



Oregon

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TO: Interested Persons, Local Governments and State Agencies

**FROM: Lane Shetterly, Director
Department of Land Conservation and Development**

SUBJECT: 2005 Land Use Legislation - Revised

Attached is an updated report on legislation adopted by the 2005 legislature that relates to state or local land use planning or the statewide land use program. This report was initially issued by this department on August 10, 2004. At that time, the report included a number of legislative measures that had not been yet been signed by the Governor. Subsequent to that report the Governor signed all the bills listed except HB 3463, which was vetoed.

The attached report provides a brief description of each new land use related legislative measure. This description is intended only as a summary – measures may have details or elements in addition to those described in the report. Therefore, we recommend that you use this report primarily as a reference and as an index of new land use related laws that may be of particular interest to you.

The report includes a hyperlink that can be used to access a “pdf. file” of the enrolled version of each bill published on the state’s legislative web site. The home page for the state’s legislative web site is at <http://www.leg.state.or.us/>. All legislation considered in the 2005 legislative session may be obtained at http://www.leg.state.or.us/bills_laws. Print copies of enrolled bills may be ordered by calling the legislative publication office in the state capitol at (503) 986-1180. (This department does not have print copies of these legislative measures available for distribution.)

If you have questions or comments about the enclosed report or new legislation, please call Bob Rindy at (503) 373-0050 ext. 229 or email: bob.rindy@state.or.us.

Land Use Legislation Enacted in the 2005 Session

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Revised September 7, 2005

The following measures that relate to land use were enacted in the 2005 legislative session and have been signed by the Governor. * Except as otherwise indicated, new laws take effect January 1, 2006. A hyperlink to the enrolled version of each measure is provided. For questions about land use legislation contact Bob Rindy, Department of Land Conservation and Development, (503)373-0050 Ext 229; Bob.rindy@state.or.us

SB 68

Summary: Affirms State Parks and Recreation Department authority to issue permit for conduit across or under state recreation area. Requires a permit to operate a Class I all-terrain vehicle on ocean shore lands.

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0068.en.pdf>

SB 82

Summary: Establishes a 10-member Oregon Task Force on Land Use Planning to study Oregon's land use system and recommend changes. Requires Task Force to conduct public meetings, survey citizens, collect specific data, and develop legislation for recommendation to the 2007 and 2009 legislatures.

Directs the Department of Land Conservation and Development to provide staff support to the Task Force and allows the agency to hire staff or consultants, as needed, to assist the Task Force. Within three months of its creation, the Task Force must submit a preliminary report to the Governor, President of the Senate, and Speaker of the House, informing them of its work plan. The Task Force must also submit a progress report to the 2007 Legislative Assembly, Governor, and Land Conservation and Development Commission by February 1, 2007, and must submit a final report to the 2009 Legislative Assembly, the Governor, and the Commission by February 1, 2009. Sunsets Task Force by January 2, 2010.

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0082.en.pdf>

SB 96

Summary: Authorizes the Land Conservation and Development Commission to amend a statewide land use planning goal after only one public hearing (instead of ten hearings required under ORS 197.235) if the amendment is the minimum necessary to conform to new legislation or an initiative measure.

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0096.en.pdf>

SB 101

Summary: Authorizes a claim for relief against Department of Transportation if certain approach roads are closed by department.

<http://www.leg.state.or.us/05reg/measpdf/sb0100.dir/sb0101.en.pdf>

SB 103

Summary: Authorizes accessory dwellings for farm worker housing in marginal land counties (Lane and Washington Counties). This supplements legislation from 2001 and 2003 sessions allowing such dwellings in all other counties
<http://www.leg.state.or.us/05reg/measpdf/sb0100.dir/sb0103.en.pdf>

SB 222

Summary: Modifies definition of “community housing” for chronically mentally ill persons to include single-family housing that accommodates at least three persons with chronic mental illness. Allows care providers of residents with chronic mental illness to occupy community housing. Modifies definition of “multiple-unit residential housing” to include housing with two or more units.
<http://www.leg.state.or.us/05reg/measpdf/sb0200.dir/sb0222.en.pdf>

SB 346

Summary: Allows, as a conditional use in an exclusive farm use (EFU) zone, the propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission. Previously only such uses under the Fish and Wildlife Commission’s jurisdiction were allowed outright as a farm use.
<http://www.leg.state.or.us/05reg/measpdf/sb0300.dir/sb0346.en.pdf>

SB 353

Summary: Disclosure required in instruments transferring fee title to real property, in order to alert sellers and buyers of real property regarding Measure 37 rights and claims.
<http://www.leg.state.or.us/05reg/measpdf/sb0300.dir/sb0353.en.pdf>

SB 431

Summary: Modifies jurisdiction of Land Use Board of Appeals (LUBA) such that appeals related to periodic review of local land use plans are under the jurisdiction of the Department of Land Conservation and Development rather than LUBA (See HB 3310).
<http://www.leg.state.or.us/05reg/measpdf/sb0400.dir/sb0431.en.pdf>

SB 538

Summary: Extends the sunset (until 2010) of legislation limiting establishment of guest ranches. Expands the amount of lodging facilities available for guest ranches and removes provisions requiring that a guest ranch be sited more than 10 air-miles from an urban growth boundary containing a population greater than 50,000. Allows guest ranch to serve meals to customers beyond those individuals staying at the guest ranch. Directs Department of Land Conservation and Development and the State Department of Agriculture and Economic and Community Development Department to submit a jointly written report on implementation of these provisions to legislature during 2007 and 2009 sessions.
<http://www.leg.state.or.us/05reg/measpdf/sb0500.dir/sb0538.en.pdf>

SB 557

Summary: Requires Office of Emergency Management to develop tsunami warning information and evacuation plans and establish uniform tsunami warning signal if moneys are available from specified sources. Requires office to develop and adopt by rule tsunami warning information and evacuation plans for distribution to transient lodging facilities located in tsunami inundation zones if moneys are available from specified sources. Takes effect on 91st day following adjournment sine die.

<http://www.leg.state.or.us/05reg/measpdf/sb0500.dir/sb0557.en.pdf>

SB 660

Summary: Requires county board or local boundary commission to approve, modify or reject petition for formation of special district using only specified legal criteria. Applies to petitions filed with board on or after effective date of Act.

<http://www.leg.state.or.us/05reg/measpdf/sb0600.dir/sb0660.en.pdf>

SB 680

Summary: Directs Oregon Department of Aviation to establish pilot program and adopt rules to foster economic development adjacent to rural airports by encouraging “through the fence operations” – Aviation-related activities that are conducted by commercial or industrial users of property within an airport boundary and that rely on the ability to taxi aircraft directly from the property to an airport runway. Requires the Department of Land Conservation and Development (DLCD) and local governments to ensure that local comprehensive plans and land use regulations facilitate and support the development or expansion of certain “pilot program airports.” Does not alter current statewide land use requirements regarding the types of levels of land uses authorized on or adjacent to airports outside urban growth boundaries. (see HB 2458).

<http://www.leg.state.or.us/05reg/measpdf/sb0600.dir/sb0680.en.pdf>

SB 688

Summary: Amends current statutory provisions for “development agreements,” that may be entered into by local governments and landowners to establish terms of an approved development. The amendments extend the maximum duration of such agreements (to 7 years for counties, 15 years for cities). The amendments also clarify that such agreements are binding upon a city or county.

<http://www.leg.state.or.us/05reg/measpdf/sb0600.dir/sb0688.en.pdf>

SB 699

Summary: Prohibits annexation of certain types of industrial land in specified area of Jackson County (White City) without the consent of the landowner. In cases where such annexations are approved, the specified parcel of industrial land retains any development rights that existed at the time of annexation.

<http://www.leg.state.or.us/05reg/measpdf/sb0600.dir/sb0699.en.pdf>

SB 863

Summary: Allows owner of an existing dwelling in an exclusive farm use zone to apply for a deferred replacement permit that remains valid indefinitely provided the dwelling is removed or demolished within three months of issuance of permit. The deferred replacement right may be transferred only to a spouse or child.

<http://www.leg.state.or.us/05reg/measpdf/sb0800.dir/sb0863.en.pdf>

SB 887

Summary: Prohibits City of Beaverton from annexing territory not within city but surrounded by corporate boundaries in without approval of residents or property owners in the territory (sunsets January 2, 2008). Provides that when a city or district proposes annexation of territory, an “annexation plan” shall be submitted only to electors in the territory proposed to be annexed. Sunsets January 2, 2008. Directs Joint Legislative Committee on Land Use to consider and propose legislation relating to annexation issues. Sunsets January 2, 2008. Prohibits annexation of specified industrial properties by city or metropolitan service district. Sunsets June 30, 2035. Declares emergency, effective on passage.

<http://www.leg.state.or.us/05reg/measpdf/sb0800.dir/sb0887.en.pdf>

SB 1032

Summary: Requires Metro to establish a process to allow consideration of an application to expand the regional urban growth boundary in between regularly schedule reviews of the boundary in order to accommodate a new public school site that cannot reasonably be accommodated within the existing boundary.

<http://www.leg.state.or.us/05reg/measpdf/sb1000.dir/sb1032.en.pdf>

SB 1044

Summary: Specifies that counties may periodically adopt and amend destination resort planning maps at times other than periodic review.

<http://www.leg.state.or.us/05reg/measpdf/sb1000.dir/sb1044.en.pdf>

SB 1094

Summary: Authorizes establishment and operation of a major motor speedway and associated uses and facilities in conjunction with such a speedway (i.e., provided such a speedway is developed prior or simultaneously) on rural lands in Morrow County. Declares emergency, effective on passage.

<http://www.leg.state.or.us/05reg/measpdf/sb1000.dir/sb1094.en.pdf>

HB 2069

Summary: Amends the list of land uses allowed in exclusive farm use zones to include landscaping businesses or businesses providing landscape architecture services, provided the business is pursued in conjunction with the growing and marketing of nursery stock on land that constitutes farm use.

<http://www.leg.state.or.us/05reg/measpdf/hb2000.dir/hb2069.en.pdf>

HB 2119

Summary: Requires an annual report to be submitted to State Department of Geology and Mineral Industries (DOGAMI) by any person holding a mining operating permit. Allows DOGAMI to issue temporary operating permits and emergency operating permits, including rules relating to issuance of permits, and allows DOGAMI to revise anniversary dates of operating permits to renew all permits on the same date.

<http://www.leg.state.or.us/05reg/measpdf/hb2100.dir/hb2119.en.pdf>

HB 2199

Summary: Moves oversight of vertical housing development zone program from Economic and Community Development Department to Housing and Community Services Department. Broadens definition of “vertical housing development project” to include projects that have residential *and* nonresidential uses in any portion of project. Encourages development of residential housing in vertical housing development project that is reserved for persons or families with limited income. Takes effect on 91st day following adjournment sine die.

<http://www.leg.state.or.us/05reg/measpdf/hb2100.dir/hb2199.en.pdf>

HB 2247

Summary: Requires manufactured dwelling park and floating home moorages to register with Housing and Community Services Department. Prohibits local government from placing a limit on placement of, or length of occupancy of, recreational vehicle in mobile home park, manufactured dwelling park or recreational vehicle park if certain conditions are met. Includes new provisions regarding landlord/tenant agreements.

<http://www.leg.state.or.us/05reg/measpdf/hb2200.dir/hb2247.en.pdf>

HB 2328

Summary: Specifies that the regulation of liquid petroleum gas containers or receptacles by the State Fire Marshal is not “a program affecting land use.” Prohibits local government from denying use of liquid petroleum gas container that complies with State Fire Marshal’s regulations. Local governments may regulate the siting and installation of liquid petroleum gas containers that are not accessory to an authorized land use, may prohibit the siting and installation of liquid petroleum gas containers of specified types or sizes in specific zones within an urban growth boundary to protect the public health and safety, and may regulate the placement of liquid petroleum gas containers.

<http://www.leg.state.or.us/05reg/measpdf/hb2300.dir/hb2328.a.pdf>

HB 2356

Summary: Modifies procedure for approval of subdivision plat or partition plat. Specifies that the granting or withholding approval of a final subdivision or partition plat by the county surveyor, assessor or the governing body is not a land use decision or a limited land use decision. This bill responds to the 2004 Court of Appeals decision *Hammer v. Clackamas County*.

<http://www.leg.state.or.us/05reg/measpdf/hb2300.dir/hb2356.en.pdf>

HB 2389

Summary:

Creates tax credit for qualifying individual who involuntarily moves manufactured dwelling due to manufactured dwelling park closure occurring within this state. Requires Housing and Community Services Department to act as collector and source of information regarding manufactured dwelling park spaces available for rent. Provides that jurisdiction may not prohibit relocation of manufactured dwelling to manufactured dwelling park or mobile home park based solely on age of dwelling if relocation is due to park closure.

<http://www.leg.state.or.us/05reg/measpdf/hb2300.dir/hb2389.en.pdf>

HB 2438

Summary: Directs LCDC to amend rules so as to allow an exception for a use that is authorized by a statewide planning goal but cannot comply with the approval standards for that type of use. Does not change other current requirements for an exception. This legislation is in response to a 2002 Court of Appeals decision (*DLCD v. Yamhill County*) declaring that an exception cannot be requested for a use that is allowed by a statewide goal even where an applicant cannot meet approval requirements for the use.

<http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2438.en.pdf>

HB 2458

Summary: Repeals “sunset” of 2003 Act authorizing industrial development in buildings of any size and type on certain lands outside urban growth boundaries outside the Willamette Valley. Changes population limits of cities where unlimited industrial development may be restricted. Directs LCDC to conform statewide land use planning goals to this legislation within six months of the effective date of the act. Declares emergency, effective on passage.

<http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2458.en.pdf>

HB 2484

Summary: Changes requirements for approval of an “annexation plan” under which a city or district may annex territory within an urban growth boundary: Requires a majority of votes cast in a city or district and a majority of votes cast in a territory proposed to be annexed in order to approve an annexation plan. (Note, see Section 3 of SB 887).

<http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2484.en.pdf>

HB 2668

Summary: Authorizes counties to vacate interior lot lines without a public hearing if the county has the approval of owners of affected and abutting private properties and the planning director finds that finds that the vacation complies with applicable land use regulations and facilitates development of the property.

<http://www.leg.state.or.us/05reg/measpdf/hb2600.dir/hb2668.en.pdf>

HB 2722

Summary: Authorizes the incorporation of new cities inside urban growth boundaries regardless of whether a city within three miles disagrees with the incorporation, (i.e., removes the ability for cities to veto a new incorporation).

<http://www.leg.state.or.us/05reg/measpdf/hb2700.dir/hb2722.en.pdf>

HB 2755

Summary: Modifies procedures for subdividing and partitioning land. Unless specifically requested by a public utility provider, the governing body of a city or county may not require a utility easement except an easement abutting a street, and may not place additional restrictions or conditions on a utility easement. Parcels created outside an urban growth boundary that are greater than 10 acres need not be surveyed or monumented. A county may provide that a partition plat is subject only to the approval of the city or county surveyor unless the partition plat includes a dedication of land for public road purposes.

<http://www.leg.state.or.us/05reg/measpdf/hb2700.dir/hb2755.en.pdf>

HB 2776

Summary: Expands types of property for which an owner may reapply for second 15-year period of historic property special assessment. Establishes conditions for residential property to qualify for second term of classification and special assessment. Provides that new owner of historic property must expressly assent to a preservation plan to qualify for special assessment.

<http://www.leg.state.or.us/05reg/measpdf/hb2700.dir/hb2776.en.pdf>

HB 2932

Summary: Amends statutory list of uses allowed in exclusive farm use zones to include community centers providing services to veterans, including: emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to agencies providing medical, mental health, disability income and substance abuse services (not including direct delivery of such services). The authorization is limited to community centers that are in existence on the effective date of the act.

<http://www.leg.state.or.us/05reg/measpdf/hb2900.dir/hb2932.en.pdf>

HB 3081

Summary: Allows County to make lawful an illegal lot or parcel that was conveyed to an unsuspecting buyer and who cannot make full use of the parcel because of the unlawful nature of the lot or parcel.

<http://www.leg.state.or.us/05reg/measpdf/hb3000.dir/hb3081.en.pdf>

HB 3117

Summary: Authorizes, as outright permitted use in exclusive farm use zone, a county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide primarily rural law enforcement services.

<http://www.leg.state.or.us/05reg/measpdf/hb3100.dir/hb3117.en.pdf>

HB 3301

Summary: Authorizes formation of county service districts with overlapping jurisdiction if the districts are authorized to provide different services. Expands purposes for which county service district may be formed.

<http://www.leg.state.or.us/05reg/measpdf/hb3300.dir/hb3301.en.pdf>

HB 3310

Summary: Modifies several provisions relating to periodic review as a method for ensuring that local government land use plans comply with statewide land use planning goals and statutory land use planning requirements. Modifies jurisdiction of Land Use Board of Appeals (LUBA) such that appeals arising from periodic review of local land use plans are under the jurisdiction of the Department of Land Conservation and Development rather than LUBA. Declares emergency, effective on passage.

<http://www.leg.state.or.us/05reg/measpdf/hb3300.dir/hb3310.en.pdf>

HB 3313

Summary: Clarifies existing law with respect to a commonly accepted interpretation of the current "forest template dwelling" provision: Declares that in determining the density of existing dwellings on forestland, a dwelling on a lot or parcel is inside the 160-acre "template" if any part of dwelling is in the template.

<http://www.leg.state.or.us/05reg/measpdf/hb3300.dir/hb3313.en.pdf>

SB 5581

Summary: DLCDC Budget. Appropriates moneys from the state General Fund to Department of Land Conservation and Development for biennial expenses. Declares emergency, effective July 1, 2005.

<http://www.leg.state.or.us/05reg/measpdf/sb5500.dir/sb5581.en.pdf>

For additional DLCDC budget information, see:

<http://www.oregon.gov/LCD/docs/budget/05-07budget1pager.pdf>

* Note: **HB 3463** was vetoed by the Governor on September 2, 2005:
<http://governor.oregon.gov/Gov/pdf/letters/HB3463.pdf>
<http://www.leg.state.or.us/05reg/measpdf/hb3300.dir/hb3463.en.pdf>