

Looking Forward

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

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

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Another Great Legislative Session For OIA

The 2017 Oregon legislative session wrapped up in early July, and Oregonians In Action had another solid year, passing four bills to help property owners across the state, and collaborating with other groups to pass three more bills. “We had a very good session,” said OIA President Dave Hunnicutt. “We made some really good changes, and did not lose any ground.”

The four bills passed by OIA include:

House Bill 2785: HB 2785 is an important win for EFU property owners. The bill grandfathers existing dwellings and agricultural buildings in EFU zones from the removal/fill requirements of the Oregon Department of State Lands (DSL), which apply to wetlands.

Wetlands jurisdiction in Oregon is very unclear. Oregon state law prohibits a property owner from removing materials from a wetland (removal), or adding materials to a wetland (fill) without first obtaining a permit from DSL. The permit is known as a removal/fill permit.

Unfortunately, DSL has not completed an inventory of all wetland areas in Oregon, and the definition of a wetland is very broad. As a result, a number of property owners have built homes or

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agricultural buildings on land that may be considered a wetland subject to DSL jurisdiction. It is not enough to obtain approval from the county – that approval does not protect the property owner, and counties typically have no greater knowledge of whether the property contains a wetland than the property owner does.

HB 2785 ensures that any dwelling or ag building constructed prior to January 1, 2017 is exempt from DSL removal/fill requirements. In addition, we will be working with the legislature and DSL in upcoming sessions to get complete maps of DSL wetlands jurisdiction, and to refine and limit the state’s definition of wetlands to ensure that DSL’s jurisdiction extends only to those areas that are true wetlands. Thanks to Representatives Julie Fahey and Brian Clem for their work on this bill.

House Bill 3055: HB 3055 fixes a problem with lot line adjustments of parcels created by Measure 49 partitions. Under Measure 49, property owners with approved claims in EFU or forest zones were prohibited from creating new Measure 49 parcels that were larger than 5 acres (or 2 acres if the property was considered high value farm or forestland). But the drafters of Measure 49 left a loophole in the language of the bill that allowed some property owners to use a property line adjustment to expand the size of the newly created Measure 49 parcel, so that the parcel exceeded the 5 acre maximum parcel size.

In 2015, the legislature adopted a bill that closed the loophole, and made it clear that newly created Measure 49 parcels could not exceed the acreage limits. Unfortunately, the 2015 legislation was worded in a manner that was ambiguous, and at least one Oregon county interpreted the new law to prohibit property line adjustments of not only the newly created 5 acre parcel(s), but also the larger remaining parcel (the remainder) that was left over after the 5 acre parcels were partitioned and created.

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For example, if Farmer Jones received Measure 49 approval to partition his 60 acre EFU zoned parcel into two 5 acre parcels and a 50 acre remainder, he should be able to use a property line adjustment to adjust the boundaries of the 50 acre remainder with a neighboring property owner. But that wasn't what the 2015 legislation said.

HB 3055 fixes the language from the 2015 legislation, and ensures that a property owner is free to use a property line adjustment to adjust the boundaries of the remainder parcel. Thanks to Representative Rich Vial for his efforts on this bill.

House Bill 2179: HB 2179 allows onsite treatment of biosolids in EFU zones.

Prior to passage of the bill, a farmer was allowed to apply biosolids (i.e. treated human waste) on EFU zoned property, subject to approval by the Oregon Department of Environmental Quality, with the limitation that biosolids cannot be applied on crops for human consumption. But the farmer had to treat the biosolids off site, on property not zoned EFU.

This was creating problems in Southern Oregon. The treatment of septage to biosolids involves nothing more than mixing and filtering agricultural lime and water in a portable tank. It made no sense to force a farmer to treat the biosolid offsite and then haul it to the farm property.

HB 2179 fixed this problem, allowing both onsite treatment and application of biosolids in EFU zones. Thanks to Representative Duane Stark for sponsoring and working this bill.

House Bill 2031: HB 2031 extends the time for the owner of the proposed Metolian destination resort, which the legislature rejected in 2009 by declaring the headwaters of the Metolius River as an area

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of critical state concern, to use the Transferrable Development Opportunities (TDO) that the 2009 legislature provided, and transfer the development rights to another property. .

The bill extends the time for the TDO's to be used, and adds language to ensure that the credits can be used in areas that are mapped for natural hazards, provided the area satisfies the requirements of LCDC's Statewide Planning Goal 7 (natural hazards) and all county criteria. Goal 7 does not prohibit development in natural hazard areas – if it did, most development in the Willamette Valley and on the Oregon coast would be prohibited. Rather, the Goal requires a heightened review of proposed development in identified natural hazard areas. Without the amendment to the bill, the TDO's could not be used in significant portions of the counties in which they were approved. Thanks to Representative Brian Clem for his work on this bill.

There were also a number of successful bills that OIA worked on with other organizations as part of a team effort, including the following bills:

Senate Bill 327: SB 327 is an important bill to extend Oregon's recreational immunity law, which protects private property owners from lawsuits for injuries/property damage suffered by persons who are using private property for recreational purposes.

Recreational immunity laws protect property owners from lawsuits that result from injuries to third persons that occur on their land as a result of recreational activities. For example, if a property owner gives permission to allow a person to hunt on his ranch, and that person is injured while hunting on the property, Oregon's recreational immunity law is designed to protect the property owner from a lawsuit by the injured hunter.

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Unfortunately, a recent decision of the Oregon Supreme Court held that the recreational immunity protections in Oregon law applied only to the owner of the property, not employees of the property. This ruling defeated the purpose of the recreational immunity laws for any property owned by a company or public body.

SB 327 amends the recreational immunity law to respond to the Supreme Court's opinion. It specifically applies immunity to the property owner, and any employee, agents, volunteers, officers, directors, members etc. of the property owner. This is an important bill.

Senate Bill 644: SB 644 is a major victory for Eastern Oregon. OIA has been advocating for years that expanding Oregon's mining industry is a key to revitalizing Oregon's rural economies, particularly in Southern Oregon and Eastern Oregon. SB 644 makes important and significant steps in that direction.

The bill makes changes for the siting of large-scale commercial mines in seven Eastern Oregon counties. Existing land use criteria for mining is unclear, confusing, and subjective. SB 644 greatly simplifies and reduces those criteria, making the path much clearer for the mine applicant to obtain approval. The bill also makes important and needed changes to the state permitting process. Mining is heavily regulated at both the state and federal levels. A mine applicant must endure a rigorous process to obtain approval to mine, and must obtain multiple permits from both state and federal agencies before mining.

Oregon mining law remains very undeveloped, and in many cases creates significant ambiguities and inequities for a mining company trying to develop a large scale mine. These mines can create

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hundreds of family wage jobs in rural Oregon. SB 644 fixes a number of the problems present in current Oregon mining law.

Oregon must compete with neighboring states, Canadian provinces, and countries around the world for mining jobs. In order to do that, Oregon needs mining laws that are clear and predictable. SB 644 does that, and is the first “pro-mining” bill in Oregon in decades.

The bill is the product of a collaborative effort between OIA, the Oregon Mining Association, and the Oregon Concrete and Aggregate Producers Association. Special thanks to Senators Fred Girod and Michael Dembrow for the significant work they put into this bill, along with Anna Braun, legislative director for Senator Peter Courtney. This was a tough bill, and it faced significant opposition, but people hung in there, and the bill was approved.

House Bill 2730: HB 2730 resolves an ongoing dispute in Curry County between an environmental organization and an approved golf course west of Highway 101. The golf course surrounds a 20 acre parcel of land that was once approved for irrigation, but was never irrigated and can no longer be irrigated.

Unfortunately, because the land once had irrigation rights, it is classified under Oregon law as “high value farmland” and can’t be used as part of a golf course. This made no sense, as the property was owned by the same owners as the golf course, and it was surrounded on all sides by the golf course, meaning it would never be used for anything except as part of the golf course.

Representative David Brock Smith, who represents the area, asked OIA for help amending the bill to make it work. We did, and it passed. If our land use system allowed for more local flexibility, and less state control in rural areas, these types of bills would be unnecessary. ■

View From Scholls

By David Hunnicutt



In the waning days of the 2017 Oregon legislative session, State Representative Mike McLane delivered an impassioned speech on the floor of the House of Representatives. Representative McLane’s speech addressed the double standard shown by urban legislators, who fix land use problems affecting the Portland-Metro area, and ignore problems for the rest of the state.

McLane’s speech was in response to House Bill 3202, a bill that allowed Tri-Met, the Portland-Metro area mass transit district, to ignore state and local land use laws in order to site a light rail line through parts of Portland and Tigard. Tri-Met testified that Oregon’s land use system was just too tough for them to meet, so they needed the legislature to pass a bill to enable them to ignore the law.

Obviously, his urban colleagues’ complete double standard didn’t sit too well with Rep. McLane, who has asked for common sense change in Oregon land use law on multiple occasions for rural Oregon cities, counties, and property owners, only to have those arguments rejected time and again by the same Portland area legislators who supported Tri-Met’s request to ignore the land use laws.

Reflecting his complete frustration with the double standard, Rep. McLane remarked, “I find it a bit hard to stomach, living in a state where the rural interests continue to hear the word ‘no’, but when you need it, it’s a ‘yes’, and that’s a bit frustrating, to say the least, for a land use system run by a privileged few, lorded over the rural poor, all in the name of a utopia you can’t describe, you can’t tell when we get there, but by God you know we’re along for the ride.”

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If you'd like to see Rep. McLane's speech, we posted it on OIA's Facebook page, where in just a week, it's been viewed over 3,000 times, and growing.

McLane's speech dovetails with an article, "Rural America is the New 'Inner City'", that appeared on the front page of the Wall Street Journal in late May. In that article, the authors, relying on federal data, point out that "in terms of poverty, college attainment, teenage births, divorce, death rates from heart disease and cancer, reliance on federal disability insurance and male labor-force participation, rural counties now rank the worst among the four major U.S. population groupings (the others are big cities, suburbs, and medium or small metro areas)."

Welcome to the new America – where small towns and rural areas are now considered "the other side of the tracks."

The WSJ article was focused on Hardin County, Ohio, and it's county seat, Kenton. The authors noted, "In Hardin County, where Kenton is the seat, factories that once made cabooses for trains and axles for commercial trucks have shut down. Since 1980, the share of county residents who live in poverty has risen by 45% and median household income adjusted for inflation has fallen by 7%. At the same time, census figures show, the percentage of adults who have divorced has nearly tripled, outpacing the U.S. average. Opioid abuse is also driving up crime."

Substitute any rural county in Oregon for Hardin County, and you'll see the same results. But until recently (see the article on the passage of Senate Bill 644 in this edition), urban legislators in Oregon have done absolutely nothing to address this worsening economic and social justice issue, despite repeated calls from legislators like Rep. McLane for help.

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This seems odd, doesn't it? After all, for decades, legislators of both parties have focused on the plight of inner cities, the high poverty rates, poor housing conditions, lack of educational opportunities, and the need for state and federal programs to help solve the crisis. But when the same problems appear in rural areas, what do we hear from the legislature? Crickets.

OIA had a bill this session, Senate Bill 432, which would have allowed eight eastern Oregon counties (Harney, Malheur, Baker, Grant, Wallowa, Sherman, Wheeler, Gilliam) to take exceptions to the Land Conservation and Development Commission's (LCDC) Statewide Planning Goals to enable job creation and rural housing. These counties suffer from the same problems that plague Hardin County, Ohio.

SB 432 would have allowed the county commissioners and city councils in each of these eight counties to change their local land use laws to fast track proposals for housing projects or economic development opportunities. The goal of the legislation was to enhance the ability of the counties and cities to attract new jobs/industries, retain the jobs/industries they already have, and compete with small towns in neighboring states that don't have a cumbersome, unwieldy state controlled land use system like Oregon, and where local elected officials can act swiftly and decisively.

Unsurprisingly, the bill was supported by the County Commissions in all eight counties, and by the Association of Oregon Counties and League of Oregon Cities.

The sponsor of SB 432 was Senator Ted Ferrioli, who represents nearly all of these counties in the Oregon legislature. Sen. Ferrioli has brought this legislation in multiple legislative sessions, in an effort to help his rural constituents, cities, and counties.

Unfortunately, although we get closer to passing this legislation every session, the bill did not pass due to a lack of support received

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from urban legislators in the Oregon House. Yep, the same urban legislators who supported Tri-Met's bill to ignore the land use laws were unwilling to extend the same courtesy to help out the poor and underprivileged in eastern Oregon.

Land use/property rights issues have always been viewed in economic terms, not as a human rights or social justice issue. Consequently, it has been harder to attract interest in solving these problems from legislators whose constituents are less worried about saving farmland, building a new house, or stopping sprawl, and are more worried about having enough food to eat, a home to live in, and a hospital to care for their sick children. As those problems now become the plight of rural Oregon, it's time for urban legislators to heed Rep. McLane's words, and help rural Oregon cities and counties. ■

LEAVE A LEGACY!

Use your will or trust to protect property rights for future generations

Unfortunately, as current generations enjoy the affluence that protection for private property has provided, support for property rights has eroded.

This is dangerous. Property rights are the cornerstone of our economic system. Without property rights, our freedom and precious civil rights are in jeopardy.

The Oregonians In Action organizations are actively and effectively fighting to protect property rights, and they need continuing support to carry on this critical battle.

One important way to help is to donate money or property in your will or trust. All you have to do is to include a sentence which simply states, "I hereby donate \$____ to Oregonians In Action." Or you can donate personal or real property by describing it. Or you can donate to the Oregonians In Action Legal Center or the Oregonians In Action Education Center.

Please contact *Dave Hunnicutt* at **503-620-0258** if you have any questions or want more information. ■

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