 9 of this 2020 Act.

23 **SECTION 8. City procedural requirements to approve Stevens Road planning amend-**
24 **ments.** (1) Stevens Road planning amendments may be approved only by an ordinance
25 adopted by the city's council under this section.

26 (2) At least 20 days before each opportunity for public participation under subsection (3)
27 of this section, the city must provide broad public notice of the opportunity, including notice
28 through the city's newsletter, online social media, website and electronic mail lists and any
29 other commonly used form of public notice used by the city for land use matters.

30 (3) Before consideration of an ordinance under this section, the city must provide op-
31 portunities for public participation, including at least:

32 (a) A public open house;

33 (b) A meeting of the city's planning commission where public testimony is considered;

34 (c) A meeting of the city's council where public testimony is considered;

35 (d) A public comment period; and

36 (e) Any other opportunity for public participation required by city ordinance or regu-
37 lation before adoption of amendments to a comprehensive plan or enacting land use regu-
38 lations.

39 (4) At least seven days before consideration of an ordinance under this section, the city's
40 council must receive written recommendations from the city's planning commission on the
41 Stevens Road planning amendments.

42 (5) Before consideration of an ordinance under this section, the city must consult with,
43 and provide opportunity for written comment from:

44 (a) Any owner of the Stevens Road tract;

45 (b) The Department of Land Conservation and Development;

1 (c) Deschutes County;

2 (d) The Bend Park and Recreation District; and

3 (e) Other local government or special districts with jurisdiction over the Stevens Road
4 tract or whose service is likely to be impacted by development of the Stevens Road tract.

5 (6) Within 10 days after adoption of an ordinance under this section, the city shall submit
6 a copy of the ordinance and any supporting information to the department.

7 **SECTION 9. Standards in lieu of goals.** (1) Notwithstanding ORS 197.250 or 197.612 or any
8 statewide land use planning goal, the Department of Land Conservation and Development
9 shall approve Stevens Road planning amendments if the department determines, in its dis-
10 cretion, that the Stevens Road planning amendments, with respect to the Stevens Road
11 tract, include:

12 (a) An inventory of significant historical artifacts, cultural sites and natural resources;

13 (b) Areas designated for recreational and open space;

14 (c) Land use regulations for the protection and preservation of any significant resources
15 and designated areas identified in paragraphs (a) and (b) of this subsection;

16 (d) Land use regulations that comply with applicable wildfire planning and development
17 requirements, including requirements in regulations adopted to implement a statewide plan-
18 ning goal relating to natural disasters and hazards;

19 (e) Areas designated for adequate employment lands that account for the city's most
20 recent economic opportunity analysis, including consideration of any subsequent economic
21 development activities and trends;

22 (f) Within areas zoned for residential purposes, land use regulations that:

23 (A) Ensure adequate opportunities for the development of all needed housing types, sizes
24 and densities, including middle housing as defined in ORS 197.758;

25 (B) Exceed the single-family attached and multifamily housing called for in the city's
26 most recently adopted housing needs analysis under ORS 197.296 (3);

27 (C) Exceed a minimum density standard of six residential units per net residential acre;
28 and

29 (D) Comply with ORS 93.277, 94.776, 197.290, 197.291, 197.293, 197.779, the amendments to
30 ORS 197.296, 197.303, 197.312 and 456.586 by sections 5 to 8, chapter 639, Oregon Laws 2019,
31 and the amendments to ORS 197.296, 197.303, 197.319, 197.320, 227.175, 227.500 and 456.586 by
32 sections 8a, 10a, 11 to 13, 18 and 20, chapter 640, Oregon Laws 2019, and rules and the city's
33 land use regulations and comprehensive plan amendments that are operative on the date the
34 Stevens Road planning amendments are approved and that implement those laws;

35 (g) Sufficient areas designated for mixed use development to support and integrate viable
36 commercial and residential uses along with transportation options, including walking, bicy-
37 cing and transit use;

38 (h) Land use regulations ensuring that:

39 (A) Adequate capacity is available, or feasible with development, for water, sewer and
40 storm water services; and

41 (B) Adequate consideration has been given to the financing, scheduling and development
42 of urban services, as defined in ORS 195.065;

43 (i) With respect to transportation, land use regulations that:

44 (A) Ensure the development of adequate infrastructure to support walking, bicycling,
45 public transit and motor vehicle movement; and

1 (B) Give adequate consideration to transportation networks that connect the Stevens
2 Road tract to other areas within the urban growth boundary of the city;

3 (j) The designation of between 12.4 and 12.6 acres that, on or before January 1, 2029, are
4 restricted so that the area may be zoned, planned, sited or developed only for residential
5 housing units that, notwithstanding ORS 91.225 and 197.309, will be preserved for a period of
6 no less than 50 years as affordable to own or rent by:

7 (A) Low income households as defined in ORS 456.270 on at least 80 percent of the area;
8 and

9 (B) Moderate income households as defined in ORS 456.270 on no more than 20 percent
10 of the area; and

11 (k) The adequate consideration of the comments received under section 8 (3) to (5) of this
12 2020 Act.

13 (2) Neither the city nor the department is obligated to adopt any specific findings or
14 evaluate any specific criteria in exercising its discretion with respect to any Stevens Road
15 planning amendments under this section and may receive, solicit or consider information
16 from any source.

17 SECTION 10. Repeal of small-scale recreation community authorization. (1) Section 2,
18 chapter 636, Oregon Laws 2009, is repealed on July 1, 2020.

19 (2) Section 3, chapter 636, Oregon Laws 2009, as amended by section 1, chapter 888,
20 Oregon Laws 2009, section 1, chapter 404, Oregon Laws 2011, section 1, chapter 748, Oregon
21 Laws 2015, section 1, chapter 494, Oregon Laws 2017, and section 8, chapter 15, Oregon Laws
22 2018, is repealed on July 1, 2020.

23 (3) Section 4, chapter 636, Oregon Laws 2009, as amended by section 2, chapter 888,
24 Oregon Laws 2009, is repealed on July 1, 2020.

25 (4) Section 5, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 888,
26 Oregon Laws 2009, and section 9, chapter 15, Oregon Laws 2018, is repealed on July 1, 2020.

27 SECTION 11. Sunset. Sections 2 to 9 of this 2020 Act are repealed on January 2, 2030.

28 SECTION 12. Section captions. The section captions used in this 2020 Act are provided
29 only for the convenience of the reader and do not become part of the statutory law of this
30 state or express any legislative intent in the enactment of this 2020 Act.

31 SECTION 13. Emergency clause. This 2020 Act being necessary for the immediate pres-
32 ervation of the public peace, health and safety, an emergency is declared to exist, and this
33 2020 Act takes effect on its passage.
34