



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor Fax: (503) 378-5318

<http://www.oregon.gov/LCD>

January 2, 2009



TO: Land Conservation and Development Commission
FROM: Richard Whitman, Director
SUBJECT: Agenda Item 7, January 15-16, 2009, LCDC Meeting

DIRECTOR'S REPORT

I. INFORMATION UPDATES

A. RECENT LUBA AND APPELLATE COURT CASES

ORS 197.090(2) requires the director to report to the Commission on each case that the department participates in, and on the position taken in each case.

ORS 197.040(1)(c)(C) requires the Commission to review recent Land Use Board of Appeals (LUBA) and appellate court decisions, and determine whether goal or rule amendments are necessary as a result of those decisions.

1. Department Participation in Appeals

Between November 14, 2008 and December 31, 2008, the department received notice of 14 appeals filed with LUBA. The department filed no appeals with LUBA or with an appellate court during this period.

2. LUBA Opinions

During November and December 2008, LUBA issued 23 opinions. Of these, LUBA dismissed 9, remanded 5, reversed 2, affirmed 4, and transferred 2 petitions to circuit court.

Several of these decisions concern the application or interpretation of a statewide planning statute, goal or LCDC administrative rule:

- **ORS 215, Goal 3 and OAR 660-033:** *Friends of Umatilla County v. Umatilla County*, LUBA No. 2008-096, filed December 9, 2008. LUBA affirmed county's legislative decision incorporating changes to ORS 215, Goal 3 and Division 33 into the county's

code. Goal 3 and ORS 215.243 and 215.700 do not require county to adopt findings explaining why it chose to incorporate legislative and LCDC standards into its code.

- **Goal 14:** *Hildenbrand v. City of Adair Village*, LUBA No. 2008-125, filed December 17, 2008. City's adoption of an amendment to its comprehensive plan, establishing an average net residential density for UGB expansion areas. Goal 14 argument not sufficiently developed to allow review.
- **Measure 37/49:** *Friends of Yamhill County v. Yamhill County (Kroo)*, LUBA No 2008-129, filed December 15, 2008. County cannot approve a subdivision plan based on a Measure 37 waiver, absent a positive vested rights determination. Note: this is the companion case to the Kroo/Yamhill County appeal that the department brought on the same grounds. The department dismissed its appeal.
- **ORS 215.247 (land application of wastewater):** *Flake v. Clackamas County*, LUBA No. 2006-030 and 2008-134, filed November 17, 2008. ORS 215.247, which makes transport and application of biosolids an allowed use, and which classifies any permit to allow that use as something other than a land use decision, applies to forest lands as well as lands zoned EFU. **This decision may require an amendment to OAR 660-006 to conform to the provisions in OAR 660-033.**
- **OAR 660-033-0130(4):** *Inglis v. Harney County*, LUBA No. 2008-122, filed November 5, 2008. LUBA remanded county approval of non-farm dwelling on vacant 10-acre parcel zoned EFRU-2).
- **Minimum density standards:** *Reinert v. Clackamas County*, LUBA No. 2008-086, filed November 19, 2008. Local code provision that requires a particular number of residential lots or parcels does not necessarily require that the local government ensure that the lots or parcels are actually developed.
- **ORS 215.275 and ORS 215.283(1((D)):** *Follansbee v. Deschutes County*, LUBA No. 2008-019, filed November 26, 2008. LCDC rule, OAR 660-033-0130(16)(b) prevents the county from considering land costs in determining whether a non-EFU site is a reasonable alternative for locating a utility facility on EFU land. Applicant's business objective to lease land, rather than purchase it, also could not be used as a basis for excluding an alternative site on non-EFU land.
- **OAR 660-033-0130(2):** *Young v. Jackson County*, LUBA No. 2008-076, filed December 23, 2008. "Equal terms" provision of the federal Religious Land Use and Institutionalized Persons Act, which prohibits land use regulations that treat religious assemblies or institutions on less than equal terms with non-religious assemblies or institutions, violated by county's application of the 3-mile rule at OAR 660-033-0130(3) (prohibiting churches, but not other uses involving assembly, within 3 miles of an urban growth boundary).

The *Flake* decision may require a rule amendment, as noted above. The *Young* decision likely will require a rule amendment, unless modified on appeal.

3. Appellate Court Opinions

Between November 14 and December 21, 2008, the Court of Appeals issued two opinions involving land use decisions.

- **ORS 197.296, Goal 10 and OAR 660-008-0010:** *GMK Developments v. City of Madras*. Court holds that a city's adoption of a report concluding that it has a need for additional land for housing and commercial uses over both a 20 and 50-year time horizon does not compel the city to amend its urban growth boundary simultaneously with the adoption of the report into its comprehensive plan. The city would be so compelled, under ORS 197.296, if its population exceeded 25,000 (and ORS 197.296 applied).
- **ORS 215.422(1)(c); Goal 1:** *Young v. Crook County*. Petitioner failed to establish that county's local appeal fee (\$2,030) violated 215.422(1)(c) (the amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal). Petitioner failed to submit evidence to support his argument. Burden is on person challenging the fee ordinance to produce evidence to support a claim that a local fee violates the statute.

4. LUBA Appeal Notices of Interest

- *Hildenbrand, et al v. Benton County*, LUBA No. 2008-202, NITA filed November 12, 2008: Approval, following LUBA remand, of 127.5-acre expansion of **Adair Village UGB** for residential development on EFU land.
- *Gould v. Deschutes County*, LUBA No. 2008-203, NITA filed November 12, 2008: Approval of final master plan for 1,970-acre **destination resort** on land zoned EFU-TRB near Cline Buttes west of Redmond and close to the Eagle Crest destination resort.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

The department continues to receive inquiries and applications for technical assistance grant projects during the 2007-2009 biennium, although funds are essentially committed or expended at this time.

Periodic review projects are the highest priority for any remaining grant funds. DLCD regional representatives and planning specialists are working directly with jurisdictions to help fund and complete periodic review plan evaluations and work tasks within the 2007-2009 biennium.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

Cities currently in periodic review continue to complete plan evaluations and work programs. Regional representatives and planning specialists are working closely with cities to complete plan evaluations and develop successful work programs.

In December, the department reviewed and approved final work task submittals from the City of Gold Beach, thereby successfully completing that city's periodic review.

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. COASTAL MANAGEMENT PROGRAM

A proposal from the department to the NOAA Coastal Services Center for a Coastal Fellow during 2009-2011, has been selected to advance to the next round in April where selected state programs will interview and be interviewed by potential Fellows to determine if there is a good fit. If all goes well, the department will welcome the new Fellow in September 2009 for a two-year stay. The Fellow will conduct a GIS analysis of the location, condition, and ownership of dikes and other structures in estuaries that will be impacted over time by increased tidal elevations caused by sea level rise. The GIS analysis will use LiDAR, aerial photos, county assessor maps and other data about Oregon estuaries and shorelands. Bob Bailey, Jeff Weber, and Tanya Haddad developed the Fellowship proposal. Current Fellow Andy Lanier will continue through August 2009.

Two projects submitted by the department to NOAA on behalf of other entities for funding under the federal CELCP (Coastal and Estuarine Lands Conservation Program) have made the list of projects to be funded pending resolution of the federal FY09 NOAA budget. Projects are: a) Big Creek (Lane County), \$2 million for acquisition of Silverspot butterfly habitat adjacent to the Big Creek Wilderness by Oregon Parks and Recreation Department from The Nature Conservancy and b) Beaver Creek (Lincoln County) \$3 million for Phase 2 acquisition of wetlands upstream from Ona Beach Wayside between Newport and Waldport.

Out of 46 projects submitted nationwide, the Big Creek ranked #8 and Beaver Creek Phase 2 ranked #23. Funding will go directly to the acquiring agencies; the department is the lead agency for project applications under a coastwide CELCP plan. Jeff Weber is staff lead.

The department has received approval from NOAA to re-direct unobligated federal funds from FY06 and FY07 and to re-program funds from the current FY08 grant to support a project to map ocean fisheries in Oregon's Territorial Sea. Maps will be generated from fishermen interviews and will inform the department's planning effort on ocean wave energy development in 2009. Mapping is expected to be complete by mid-summer. The department is working closely with the OCZMA (Oregon Coastal Zone Management Association), several local fishermen groups, members of the Ocean Policy Advisory Council, Oregon Wave Energy Trust, and Ecotrust to develop the work program and necessary contracts. Paul Klarin is staff lead.

B. MEASURE 49 DEVELOPMENT SERVICES

As of December 31, 2008, one hundred and eighty-six final orders had been issued and a total of 500 preliminary evaluations had been sent. The division is building toward issuing at least 200 Measure 49 final orders per month. In conjunction with the Department of Justice, we are continuing to examine ways to speed the processing of Measure 49 orders. The department plans to submit proposed rule amendments at the March LCDC meeting in order to speed the processing of certain types of claims and to update counties' requirements to provide notice of Measure 49 application and decisions to DLCD. The current administrative rules only require

counties to provide notice of decisions under Measure 37 (not 49). A rulemaking notice will be filed in mid-January, and draft rules will be available no later than the beginning of February.

On November 12, 2008, the federal district court issued an opinion in *Citizens for Constitutional Fairness v. Jackson County*. In the decision, Judge Panner held that Jackson County must honor its Measure 37 waivers for the approximately 20 Measure 37 claimants who brought the lawsuit because those waivers are constitutionally-protected contracts between the county and the plaintiffs. The court equated the county's Measure 37 waivers to settlement agreements. The court also held that Jackson County's waivers are quasi-judicial decisions that cannot be altered by the Oregon voters or by the legislature. At the same time, the court expressly declined to hold that Measure 49 is unconstitutional, and noted that the claimants still must comply with applicable zoning regulations (which the court failed to note include applicable state laws that prohibit the plaintiffs' desired uses of their property). Jackson County has appealed this decision to the 9th Circuit Court of Appeals. The state is reviewing the case and the county's appeal. In the meantime, a number of other cases in state courts are proceeding that raise the same or related issues.

C. TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM

The TGM program received 134 grant pre-applications for the 2009-2011 biennium by the December 15 deadline. The TGM program budget includes \$4.5 million for grants each biennium to help local governments update and refine transportation plans and conduct related land use planning to help communities give Oregonians more transportation choices through improved pedestrian, bicycle, transit, and multi-modal street facilities. While TGM grants are directed primarily to cities and counties, special districts – such as transit and school districts – are also eligible as part of a joint project with a local government.

Grant pre-applications include requests for the following types of projects:

- Transportation system plan updates (27)
- Transportation refinement plans for specific areas or corridors (14)
- Bicycle and/or pedestrian plan updates (12)
- Planning for safe routes to school (9)
- Interchange area management plans or access management plans (2)
- Transportation demand management plans (2)
- Detailed planning for a downtown, Main Street, or town center (19)
- Plan for a transit station area, transit oriented development or transit (10)
- Neighborhood plans (7)
- Scenario planning for climate change / VMT reduction (1)

The number of pre-applications received represents a significant increase in local interest in the TGM program. Last biennium we received approximately 100 pre-applications.

During January, TGM staff (from ODOT and DLCD) will work with local governments to help develop projects for the formal grant application process. The TGM grant application packet

will be distributed in January, applications are due in March, and grant awards scheduled for May. Grant awards are contingent upon legislative approval of the DLCD and ODOT budgets.

For the 2009-2011 biennium, grant award criteria have been revised to emphasize and encourage projects that address state goals to address climate change by planning to reduce greenhouse gas emissions.

D. METOLIUS RIVER BASIN AREA OF CRITICAL CONCERN

The department and the Commission have received a letter from Governor Kulongoski (attached to this report) requesting that the Commission designate the Metolius River basin as an Area of Critical Concern, and that the department work with Jefferson County and Deschutes County to develop a management plan for private lands within the basin. The management plan would not allow destination resorts in the basin, but may include provisions allowing small-scale development and that provide for the transfer of development rights out of the basin to nearby areas. The Governor requests that this effort be completed by mid-March of 2009, so that the designation and management plan may be considered by the 2009 Oregon Legislature under the Area of Critical Concern statutes (which provide for LCDC to propose, and the legislature to approve or disapprove, such designations).

The department has initiated meetings with concerned local governments, the Warm Springs Tribe, other interested entities, and with key property owners in the basin, and expects to make a verbal status report to the Commission at the January meeting. Part of that report will be a discussion of what process to use to ensure broad public input into this effort. The Area of Critical Concern designation process is a special land use management tool that has been in place since the inception of the state land use program. While this tool was looked at to address several area-specific land use problems early in the program, this is the first time in recent years that it has been used. Given the short amount of time available, it is expected that this effort will focus narrowly only on issues related to resort development in and near the basin.

E. BIG LOOK TASK FORCE

The Task Force has completed its report to the 2009 Legislature (the report will be a hand-carry to the Commission meeting). Staff and consultants are also working on a set of proposed amendments to the Task Force's legislative proposal, which the Task Force will review and refine at its meeting on January 16th, immediately following the Commission meeting.

F. BEND URBAN GROWTH BOUNDARY AMENDMENT

The department has been working closely with the City of Bend on its proposed expansion of its urban growth boundary. The city's decision, and the corresponding decision by Deschutes

County, are expected to be final in January of 2009. The city's proposal has raised some significant concerns at the staff level in the department. However, substantial progress has been made in addressing some of these issues.

III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF AND PROMOTIONS

No new hires have been made since the last report.

B. DEPARTING EMPLOYEES

Frank Lackey (Measure 49 Development Services) accepted an opportunity at the Public Utility Commission (PUC). A replacement for Frank is expected to be hired by later in January.

C. RECRUITMENTS

As noted above, the department is currently recruiting for the Operations Manager in the Measure 49 Development Services Division. This position provides supervision and directs the activities of clerical and administrative staff in the day-to-day operations of the division. The supplemental review of Measure 37 claims and issuance of final Measure 49 decisions to claimants depends heavily on the clerical and administrative production cycle, which includes data entry; report generation; information gathering from title companies, counties and claimants; neighbor notices; data sharing with other departments; and mailings. The limited-duration position is a Principle Executive Manager A. The recruitment closes January 5, 2009.

The department is currently holding some other positions vacant in the Measure 49 Development Services Division in order to meet current and potential budgetary restrictions resulting from the recent General Fund revenue situation.

D. DIRECTOR ACTIVITIES

Highlights of the director's activities during December of 2008 include:

- Participation in the Governor's Agency Advisors Committee
- Participation in the Natural Resources Cabinet
- Ongoing senior staff meetings with the Department of Transportation and the Oregon Economic and Community Development Department, to help improve coordination and communication between DLCD, ODOT and OECDD

- Informational Meeting with the House Agriculture and Natural Resources Committee on the Big Look Task Force (December 2)
- Big Look Task Force Meeting (December 9)
- Participation in Metro Reserves Steering Committee, preceded by a meeting with fellow state agency participants (December 10)
- Participation in SOLV Annual Luncheon (December 10)
- Participation in Liquid Natural Gas Coordination Group meeting (December 10)
- Speaking at and participation in the Oregon Business Plan Summit meeting (December 11)
- Speaking at a continuing legal education session presented by the Seminar Group. Provided an update on the Big Look and pending rulemaking activities by LCDC. (December 12)
- Participation in conference call with the City of Bend regarding UGB expansion (December 12)
- Participation in interviews of candidates for the Citizen Involvement Advisory Committee (December 15)
- Participation in League of Oregon Cities TPR meeting (December 16)
- Participation in Coastal/Ocean issues briefing (December 19)

IV. DLCD LEGISLATIVE CONCEPTS

Final versions of the agency's six legislative concepts were submitted to the Governor's office for filing with the legislature. These bills (listed below) will be filed with the Oregon House. Copies of the bills are attached to this report. For information, contact Bob Rindy at 503-373-0050 Ext 229 or email bob.rindy@state.or.us. Further information about these concepts will be published on the department's web site.

1. HB 2225: Pilot Program to Establish Sites Dedicated to Affordable Housing
2. HB 2226: Destination Resorts in the Metolius River Basin
3. HB 2227: Destination Resort Process Study and Reform
4. HB 2228: Pilot Project Regarding Forest Land Conversion and Transfer of Development Rights
5. HB 2229: Big Look Task Force Legislation
6. HB 2230: State Agency Coordination Program Update

V. LCDC POLICY AND RULEMAKING UPDATES

A. RULEMAKING

The Commission's Affordable Housing work group did not meet since the last director's report to the Commission at the December LCDC meeting. The work group is scheduled to meet at least two more times (January 9 and 26), and may schedule additional meetings. As discussed above, the department has submitted a legislative concept, HB 2225 (shared with the Department of Housing and Community Services), to establish a pilot project based on issues the Affordable Housing work group is discussing. The work group is continuing to discuss ideas to encourage

affordable housing. The department's website has information and materials regarding this rulemaking project, including a schedule of meetings, at the following link:

[http://www.oregon.gov/LCD/meetings.shtml#Affordable Housing Work Group](http://www.oregon.gov/LCD/meetings.shtml#Affordable_Housing_Work_Group)

LCDC's "Phase 2 UGB Work Group" met on December 10 to continue discussing "safe harbors" and other proposed administrative rules intended to clarify and streamline the UGB amendment process. The work group has met seven times, and forwarded a recommendation to LCDC, which was considered at the December 4 hearing in Tillamook. LCDC intends to resume its consideration of the work group's recommended administrative rules, and possibly adopt amendments to the UGB amendment rules in OAR 660, Division 24, at its March meeting. Meeting summaries and materials are on the department's website, along with other information, at the following link: http://www.lcd.state.or.us/LCD/ugb_rulemaking_project.shtml

B. OTHER POLICY ACTIVITIES

Metro Urban and Rural Reserves

The department is continuing to participate in Metro's process for designating Urban and Rural Reserves, and to coordinate with other state agencies in that effort. The Metro Reserves Steering Committee has met roughly seven times, and last met on December 10, 2008. Metro will brief the Commission on the progress of this effort at the January LCDC meeting (see item 9).

The department has begun hosting a regular meeting of all state agencies involved in the Metro reserves effort before each Steering Committee meeting.

VI. ATTACHMENTS

- A. LETTER FROM THE GOVERNOR REGARDING THE METOLIUS RIVER BASIN**
- B. LEGISLATIVE CONCEPTS**



THEODORE R. KULONGOSKI
Governor

December 19, 2008

Mr. Richard Whitman, Director
Oregon Department of Land Conservation & Development
635 Capitol ST NE, Suite 150
Salem, OR 97301

Mr. John Van Landingham, Commission Chair
Land Conservation & Development Commission
376 East 11th AV
Eugene, OR 97401

Dear Director Whitman and Commission Chair VanLandingham:

This year marks the twentieth anniversary of the Oregon Rivers Initiative, by which the people of Oregon designated the Metolius River as a state Scenic Waterway. In that same year, Congress approved the addition of the Metolius to the National Wild and Scenic River System. Under the federal legislation, the Metolius and adjacent lands are managed to provide a primitive recreational experience. Under the state legislation and implementing rules, the Metolius and surrounding lands are administered to allow compatible river-oriented public outdoor recreational opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its aesthetic, fish and wildlife, scientific and recreational values.

As you know, the 2007 Legislative Assembly considered (and the Oregon Senate passed) a bill to prohibit destination resort development within three miles of the Metolius Basin. The purpose of Senate Bill 30 was to " * * * protect * * * the basin's natural resources, wildlife habitat and historical, cultural and scenic values from urban and similar forms of development." Although I agreed that the Metolius is a special place – deserving special protection, I expressed some concerns with Senate Bill 30 in a letter to Representative Diane Rosenbaum dated June 22, 2007. In that letter, I also reported that I had asked state agencies to report to me concerning the adequacy of existing state laws to protect the resources of the Metolius.

After analyzing the potential effects of resort development in and near the Metolius basin, the state agencies reported that existing laws do not fully protect the important natural resources of the Metolius basin including water quantity, water quality, and fish and wildlife. In addition, the Oregon Land Use Board of Appeals and the Oregon Court of Appeals since have confirmed that the groundwater sources that supply the Metolius River are specifically excluded from the

Mr. Richard Whitman, DLCD Director
Mr. John Van Landingham, LCDC Commission Chair
December 19, 2008
Page Two

natural resources that are protected under Jefferson County's comprehensive land use plan and corresponding state land use laws. As a result, local and state land use plans and goals do not protect the water sources that supply the Metolius River.

At present, Jefferson County has mapped two potential sites for destination resort development in or near the Metolius basin. While I know that the county went through a long and careful process to map potential sites for resort development, I am concerned that the combination of inadequate state protections and absent local safeguards for groundwater leaves the unique and irreplaceable resources of the Metolius exposed to the harmful effects of large-scale development. As a result, I am asking the Department and the Land Conservation & Development Commission to designate the Metolius basin as an Area of Critical Concern, and to work with Jefferson County to develop a state management plan for private lands in the basin. The management plan should not allow destination resorts within the Metolius basin, but may include provisions that allow small-scale development and that provide for the transfer of development rights out of the basin to nearby areas. In addition to working with Jefferson County and local citizens, the Department also should confer with other areas and entities that could be affected, including (but not limited to) the City of Sisters.

To assure that there is time to consider this matter during the 2009 Legislative Session, I also ask that you complete this effort by the middle of March of 2009. I recognize that this is an ambitious schedule, and that it may mean that some details of the management plan are left to be fleshed out in a later stage of work, but I would like the main elements of the plan completed by mid-March. If it is not possible to complete a designation and management plan by mid-March, we will need to explore legislative alternatives but (as you know) my preference is to develop an approach through a more collaborative process with Jefferson County and other interested parties and citizens.

Thank you in advance for taking on this important effort. I am hopeful that this will serve as a model for an alternative approach to direct legislative action in area-specific land use matters that involve resources of state-wide importance.

Sincerely,



THEODORE R. KULONGOSKI
Governor

LC 485
66000-001
11/26/08 (BHC/ps)

D R A F T

SUMMARY

Directs Department of Land Conservation and Development to establish pilot program in which local governments may site and develop affordable housing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to pilot program to establish sites dedicated to affordable housing; and declaring an emergency.

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

SECTION 1. Sections 2 to 4 of this 2009 Act are added to and made a part of ORS 197.295 to 197.314.

SECTION 2. The Legislative Assembly finds and declares that a supply of land dedicated to affordable housing and planned and zoned to encourage development of affordable housing and to protect the land's use for siting affordable housing over a long period is necessary for the economic prosperity of Oregon communities.

SECTION 3. As used in sections 2 to 4 of this 2009 Act:

(1) "Affordable housing" has the meaning given that term by the Land Conservation and Development Commission by rule under section 4 of this 2009 Act.

(2) "Lot" has the meaning given that term in ORS 92.010.

(3) "Manufactured structure " has the meaning given that term in ORS 446.003.

(4) "Parcel" has the meaning given that term in ORS 92.010.

SECTION 4. (1) The Department of Land Conservation and Devel-

1 opment, working with the Housing and Community Services Depart-
2 ment, other state agencies and local governments, shall establish and
3 implement an affordable housing pilot program. Notwithstanding the
4 statewide land use planning goal provisions providing requirements for
5 amendments to urban growth boundaries, the Land Conservation and
6 Development Commission shall adopt rules to implement the pilot
7 program.

8 (2) Under the rules, the commission shall establish a site selection
9 process by which the commission must select five pilot projects, in up
10 to five jurisdictions, from among nominations made by local govern-
11 ments. Under the site selection process:

12 (a) A local government:

13 (A) May nominate potential pilot projects that provide sites dedi-
14 cated to affordable housing; and

15 (B) Must submit a concept plan for each proposed pilot project, in-
16 cluding any proposed amendments to comprehensive plans and land
17 use regulations required to implement the pilot project.

18 (b) The commission shall select pilot projects that are:

19 (A) Reasonably likely to provide a site for affordable housing that
20 would not otherwise be provided without the special provisions of the
21 pilot program;

22 (B) Reasonably likely to serve identified populations in the area
23 that require affordable housing;

24 (C) Near public facilities and services, including transportation, or
25 for which the facilities and services are planned and reasonably likely
26 to be provided in the near future; and

27 (D) If the pilot project requires bringing a new site within an urban
28 growth boundary, located, planned and zoned to avoid or minimize
29 adverse effects on natural resources and nearby farm and forest uses.

30 (3) The Land Conservation and Development Commission, by rule:

31 (a) Shall define "affordable housing" that would be authorized on

1 sites dedicated to affordable housing, including sites that are used as
2 manufactured dwelling parks or mobile home parks;

3 (b) Shall specify related requirements for affordable housing that
4 may include price range, taking into consideration:

5 (A) Housing prices within a region compared to the income of res-
6 idents of that region;

7 (B) The availability of government-assisted housing in a region;

8 (C) The need for sites to accommodate manufactured structures due
9 to the conversion of manufactured dwelling parks or mobile home
10 parks in a region to other uses; and

11 (D) Other relevant factors;

12 (c) Shall limit the size of each pilot project site to 50 or fewer acres;

13 (d) May authorize mixed income housing developments that include
14 affordable housing on pilot project sites; and

15 (e) May establish, without regard to whether an urban growth
16 boundary already contains a 20-year supply of buildable lands and
17 notwithstanding the priorities for inclusion of land within the urban
18 growth boundary in ORS 197.298, an expedited process for amending
19 urban growth boundaries to include up to two sites per pilot project
20 that are dedicated to affordable housing if the rules:

21 (A) Identify specific goal and rule requirements related to urban
22 growth boundaries that may be notwithstanding for the purpose of im-
23 plementing the pilot program; and

24 (B) Require that pilot project sites included within an urban growth
25 boundary:

26 (i) Are dedicated to affordable housing; and

27 (ii) Remain planned and zoned for affordable housing, except as
28 provided otherwise by rules authorized in paragraph (d) of this sub-
29 section.

30 (4) A local government that brings a pilot project site within its
31 urban growth boundary:

1 (a) Shall protect sites dedicated to affordable housing from conver-
2 sion to other uses before, during and after the development of afford-
3 able housing, except as provided otherwise by rules authorized in
4 subsection (3)(d) of this section;

5 (b) Shall ensure that housing developed on the site continues to be
6 used to provide affordable housing for a period of at least 50 years
7 through:

8 (A) Zoning restrictions;

9 (B) Guaranteed rental rates or sales prices;

10 (C) Regulations, provisions or conditions like those described in
11 ORS 197.309 (2);

12 (D) Other regulations, provisions or conditions determined by the
13 local government to be effective in maintaining the affordability of
14 housing on land dedicated to that purpose pursuant to sections 2 to 4
15 of this 2009 Act; or

16 (E) Restrictive agreements entered into with sources of affordable
17 housing funding; and

18 (c) May authorize a mix of affordable housing and other housing
19 types on a site, provided the percentage of affordable housing units
20 developed on the site meets or exceeds requirements specified by rules
21 authorized in subsection (3)(d) of this section.

22 (5) A local government that brings a pilot project site within its
23 urban growth boundary may not plan and zone the site to allow a use,
24 or mix of uses, not authorized under sections 2 to 4 of this 2009 Act
25 unless the local government withdraws the site from the urban growth
26 boundary and rezones the site pursuant to law, statewide land use
27 planning goals and land use regulations implementing the goals that
28 regulate allowable uses of land outside urban growth boundaries.

29 (6) A local government may not use sections 2 to 4 of this 2009 Act
30 to bring high value farmland, as determined by the commission,
31 within its urban growth boundary.

1 **(7) The inclusion of sites dedicated to affordable housing within an**
2 **urban growth boundary pursuant to this section does not authorize a**
3 **local government to convert buildable lands within the urban growth**
4 **boundary that are planned for needed housing, as defined in ORS**
5 **197.303, to other uses.**

6 **(8) Notwithstanding the exception in ORS 197.309 (1), for pilot**
7 **project sites or affordable housing developed under this section, a local**
8 **government may act under ORS 197.309 (1) in a manner that has the**
9 **effect of establishing the sales price for a housing unit or residential**
10 **building lot or parcel, or that requires a housing unit or residential**
11 **building lot or parcel to be designated for sale to a particular class or**
12 **group of purchasers.**

13 **(9) This section does not constitute a statutory contract. Sites**
14 **dedicated to affordable housing that are established under this section**
15 **and affordable housing developed under this section remain subject to**
16 **new or additional regulatory requirements authorized by law, state-**
17 **wide land use planning goals and land use regulations implementing**
18 **the goals.**

19 **SECTION 5.** **This 2009 Act being necessary for the immediate pres-**
20 **ervation of the public peace, health and safety, an emergency is de-**
21 **clared to exist, and this 2009 Act takes effect on its passage.**

DRAFT

SUMMARY

Restricts siting of destination resort in Metolius River Basin.

Prevents claim for compensation for regulations restricting residential use of private real property based on restriction on siting of destination resort in Metolius River Basin.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to destination resorts within 10 miles of Metolius River Basin; and
3 declaring an emergency.

4 Whereas the Metolius River Basin is a subbasin of the Deschutes River
5 Basin; and

6 Whereas the Metolius River Basin is an invaluable and highly sensitive
7 natural area that is ecologically and scientifically significant because of the
8 unique hydrogeologic characteristics, wetlands and ground water resources
9 of the basin; and

10 Whereas the Metolius River was added to the National Wild and Scenic
11 Rivers System in the Omnibus Oregon Wild and Scenic Rivers Act of 1988
12 because the federal government determined the river to be remarkable in all
13 areas of evaluation; and

14 Whereas the Metolius River Basin has unique hydrological and geological
15 features that cannot be protected adequately through current mitigation
16 practices and the pumping of ground water will likely result in diminished
17 discharges at the principal spring complexes at the head of the Metolius
18 River; and

19 Whereas the Metolius River and its tributaries are home to sensitive or

1 threatened species of fish, including redband trout and bull trout, and the
2 Metolius River Basin is critical habitat for the restoration of anadromous
3 fish populations, including spring chinook, sockeye and summer steelhead;
4 and

5 Whereas the Metolius River Basin contains highly sensitive range for
6 wintering deer and elk; and

7 Whereas the Metolius River Basin holds significant cultural, economic,
8 religious and historical value for Native American tribes; and

9 Whereas the Metolius River Basin features outstanding scenic views and
10 sites; and

11 Whereas the United States Forest Service, in recognition of the unique
12 values of the region's natural resources and spiritual values, designated
13 86,000 acres of the Metolius River Basin as the Metolius Conservation Area
14 in the Deschutes National Forest Land and Resource Management Plan of
15 1990, ensuring that the area must be managed subject to heightened stan-
16 dards of protection; and

17 Whereas protections against destination resort development in similar
18 significant, noteworthy and nationally recognized areas have been codified
19 and those protections should be extended to include the Metolius River
20 Basin; and

21 Whereas the protection of the natural resources, wildlife habitat and
22 historical, cultural and scenic values of the Metolius River Basin from urban
23 and similar forms of development is a matter of utmost importance and
24 concern to Oregonians; now, therefore,

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

26 **SECTION 1. (1) Notwithstanding the map of lands eligible for des-**
27 **tination resort siting adopted pursuant to ORS 197.455 (2) by Jefferson**
28 **County on or after September 1, 2006, a county may not approve siting**
29 **a destination resort in the Metolius River Basin, a subbasin of the**
30 **Deschutes River Basin, unless the land is owned by a federally recog-**
31 **nized Indian tribe in this state.**

1 (2) Notwithstanding ORS 195.305, the restriction on siting a desti-
2 nation resort in the Metolius River Basin under this section is not a
3 legal basis for claiming compensation under ORS 195.300 to 195.336 for
4 regulations restricting the residential use of private real property.

5 **SECTION 2.** (1) Before a county amends the map of lands eligible
6 for destination resort siting in its acknowledged comprehensive plan,
7 pursuant to ORS 197.455 (2), to authorize siting of a destination resort
8 within 10 miles of the Metolius River Basin, the county shall consider
9 imposing a condition that the owner of the land:

10 (a) Acquire, pursuant to ORS 94.531, a severable development in-
11 terest, from land within the Metolius River Basin that is mapped as
12 eligible but on which destination resort siting is restricted by section
13 1 of this 2009 Act, that reflects the fair market value of the lands be-
14 fore the effective date of this 2009 Act; and

15 (b) Transfer the development credit to the land within 10 miles of
16 the Metolius River Basin proposed to be mapped as eligible for desti-
17 nation resort siting.

18 (2) Before a county approves a permit application to site a destina-
19 tion resort on land within 10 miles of the Metolius River Basin, the
20 county shall consider imposing a condition that the owner of the land:

21 (a) Acquire, pursuant to ORS 94.531, a severable development in-
22 terest, from land within the Metolius River Basin that is mapped as
23 eligible but on which destination resort siting is prohibited by section
24 1 of this 2009 Act, that reflects the fair market value of the lands be-
25 fore the effective date of this 2009 Act; and

26 (b) Transfer the development credit to the land within 10 miles of
27 the Metolius River Basin considered for approval as the site a desti-
28 nation resort.

29 (3) The county shall impose the condition described in subsection
30 (1) or (2) of this section if the county determines that the condition
31 does not prevent development of the destination resort.

1 (4) For purposes of this section, a development credit may be
2 transferred between land in different counties.

3 SECTION 3. Section 1 of this 2009 Act applies to an application for
4 approval of a destination resort that was first submitted on or after
5 September 1, 2006.

6 SECTION 4. This 2009 Act being necessary for the immediate pres-
7 ervation of the public peace, health and safety, an emergency is de-
8 clared to exist, and this 2009 Act takes effect on its passage.

9

DRAFT

SUMMARY

Modifies provisions for siting destination resorts.
Directs Land Conservation and Development Commission to evaluate destination resort policies and update key requirements.
Limits legal basis for claiming compensation for regulations restricting use of property by declaring that destination resort is not residential use of private real property.

A BILL FOR AN ACT

1
2 Relating to destination resorts; creating new provisions; amending ORS
3 197.440, 197.445, 197.450, 197.455, 197.460, 197.462 and 197.825; and repeal-
4 ing ORS 197.435 and 197.465.

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

6 **SECTION 1.** ORS 197.440 is amended to read:

7 197.440. (1) The Legislative Assembly finds that:

8 [(1)] (a) It is the policy of this state to promote Oregon as a vacation
9 destination and to encourage tourism as a valuable segment of our state's
10 economy[;].

11 [(2)] (b) There is a [growing] need to provide year-round destination resort
12 accommodations to attract visitors and encourage them to stay longer. The
13 establishment of destination resorts will provide jobs for Oregonians and
14 contribute to the state's economic development[;].

15 [(3) *It is a difficult and costly process to site and establish destination re-*
16 *sorts in rural areas of this state; and]*

17 [(4)] (c) The siting of destination resort facilities is an issue of statewide
18 concern.

1 (2) The Legislative Assembly further finds that:

2 (a) In 1984, the Land Conservation and Development Commission
3 adopted provisions of a goal relating to recreational needs that allowed
4 the siting of destination resorts outside urban growth boundaries
5 without taking an exception to goals relating to agricultural lands,
6 forestlands, public facilities and services or urbanization.

7 (b) Because, in 1987, provisions of the goals relating to destination
8 resorts were enacted into law:

9 (A) The commission has been limited in its authority to:

10 (i) Revise and update the goal relating to recreational needs; and

11 (ii) Update land use policy relating to destination resorts to account
12 for changing circumstances and differing conditions and needs in dif-
13 ferent regions of this state.

14 (B) Several problems have arisen, including:

15 (i) Destination resorts have become concentrated in close proximity
16 to some Oregon cities and the number of destination resorts continues
17 to increase without adequate assessment of the impacts that existing
18 and planned resorts have on nearby urban and rural areas, including
19 areas under the jurisdiction of multiple local governments, transpor-
20 tation and other public facilities, natural resources in the region, in-
21 cluding water resources and fish and wildlife habitat, prevention and
22 suppression of wildfires and control or mitigation of other natural
23 hazards.

24 (ii) Extensive areas outside of, but in proximity to, urban growth
25 boundaries are currently mapped and zoned to allow destination resort
26 development, and additional resorts are in the planning or approval
27 process.

28 (iii) Increasingly, destination resorts have taken on the character
29 of residential subdivisions, rather than unique developments designed
30 to attract tourism and serve visitors, and have diminished the effect
31 of land use policies intended to concentrate permanent development

1 in urban growth boundaries and contain urban sprawl and exurban
2 development in Oregon.

3 (iv) Siting criteria designed to ensure that high quality developed
4 recreational amenities anchor destination resorts have not been up-
5 dated to account for present-day market and inflation factors or re-
6 vised to encourage recreational amenities that minimize impacts on
7 the availability of water and on farmland, forestland and other natural
8 resources.

9 (v) Amendments to statutory requirements for destination resorts
10 have diminished the effect of safeguards provided in the original
11 goal-based requirements for destination resorts, including modifica-
12 tions to the ratio of permanent housing to overnight lodging and
13 changes that authorize amendments to maps of eligible lands at times
14 other than the periodic review of comprehensive plans.

15 SECTION 2. (1) The Land Conservation and Development Commis-
16 sion shall:

17 (a) Evaluate the state's destination resort policies and implemen-
18 tation of those policies; and

19 (b) Update key requirements and address issues through special
20 studies and, as necessary, through the amendment of statewide land
21 use planning goals or the adoption of administrative rules.

22 (2) The issues to be addressed and the key requirements to be up-
23 dated include, but are not limited to:

24 (a) The adequacy of siting provisions to ensure that destination re-
25 sorts function, as originally intended, to attract tourism and serve
26 visitors rather than to establish residential subdivisions or to establish
27 suburban communities that compete with urban areas.

28 (b) The impact of existing and planned destination resorts on
29 nearby urban areas, including the impact of large amounts of perma-
30 nent, exurban housing on nearby communities, on facilities and on
31 service providers.

1 (c) The protection of important natural resources impacted by des-
2 tination resorts, including farm and forest resources, water resources
3 and natural areas and habitats, and the adequacy of requirements for
4 identifying and evaluating the important natural resources before re-
5 sort approval.

6 (d) The effects of a concentration of destination resorts in partic-
7 ular regions of this state and whether the number of destination re-
8 sorts or the number of permanent dwelling units allowed in resorts
9 should be capped by region or county.

10 (e) Provisions to avoid or mitigate transportation and wildlife im-
11 pacts caused by destination resorts.

12 (f) Whether to cap the size of destination resorts generally or the
13 number of dwelling units allowed in destination resorts concentrated
14 in a region or county.

15 (g) Whether to limit the expansion of existing destination resorts.

16 (h) Whether to allow conversion of existing rural residential devel-
17 opment to destination resort status.

18 (i) Equity among counties with regard to differing potential for
19 destination resort development and flexibility to adapt siting require-
20 ments to differing conditions in the different regions of this state.

21 (j) Mitigation and control of natural hazards, including prevention
22 and suppression of wildfires, that may be exacerbated by destination
23 resort siting.

24 (k) The availability of workforce housing and related transportation
25 needs in destination resorts and nearby communities.

26 **SECTION 3.** ORS 197.445 is amended to read:

27 197.445. A destination resort is a self-contained development that provides
28 [for] visitor-oriented accommodations and developed recreational facilities in
29 a setting with high natural amenities. To qualify as a destination resort
30 under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a proposed
31 development must [*meet the following standards:*] **satisfy the requirements**

1 **of a goal relating to recreational needs and rules implementing the**
2 **goal.**

3 *[(1) The resort must be located on a site of 160 acres or more except within*
4 *two miles of the ocean shoreline where the site shall be 40 acres or more.]*

5 *[(2) At least 50 percent of the site must be dedicated to permanent open*
6 *space, excluding streets and parking areas.]*

7 *[(3) At least \$7 million must be spent on improvements for on-site developed*
8 *recreational facilities and visitor-oriented accommodations exclusive of costs*
9 *for land, sewer and water facilities and roads. Not less than one-third of this*
10 *amount must be spent on developed recreational facilities.]*

11 *[(4) Visitor-oriented accommodations including meeting rooms, restaurants*
12 *with seating for 100 persons and 150 separate rentable units for overnight*
13 *lodging shall be provided. However, the rentable overnight lodging units may*
14 *be phased in as follows:]*

15 *[(a) On lands not described in paragraph (b) of this subsection:]*

16 *[(A) A total of 150 units of overnight lodging must be provided.]*

17 *[(B) At least 75 units of overnight lodging, not including any individually*
18 *owned homes, lots or units, must be constructed or guaranteed through surety*
19 *bonding or equivalent financial assurance prior to the closure of sale of indi-*
20 *vidual lots or units.]*

21 *[(C) The remaining overnight lodging units must be provided as individ-*
22 *ually owned lots or units subject to deed restrictions that limit their use to*
23 *use as overnight lodging units. The deed restrictions may be rescinded when*
24 *the resort has constructed 150 units of permanent overnight lodging as re-*
25 *quired by this subsection.]*

26 *[(D) The number of units approved for residential sale may not be more*
27 *than two units for each unit of permanent overnight lodging provided under*
28 *this paragraph.]*

29 *[(E) The development approval must provide for the construction of other*
30 *required overnight lodging units within five years of the initial lot sales.]*

31 *[(b) On lands in eastern Oregon, as defined in ORS 321.805:]*

1 [(A) A total of 150 units of overnight lodging must be provided.]

2 [(B) At least 50 units of overnight lodging must be constructed prior to the
3 closure of sale of individual lots or units.]

4 [(C) At least 50 of the remaining 100 required overnight lodging units must
5 be constructed or guaranteed through surety bonding or equivalent financial
6 assurance within five years of the initial lot sales.]

7 [(D) The remaining required overnight lodging units must be constructed
8 or guaranteed through surety bonding or equivalent financial assurances
9 within 10 years of the initial lot sales.]

10 [(E) The number of units approved for residential sale may not be more
11 than 2-1/2 units for each unit of permanent overnight lodging provided under
12 this paragraph.]

13 [(F) If the developer of a resort guarantees the overnight lodging units re-
14 quired under subparagraphs (C) and (D) of this paragraph through surety
15 bonding or other equivalent financial assurance, the overnight lodging units
16 must be constructed within four years of the date of execution of the surety
17 bond or other equivalent financial assurance.]

18 [(5) Commercial uses allowed are limited to types and levels of use neces-
19 sary to meet the needs of visitors to the development. Industrial uses of any
20 kind are not permitted.]

21 [(6) In lieu of the standards in subsections (1), (3) and (4) of this section,
22 the standards set forth in subsection (7) of this section apply to a destination
23 resort:]

24 [(a) On land that is not defined as agricultural or forest land under any
25 statewide planning goal;]

26 [(b) On land where there has been an exception to any statewide planning
27 goal on agricultural lands, forestlands, public facilities and services and
28 urbanization; or]

29 [(c) On such secondary lands as the Land Conservation and Development
30 Commission deems appropriate.]

31 [(7) The following standards apply to the provisions of subsection (6) of this

1 section:]

2 [(a) *The resort must be located on a site of 20 acres or more.*]

3 [(b) *At least \$2 million must be spent on improvements for on-site developed*
4 *recreational facilities and visitor-oriented accommodations exclusive of costs*
5 *for land, sewer and water facilities and roads. Not less than one-third of this*
6 *amount must be spent on developed recreational facilities.*]

7 [(c) *At least 25 units, but not more than 75 units, of overnight lodging must*
8 *be provided.*]

9 [(d) *Restaurant and meeting room with at least one seat for each unit of*
10 *overnight lodging must be provided.*]

11 [(e) *Residential uses must be limited to those necessary for the staff and*
12 *management of the resort.*]

13 [(f) *The governing body of the county or its designee has reviewed the resort*
14 *proposed under this subsection and has determined that the primary purpose*
15 *of the resort is to provide lodging and other services oriented to a recreational*
16 *resource which can only reasonably be enjoyed in a rural area. Such recre-*
17 *ational resources include, but are not limited to, a hot spring, a ski slope or*
18 *a fishing stream.*]

19 [(g) *The resort must be constructed and located so that it is not designed*
20 *to attract highway traffic. Resorts may not use any manner of outdoor adver-*
21 *tising signing except:*]

22 [(A) *Tourist oriented directional signs as provided in ORS 377.715 to*
23 *377.830; and]*

24 [(B) *On-site identification and directional signs.*]

25 [(8) *Spending required under subsections (3) and (7) of this section is stated*
26 *in 1993 dollars. The spending required shall be adjusted to the year in which*
27 *calculations are made in accordance with the United States Consumer Price*
28 *Index.*]

29 [(9) *When making a land use decision authorizing construction of a desti-*
30 *nation resort in eastern Oregon, as defined in ORS 321.805, the governing body*
31 *of the county or its designee shall require the resort developer to provide an*

1 *annual accounting to document compliance with the overnight lodging stan-*
 2 *dards of this section. The annual accounting requirement commences one year*
 3 *after the initial lot or unit sales. The annual accounting must contain:]*

4 *[(a) Documentation showing that the resort contains a minimum of 150*
 5 *permanent units of overnight lodging or, during the phase-in period, doc-*
 6 *umentation showing the resort is not yet required to have constructed 150 units*
 7 *of overnight lodging.]*

8 *[(b) Documentation showing that the resort meets the lodging ratio de-*
 9 *scribed in subsection (4) of this section.]*

10 *[(c) For a resort counting individually owned units as qualified overnight*
 11 *lodging units, the number of weeks that each overnight lodging unit is avail-*
 12 *able for rental to the general public as described in ORS 197.435.]*

13 **SECTION 4.** ORS 197.450 is amended to read:

14 197.450. In accordance with the provisions of ORS 30.947, 197.435 to
 15 197.467, 215.213, 215.283 and 215.284 **and a goal relating to recreational**
 16 **needs and rules implementing the goal**, a comprehensive plan may pro-
 17 vide for the siting of a destination resort on rural lands without taking an
 18 exception to [*statewide planning*] goals relating to agricultural lands,
 19 forestlands, public facilities and services or urbanization.

20 **SECTION 5.** ORS 197.455 is amended to read:

21 197.455. [(1)] A destination resort must be sited on lands mapped as eli-
 22 gible for destination resort siting by the affected county. The county may
 23 not [*allow destination resorts approved pursuant to ORS 197.435 to 197.467 to*
 24 *be sited in any of the following areas*] **map lands as eligible for destination**
 25 **resort siting if the lands are:**

26 [(a) *Within 24 air miles of an urban growth boundary with an existing*
 27 *population of 100,000 or more unless residential uses are limited to those nec-*
 28 *essary for the staff and management of the resort.]*

29 [(b)(A) *On a site with 50 or more contiguous acres of unique or prime*
 30 *farmland identified and mapped by the United States Natural Resources*
 31 *Conservation Service, or its predecessor agency.]*

1 *[(B) On a site within three miles of a high value crop area unless the resort*
 2 *complies with the requirements of ORS 197.445 (6) in which case the resort*
 3 *may not be closer to a high value crop area than one-half mile for each 25 units*
 4 *of overnight lodging or fraction thereof.]*

5 *[(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as deter-*
 6 *mined by the State Forestry Department, which are not subject to an approved*
 7 *goal exception.]*

8 *[(d) In the Columbia River Gorge National Scenic Area as defined by the*
 9 *Columbia River Gorge National Scenic Act, P.L. 99-663.]*

10 *[(e) In an especially sensitive big game habitat area as determined by the*
 11 *State Department of Fish and Wildlife in July 1984 or as designated in an*
 12 *acknowledged comprehensive plan.]*

13 *[(2) In carrying out subsection (1) of this section, a county shall adopt, as*
 14 *part of its comprehensive plan, a map consisting of eligible lands within the*
 15 *county. The map must be based on reasonably available information and may*
 16 *be amended pursuant to ORS 197.610 to 197.625, but not more frequently than*
 17 *once every 30 months. The county shall develop a process for collecting and*
 18 *processing concurrently all map amendments made within a 30-month planning*
 19 *period. A map adopted pursuant to this section shall be the sole basis for de-*
 20 *termining whether tracts of land are eligible for destination resort siting pur-*
 21 *suant to ORS 197.435 to 197.467.]*

22 **(1) Within 24 air miles of an urban growth boundary with a popu-**
 23 **lation of 100,000 or more on the date an application for destination**
 24 **resort approval is deemed complete under ORS 215.427;**

25 **(2) On a site that is on high value farmland or within three miles**
 26 **of high value farmland as determined by the Land Conservation and**
 27 **Development Commission;**

28 **(3) On forestlands that are not subject to an approved goal excep-**
 29 **tion and that are determined by the State Forestry Department to be**
 30 **predominantly Cubic Foot Site Class 1 or 2 forestlands;**

31 **(4) In the Columbia River Gorge National Scenic Area as defined**

1 by the Columbia River Gorge National Scenic Act, P.L. 99-663; or
 2 (5) In an area of especially sensitive big game habitat as determined
 3 by the State Department of Fish and Wildlife in July 1984, or as des-
 4 ignated by the county in the acknowledged comprehensive plan.

5 **SECTION 6.** ORS 197.460 is amended to read:

6 197.460. A county shall [*insure*] **ensure** that a destination resort is com-
 7 patible with the site and adjacent land uses [*through the following*
 8 *measures*]. **The county:**

9 (1) **Shall require that** important natural features, including habitat of
 10 threatened or endangered species, streams, rivers and significant wetlands,
 11 [*shall be retained.*] **are protected.**

12 (2) **Shall require that** riparian vegetation within 100 feet of streams,
 13 rivers and significant wetlands [*shall be retained. Alteration of important*
 14 *natural features, including placement of structures which maintain the overall*
 15 *values of the feature may be allowed.*] **is protected, except as necessary to**
 16 **implement restoration activities.**

17 [(2) *Improvements and activities shall be located and designed to avoid or*
 18 *minimize adverse effects of the resort on uses on surrounding lands, partic-*
 19 *ularly effects on intensive farming operations in the area. At a minimum,*
 20 *measures to accomplish this shall include:*]

21 (3) **Shall require that destination resorts are located, designed and**
 22 **operated to avoid or mitigate direct and indirect adverse effects of the**
 23 **resort on other lands, including lands in the jurisdiction of other local**
 24 **governments, particularly effects on intensive farming operations in**
 25 **the area. At a minimum, measures to accomplish this include:**

26 (a) Establishment and maintenance of buffers between the resort and ad-
 27 jacent land uses, including natural vegetation and where appropriate, fences,
 28 berms, landscaped areas and other similar types of buffers.

29 (b) Setbacks of structures and other improvements from adjacent land
 30 uses.

31 (c) **Avoidance or mitigation of adverse effects on state highways,**

1 county roads and city streets.

2 **SECTION 7. A destination resort authorized under ORS 197.435 to**
 3 **197.467 is not a residential use of private real property for purposes of**
 4 **ORS 195.305.**

5 **SECTION 8. ORS 197.435 and 197.465 are repealed.**

6 **SECTION 9.** ORS 197.462 is amended to read:

7 197.462. A portion of a tract that is excluded from the site of a destination
 8 resort [*pursuant to ORS 197.435 (7)*] shall not be used or operated in con-
 9 junction with the resort. Subject to this limitation, the use of the excluded
 10 property shall be governed by otherwise applicable law.

11 **SECTION 10.** ORS 197.825 is amended to read:

12 197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3)
 13 of this section, the Land Use Board of Appeals shall have exclusive juris-
 14 diction to review any land use decision or limited land use decision of a local
 15 government, special district or a state agency in the manner provided in ORS
 16 197.830 to 197.845.

17 (2) The jurisdiction of the board:

18 (a) Is limited to those cases in which the petitioner has exhausted all
 19 remedies available by right before petitioning the board for review;

20 (b) Is subject to the provisions of ORS 197.850 relating to judicial review
 21 by the Court of Appeals;

22 (c) Does not include a local government decision that is:

23 (A) Submitted to the Department of Land Conservation and Development
 24 for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a
 25 matter arising out of a local government decision submitted to the depart-
 26 ment for acknowledgment, unless the Director of the Department of Land
 27 Conservation and Development, in the director's sole discretion, transfers the
 28 matter to the board; or

29 (B) Subject to the review authority of the department under ORS
 30 197.430[197.445, 197.450 or 197.455] **or 197.435 to 197.467** or a matter related
 31 to a local government decision subject to the review authority of the de-

1 partment under ORS 197.430[, 197.445, 197.450 or 197.455] or 197.435 to
2 **197.467**;

3 (d) Does not include those land use decisions of a state agency over which
4 the Court of Appeals has jurisdiction for initial judicial review under ORS
5 183.400, 183.482 or other statutory provisions;

6 (e) Does not include any rules, programs, decisions, determinations or
7 activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

8 (f) Is subject to ORS 196.115 for any county land use decision that may
9 be reviewed by the Columbia River Gorge Commission pursuant to sections
10 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L.
11 99-663; and

12 (g) Does not include review of expedited land divisions under ORS 197.360.

13 (3) Notwithstanding subsection (1) of this section, the circuit courts of
14 this state retain jurisdiction:

15 (a) To grant declaratory, injunctive or mandatory relief in proceedings
16 arising from decisions described in ORS 197.015 (10)(b) or proceedings
17 brought to enforce the provisions of an adopted comprehensive plan or land
18 use regulations; and

19 (b) To enforce orders of the board in appropriate proceedings brought by
20 the board or a party to the board proceeding resulting in the order.

21 **SECTION 11. (1) The amendments to ORS 197.440, 197.445, 197.450,**
22 **197.455, 197.460, 197.462 and 197.825 by sections 1, 3 to 6, 9 and 10 of this**
23 **2009 Act, section 2 of this 2009 Act and the repeal of ORS 197.435 and**
24 **197.465 by section 8 of this 2009 Act apply to an application for approval**
25 **of the siting of a destination resort first submitted under ORS 215.427**
26 **(3) on or after the effective date of this 2009 Act.**

27 **(2) Section 7 of this 2009 Act applies to a destination resort approved**
28 **before, on or after the effective date of this 2009 Act.**

29

D R A F T

SUMMARY

Establishes pilot program to conserve resource lands by facilitating transfer of residential development rights from farm or forest property to other property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to transfer of development rights from resource lands; and declaring an emergency.

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

SECTION 1. The Legislative Assembly finds that:

(1) Working farms and forests make vital contributions to Oregon by providing jobs, timber, agricultural products, tax base and other social and economic benefits, by helping to maintain soil, air and water resources, by reducing levels of carbon dioxide in the atmosphere and by providing habitat for wildlife and aquatic life.

(2) Population growth, escalating land values, increasing risks due to wildfire and invasive species, and changes in land ownership and management objectives, with a resulting increase in conflict caused by dispersed residential development, require that new methods be developed to facilitate continued management of private lands zoned for farm use, forest use and mixed farm and forest use for agricultural production and timber harvest.

(3) It is the public policy of the State of Oregon to:

(a) Encourage and explore alternative methods to encourage the continued management of private farm and forest lands for timber and

1 agricultural production.

2 (b) Protect water quality, wildlife habitat and other important na-
3 tural resources by limiting location of dispersed residential develop-
4 ment on farm and forest lands.

5 (c) Provide for an orderly and efficient transition from rural to ur-
6 ban land uses by establishing locations at which residential develop-
7 ment rights transferred from farm or forest lands may be used.

8 **SECTION 2.** (1) There is established the Oregon Transfer of Devel-
9 opment Rights Pilot Program in the Department of Land Conservation
10 and Development. Working with the State Forestry Department, the
11 State Department of Agriculture and local governments and with
12 other state agencies, as appropriate, the Department of Land Conser-
13 vation and Development shall implement the pilot program.

14 (2) The Land Conservation and Development Commission shall
15 adopt rules to implement the pilot program. Notwithstanding ORS
16 197.225, the rules need not be in compliance with the statewide land
17 use planning goals.

18 (3) In adopting rules to implement the pilot program, the commis-
19 sion shall:

20 (a) Establish procedures or requirements reasonably necessary to
21 make a pilot project consistent with statewide land use planning goals.

22 (b) Establish a maximum ratio of transferable development rights
23 to severed development interests in a sending area for each pilot
24 project. The maximum ratio:

25 (A) Must be calculated to protect lands planned and zoned for farm
26 use, forest use or mixed farm and forest use and to create incentives
27 for owners of land in the sending area to participate in the pilot
28 project; and

29 (B) May not exceed three transferable development rights to one
30 severed development interest.

31 (c) Require participating owners of land in a sending area to grant

1 conservation easements, or otherwise obligate themselves, to ensure
2 that additional residential development of their property does not oc-
3 cur.

4 (d) Require that a pilot project be established prior to 2013.

5 (4) The commission, by rule, shall establish a process for selecting
6 pilot projects from among potential sites nominated by local govern-
7 ments. The process must require local governments to nominate po-
8 tential sites by submitting a concept plan for each proposed pilot
9 project, including proposed amendments to the comprehensive plan
10 and land use regulations necessary to implement the pilot project.

11 (5) When selecting a pilot project, the commission must find that
12 the pilot project is:

13 (a) Reasonably likely to provide a net benefit to the forest economy
14 or the agricultural economy of this state; and

15 (b) Designed to avoid or minimize adverse effects on transportation,
16 natural resources, public facilities and services, nearby urban areas
17 and nearby farm and forest uses.

18 (6) The commission may select up to:

19 (a) Four pilot projects for the transfer of development rights from
20 lands in a sending area that are currently planned and zoned for forest
21 use or mixed farm and forest use; and

22 (b) Two pilot projects for the transfer of development rights from
23 lands in a sending area that are currently planned and zoned for farm
24 use or mixed farm and forest use.

25 (7) A sending area for a pilot project:

26 (a) May not exceed 10,000 acres; and

27 (b) Must, for at least one pilot project, contain a critical mass of
28 lands that are planned and zoned for farm, forest or mixed farm and
29 forest uses and have a relatively low density of residential develop-
30 ment.

31 (8) The commission may establish additional requirements for

1 sending areas.

2 (9)(a) Except as provided otherwise in paragraph (b) of this sub-
3 section, a local government participating in a pilot project shall select
4 a receiving area for the pilot project based on the following priorities:

5 (A) First priority is lands within an urban growth boundary;

6 (B) Second priority is lands that are adjacent to an urban growth
7 boundary and subject to an exception from the statewide land use
8 planning goals for agricultural lands or forestlands;

9 (C) Third priority is lands that are adjacent to an urban growth
10 boundary and not subject to an exception from goals for agricultural
11 lands or forestlands;

12 (D) Fourth priority is lands that are not adjacent to an urban
13 growth boundary and subject to an exception from goals for agricul-
14 tural lands or forestlands;

15 (E) Fifth priority is lands that are planned and zoned as marginal
16 lands or as nonresource lands; and

17 (F) Sixth priority is rural lands not described in subparagraphs (B)
18 to (E) of this paragraph.

19 (b) The commission may:

20 (A) Authorize a local government to select lower priority lands over
21 higher priority lands for a receiving area in a pilot project only if the
22 local government has established, to the satisfaction of the commis-
23 sion, that selecting higher priority lands as the receiving area is not
24 likely to result in the severance and transfer of a significant propor-
25 tion of the development interests in the sending area within five years
26 after the receiving area is established.

27 (B) Notwithstanding the priorities established in this subsection,
28 select one pilot project in which all or part of the receiving area is on
29 lands that are planned and zoned for forest use or mixed farm and
30 forest use and are not located adjacent to an urban growth boundary,
31 if:

1 (i) The receiving area does not exceed 100 acres; and

2 (ii) The commission finds that farm or forest use of the lands
3 within the receiving area are already impaired by residential uses and
4 additional residential development in the receiving area can be ac-
5 commodated in a manner that protects or improves farm or forest
6 management in areas in or adjacent to the receiving area.

7 (c) If lands described in paragraph (a)(B) or (C) of this subsection
8 are selected for use as a receiving area in a pilot project, the minimum
9 residential density of development must be at least 10 dwelling units
10 per net acre.

11 (d) If lands described in paragraph (a)(D), (E) or (F) of this sub-
12 section are used as a receiving area in a pilot project, the receiving
13 area may not exceed 100 acres.

14 (10) The commission may establish additional requirements for re-
15 ceiving areas.

16 **SECTION 3.** (1) Notwithstanding contrary provisions of the state-
17 wide land use planning goals or the acknowledged comprehensive plan
18 and land use regulations implementing the plan and notwithstanding
19 limitations on land division and residential development in ORS
20 chapter 215, the local government may allow residential development
21 in a receiving area consistent with administrative rules governing the
22 Oregon Transfer of Development Rights Pilot Program and a concept
23 plan approved by the Land Conservation and Development Commission
24 if:

25 (a) For a pilot project that includes farmlands or mixed farm and
26 forest lands in the sending area or receiving area, the State Depart-
27 ment of Agriculture has approved the concept plan;

28 (b) For a pilot project that includes forestlands in the sending area
29 or receiving area, the State Forestry Department has approved the
30 concept plan; and

31 (c) The local governments with land use jurisdiction over lands in-

1 cluded in the sending area and receiving area for the pilot project
2 have:

3 (A) Approved the concept plan; and

4 (B) Adopted comprehensive plan and land use regulations consistent
5 with subsection (2) of this section.

6 (2) When the commission has approved a proposed concept plan and
7 pilot project, the local government with land use jurisdiction over the
8 affected sending area and affected receiving area shall adopt overlay
9 zone provisions and corresponding amendments to the comprehensive
10 plan that identify the additional residential development allowed
11 through participation in the pilot project. The Department of Land
12 Conservation and Development shall review the overlay zones and
13 corresponding comprehensive plan amendments for compliance with
14 the goals, as defined in ORS 197.747, in the manner of periodic review
15 under ORS 197.628 to 197.650.

16 (3) Notwithstanding ORS 197.296 and 197.298 and statewide land use
17 planning goals relating to urbanization, a local government may
18 amend its urban growth boundary to include adjacent lands in a re-
19 ceiving area, consistent with the administrative rules implementing
20 the pilot program and an approved concept plan, if the net residential
21 density of development authorized in the receiving area is at least 10
22 dwelling units per acre.

23 (4) Local governments or other entities may establish a develop-
24 ment rights bank, or other system, to facilitate the conveyance of
25 transferable development rights.

26 SECTION 4. (1) The Department of Land Conservation and Devel-
27 opment, the State Forestry Department, the State Department of Ag-
28 riculture, a local government participating in the Oregon Transfer of
29 Development Rights Pilot Program or a third-party holder identified
30 by the Department of Land Conservation and Development may hold,
31 monitor or enforce a conservation easement or other property interest

1 to ensure that lands in sending areas do not retain residential devel-
2 opment rights transferred under sections 1 to 4 of this 2009 Act.

3 (2) An entity that is eligible to be a holder of a conservation ease-
4 ment under this section may acquire, from a willing seller in the
5 manner provided by ORS 271.715 to 271.795, the rights to carry out a
6 use of land authorized under rules of the Land Conservation and De-
7 velopment Commission that implement the pilot program.

8 SECTION 5. The Department of Land Conservation and Develop-
9 ment shall prepare and deliver a report to the Seventy-seventh Legis-
10 lative Assembly:

11 (1) Evaluating the Oregon Transfer of Development Rights Pilot
12 Program established in sections 1 to 4 of this 2009 Act; and

13 (2) Recommending whether the pilot program should be continued,
14 modified, expanded or terminated.

15 SECTION 6. This 2009 Act being necessary for the immediate pres-
16 ervation of the public peace, health and safety, an emergency is de-
17 clared to exist, and this 2009 Act takes effect on its passage.

18

DRAFT

SUMMARY

Establishes main principles for state land use system.

Expands authorities for regional land use planning. Authorizes establishment of regional definitions of "agricultural land" and "forest land" for purposes of land use goal setting.

Directs Land Conservation and Development Commission to carry out policy-neutral review and audit of land use system to reduce complexity.

Provides for state strategic plan integrating land use, transportation and economic development priorities.

Directs Oregon Progress Board to coordinate with Department of Land Conservation and Development, during or before next review of Oregon Benchmarks, to develop performance measures for each statewide land use goal.

Appropriates moneys from General Fund to Department of Land Conservation and Development to implement specified provisions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2
3
4
5
6
7
8
9
10
11
12

Relating to recommendations of Oregon Task Force on Land Use Planning; creating new provisions; amending ORS 197.010, 197.040, 197.230, 197.628, 197.652, 197.654, 197.656 and 197.747; appropriating money; and declaring an emergency.

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

SECTION 1. ORS 197.010 is amended to read:

197.010. The Legislative Assembly declares that:

(1) In order to assure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole.

These comprehensive plans:

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 (a) Must be adopted by the appropriate governing body at the local and
2 state levels;

3 (b) Are expressions of public policy in the form of policy statements,
4 generalized maps and standards and guidelines;

5 (c) Shall be the basis for more specific rules and land use regulations
6 which implement the policies expressed through the comprehensive plans;

7 (d) Shall be prepared to assure that all public actions are consistent and
8 coordinated with the policies expressed through the comprehensive plans;
9 and

10 (e) Shall be regularly reviewed and, if necessary, amended to keep them
11 consistent with the changing needs and desires of the public they are de-
12 signed to serve.

13 **(2)(a) The overarching principles guiding the land use program in
14 the State of Oregon are to:**

15 **(A) Provide a healthy environment;**

16 **(B) Sustain a prosperous economy;**

17 **(C) Ensure a desirable quality of life; and**

18 **(D) Provide fairness and equity to all Oregonians.**

19 **(b) The overarching principles in paragraph (a) of this subsection
20 provide guidance to a public body, as defined in ORS 174.109, that
21 adopts or interprets goals, comprehensive plans and land use regu-
22 lations implementing the plans, or administrative rules implementing
23 a provision of ORS chapter 195, 196, 197, 215 or 227.**

24 **[(2)] (3)** The equitable balance between state and local government inter-
25 ests can best be achieved by resolution of conflicts using alternative dispute
26 resolution techniques such as mediation, collaborative planning and arbi-
27 tration. Such dispute resolution techniques are particularly suitable for
28 conflicts arising over periodic review, comprehensive plan and land use reg-
29 ulations, amendments, enforcement issues and local interpretation of state
30 land use policy.

31 **SECTION 2.** ORS 197.040 is amended to read:

1 197.040. (1) The Land Conservation and Development Commission shall:

2 (a) Direct the performance by the Director of the Department of Land
3 Conservation and Development and the director's staff of their functions
4 under ORS chapters 195, 196 and 197.

5 (b) In accordance with the provisions of ORS chapter 183, adopt rules that
6 it considers necessary to carry out ORS chapters 195, 196 and 197. Except
7 as provided in subsection (3) of this section, in designing its administrative
8 requirements, the commission shall:

9 (A) Allow for the diverse administrative and planning capabilities of local
10 governments;

11 **(B) Consider the variation in conditions and needs in different re-**
12 **gions of the state;**

13 ~~[(B)]~~ **(C)** Assess what economic and property interests will be, or are
14 likely to be, affected by the proposed rule;

15 ~~[(C)]~~ **(D)** Assess the likely degree of economic impact on identified prop-
16 erty and economic interests; and

17 ~~[(D)]~~ **(E)** Assess whether alternative actions are available that would
18 achieve the underlying lawful governmental objective and would have a
19 lesser economic impact.

20 (c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under
21 ORS chapters 195, 196 and 197 any statewide land use policies that it con-
22 sider necessary to carry out ORS chapters 195, 196 and 197.

23 (B) Adopt by rule in accordance with ORS chapter 183 any procedures
24 necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b).

25 (C) Review decisions of the Land Use Board of Appeals and land use de-
26 cisions of the Court of Appeals and the Supreme Court within 120 days of
27 the date the decisions are issued to determine if goal or rule amendments
28 are necessary.

29 (d) Cooperate with the appropriate agencies of the United States, this
30 state and its political subdivisions, any other state, any interstate agency,
31 any person or groups of persons with respect to land conservation and de-

1 velopment.

2 (e) Appoint advisory committees to aid it in carrying out ORS chapters
3 195, 196 and 197 and provide technical and other assistance, as it considers
4 necessary, to each such committee.

5 (2) Pursuant to ORS chapters 195, 196 and 197, the commission shall:

6 (a) Adopt, amend and revise goals consistent with regional, county and
7 city concerns;

8 (b) Prepare, collect, provide or cause to be prepared, collected or provided
9 land use inventories;

10 (c) Prepare statewide planning guidelines;

11 (d) Review comprehensive plans for compliance with goals;

12 (e) Coordinate planning efforts of state agencies to assure compliance
13 with goals and compatibility with city and county comprehensive plans;

14 (f) Insure widespread citizen involvement and input in all phases of the
15 process;

16 (g) Review and recommend to the Legislative Assembly the designation
17 of areas of critical state concern;

18 (h) Report periodically to the Legislative Assembly and to the committee;
19 and

20 (i) Perform other duties required by law.

21 (3) The requirements of subsection (1)(b) of this section shall not be in-
22 terpreted as requiring an assessment for each lot or parcel that could be af-
23 fected by the proposed rule.

24 **SECTION 3.** ORS 197.230 is amended to read:

25 197.230. (1) In preparing, adopting and amending goals and guidelines, the
26 Department of Land Conservation and Development and the Land Conserva-
27 tion and Development Commission shall:

28 (a) Assess:

29 (A) What economic and property interests will be, or are likely to be,
30 affected by the proposed goal or guideline;

31 (B) The likely degree of economic impact on identified property and eco-

1 nomic interests; and

2 (C) Whether alternative actions are available that would achieve the
3 underlying lawful governmental objective and would have a lesser economic
4 impact.

5 (b) Consider the existing comprehensive plans of local governments and
6 the plans and programs affecting land use of state agencies and special dis-
7 tricts in order to preserve functional and local aspects of land conservation
8 and development.

9 (c) Give consideration to the following areas and activities:

10 (A) Lands adjacent to freeway interchanges;

11 (B) Estuarine areas;

12 (C) Tide, marsh and wetland areas;

13 (D) Lakes and lakeshore areas;

14 (E) Wilderness, recreational and outstanding scenic areas;

15 (F) Beaches, dunes, coastal headlands and related areas;

16 (G) Wild and scenic rivers and related lands;

17 (H) Floodplains and areas of geologic hazard;

18 (I) Unique wildlife habitats; and

19 (J) Agricultural land.

20 (d) Make a finding of statewide need for the adoption of any new goal
21 or the amendment of any existing goal.

22 (e) Design goals to:

23 (A) Allow a reasonable degree of flexibility in the application of goals
24 by state agencies, cities, counties and special districts;

25 **(B) Provide a healthy environment;**

26 **(C) Sustain a prosperous economy;**

27 **(D) Ensure a desirable quality of life; and**

28 **(E) Provide fairness and equity to all Oregonians.**

29 (2) Goals shall not be land management regulations for specified ge-
30 ographic areas established through designation of an area of critical state
31 concern under ORS 197.405.

1 (3) The requirements of subsection (1)(a) of this section shall not be in-
 2 terpreted as requiring an assessment for each lot or parcel that could be af-
 3 fected by the proposed rule.

4 (4) The commission may exempt cities with a population less than 10,000,
 5 or those areas of a county inside an urban growth boundary that contain a
 6 population less than 10,000, from all or any part of land use planning goals,
 7 guidelines and administrative rules that relate to transportation planning.

8 **SECTION 4.** ORS 197.628 is amended to read:

9 197.628. (1) It is the policy of the State of Oregon to require the periodic
 10 review of comprehensive plans and land use regulations in order to respond
 11 to changes in local, regional and state conditions to ensure that the plans
 12 and regulations remain in compliance with the statewide planning goals
 13 adopted pursuant to ORS 197.230, and to ensure that the plans and regu-
 14 lations make adequate provision for economic development, needed housing,
 15 transportation, public facilities and services and urbanization.

16 (2) The Land Conservation and Development Commission shall concen-
 17 trate periodic review assistance to local governments on:

18 (a) Achieving compliance with those statewide land use planning laws
 19 and goals that address economic development, needed housing, transporta-
 20 tion, public facilities and services and urbanization; **and**

21 (b) **Reviewing and amending designations of farmlands, forestlands**
 22 **and other rural lands under section 7 of this 2009 Act if the review and**
 23 **amendment are conducted on a regional basis by at least two counties**
 24 **and the cities in the region.**

25 (3) The following conditions indicate the need for periodic review of
 26 comprehensive plans and land use regulations:

27 (a) There has been a substantial change in circumstances including but
 28 not limited to the conditions, findings or assumptions upon which the com-
 29 prehensive plan or land use regulations were based, so that the comprehen-
 30 sive plan or land use regulations do not comply with the statewide planning
 31 goals relating to economic development, needed housing, transportation,

1 public facilities and services and urbanization;

2 (b) Decisions implementing acknowledged comprehensive plan and land
3 use regulations are inconsistent with the goals relating to economic devel-
4 opment, needed housing, transportation, public facilities and services and
5 urbanization;

6 (c) There are issues of regional or statewide significance, intergovern-
7 mental coordination or state agency plans or programs affecting land use
8 which must be addressed in order to bring comprehensive plans and land use
9 regulations into compliance with the goals relating to economic development,
10 needed housing, transportation, public facilities and services and
11 urbanization; or

12 (d) The local government, commission or Department of Land Conserva-
13 tion and Development determines that the existing comprehensive plan and
14 land use regulations are not achieving the statewide planning goals relating
15 to economic development, needed housing, transportation, public facilities
16 and services and urbanization.

17 **SECTION 5. Sections 6 to 8 of this 2009 Act are added to and made**
18 **a part of ORS chapter 195.**

19 **SECTION 6. (1) Two or more counties that constitute a region in**
20 **which farmlands, forestlands and farm and forest practices are similar**
21 **may petition the Land Conservation and Development Commission to**
22 **establish regional definitions of the terms “agricultural land” or “for-**
23 **est land” for purposes of the goals.**

24 **(2) If the commission accepts the petition, the commission shall:**

25 **(a) Identify the region to which the definitions apply, taking into**
26 **consideration:**

27 **(A) The content of the petition;**

28 **(B) The need to address similar and related lands as one region;**

29 **(C) The need to address similar and related farm or forest practices**
30 **and products in a region in a consistent manner; and**

31 **(D) The need to have a limited number of regional definitions in the**

1 state.

2 (b) Shall coordinate with the State Department of Agriculture, the
3 State Forestry Department and all local governments in the affected
4 region.

5 (3) The commission is not subject to ORS 197.235 (1)(a) for the pur-
6 pose of considering whether to establish regional definitions under
7 sections 6 to 8 of this 2009 Act. However, the commission shall hold
8 at least one public hearing in each county in which the regional defi-
9 nitions would apply.

10 (4) The commission shall base regional definitions established under
11 sections 6 to 8 of this 2009 Act on the characteristics of land and farm
12 or forest practices in the region and the consideration of factors in-
13 cluding, but not limited to:

14 (a) ORS 215.243 and 215.700;

15 (b) Soil capability and suitability for farming or forestry;

16 (c) The long-term viability of current and potential future farm or
17 forest operations on the land;

18 (d) The importance of the land to farm or forest operations on ad-
19 jacent and nearby lands;

20 (e) The availability of water needed to sustain current or antic-
21 ipated farm operations on the land;

22 (f) The land use pattern on the land and on adjacent and nearby
23 lands, including the location of the property in relation to adjacent
24 and nearby nonfarm and nonforest uses and the existence of buffers
25 between farm or forest operations and nonfarm or nonforest uses;

26 (g) The farm or forest land use pattern, including parcelization,
27 tenure and ownership patterns of the land and nearby lands;

28 (h) The sufficiency and stability of the farm or forest infrastructure
29 in the area; and

30 (i) The importance of farmlands and forestlands as a means to
31 sequester carbon and as a means of avoiding or minimizing the ad-

1 verse effects of climate change.

2 **SECTION 7. (1) If the Land Conservation and Development Com-**
3 **mission establishes regional definitions for a region under sections 6**
4 **to 8 of this 2009 Act, a county in the region may elect to:**

5 **(a) Review and amend its comprehensive plan and zoning map des-**
6 **ignations for farmlands or forestlands; and**

7 **(b) Redesignate as other rural lands those farmlands and**
8 **forestlands that do not fit in the regional definition of “agricultural**
9 **land” or “forest land.”**

10 **(2) A county that elects to amend its comprehensive plan and zon-**
11 **ing map designations under this section:**

12 **(a) Shall act through a legislative amendment of the comprehensive**
13 **plan and zoning map designations.**

14 **(b) Shall submit the legislative amendment to the commission for**
15 **review in the manner provided for periodic review under ORS 197.628**
16 **to 197.650.**

17 **(c) Shall, as part of the process of adopting the legislative amend-**
18 **ment:**

19 **(A) Adopt, as a part of the comprehensive plan, a map that:**

20 **(i) Identifies the farmlands, forestlands and other rural lands under**
21 **review that contain ecologically significant natural areas or resources;**

22 **(ii) Establishes a priority for protection from conflicting develop-**
23 **ment; and**

24 **(iii) Determines which of the lands have the highest priority for**
25 **protection from conflicting development.**

26 **(B) Establish appropriate limitations on the uses allowed on lands**
27 **designated as other rural lands in compliance with rules adopted by**
28 **the commission under subsection (5) of this section.**

29 **(d) Shall examine alternative, nonregulatory methods to protect**
30 **lands that contain ecologically significant natural resources or areas.**

31 **(3) In determining whether to acknowledge a comprehensive plan**

1 and zoning map designation proposed under sections 6 to 8 of this 2009
2 Act, the commission shall:

3 (a) Coordinate with the State Department of Agriculture, the State
4 Forestry Department and other local governments in the county.

5 (b) Consider the adequacy of the county's program for protecting
6 ecologically significant natural areas.

7 (4) The Department of Land Conservation and Development shall
8 give preference in providing grant moneys, if any, that are available
9 to counties that enter into a cooperative agreement under ORS 195.025
10 with one or more adjacent counties in the region to review and amend
11 comprehensive plans and zoning map designations of farmlands or
12 forestlands pursuant to this section.

13 (5) If the commission adopts a regional definition under sections 6
14 to 8 of this 2009 Act, the commission shall adopt regional rules con-
15 cerning farmlands or forestlands, as appropriate, and lands redesign-
16 dated as other rural lands. The rules must be designed to achieve the
17 following outcomes:

18 (a) The amount, type, location and pattern of development on lands
19 that are redesignated as other rural lands:

20 (A) Must be rural in character and may not interfere with orderly
21 and efficient development of urban areas in the vicinity of the other
22 rural lands;

23 (B) May not conflict with existing or reasonably foreseeable future
24 farm or forest uses or accepted farm or forest practices; and

25 (C) May not lead to significant adverse effects, as specified by the
26 commission in rules, including but not limited to adverse effects on:

27 (i) Water quality or the availability or cost of water supply;

28 (ii) Energy use;

29 (iii) State or local transportation facilities;

30 (iv) Fish or wildlife habitat or other ecologically significant lands;

31 (v) The risk of wildland fire or the cost of fire suppression;

1 (vi) The cost of public facilities or services; or

2 (vii) The fiscal health of a local government.

3 (b) Additional residential development that is authorized by the
4 commission under this section must, to the extent practicable, be
5 clustered and located to minimize the effects on farm and forest uses
6 and to reduce the costs of public facilities and services.

7 **SECTION 8.** (1) The Land Conservation and Development Commis-
8 sion may adopt rules implementing sections 6 to 8 of this 2009 Act.

9 (2) The rules:

10 (a) Must reflect the differing conditions in different regions of the
11 state.

12 (b) May not contain new regulatory restrictions on the use of lands
13 identified as containing ecologically significant natural resources or
14 areas to protect those resources or areas.

15 (c) May provide criteria for designating the lands.

16 (d) May provide for the purchase, lease or transfer of development
17 rights to protect the resources or areas.

18 **SECTION 9.** ORS 197.652 is amended to read:

19 197.652. [*Programs of the collaborative regional problem-solving process*
20 *described in ORS 197.654 and 197.656 shall be established in counties or re-*
21 *gions geographically distributed throughout the state.*]

22 (1) At the request of a county and at least one other local govern-
23 ment in a region, the Department of Land Conservation and Develop-
24 ment, other state agencies, as defined in ORS 171.133, metropolitan
25 planning organizations and special districts may participate with the
26 local governments in a collaborative regional problem-solving process.

27 (2) If requested to participate, the department:

28 (a) Shall convene the process and work to encourage regional ef-
29 forts to resolve land use planning problems using the authorities de-
30 scribed in ORS 197.654 and 197.658.

31 (b) May include representatives of an advisory committee on

1 **transportation established under ORS 367.822 in a regional effort under**
 2 **ORS 197.652 to 197.658.**

3 **SECTION 10.** ORS 197.654 is amended to read:

4 197.654. (1) [*Local governments and those special districts that provide ur-*
 5 *ban services may enter into a collaborative regional problem-solving process.*
 6 *A collaborative regional problem-solving process is a planning process directed*
 7 *toward resolution of land use problems in a region. The process must offer an*
 8 *opportunity to participate with appropriate state agencies and all local gov-*
 9 *ernments within the region affected by the problems that are the subject of the*
 10 *problem-solving process.*] **Local governments, state agencies as defined in**
 11 **ORS 171.133, metropolitan planning organizations and special districts**
 12 **may enter into a regional problem-solving agreement to resolve a re-**
 13 **gional land use problem. The agreement must include, as parties to**
 14 **the agreement, entities that are necessary to resolve each land use**
 15 **problem identified in the agreement, including the Department of**
 16 **Transportation if the agreement requires amendments to a compre-**
 17 **hensive plan or land use regulations that will have a significant ad-**
 18 **verse effect on an existing or planned state transportation facility. The**
 19 **process must include:**

20 (a) An opportunity for involvement by other stakeholders with an interest
 21 in the problem; and

22 (b) Efforts among the collaborators to agree on goals, objectives and
 23 measures of success for steps undertaken to implement the process as set
 24 forth in ORS 197.656.

25 [(2) *As used in ORS 197.652 to 197.658, "region" means an area of one or*
 26 *more counties, together with the cities within the county, counties, or affected*
 27 *portion of the county.*]

28 **(2) A decision by a local government, state agency as defined in**
 29 **ORS 171.133, metropolitan planning organization or special district to**
 30 **enter into an agreement under ORS 197.652 to 197.658 is not a final land**
 31 **use decision. However, an agreement entered into under ORS 197.652**

1 to 197.658 does not become final and binding until:

2 (a) All local governments that are parties to the agreement have
3 enacted the comprehensive plan provisions or land use regulations set
4 forth in the agreement; and

5 (b) The Land Conservation and Development Commission has ap-
6 proved the comprehensive plan provisions and land use regulations as
7 provided under ORS 197.656.

8 (3) Comprehensive plan provisions and land use regulations made
9 to implement an agreement under ORS 197.652 to 197.658 take effect
10 _____ days after the commission provides notice to all parties to the
11 agreement that the commission has approved all of the amendments
12 to comprehensive plan provisions and land use regulations.

13 **SECTION 11.** ORS 197.656 is amended to read:

14 197.656. (1) [*Upon invitation by the local governments in a region, the Land*
15 *Conservation and Development Commission and other state agencies may par-*
16 *ticipate with the local governments in a collaborative regional problem-solving*
17 *process.*] **A local government that adopts comprehensive plan provisions**
18 **or land use regulations to implement a regional problem-solving**
19 **agreement entered into under ORS 197.652 to 197.658 shall submit the**
20 **provision or regulation to the Land Conservation and Development**
21 **Commission for review in the manner set forth in ORS 197.628 to**
22 **197.650 for periodic review.**

23 (2) Following the procedures set forth in this subsection, the commission
24 may [*acknowledge*] **approve** amendments to comprehensive plans and land
25 use regulations, or new land use regulations, that do not fully comply with
26 the **goals, or** rules of the commission that implement the statewide planning
27 goals, without taking an exception, upon a determination that:

28 [(a) *The amendments or new provisions are based upon agreements reached*
29 *by all local participants, the commission and other participating state agencies,*
30 *in the collaborative regional problem-solving process;*]

31 [(b) *The regional problem-solving process has included agreement among*

1 *the participants on:]*

2 **(a) The amendments to comprehensive plans or land use regu-**
 3 **lations, or new comprehensive plan provisions or land use regulations,**
 4 **conform on the whole with the purposes of the goals and any failure**
 5 **to meet individual goal requirements is technical or minor in nature;**
 6 **and**

7 **(b) The amendments to comprehensive plans or land use regu-**
 8 **lations, or new comprehensive plan provisions or land use regulations,**
 9 **include:**

10 (A) Regional goals for resolution of each regional problem that is the
 11 subject of the *[process]* **agreement;**

12 (B) *[Optional]* Techniques to achieve the **regional** goals *[for each regional*
 13 *problem that is the subject of the process];*

14 (C) Measurable indicators of performance **and a system for monitoring**
 15 **progress** toward achievement of the **regional** goals *[for each regional prob-*
 16 *lem that is the subject of the process];*

17 (D) *[A system of]* Incentives and disincentives to encourage successful
 18 implementation of the techniques chosen by the participants to achieve the
 19 **regional** goals;

20 (E) *[A system for monitoring progress toward achievement of the goals]* **If**
 21 **the regional goals involve the management of an urban growth**
 22 **boundary, tools to coordinate the planning and provision of water,**
 23 **sewer and transportation facilities in the region; and**

24 (F) A process for correction of the techniques if monitoring indicates that
 25 the techniques are not achieving the **regional** goals. *[: and]*

26 *[(c) The agreement reached by regional problem-solving process participants*
 27 *and the implementing plan amendments and land use regulations conform, on*
 28 *the whole, with the purposes of the statewide planning goals.]*

29 *[(3) A local government that amends an acknowledged comprehensive plan*
 30 *or land use regulation or adopts a new land use regulation in order to imple-*
 31 *ment an agreement reached in a regional problem-solving process shall submit*

1 *the amendment or new regulation to the commission in the manner set forth*
 2 *in ORS 197.628 to 197.650 for periodic review or set forth in ORS 197.251 for*
 3 *acknowledgment.]*

4 [(4) *The commission shall have exclusive jurisdiction for review of amend-*
 5 *ments or new regulations described in subsection (3) of this section. A partic-*
 6 *ipant or stakeholder in the collaborative regional problem-solving process shall*
 7 *not raise an issue before the commission on review that was not raised at the*
 8 *local level.]*

9 **(3) The commission:**

10 **(a) May adopt rules to establish additional procedure and substan-**
 11 **tive requirements for review and approval of an agreement and com-**
 12 **prehensive plan provisions and land use regulations adopted under**
 13 **ORS 197.652 to 197.658.**

14 **(b) Has exclusive jurisdiction for review of amendments to com-**
 15 **prehensive plans or land use regulations, or new comprehensive plan**
 16 **provisions or land use regulations, adopted by a local government un-**
 17 **der ORS 197.652 to 197.658. A party to the agreement and a person who**
 18 **participated in the proceedings leading to the adoption of the com-**
 19 **prehensive plan provisions or land use regulations may not raise an**
 20 **issue on review before the commission that was not raised in the re-**
 21 **gional problem-solving process.**

22 [(5) (4) If the commission denies [*an amendment or new regulation*]
 23 **amendments to comprehensive plans or land use regulations, or new**
 24 **comprehensive plan provisions or land use regulations, submitted pur-**
 25 **suant to subsection [(3)] (1) of this section, the commission shall issue a**
 26 **written statement describing the reasons for the denial and suggesting al-**
 27 **ternative methods for accomplishing the goals on a timely basis.**

28 [(6) (5) If, in order to resolve regional land use problems, [*the*
 29 *participants*] **a local government** in a collaborative regional problem-solving
 30 process [*decide*] **decides** to devote agricultural land or forestland, as defined
 31 in the statewide planning goals, to uses not authorized by those goals, the

1 [participants] **local government** shall choose land that is not part of the
2 region's commercial agricultural or forestland base, or take an exception to
3 those goals pursuant to ORS 197.732. To identify land that is not part of the
4 region's commercial agricultural or forestland base, the [participants] **local**
5 **government** shall consider the recommendation of a committee of persons
6 appointed by the affected county, with expertise in appropriate fields, in-
7 cluding but not limited to farmers, ranchers, foresters and soils scientists
8 and representatives of the State Department of Agriculture, the State De-
9 partment of Forestry and the Department of Land Conservation and Devel-
10 opment.

11 [(7)] **(6)** The Governor [shall] **may** require all appropriate state agencies
12 to participate in the collaborative regional problem-solving process.

13 **SECTION 12.** ORS 197.747 is amended to read:

14 197.747. For the purposes of acknowledgment under ORS 197.251, board
15 review under ORS 197.805 to 197.855, **Land Conservation and Development**
16 **Commission review of a proposed regional problem solving agreement**
17 **under ORS 197.652 to 197.658** and periodic review under ORS 197.628 to
18 197.650, "compliance with the goals" means the comprehensive plan and
19 regulations, on the whole, conform with the purposes of the goals and any
20 failure to meet individual goal requirements is technical or minor in nature.

21 **SECTION 13.** Section 14 of this 2009 Act is added to and made a part
22 of ORS 197.652 to 197.658.

23 **SECTION 14.** (1) A local government that is a party to a regional
24 problem-solving agreement under ORS 197.652 to 197.658 that involves
25 nonconforming lots or parcels, as defined in ORS 92.010, on rural lands
26 may authorize the transfer of residential development rights from the
27 nonconforming lots or parcels and may authorize corresponding addi-
28 tional development rights on receiving lots or parcels that are within
29 or adjacent to an urban growth boundary without regard to whether
30 the receiving lots or parcels are under the jurisdiction of the same
31 local government as the nonconforming lots or parcels.

1 **(2) The Land Conservation and Development Commission shall**
2 **amend the statewide land use planning goals or rules implementing**
3 **the goals to implement this section.**

4 **SECTION 15. In areas of the state that are growing rapidly, state**
5 **agencies, as defined in ORS 171.133, including but not limited to the**
6 **Department of Transportation, and local governments shall prioritize**
7 **funding for infrastructure to:**

8 **(1) Support infill or redevelopment of existing urban areas to attain**
9 **the density necessary to support alternative modes of transportation;**
10 **and**

11 **(2) Be consistent with the principles set forth in ORS 197.010 (2)(a).**

12 **SECTION 16. Section 17 of this 2009 Act is added to and made a part**
13 **of ORS 222.111 to 222.180.**

14 **SECTION 17. If a city brings territory within its urban growth**
15 **boundary, the city shall annex the territory to the city.**

16 **SECTION 18. The Land Conservation and Development Commission**
17 **shall appoint a work group to conduct a policy-neutral review and**
18 **audit of ORS chapters 195, 196, 197, 215 and 227, the statewide land use**
19 **planning goals and the rules of the commission implementing the**
20 **goals. The commission shall make recommendations, based on the re-**
21 **view and audit, of major policies and key procedures that are most**
22 **appropriate for enactment by law and other policies and procedures**
23 **that are most appropriate for adoption by statewide land use planning**
24 **goals to allow for greater variation between regions of the state over**
25 **time and to reduce complexity.**

26 **SECTION 19. (1) The Land Conservation and Development Com-**
27 **mission and other boards, commissions and departments, including**
28 **but not limited to the Oregon Transportation Commission, the State**
29 **Board of Agriculture, the State Board of Forestry, the Housing and**
30 **Community Services Department, the Water Resources Commission**
31 **and the Oregon Economic and Community Development Commission**

1 shall prepare an integrated state strategic plan that is integrated with
2 the strategic plan prepared pursuant to ORS 284.615 and that includes,
3 but is not limited to:

4 (a) Identification of emerging economic, environmental, social and
5 population trends likely to affect the state;

6 (b) A description of desirable future land use, transportation and
7 economic development outcomes that are consistent with the princi-
8 ples in ORS 197.010 (2)(a) and that can be achieved through coordinated
9 action and investment; and

10 (c) Identification of strategic opportunities and needs for invest-
11 ment that would increase the likelihood of achieving the outcomes
12 described in paragraph (b) of this subsection.

13 (2) The strategic plan required by this section must be prepared in
14 consultation with local governments and representatives of business
15 and citizen interests and updated prior to each regular session of the
16 Legislative Assembly.

17 (3) The boards, commissions and departments listed in subsection
18 (1) of this section shall meet annually to review progress toward
19 achieving the strategic plan and to coordinate actions for the following
20 year.

21 SECTION 20. (1) The Oregon Progress Board, in cooperation with
22 the Department of Land Conservation and Development, shall review
23 and revise the goals for Oregon's progress and benchmarks that relate
24 to the land use system during or before the next review required by
25 ORS 284.628.

26 (2) The benchmarks must include an integrated data gathering,
27 tracking and reporting system that provides for at least one perform-
28 ance measure for each statewide land use planning goal and for an
29 ongoing comparative analysis of how the land use system is perform-
30 ing relative to the land use systems of other states and the costs and
31 benefits of the system for citizens in different regions.

1 **(3) The Oregon Progress Board and the Department of Land Con-**
 2 **servation and Development shall design the data gathering, tracking**
 3 **and reporting system to provide reasonably accurate information**
 4 **concerning the performance of the land use system while minimizing**
 5 **costs to local governments and state agencies, as defined in ORS**
 6 **171.133. The board and the department shall convene a work group to**
 7 **advise the board and the department concerning the design of the**
 8 **system, data availability, collection and reporting that includes, but**
 9 **is not limited to, representatives of:**

10 **(a) Local government;**

11 **(b) The Building Codes Division of the Department of Consumer and**
 12 **Business Services;**

13 **(c) The Department of State Lands;**

14 **(d) The State Department of Agriculture;**

15 **(e) The State Forestry Department;**

16 **(f) The Department of Transportation; and**

17 **(g) The Oregon University System.**

18 **(4) The State Forestry Department, the State Department of Agri-**
 19 **culture and the Department of Transportation shall cooperate in the**
 20 **development and implementation of the reporting system.**

21 **SECTION 21.** **There is appropriated to the Department of Land**
 22 **Conservation and Development, for the biennium beginning July 1,**
 23 **2009, out of the General Fund, the amount of \$_____ for the purpose**
 24 **of carrying out the provisions of sections 6 to 8, 14, 15, 18, 19 and 20**
 25 **of this 2009 Act and the amendments to ORS 197.010, 197.040, 197.230,**
 26 **197.628, 197.652, 197.654, 197.656 and 197.747 by sections 1, 2, 3, 4, 9, 10,**
 27 **11 and 12 of this 2009 Act.**

28 **SECTION 22.** **This 2009 Act being necessary for the immediate**
 29 **preservation of the public peace, health and safety, an emergency is**
 30 **declared to exist, and this 2009 Act takes effect on its passage.**

D R A F T

SUMMARY

Excludes from definition of “land use decision” local government decision that state agency permit is consistent with statewide land use planning goals and compatible with acknowledged comprehensive plan when local government decision is based on prior local approval of permit for substantially same action.

Directs Land Conservation and Development Commission to update and improve coordination of land use decision-making between state agencies and local governments.

A BILL FOR AN ACT

1
2 Relating to coordination of land use decision-making between state agencies
3 and local governments; creating new provisions; and amending ORS
4 197.015, 197.180, 197.254 and 197.650.

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

6 **SECTION 1. The Legislative Assembly finds and declares that:**

7 **(1) Improving coordination and consistency between the duties and**
8 **actions of state agencies that affect land use and the duties and**
9 **actions of local governments under comprehensive plans and land use**
10 **regulations is required to ensure that the actions of state agencies**
11 **complement both state and local land use planning objectives.**

12 **(2) Improved coordination is necessary to streamline state and local**
13 **permitting procedures.**

14 **(3) The Department of Land Conservation and Development has not**
15 **engaged in a formal and concerted effort to update state agency land**
16 **use coordination programs since 1989, and that state agency rules,**
17 **plans and programs affecting land use and local government compre-**

1 **hensive plans and land use regulations have changed substantially**
2 **since that time.**

3 **(4) Rules of the Land Conservation and Development Commission**
4 **regarding state agency land use coordination and state permit com-**
5 **pliance and compatibility should be:**

6 **(a) Reviewed to eliminate unclear or conflicting provisions and to**
7 **ensure that local land use decisions authorizing a use generally pre-**
8 **cede state agency decisions on permits for the use or for aspects of the**
9 **use; and**

10 **(b) Updated regularly to maintain a high level of coordination be-**
11 **tween state agencies and local governments in reviewing authori-**
12 **zations for a use of property.**

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

14 197.015. As used in ORS chapters 195, 196 and 197, unless the context re-
15 quires otherwise:

16 (1) "Acknowledgment" means a commission order that certifies that a
17 comprehensive plan and land use regulations, land use regulation or plan or
18 regulation amendment complies with the goals or certifies that Metro land
19 use planning goals and objectives, Metro regional framework plan, amend-
20 ments to Metro planning goals and objectives or amendments to the Metro
21 regional framework plan comply with the [*statewide planning*] goals.

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

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

26 (4) "Commission" means the Land Conservation and Development Com-
27 mission.

28 (5) "Comprehensive plan" means a generalized, coordinated land use map
29 and policy statement of the governing body of a local government that
30 interrelates all functional and natural systems and activities relating to the
31 use of lands, including but not limited to sewer and water systems, trans-

1 portation systems, educational facilities, recreational facilities, and natural
2 resources and air and water quality management programs.
3 “Comprehensive” means all-inclusive, both in terms of the geographic area
4 covered and functional and natural activities and systems occurring in the
5 area covered by the plan. “General nature” means a summary of policies and
6 proposals in broad categories and does not necessarily indicate specific lo-
7 cations of any area, activity or use. A plan is “coordinated” when the needs
8 of all levels of governments, semipublic and private agencies and the citizens
9 of Oregon have been considered and accommodated as much as possible.
10 “Land” includes water, both surface and subsurface, and the air.

11 (6) “Department” means the Department of Land Conservation and De-
12 velopment.

13 (7) “Director” means the Director of the Department of Land Conserva-
14 tion and Development.

15 (8) “Goals” means the mandatory statewide **land use** planning standards
16 adopted by the commission pursuant to ORS chapters 195, 196 and 197.

17 (9) “Guidelines” means suggested approaches designed to aid cities and
18 counties in preparation, adoption and implementation of comprehensive plans
19 in compliance with goals and to aid state agencies and special districts in
20 the preparation, adoption and implementation of plans, programs and regu-
21 lations in compliance with goals. Guidelines shall be advisory and shall not
22 limit state agencies, cities, counties and special districts to a single ap-
23 proach.

24 (10) “Land use decision”:

25 (a) Includes:

26 (A) A final decision or determination made by a local government or
27 special district that concerns the adoption, amendment or application of:

28 (i) The goals;

29 (ii) A comprehensive plan provision;

30 (iii) A land use regulation; or

31 (iv) A new land use regulation;

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

4 (C) A decision of a county planning commission made under ORS 433.763;
5 (b) Does not include a decision of a local government:

6 (A) That is made under land use standards that do not require interpre-
7 tation or the exercise of policy or legal judgment;

8 (B) That approves or denies a building permit issued under clear and ob-
9 jective land use standards;

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

11 (D) That determines final engineering design, construction, operation,
12 maintenance, repair or preservation of a transportation facility that is oth-
13 erwise authorized by and consistent with the comprehensive plan and land
14 use regulations;

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

16 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation,
17 maintenance or removal of a liquid petroleum gas container or receptacle
18 regulated exclusively by the State Fire Marshal under ORS 480.410 to
19 480.460; [or]

20 (G) That approves or denies approval of a final subdivision or partition
21 plat or that determines whether a final subdivision or partition plat sub-
22 stantially conforms to the tentative subdivision or partition plan; or

23 **(H) That a proposed state agency action subject to ORS 197.180 (1)**
24 **complies with the goals and is compatible with the acknowledged**
25 **comprehensive plan and land use regulations implementing the plan,**
26 **if the local government has already made a land use decision author-**
27 **izing:**

28 **(i) A use or activity that encompasses the proposed state agency**
29 **action; or**

30 **(ii) A use or activity that would be authorized, funded or under-**
31 **taken by the proposed state agency action;**

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

2 (d) Does not include authorization of an outdoor mass gathering as de-
3 fined in ORS 433.735, or other gathering of fewer than 3,000 persons that is
4 not anticipated to continue for more than 120 hours in any three-month pe-
5 riod; and

6 (e) Does not include:

7 (A) A writ of mandamus issued by a circuit court in accordance with ORS
8 215.429 or 227.179; [*or*]

9 (B) Any local decision or action taken on an application subject to ORS
10 215.427 or 227.178 after a petition for a writ of mandamus has been filed
11 under ORS 215.429 or 227.179; or

12 **(C) A state agency action subject to ORS 197.180 (1), if:**

13 **(i) The local government with land use jurisdiction over a use or**
14 **activity that would be authorized, funded or undertaken by the state**
15 **agency as a result of the state agency action has already made a land**
16 **use decision approving the use or activity; or**

17 **(ii) A use or activity that would be authorized, funded or under-**
18 **taken by the state agency as a result of the state agency action is al-**
19 **lowed without review under the acknowledged comprehensive plan and**
20 **land use regulations implementing the plan.**

21 (11) "Land use regulation" means any local government zoning ordinance,
22 land division ordinance adopted under ORS 92.044 or 92.046 or similar gen-
23 eral ordinance establishing standards for implementing a comprehensive
24 plan.

25 (12) "Limited land use decision":

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

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

30 (B) The approval or denial of an application based on discretionary stan-
31 dards designed to regulate the physical characteristics of a use permitted

1 outright, including but not limited to site review and design review.

2 (b) Does not mean a final decision made by a local government pertaining
3 to a site within an urban growth boundary that concerns approval or denial
4 of a final subdivision or partition plat or that determines whether a final
5 subdivision or partition plat substantially conforms to the tentative subdivi-
6 sion or partition plan.

7 (13) "Local government" means any city, county or metropolitan service
8 district formed under ORS chapter 268 or an association of local governments
9 performing land use planning functions under ORS 195.025.

10 (14) "Metro" means a metropolitan service district organized under ORS
11 chapter 268.

12 (15) "Metro planning goals and objectives" means the land use goals and
13 objectives that a metropolitan service district may adopt under ORS 268.380
14 (1)(a). The goals and objectives do not constitute a comprehensive plan.

15 (16) "Metro regional framework plan" means the regional framework plan
16 required by the 1992 Metro Charter or its separate components. Neither the
17 regional framework plan nor its individual components constitute a compre-
18 hensive plan.

19 (17) "New land use regulation" means a land use regulation other than
20 an amendment to an acknowledged land use regulation adopted by a local
21 government that already has a comprehensive plan and land regulations ac-
22 knowledged under ORS 197.251.

23 (18) "Person" means any individual, partnership, corporation, association,
24 governmental subdivision or agency or public or private organization of any
25 kind. The Land Conservation and Development Commission or its designee
26 is considered a person for purposes of appeal under ORS chapters 195 and
27 197.

28 (19) "Special district" means any unit of local government, other than a
29 city, county, metropolitan service district formed under ORS chapter 268 or
30 an association of local governments performing land use planning functions
31 under ORS 195.025, authorized and regulated by statute and includes but is

1 not limited to water control districts, domestic water associations and water
 2 cooperatives, irrigation districts, port districts, regional air quality control
 3 authorities, fire districts, school districts, hospital districts, mass transit
 4 districts and sanitary districts.

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

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

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

16 **SECTION 3.** ORS 197.180 is amended to read:

17 197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this
 18 section or unless expressly exempted by another statute from any of the re-
 19 quirements of this section, state agencies shall carry out their planning du-
 20 ties, powers and responsibilities and take actions that are authorized by law
 21 with respect to programs affecting land use:

22 (a) In compliance with [*goals adopted or amended pursuant to ORS chap-*
 23 *ters 195, 196 and 197*] **the goals, rules implementing the goals and rules**
 24 **implementing this section;** and

25 (b) In a manner compatible with **acknowledged comprehensive plans**
 26 **and land use regulations.**[:]

27 [(A) *Comprehensive plans and land use regulations initially acknowledged*
 28 *under ORS 197.251;*]

29 [(B) *Amendments to acknowledged comprehensive plans or land use regu-*
 30 *lations or new land use regulations acknowledged under ORS 197.625; and*]

31 [(C) *Amendments to acknowledged comprehensive plans or land use regu-*

1 *lations or new land use regulations acknowledged through periodic review.]*

2 (2) State agencies need not comply with subsection (1)(b) of this section
 3 if [*the comprehensive plan or land use regulations are inconsistent with*] a
 4 state agency **rule**, plan or program relating to land use [*that*] was not in
 5 effect [*at the time the local plan*] **when the comprehensive plan provision**
 6 **or land use regulation with which the action would be incompatible**
 7 was acknowledged[,] and the agency has demonstrated **that**:

8 (a) [*That*] The **state agency rule**, plan or program is mandated by state
 9 statute or federal law;

10 (b) [*That*] The **state agency rule**, plan or program is consistent with the
 11 goals;

12 (c) [*That*] The **state agency rule**, plan or program has objectives that
 13 cannot be achieved in a manner [*consistent*] **compatible** with the **acknowl-**
 14 **edged** comprehensive plan and land use regulations; and

15 (d) [*That*] The agency has complied with its certified state agency coor-
 16 dination program.

17 **(3) Unless federal law or a provision of state law other than this**
 18 **section requires otherwise, the commission, by rule, may require a**
 19 **local government to make a land use decision before a state agency**
 20 **takes action that is subject to subsection (1) of this section if:**

21 (a) **The land use decision will determine whether to authorize a use**
 22 **or activity that would be authorized, funded or undertaken by the**
 23 **proposed state agency action; and**

24 (b) **The state agency will rely on the determination of the local**
 25 **government that the proposed state agency action complies with the**
 26 **goals and is compatibility with the acknowledged comprehensive plan**
 27 **and land use regulations.**

28 [(3)] **(4) Upon request by the Land Conservation and Development Com-**
 29 **mission, each state agency shall submit to the Department of Land Conser-**
 30 **vation and Development the following information:**

31 (a) Agency rules and summaries of **state agency plans and programs**

1 affecting land use;

2 (b) A program for coordination pursuant to ORS 197.040 (2)(e);

3 (c) A program for coordination pursuant to ORS 197.090 (1)(b); and

4 (d) A program for cooperation with and technical assistance to local
5 governments.

6 [(4)] (5) Within 90 days of receipt, the Director of the Department of Land
7 Conservation and Development shall review the information submitted pur-
8 suant to subsection [(3)] (4) of this section and shall notify each **state**
9 agency if the director believes the **state agency** rules [*and*], **plans or** pro-
10 grams submitted are insufficient to [*assure*] **ensure** compliance with goals
11 and compatibility with [*city and county*] **acknowledged** comprehensive plans
12 and land use regulations.

13 [(5)] (6) Within 90 days of receipt of notification specified in subsection
14 [(4)] (5) of this section, the **state** agency may revise the **state agency**
15 rules, **plans** or programs and resubmit them to the director.

16 [(6)] (7) The director shall make findings under subsections [(4) *and*] (5)
17 **and** (6) of this section as to whether the **state agency** rules [*and*], **plans**
18 **or** programs are sufficient to [*assure*] **ensure** compliance with the goals and
19 compatibility with acknowledged city and county comprehensive plans and
20 land use regulations[,] and shall forward the rules and **summaries of state**
21 **agency plans or** programs to the commission for its action. The commission
22 shall either certify the **state agency** rules [*and*], **plans or** programs as [*be-*
23 *ing in compliance*] **compliant** with the goals and compatible with the **ac-**
24 **knowledged** comprehensive plans and land use regulations of affected local
25 governments or shall determine the same to be insufficient [*by December 31,*
26 *1990*].

27 [(7)] (8) The department shall report, to the appropriate committee of the
28 House and the Senate and to the subcommittee of the Joint Ways and Means
29 Committee that considers the **state** agency budget, any agency that has
30 failed to meet the requirements of subsection [(6)] (7) of this section.

31 [(8)] (9) Any **state** agency that has failed to meet the requirements of

1 subsection [(6)] (7) of this section shall report the reasons therefor to the
 2 appropriate committee of the House and the Senate and to the subcommittee
 3 of the Joint Ways and Means Committee that considers the agency budget.

4 [(9)] (10) Until [*state agency*] rules and **state agency plans and** programs
 5 are certified as [*being in compliance*] **compliant** with the goals and compat-
 6 ible with [*applicable city and county*] **the acknowledged** comprehensive
 7 plans and land use regulations **of affected local governments**, the **state**
 8 agency shall make findings when adopting or amending its rules and **state**
 9 **agency plans and** programs as to the applicability and application of the
 10 goals or acknowledged comprehensive plans, as appropriate.

11 [(10)] (11) The commission shall adopt rules establishing procedures to
 12 [*assure*] **ensure** that state agency permits affecting land use are issued in
 13 compliance with the goals and compatible with acknowledged comprehensive
 14 plans and land use regulations, as required by subsection (1) of this section.
 15 The rules [*shall*] **must** prescribe the circumstances in which state agencies
 16 may rely upon a determination of compliance [*or compatibility made by the*
 17 *affected city or county. The rules shall allow a state agency to rely upon a*
 18 *determination of compliance by a city or county without an acknowledged*
 19 *comprehensive plan and land use regulations only if the city or county deter-*
 20 *mination is supported by written findings demonstrating compliance with the*
 21 *goals.*] **with the goals or compatibility with the acknowledged compre-**
 22 **hensive plan.**

23 [(11)] (12) A state agency required to have a land use coordination pro-
 24 gram shall participate in a local government land use hearing, except a
 25 hearing under ORS 197.610 to 197.625, only in a manner that is consistent
 26 with the coordination program, unless the agency[:]

27 [(a) *Is exempt from coordination program requirements; or*]

28 [(b)] participated in the local government's periodic review pursuant to
 29 ORS 197.633 and raised the issue that is the basis for participation in the
 30 land use hearing.

31 [(12)] (13) [*In carrying out programs affecting land use, a state agency is*]

1 **State agency rules, plans or programs affecting land use** are not com-
 2 patible with an acknowledged comprehensive plan if *[it]* **the state agency**
 3 takes or approves an action that is not allowed under the **acknowledged**
 4 **comprehensive** plan. However, a state agency may apply statutes and rules
 5 *[which the agency is required by law to apply in order]* to deny, condition or
 6 further restrict an action of the state agency or of any applicant before the
 7 state agency *[provided it]* **if the state agency** applies those statutes and
 8 rules to the uses planned for in the acknowledged comprehensive plan.

9 **(14) In cooperation with local governments and state agencies**
 10 **whose rules, plans or programs affect land use, the department peri-**
 11 **odically shall:**

12 **(a) Identify aspects of coordination related to uses that require the**
 13 **issuance of multiple permits from state agencies and local govern-**
 14 **ments.**

15 **(b) Update and improve rules regulating the effectiveness and effi-**
 16 **ciency of state agency coordination programs.**

17 *[(13)]* **(15)** This section does not apply to rules, **plans**, programs, decisions,
 18 determinations or activities carried out under ORS 527.610 to 527.770, 527.990
 19 (1) and 527.992.

20 **SECTION 4.** ORS 197.254 is amended to read:

21 197.254. (1) A state agency shall be barred after the date set for sub-
 22 mission of programs by the Land Conservation and Development Commission
 23 as provided in ORS 197.180 *[(3)]* **(4)**, from contesting a request for acknowl-
 24 edgment submitted by a local government under ORS 197.251 or from filing
 25 an appeal under ORS 197.620 (1) or (2), if the commission finds that:

26 (a) The state agency has not complied with ORS 197.180; or

27 (b) The state agency has not coordinated its plans, programs or rules af-
 28 fecting land use with the comprehensive plan or land use regulations of the
 29 city or county pursuant to a coordination program approved by the commis-
 30 sion under ORS 197.180.

31 (2) A state agency shall be barred from seeking a commission order under

1 ORS 197.644 requiring amendment of a local government comprehensive plan
2 or land use regulation in order to comply with the agency's plan or program
3 unless the agency has first requested the amendment from the local govern-
4 ment and has had its request denied.

5 (3) A special district shall be barred from contesting a request for initial
6 compliance acknowledgment submitted by a local government under ORS
7 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the county
8 or Metropolitan Service District assigned coordinative functions under ORS
9 195.025 (1) finds that:

10 (a) The special district has not entered into a cooperative agreement un-
11 der ORS 195.020; or

12 (b) The special district has not coordinated its plans, programs or regu-
13 lations affecting land use with the comprehensive plan or land use regu-
14 lations of the local government pursuant to its cooperative agreement made
15 under ORS 195.020.

16 (4) A special district shall be barred from seeking a commission order
17 under ORS 197.644 requiring amendment of a local government comprehen-
18 sive plan or land use regulation in order to comply with the special district's
19 plan or program unless the special district has first requested the amendment
20 from the local government and has had its request denied.

21 **SECTION 5.** ORS 197.650 is amended to read:

22 197.650. (1) A Land Conservation and Development Commission order may
23 be appealed to the Court of Appeals in the manner provided in ORS 183.482
24 by the following persons:

25 (a) Persons who submitted comments or objections pursuant to ORS
26 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are ap-
27 pealing a commission order issued under ORS 197.251 or 197.633, 197.636 or
28 197.644;

29 (b) Persons who submitted comments or objections pursuant to procedures
30 adopted by the commission for certification of state agency coordination
31 programs and are appealing a certification issued under ORS 197.180 [(6)]

1 (7);

2 (c) Persons who petitioned the commission for an order under ORS 197.324
3 and whose petition was dismissed; or

4 (d) Persons who submitted oral or written testimony in a proceeding be-
5 fore the commission pursuant to ORS 215.780.

6 (2) Notwithstanding ORS 183.482 (2) relating to contents of the petition,
7 the petition shall state the nature of the order petitioner desires reviewed
8 and whether the petitioner submitted comments or objections as provided in
9 ORS 197.251 (2) or pursuant to ORS 197.633, 197.636 or 197.644.

10 (3) Notwithstanding ORS 183.482 (2) relating to service of the petition,
11 copies of the petition shall be served by registered or certified mail upon the
12 Department of Land Conservation and Development, the local government
13 and all persons who filed comments or objections.

14 **SECTION 6. The amendments to ORS 197.015 by section 1 of this**
15 **2009 Act apply to local government decisions made on or after the ef-**
16 **fective date of this 2009 Act.**

17
