

**TRANSPORTATION CORRIDOR
PRESERVATION AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill modifies the Municipal Land Use, Development, and Management Act, the County Land Use, Development, and Management Act, and the Transportation Code by amending provisions relating to transportation corridor preservation.

Highlighted Provisions:

This bill:

- ▶ authorizes the Department of Transportation to identify and the Transportation Commission to approve transportation corridors as high priority transportation corridors;
- ▶ requires the Department of Transportation to notify a municipality or county if a high priority transportation corridor is located within the boundaries of a municipality or county;
- ▶ requires a municipality or county to notify the executive director of the Department of Transportation if the municipality receives a land use application that relates to land located within the boundaries of a high priority transportation corridor;
- ▶ provides that a municipality or county may not approve certain land use applications until a certain time after notifications have been received by the Department of Transportation if a land use application relates to land located within the boundaries of a high priority transportation corridor with an exception;



28 ▶ provides that an applicant for a land use application is not entitled to receive
 29 approval of certain land use applications until a certain time after notifications have
 30 been received by the executive director of the Department of Transportation with an
 31 exception;

32 ▶ authorizes the Department of Transportation to, on a voluntary basis, acquire
 33 property for which it has received a notification by a municipality or a county;

34 ▶ **§→ beginning on August 1, 2008, ←§** authorizes the Transportation Commission to
 34a designate certain transportation
 35 corridors as critical transportation corridors;

36 ▶ requires the Department of Transportation to notify a municipality or county if the
 37 municipality or county has property within its boundaries that is located within a
 38 critical transportation corridor;

39 ▶ **§→ beginning on August 1, 2008, ←§** authorizes the Department of Transportation to
 39a acquire certain private property
 40 rights through the use of eminent domain powers that are located within a critical
 41 transportation corridor;

42 ▶ **§→ beginning on August 1, 2008, ←§** authorizes the Department of Transportation to
 42a use certain transportation funds for
 43 the acquisition of private property rights through eminent domain in certain
 44 circumstances; **§→ [and]**

44a ▶ **on July 1, 2012, sunsets the authority of the:**

44b • **Transportation Commission to designate a transportation corridor or a portion**
 44c **of a transportation corridor as a critical transportation corridor; and**

44d • **Department of Transportation to use eminent domain powers for the acquisition**
 44e **of private property rights within a critical transportation corridor; and ←§**

45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **10-9a-509**, as last amended by Laws of Utah 2007, Chapter 363

53 **17-27a-508**, as last amended by Laws of Utah 2007, Chapter 363

53a **§→ 63-55-272**, as last amended by Laws of Utah 2004, Chapter 90 ←§

54 **72-5-402**, as last amended by Laws of Utah 2003, Chapter 300

55 **72-5-403**, as last amended by Laws of Utah 2003, Chapter 300

56

57 *Be it enacted by the Legislature of the state of Utah:*

58 Section 1. Section **10-9a-509** is amended to read:

59 **10-9a-509. When a land use applicant is entitled to approval -- Exception --**
60 **Municipality may not impose unexpressed requirements -- Municipality required to**
61 **comply with land use ordinances.**

62 (1) (a) ~~[An]~~ Except as provided in Subsection (1)(b), an applicant is entitled to
63 approval of a land use application if the application conforms to the requirements of the
64 municipality's land use maps, zoning map, and applicable land use ordinance in effect when a
65 complete application is submitted and all fees have been paid, unless:

66 (i) the land use authority, on the record, finds that a compelling, countervailing public
67 interest would be jeopardized by approving the application; or

68 (ii) in the manner provided by local ordinance and before the application is submitted,
69 the municipality has formally initiated proceedings to amend its ordinances in a manner that
70 would prohibit approval of the application as submitted.

71 **(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval**
72 **of a land use application until the requirements of this Subsection (1)(b) have been met if the**
73 **land use application relates to land located within the boundaries of a high priority**
74 **transportation corridor designated in accordance with Section 72-5-403.**

75 **(i) (A) A municipality shall notify the executive director of the Department of**
76 **Transportation of any land use applications that relate to land located within the boundaries of**
77 **a high priority transportation corridor.**

78 **(B) The notification under Subsection (1)(b)(i)(A) shall be in writing and mailed by**
79 **certified or registered mail to the executive director of the Department of Transportation.**

80 **(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land**
81 **use application that relates to land located within the boundaries of a high priority**
82 **transportation corridor until:**

83 **(A) 30 days after the notification under Subsection (1)(b)(i) is received by the**
84 **Department of Transportation if the land use application is for a building permit; or**

85 **(B) 45 days after the notification under Subsection (1)(b)(i) is received by the**
86 **Department of Transportation if the land use application is for any land use other than a**
87 **building permit.**

88 **(c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:**

89 **(A) the land use application relates to land that was the subject of a previous land use**

90 application; and

91 (B) the previous land use application described under Subsection (1)(c)(i)(A) complied
 92 with the requirements of Subsection (1)(b).

93 (ii) A municipality may approve a land use application without making the required
 94 notifications under Subsection (1)(b) if:

95 (A) the land use application relates to land that was the subject of a previous land use
 96 application; and

97 (B) the previous land use application described under Subsection (1)(c)(ii)(A)
 98 complied with the requirements of Subsection (1)(b).

99 ~~[(b)]~~ (d) ~~§~~→ **After a municipality has complied with the requirements of Subsection**
 99a **(1)(b) for a land use application, the municipality may not withhold approval of the land use**
 99b **application for which the applicant is otherwise entitled under Subsection (1)(a).**

99c ~~(e)~~ ←~~§~~ The municipality shall process an application without regard to proceedings
 100 initiated to amend the municipality's ordinances if:

101 (i) 180 days have passed since the proceedings were initiated; and

102 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
 103 application as submitted.

104 ~~[(e)]~~ ~~§~~→ ~~[(e)]~~ (f) ←~~§~~ An application for a land use approval is considered submitted and complete
 105 when the application is provided in a form that complies with the requirements of applicable
 106 ordinances and all applicable fees have been paid.

107 ~~[(f)]~~ ~~§~~→ ~~[(f)]~~ (g) ←~~§~~ The continuing validity of an approval of a land use application is conditioned
 108 upon the applicant proceeding after approval to implement the approval with reasonable
 109 diligence.

110 ~~[(e)]~~ ~~§~~→ ~~[(g)]~~ (h) ←~~§~~ A municipality may not impose on a holder of an issued land use permit a
 111 requirement that is not expressed:

112 (i) in the land use permit or in documents on which the land use permit is based; or

113 (ii) in this chapter or the municipality's ordinances.

114 ~~[(f)]~~ ~~§~~→ ~~[(h)]~~ (i) ←~~§~~ A municipality may not withhold issuance of a certificate of occupancy
 115 because of an applicant's failure to comply with a requirement that is not expressed:

116 (i) in the building permit or in documents on which the building permit is based; or

117 (ii) in this chapter or the municipality's ordinances.

118 (2) A municipality is bound by the terms and standards of applicable land use
 119 ordinances and shall comply with mandatory provisions of those ordinances.

120 Section 2. Section **17-27a-508** is amended to read:

121 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**
122 **County may not impose unexpressed requirements -- County required to comply with**
123 **land use ordinances.**

124 (1) (a) ~~[Am]~~ Except as provided in Subsection (1)(b), an applicant is entitled to
125 approval of a land use application if the application conforms to the requirements of the
126 county's land use maps, zoning map, and applicable land use ordinance in effect when a
127 complete application is submitted and all fees have been paid, unless:

128 (i) the land use authority, on the record, finds that a compelling, countervailing public
129 interest would be jeopardized by approving the application; or

130 (ii) in the manner provided by local ordinance and before the application is submitted,
131 the county has formally initiated proceedings to amend its ordinances in a manner that would
132 prohibit approval of the application as submitted.

133 **(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval**
134 **of a land use application until the requirements of this Subsection (1)(b) have been met if the**
135 **land use application relates to land located within the boundaries of a high priority**
136 **transportation corridor designated in accordance with Section 72-5-403.**

137 **(ii) (A) A county shall notify the executive director of the Department of**
138 **Transportation of any land use applications that relate to land located within the boundaries of**
139 **a high priority transportation corridor.**

140 **(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by**
141 **certified or registered mail to the executive director of the Department of Transportation.**

142 **(iii) Except as provided in Subsection (1)(c), a county may not approve a land use**
143 **application that relates to land located within the boundaries of a high priority transportation**
144 **corridor until:**

145 **(A) 30 days after the notification under Subsection (1)(b)(ii) is received by the**
146 **Department of Transportation if the land use application is for a building permit; or**

147 **(B) 45 days after the notification under Subsection (1)(b)(ii) is received by the**
148 **Department of Transportation if the land use application is for any land use other than a**
149 **building permit.**

150 **(c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:**

151 **(A) the land use application relates to land that was the subject of a previous land use**

152 application; and

153 (B) the previous land use application described under Subsection (1)(c)(i)(A) complied
154 with the requirements of Subsection (1)(b).

155 (ii) A county may approve a land use application without making the required
156 notifications under Subsection (1)(b) if:

157 (A) the land use application relates to land that was the subject of a previous land use
158 application; and

159 (B) the previous land use application described under Subsection (1)(c)(ii)(A)
160 complied with the requirements of Subsection (1)(b).

161 ~~[(b)]~~ (d) **§→ After a county has complied with the requirements of Subsection (1)(b) for**
161a **a land use application, the county may not withhold approval of the land use application for**
161b **which the applicant is otherwise entitled under Subsection (1)(a).**

161c ~~(e)~~ **←§** The county shall process an application without regard to proceedings initiated
162 to amend the county's ordinances if:

163 (i) 180 days have passed since the proceedings were initiated; and

164 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
165 application as submitted.

166 ~~[(e)]~~ **§→** ~~[(e)]~~ **(f) ←§** An application for a land use approval is considered submitted and complete
167 when the application is provided in a form that complies with the requirements of applicable
168 ordinances and all applicable fees have been paid.

169 ~~[(f)]~~ **§→** ~~[(f)]~~ **(g) ←§** The continuing validity of an approval of a land use application is conditioned
170 upon the applicant proceeding after approval to implement the approval with reasonable
171 diligence.

172 ~~[(e)]~~ **§→** ~~[(g)]~~ **(h) ←§** A county may not impose on a holder of an issued land use permit a
173 requirement that is not expressed:

174 (i) in the land use permit or in documents on which the land use permit is based; or

175 (ii) in this chapter or the county's ordinances.

176 ~~[(f)]~~ **§→** ~~[(h)]~~ **(i) ←§** A county may not withhold issuance of a certificate of occupancy because of
177 an applicant's failure to comply with a requirement that is not expressed:

178 (i) in the building permit or in documents on which the building permit is based; or

179 (ii) in this chapter or the county's ordinances.

180 (2) A county is bound by the terms and standards of applicable land use ordinances and
181 shall comply with mandatory provisions of those ordinances.

181a **§→ Section 3. Section 63-55-272 is amended to read:**

181b **63-55-272. Repeal dates, Title 72.**

181c **Subsection 72-5-403(4) regarding the designation of critical transportation corridors**
181d **and the use of eminent domain for acquisition of private property rights within a**
181e **critical transportation corridor is repealed July 1, 2012. ←§**

182 Section **§→** [3] **4 ←§** . Section 72-5-402 is amended to read:

183 **72-5-402. Public purpose.**

184 (1) The Legislature finds and declares that the planning and preservation of
185 transportation corridors is a public purpose, that the acquisition of public rights in private
186 property for possible use as a transportation corridor years in advance is a public purpose, and
187 that acquisition of public rights in private property for possible use as alternative transportation
188 corridors is a public purpose, even if one or more of the transportation corridors is eventually
189 not used for a public purpose, so long as reasonable evidence exists at the time of acquisition
190 that the transportation facility will be developed within the time period established under this
191 part.

192 (2) The Legislature finds and declares that the acquisition of private property rights for
193 the preservation of transportation corridors should be done on a voluntary basis [~~and not by the~~
194 ~~use of eminent domain powers~~].

195 Section 4. Section **72-5-403** is amended to read:

196 **72-5-403. Transportation corridor preservation powers.**

197 (1) The department, counties, and municipalities may:

198 (a) act in cooperation with one another and other government entities to promote
199 planning for and enhance the preservation of transportation corridors and to more effectively
200 use the monies available in the Transportation Corridor Preservation Revolving Loan Fund
201 created in Section 72-2-117;

202 (b) undertake transportation corridor planning, review, and preservation processes; and

203 (c) acquire fee simple rights and other rights of less than fee simple, including
204 easement and development rights, or the rights to limit development, including rights in
205 alternative transportation corridors, and to make these acquisitions up to a projected 30 years in
206 advance of using those rights in actual transportation facility construction.

207 (2) In addition to the powers described under Subsection (1), counties and
208 municipalities may:

209 (a) limit development for transportation corridor preservation by land use regulation
210 and by official maps; and

211 (b) by ordinance prescribe procedures for approving limited development in
212 transportation corridors until the time transportation facility construction begins.

213 (3) (a) The department shall identify and the commission shall approve transportation

214 corridors as high priority transportation corridors for transportation corridor preservation.

215 (b) The department shall notify a county or municipality if the county or municipality
216 has land within its boundaries that is located within the boundaries of a high priority
217 transportation corridor.

218 (c) The department may, on a voluntary basis, acquire private property rights within the
219 boundaries of a high priority transportation corridor for which a notification has been received
220 in accordance with Section 10-9a-509 or 17-27a-508.

221 (4) (a) ~~§~~→ [The] Beginning on August 1, 2008, the ←~~§~~ commission may designate a
221a transportation corridor or a portion of a
222 transportation corridor as a critical transportation corridor if:

223 (i) the transportation corridor has been designated as the preferred alternative route in a
224 transportation feasibility study; and

225 (ii) the department has notified a municipality or a county if the municipality or county
226 has land within its boundaries that is located within the boundaries of a critical transportation
227 corridor so that the critical transportation corridor may be incorporated into the municipality's
228 or county's general plan.

229 (b) ~~§~~→ [The] Beginning on August 1, 2008, the ←~~§~~ department may:

230 (i) use eminent domain powers for the acquisition of private property rights for
231 transportation corridor preservation purposes:

232 (A) if the property is located within the boundaries of a critical transportation corridor
233 designated under Subsection (4)(a); and

234 (B) no sooner than 45 days after the department has notified a county or municipality
235 in accordance with Subsection (4)(a)(ii); and

236 (ii) for the acquisition of private property rights through the use of eminent domain
237 powers for transportation corridor purposes authorized under this Subsection (4)(b):

238 (A) use funds in the Transportation Corridor Preservation Revolving Loan Fund
239 created in Section 72-2-117;

240 (B) use Local Transportation Corridor Preservation Funds in accordance with the
241 requirements of Section 72-2-117.5; or

242 (C) use funds appropriated to the department.

Legislative Review Note

as of 2-8-08 10:49 AM

Office of Legislative Research and General Counsel

S.B. 208 - Transportation Corridor Preservation Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. Enactment of this bill could create savings in the purchase of future transportation corridors. It is unknown at this time how much savings but it could be significant in some corridors.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
