



Oregon

Theodore R. Kulongoski, Governor

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July 22, 2009

TO: Interested Persons, Local Governments and State Agencies

FROM: Richard Whitman, Director
Bob Rindy, Senior Policy Analyst/Legislative Coordinator

SUBJECT: 2009 Land Use Legislation

The department has issued a summary listing legislation enacted by the 2009 Oregon Legislature that relates to land use planning. Not all the bills listed in the attached report have been signed by the governor as of the date of the report. You can see a list of bills the governor has signed so far, and periodically check which bills are signed over the next few weeks, at the following link: http://www.oregon.gov/Gov/2009_Action.shtml

Local governments and land use planners might especially note the following bills: HB 2229 regarding the "Big Look Task Force" recommendations; HB 2001 and HB 2186 regarding transportation funding and planning; HB 2228, HB 3298 and HB 3313 regarding the Metolius Area of Critical Statewide Concern; HB 2230 regarding state agency coordination; HB 3013 regarding coastal Marine Reserves; HB 3099 regarding uses allowed on farm land; HB 3225 regarding Measure 49 claims; HB 2228 regarding the Skyline Forest; SB 763 and HB 2228 regarding Transfers of Development Credits; and HB 3379 regarding DLCDC transportation planning rules. These bills and others listed in the report may require local governments to amend local land use plans and/or implementing ordinances. This list is primarily concerned with land use and does not include all bills that may be of interest to local governments or state agencies.

The attached report provides a brief summary of each legislative measure. Many of these new laws have elements in addition to those described in the summary, and details of the legislation are not included in the summary. Therefore, it is recommended that you use the report primarily as a reference to new laws that may be of interest. If a particular bill does not specify an effective date (usually at the end of the bill), the effective date of the law (if the bill is signed by the governor) will be January 1, 2010.

The report includes hyperlinks that can be used to access a pdf file of the enrolled version of each bill as published on the state's legislative web site. Or, the bills are available through the home page of the state's legislative web site: <http://www.leg.state.or.us/>. All legislation considered in the 2009 legislative session, including bills that were not passed, may be accessed at http://www.leg.state.or.us/bills_laws. Print copies of enacted legislation may be ordered by calling the Legislative Publication Office at the state capitol: (503) 986-1180. DLCDC does not have print copies of legislative measures available for distribution.

If you have questions or comments about the referenced report or other legislation, please call Bob Rindy at (503) 373-0050 ext. 229, e-mail: bob.rindy@state.or.us; or Michael Morrissey, (503)373-0050 ext. 320, e-mail: michael.morrissey@state.or.us.

Land Use Legislation Report July 17, 2009

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

The following bills have been enacted by the 2009 Oregon Legislature and relate to land use planning, the state land use program, local government planning, or state agency programs concerning land use or similar topics. While all of the bills listed were passed by the legislature, not all have been signed by the Governor at the time of this report.

For questions contact Bob Rindy, (503)373-0050 ext. 229, bob.rindy@state.or.us; or Michael Morrissey, (503)373-0050 ext. 320, michael.morrissey@state.or.us

House Bills

HB 2001

Summary: Transportation Funding Act; directs improvements and funding for state, county and city transportation systems. The bill includes many other related transportation measures; authorizes issuance of Highway User Tax Bonds, and dedicates funding to complete the first phase of the Newberg-Dundee Bypass; requires metropolitan service districts to develop "land use and transportation scenarios" to reduce greenhouse gas emissions (see also HB 2186); and requires one or more pilot programs that implement congestion pricing in the Portland metropolitan area. Takes effect on the 91st day following adjournment.

<http://www.leg.state.or.us/09reg/measpdf/hb2000.dir/hb2001.en.pdf>

HB 2003

Summary: Extends landowner immunity to paths, trails, roads, watercourses and other rights of way that are used by the public to reach land for recreational purposes, gardening, woodcutting or harvest of special forest products. Requires that such rights of way be on land that is adjacent to the land that the public intends to use for such purposes.

<http://www.leg.state.or.us/09reg/measpdf/hb2000.dir/hb2003.en.pdf>

HB 2082

Summary: Revises provisions governing the formation, consolidation and dissolution of soil and water conservation districts and the inclusion within, or withdrawal of, land from soil and water conservation districts. Eliminates statutory provisions regarding the imposition of land use regulations within such districts.

<http://www.leg.state.or.us/09reg/measpdf/hb2000.dir/hb2082.en.pdf>

HB 2106

Summary: Allows a school district to select a site for a school construction project that is different from the site proposed prior to a bond election, provided a safety improvement evaluation is made for the new site before bonds are issued for the project. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2106.en.pdf>

HB 2155

Summary: Allows the Department of State Lands to assess a one-time fee that covers all fees for a removal or fill permit. Modifies factors the department considers in determining whether to issue a permit, including exemptions for lands zoned for exclusive farm use. Allows the department to establish by rule an exemption from removal or fill permitting requirements for voluntary habitat restoration projects that have only minimal adverse impact.

<http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2155.en.pdf>

HB 2186

Summary: Authorizes the Environmental Quality Commission to adopt a low carbon fuel standard to reduce greenhouse gas emissions per unit of fuel energy by 10 percent below 2010 levels by the year 2020. Creates a “Metropolitan Planning Organization Greenhouse Gas Emissions Task Force” to study alternative land use and transportation scenarios that reduce greenhouse gas emissions from motor vehicles in areas served by metropolitan planning organizations, and to recommend new legislation. The Task Force would consist of 16 members (including the Chair of LCDC) appointed by the governor and legislative leadership. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb2100.dir/hb2186.en.pdf>

HB 2216

Summary: Establishes the State Forest Acquisition Fund and appropriates money in the fund to the Board of Forestry for the purpose of acquiring parcels in the Gilchrist area of Klamath County for use as a state forest.

<http://www.leg.state.or.us/09reg/measpdf/hb2200.dir/hb2216.b.pdf>

HB 2228

Summary: Establishes the Oregon Transfer of Development Rights Pilot Program in the Department of Land Conservation and Development, to be implemented in coordination with the State Forestry Department, local governments and other state agencies. Local governments may nominate up to three pilot projects reasonably likely to provide a net benefit to the forest or agricultural economy of the state through transfer of development rights from forest land to a receiving area either inside an urban growth boundary (UGB), on exception land adjacent to a UGB or in a rural community. Also, this bill authorizes the owners of the “Skyline Forest” and the “Southern Conservation Tract” to transfer those areas to a land trust to create a multi-use “community forest.” In return, the owner may develop a “Skyline Forest Sustainable Development Area” (a new residential community) on specified tracts of up to 1,200 contiguous acres near the City of Sisters, including up to 282 residences, rental units or lodging units and other associated uses and facilities. Finally, this act provides that one or two small-scale recreation communities may be established on forestlands outside the Metolius River Basin if, within 90 days after the effective date of the act, the owner of a Metolius destination resort site transfers development credits from the Metolius resort site and grants a conservation easement (see also HB 3298 and HB 3313). Declares emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb2200.dir/hb2228.en.pdf>

HB 2229

Summary: Implements the 2008 recommendations of the “Big Look Task Force,” appointed in 2005 to review Oregon’s land use system. The legislation: (1) Establishes new “main principles” for the state land use system; (2) Expands authorities for regional land use planning; (3) Provides that a county may conduct a legislative review of county lands for purposes of correcting mapping errors and updating designations of farmland and forestland, and to determine whether zoning of such lands is consistent with definitions of agricultural lands, forest lands or non-resource land. The county must submit any decisions to change planning and zoning as a result of this review to the Land Conservation and Development Commission for approval; (4) Revises statutory criteria and other provisions under which a county, in conjunction with at least one other local government, may enter into a collaborative regional problem-solving process; and (5) Authorizes the Land Conservation and Development Commission to carry out a policy-neutral review and audit of the land use system to reduce complexity. Declares an emergency, effective on passage.
<http://www.leg.state.or.us/09reg/measpdf/hb2200.dir/hb2229.en.pdf>

HB 2230

Summary: Authorizes the Land Conservation and Development Commission to update and improve coordination of land use decision-making between state agencies and local governments. Excludes from the definition of “land use decision” a local government determination that a proposed state agency permit is compatible with an acknowledged comprehensive plan, provided the local decision is based on a prior local approval of a permit for substantially the same action, or provided the use or activity that would be authorized by the proposed state agency action is either allowed without review under the local plan or requires a future land use review.
<http://www.leg.state.or.us/09reg/measpdf/hb2200.dir/hb2230.en.pdf>

HB 2614

Summary: Requires a landlord of a rental dwelling unit located in a 100-year flood plain a flood plain to notify tenant that the unit is in the flood plain. Allows a tenant suffering an uninsured flood loss compensation for a violation of this notice requirement.
<http://www.leg.state.or.us/09reg/measpdf/hb2600.dir/hb2614.en.pdf>

HB 2759

Summary: Creates a form for correction of errors concerning the status or effect of a recorded trust deed. Requires the recording officer of a county to file specified records in the statutory lien record.
<http://www.leg.state.or.us/09reg/measpdf/hb2700.dir/hb2759.en.pdf>

HB 2822

Summary: Establishes a process for local governments to grant or deny a “way of necessity” for private sewer lines in order to provide a continuation of a preexisting sewer service to land that has access to a public road.

<http://www.leg.state.or.us/09reg/measpdf/hb2800.dir/hb2822.en.pdf>

HB 2904

Summary: Provides that a farm use on farmland is eligible for special property tax assessment if the use is under a plan to remediate or mitigate severe adverse conditions. Authorizes the Oregon State University Extension Service to establish fees for certifying remediation plans. Specifies procedures and criteria by which farmland certified for a remediation plan is disqualified from special assessment or removed from disqualification. Takes effect on 91st day following adjournment.

<http://www.leg.state.or.us/09reg/measpdf/hb2900.dir/hb2904.en.pdf>

HB 3013

Summary: Outlines a detailed plan and timeline to complete an evaluation of six potential marine reserve sites recommended by the Governor’s Ocean Policy Advisory Council. The act establishes two pilot marine reserve projects – at Otter Rock near Depoe Bay and Redfish Rocks near Port Orford – and prescribes a process to evaluate the potential for reserves in four other areas. Directs certain state agencies to implement specified recommendations of the Ocean Policy Advisory Council regarding marine reserves, and directs the State Department of Fish and Wildlife to develop a work plan for implementing recommendations and to report on results of the work plan to the appropriate interim legislative committee. Specifies that designation of marine reserves must include a commitment to pursue long-term funding for marine reserves. Declares emergency, effective July 1, 2009.

<http://www.leg.state.or.us/09reg/measpdf/hb3000.dir/hb3013.en.pdf>

HB 3043

Summary: Annexes territory within the Metro urban growth boundary to the metropolitan service district by operation of law. Exempts territory within the urban growth boundary annexed by operation of law from contested case proceedings.

<http://www.leg.state.or.us/09reg/measpdf/hb3000.dir/hb3043.en.pdf>

HB 3099

Summary: Modifies certain conditional and outright permitted uses, or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane clubs, and breeding and kenneling of greyhounds. Specifies circumstances under which a formerly permitted use may be expanded. Specifies streamlined procedures by which a county may amend its land use regulations to conform to the act.

<http://www.leg.state.or.us/09reg/measpdf/hb3000.dir/hb3099.en.pdf>

HB 3106

Summary: Creates the Task Force on Nearshore Research for the purpose of making recommendations to ensure protection and utilization of Oregon's nearshore resources. Establishes the Nearshore Resources Fund and appropriates moneys in the fund to the Coastal Oregon Marine Experiment Station of Oregon State University for the purpose of enabling the task force to carry out actions required by the act. Sunsets January 2, 2012. Declares emergency, effective July 1, 2009.

<http://www.leg.state.or.us/09reg/measpdf/hb3100.dir/hb3106.en.pdf>

HB 3153

Summary: Requires a utility provider to consult with owners of high-value farmland prior to installing a transmission line in order to minimize the impact on farming operations.

<http://www.leg.state.or.us/09reg/measpdf/hb3100.dir/hb3153.en.pdf>

HB 3225

Summary: Provides a process for approximately 400 Measure 37 claims to proceed under Measure 49 that would have otherwise been precluded from going forward, including: claimants that did not comply with requirement that a claim be filed with the public entity that enacted the regulation; claimants with a majority of property located outside an urban growth boundary and entirely outside or entirely inside the boundaries of a city; and, claimants that filed a claim only with the state but not with both the county and state. Directs the Land Conservation and Development Commission to issue final orders under Measure 49 on or before a specified date. Directs the department to investigate certain improperly filed claims and report to the legislature. Requires a fee of \$175 for the processing of certain claims, and authorizes the department to prioritize processing of up to 100 claims that demonstrate a hardship. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb3200.dir/hb3225.en.pdf>

HB 3298

Summary: Approves a recommendation by the Land Conservation and Development Commission to designate the Metolius Basin as an "Area of Critical State Concern." Directs the commission to adopt the management plan for the Metolius area as a rule, with some specified changes. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb3200.dir/hb3298.en.pdf>

HB 3313

Summary: Extends the deadline – from 40 days to a year – for an owner of a Metolius resort site to notify the Department of Land Conservation and Development that the owner has elected to seek approval of a small-scale recreation community as provided under HB 2228. Broadens the type of land, and increases the acreage, on

which such a small-scale recreation community may be built. Clarifies certain development standards and expands the types of development allowed in the Skyline Forest Sustainable Development Area specified in HB 2228. Declares an emergency, effective on passage. (See HB 3298).

<http://www.leg.state.or.us/09reg/measpdf/hb3300.dir/hb3313.en.pdf>

HB 3369

Summary: Provides steps under which the Water Resources Department and other specified agencies create an integrated statewide water resources strategy and an active water investment mechanism. Creates a process by which the Water Resources Department may loan or grant moneys to enable construction of water development projects located in the Columbia River Basin. Modifies provisions related to financing water development projects, and authorizes the department to issue grants for critical ground water storage projects located in the Umatilla Basin that meet specified conditions.

<http://www.leg.state.or.us/09reg/measpdf/hb3300.dir/hb3369.en.pdf>

HB 3379

Summary: Allows a limited number of local governments that are unable to meet funding requirements of the Transportation Planning Rules adopted by the Land Conservation and Development Commission to apply for extensions, submit alternative plans for funding or apply to adjust various traffic performance measures. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/hb3300.dir/hb3379.en.pdf>

Senate Bills

SB 170

Summary: Expands – from four to six – the number of Oregon’s rural airports eligible to participate in the Department of Aviation’s “Through the Fence” pilot project. Requires submission, review, approval and revision of a facility site plan for each “through the fence” operation so that the real property covered by the site plan can be incorporated into the airport boundary. The Department of Land Conservation and Development and a local government within whose jurisdiction a pilot site is located must coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications, facilitate the pilot project consistent with current applicable statewide land use planning requirements.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0170.en.pdf>

SB 171

Summary: Prohibits a person from constructing an object or structure that constitutes a physical hazard to air navigation, with some exceptions. Allows the Director of Oregon Department of Aviation to adopt rules relating to mitigation of hazards to air navigation.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0171.en.pdf>

SB 189

Summary: Clarifies the obligation of an owner of timberland regarding payment of assessments and taxes. Clarifies classification of forestland, modifies the circumstances under which the State Forester may classify forestland, allows governing bodies of two or more counties to establish a joint forestland classification committee, and allows the State Board of Forestry to adopt rules to implement county forestland classifications.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0189.en.pdf>

SB 191

Summary: Adds an exemption from surface mining reclamation requirements for certain mining operations that were exempt by a county, and requires the landowner or operator to complete an erosion stabilization plan for mining operations exempt from reclamation requirements. Establishes requirements for continued operation of mining operations that previously operated under a permit from a county. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0191.en.pdf>

SB 192

Summary: Modifies criteria by which an owner of historic property may participate in, or be disqualified from, the historic property special assessment program. Extends the program to July 1, 2020. Takes effect on 91st day following adjournment.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0192.en.pdf>

SB 195

Summary: Provides an exemption for wave energy projects from statutory provisions related to hydroelectric projects. Authorizes the Water Resources Commission to adopt rules relating to wave energy projects. Sunsets January 1, 2010. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0195.en.pdf>

SB 217

Summary: Permits the Historic Preservation Revolving Loan Fund to be used for enforcement of cultural resources protection laws and for promotion of public education regarding cultural resources. Requires funds recovered by the Attorney

General for cultural resources protection enforcement to be placed in an Historic Preservation Revolving Loan Fund. Declares an emergency, effective on passage.
<http://www.leg.state.or.us/09reg/measpdf/sb0200.dir/sb0217.en.pdf>

SB 234

Summary: Authorizes service by first class mail of a petition for judicial review of a final order of the Land Use Board of Appeals. Authorizes, by reference, service by first class mail of a petition for judicial review of a local government's "expedited land division" decision issued by a referee.

<http://www.leg.state.or.us/09reg/measpdf/sb0200.dir/sb0234.en.pdf>

SB 513

Summary: Makes legislative findings and establishes state policy regarding ecosystem services. Encourages state agencies to take certain actions related to ecosystem services and ecosystem services markets. Requires the Sustainability Board to convene an ecosystem services markets working group. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0513.en.pdf>

SB 566

Summary: Provides that the Metropolitan Service District is not required to consider the capability classification system or the cubic foot site class of land as described in ORS 197.298(2) when including land previously designated as urban reserve within the Metro urban growth boundary. Takes effect December 1, 2009.

<http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0566.en.pdf>

SB 580 - NOTE: The Governor has vetoed this bill.

Summary: Directs the Department of Transportation to collaborate with governmental units to implement tolling on interstate bridges that cross the Columbia River. Requires the department to develop and submit a rate structure for tolling to the Oregon Transportation Commission on or before January 1, 2011.

<http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0580.en.pdf>

SB 599

Summary: Modifies the definition of surface mining to exclude excavations or reprocessing of aggregate material or grading operations within the highway right of way reasonably necessary for the construction, reconstruction or maintenance of a highway.

<http://www.leg.state.or.us/09reg/measpdf/sb0500.dir/sb0599.en.pdf>

SB 691

Summary: Modifies Measure 49 provisions for claiming compensation for specified land use regulations that restrict forest practices on private real property. Allows a claim by a land owner based on a land use regulations restricting forest practices and enacted before the owner acquired the property. Allows prescribed uses of property by a person who acquired forest property subsequent to the owner who filed a claim. Allows an owner to prove a reduction in fair market value by appraisals that show the value of land and harvestable timber, and to make separate claims for different lawfully established units of land.

<http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0691.en.pdf>

SB 763

Summary: Broadens statutory authorization of cities, counties, metropolitan service districts and certain state agencies to establish Transferable Development Credit (TDC) systems for the purpose of transferring development interests from resource land in “sending areas” to land in “receiving areas” in which additional uses or development not otherwise allowed are allowed by reason of the transfer. Allows establishment of TDC systems involving land under the jurisdiction of different governmental units. Requires governmental units establishing such systems to enter into an intergovernmental agreement with each other and with the Department of Land Conservation and Development. Requires the department to report on transferable development credit systems to the Seventy-seventh Legislative Assembly. Declares an emergency, effective on passage

<http://www.leg.state.or.us/09reg/measpdf/sb0700.dir/sb0763.en.pdf>

SB 944

Summary: Directs Lane County to develop a proposed charter for the formation of an Area Commission on Transportation on or before September 30, 2010. Requires such charter to include certain information, and directs the county to submit the charter to the Oregon Transportation Commission and to report to interim committees of the Legislative Assembly on or before October 31, 2010.

<http://www.leg.state.or.us/09reg/measpdf/sb0900.dir/sb0944.en.pdf>

SB 963

Summary: Revises various provisions governing condominiums and planned communities.

<http://www.leg.state.or.us/09reg/measpdf/sb0900.dir/sb0963.en.pdf>

SB 5506

Summary: Provides a job stimulus and investment package intended to create jobs by supplying funds for various projects and programs throughout the state, including upgrades to infrastructure.

<http://www.leg.state.or.us/09reg/measpdf/sb5500.dir/sb5506.en.pdf>

SB 5531

Summary: Department of Land Conservation and Development Budget. Appropriates moneys from General Fund to the Department of Land Conservation and Development for biennial expenses, including biennial expenditures from fees, moneys or other revenues, and authorizes biennial expenditures by the department from federal funds. Includes general fund appropriations for local government technical assistance grants and periodic review grants, to be distributed by the department. Additional local grant funding is authorized through federal coastal zone management funds and through other funds under the DLC/ODOT Transportation and Growth Management Program. Declares an emergency, effective July 1, 2009.
<http://www.leg.state.or.us/09reg/measpdf/sb5500.dir/sb5531.en.pdf>

SB 5532

Summary: Approves certain new or increased fees adopted by Department of Land Conservation and Development, specifically: (1) the annual subscription fees for mailed notice of proposed action provided by local governments, and (2) the annual subscription fees for mailed notices of adoption of local actions. Declares an emergency, effective July 1, 2009.
<http://www.leg.state.or.us/09reg/measpdf/sb5500.dir/sb5532.en.pdf>
