

# House Bill 2282

Sponsored by Representative CLEM (Pre-session filed.)

## SUMMARY

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

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

Sunsets, on January 2, 2024, laws allowing Metolius resort site owners to use development opportunity to develop small-scale recreation communities.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to temporary development opportunities; creating new provisions; amending section 3,  
3 chapter 636, Oregon Laws 2009; repealing sections 2, 3, 4 and 5, chapter 636, Oregon Laws 2009;  
4 and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 9 of this 2021 Act are added to and made a part of ORS chapter**  
7 **197.**

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

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

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

11 (3) "Planning commission" means a planning commission described in ORS 227.090.

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

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

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

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

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

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

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

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

27 (c) If taken by the department, are not considered rulemaking and are not subject to  
28 ORS 183.325 to 183.410 or 183.710 to 183.730 and, notwithstanding ORS 183.484 or 183.485, are

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 **appealable directly to the Court of Appeals.**

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

5 **(2) If the department approves Stevens Road planning amendments under sections 7 to**  
 6 **9 of this 2021 Act:**

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

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

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

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

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

21 **(2) The holder of a development opportunity may convey the development opportunity to**  
 22 **another person only by a written contract. If the holder of a development opportunity applies**  
 23 **to a county for the approval of the establishment of a small-scale recreation community**  
 24 **under sections 2 to 5, chapter 636, Oregon Laws 2009, the development opportunity is void**  
 25 **and the holder may not convey the development opportunity under this section.**

26 **(3) The Department of Land Conservation and Development may not approve an urban**  
 27 **growth boundary amendment or Stevens Road planning amendments under sections 6 to 9**  
 28 **of this 2021 Act unless:**

29 **(a) On or before December 31, 2023, a holder of a development opportunity has submitted**  
 30 **a letter to the owner of the Stevens Road tract and to the city expressing the holder’s non-**  
 31 **binding interest in selling or conveying the development opportunity to the owner of the**  
 32 **Stevens Road tract;**

33 **(b) On or before December 31, 2023, the owner of the Stevens Road tract has submitted**  
 34 **a letter to a holder of a development opportunity under paragraph (a) of this subsection and**  
 35 **to the city expressing the owner’s nonbinding interest in purchasing or acquiring the devel-**  
 36 **opment opportunity; and**

37 **(c) At the time of the department’s approval, the owner of the Stevens Road tract is the**  
 38 **holder of a development opportunity.**

39 **SECTION 5. Conceptual plan approval. (1) As used in this section, “conceptual plan”**  
 40 **means an ordinance or resolution adopted by the city’s council that:**

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

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

45 **(2) At least 14 days before each opportunity for public participation under subsection (3)**

1 of this section, the city must provide published notice of the opportunity.

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

- 4 (a) A public open house;
- 5 (b) A meeting of the city's planning commission where public testimony is considered;
- 6 (c) A meeting of the city's council where public testimony is considered; and
- 7 (d) A public comment period.

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

11 (5) The city may not submit an approved conceptual plan to the department after March  
12 31, 2022.

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

14 (a) The city has received the letters described in section 4 (3)(a) and (b) of this 2021 Act;  
15 and

16 (b) In the department's discretion, considering the conceptual plan along with any sup-  
17 porting documentation and relevant public comment, the proposed development of the  
18 Stevens Road tract would be capable of meeting the requirements of sections 7 to 9 of this  
19 2021 Act.

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

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

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

27 **SECTION 6. Stevens Road urban growth boundary expansion.** (1) Notwithstanding ORS  
28 197.286 to 197.314, 197.626 or 197A.320 or any statewide land use planning goal related to  
29 housing or urbanization, the Department of Land Conservation and Development shall ap-  
30 prove an expansion of the urban growth boundary submitted by the city and approved by the  
31 city by ordinance, if the department determines that:

32 (a) The owner of the Stevens Road tract is the holder of a development opportunity under  
33 section 4 (3)(c) of this 2021 Act;

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

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

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

41 (a) January 1, 2026; or

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

44 **SECTION 7. Department approval of Stevens Road proposed planning amendments.** (1)  
45 Notwithstanding ORS 197.612, the Department of Land Conservation and Development shall

1 approve Stevens Road planning amendments submitted by the city if:

2 (a) The owner of the Stevens Road tract is the holder of a development opportunity under  
3 section 4 (3)(c) of this 2021 Act;

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

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

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

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

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

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

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

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

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

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

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

30 (a) A public open house;

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

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

33 (d) A public comment period; and

34 (e) Any other opportunity for public participation required by city ordinance or regu-  
35 lation before adoption of amendments to a comprehensive plan or enactment of land use  
36 regulations.

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

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

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

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

44 (c) Deschutes County;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (g) Sufficient areas designated for mixed use development to support and integrate viable  
 32 commercial and residential uses along with transportation options, including walking, bicy-  
 33 cling and transit use;

34 (h) Land use regulations ensuring that:

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

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

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

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

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

44 (j) The designation of between 12.4 and 12.6 acres that, on or before January 1, 2029, are  
 45 restricted so that the area may be zoned, planned, sited or developed only for residential

1 **housing units that, notwithstanding ORS 91.225 and 197.309, will be preserved for a period of**  
 2 **no less than 50 years as affordable to own or rent by:**

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

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

7 **(k) The adequate consideration of the comments received under section 8 (3) to (5) of this**  
 8 **2021 Act.**

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

13 **SECTION 10.** Sections 3, chapter 636, Oregon Laws 2009, as amended by section 1, chapter 888,  
 14 Oregon Laws 2009, section 1, chapter 404, Oregon Laws 2011, section 1, chapter 748, Oregon Laws  
 15 2015, section 1, chapter 494, Oregon Laws 2017 and section 8, chapter 15, Oregon Laws 2018, is  
 16 amended to read:

17 **Sec. 3.** (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation commu-  
 18 nities may be established as specified in sections 2 to 5, chapter 636, Oregon Laws 2009.

19 (2) The owner of a Metolius resort site may apply to a county for approval of a small-scale re-  
 20 creation community within three years after [June 29, 2017,] **the effective date of this 2021 Act**  
 21 if:

22 (a) Prior to June 29, 2010, the owner notified the Department of Land Conservation and Devel-  
 23 opment that the owner elected to seek approval of a small-scale recreation community; [and]

24 (b) The owner renews the election described in paragraph (a) of this subsection within 30 days  
 25 after June 29, 2017[.]; **and**

26 **(c) The owner renews the election described in paragraph (a) within 30 days after the**  
 27 **effective date of this 2021 Act.**

28 (3) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
 29 Laws 2009, may be established only in conjunction with a transfer of development opportunity from  
 30 a Metolius resort site. A transfer of development opportunity must be carried out through an  
 31 agreement between the owner of a Metolius resort site and the owner of the site proposed for de-  
 32 velopment of a small-scale recreation community. In the agreement, the owner of the Metolius resort  
 33 site must:

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

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

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

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

40 (C) Contains other provisions, as required by the Department of Land Conservation and Devel-  
 41 opment, that are necessary to ensure that the conservation easement is enforceable.

42 (4)(a) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
 43 Laws 2009, must be sited on land that is within a county described in paragraph (b) of this sub-  
 44 section and that is either or both of the following:

45 (A) Planned and zoned for forest use; or

1 (B) Rural and not subject to statewide land use planning goals relating to agricultural lands or  
2 forestlands.

3 (b) A small-scale recreation community may be established in:

4 (A) Baker County;

5 (B) Clatsop County;

6 (C) Columbia County;

7 (D) Coos County;

8 (E) Crook County;

9 (F) Curry County;

10 (G) Douglas County;

11 (H) Grant County;

12 (I) Harney County;

13 (J) Josephine County;

14 (K) Klamath County;

15 (L) Lake County;

16 (M) Lincoln County;

17 (N) Linn County;

18 (O) Malheur County;

19 (P) Morrow County;

20 (Q) Sherman County;

21 (R) Umatilla County;

22 (S) Wallowa County;

23 (T) Wasco County; or

24 (U) Wheeler County.

25 (5) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon  
26 Laws 2009, may not be sited on land that is:

27 (a) Within an area identified as “Area 1” or “Area 2” in the management plan.

28 (b) Within an area protected as a significant resource in an acknowledged comprehensive plan  
29 provision implementing statewide land use planning goals relating to:

30 (A) Open space and scenic and historic areas;

31 (B) Natural or conservation management unit requirements for estuarine resources; or

32 (C) Beaches and dunes.

33 (6)(a) All land on which a small-scale recreation community authorized under sections 2 to 5,  
34 chapter 636, Oregon Laws 2009, is sited must be at least one-quarter mile from the nearest state  
35 park.

36 (b) Any buildings or other improvements developed within the boundaries of land on which a  
37 small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws 2009,  
38 is sited must be located at least one mile from the nearest state park.

39 (7) If a county listed in subsection (4)(b)(B), (D), (F), (G) or (M) of this section approves an ap-  
40 plication for a small-scale recreation community that also requires a federal license or permit, that  
41 approval shall be deemed to constitute an acknowledged exception under ORS 197.732 to any appli-  
42 cable statewide land use planning goal with which the use would not otherwise comply.

43 **SECTION 11. Repeal of small-scale recreation community authorization.** (1) **Section 2,**  
44 **chapter 636, Oregon Laws 2009, is repealed on January 2, 2024.**

45 **(2) Section 3, chapter 636, Oregon Laws 2009, as amended by section 1, chapter 888,**

1 Oregon Laws 2009, section 1, chapter 404, Oregon Laws 2011, section 1, chapter 748, Oregon  
2 Laws 2015, section 1, chapter 494, Oregon Laws 2017, section 8, chapter 15, Oregon Laws 2018,  
3 and section 10 of this 2021 Act, is repealed on January 2, 2024.

4 (3) Section 4, chapter 636, Oregon Laws 2009, as amended by section 2, chapter 888,  
5 Oregon Laws 2009, is repealed on January 2, 2024.

6 (4) Section 5, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 888,  
7 Oregon Laws 2009, and section 9, chapter 15, Oregon Laws 2018, is repealed on January 2,  
8 2024.

9 **SECTION 12. Sunset.** Sections 2 to 9 of this 2021 Act are repealed on January 2, 2030.

10 **SECTION 13. Section captions.** The section captions used in this 2021 Act are provided  
11 only for the convenience of the reader and do not become part of the statutory law of this  
12 state or express any legislative intent in the enactment of this 2021 Act.

13 **SECTION 14. Emergency clause.** This 2021 Act being necessary for the immediate pres-  
14 ervation of the public peace, health and safety, an emergency is declared to exist, and this  
15 2021 Act takes effect on its passage.

16