

**TRANSPORTATION CORRIDOR  
PRESERVATION AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: Brad L. Dee

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**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           ▶ authorizes the Transportation Commission to 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           ▶ authorizes the Department of Transportation to acquire certain private property
- 40 rights through the use of eminent domain powers that are located within a critical
- 41 transportation corridor;
- 42           ▶ authorizes the Department of Transportation to use certain transportation funds for
- 43 the acquisition of private property rights through eminent domain in certain
- 44 circumstances; 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

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



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           (ii) (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)(ii)(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)(ii) 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)(ii) 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) 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 ~~(c)~~ (e) 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 ~~(d)~~ (f) 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) 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) 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) ~~[An]~~ 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) 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 ~~[(c)]~~ (e) 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 ~~[(d)]~~ (f) 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) 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) 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.

182 Section 3. 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 commission may designate a 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 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**

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**S.B. 208 - Transportation Corridor Preservation Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**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.

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**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.

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