Looking Forward

A publication of Oregonians In Action Education Center on land use and property rights

Oregonians In Action Education Center is a non-profit, non-partisan, IRS 501 (c)(3) corporation wholly funded by voluntary contributions.

For balanced, flexible and fair land-use regulations, with respect and protection for the rights of landowners

OIA Passes Four Property Bills In 2015 Legislative Session

The 2015 Oregon legislative session is in the books, and Oregonians In Action had another solid year, passing four bills to help property owners across the state. "Although we didn't hit any home runs, we had a very good session," said OIA President Dave Hunnicutt. "Oregon property owners gained, and lost very little. That's a victory."

The 2015 session marks the tenth consecutive "long" session in which at least four new OIA bills have been adopted by the legislature.

The four OIA bills that were enacted this year cover a broad range of property related issues. "We branched out this year in response to concerns brought to us by our supporters," continued Hunnicutt. "It is amazing what Oregon property owners face on a daily basis." The four bills passed by OIA include:

Senate Bill 912: SB 912 resolves a longstanding dispute over title claims to "historically filled lands (HFL)". Beginning in the late 1800's, the federal government and Oregon port districts were heavily involved in dredging the rivers and bays of western Oregon to deepen and widen the channels for ship traffic and commerce.

continued on page 3

Inside This Issue:

1-4: OIA Passes Four Property Bills In 2015 Legislative Session

8-9: LCDC Adopts New Sage Grouse Rules To Limit Development In Rural Oregon

10-11: View From Murrayhill

Oregonians In Action
Education Center
PO Box 230637 Tigard, OR 97281

Phone: 503-620-0258 or 1-888 LAND USE

Fax: 503-639-6891

E-mail: oiaec@oia.org

The *Looking Forward* is

Produced by:
Oregonians In Action Education Center staff.

Printed by:
Lynx Group, Inc.
Salem, OR

OIA Passes Four Property Bills In 2015 Legislative Session

continued from front page

In order to deepen and widen river and bay channels for navigation, the bottom of the river was dredged, and the mud, sand, rocks and other debris on the beds that was dredged (known as the "dredge spoils") needed to be deposited somewhere. The common practice at the time was to dump the dredge spoils along the bank near the dredge site, on land that was completely or partially underwater.

As the submerged or partially submerged lands were filled by the depositing of dredge spoils, they became dryland. Until 1963, the state did not have a permitting system for depositing dredge spoils. Dryland areas that were created by the dumping of dredge spoils prior to 1963 are known as HFL.

Even though HFL's have been dry, in many cases, for over 100 years, the State of Oregon claims title to the land as "waters of the state". In order to clear the title to the entire property, the property owner must resolve the title issue with the State.

This is a significant problem for western Oregon property owners. In the 1970's, a study of the extent of HFL in western Oregon was completed. The number of affected properties was estimated to be in the thousands.

SB 912 creates a streamlined process for clearing the titles to all Oregon properties with HFL issues. The current process involves expensive litigation against the State. The bill requires the Oregon Department of State Lands (DSL) to identify all properties which the State believes contain HFL's by 2025, and notify the owners of those properties within that time. At the end of that time, the State will relinquish all ownership claims to properties that have not received notification. This will effectively end the disputes once and for all.

continued on page 4

OIA Passes Four Property Bills In 2015 Legislative Session

continued from page 3

At the same time, DSL is drafting new rules to create a quick and easy option for property owners to clear their titles. For claims involving small amounts of land with small values in dispute (the majority of claims), DSL will simply deed the State's interest in the property to the owner. No litigation, very low costs, and the claim gets resolved.

If the State's interest is in the "moderate" range (values between $20,000 and $100,000), DSL will give property owners the option of a quick settlement based on an agreed value (based upon appraisals done by the state and the property owner) or the current litigation process. This option should result in tremendous savings to both the State and the property owner.

Finally, if the State claims a significant interest in the property (more than $100,000), the current process will continue to be used to resolve the title claim.

The HFL issue has plagued the Oregon legislature for over 40 years, and various attempts have been made over the years to resolve title claims. SB 912 is the first solution, and is a landmark bill for a little understood but significant Oregon property issue.

House Bill 2038: HB 2038 protects Oregon property owners from legal liability for "aviation activities" that occur on their property. The bill was the only property owner liability relief bill to pass this year.

OIA introduced HB 2038 on behalf of Oregon farmers and ranchers, many of whom have small, private runways on their property. Prior to HB 2038, these property owners faced significant liability exposure for accidents resulting from the public using their airstrip, even if the user was uninvited and was trespassing.

continued on page 5

OIA Passes Four Property Bills In 2015 Legislative Session

continued from page 4

Because of the potential liability, most Oregon owners of private airstrips refuse to let the public use the airstrip. In addition, rural Oregon property owners with open fields could be held liable for injuries or property damage resulting from use of the property for aviation activities, whether the user was an invited guest or a trespasser.

At one meeting on the bill, a farmer brought in a picture of two ultralight aircraft that had landed in his field earlier in the week. The farmer said that it happens all the time.

HB 2038 solves this problem. The bill provides complete protection from liability for personal injuries or property damage arising from aviation activities on private property, unless the property owner is charging a fee to use of the property for the aviation activity or the property owner intentionally intends to cause the injury.

Since the bill passed, we have received lots of questions about the bill and its impacts. There is a large aviation community in Oregon, and a number of rural property owners with airstrips who love this bill.

House Bill 3089: HB 3089 is an important first step in bringing mining back to Oregon as a significant natural resource industry. The bill creates the first statutory mining policy for Oregon, and provides that the state will welcome the mining industry, and the jobs it creates, to Oregon.

Mining plays an important part in Oregon's history. In Southern and Eastern Oregon, mining was the industry that first brought settlers in large numbers to the Oregon Territory. Over the years, mining was the predominant industry in these parts of the state.

continued on page 6

OIA Passes Four Property Bills In 2015 Legislative Session

continued from page 5

Unfortunately, in recent decades, mining has become virtually non-existent in Oregon, with the exception of aggregate mining. Despite studies showing potential large reserves of precious metals and rare earth elements in both Southern and Eastern Oregon on both public and private properties, and a large, well-financed mining industry in Nevada and Idaho, the mining industry has mostly ignored Oregon, due to a belief that Oregon regulating agencies and the Oregon legislature are hostile to the industry, and that mining permits will not be approved.

The goal of HB 3089 is to change that perception. The bill creates a policy statement which recognizes the importance of the mining industry to rural Oregon, the family wage jobs the industry creates, and the minimal impact that the industry has on other industries.

The bill provides that mining is a natural resource use, akin to agriculture or timber production, and that mining companies and Oregon property owners are encouraged to prospect and explore in Oregon for mineral production.

Finally, the bill directs the Oregon Department of Geology and Mineral Industries (DOGAMI) to provide detailed reports on potential mineral resource sites in Oregon, and make that report available to the public online.

HB 3089 is a bill that should have been enacted decades ago, but has taken time to develop.

House Bill 3214: House Bill 3214, also known as the "Hal's Paving" bill, addresses a confusing set of Oregon Land Conservation and Development Commission (LCDC) administrative rules for rural exceptions. The bill calls for LCDC to draft new rules to fix the problem.

continued on page 7

OIA Passes Four Property Bills In 2015 Legislative Session

continued from page 6

In Oregon rural areas, LCDC has created two goals (Goals 3 and 4) that force counties to zone nearly 97% of all privately owned rural land as "agricultural land" or "forestland." Rural property owners wishing to make an alternative use of their property other than farming or timber must take an "exception" to Goals 3 and 4 to change the zoning of the property to some other type of use, such as rural residential, rural commercial, or rural industrial.

Every Oregon county has approved Goal 3/4 exception areas. In order to create an exception area, the property owner/county is required to demonstrate that the property is not suitable for farming or forestry. Once the exception is taken, however, the property is no longer deemed to be agricultural land or forestland, and Goals 3 and 4 no longer apply to the property.

Unfortunately, under LCDC's current rules, a property owner who owns a parcel of exception land cannot rezone the land to another exception zone without taking a brand new Goal 3/4 exception, even though the county has already recognized that the property is not agricultural land or forest land. This is what happened to Hal's Paving.

Hal's has operated its paving business in Clackamas County for decades. The business is located on property which Clackamas County has zoned as rural residential, as a result of a Goal 3/4 exception. Hal's applied to change the zoning of their property from rural residential to rural industrial, at the County's suggestion. The County approved the request, but a neighbor challenged the approval, claiming that Hal's needed to take a brand new Goal 3/4 exception and prove once again that the land was not suitable for agriculture or forestry.

continued on page 11

LCDC Adopts New Sage Grouse Rules To Limit Development In Rural Oregon

On July 23, the Oregon Land Conservation and Development Commission (LCDC) approved new rules for the protection of the Greater Sage Grouse. These new rules apply to seven central and eastern Oregon counties – Baker, Crook, Deschutes, Harney, Lake, Malheur and Union. The rules are likely to have a significant detrimental impact on growth in these counties.

The stated purpose of the rules is to provide greater protection of Sage Grouse habitat, in the hope that state protection will result in the elimination of the listing of the Sage Grouse under the federal Endangered Species Act (ESA). Whether this is a realistic possibility is open to debate, since the United States Fish and Wildlife Service already considered a Sage Grouse listing under the ESA in 2010 and determined that a listing was not a priority for the agency. In fact, of the 146 species currently listed as candidates for possible ESA inclusion, there are at least 95 species with a higher priority for listing than the Sage Grouse.

The rules, which apply to private property zoned for agricultural use (EFU) or forest use, create significant new limitations on "conflicting uses," which LCDC considers to be uses which might in some way bother the Sage Grouse. Under the rule, virtually all development in the EFU and forest zones would be considered a "conflicting use." For example, a new home for a rancher is considered a "conflicting use." So is a farm stand. A processing facility for crops – that's a conflicting use too.

How about a church? A new school? A mine or other new industry? Yes – all of these are "conflicting uses." Apparently, the Sage Grouse have more right to occupy the private property than the property owner.

continued on page 9

LCDC Adopts New Sage Grouse Rules To Limit Development In Rural Oregon

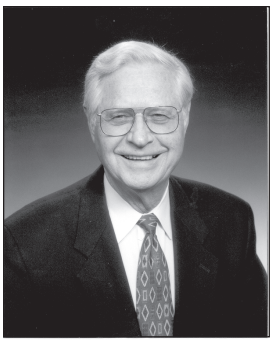
continued from page 8

Unfortunately, any use considered to be a "conflicting use" is limited to whatever restrictions that the Oregon Department of Fish and Wildlife (ODFW) decide are appropriate for the development, including a decision that the development can't be approved. In other words, the property owner is completely at the mercy of ODFW to decide whether or not the "conflicting use" can be approved, and there are no set criteria for ODFW to consider. Whatever ODFW decides is the way it's going to be.

So why is LCDC adopting new rules for Sage Grouse protection? No one knows, but it doesn't really appear to be about avoiding an ESA listing. In fact, LCDC claims that Sage Grouse habitat has eroded as a result of "the introduction of invasive weeds, juniper encroachment, large-scale development, wildland fire, and intensive agriculture." With the exception of "large-scale development," LCDC's rules do nothing to address any of the other causes, and more importantly, their rules impact development that LCDC recognizes is not "large-scale" at all.

It appears that what LCDC is really doing is using the Sage Grouse as a pretext to allow the ODFW to limit or prohibit new development that has no impact at all on Sage Grouse habitat. And LCDC wonders why the public doesn't trust them?

View From Murrayhill



By Bill Moshofsky

July was a tough month for Oregon property owners. While OIA had a good legislative session (see Dave Hunnicutt's article), rural Oregonians found themselves under attack, not from the legislature but instead from two state agencies, the Oregon Land Conservation and Development Commission (LCDC) and the Oregon Board of Forestry (BOF).

LCDC adopted new rules which limit virtually all rural development in seven eastern Oregon counties that have populations of the Western Sage Grouse. In past editions of Looking Forward, we've highlighted the need for more development in eastern Oregon. These areas have been in economic decline for decades, with aging and declining populations, high unemployment, and extreme poverty levels. They need opportunities to grow, not more anti-growth policies.

Unfortunately, LCDC has decided to kick eastern Oregon while it's down. I've never understood why LCDC tries so hard to stop development in areas of our state that so desperately need it. Unfortunately, it appears that some things never change.

In the meantime, the BOF also decided to get into the act, with a proposal to prohibit all timber harvesting on private property within 90-120 feet of most western Oregon streams. If the new

continued on page 11

View From Murrayhill

continued from page 10

proposal is enacted, industrial and non-industrial forestland owners will lose the right to harvest their trees alongside the stream, with no exception.

Fortunately, OIA was there to testify on the BOF proposal. Dave Hunnicutt reminded the Board that any new setbacks they adopted would trigger claims for compensation by property owners under Ballot Measure 49, and that OIA would be there to represent property owners who were impacted. Unlike LCDC, the BOF decided that it might be wise to think over their proposal before rushing forward, in light of the potential litigation that would be created by their rule, and the testimony of academics, foresters, industry representatives, and small woodlot owners, nearly all of whom indicated that the rules were both unnecessary and counterproductive.

The lesson from both the LCDC and BOF proposals is this – even when things are going well with the legislature, the real threat to property owners in Oregon comes from state agencies like LCDC and the BOF.

OIA Passes Four Bills In 2015 Legislative Session

continued from page 7

In a split opinion, LUBA held that Hal's needed to take a new exception, even though the County had already found (and LCDC acknowledged) that the property was not suitable for agriculture or forestry. HB 3214 fixes this, and requires LCDC to redraft their exception rules to enable an industrial use like Hal's to go from one exception zone to another without having to take a brand new exception.

Along with these bills, OIA was successful in defeating a number of bad bills that would have hurt property owners, making it a successful session. While not all of OIA's bills were approved, progress was made.

NONPROFIT ORG
US POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 1608

Oregonians In Action
Education Center
PO Box 230637
Tigard, OR 97281-0637

Address service requested

Like us on Facebook:
www.facebook.com/OIAOregon

Scan this code with your smart phone to get the property rights news at www.oia.org

Yes, I support OIA Education Center's efforts to protect private property rights!

Name _____

Address _____

City, State _____

Zip _____

Phone: _____

Please mail check to: OIA EC, PO Box 230637 Tigard, OR 97223