

2009 LEGISLATION ALERTS

LAND USE

LANDOWNER IMMUNITY TO THE PUBLIC

ORS 105.672 - 105.696

2009 OR LAWS CH 532 (HB 2003)

ORS 105.676 provides landowners immunity for allowing the public access to their land for recreational purposes. HB 2003 includes gardening as a recreational purpose. A landowner's immunity for gardening uses applies only if the owner charges no more than \$25 per year for the use of the land by the public for gardening. The current definition of "land" is expanded to include "all paths, trails, roads, watercourses and other rights-of-way while being used by a person to reach land for recreational purposes . . . that are on land adjacent to the land that the person intends to use for recreational purposes, etc."

Effective date: January 1, 2010

The amendments apply to causes of action that arise on or after January 1, 2010.

VIOLATIONS OF STATE LAND LAWS

ORS CH 273

2009 OR LAWS CH 341 (HB 2153)

HB 2153 adds provisions to ORS Chapter 273 that allow for civil penalties up to \$1,000 per day, pursuant to a schedule to be developed by the Department of State Lands, for violations of certain laws regarding use of state lands. The bill directs penalty proceeds to the Common School Fund.

Effective date: June 18, 2009

Sections 2 and 3 of this Act apply to violations occurring on or after June 18, 2009.

STATE AND LOCAL PERMITTING

ORS 197.015 - 197.650

2009 OR LAWS CH 606 (HB 2230)

ORS 197.015(10) defines a "land use decision." This definition determines the types of decisions that may be appealed to the Land Use Board of Appeals (LUBA).

HB 2230 provides additional exclusions to what is considered a land use decision and therefore not appealable to LUBA.

HB 2230 also gives LCDC the authority to adopt rules clarifying the sequence of approvals when a use requires multiple permits from state agencies and local governments.

Effective date: January 1, 2010

The amendments apply to local government decisions made on or after January 1, 2010.

BALLOT MEASURE 49

ORS 195.336, 205.246;

2007 OR LAWS CH 424

2009 OR LAWS CH 855 (HB 3225)

In 2004, Oregon voters passed Ballot Measure 37, allowing landowners whose property values were diminished by land use laws or regulations to file claims for compensation. In 2007, voters passed Ballot Measure 49, which modified the claims process for certain land owners who had already submitted claims for compensation. HB 3225, Section 2, permits a claimant who filed a timely election in pursuit of compensation for loss of property value due to land use regulation to pursue relief under Sections 2 and 6, chapter

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424, Oregon Laws 2007, on claims that would otherwise have been precluded under Measure 49.

Effective date: July 28, 2009

*The amendments apply to claims for compensation made **before**, on, or after July 28, 2009.*

VIOLATIONS OF ENVIRONMENTAL LAWS
ORS 459.995, 465.900, 466.990 - 466.995,
468.130 - 468.996, 783.992
2009 OR LAWS CH 267 (SB 105)

SB 105 increases the maximum penalties for violations of a wide variety of environmental laws. Most general penalties that previously had maximum fines of \$10,000 per day or per violation are now subject to fines up to \$25,000 per day or per violation, including violations of solid waste, hazardous waste, oil storage tank, and various cleanup laws. Sections 7 and 11 provide that corporations are now subject to fines to the same extent as individuals.

SB 105 also requires consideration of whether a violator gained any economic benefit or if there were previous violations when imposing a penalty. The maximum civil penalty for a violation that results in imminent likelihood of extreme hazard to public health or that causes extensive damage to the environment is increased from \$100,000 to \$250,000. The new penalties become effective January 1, 2011.

Effective date: January 1, 2010

Most sections become operative on January 1, 2011. The amendments apply to violations occurring on or after January 1, 2011.

LUBA APPEALS
ORS 197.850
2009 OR LAWS CH 25 (SB 234)

ORS 197.850 outlines the process for a party to appeal a Land Use Board of Appeals (LUBA) decision to the Court of Appeals.

SB 234 conforms the service method for appeals from the LUBA to the service method for appeals from the circuit courts as described in ORS 19.260. SB 234 Section 1 amends ORS 197.850(4) to allow for service of the petition for appeal by first-class mail. Section 2 defines an appeal as a petition for judicial review to the Court of Appeals of: (1) a LUBA's final order; or (2) a local government referee's decision on an expedited land division.

Effective date: January 1, 2010

The amendments apply to a petition for judicial review of a final LUBA order or a local government referee's decision on expedited land division that is filed with the Court of Appeals on or after January 1, 2010.

BALLOT MEASURES 37 AND 49
ORS 195.300 - 195.312
2009 OR LAWS CH 464 (SB 691)

SB 691 modifies the provisions for claiming compensation under Ballot Measures 37 and 49 based on land use regulations that restrict forest practices on private real property by amending ORS 195.300, 195.310, and 105.312.

Effective date: January 1, 2010

The amendments apply to a claim based on land use regulation described in ORS 195.300(14)(e) that is enacted or adopted after January 1, 2010.

Practice tip: Claims for relief under this legislation remain subject to all of the existing claims exceptions under Measure 49, including health and safety regulations and regulations required by federal law.

The Professional Liability Fund sincerely thanks Jennifer Pike and Megan D. Roche for assistance with this section of the 2009 Legislation Alerts.