



Oregon

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May 21, 2009

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy and Michael Morrissey, Legislative Coordinators for
The Department of Land Conservation and Development (DLCD)

SUBJECT: Agenda Item 8, June 4-5, 2009, LCDC Meeting

LEGISLATIVE UPDATE

Under this agenda item, the department will report to the commission regarding the status of land use legislation, including the department's proposed legislation and other legislation that effects land use policy or the department.

The status of legislation proposed or tracked by the department changes almost daily, and as such information in this report may be out of date by the time the commission meets. The department will supplement this report with updated information at the meeting.

For additional information, contact either Bob Rindy at (503) 373-0050 ext. 229 or by e-mail at bob.rindy@state.or.us; or Michael Morrissey at (503) 373-0050 ext. 320 or by e-mail at michael.morrissey@state.or.us.

I. OVERVIEW

April 28 was the deadline for bills to move out of their "committee of origin" (except Rules, Ways and Means, and Revenue committees). As such, the list of "live bills" that DLCD is tracking has been substantially reduced – a large percentage of the roughly 200 bills DLCD was tracking are "dead." Attachment A to this report shows the live bills DLCD is currently tracking as of the date of the report (this list includes only "priority 1, 2, and 3" bills – it does not include other tracked bills that affect agencies, including DLCD, but that do not affect land use policy).

II. PROPOSED DLCD LEGISLATION

At the start of the 2009 session, the Governor proposed six bills at the request of LCDC and the department:

HB 2225: Affordable housing pilot program. As the department reported last time (the commission's April meeting), the chair of the House Sustainability and Economic Development Committee informed the department that he does not intend to take further action on this bill.

HB 2226: Protect the Metolius River Basin. The commission's proposal for the Metolius Area of Critical Statewide Concern (ACSC) was submitted to the legislature on April 2, 2009, several months after a previous proposal regarding the Metolius, HB 2226, was filed by the Governor's Office. As such, the ACSC is in a different bill, **HB 3100** (Attachment B). That bill was the subject of hearings in the House Land Use Committee on April 7 and 9, and the bill was forwarded to the House Rules Committee on April 21. Action on this bill is not scheduled at the time of this report. SB 741 is also a live bill and is very similar to HB 3100. SB 741 passed the Senate Environment and Natural Resources Committee and has been referred to Senate Rules.

HB 2227: Destination Resorts. The House Land Use Committee forwarded the department's general bill regarding destination resort law, with amendments, to the house floor with a "do pass" recommendation on March 31. The amended version of the bill (Attachment C) passed on the house floor on April 13. The bill primarily removes detailed resort provisions (phase in standards) from statute, but leaves similar provisions in LCDC's Goal 8 to maintain destination resort policy. The bill allows the commission and department to undertake a study of destination resort issues within a timeframe that is likely to cross into the 2011-13 biennium.

HB 2228: Transfer of Development Credits (TDC) Pilot Program. The department's bill was amended substantially in committee, has passed the house, and is currently in the Senate Environment Committee. The bill still establishes a pilot program to conserve forest lands by facilitating a transfer of residential development credits, but the amended version includes two new elements unrelated to the original TDC bill. One amendment authorizes a "transfer of development opportunity" from an owner of a previously mapped resort site in the Metolius Basin to other limited areas in the state. The other new element provides that the owner of the "Skyline Forest" and "South Country Tract" in Deschutes County may transfer this forest land to a trust or land management agency and in return, may retain 3,000 acres of the land for certain residential uses, including development on 320 acres. Additional amendments to the bill (Attachment D) were under discussion at the time of this report.

HB 2229: Big Look Task Force Recommendations. This bill was amended and has passed both the House Land Use Committee and the house floor, almost unanimously. The bill is currently in the Senate Environment Committee and was scheduled for a hearing at the time of this report. The amended bill (Attachment E) allows counties to conduct a legislative review of agricultural or forest lands to determine consistency with current Goal definitions, and to correct mapping errors or update these designations. The bill also amends and clarifies requirements in the "regional problem-solving process" statutes, and directs a policy-neutral review and audit of the land use system to reduce complexity.

HB 2230: State Agency Coordination and modification of Land Use Compatibility Statement (LUCS) requirements. This bill passed the house floor and the amended bill (Attachment F) was scheduled for a hearing in the Senate Environment and Natural Resources Committee at the time of this report. It is anticipated that there will be little if any opposition to the bill, and passage is expected.

II. MEASURE 49 LEGISLATION (see also, Measure 49 Report under Item 6)

SB 945: Measure 49. This bill, sponsored by Senator Prozanski, passed the Senate Judiciary Committee and is scheduled for a hearing before the Ways and Means Committee. The current version of the bill imposes a statutory deadline for DLCD to complete claims (June 30, 2010); authorizes prioritizing no more than 100 claims in cases of demonstrated hardship, and allows approximately 400 claimants who failed to meet statutory deadlines, had property split by a UGB, or whose property is within a city but outside a UGB (Damascus) an additional opportunity for review of their claims. The bill also directs the department to investigate and report to the legislature by the end of this year the approximately 900 claims filed only with a county but not with the state, and certain claims filed without a required appraisal.

HB 3225: Nearly identical to SB 945 except adds fee of \$175 for processing of certain claims. Declares emergency, effective on passage.

SB 691: Modifies provisions for claiming compensation for specified land use regulations that regulate forest practices on private real property. Allows forest practices claims by owner on the portion of the property affected by the regulation and not the entire parcel.

III. OTHER LEGISLATION OF INTEREST

Several other land use related bills were still “alive” at the time of this report and may be of interest to the commission:

HB 2761: Changes process for a landowner who requests an independent soil capability assessment. Requires DLCD to establish a list of qualified contractors for such assessment, and to collect a fee to cover costs of administering this program.

HB 3043: Annexes territory to Metro as that UGB is expanded so that territory added to the UGB would automatically be added to Metro’s jurisdiction (this is Metro’s bill).

HB 3099: This bill, which has been substantially amended from the original version, would change or eliminate some uses currently allowed in exclusive farm use (EFU) zones by statute. The amended bill has passed the house and is currently in the Senate Business and Transportation Committee. No hearing was scheduled at the time of this report, but additional amendments are anticipated.

HB 3298: Provides that once counties and metropolitan service districts have designated land as urban reserve, they may not designate additional land as urban reserve until at least 50 percent of the previously designated urban reserves have been included within the Metro urban growth boundary.

SB 566: Excuses Metro from considering the “priority of land” statute when adding land in an urban reserve to its UGB.

SB 763: This bill, which has passed the Senate and was scheduled for a hearing in the House Land Use Committee at the time of this report, would establish a broad system for buying and selling transferable development credits (TDCs) to encourage landowners to voluntarily protect resource lands. The department has participated in a work group regarding this bill, beginning in the Fall of 2008. TDCs have been used effectively in other states; this bill integrates this market-based planning and conservation tool into the Oregon land use system.

IV. ATTACHMENTS

A. May 15, 2009 Bill Tracking Report

B. House Bill 3100 regarding the Metolius

C. Amended Version of DLCD Destination Resorts Bill, House Bill 2227-A

D. Amended Version of DLCD TDC Pilot Program Bill, House Bill 2228

E. Amended Version of Big Look Task Force Recommendations, House Bill 2229

F. DLCD Bill regarding State Agency Coordination, House Bill 2230

DLCD Bill Tracking Report

Report Date: Fri, May 15, 2009

Searched on: May 15, 2009

Tracked=Live Bills

Priority=1,2,3

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
HB2001A	Relating to transportation; providing for revenue raising that requires approval by a three-fifths majority.	Directs Department of Transportation to develop pilot programs to implement congestion pricing in Portland metropolitan area. Directs Department of Transportation to develop least-cost planning model. Authorizes issuance of lottery bonds for transportation projects funded from Multimodal Transportation Fund.	Governor Theodore R. Kulongoski	E. Terry Beyer Vicki Berger	1	Date: Tue, May 19, 2009 Time: 8:00 AM Loc: HR A Com: Revenue (H)	05/19/09 - Public Hearing and Work Session scheduled. 05/04/09 - Without recommendation as to passage, with amendments and be referred to Revenue, then Ways and Means both by prior reference.
HB2098A	Relating to Oregon territorial sea mapping project; declaring an emergency.	Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Department of State Lands to pay costs of Oregon territorial sea mapping project. Declares emergency, effective July 1, 2009.	House Interim Committee on Emergency Preparedness and Ocean Policy	Presession filed.	1	No hearings scheduled at this time.	05/12/09 - Public Hearing held. 03/20/09 - Assigned to Subcommittee On Natural Resources. 03/17/09 - Referred to Ways and Means by prior reference.
HB2216A	Relating to the State Board of Forestry authorization to acquire lands; appropriating money; declaring an emergency.	Modifies certain provisions related to ability of State Board of Forestry to acquire lands. Establishes State Forest Acquisition Fund. Continuously appropriates moneys in fund to board for purpose of acquiring parcels in Gilchrist area of Klamath County for use as state forestland.	Governor Theodore R. Kulongoski for State Forestry Department	Presession filed.	1	No hearings scheduled at this time.	05/07/09 - Assigned to Ways and Means Subcommittee On Natural Resources. 05/05/09 - Recommendation: Do pass, rferred to Ways and Means, and then Revenue.
HB2227A	Relating to destination resorts.	Modifies provisions for siting destination resorts. <i>Directs</i> Authorizes Land Conservation and Development Commission to evaluate destination resort policies and update key requirements.	Governor Theodore R. Kulongoski for Department of Land Conservation and Development	Presession filed.	1	No hearings scheduled at this time.	05/07/09 - Public Hearing held. 04/21/09 - Referred to Environment and Natural Resources.
HB2228A	Relating to transfer of development rights from resource lands; declaring an emergency.	Authorizes establishment of small-scale recreation communities on forestlands, conditioned on transfer of development opportunity from owner of Metolius resort site. Establishes DLCD pilot program to conserve resource lands by facilitating transfer of residential development rights from forest property. Provides that if owner of Skyline Forest and South Country Tract transfers forest to land trust, owner may use 3,000 acres of land for specified uses.	Governor Theodore R. Kulongoski for Department of Land Conservation and Development	Presession filed.	1	No hearings scheduled at this time.	05/14/09 - Referred to Environment and Natural Resources. 05/13/09 - First reading. Referred to Presidents desk. 05/12/09 - Third reading. Carried by Clem. Passed.
HB2229A	Relating to recommendations of Oregon Task Force on Land Use Planning; declaring an emergency.	Establishes main principles for state land use system. Provides that county may conduct legislative review of county lands to determine whether lands planned and zoned are consistent with definitions of agricultural lands or forest lands for purposes of correcting mapping errors and updating designations of farmlands and forestlands. Directs Land Conservation and Development Commission to carry out policy-neutral review and audit of land use system to reduce complexity.	Governor Theodore R. Kulongoski for Department of Land Conservation and Development	Presession filed.	1	Date: Tue, May 19, 2009 Time: 3:00 PM Loc: HR C Com: Environment and Natural Resources (S)	05/19/09 - Public Hearing and Possible Work Session scheduled. 05/12/09 - Referred to Environment and Natural Resources. 05/11/09 - First reading. Referred to Presidents desk.
HB2230	Relating to coordination of land use decision-making between state agencies and local governments.	Excludes from definition of land use decision local government decision that state agency permit is 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.	Governor Theodore R. Kulongoski for Department of Land Conservation and Development	Presession filed.	1	Date: Tue, May 19, 2009 Time: 3:00 PM Loc: HR C Com: Environment and Natural Resources (S)	05/19/09 - Possible Work Session scheduled. 05/07/09 - Public Hearing held. 03/18/09 - Referred to Environment and Natural Resources.

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
HB2375A	Relating to fireworks business in exclusive farm use zone.	Limits use of aerial fireworks display business in exclusive farm use zones to current business owners. Requires discontinuance of aerial fireworks display business upon expiration of current permit. Provides that permit expires upon occurrence of sale or transfer of business and certain other circumstances.	House Interim Committee on Consumer Protection	Pre-session filed.	2	No hearings scheduled at this time.	03/03/09 - Referred to Business and Transportation. 02/23/09 - First reading. Referred to Presidents desk. 02/19/09 - Third reading. Carried by Clem. Passed.
HB2396A	Relating to public borrowing for West Eugene extension; appropriating money; declaring an emergency.	Authorizes issuance of lottery bonds to finance extension of bus rapid transit system in west Eugene. Creates West Eugene EmX Extension Fund. Continuously appropriates moneys in fund to Oregon Department of Administrative Services . Directs department to use moneys in fund to finance costs incurred by Lane Transit District to establish West Eugene EmX Extension.		Pre-session filed. Chris Edwards	3	No hearings scheduled at this time.	05/06/09 - Public Hearing held. 04/21/09 - Assigned to Subcommittee On Capital Construction and Info Technology. 04/16/09 - Referred to Ways and Means by prior reference.
HB2437A	Relating to highway construction study; appropriating money; declaring an emergency.	Requires Department of Transportation to study feasibility of constructing highway between Coos Bay and Ontario. Appropriates moneys from General Fund to department for study. Sunsets January 2, 2012. Declares emergency, effective on passage.	Oregonians in Action	Wayne Krieger Arnie Roblan	3	No hearings scheduled at this time.	04/28/09 - Assigned to Subcommittee On Transportation and Economic Development. 04/24/09 - Referred to Ways and Means by prior reference.
HB2473	Relating to real estate transfer taxation.	Permits counties to impose real estate transfer tax if tax revenues are dedicated to affordable housing programs.		Revenue (H)	3	No hearings scheduled at this time.	02/04/09 - Referred to Revenue. 01/29/09 - First reading. Referred to Speakers desk.
HB2761	Relating to soil information.	Allows landowner to request independent soil capability assessment.		Brian Clem Arnie Roblan	1	Date: Fri, May 15, 2009 Time: 1:00 PM Loc: HR A Cm: Environment and Natural Resources (S)	05/15/09 - Public Hearing and Possible Work Session scheduled. 05/08/09 - Referred to Environment and Natural Resources, then Ways and Means.
HB2822	Relating to ways of necessity for private sewer lines.	Establishes way of necessity for private sewer lines. Sets conditions for use.		Mitch Greenlick Jules Bailey	2	No hearings scheduled at this time.	05/13/09 - Public Hearing held. 03/31/09 - Referred to Education and General Government. 03/24/09 - First reading. Referred to Presidents desk.
HB2859	Relating to ground water use for domestic purposes.	Reduces amount of ground water use for domestic purposes exempt from water right requirement. Applies to ground water use that commences on or after effective date of Act. Continues former exemption amount if new water use replaces ground water use commenced before effective date of Act.		Brian Clem	3	No hearings scheduled at this time.	04/16/09 - Work Session held. 03/17/09 - Public Hearing held. 03/09/09 - Referred to Environment and Water.
HB3013	Relating to ocean resources.	Modifies various provisions relating to Ocean Policy Advisory Council. Makes legislative finding that wave energy provides renewable, sustainable source of energy. Repeals sunset on prohibition against leases for exploration, development or production of oil, gas or sulfur in territorial sea and exemption for academic research or geologic survey activities. Repeals provisions related to joint liaison program with National Oceanic and Atmospheric Administration.		Rules (H)	2	No hearings scheduled at this time.	04/30/09 - Referred to Rules by order of Speaker. 04/30/09 - Without recommendation as to passage and be referred to Rules. 04/23/09 - Work Session held.
HB3058	Relating to removal-fill permitting program.	Changes definition of applicant for purposes of removal-fill permitting program.		Mike Schaufler Brad Witt	3	No hearings scheduled at this time.	04/30/09 - Referred to Rules by order of Speaker. 04/30/09 - Without recommendation as to passage and be referred to Rules. 04/28/09 - Work Session held.
HB3099A	Relating to use of land zoned for exclusive farm use.	Modifies conditional and outright permitted uses of land zoned for exclusive farm use. Modifies criteria for uses.	Oregon Farm Bureau	Brian Clem	1	No hearings scheduled at this time.	05/13/09 - Referred to Business and Transportation. 05/11/09 - First reading. Referred to Presidents desk.

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
HB3100A	Relating to area of critical state concern; declaring an emergency.	Approves recommendation of Land Conservation and Development Commission by designating area identified by commission recommendation , <i>as amended,</i>] as area of critical state concern. <i>Adopts</i>] Approves management plan included in recommendation. <i>Directs</i> commission to supplement management plan for area.] Prohibits new developments that result in specified negative impacts. Prohibits county siting destination resort in area. Declares emergency, effective on passage.		Ben Cannon Brian Clem	1	No hearings scheduled at this time.	04/29/09 - Referred to Rules by prior reference. 04/29/09 - Recommendation: Do pass with amendments, be printed A-Engrossed, and be referred to Rules by prior reference. 04/21/09 - Work Session held.
HB3106A	Relating to nearshore research; declaring an emergency.	Creates Task Force on Nearshore Research . <i>Directs</i> task force to provide recommendations on needs and challenges facing nearshore resources] for purpose of making recommendations to ensure protection and utilization of Oregons nearshore resources. <i>Appropriates moneys from General Fund</i>] Directs Department of State Lands to transfer certain moneys, for biennium beginning July 1, 2009, to Department of Higher Education for purposes of Task Force on Nearshore Research. Sunsets January 2, 2012. Declares emergency, effective July 1, 2009.		Arnie Roblan Deborah Boone	2	Date: Tue, May 19, 2009 Time: 1:00 PM Loc: H-170 Com: Natural Resources (J)	05/19/09 - Public Hearing scheduled. 05/04/09 - Assigned to Subcommittee On Natural Resources. 04/30/09 - Referred to Ways and Means by prior reference.
HB3153A	Relating to utility facilities.	Requires utility provider to make reasonable effort to locate utility transmission and distribution lines in exclusive farm use zones so that lines have least practical impact on farming operations.		Brian Clem Deborah Boone	2	No hearings scheduled at this time.	05/05/09 - Recommendation: Do pass with amendments, referred to Rules..
HB3225A	Relating to Ballot Measure 49 (2007) claims; declaring an emergency.	Specifies that certain claimants under Ballot Measure 49 (2007) are eligible to receive relief under Act. Allows claimant that did not comply with previous filing requirements, claimant with majority of property located outside urban growth boundary, that filed claim only with state and not with both county and state to pursue relief under Act. Directs LCDC to establish procedure and to issue final order on or before specified dates. Directs department to investigate certain improperly filed claims. Requires fee of \$175 for processing of certain claims. Authorizes Director to prioritize processing of specified claims that demonstrate hardship. Declares emergency, effective on passage.		Land Use (H)	1	No hearings scheduled at this time.	05/13/09 - Public Hearing held. 05/05/09 - Assigned to Subcommittee On Natural Resources. 05/04/09 - Referred to Ways and Means by order of Speaker.
HB3298A	Relating to land reserves.	Provides that once counties and metropolitan service districts have designated land as urban reserve, they may not designate additional land as urban reserve until at least 50 percent of previously designated urban reserves have been included within urban growth boundary of district.	Oregon Farm Bureau, Oregon Association of Nurseries	Brian Clem	1	No hearings scheduled at this time.	05/13/09 - Referred to Environment and Natural Resources. 05/11/09 - First reading. Referred to Presidents desk. 05/08/09 - Third reading. Carried by Clem. Passed.
HB3313	Relating to land use.	Provides counties with alternative land use procedure for siting one single-family dwelling on lot, parcel or tract located within farm, forest or mixed-use zone.		Bruce Hanna	1	No hearings scheduled at this time.	04/23/09 - Referred to Rules by order of Speaker. 04/23/09 - Without recommendation as to passage and be referred to Rules.
HB3379A	Relating to transportation; declaring an emergency.	Allows local governments that are unable to meet funding requirements of transportation planning rule adopted by Land Conservation and Development Commission to apply for extensions, submit alternative plans for funding or apply to adjust various traffic performance measures. Limits number of extensions and plans that may be approved. Declares emergency, effective on passage.		David Edwards John Huffman	2	Date: Mon, May 18, 2009 Time: 1:00 PM Loc: HR B Com: Business and Transportation (S)	05/18/09 - Public Hearing and Work Session scheduled. 05/08/09 - Referred to Business and Transportation. 05/07/09 - First reading. Referred to Presidents desk.

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
HB3454A	Relating to water control.	Directs Water Resources Department to develop integrated state water resources strategy. Specifies components to be included in strategy. Requires department to review and update strategy every five years.		Rules (H)	3	No hearings scheduled at this time.	05/05/09 - Assigned to Subcommittee On Natural Resources. Recommendation: Do pass with amendments, and be referred to Ways and Means.
HB3491	Relating to use of land zoned for forest use.	Authorizes parking of up to 10 dump trucks and up to 10 trailers on lot or parcel of land zoned for forest use or mixed farm and forest use.	Jim Althausen	Vic Gilliam Fred Girod	1	No hearings scheduled at this time.	05/07/09 - Referred to Rules. 05/07/09 - First reading. Referred to Speaker
HB3492	Relating to liquefied natural gas; declaring an emergency.	Requires applicant seeking to construct liquefied natural gas terminal or pipeline directly related to terminal to enter into certain written agreement with state. Declares emergency, effective on passage.		Tobias Read Vicki Walker	3	No hearings scheduled at this time.	05/13/09 - Referred to Rules. 05/12/09 - First reading. Referred to Speakers desk.
HJR47	Proposing amendment to Oregon Constitution relating to authorizing cities and counties to adopt site value taxation system in lieu of uniform ad valorem property taxation.	Proposes amendment to Oregon Constitution authorizing cities and counties to adopt site value taxation system in lieu of uniform ad valorem property taxation. Refers proposed amendment to people for their approval or rejection at next general election held throughout this state.		Revenue (H)	2	No hearings scheduled at this time.	03/13/09 - Referred to Revenue with subsequent referral to Rules. 03/11/09 - First reading. Referred to Speakers desk.
SB80A	Relating to greenhouse gas emissions; declaring an emergency.	Requires plans to meet 2020 greenhouse gas emissions reduction goal. Specifies duties and powers of state agencies in developing plans. Establishes Climate Policy Advisory Council. Imposes deadlines on state agencies for submitting plans to council.	Governor Theodore R. Kulongoski	Presession filed.	2	No hearings scheduled at this time.	05/11/09 - Assigned to Subcommittee On Natural Resources. 05/06/09 - Referred to Ways and Means by order of the President. 05/06/09 - Recommendation: Do pass with amendments
SB 170	Relating to rural airports.	Expands number of rural airports eligible to participate in pilot project encouraging economic development.	Governor Theodore R. Kulongoski for Oregon Department of Aviation	Presession filed.	1	Date: Wed, May 20, 2009 Time: 1:00 PM Loc: HR D Com: Transportation	05/20/09 - Public Hearing and Possible Work Session scheduled. 03/06/09 - Referred to Transportation.
SB171A	Relating to physical hazards to air navigation.	Prohibits person from constructing structure that constitutes physical hazard to air navigation. Allows Director of Oregon Department of Aviation to adopt rules relating to mitigation of hazards to air igation.	Governor Theodore R. Kulongoski for Oregon Department of Aviation	Presession filed.	2 2	Date: Wed, May 20, 2009 Time: 1:00 PM Loc: HR D Com: Transportation (H)	05/20/09 - Public Hearing and Possible Work Session scheduled. 04/29/09 - Referred to Transportation./29/09 - First reading. Referred to Speakers desk.
SB193A	Relating to state water resources strategy.	Authorizes Water Resources Department to develop integrated state water resources strategy. Directs department to report to legislature regarding strategy. Directs Water Resources Commission to give Environmental Quality Commission notice of strategy and to update strategy every five years.	Governor Theodore R. Kulongoski for Water Resources Department	Presession filed.	2	No hearings scheduled at this time.	05/14/09 - Public Hearing held. 04/09/09 - Assigned to Subcommittee On Natural Resources. 04/07/09 - Referred to Ways and Means by prior reference.
SB194A	Relating to water use measurement.	Requires Water Resources Department to biennially report to Legislative Assembly regarding measurement of significant diversions of surface water from certain watersheds. Requires department to request public hearing on report.	Governor Theodore R. Kulongoski for Water Resources Department	Presession filed.	3	No hearings scheduled at this time.	05/14/09 - Public Hearing held. 04/09/09 - Assigned to Subcommittee On Natural Resources. 04/07/09 - Referred to Ways and Means by prior reference.
SB195	Relating to wave energy; declaring an emergency.	Adds exemption for wave energy projects from provisions related to hydroelectric projects. Authorizes Water Resources Commission to adopt rules relating to wave energy projects. Sunsets January 1, 2010. Declares emergency, effective on passage.	Governor Theodore R. Kulongoski for Water Resources Department	Presession filed.	2	Date: Tue, May 19, 2009 Time: 3:00 PM Loc: HR D Com: Environment and Water (H)	05/19/09 - Work Session scheduled. 03/10/09 - Referred to Environment and Water with subsequent referral to Ways and Means.
SB513A	Relating to ecosystems; appropriating money; declaring an emergency.	Establishes policy regarding ecosystem services. Makes legislative findings regarding ecosystem services. Encourages state agencies to take certain actions related to ecosystem services and ecosystem services markets. Requires Sustainability Board to convene ecosystem services markets working group. Appropriates moneys from General Fund to Sustainability Board for purpose of ecosystem services markets working group. Declares emergency, effective on passage.		Richard Devlin Jason Atkinson	3	No hearings scheduled at this time.	05/13/09 - Public Hearing held. 04/13/09 - Assigned to Subcommittee On Natural Resources. 04/09/09 - Referred to Ways and Means by prior reference.

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
SB566A	Relating to urban growth boundary management in metropolitan service district; prescribing an effective date.	Provides that metropolitan service district is not required to consider certain information when including land designated as urban reserve within urban growth boundary. Takes effect December 1, 2009.		Bruce Starr	1	No hearings scheduled at this time.	05/14/09 - Public Hearing scheduled. 05/07/09 - Referred to Land Use. 05/05/09 - First reading. Referred to Speakers desk.
SB634A	Relating to priority of land for inclusion within urban growth boundary.	Modifies priority of land for inclusion within urban growth boundary. Provides that in-lieu land owned by the state and adjacent to a UGB is higher priority than private farm and forest land.		Chris Telfer Vicki Walker	1	No hearings scheduled at this time.	05/11/09 - Referred to Land Use. 05/08/09 - First reading. Referred to Speakers desk. 05/07/09 - Third reading. Carried by Telfer, Walker. Passed.
SB691A	Relating to compensation for the loss of value of private forestland resulting from regulation of forest practices.	Modifies provisions for claiming compensation for specified land use regulations that restrict forest practices on private real property. Allows claim by owner based on land use regulation restricting forest practices and enacted before owner acquired property. Allows claim to use property in manner prescribed by regulation by person who owns property subsequent to owner who filed claim. Allows owner to prove reduction in fair market value by appraisals that show value of land and harvestable timber. Allows owner to make separate claims, based on same regulation of forest practices for different lawfully established units of land.	Oregon Forest Industries Council	Betsy Johnson	1	Date: Thu, May 21, 2009 Time: 3:00 PM Loc: HR E Com: Land Use (H)	05/21/09 - Public Hearing scheduled. 05/11/09 - Referred to Land Use. 05/06/09 - First reading. Referred to Speakers desk.
SB719A	Relating to Urban Growth Boundary Expansion Area Revolving Loan Fund; appropriating money; declaring an emergency.	Establishes Urban Growth Boundary Expansion Area Revolving Loan Fund. Continuously appropriates moneys from fund to Economic and Community Development Department to provide no-interest loans to finance eligible infrastructure projects in urban growth boundary expansion areas. Declares emergency, effective July 1, 2009.	City of Gresham, Washington County, Central Oregon Cities organization, City of Wilsonville	Laurie Monnes Anderson Bruce Starr	3	No hearings scheduled at this time.	05/13/09 - Public Hearing held. 04/28/09 - Assigned to Subcommittee On Transportation and Economic Development. 04/23/09 - Referred to Ways and Means by order of the President.
SB741A	Relating to protection of Metolius River Basin; declaring an emergency.	Approves recommendation of Land Conservation and Development Commission that Metolius River Basin be designated area of critical state concern. Approves management plan included in commissions recommendation. Makes certain changes to plan. Restricts new developments in Metolius River Basin. Restricts siting of destination resort in Metolius River Basin. Declares emergency, effective on passage.		Environment and Natural Resources (S)	1	No hearings scheduled at this time.	05/05/09 - Referred to Rules by order of the President. 05/05/09 - Recommendation: Do pass with amendments and be referred to Rules. (Printed A-Eng) 04/28/09 - Work Session held.
SB763A	Relating to transferable development credits; declaring an emergency.	Authorizes cities, counties, metropolitan service districts and certain state agencies to establish transferable development credit system for purpose of allowing specified persons to transfer developmental interests from one government unit to another. Requires participating governmental units to enter into intergovernmental agreement with each other and, for purpose of administering process, with Department of Land Conservation and Development. Requires department to report on transferable development credit systems to Seventy-seventh Legislative Assembly. Declares emergency, effective on passage.		Martha Schrader Mary Nolan	1	Date: Tue, May 19, 2009 Time: 3:00 PM Loc: HR E Com: Land Use (H)	05/21/09 - Public Hearing and Possible Work Session scheduled. 05/19/09 - Public Hearing and Possible Work Session scheduled. 05/11/09 - Referred to Land Use.
SB944A	Relating to Lane County Area Commission on Transportation.	Directs Lane County to develop proposed charter for formation of area commission on transportation on or before September 30, 2010. Directs county to submit charter to Oregon Transportation Commission. Directs county to report on development of area commission to interim committees of Legislative Assembly on or before October 31, 2010.		Floyd Prozanski Paul Holvey	3	Date: Fri, May 15, 2009 Time: 1:00 PM Loc: HR D Com: Transportation (H)	05/15/09 - Public Hearing and Possible Work Session scheduled. 05/07/09 - Referred to Transportation. 05/05/09 - First reading. Referred to Speakers desk.

Bill #	Relating To Clause	Summary	At the Request of	First 2 Sponsors	Prty	Next Hearing	Last Three Actions
SB945A	Relating to Ballot Measure 49 (2007) claims; declaring an emergency.	Specifies requirements for eligibility of certain claims filed pursuant to Ballot Measure 49 (2007). Describes procedures by which claimants may pursue relief. Directs Department of Land Conservation and Development to review claims. Directs department to issue final order for claims on or before specified dates. Directs department to investigate certain matters related to filing of claims. Directs department to report findings to interim committee of Legislative Assembly on or before December 31, 2009. Declares emergency, effective on passage.		Floyd Prozanski	1	No hearings scheduled at this time.	05/13/09 - Public Hearing held. 04/28/09 - Assigned to Subcommittee On Natural Resources. 04/23/09 - Referred to Ways and Means by order of the President.
SB963A	Relating to properties governed by declarations.	Revises various provisions governing condominiums and planned communities.		Judiciary (S)	3	Date: Tue, May 19, 2009 Time: 1:00 PM Loc: HR E Com: Sustainability and Economic Development	05/19/09 - Public Hearing and Possible Work Session scheduled. 05/11/09 - Referred to Sustainability and Economic Development. 05/08/09 - First reading. Referred to Speaker
SB5531	Relating to financial administration of the Department of Land Conservation and Development; appropriating money; declaring an emergency.	Appropriates moneys from General Fund to Department of Land Conservation and Development for certain biennial expenses. Limits certain biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by department. Limits biennial expenditures by department from federal funds. Declares emergency, effective July 1, 2009.	Budget and Management Division, Oregon Department of Administrative Services	Presession filed.	1	No hearings scheduled at this time.	03/10/09 - Public Hearing held. 03/09/09 - Public Hearing held. 03/05/09 - Public Hearing held.
SB5532	Relating to financial administration of the Department of Land Conservation and Development; declaring an emergency.	Approves certain new or increased fees adopted by Department of Land Conservation and Development. Declares emergency, effective July 1, 2009.	Budget and Management Division, Oregon Department of Administrative Services	Presession filed.	1	No hearings scheduled at this time.	03/10/09 - Public Hearing held. 03/09/09 - Public Hearing held. 01/26/09 - Assigned to Subcommittee On Natural Resources.
SB5548	Relating to financial administration of the Department of Transportation; appropriating money; declaring an emergency.	Appropriates moneys from General Fund to Department of Transportation for rail programs. Limits certain biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts and certain federal funds, but excluding lottery funds and other federal funds, collected or received by department. Limits biennial expenditures by department from federal funds. Limits certain biennial	Budget and Management Division, Oregon Department of Administrative Services	Presession filed.	3 3	No hearings scheduled at this time.	04/28/09 - Public Hearing held. 04/27/09 - Public Hearing held. 04/23/09 - Public Hearing held.

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

A-Engrossed House Bill 3100

Ordered by the House April 29
Including House Amendments dated April 29

Sponsored by Representatives CANNON, CLEM; Representatives BAILEY, BARNHART, BOONE, BUCKLEY, GARRETT, GREENLICK, KAHL, READ, RILEY, SCHAUFLE, J SMITH, TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Approves recommendation of Land Conservation and Development Commission by designating area identified by commission recommendation, *as amended*,] as area of critical state concern. *[Adopts]* **Approves** management plan included in recommendation. *[Directs commission to supplement management plan for area.]* **Prohibits new developments that result in specified negative impacts.** Prohibits county siting destination resort in area.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to area of critical state concern; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 197.**

5 **SECTION 2. (1) As used in this section, "Metolius River Basin" means the portions of the**
6 **basin identified as Area 1 and Area 2 in the management plan recommended by the Land**
7 **Conservation and Development Commission.**

8 **(2) Pursuant to ORS 197.405 (4), the Legislative Assembly hereby:**

9 **(a) Approves the recommendation of the commission, submitted to the Legislative As-**
10 **sembly on April 2, 2009, that the Metolius River Basin be designated an area of critical state**
11 **concern; and**

12 **(b) Designates the Metolius River Basin an area of critical state concern.**

13 **(3) The Legislative Assembly approves the management plan included in the commission's**
14 **recommendation pursuant to ORS 197.405 (1)(c).**

15 **(4) New development in the Metolius River Basin may not result in:**

16 **(a) Negative impact on the Metolius River, its springs or its tributaries;**

17 **(b) Negative impact on fish resources in the Metolius River Basin; or**

18 **(c) Negative impact on the wildlife resources in the Metolius River Basin.**

19 **(5) A county may not approve siting a destination resort in the Metolius River Basin.**

20 **(6) "Contiguous," as used in section 2.2.3 of the management plan, means that the de-**
21 **velopment of units may occur on up to 25 clusters that may be connected only by a road**
22 **system.**

23 **SECTION 3. This 2009 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
25 **on its passage.**

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.

A-Eng. HB 3100

1

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

A-Engrossed House Bill 2227

Ordered by the House April 6
Including House Amendments dated April 6

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies provisions for siting destination resorts.

[Directs] **Authorizes** 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 197.440, 197.445, 197.450,
3 197.455, 197.460, 197.462 and 197.825; and repealing ORS 197.435 and 197.465.

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

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

6 197.440. (1) The Legislative Assembly finds that:

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

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

12 [(3)] *It is a difficult and costly process to site and establish destination resorts in rural areas of this*
13 *state; and]*

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

15 **(2) The Legislative Assembly further finds that:**

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

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

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

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

24 **(ii) Update land use policy relating to destination resorts to account for changing cir-**
25 **cumstances and differing conditions and needs in different regions of this state.**

26 **(B) Several problems have arisen, including:**

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 (i) Destination resorts have become concentrated in close proximity to some Oregon
2 cities and the number of destination resorts continues to increase without adequate assess-
3 ment of the impacts that existing and planned resorts have on nearby urban and rural areas,
4 including areas under the jurisdiction of multiple local governments, transportation and
5 other public facilities, natural resources in the region, including water resources and fish and
6 wildlife habitat, prevention and suppression of wildfires and control or mitigation of other
7 natural hazards.

8 (ii) Extensive areas outside of, but in proximity to, urban growth boundaries are cur-
9 rently mapped and zoned to allow destination resort development, and additional resorts are
10 in the planning or approval process.

11 (iii) Increasingly, destination resorts have taken on the character of residential subdi-
12 visions, rather than unique developments designed to attract tourism and serve visitors, and
13 have diminished the effect of land use policies intended to concentrate permanent develop-
14 ment in urban growth boundaries and contain urban sprawl and exurban development in
15 Oregon.

16 (iv) Siting criteria designed to ensure that high quality developed recreational amenities
17 anchor destination resorts have not been updated to account for present-day market and
18 inflation factors or revised to encourage recreational amenities that minimize impacts on the
19 availability of water and on farmland, forestland and other natural resources.

20 (v) Amendments to statutory requirements for destination resorts have diminished the
21 effect of safeguards provided in the original goal-based requirements for destination resorts,
22 including modifications to the ratio of permanent housing to overnight lodging and changes
23 that authorize amendments to maps of eligible lands at times other than the periodic review
24 of comprehensive plans.

25 **SECTION 2.** (1) The Land Conservation and Development Commission may:

26 (a) Evaluate the state's destination resort policies and implementation of those policies;
27 and

28 (b) Update key requirements and address issues through special studies and, as neces-
29 sary, through the amendment of statewide land use planning goals or the adoption of ad-
30 ministrative rules.

31 (2) If the commission undertakes an evaluation authorized in subsection (1) of this sec-
32 tion, the issues to be addressed and the key requirements to be updated include, but are not
33 limited to:

34 (a) The adequacy of siting provisions to ensure that destination resorts function, as ori-
35 ginally intended, to attract tourism and serve visitors rather than to establish residential
36 subdivisions or to establish suburban communities that compete with urban areas.

37 (b) The impact of existing and planned destination resorts on nearby urban areas, in-
38 cluding the impact of large amounts of permanent, exurban housing on nearby communities,
39 on facilities and on service providers.

40 (c) The protection of important natural resources impacted by destination resorts, in-
41 cluding farm and forest resources, water resources and natural areas and habitats, and the
42 adequacy of requirements for identifying and evaluating the important natural resources
43 before resort approval.

44 (d) The effects of a concentration of destination resorts in particular regions of this state
45 and whether the number of destination resorts or the number of permanent dwelling units

1 **allowed in resorts should be capped by region or county.**

2 **(e) Provisions to avoid or mitigate transportation and wildlife impacts caused by desti-**
3 **nation resorts.**

4 **(f) Mitigation and control of natural hazards, including prevention and suppression of**
5 **wildfires, that may be exacerbated by destination resort siting.**

6 **(g) The availability of workforce housing and related transportation needs in destination**
7 **resorts and nearby communities.**

8 **(h) The suitability of excluding destination resort development on lands within irrigation**
9 **districts.**

10 **(i) The economic benefits of destination resorts to local economies and the state econ-**
11 **omy.**

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

13 197.445. (1) A destination resort is a self-contained development that provides [*for*] visitor-
14 oriented accommodations and developed recreational facilities in a setting with high natural ameni-
15 ties. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and
16 215.284, a proposed development must [*meet the following standards*]:

17 **(a) Satisfy the requirements of a goal relating to recreational needs and rules imple-**
18 **menting the goal; and**

19 **(b) Have as its primary use the provision of visitor-oriented overnight accommodations**
20 **in permanent structures.**

21 **(2) A county that approves siting of a destination resort shall make findings that the**
22 **primary use of the destination resort meets the standard in subsection (1)(b) of this section.**

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

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

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

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

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

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

35 [*(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or*
36 *units, must be constructed or guaranteed through surety bonding or equivalent financial assurance*
37 *prior to the closure of sale of individual lots or units.*]

38 [*(C) The remaining overnight lodging units must be provided as individually owned lots or units*
39 *subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions*
40 *may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required*
41 *by this subsection.*]

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

44 [*(E) The development approval must provide for the construction of other required overnight lodg-*
45 *ing units within five years of the initial lot sales.*]

- 1 ***[(b) On lands in eastern Oregon, as defined in ORS 321.805:]***
2 ***[(A) A total of 150 units of overnight lodging must be provided.]***
3 ***[(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of in-***
4 ***dividual lots or units.]***
5 ***[(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or***
6 ***guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot***
7 ***sales.]***
8 ***[(D) The remaining required overnight lodging units must be constructed or guaranteed through***
9 ***surety bonding or equivalent financial assurances within 10 years of the initial lot sales.]***
10 ***[(E) The number of units approved for residential sale may not be more than 2-1/2 units for each***
11 ***unit of permanent overnight lodging provided under this paragraph.]***
12 ***[(F) If the developer of a resort guarantees the overnight lodging units required under subpara-***
13 ***graphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance,***
14 ***the overnight lodging units must be constructed within four years of the date of execution of the surety***
15 ***bond or other equivalent financial assurance.]***
16 ***[(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of***
17 ***visitors to the development. Industrial uses of any kind are not permitted.]***
18 ***[(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth***
19 ***in subsection (7) of this section apply to a destination resort:]***
20 ***[(a) On land that is not defined as agricultural or forest land under any statewide planning***
21 ***goal;]***
22 ***[(b) On land where there has been an exception to any statewide planning goal on agricultural***
23 ***lands, forestlands, public facilities and services and urbanization; or]***
24 ***[(c) On such secondary lands as the Land Conservation and Development Commission deems ap-***
25 ***propriate.]***
26 ***[(7) The following standards apply to the provisions of subsection (6) of this section:]***
27 ***[(a) The resort must be located on a site of 20 acres or more.]***
28 ***[(b) At least \$2 million must be spent on improvements for on-site developed recreational facilities***
29 ***and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads.***
30 ***Not less than one-third of this amount must be spent on developed recreational facilities.]***
31 ***[(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.]***
32 ***[(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must***
33 ***be provided.]***
34 ***[(e) Residential uses must be limited to those necessary for the staff and management of the***
35 ***resort.]***
36 ***[(f) The governing body of the county or its designee has reviewed the resort proposed under this***
37 ***subsection and has determined that the primary purpose of the resort is to provide lodging and other***
38 ***services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such***
39 ***recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.]***
40 ***[(g) The resort must be constructed and located so that it is not designed to attract highway traffic.***
41 ***Resorts may not use any manner of outdoor advertising signing except:]***
42 ***[(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and]***
43 ***[(B) On-site identification and directional signs.]***
44 ***[(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The***
45 ***spending required shall be adjusted to the year in which calculations are made in accordance with the***

1 *United States Consumer Price Index.]*

2 *[(9) When making a land use decision authorizing construction of a destination resort in eastern*
3 *Oregon, as defined in ORS 321.805, the governing body of the county or its designee shall require the*
4 *resort developer to provide an annual accounting to document compliance with the overnight lodging*
5 *standards of this section. The annual accounting requirement commences one year after the initial lot*
6 *or unit sales. The annual accounting must contain:]*

7 *[(a) Documentation showing that the resort contains a minimum of 150 permanent units of over-*
8 *night lodging or, during the phase-in period, documentation showing the resort is not yet required to*
9 *have constructed 150 units of overnight lodging.]*

10 *[(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of*
11 *this section.]*

12 *[(c) For a resort counting individually owned units as qualified overnight lodging units, the num-*
13 *ber of weeks that each overnight lodging unit is available for rental to the general public as described*
14 *in ORS 197.435.]*

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

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

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

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

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

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

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

34 *[(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry*
35 *Department, which are not subject to an approved goal exception.]*

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

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

40 *[(2) In carrying out subsection (1) of this section, a county shall adopt, as part of its comprehensive*
41 *plan, a map consisting of eligible lands within the county. The map must be based on reasonably*
42 *available information and may be amended pursuant to ORS 197.610 to 197.625, but not more fre-*
43 *quently than once every 30 months. The county shall develop a process for collecting and processing*
44 *concurrently all map amendments made within a 30-month planning period. A map adopted pursuant*
45 *to this section shall be the sole basis for determining whether tracts of land are eligible for destination*

1 resort siting pursuant to ORS 197.435 to 197.467.]

2 (a) Within 24 air miles of an urban growth boundary with a population of 100,000 or more;

3 (b) On a site that is within three miles of a high value crop area;

4 (c) On a site that is within an irrigation district organized under ORS chapter 545;

5 (d) On a site in which the lands are predominantly classified as being in fire regime
6 condition class 3, unless the county prepares a community wildfire protection plan that
7 demonstrates the site can be developed without being at a high overall risk;

8 (e) Forestlands that are not subject to an approved exception to a goal relating to agri-
9 cultural lands or forestlands and that are determined by the State Forestry Department to
10 be predominantly Cubic Foot Site Class 1 or 2 forestlands;

11 (f) In the Columbia River Gorge National Scenic Area as defined by the Columbia River
12 Gorge National Scenic Area Act, P.L. 99-663; or

13 (g) In an area of especially sensitive big game habitat.

14 (2) As used in this section, "high value crop area" means an area in which there is a
15 concentration of commercial farms capable of producing crops or products with a minimum
16 gross value of \$1,000 per acre per year.

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

18 197.460. A county shall [*insure*] **ensure** that a destination resort is compatible with the site and
19 adjacent land uses [*through the following measures*]. **The county shall require that:**

20 (1) Important natural features **within the destination resort**, including habitat of threatened
21 or endangered species, streams, rivers and significant wetlands [*shall be*], **will be** retained.

22 (2) Riparian vegetation within 100 feet of streams, rivers and significant wetlands [*shall be*]
23 **within the destination resort will be** retained. **A county may allow** alteration of important na-
24 tural features, including placement of structures [*which*] **that** maintain the overall values of the
25 feature [*may be allowed*].

26 [(2)] (3) Improvements and activities [*shall be*] **will be** located and designed to avoid or
27 [*minimize*] **mitigate** adverse effects of the resort on uses on surrounding lands, particularly effects
28 on [*intensive*] farming operations in the area. At a minimum, measures to accomplish this shall in-
29 clude:

30 (a) Establishment and maintenance of buffers between the resort and adjacent land uses, in-
31 cluding natural vegetation and where appropriate, fences, berms, landscaped areas and other similar
32 types of buffers.

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

34 (4) **A destination resort:**

35 (a) **Avoid or mitigate direct and indirect adverse effects on state highways, county roads**
36 **and city streets.**

37 (b) **Provide for adequate fire-fighting facilities and services.**

38 (c) **Provide for workforce housing, on-site or off-site, for individuals working at the re-**
39 **sort.**

40 **SECTION 7. ORS 197.435 and 197.465 are repealed.**

41 **SECTION 8.** ORS 197.462 is amended to read:

42 197.462. A portion of a tract that is excluded from the site of a destination resort [*pursuant to*
43 *ORS 197.435 (7)*] shall not be used or operated in conjunction with the resort. Subject to this limi-
44 tation, the use of the excluded property shall be governed by otherwise applicable law.

45 **SECTION 9.** ORS 197.825 is amended to read:

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

5 (2) The jurisdiction of the board:

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

8 (b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Ap-
9 peals;

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

11 (A) Submitted to the Department of Land Conservation and Development for acknowledgment
12 under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government de-
13 cision submitted to the department for acknowledgment, unless the Director of the Department of
14 Land Conservation and Development, in the director's sole discretion, transfers the matter to the
15 board; or

16 (B) Subject to the review authority of the department under ORS 197.430[, 197.445, 197.450 or
17 197.455] **or 197.435 to 197.467** or a matter related to a local government decision subject to the re-
18 view authority of the department under ORS 197.430[, 197.445, 197.450 or 197.455] **or 197.435 to**
19 **197.467**;

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

22 (e) Does not include any rules, programs, decisions, determinations or activities carried out un-
23 der ORS 527.610 to 527.770, 527.990 (1) and 527.992;

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

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

28 (3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain juris-
29 diction:

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

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

35 **SECTION 10. Section 2 of this 2009 Act, the amendments to ORS 197.440, 197.445, 197.450,**
36 **197.455, 197.460, 197.462 and 197.825 by sections 1, 3 to 6, 8 and 9 of this 2009 Act and the re-**
37 **peal of ORS 197.435 and 197.465 by section 7 of this 2009 Act apply to an application for ap-**
38 **proval of the siting of a destination resort first submitted under ORS 215.427 (3) on or after**
39 **the effective date of this 2009 Act.**

40

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

A-Engrossed House Bill 2228

Ordered by the House May 7
Including House Amendments dated May 7

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes establishment of one or two small-scale recreation communities on forestlands. Conditions establishment of communities on transfer of development opportunity from owner of Metolius resort site to owner of proposed site of small-scale recreation community. Specifies standards for establishment of communities.

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

Provides that if owner of Skyline Forest and South Country Tract transfers forest to land trust and tract to land trust or land management agency under certain circumstances, owner may retain and use 3,000 acres of land for specified uses.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfer of development rights from resource lands; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds that:**

5 **(1) Providing for rural unemployment reductions and living wage job opportunities brings**
6 **stability to economically distressed rural communities.**

7 **(2) Sections 1 to 9 of this 2009 Act are intended to reduce unemployment and create living**
8 **wage jobs in economically distressed counties.**

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

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

18 **(5) It is the public policy of the State of Oregon to:**

19 **(a) Explore alternative methods to encourage the continued management of private**
20 **forestlands for timber production.**

21 **(b) Protect water quality, wildlife habitat and other important natural resources by lim-**
22 **iting location of dispersed residential development on forestlands.**

23 **(c) Provide for an orderly and efficient transition from rural to urban land uses by es-**

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 **tablishing locations at which residential development rights or development opportunities**
2 **transferred from forestlands may be used.**

3 **(d) Provide for a limited number of demonstration projects for small-scale recreation**
4 **communities that:**

5 **(A) Create incentives for economic development in areas that are in need of long-term**
6 **job creation;**

7 **(B) Enhance the state's leadership in sustainability and natural resource stewardship;**

8 **(C) Encourage appropriate public access to and stewardship of recreational resources on**
9 **public lands consistent with the carrying capacity of the lands and resources; and**

10 **(D) Provide for additional sources of long-term funding for stewardship of natural re-**
11 **sources.**

12 **SECTION 1a. Sections 1 to 9 of this 2009 Act may be cited as the Rural Unemployment**
13 **Reductions and Living-Wage Job Opportunities Bring Stability Act or the RURAL JOBS Act.**

14 **SECTION 2. As used in sections 2 to 5 of this 2009 Act:**

15 **(1) "Management plan" means the management plan for the Metolius River Basin that**
16 **was recommended to the Legislative Assembly on April 2, 2009, by the Land Conservation**
17 **and Development Commission.**

18 **(2) "Metolius resort site" means land mapped as eligible for destination resort siting un-**
19 **der ORS 197.455 by Jefferson County or Deschutes County that has not been developed as a**
20 **resort and that is not owned by a resort.**

21 **(3) "Overnight lodgings" has the meaning given that term in ORS 197.435.**

22 **(4) "Tract" has the meaning given that term in ORS 215.010.**

23 **SECTION 3. (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation**
24 **communities may be established on forestlands as specified in sections 2 to 5 of this 2009 Act.**

25 **(2) If, within 90 days after the effective date of this 2009 Act, the owner of a Metolius**
26 **resort site notifies the Department of Land Conservation and Development that it has**
27 **elected to seek approval of a small-scale recreation community, the owner may, within one**
28 **year after the effective date of this 2009 Act, apply to a county for approval of a small-scale**
29 **recreation community.**

30 **(3) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act**
31 **may be established only in conjunction with a transfer of development opportunity from a**
32 **Metolius resort site. A transfer of development opportunity must be carried out through an**
33 **agreement between the owner of a Metolius resort site and the owner of the site proposed**
34 **for development of a small-scale recreation community. In the agreement, the owner of the**
35 **Metolius resort site must:**

36 **(a) Agree to limit the use of the Metolius resort site, consistent with the management**
37 **plan in consideration for the opportunity to participate in the development of the small-scale**
38 **recreation community; and**

39 **(b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:**

40 **(A) Limits the use of the Metolius resort site to be consistent with the management plan;**

41 **(B) Allows public access to that portion of the site that is not developed; and**

42 **(C) Contains other provisions, as required by the Department of Land Conservation and**
43 **Development, that are necessary to ensure that the conservation easement is enforceable.**

44 **(4) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act**
45 **must be sited on land that is:**

1 (a) Planned and zoned for forest use; and

2 (b) Within a county that has a seasonally adjusted average annual unemployment rate
3 over the preceding 10 calendar years that is more than 110 percent of the unemployment rate
4 for the entire state over the same period, as reported by the Employment Department.

5 (5) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act
6 may not be sited on land that is:

7 (a) Within an area identified as "Area 1" or "Area 2" in the management plan.

8 (b) Within an area described in ORS 197.455 in which destination resorts may not be
9 sited.

10 (c) Within an area protected by or inventoried as a significant resource in an acknowl-
11 edged comprehensive plan provision implementing statewide land use planning goals relating
12 to:

13 (A) Open space, scenic and historic areas and natural resources;

14 (B) Estuarine resources;

15 (C) Coastal shorelands; or

16 (D) Beaches and dunes.

17 (d) Within an area identified as subject to a natural hazard by an acknowledged com-
18 prehensive plan provision implementing a statewide land use planning goal relating to pro-
19 tection from natural hazards.

20 **SECTION 4.** (1) A small-scale recreation community authorized under sections 2 to 5 of
21 this 2009 Act must meet the following development standards:

22 (a) The community must be located on a tract that contains 200 or fewer acres of land.

23 (b) The community must consist of 240 or fewer units and at least two-thirds must be
24 overnight lodging units.

25 (c) The community may contain one restaurant containing 5,000 or fewer square feet, and
26 accessory uses necessary to the operation of the community, including accessory recre-
27 ational facilities.

28 (d) The owner of the property must spend at least \$1.5 million on off-site resource en-
29 hancement or restoration projects on nearby public lands that will be used by individuals
30 from the community.

31 (e) The community may not include a golf course or related facilities.

32 (f) The community must be developed and operated in a sustainable manner by meeting
33 the following criteria:

34 (A) When fully developed, the community must use reclaimed water as the primary
35 source of water for any irrigation of grounds.

36 (B) Facilities for snowmobiling or other motorized recreational activities are not per-
37 mitted.

38 (C) At least 50 percent of the tract on which the community is located must be dedicated
39 to permanent open space that is contiguous and demonstrates the biological viability of the
40 site as habitat or that provides ecosystem services to the area.

41 (D) Significant natural resource functions and values on the site must be preserved.

42 (E) Impervious surfaces, including rooftops and paved roads, trails and parking areas
43 may not exceed 35 percent of the total site area.

44 (F) Potable water usage must achieve a 20 percent reduction below standard code-built
45 developments. Reclaimed water usage for nonpotable water needs may account for the entire

1 reduction required.

2 (G) Stormwater must be managed on-site. Off-site runoff must be limited to predevelop-
3 ment runoff rates.

4 (H) A restaurant, lodge or other nonresidential building must be designed and con-
5 structed to meet regionally or nationally recognized design standards for sustainable design
6 that are acceptable to the county having land use jurisdiction over the proposed development
7 site.

8 (I) Residential buildings must be designed and constructed to meet regionally or na-
9 tionally recognized design standards for sustainable design that are acceptable to the county
10 having land use jurisdiction over the proposed development site. The developer must achieve
11 certification for all buildings, with at least 50 percent of the buildings achieving a top-tier
12 rating under the rating system selected.

13 (J) Additional housing capable of housing at least 50 percent of the peak season employ-
14 ees must be provided on-site.

15 (2) In addition to the development standards described in subsection (1) of this section,
16 a small-scale recreation community must:

17 (a) Develop an environmental operations manual that describes core practices for oper-
18 ating the small-scale recreation community, including:

19 (A) Waste reduction, recycling and diversion practices.

20 (B) Cleaning and site maintenance practices.

21 (C) Staff education practices.

22 (D) Commitment of the community to environmental stewardship.

23 (b) Establish a conservation stewardship organization, as a separate nonprofit entity
24 funded through income generated by the development, that is charged with:

25 (A) Development of a baseline study that establishes the current level and condition of
26 the local environment. As part of the baseline study, the organization must develop a long-
27 term stewardship plan that targets net creation and rehabilitation of resources, on-site and
28 off-site.

29 (B) Ongoing review, election and management of habitat restoration projects that im-
30 plement the goal of the long-term stewardship plan.

31 (C) Education and outreach on environmental stewardship.

32 (c) Organize and manage volunteers working to conserve local resources.

33 (d) Monitor performance of energy and water usage and site development standards
34 versus actual practice.

35 (e) Audit and publish annually a report of the community's performance result for the
36 preceding year.

37 **SECTION 5.** (1) An application for a small-scale recreation community under sections 2
38 to 5 of this 2009 Act may be filed only by the owner of a Metolius resort site and the owner
39 of the site on which development of the small-scale recreation community is proposed and
40 must be filed jointly by the owners. The owners shall file a copy of the application with the
41 Department of Land Conservation and Development at the same time that the owners file
42 the application with the county having land use jurisdiction over the proposed development
43 site.

44 (2) A county shall review an application for a small-scale recreation community under
45 sections 2 to 5 of this 2009 Act as a conditional use in a forest zone and as a land division

1 under ORS chapter 92.

2 (3) In addition to the standards set forth in sections 2 to 5 of this 2009 Act, the small-
3 scale recreation community must meet the land division standards and other development
4 standards of the county, including standards for streets, utilities and services, unless the
5 standards conflict with sections 2 to 5 of this 2009 Act. If the development standards of the
6 county are dependent on the zoning of the site, the county shall apply the development
7 standards for an urban residential zone with the highest population density.

8 (4) If more than two applications for a small-scale recreation community are filed under
9 sections 2 to 5 of this 2009 Act and a county has not yet approved an application, the de-
10 partment shall determine which of the applications may proceed, taking into consideration:

11 (a) The time at which each application was filed;

12 (b) The unemployment rate in the counties, if more than one county is involved; and

13 (c) The findings set forth in section 1 of this 2009 Act.

14 (5) When two applications for small-scale recreation communities have been approved,
15 additional applications may not be considered.

16 (6) A county may charge a fee to cover the costs of processing an application.

17 **SECTION 6.** (1) There is established the Oregon Transfer of Development Rights Pilot
18 Program in the Department of Land Conservation and Development. Working with the State
19 Forestry Department, the State Department of Agriculture and local governments and with
20 other state agencies, as appropriate, the Department of Land Conservation and Development
21 shall implement the pilot program.

22 (2) The Land Conservation and Development Commission shall adopt rules to implement
23 the pilot program. The commission, by rule, may:

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

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

28 (B) May not exceed one transferable development right to one severed development in-
29 terest if the receiving area is outside of an urban growth boundary.

30 (b) Require participating owners of land in a sending area to grant conservation ease-
31 ments pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that
32 additional residential development of their property does not occur.

33 (c) Require participating owners of land in a sending area to allow reasonable public ac-
34 cess to the property.

35 (3) The commission, by rule, shall establish a process for selecting pilot projects from
36 among potential projects nominated by local governments. The process must require local
37 governments to nominate potential projects by submitting a concept plan for each proposed
38 pilot project, including proposed amendments, if any, to the comprehensive plan and land use
39 regulations implementing the plan that are necessary to implement the pilot project.

40 (4) When selecting a pilot project, the commission must find that the pilot project is:

41 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural
42 economy of this state;

43 (b) Designed to avoid or minimize adverse effects on transportation, natural resources,
44 public facilities and services, nearby urban areas and nearby farm and forest uses; and

45 (c) Designed so that new development authorized in a receiving area does not conflict

1 with a resource or area inventoried under a statewide land use planning goal relating to na-
2 tural resources, scenic and historic areas and open spaces, or with an area identified as a
3 conservation opportunity area in the "Conservation Strategy" prepared in September of 2006
4 by the State Department of Fish and Wildlife.

5 (5) The commission may select up to five pilot projects for the transfer of development
6 rights under sections 6 to 8 of this 2009 Act. However, the number of pilot projects author-
7 ized by this section is reduced on a one-for-one basis for each owner of a Metolius resort site
8 that elects to pursue approval of a small-scale recreation community under sections 2 to 5
9 of this 2009 Act.

10 (6) A sending area for a pilot project under sections 6 to 8 of this 2009 Act:

11 (a) Must be planned and zoned for forest use;

12 (b) May not exceed 10,000 acres; and

13 (c) Must be likely to experience significant additional development in the form of forest
14 dwellings within 20 years after the effective date of this 2009 Act.

15 (7) The commission may establish additional requirements for sending areas.

16 (8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local govern-
17 ment participating in a pilot project shall select a receiving area for the pilot project based
18 on the following priorities:

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

20 (B) Second priority is lands that are adjacent to an urban growth boundary and that are
21 subject to an exception from a statewide land use planning goal relating to forestlands;

22 (C) Third priority is lands that are within a rural unincorporated community in an ac-
23 knowledged comprehensive plan;

24 (D) Fourth priority is lands that are adjacent to an urban growth boundary and that are
25 not subject to an exception from a statewide land use planning goal relating to forestlands;

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

28 (F) Sixth priority is forestlands not described in subparagraphs (A) to (E) of this para-
29 graph.

30 (b) The commission may authorize a local government to select lower priority lands over
31 higher priority lands for a receiving area in a pilot project only if the local government has
32 established, to the satisfaction of the commission, that selecting higher priority lands as the
33 receiving area is not likely to result in the severance and transfer of a significant proportion
34 of the development interests in the sending area within five years after the receiving area
35 is established.

36 (c) If lands described in paragraph (a)(B) of this subsection are selected for use as a re-
37 ceiving area in a pilot project, the minimum residential density of development must be at
38 least 10 dwelling units per net acre.

39 (d) If lands described in paragraph (a)(D), (E) or (F) of this subsection are used as a re-
40 ceiving area in a pilot project, the receiving area may not exceed 100 acres.

41 (e) A receiving area may not be located within 10 miles of the Portland metropolitan area
42 urban growth boundary.

43 (9) The commission may establish additional requirements for receiving areas.

44 (10) A pilot project must include affordable housing. The commission, by rule, may pro-
45 vide a bonus in the form of a higher ratio if a substantial portion of the new development in

1 the receiving area of the pilot project is affordable housing.

2 **SECTION 7.** (1) Notwithstanding contrary provisions of statewide land use planning goals
3 relating to forestlands, public facilities and services and urbanization, and notwithstanding
4 ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use
5 regulations implementing the plan to allow residential development in a receiving area con-
6 sistent with sections 6 to 8 of this 2009 Act if the Land Conservation and Development
7 Commission has approved a concept plan for the pilot project.

8 (2) The local governments having land use jurisdiction over lands included in the sending
9 area and the receiving area for the pilot project shall adopt amendments to their respective
10 comprehensive plans and land use regulations implementing the plans that are consistent
11 with subsection (3) of this section.

12 (3) When the commission has approved a proposed concept plan, the local governments
13 having land use jurisdiction over the affected sending area and affected receiving area shall
14 adopt overlay zone provisions and corresponding amendments to the comprehensive plan and
15 land use regulations implementing the plan that identify the additional residential develop-
16 ment allowed through participation in the pilot project. The Department of Land Conserva-
17 tion and Development shall review the overlay zones and corresponding comprehensive plan
18 amendments in the manner of periodic review under ORS 197.628 to 197.650.

19 (4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relat-
20 ing to urbanization, a local government may amend its urban growth boundary to include
21 adjacent lands in a receiving area, consistent with an approved concept plan, if the net res-
22 idential density of development authorized in the receiving area is at least 10 dwelling units
23 per acre.

24 (5) Local governments or other entities may establish a development rights bank or other
25 system to facilitate the transfer of development rights.

26 (6) A county shall review an application for a pilot project under sections 6 to 8 of this
27 2009 Act as a comprehensive plan amendment. A county may apply other procedures, in-
28 cluding master plan approval, site plan review or conditional use review as the county finds
29 appropriate to subsequent phases of review of the pilot project.

30 **SECTION 8.** (1) The Department of Land Conservation and Development, the State
31 Forestry Department, a local government participating in the Oregon Transfer of Develop-
32 ment Rights Pilot Program or a third-party holder identified by the Department of Land
33 Conservation and Development may hold, monitor or enforce a conservation easement pur-
34 suant to ORS 271.715 to 271.795 or other property interest to ensure that lands in sending
35 areas do not retain residential development rights transferred under sections 6 to 8 of this
36 2009 Act.

37 (2) An entity that is eligible to be a holder of a conservation easement may acquire, from
38 a willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry out a
39 use of land authorized under rules of the Land Conservation and Development Commission
40 implementing the pilot program.

41 **SECTION 9.** (1) As used in this section:

42 (a) "Community forestlands" has the meaning given that term in ORS 530.600.

43 (b) "Land trust" means a land trust that has been approved as an accredited land trust
44 by the Land Trust Alliance, a nonprofit corporation.

45 (2) The owner of the Skyline Forest and the South County Tract may carry out the use

1 described in subsection (3) of this section if:

2 (a) The owner transfers:

3 (A) The Skyline Forest to a land trust for the purpose of creating community forestlands;
4 and

5 (B) The South County Tract either to a land trust for the purpose of creating community
6 forestland or to a federal or state land management agency.

7 (b) The consideration for the transfer does not exceed the fair market timber value of
8 the property; and

9 (c) The community forestlands are managed so that wildlife and recreational values are
10 safeguarded and the overall forest health, including sustainable timber production and
11 wildfire prevention, is maintained over the long term.

12 (3) The owner of the Skyline Forest and South County Tract may retain an area of up
13 to 3,000 acres of land and, within the retained area, the owner may develop up to 197 com-
14 bined residential and overnight lodging units on a single node of 640 or fewer contiguous
15 acres, not including land for roads needed to access the property. Other uses within the
16 single node are limited to a restaurant, a small community store, an equestrian facility and
17 other small-scale uses oriented towards providing on-site recreational opportunities and
18 basic services necessary to support the development.

19 (4) The development may not contain a golf course.

20 (5) The development is limited to an annual water use of 150 acre-feet, not including
21 water for firefighting needs on-site or off-site.

22 (6) The development, including all access roads, must be sited in consultation with the
23 State Department of Fish & Wildlife to ensure that impacts to local wildlife, particularly to
24 local deer and elk populations, are minimized.

25 (7) The development must be sited in consultation with the State Forestry Department
26 and the United States Forest Service to ensure that the risks posed to the development by
27 wildfire are minimized.

28 (8) The landowner may use the remaining acreage retained under subsection (3) of this
29 section as open space for the primary purpose of minimizing the risk of wildfire to the de-
30 velopment, but also to maintain its habitat value for deer and elk. The owner shall cause a
31 conservation easement pursuant to ORS 271.715 to 271.795 to be recorded on the entirety of
32 the open space land prohibiting any development or partitions but allowing for the creation
33 of primitive recreational trails designed to provide public access between the development
34 and the community forestlands. The conservation easement must be held by a land trust and
35 the terms agreed to by the State Department of Fish and Wildlife and the State Forestry
36 Department.

37 (9) The landowner shall provide adequate firefighting facilities and services to address the
38 needs of the development.

39 (10) Deschutes County shall demonstrate, in the county's review under this section,
40 compliance with this section and with applicable site plan and land division requirements of
41 the county. The approval of a site plan and all related land use applications are land use
42 decisions. The county shall condition final land use approval on the recording of a conser-
43 vation easement on the lands identified in subsection (8) of this section and the transfer of
44 fee title of the remainder of the Skyline Forest and the South County Tract, other than lands
45 retained pursuant to this section, either to a land trust for the purpose of establishing

1 community forestlands or to a federal or state land management agency as provided in sub-
2 section (2) of this section. After the transfer of fee title of the Skyline Forest and the South
3 County Tract, other than lands retained pursuant to this section, development rights on the
4 portion of Skyline Forest and the South County Tract transferred to a land trust are extin-
5 guished.

6 (11) As a condition of transferring fee title of Skyline Forest and the South County Tract
7 pursuant to this section, the owner may require that the land trust or the federal or state
8 and management agency meet reasonable management standards to ensure that a buffer
9 area of the community forestlands that is closest to retained lands be managed in a manner
10 consistent with establishing forest health and managing wildfire risk. The buffer area may
11 not extend farther than 500 feet from the boundary that divides the retained lands from the
12 community forestlands.

13 (12) If the owner of the Skyline Forest and the South County Tract has not completed
14 the transfer of lands described in subsection (3) of this section within five years after the
15 effective date of this 2009 Act, the owner may not develop the residential and overnight
16 lodging units or the other uses on the single node that are described in subsection (3) of this
17 section.

18 **SECTION 10.** On or before February 1, 2013, the Department of Land Conservation and
19 Development shall make a report to the Seventy-seventh Legislative Assembly, in the man-
20 ner described in ORS 192.245:

21 (1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in
22 sections 6 to 8 of this 2009 Act; and

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

25 **SECTION 11.** This 2009 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
27 on its passage.

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

A-Engrossed House Bill 2229

Ordered by the House May 5
Including House Amendments dated May 5

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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.*]

Provides that county may conduct legislative review of county lands to determine whether lands planned and zoned are consistent with definitions of "agricultural lands" or "forest lands" for purposes of correcting mapping errors and updating designations of farmlands and forestlands. Requires county to submit decisions on planning and rezoning designations to Department of Land Conservation and Development for review. Specifies procedures for review.

Provides that county, if in conjunction with at least one other local government, may enter into collaborative regional problem-solving process with certain public bodies. Requires county to submit proposed work scope and participant list to Land Conservation and Development Commission for approval. Requires participants to submit changes to comprehensive plans and land use regulations made pursuant to process to commission for review. Specifies procedures for review.

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 Relating to recommendations of Oregon Task Force on Land Use Planning; creating new provisions;
3 amending ORS 197.010, 197.040, 197.652, 197.654, 197.656, 197.747, 215.427 and 227.178; and de-
4 claring an emergency.

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

6 **SECTION 1.** ORS 197.010 is amended to read:

7 197.010. The Legislative Assembly declares that:

8 (1) In order to [*assure*] **ensure** the highest possible level of livability in Oregon, it is necessary
9 to provide for properly prepared and coordinated comprehensive plans for cities and counties, re-
10 gional areas and the state as a whole. These comprehensive plans:

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

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

14 (c) Shall be the basis for more specific rules and land use regulations which implement the pol-

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 icies expressed through the comprehensive plans;

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

4 (e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the
5 changing needs and desires of the public they are designed to serve.

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

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

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

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

11 **(D) Equitably allocate the benefits and burdens of land use planning.**

12 **(b) Additionally, the land use program should, but is not required to, help communities**
13 **achieve sustainable development patterns and manage the effects of climate change.**

14 **(c) The overarching principles in paragraph (a) of this subsection and the purposes in**
15 **paragraph (b) of this subsection provide guidance to:**

16 **(A) The Legislative Assembly when enacting a law regulating land use.**

17 **(B) A public body, as defined in ORS 174.109, when the public body:**

18 **(i) Adopts or interprets goals, comprehensive plans and land use regulations implement-**
19 **ing the plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197,**
20 **215 or 227; or**

21 **(ii) Interprets a law governing land use.**

22 **(d) Use of the overarching principles in paragraph (a) of this subsection and the purposes**
23 **in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly**
24 **or other public body and is not judicially enforceable.**

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

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

31 197.040. (1) The Land Conservation and Development Commission shall:

32 (a) Direct the performance by the Director of the Department of Land Conservation and Devel-
33 opment and the director's staff of their functions under ORS chapters 195, 196 and 197.

34 (b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers neces-
35 sary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section,
36 in designing its administrative requirements, the commission shall:

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

38 **(B) Consider the variation in conditions and needs in different regions of the state and**
39 **encourage regional approaches to resolving land use problems;**

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

42 **[(C)] (D)** Assess the likely degree of economic impact on identified property and economic in-
43 terests; and

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

1 (c)(A) Adopt by rule in accordance with ORS chapter 183 or by goal under ORS chapters 195,
2 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters
3 195, 196 and 197.

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

6 (C) Review decisions of the Land Use Board of Appeals and land use decisions of the Court of
7 Appeals and the Supreme Court within 120 days of the date the decisions are issued to determine
8 if goal or rule amendments are necessary.

9 (d) Cooperate with the appropriate agencies of the United States, this state and its political
10 subdivisions, any other state, any interstate agency, any person or groups of persons with respect
11 to land conservation and development.

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

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

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

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

17 (c) Prepare statewide planning guidelines;

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

19 (e) Coordinate planning efforts of state agencies to assure compliance with goals and compat-
20 ibility with city and county comprehensive plans;

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

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

24 (h) Report periodically to the Legislative Assembly and to the committee; *[and]*

25 (i) **Review the land use planning responsibilities and authorities given to the state, re-**
26 **gions, counties and cities, review the resources available to each level of government and**
27 **make recommendations to the Legislative Assembly to improve the administration of the**
28 **statewide land use program; and**

29 *[(i)]* (j) Perform other duties required by law.

30 (3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an
31 assessment for each lot or parcel that could be affected by the proposed rule.

32 **NOTE:** Sections 3 and 4 were deleted by amendment. Subsequent sections were not renumbered.

33 **SECTION 5. (1) For the purposes of correcting mapping errors made in the acknowledg-**
34 **ment process and updating the designation of farmlands and forestlands for land use plan-**
35 **ning, a county may conduct a legislative review of lands in the county to determine whether**
36 **the lands planned and zoned for farm use, forest use or mixed farm and forest use are con-**
37 **sistent with the definitions of “agricultural lands” or “forest lands” in goals relating to ag-**
38 **ricultural lands or forestlands.**

39 (2) **A county may undertake the reacknowledgment process authorized by this section**
40 **only if the Department of Land Conservation and Development approves a work plan, from**
41 **the county, describing the expected scope of reacknowledgment. The department may con-**
42 **dition approval of a work plan for reacknowledgment under this section to reflect the re-**
43 **sources needed to complete the review required by sections 7 and 13 of this 2009 Act. The**
44 **work plan of the county and the approval of the department are not final orders for purposes**
45 **of review.**

1 **(3) A county that undertakes the reacknowledgment process authorized by this section**
2 **shall provide an opportunity for all lands planned for farm use, forest use or mixed farm and**
3 **forest use and all lands subject to an exception under ORS 197.732 to a goal relating to ag-**
4 **ricultural lands or forestlands to be included in the review.**

5 **(4) A county must plan and zone land reviewed under this section:**

6 **(a) For farm use if the land meets the definition of “agricultural land” in a goal relating**
7 **to agricultural lands;**

8 **(b) For forest use if the land meets the definition of “forest land” used for comprehensive**
9 **plan amendments in the goal relating to forestlands;**

10 **(c) For mixed farm and forest use if the land meets both definitions;**

11 **(d) For nonresource use, consistent with section 7 of this 2009 Act, if the land does not**
12 **meet either definition; or**

13 **(e) For a rural use other than farm use or forest use as provided in a goal relating to**
14 **land use planning process and policy framework and subject to an exception to the appro-**
15 **priate goals under ORS 197.732 (2).**

16 **(5) A county may consider the current land use pattern on adjacent and nearby lands in**
17 **determining whether land meets the appropriate definition.**

18 **SECTION 6. (1) If a county amends its comprehensive plan or a land use regulation**
19 **mapping zoning designations under sections 5 to 7 of this 2009 Act, the county shall review**
20 **lands that are planned or rezoned as nonresource lands to determine whether the lands**
21 **contain ecologically significant natural areas or resources. The county shall consider ap-**
22 **propriate goals and the “Oregon Conservation Strategy” prepared in September of 2006 by**
23 **the State Department of Fish and Wildlife.**

24 **(2) The county shall maintain an inventory in the comprehensive plan of nonresource**
25 **lands that contain ecologically significant natural areas or resources and establish a program**
26 **to protect the areas or resources from the adverse effects of new uses allowed by the plan-**
27 **ning or zoning changes. The county may use nonregulatory programs to protect the re-**
28 **sources including, but not limited to, programs for the transfer of severable development**
29 **interests to other lands that do not contain ecologically significant resources.**

30 **(3) If a county amends its comprehensive plan or a land use regulation mapping zoning**
31 **designations under sections 5 to 7 of this 2009 Act, the county shall review lands that are**
32 **planned or rezoned as nonresource lands to determine that the uses allowed by the planning**
33 **or zoning changes are consistent with the carrying capacity of the lands. The county shall**
34 **ensure that:**

35 **(a) The amount, type, location and pattern of development on lands redesignated as**
36 **nonresource lands:**

37 **(A) Will be rural in character and will not significantly interfere with orderly and effi-**
38 **cient development of urban areas in the vicinity;**

39 **(B) Will not significantly conflict with existing or reasonably foreseeable farm or forest**
40 **uses or with accepted farm or forest practices; and**

41 **(C) Will not lead to significant adverse effects including, but not limited to, adverse ef-**
42 **fects on:**

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

44 **(ii) Energy use;**

45 **(iii) State or local transportation facilities;**

- 1 (iv) Fish or wildlife habitat or other ecologically significant lands;
- 2 (v) The risk of wildland fire or the cost of fire suppression;
- 3 (vi) The cost of public facilities or services; or
- 4 (vii) The fiscal health of a local government.

5 (b) Additional residential development on nonresource lands is, to the extent practicable,
6 located and clustered to:

- 7 (A) Minimize the effects on farm and forest uses;
- 8 (B) Avoid lands subject to natural hazards; and
- 9 (C) Reduce the costs of public facilities and services.

10 **SECTION 7.** (1) A county shall submit decisions on planning and rezoning designations
11 under sections 5 to 7 of this 2009 Act to the Department of Land Conservation and Develop-
12 ment for review pursuant to the procedures set forth in this section and section 13 of this
13 2009 Act.

14 (2) The department shall coordinate with:

15 (a) The State Department of Agriculture in reviewing decisions on planning and rezoning
16 designations for lands planned for farm use or mixed farm and forest use.

17 (b) The State Forestry Department in reviewing decisions on planning and rezoning des-
18 ignations for lands planned for forest use or mixed farm and forest use.

19 (3) The Land Conservation and Development Commission has exclusive jurisdiction for
20 review of a county's decision made under sections 5 to 7 of this 2009 Act.

21 (4) A person who participated in the proceedings leading to the county's decisions under
22 sections 5 to 7 of this 2009 Act may not raise an issue on review before the commission that
23 was not raised in the local proceedings.

24 (5) The commission may adopt rules implementing sections 5 to 7 of this 2009 Act.

25 **SECTION 8.** ORS 197.652 is amended to read:

26 197.652. *[Programs of the collaborative regional problem-solving process described in ORS 197.654*
27 *and 197.656 shall be established in counties or regions geographically distributed throughout the*
28 *state.]*

29 (1) At the request of a county and at least one other local government in a region, the
30 Department of Land Conservation and Development, other state agencies, as defined in ORS
31 171.133, metropolitan planning organizations, special districts and advisory committees on
32 transportation may participate with the local governments in a collaborative regional
33 problem-solving process.

34 (2) If requested to participate, the department shall assist the county with the process
35 and encourage regional efforts to resolve land use planning problems using the authorities
36 described in ORS 197.652 to 197.658.

37 (3) The county, in cooperation with the other local governments, shall identify the land
38 use planning problems to be addressed and the participants whose actions are necessary to
39 resolve the land use planning problems.

40 (4) The county shall submit a proposed work scope and a proposed list of participants as
41 a proposal to the Land Conservation and Development Commission for review. The commis-
42 sion shall review:

43 (a) The proposed work scope to determine whether it can reasonably be completed within
44 the time allowed;

45 (b) The proposed participant list to determine whether it includes, at a minimum, all local

1 **governments that will need to amend a comprehensive plan provision or a land use regu-**
2 **lation, or adopt a new provision or regulation, in order to resolve the land use planning**
3 **problems identified in the work scope; and**

4 **(c) The proposed work scope and the proposed participant list for consistency.**

5 **(5) A county may initiate amendments of a comprehensive plan or land use regulation**
6 **under ORS 197.652 to 197.658 only if the commission approves the work scope, the list of**
7 **participants and a schedule for completion of the process. The schedule for completion of the**
8 **process may:**

9 **(a) Not exceed three years except as provided in paragraph (b) of this subsection.**

10 **(b) Be extended by the commission for up to one year for good cause shown.**

11 **(6) The decision of a county to submit a proposal under this section, and the decision of**
12 **the commission to approve a proposal, are not final actions subject to judicial review.**

13 **(7) If the commission approves a proposal under this section, the county must period-**
14 **ically report on the progress in carrying out the proposal, as specified by the commission.**

15 **(8) For purposes of ORS 197.654 and 197.656, the participants in a collaborative regional**
16 **problem-solving process include all participants on the list of participants approved by the**
17 **commission unless the commission subsequently approves the addition or removal of a par-**
18 **ticipant.**

19 **SECTION 9.** ORS 197.654 is amended to read:

20 197.654. (1) *[Local governments and those special districts that provide urban services may enter*
21 *into a collaborative regional problem-solving process. A collaborative regional problem-solving process*
22 *is a planning process directed toward resolution of land use problems in a region. The process must*
23 *offer an opportunity to participate with appropriate state agencies and all local governments within the*
24 *region affected by the problems that are the subject of the problem-solving process. The process must*
25 *include:]*

26 *[(a) An opportunity for involvement by other stakeholders with an interest in the problem; and]*

27 *[(b) Efforts among the collaborators to agree on goals, objectives and measures of success for steps*
28 *undertaken to implement the process as set forth in ORS 197.656.]*

29 *[(2) As used in ORS 197.652 to 197.658, "region" means an area of one or more counties, together*
30 *with the cities within the county, counties, or affected portion of the county.]* **After the Land Con-**
31 **servation and Development Commission approves a proposal for regional problem-solving**
32 **under ORS 197.652, the participants shall develop proposed actions to resolve the problems**
33 **identified in the work scope. The participants must agree to:**

34 **(a) Regional goals that describe how the region intends to resolve each regional problem**
35 **described in the work scope;**

36 **(b) Actions necessary to achieve the regional goals, including changes to comprehensive**
37 **plans or land use regulations;**

38 **(c) Measurable indicators of performance and a system for monitoring progress toward**
39 **achievement of the regional goals;**

40 **(d) Incentives and disincentives to encourage successful implementation of the actions**
41 **to achieve the regional goals;**

42 **(e) If the regional goals involve the management of an urban growth boundary, actions**
43 **to coordinate the planning and provision of water, sewer and transportation facilities in the**
44 **region; and**

45 **(f) A process for correction of actions if monitoring indicates that the actions are not**

1 achieving the regional goals.

2 (2) A decision by a participant to enter into a regional problem-solving agreement under
3 ORS 197.652 to 197.658 is not a final land use decision. However, a regional problem-solving
4 agreement is not final and binding until:

5 (a) All local governments that are participants have adopted the provisions of the com-
6 prehensive plans or land use regulations contemplated in the agreement; and

7 (b) The commission has approved the comprehensive plan provisions and land use regu-
8 lations as provided under ORS 197.656.

9 (3) Changes to provisions of comprehensive plans and land use regulations adopted to
10 implement a regional problem-solving agreement take effect 60 days after the commission
11 notifies all participants that the commission has approved all of the changes.

12 **SECTION 10.** ORS 197.656 is amended to read:

13 197.656. (1) *[Upon invitation by the local governments in a region, the Land Conservation and*
14 *Development Commission and other state agencies may participate with the local governments in a*
15 *collaborative regional problem-solving process.]* **After the adoption of changes to comprehensive**
16 **plans and land use regulations to implement a regional problem-solving agreement under**
17 **ORS 197.652 to 197.658, the local governments that are participants shall submit the changes**
18 **to the Land Conservation and Development Commission for review in the manner set forth**
19 **in this section.**

20 (2) Following the procedures set forth in this subsection, the commission may *[acknowledge*
21 *amendments]* **approve changes** to comprehensive plans and land use regulations*[, or new land use*
22 *regulations,]* that do not fully comply with *[the rules of the commission that implement]* the statewide
23 **land use** planning goals, without taking an exception **under ORS 197.732**, upon a determination that
24 **the changes:**

25 *[(a) The amendments or new provisions are based upon agreements reached by all local partic-*
26 *ipants, the commission and other participating state agencies, in the collaborative regional problem-*
27 *solving process;]*

28 *[(b) The regional problem-solving process has included agreement among the participants on:]*

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

30 *[(B) Optional techniques to achieve the goals for each regional problem that is the subject of the*
31 *process;]*

32 *[(C) Measurable indicators of performance toward achievement of the goals for each regional*
33 *problem that is the subject of the process;]*

34 *[(D) A system of incentives and disincentives to encourage successful implementation of the tech-*
35 *niques chosen by the participants to achieve the goals;]*

36 *[(E) A system for monitoring progress toward achievement of the goals; and]*

37 *[(F) A process for correction of the techniques if monitoring indicates that the techniques are not*
38 *achieving the goals; and]*

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

42 (3) A local government that amends an acknowledged comprehensive plan or land use regulation
43 or adopts a new land use regulation in order to implement an agreement reached in a regional
44 problem-solving process shall submit the amendment or new regulation to the commission in the manner
45 set forth in ORS 197.628 to 197.650 for periodic review or set forth in ORS 197.251 for acknowledg-

1 *ment.]*

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

6 (a) **Conform, on the whole, with the purposes of the goals, and any failure to meet indi-**
7 **vidual goal requirements is technical or minor in nature;**

8 (b) **Are needed to achieve the regional goals specified by the participants; and**

9 (c) **In combination with other actions agreed upon by the participants, are reasonably**
10 **likely to achieve the regional goals.**

11 (3) **The commission:**

12 (a) **Shall review changes to the comprehensive plans or land use regulations adopted by**
13 **a local government to implement a regional problem-solving agreement under ORS 197.652**
14 **to 197.658 pursuant to the procedures set forth in this section and section 13 of this 2009 Act.**

15 (b) **Has exclusive jurisdiction for review of changes to comprehensive plans or land use**
16 **regulations adopted by a local government to implement a regional problem-solving agree-**
17 **ment under ORS 197.652 to 197.658.**

18 (4) **A participant in the regional problem-solving process or a person who participated in**
19 **the proceedings leading to the adoption of changes to the comprehensive plans or land use**
20 **regulations may not raise an issue on review before the commission that was not raised in**
21 **the local proceedings for adoption of the changes to the plans or regulations.**

22 (5) If the commission [*denies an amendment or new regulation submitted pursuant to subsection*
23 *(3) of this section*] **disapproves changes to the comprehensive plans or land use regulations**
24 **adopted by a local government to implement a regional problem-solving agreement under**
25 **ORS 197.652 to 197.658**, the commission shall issue a written statement describing the reasons for
26 the [*denial*] **disapproval** and suggesting alternative methods for accomplishing the goals on a timely
27 basis.

28 (6) If, in order to resolve regional land use problems, the participants in a collaborative regional
29 problem-solving process decide to devote agricultural land or forestland, as defined in the statewide
30 planning goals, to uses not authorized by those goals, the participants shall choose land that is not
31 part of the region's commercial agricultural or forestland base, or take an exception to those goals
32 pursuant to ORS 197.732. To identify land that is not part of the region's commercial agricultural
33 or forestland base, the participants shall consider the recommendation of a committee of persons
34 appointed by the affected county, with expertise in appropriate fields, including but not limited to
35 farmers, ranchers, foresters and soils scientists and representatives of the State Department of Ag-
36 riculture, the State Department of Forestry and the Department of Land Conservation and Devel-
37 opment.

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

40 (8) **The commission may adopt rules to establish additional procedural and substantive**
41 **requirements for review of changes to comprehensive plans and land use regulations adopted**
42 **by local governments to implement a regional problem-solving agreement under ORS 197.652**
43 **to 197.658.**

44 **SECTION 11.** ORS 197.747 is amended to read:

45 197.747. For the purposes of acknowledgment under ORS 197.251, board review under ORS

1 197.805 to 197.855, [and] review of a proposed regional problem-solving agreement under ORS
2 197.652 to 197.658 or periodic review under ORS 197.628 to 197.650, “compliance with the goals”
3 means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals
4 and any failure to meet individual goal requirements is technical or minor in nature.

5 **SECTION 12.** Section 13 of this 2009 Act is added to and made a part of ORS chapter 197.

6 **SECTION 13.** (1) The Land Conservation and Development Commission shall grant, deny
7 or remand approval of proposed changes to a comprehensive plan or land use regulations
8 adopted pursuant to sections 5 to 7 of this 2009 Act or ORS 197.652 to 197.658 within 120 days
9 after the date that the local government submits the proposed changes.

10 (2) The Department of Land Conservation and Development shall prepare a report stating
11 whether the proposed changes comply with applicable statutes, goals and commission rules.
12 The department shall provide a reasonable opportunity for persons to prepare and submit
13 written comments or objections to the report; however a person may not:

14 (a) Submit written comments or objections to the report unless the person participated
15 orally or in writing in the local government proceedings leading to the adoption of the pro-
16 posed changes.

17 (b) Produce new evidence.

18 (3) After reviewing the proposed changes, the report and any written comments and ob-
19 jections to the report, the commission shall prepare a proposed final order. The commission
20 shall afford the local government and persons who submitted written comments or objections
21 to the report a reasonable opportunity to file written exceptions to the proposed final order.
22 If timely exceptions are not filed, the proposed order becomes final.

23 (4) The commission’s review under this section is confined to the record of proceedings
24 before the local government, the report of the department and any comments, objections and
25 exceptions filed under subsection (2) or (3) of this section and the proposed final order of the
26 commission, including any responses to exceptions. The commission may entertain oral ar-
27 gument from the department and from persons who filed exceptions, and may consider new
28 issues raised by its review. The commission may not allow additional evidence, argument or
29 testimony that could have been presented to the local government but was not presented.

30 (5) A commission order granting, denying or remanding proposed changes must include
31 a clear statement of findings that sets forth the basis for the approval, denial or remand,
32 including:

33 (a) Identifying the statutes, goals and rules applicable to the proposed changes; and

34 (b) Supporting the determinations of compliance and noncompliance.

35 (6) A commission order granting approval may be limited to an identified geographic area
36 described in the order if:

37 (a) The identified geographic area is the only area that is the subject of the proposed
38 changes; or

39 (b) Specific geographic areas do not comply with the applicable statutes, goals or rules,
40 and the requirements are not technical or minor in nature.

41 (7) The commission may issue a limited approval order if a previously issued approval
42 order is reversed or remanded by an appellate court. The limited approval order may deny
43 approval of that part of the comprehensive plan or land use regulations that the court found
44 not in compliance with the applicable statutes, goals or rules and grant approval of other
45 parts of the proposed changes.

1 **(8) A limited approval order is an approval for all purposes and is a final order for pur-**
2 **poses of judicial review with respect to the approved geographic area. A limited order may**
3 **be adopted in conjunction with a remand.**

4 **SECTION 14. In areas of the state that are growing rapidly, state agencies, as defined in**
5 **ORS 171.133, cities and counties should, within constraints of applicable federal law and reg-**
6 **ulations, state law and rules and local ordinances:**

7 **(1) Consider directing major public infrastructure investments, including major trans-**
8 **portation investments, to reinforce compact urban development; and**

9 **(2) Consider giving priority to investments that promote infill or redevelopment of ex-**
10 **isting urban areas to encourage the density necessary to support alternative modes of**
11 **transportation.**

12 **SECTION 15.** ORS 215.427 is amended to read:

13 215.427. (1) Except as provided in subsections (3), [and] (5) **and (10)** of this section, for land
14 within an urban growth boundary and applications for mineral aggregate extraction, the governing
15 body of a county or its designee shall take final action on an application for a permit, limited land
16 use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days
17 after the application is deemed complete. The governing body of a county or its designee shall take
18 final action on all other applications for a permit, limited land use decision or zone change, includ-
19 ing resolution of all appeals under ORS 215.422, within 150 days after the application is deemed
20 complete, except as provided in subsections (3), [and] (5) **and (10)** of this section.

21 (2) If an application for a permit, limited land use decision or zone change is incomplete, the
22 governing body or its designee shall notify the applicant in writing of exactly what information is
23 missing within 30 days of receipt of the application and allow the applicant to submit the missing
24 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-
25 tion upon receipt by the governing body or its designee of:

26 (a) All of the missing information;

27 (b) Some of the missing information and written notice from the applicant that no other infor-
28 mation will be provided; or

29 (c) Written notice from the applicant that none of the missing information will be provided.

30 (3)(a) If the application was complete when first submitted or the applicant submits additional
31 information, as described in subsection (2) of this section, within 180 days of the date the application
32 was first submitted and the county has a comprehensive plan and land use regulations acknowledged
33 under ORS 197.251, approval or denial of the application shall be based upon the standards and
34 criteria that were applicable at the time the application was first submitted.

35 (b) If the application is for industrial or traded sector development of a site identified under
36 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,
37 approval or denial of the application must be based upon the standards and criteria that were ap-
38 plicable at the time the application was first submitted, provided the application complies with
39 paragraph (a) of this subsection.

40 (4) On the 181st day after first being submitted, the application is void if the applicant has been
41 notified of the missing information as required under subsection (2) of this section and has not sub-
42 mitted:

43 (a) All of the missing information;

44 (b) Some of the missing information and written notice that no other information will be pro-
45 vided; or

1 (c) Written notice that none of the missing information will be provided.

2 (5) The period set in subsection (1) of this section may be extended for a specified period of time
3 at the written request of the applicant. The total of all extensions, **except as provided in sub-**
4 **section (10) of this section for mediation**, may not exceed 215 days.

5 (6) The period set in subsection (1) of this section applies:

6 (a) Only to decisions wholly within the authority and control of the governing body of the
7 county; and

8 (b) Unless the parties have agreed to mediation as described in **subsection (10) of this section**
9 **or ORS 197.319 (2)(b)**.

10 (7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section
11 does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or
12 adoption of a new land use regulation that was forwarded to the Director of the Department of Land
13 Conservation and Development under ORS 197.610 (1).

14 (8) Except when an applicant requests an extension under subsection (5) of this section, if the
15 governing body of the county or its designee does not take final action on an application for a
16 permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after
17 the application is deemed complete, the county shall refund to the applicant either the unexpended
18 portion of any application fees or deposits previously paid or 50 percent of the total amount of such
19 fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees
20 incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible
21 for the costs of providing sufficient additional information to address relevant issues identified in
22 the consideration of the application.

23 (9) A county may not compel an applicant to waive the period set in subsection (1) of this sec-
24 tion or to waive the provisions of subsection (8) of this section or ORS 215.429 as a condition for
25 taking any action on an application for a permit, limited land use decision or zone change except
26 when such applications are filed concurrently and considered jointly with a plan amendment.

27 **(10) The periods set forth in subsection (1) of this section and the period set forth in**
28 **subsection (5) of this section may be extended by up to 90 additional days, if the applicant**
29 **and the county agree that a dispute concerning the application will be mediated.**

30 **SECTION 16.** ORS 227.178 is amended to read:

31 227.178. (1) Except as provided in subsections (3), [and] (5) **and (11)** of this section, the govern-
32 ing body of a city or its designee shall take final action on an application for a permit, limited land
33 use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days
34 after the application is deemed complete.

35 (2) If an application for a permit, limited land use decision or zone change is incomplete, the
36 governing body or its designee shall notify the applicant in writing of exactly what information is
37 missing within 30 days of receipt of the application and allow the applicant to submit the missing
38 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-
39 tion upon receipt by the governing body or its designee of:

40 (a) All of the missing information;

41 (b) Some of the missing information and written notice from the applicant that no other infor-
42 mation will be provided; or

43 (c) Written notice from the applicant that none of the missing information will be provided.

44 (3)(a) If the application was complete when first submitted or the applicant submits the re-
45 quested additional information within 180 days of the date the application was first submitted and

1 the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, ap-
2 proval or denial of the application shall be based upon the standards and criteria that were appli-
3 cable at the time the application was first submitted.

4 (b) If the application is for industrial or traded sector development of a site identified under
5 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,
6 approval or denial of the application must be based upon the standards and criteria that were ap-
7 plicable at the time the application was first submitted, provided the application complies with
8 paragraph (a) of this subsection.

9 (4) On the 181st day after first being submitted, the application is void if the applicant has been
10 notified of the missing information as required under subsection (2) of this section and has not sub-
11 mitted:

12 (a) All of the missing information;

13 (b) Some of the missing information and written notice that no other information will be pro-
14 vided; or

15 (c) Written notice that none of the missing information will be provided.

16 (5) The 120-day period set in subsection (1) of this section may be extended for a specified period
17 of time at the written request of the applicant. The total of all extensions, **except as provided in**
18 **subsection (11) of this section for mediation**, may not exceed 245 days.

19 (6) The 120-day period set in subsection (1) of this section applies:

20 (a) Only to decisions wholly within the authority and control of the governing body of the city;
21 and

22 (b) Unless the parties have agreed to mediation as described in **subsection (11) of this section**
23 **or** ORS 197.319 (2)(b).

24 (7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this
25 section does not apply to an amendment to an acknowledged comprehensive plan or land use regu-
26 lation or adoption of a new land use regulation that was forwarded to the Director of the Depart-
27 ment of Land Conservation and Development under ORS 197.610 (1).

28 (8) Except when an applicant requests an extension under subsection (5) of this section, if the
29 governing body of the city or its designee does not take final action on an application for a permit,
30 limited land use decision or zone change within 120 days after the application is deemed complete,
31 the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, ei-
32 ther the unexpended portion of any application fees or deposits previously paid or 50 percent of the
33 total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional
34 governmental fees incurred subsequent to the payment of such fees or deposits. However, the ap-
35 plicant is responsible for the costs of providing sufficient additional information to address relevant
36 issues identified in the consideration of the application.

37 (9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

38 (A) Submit a written request for payment, either by mail or in person, to the city or its designee;
39 or

40 (B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall
41 award an amount owed under this section in its final order on the petition.

42 (b) Within seven calendar days of receiving a request for a refund, the city or its designee shall
43 determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made
44 to the applicant within 30 calendar days of receiving the request. Any amount due and not paid
45 within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of

1 one percent per month, or a portion thereof.

2 (c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the
3 city or its designee receives the refund request, the applicant may file an action for recovery of the
4 unpaid refund. In an action brought by a person under this paragraph, the court shall award to a
5 prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and
6 costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable
7 attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

8 (10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this
9 section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for
10 taking any action on an application for a permit, limited land use decision or zone change except
11 when such applications are filed concurrently and considered jointly with a plan amendment.

12 **(11) The period set forth in subsection (1) of this section and the period set forth in**
13 **subsection (5) of this section may be extended by up to 90 additional days, if the applicant**
14 **and the city agree that a dispute concerning the application will be mediated.**

15 **SECTION 17. (1) The Land Conservation and Development Commission, in cooperation**
16 **with the Oregon Law Commission and other public or private entities, may, as resources are**
17 **available, appoint a work group to conduct a policy-neutral review and audit of ORS chapters**
18 **195, 196, 197, 215 and 227, the statewide land use planning goals and the rules of the com-**
19 **mission implementing the goals.**

20 **(2) The commission shall sequence any review based on its judgment as to which aspects**
21 **of the statewide land use program are most in need of updating.**

22 **(3) A review undertaken under this section should, but does not have to, include appro-**
23 **priate involvement of local government, professional land use planning, private legal and**
24 **other representatives.**

25 **(4) Recommendations should, but do not have to, address major policies and key proce-**
26 **dures that are most appropriate for enactment by law and what policies and procedures are**
27 **most appropriate for adoption by statewide land use planning goals or rules to allow for**
28 **greater variation between regions of the state over time and to reduce complexity.**

29 **SECTION 18. Section 13 of this 2009 Act and the amendments to ORS 197.652, 197.654,**
30 **197.656 and 197.747 by sections 8, 9, 10 and 11 of this 2009 Act apply to collaborative regional**
31 **problem-solving processes commenced on or after the effective date of this 2009 Act.**

32 **SECTION 19. This 2009 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
34 **on its passage.**

35

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

House Bill 2230

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 and local governments;
3 creating new provisions; and amending ORS 197.015, 197.180, 197.254 and 197.650.

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

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

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

10 (2) **Improved coordination is necessary to streamline state and local permitting proce-**
11 **dures.**

12 (3) **The Department of Land Conservation and Development has not engaged in a formal**
13 **and concerted effort to update state agency land use coordination programs since 1989, and**
14 **that state agency rules, plans and programs affecting land use and local government com-**
15 **prehensive plans and land use regulations have changed substantially since that time.**

16 (4) **Rules of the Land Conservation and Development Commission regarding state agency**
17 **land use coordination and state permit compliance and compatibility should be:**

18 (a) **Reviewed to eliminate unclear or conflicting provisions and to ensure that local land**
19 **use decisions authorizing a use generally precede state agency decisions on permits for the**
20 **use or for aspects of the use; and**

21 (b) **Updated regularly to maintain a high level of coordination between state agencies and**
22 **local governments in reviewing authorizations for a use of property.**

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

24 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

25 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
26 land use regulations, land use regulation or plan or regulation amendment complies with the goals
27 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
28 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-

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 work plan comply with the [*statewide planning*] goals.

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

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

5 (4) "Commission" means the Land Conservation and Development Commission.

6 (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement
7 of the governing body of a local government that interrelates all functional and natural systems and
8 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
9 portation systems, educational facilities, recreational facilities, and natural resources and air and
10 water quality management programs. "Comprehensive" means all-inclusive, both in terms of the
11 geographic area covered and functional and natural activities and systems occurring in the area
12 covered by the plan. "General nature" means a summary of policies and proposals in broad catego-
13 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is "co-
14 ordinated" when the needs of all levels of governments, semipublic and private agencies and the
15 citizens of Oregon have been considered and accommodated as much as possible. "Land" includes
16 water, both surface and subsurface, and the air.

17 (6) "Department" means the Department of Land Conservation and Development.

18 (7) "Director" means the Director of the Department of Land Conservation and Development.

19 (8) "Goals" means the mandatory statewide **land use** planning standards adopted by the com-
20 mission pursuant to ORS chapters 195, 196 and 197.

21 (9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
22 adoption and implementation of comprehensive plans in compliance with goals and to aid state
23 agencies and special districts in the preparation, adoption and implementation of plans, programs
24 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
25 agencies, cities, counties and special districts to a single approach.

26 (10) "Land use decision":

27 (a) Includes:

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

30 (i) The goals;

31 (ii) A comprehensive plan provision;

32 (iii) A land use regulation; or

33 (iv) A new land use regulation;

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

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

37 (b) Does not include a decision of a local government:

38 (A) That is made under land use standards that do not require interpretation or the exercise
39 of policy or legal judgment;

40 (B) That approves or denies a building permit issued under clear and objective land use stan-
41 dards;

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

43 (D) That determines final engineering design, construction, operation, maintenance, repair or
44 preservation of a transportation facility that is otherwise authorized by and consistent with the
45 comprehensive plan and land use regulations;

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

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

5 (G) That approves or denies approval of a final subdivision or partition plat or that determines
6 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or
7 partition plan; or

8 **(H) That a proposed state agency action subject to ORS 197.180 (1) complies with the**
9 **goals and is compatible with the acknowledged comprehensive plan and land use regulations**
10 **implementing the plan, if the local government has already made a land use decision au-**
11 **thorizing:**

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

13 (ii) **A use or activity that would be authorized, funded or undertaken by the proposed**
14 **state agency action;**

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

16 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
17 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
18 hours in any three-month period; and

19 (e) Does not include:

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

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

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

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

28 (ii) **A use or activity that would be authorized, funded or undertaken by the state agency**
29 **as a result of the state agency action is allowed without review under the acknowledged**
30 **comprehensive plan and land use regulations implementing the plan.**

31 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-
32 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
33 implementing a comprehensive plan.

34 (12) "Limited land use decision":

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

37 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
38 92.040 (1).

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

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

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

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

5 (15) "Metro planning goals and objectives" means the land use goals and objectives that a met-
6 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
7 stitute a comprehensive plan.

8 (16) "Metro regional framework plan" means the regional framework plan required by the 1992
9 Metro Charter or its separate components. Neither the regional framework plan nor its individual
10 components constitute a comprehensive plan.

11 (17) "New land use regulation" means a land use regulation other than an amendment to an
12 acknowledged land use regulation adopted by a local government that already has a comprehensive
13 plan and land regulations acknowledged under ORS 197.251.

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

18 (19) "Special district" means any unit of local government, other than a city, county, metropol-
19 itan service district formed under ORS chapter 268 or an association of local governments per-
20 forming land use planning functions under ORS 195.025, authorized and regulated by statute and
21 includes but is not limited to water control districts, domestic water associations and water coop-
22 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,
23 school districts, hospital districts, mass transit districts and sanitary districts.

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

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

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

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

33 197.180. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless ex-
34 pressly exempted by another statute from any of the requirements of this section, state agencies
35 shall carry out their planning duties, powers and responsibilities and take actions that are author-
36 ized by law with respect to programs affecting land use:

37 (a) In compliance with [*goals adopted or amended pursuant to ORS chapters 195, 196 and 197*]
38 **the goals, rules implementing the goals and rules implementing this section;** and

39 (b) In a manner compatible with **acknowledged comprehensive plans and land use regu-**
40 **lations.**[.]

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

42 [(B) *Amendments to acknowledged comprehensive plans or land use regulations or new land use*
43 *regulations acknowledged under ORS 197.625; and]*

44 [(C) *Amendments to acknowledged comprehensive plans or land use regulations or new land use*
45 *regulations acknowledged through periodic review.*]

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

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

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

8 (c) [*That*] The **state agency rule**, plan or program has objectives that cannot be achieved in a
9 manner [*consistent*] **compatible** with the **acknowledged** comprehensive plan and land use regu-
10 lations; and

11 (d) [*That*] The agency has complied with its certified state agency coordination program.

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

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

17 (b) **The state agency will rely on the determination of the local government that the**
18 **proposed state agency action complies with the goals and is compatibility with the acknowl-**
19 **edged comprehensive plan and land use regulations.**

20 [(3)] (4) Upon request by the Land Conservation and Development Commission, each state
21 agency shall submit to the Department of Land Conservation and Development the following infor-
22 mation:

23 (a) Agency rules and summaries of **state agency plans and** programs affecting land use;

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

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

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

27 [(4)] (5) Within 90 days of receipt, the Director of the Department of Land Conservation and
28 Development shall review the information submitted pursuant to subsection [(3)] (4) of this section
29 and shall notify each **state** agency if the director believes the **state agency** rules [*and*], **plans or**
30 **programs** submitted are insufficient to [*assure*] **ensure** compliance with goals and compatibility with
31 [*city and county*] **acknowledged** comprehensive plans and land use regulations.

32 [(5)] (6) Within 90 days of receipt of notification specified in subsection [(4)] (5) of this section,
33 the **state** agency may revise the **state agency** rules, **plans** or programs and resubmit them to the
34 director.

35 [(6)] (7) The director shall make findings under subsections [(4) and] (5) **and** (6) of this section
36 as to whether the **state agency** rules [*and*], **plans or** programs are sufficient to [*assure*] **ensure**
37 compliance with the goals and compatibility with acknowledged city and county comprehensive
38 plans and land use regulations[,] and shall forward the rules and **summaries of state agency plans**
39 **or** programs to the commission for its action. The commission shall either certify the **state agency**
40 rules [*and*], **plans or** programs as [*being in compliance*] **compliant** with the goals and compatible
41 with the **acknowledged** comprehensive plans and land use regulations of affected local governments
42 or shall determine the same to be insufficient [*by December 31, 1990*].

43 [(7)] (8) The department shall report, to the appropriate committee of the House and the Senate
44 and to the subcommittee of the Joint Ways and Means Committee that considers the **state** agency
45 budget, any agency that has failed to meet the requirements of subsection [(6)] (7) of this section.

1 [(8)] (9) Any **state** agency that has failed to meet the requirements of subsection [(6)] (7) of this
2 section shall report the reasons therefor to the appropriate committee of the House and the Senate
3 and to the subcommittee 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 are certified as [*being*
5 *in compliance*] **compliant** with the goals and compatible with [*applicable city and county*] **the ac-**
6 **knowledge**d comprehensive plans and land use regulations of **affected local governments**, the
7 **state** agency shall make findings when adopting or amending its rules and **state agency plans and**
8 programs as to the applicability and application of the goals or acknowledged comprehensive plans,
9 as appropriate.

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

19 [(11)] (12) A state agency required to have a land use coordination program shall participate in
20 a local government land use hearing, except a hearing under ORS 197.610 to 197.625, only in a
21 manner that is consistent with the coordination program, unless the agency[:]

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

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

25 [(12)] (13) [*In carrying out programs affecting land use, a state agency is*] **State agency rules,**
26 **plans or programs affecting land use are** not compatible with an acknowledged comprehensive
27 plan if [*it*] **the state agency** takes or approves an action that is not allowed under the **acknowl-**
28 **edged comprehensive** plan. However, a state agency may apply statutes and rules [*which the agency*
29 *is required by law to apply in order*] to deny, condition or further restrict an action of the state
30 agency or of any applicant before the state agency [*provided it*] **if the state agency** applies those
31 statutes and rules to the uses planned for in the acknowledged comprehensive plan.

32 (14) **In cooperation with local governments and state agencies whose rules, plans or**
33 **programs affect land use, the department periodically shall:**

34 (a) **Identify aspects of coordination related to uses that require the issuance of multiple**
35 **permits from state agencies and local governments.**

36 (b) **Update and improve rules regulating the effectiveness and efficiency of state agency**
37 **coordination programs.**

38 [(13)] (15) This section does not apply to rules, **plans**, programs, decisions, determinations or
39 activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992.

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

41 197.254. (1) A state agency shall be barred after the date set for submission of programs by the
42 Land Conservation and Development Commission as provided in ORS 197.180 [(3)] (4), from con-
43 testing a request for acknowledgment submitted by a local government under ORS 197.251 or from
44 filing an appeal under ORS 197.620 (1) or (2), if the commission finds that:

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

1 (b) The state agency has not coordinated its plans, programs or rules affecting land use with the
2 comprehensive plan or land use regulations of the city or county pursuant to a coordination program
3 approved by the commission under ORS 197.180.

4 (2) A state agency shall be barred from seeking a commission order under ORS 197.644 requiring
5 amendment of a local government comprehensive plan or land use regulation in order to comply with
6 the agency's plan or program unless the agency has first requested the amendment from the local
7 government and has had its request denied.

8 (3) A special district shall be barred from contesting a request for initial compliance acknowl-
9 edgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS
10 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions
11 under ORS 195.025 (1) finds that:

12 (a) The special district has not entered into a cooperative agreement under ORS 195.020; or

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

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

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

21 197.650. (1) A Land Conservation and Development Commission order may be appealed to the
22 Court of Appeals in the manner provided in ORS 183.482 by the following persons:

23 (a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings
24 under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS
25 197.251 or 197.633, 197.636 or 197.644;

26 (b) Persons who submitted comments or objections pursuant to procedures adopted by the com-
27 mission for certification of state agency coordination programs and are appealing a certification is-
28 sued under ORS 197.180 [(6)] (7);

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

31 (d) Persons who submitted oral or written testimony in a proceeding before the commission
32 pursuant to ORS 215.780.

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

36 (3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition
37 shall be served by registered or certified mail upon the Department of Land Conservation and De-
38 velopment, the local government and all persons who filed comments or objections.

39 **SECTION 6. The amendments to ORS 197.015 by section 2 of this 2009 Act apply to local**
40 **government decisions made on or after the effective date of this 2009 Act.**

41