

Enrolled House Bill 2356

Sponsored by Representative ESQUIVEL (at the request of Jackson County, Association of Oregon Counties, League of Oregon Cities, Clackamas County, Oregon Home Builders Association, Oregon Association of Realtors, Professional Land Surveyors of Oregon, Oregon Association of County Engineers and Surveyors)

CHAPTER

AN ACT

Relating to approval of land division; creating new provisions; amending ORS 92.100 and 197.015; and declaring an emergency.

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

SECTION 1. ORS 92.100 is amended to read:

92.100. (1)(a) **Except as provided in subsection (4) of this section**, before [*any*] a subdivision or partition plat [*can be recorded, covering*] **that covers** land within the corporate limits of [*any*] a city **may be recorded**, the county surveyor must approve the plat.

(b) Notwithstanding ORS 92.170, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor.

(c) Except as provided in subsection (4) of this section, if the land is outside the corporate limits of any city, the subdivision or partition plat shall be approved by the county surveyor before it is recorded.

(d) All subdivision plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(e) Notwithstanding paragraph (d) of this subsection, a county may provide by ordinance for the approval of subdivision plats by:

- (A) The county assessor; and
- (B)(i) The chairperson of the governing body of the county;
- (ii) The vice chairperson of the governing body of the county; or
- (iii) A person designated in lieu of the chairperson or vice chairperson.

(f) Unless provided for by ordinance of the **controlling** governing body, partition plats [*shall be*] **are** subject only to the approval of the city or county surveyor. The city or county surveyor shall review the partition plat only for compliance with the applicable provisions of [*this chapter*] **ORS 92.010 to 92.190** and [*ORS*] 209.250.

(2) Before approving the subdivision plat as required by this section, the county surveyor shall check the subdivision site and the subdivision plat and shall take [*such*] measurements and make [*such*] computations and other determinations as are necessary to determine that the subdivision plat complies with the applicable provisions of [*this chapter and*] **ORS 92.010 to 92.190 and 209.250** and with the subdivision requirements established pursuant to an ordinance or resolution passed by the governing body of the controlling city or county. [*For performing such service the county sur-*

veyor shall collect from the subdivider a fee of \$100 plus \$5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by resolution or order.]

(3) Before approving the partition plat as required by this section, the county surveyor, as provided by subsection (1) of this section, shall check the partition plat and make [such] computations and other determinations that the partition plat complies with the **applicable** provisions of [this and other applicable laws] **ORS 92.010 to 92.190 and 209.250** and with the partition requirements established pursuant to an ordinance or resolution by the governing body of the controlling city or county. [For performing such service, the county surveyor shall collect from the partitioner a fee to be established by the governing body.]

(4) [Any] **Before a subdivision or partition plat prepared by the county surveyor in a private capacity [shall] may be recorded, the plat must** be approved in accordance with subsection (2) or (3) of this section, whichever is applicable, by the surveyor of a county other than the county [where] **in which** the land is located and who has been designated by the county surveyor. [The designated county surveyor shall collect the applicable subdivision or partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners. The subdivision or partition plat check fee and other expenses shall be paid by the subdivider prior to approval of the subdivision or partition plat by the designated county surveyor.]

(5) For performing the service described:

(a) In subsection (2) of this section, the county surveyor shall collect from the subdivider a fee of \$100 plus \$5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by resolution or order.

(b) In subsection (3) of this section, the county surveyor shall collect from the partitioner a fee to be established by the governing body.

(c) In subsection (4) of this section, the designated county surveyor shall collect the applicable subdivision or partition plat check fee, and any travel expenses incurred, as established by the designated county surveyor's board of commissioners. The subdivision or partition plat check fee and other expenses shall be paid by the subdivider or partitioner prior to approval of the subdivision or partition plat by the designated county surveyor.

[5] **(6) Nothing in this section [shall be construed to prohibit] prohibits** a city, county or special district from requiring engineering review and approval of a subdivision plat to [assure] **ensure** compliance with state and local subdivision requirements that relate to matters other than survey adequacy.

(7) Granting approval or withholding approval of a final subdivision or partition plat under this section by the county surveyor, the county assessor or the governing body of a city or county, or a designee of the governing body, is not a land use decision or a limited land use decision, as defined in ORS 197.015.

SECTION 2. ORS 197.015 is amended to read:

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

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

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

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area

covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

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

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

(8) "Goals" means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

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

(10) "Land use decision":

(a) Includes:

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

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

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

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

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

(A) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgment;

(B) Which approves or denies a building permit issued under clear and objective land use standards;

(C) Which is a limited land use decision;

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

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

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

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

(e) Does not include:

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

or

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

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

(12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:

(a) The approval or denial of a **tentative** subdivision or partition **plan**, as described in ORS [chapter 92] **92.040 (1)**.

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

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

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

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

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

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

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

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 authorized and regulated by statute and includes but is not limited to: Water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

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

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

SECTION 3. The amendments to ORS 92.100 and 197.015 by sections 1 and 2 of this 2005 Act apply to plats submitted after the effective date of this 2005 Act.

SECTION 4. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House March 22, 2005

Repassed by House June 7, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 3, 2005

.....
President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State