

Enrolled House Bill 3318

Sponsored by Representatives KROPF, POST, ZIKA, Senator KNOPP; Representative CLEM

CHAPTER

AN ACT

Relating to use of land; creating new provisions; amending ORS 455.315; and prescribing an effective date.

Whereas the Stevens Road tract is Common School Fund land and its sale will generate revenue to directly support Oregon’s students; and

Whereas the Stevens Road tract is not zoned for farm or forest uses; and

Whereas the Stevens Road tract has poor quality soils and has no associated water rights; and

Whereas as the Stevens Road tract is directly adjacent to an existing urban growth boundary of the City of Bend; and

Whereas the City of Bend in particular is experiencing an acute housing crisis and a need for affordable and workforce housing; and

Whereas the City of Bend in particular has an acute shortage of large parcels available for subsidized affordable housing; and

Whereas the Stevens Road tract is Common School Fund land and its sale will generate revenue to directly support kindergarten through grade 12 students in this state; and

Whereas kindergarten through grade 12 students will directly benefit from the development of housing on the Stevens Road tract for employees of education providers; and

Whereas sections 2 to 9 of this 2021 Act are intended to result in a dense, master-planned development focused primarily on providing affordable and workforce housing in a complete community context; now, therefore,

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

SECTION 1. Sections 2 to 9 of this 2021 Act are added to and made a part of ORS chapter 197.

SECTION 2. Definitions. As used in sections 2 to 9 of this 2021 Act:

(1) “City” means the City of Bend.

(2) “Council” has the meaning given that term in ORS 227.010.

(3) “Planning commission” means a planning commission described in ORS 227.090.

(4) “Stevens Road planning amendments” means amendments to the city’s comprehensive plans, land use regulations or zoning maps that affect the development of the Stevens Road tract.

(5) “Stevens Road tract” means land that:

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

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

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

SECTION 3. Stevens Road planning generally. (1) Actions taken under sections 2 to 9 of this 2021 Act:

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

(b) If taken by the city, are not subject to any review except by the Department of Land Conservation and Development under sections 2 to 9 of this 2021 Act.

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

(d) If taken under an exercise of discretion authorized under sections 2 to 9 of this 2021 Act, are a final action, are entitled to deference and are not subject to an evidentiary review on appeal notwithstanding ORS 34.040 (1)(c), 183.482 (8)(c) or 183.484 (5)(c).

(2) If the department approves Stevens Road planning amendments under sections 7 to 9 of this 2021 Act:

(a) Any subsequent land use decision within the Stevens Road tract is a land use decision subject to the ordinary procedures and requirements of ORS chapters 197 and 227, statewide land use planning goals, rules adopted by the Land Conservation and Development Commission or the department, the city's comprehensive plan and land use regulations and the requirements set forth in section 9 (1) of this 2021 Act.

(b) Violations of sections 2 to 9 of this 2021 Act may be the basis for the initiation of enforcement action under ORS 197.319 to 197.335.

SECTION 4. Confirmation of intent. The Department of Land Conservation and Development may not approve an urban growth boundary amendment or Stevens Road planning amendments under sections 6 to 9 of this 2021 Act unless, on or before December 31, 2022:

(1) The city has submitted a letter to the department expressing the city's nonbinding intent to consider a conceptual plan under section 5 of this 2021 Act; and

(2) The owner of the Stevens Road tract has:

(a) Submitted a letter to the department giving its consent to the city's pursuit of the urban growth boundary expansion and planning amendments under sections 6 to 9 of this 2021 Act; and

(b) Established an agreement with the city that:

(A) Is binding on the successors of the owners;

(B) Is contingent upon the final approval of the planning amendments; and

(C) Establishes the essential terms, including the price per acre, but not requiring that specific lands be designated, for the department's conveyances to the city of real property consistent with section 9 (2) and (3) of this 2021 Act.

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

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

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

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

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

(a) A public open house;

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

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

(d) A public comment period.

(4) Before consideration of a conceptual plan, the city must consult with, and provide the opportunity for written comment from, the owner of the Stevens Road tract and the Department of Land Conservation and Development.

(5) The city may not submit an approved conceptual plan to the department after July 1, 2022.

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

(a) The department has received the letters described in section 4 of this 2021 Act; and

(b) In the department's discretion, considering the conceptual plan along with any supporting documentation and relevant public comment, the proposed development of the Stevens Road tract would be capable of meeting the requirements of sections 7 to 9 of this 2021 Act.

(7) The department may not approve an urban growth boundary expansion or Stevens Road planning amendments under sections 6 to 9 of this 2021 Act unless the department has approved the city's conceptual plan under this section.

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

(9) No later than 90 days after receiving a notice of remand, the city may approve and submit an amended conceptual plan to the department for review under this section.

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

(a) The department has received the letters required by section 4 of this 2021 Act;

(b) The department has approved the city's conceptual plan under section 5 of this 2021 Act; and

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

(2) The city shall include the lands brought within the city's urban growth boundary under this section in the city's inventory of buildable lands under ORS 197.296 (3)(a).

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

(a) The department has received the letters required by section 4 of this 2021 Act;

(b) The department has approved the city's conceptual plan under section 5 of this 2021 Act;

(c) The department has approved an expansion of the city's urban growth boundary under section 6 of this 2021 Act;

(d) The proposed Stevens Road planning amendments were approved by the city through an ordinance adopted and submitted to the department under section 8 of this 2021 Act;

(e) The proposed Stevens Road planning amendments comply with the requirements and standards in section 9 of this 2021 Act; and

(f) The Stevens Road planning amendments are submitted on or before January 1, 2025.

(2) The Stevens Road planning amendments submitted under sections 7 to 9 of this 2021 Act are not operable until they are approved by the department.

(3) The department may consider public comments and testimony before considering approval of the Stevens Road planning amendments.

(4) The department shall approve, remand or remand in part the Stevens Road planning amendments within 180 days. Notwithstanding subsection (1)(f) of this section, within 180 days of a remand, the city may resubmit Stevens Road planning amendments for approval under sections 7 to 9 of this 2021 Act.

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

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

(3) Before consideration of an ordinance under this section, the city must provide opportunities for public participation, including at least:

- (a) A public open house;
- (b) A meeting of the city's planning commission where public testimony is considered;
- (c) A meeting of the city's council where public testimony is considered;
- (d) A public comment period; and
- (e) Any other opportunity for public participation required by city ordinance or regulation before adoption of amendments to a comprehensive plan or enactment of land use regulations.

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

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

- (a) Any owner of the Stevens Road tract;
- (b) The Department of Land Conservation and Development;
- (c) Deschutes County;
- (d) The Bend Park and Recreation District; and
- (e) Any other local government or special district with jurisdiction over the Stevens Road tract or whose service is likely to be impacted by development of the Stevens Road tract.

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

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

- (a) An inventory of significant historical artifacts, cultural sites and natural resources.
- (b) Areas designated for recreational and open space.
- (c) Land use regulations for the protection and preservation of significant resources and designated areas identified in paragraphs (a) and (b) of this subsection.

(d) Land use regulations that comply with applicable wildfire planning and development requirements, including requirements in regulations adopted to implement a statewide planning goal relating to natural disasters and hazards.

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

(f) Within areas zoned for residential purposes, without counting the lands designated under subsection (2) of this section, land use regulations for housing that:

- (A) Ensure adequate opportunities for the development of all needed housing types, sizes and densities of market-rate housing, including middle housing as defined in ORS 197.758;
- (B) Exceed the proportions of single-family attached and multifamily housing called for in the city's most recently adopted housing needs analysis under ORS 197.296 (3);
- (C) Exceed a minimum density standard of nine residential units per gross residential acre; and

(D) On the date the Stevens Road planning amendments are approved, comply with land use regulations adopted by the city, or any minimum applicable rules adopted by the department, to implement ORS 197.758 and the amendments to ORS 197.312 by section 7, chapter 639, Oregon Laws 2019.

(g) Sufficient areas designated for mixed use development to support and integrate viable commercial and residential uses along with transportation options, including walking, bicycling and transit use.

(h) Land use regulations ensuring that:

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

(B) Adequate consideration is given to the financing, scheduling and development of urban services, as defined in ORS 195.065.

(i) Land use regulations for transportation that:

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

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

(j) The adequate consideration of the recommendations and comments received under section 8 (3) to (5) of this 2021 Act.

(2) The department may not approve the planning amendments under subsection (1) of this section unless the planning amendments designate at least 20 net acres of land to be:

(a) Restricted so the area may be zoned, planned, sited or developed only for residential housing units at a minimum density of nine residential units per gross acre;

(b) Conveyed to the city at a price per acre established under section 4 (2)(b) of this 2021 Act; and

(c) Notwithstanding ORS 91.225 or 197.309, preserved for a period of no less than 50 years as affordable to own or rent as follows:

(A) At least 12 net acres made affordable to:

(i) Households with incomes of 60 percent or less of the area median income, as defined in ORS 456.270; or

(ii) If part of an income-averaging program approved by the Housing and Community Services Department, households whose incomes average 60 percent or less of the area median income.

(B) At least six net acres:

(i) Made affordable to households with incomes of 80 percent or less of the area median income; and

(ii) Made available, to the extent permitted by law, in a manner that gives a priority to households in which at least one individual is employed by an education provider over other members of the public.

(C) At least two net acres in which at least 80 percent of the units in each contiguous development tract are made affordable to households with 80 percent or less of the area median income, of which at least one net acre is made available, to the extent permitted by law, in a manner that gives a priority to households in which at least one individual is employed by an education provider over other members of the public.

(3) Upon a partition or subdivision of the Stevens Road tract following the approval of the planning amendments under subsection (1) of this section establishing one or more lots or parcels described in subsection (2) of this section, the owner shall transfer those lots or parcels to the city. For a period of 99 years after the purchase of property under this section, if the city resells any lot or parcel, the city may recover only the city's costs of the purchase and resale of the property.

(4) Neither the city nor the Department of Land Conservation and Development is obligated to adopt any specific findings or evaluate any specific criteria in exercising its dis-

cretion with respect to any Stevens Road planning amendments under this section and may receive, solicit or consider information from any source.

(5) As used in this section, “education provider” means a school district as defined in ORS 332.002, an educational program under the Youth Corrections Education Program or Juvenile Detention Education Program as both are defined in ORS 326.695, or an education service district as defined in ORS 334.003.

SECTION 10. Sunset. Sections 2 to 9 of this 2021 Act are repealed on January 2, 2030.

SECTION 11. ORS 455.315 is amended to read:

455.315. (1) The provisions of this chapter do not authorize the application of a state structural specialty code to any agricultural building, agricultural grading [or], equine facility **or dog training facility**.

(2) As used in this section:

(a)(A) “Agricultural building” means a structure located on a farm or forest operation and used for:

[(A)] (i) Storage, maintenance or repair of farm or forestry machinery and equipment;

[(B)] (ii) The raising, harvesting and selling of crops or forest products;

[(C)] (iii) The feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees;

[(D)] (iv) Dairying and the sale of dairy products; or

[(E)] (v) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of forest products and the disposal, by marketing or otherwise, of farm produce or forest products.

[(b)] (B) “Agricultural building” does not mean:

[(A)] (i) A dwelling;

[(B)] (ii) A structure used for a purpose other than growing plants in which 10 or more persons are present at any one time;

[(C)] (iii) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476;

[(D)] (iv) A structure used by the public; or

[(E)] (v) A structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.

[(c)] (b) “Agricultural grading” means grading related to a farming practice as defined in ORS 30.930.

(c) “Dog training facility” means a farm building used for dog training classes or testing trials permitted under ORS 215.213 (1)(z) or 215.283 (1)(x) in which no more than 10 persons are present at any one time.

(d)(A) “Equine facility” means a building located on a farm and used by the farm owner or the public for:

[(A)] (i) Stabling or training equines; or

[(B)] (ii) Riding lessons and training clinics.

[(e)] (B) “Equine facility” does not mean:

[(A)] (i) A dwelling;

[(B)] (ii) A structure in which more than 10 persons are present at any one time;

[(C)] (iii) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476; or

[(D)] (iv) A structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.

(3) Notwithstanding the provisions of subsection (1) of this section, incorporated cities may regulate agricultural buildings, [and] equine facilities **and dog training facilities** within their boundaries pursuant to this chapter.

SECTION 12. Section captions. The section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

SECTION 13. Effective date. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 21, 2021

Received by Governor:

Repassed by House June 26, 2021

.....M,....., 2021

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 25, 2021

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Shemia Fagan, Secretary of State