

House Bill 3536

Sponsored by Representative HUFFMAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies alternatives for establishing small-scale recreation community using transferable development opportunities from Metolius resort sites.

Directs Water Resources Department to periodically review program for Deschutes Basin ground water study area and to report to Legislative Assembly every five years.

Appropriates moneys to department for purpose of periodic review program.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to the Deschutes Basin; creating new provisions; amending sections 2, 3, 4 and 5, chapter
3 636, Oregon Laws 2009; repealing ORS 540.155; appropriating money; and declaring an emer-
4 gency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** Section 2, chapter 636, Oregon Laws 2009, is amended to read:

7 **Sec. 2.** As used in sections 2 to 5 [*of this 2009 Act*], **chapter 636, Oregon Laws 2009:**

8 (1) **“Common ownership” means ownership by related family members or by entities**
9 **owned by related family members.**

10 (2) **“Development area” means certain property within a heritage guest ranch consisting**
11 **of not more than 50 percent of the total acreage of the heritage guest ranch.**

12 (3) **“Heritage guest ranch” is a resort that contains tourism amenities similar to amen-**
13 **ities found at a guest ranch or a destination resort, that is on two or more tracts in**
14 **Deschutes County and that:**

15 (a) **Contains at least 1,000 acres;**

16 (b) **Includes a tourism amenity, such as a golf course;**

17 (c) **Is, as of January 1, 2013, held in common ownership; and**

18 (d) **Is located on land:**

19 (A) **That is either zoned for exclusive farm use or subject to a local zoning classification**
20 **that allows multiple-use agriculture, rural residential use or surface mining;**

21 (B) **At least two-thirds of which is mapped as eligible for destination resort siting as**
22 **provided in ORS 197.455; and**

23 (C) **A portion of which is adjacent to Whychus Creek and includes spawning beds in which**
24 **native fish have been reintroduced.**

25 [(1)] (4) **“Management plan” means the management plan for the Metolius River Basin that was**
26 **recommended to the Legislative Assembly on April 2, 2009, by the Land Conservation and Develop-**
27 **ment Commission.**

28 [(2)] (5) **“Metolius resort site” means land mapped as eligible for destination resort siting under**
29 **ORS 197.455 by Jefferson County that has not been developed as a resort.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 [(3)] (6) "Overnight lodgings" has the meaning given that term in ORS 197.435.

2 [(4)] (7) "Tract" has the meaning given that term in ORS 215.010.

3 **SECTION 2.** Section 3 of this 2013 Act is added to and made a part of sections 2 to 5,
4 chapter 636, Oregon Laws 2009.

5 **SECTION 3.** (1) Subject to approval by the county that has land use jurisdiction of a
6 master plan that conforms to the requirements of this section, an applicant may establish
7 a small-scale recreation community on a heritage guest ranch as an outright permitted use,
8 notwithstanding contrary provisions of:

9 (a) ORS chapters 195, 196, 197, 215 and 227, including administrative rules authorized by
10 ORS chapters 195, 196, 197, 215 and 227;

11 (b) Statewide land use planning goals and the administrative rules implementing the
12 goals; and

13 (c) The acknowledged comprehensive plan and land use regulations that would otherwise
14 apply to the development area.

15 (2) The development area of a small-scale recreation community established on a heritage
16 guest ranch may include:

17 (a) Restaurants, meeting and conference facilities and commercial uses to serve the
18 needs of visitors to the small-scale recreation community;

19 (b) Developed recreational facilities, including but not limited to tennis courts, spas,
20 equestrian facilities, swimming pools and bicycle and hiking paths;

21 (c) Up to 480 residential units, plus additional overnight lodgings, including but not lim-
22 ited to single-family houses, lodging units, cabins, condominiums, townhouses or units in
23 fractional ownership, that are carried out pursuant to a transfer of development opportu-
24 nities from the owner of a Metolius resort site in an agreement described in section 3,
25 chapter 636, Oregon Laws 2009;

26 (d) Motorcoach resort facilities with up to 100 spaces;

27 (e) Accessory amenities and services, including golf-related facilities and not more than
28 one golf course developed on or after January 1, 2013;

29 (f) Roads, utilities and maintenance and security facilities that are necessary to support
30 the development area; and

31 (g) Uses approved before the effective date of this 2013 Act, whether or not such uses
32 are yet established.

33 (3) Development of the development area of the small-scale recreation community sited
34 on the heritage guest ranch may occur in phases at the discretion of the developer or owner
35 and is subject to all of the following requirements:

36 (a) During each phase of development, the number of units of overnight lodgings must
37 be at least 25 percent of the total number of residential units and units of overnight lodgings.

38 (b) Overnight lodgings that are not lodging units, timeshares or units in fractional own-
39 ership must be designed to encourage and facilitate use as overnight lodgings and must in-
40 corporate the following design restrictions:

41 (A) Detached single-family houses and cabins may not be sited on lots or parcels that
42 exceed 5,000 square feet;

43 (B) Detached single-family houses and cabins, and condominium units and townhouses,
44 may not exceed 1,800 square feet of living space; and

45 (C) Detached single-family houses and cabins, and condominium units and townhouses,

1 may not have more than one single-car garage for each unit.

2 (c) To minimize effects of the development area on uses on surrounding lands, the de-
 3 veloper or owner shall develop buffers, including natural vegetation, fences, berms, land-
 4 scaped areas and similar types of buffers, where appropriate between the development area
 5 and adjacent land uses.

6 (d) For the purpose of mitigating impacts to nearby areas as residential units are devel-
 7 oped, the developer or owner of the small-scale recreation community established on the
 8 heritage guest ranch shall cause deed restrictions to be placed on the land to ensure that
 9 assessments are paid. Within 30 days after the owner of a lot or parcel obtains a building
 10 permit, the owner of the lot or parcel shall pay an assessment to offset the costs of the in-
 11 creased use of capital improvements to:

12 (A) The closest city within 10 miles of the small-scale recreation community, in the
 13 amount of \$1,000; and

14 (B) The school foundation of the school district in which the development area of the
 15 small-scale recreation community is located, in the amount of \$2,500.

16 (e) The developer or owner shall sell or donate any land adjacent to, and within 100 feet
 17 of, the spawning beds of Whychus Creek as determined by the State Department of Fish and
 18 Wildlife, subject to a conservation easement described in paragraph (g) of this subsection,
 19 to a nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue
 20 Code and that has a focus on the environment and education.

21 (f) If the developer or owner transfers a surface water right to an in-stream use of wa-
 22 ter, the developer or owner is entitled to receive a ground water right in an equal amount
 23 for the use of the developer's or owner's choice upon request to the Water Resources De-
 24 partment.

25 (g) The developer or owner of the small-scale recreation community shall cause conser-
 26 vation easements under ORS 271.715 to 271.795 to be placed on:

27 (A) The inventoried spawning beds and mapped flood plain areas of Whychus Creek. The
 28 conservation easement under this subparagraph must limit uses in and adjacent to the
 29 spawning beds and flood plain areas to:

30 (i) Recreational activities that have a low impact on the environment, including but not
 31 limited to hiking, biking, horseback riding and fishing;

32 (ii) Stream enhancement; and

33 (iii) Education and research.

34 (B) Not less than 70 percent of prime or unique farmland in the small-scale recreation
 35 community. The conservation easement under this subparagraph must limit the uses to:

36 (i) Agricultural use; and

37 (ii) Agricultural research performed in cooperation with an agricultural experiment sta-
 38 tion of Oregon State University or an agricultural science program conducted by a school
 39 district, as defined in ORS 330.005.

40 (4) Roads, utility corridors and utility facilities necessary to serve the small-scale recre-
 41 ation community established on the heritage guest ranch are outright permitted uses within
 42 the development area and on nearby lands. Roads in the development area:

43 (a) Must be all-weather roads;

44 (b) May remain unpaved in certain areas to discourage motor vehicle use in sensitive
 45 areas of the small-scale recreation community; and

- 1 (c) Must be wide enough to accommodate emergency equipment.
- 2 (5) Except as provided in subsection (4) of this section, a use authorized by this section
3 must be constructed in the small-scale recreation community. For purposes of this sub-
4 section, a use approved before the effective date of this 2013 Act is not a use authorized by
5 this section.
- 6 (6) The developer or owner of the small-scale recreation community established on the
7 heritage guest ranch may submit an application to the county that has land use jurisdiction
8 for approval of a master plan for the development and use of the small-scale recreation
9 community pursuant to this section.
- 10 (7) If a county that has land use jurisdiction receives an application for approval of a
11 master plan for the development and use of the development area pursuant to this section,
12 the county shall approve the master plan when the developer or owner demonstrates its in-
13 tention to substantially comply with the following requirements:
- 14 (a) Significant impacts to the important natural features of the development area and
15 associated property will be minimized.
- 16 (b) The development area and associated property will be managed to provide public
17 benefits in the form of:
- 18 (A) Wildlife and aquatic habitat improvements, including tree planting, enhancement of
19 riparian areas and restoration or enhancement of areas for fish and wildlife; and
- 20 (B) Training and education programs about the environment and sustainable farming and
21 ranching.
- 22 (c) The development area and associated property will be managed to support:
- 23 (A) The growth of ancillary and support businesses in the county; and
- 24 (B) The expansion of tourism opportunities for the county.
- 25 (d) The development area and associated property will be subject to design criteria and
26 standards that promote sustainability in the development area and that:
- 27 (A) Promote energy and water conservation;
- 28 (B) Minimize adverse impacts of development on fish and wildlife; and
- 29 (C) Reduce wildfire risk.
- 30 (e) Residential development and overnight lodgings will be clustered to lessen adverse
31 impacts on fish and wildlife.
- 32 (f) Subject to the standards and criteria in provisions of this section, the county will
33 approve a final plat pursuant to ORS 92.010 to 92.192 for the lots created in the first phase
34 of development in the development area.
- 35 (8) The county planning director may:
- 36 (a) Approve by administrative review an amendment to an approved master plan or an
37 associated land division plan; or
- 38 (b) If the county planning director determines that a proposed amendment to an ap-
39 proved master plan or an associated land division plan may impact the requirements made
40 pursuant to subsection (7) of this section, refer the amendment to the governing body of the
41 county for review. If the county planning director refers a proposed amendment to the gov-
42 erning body of the county, the governing body shall approve the proposed amendment if the
43 master plan, as amended, or the associated land division plan, as amended, remains consist-
44 ent with the requirements of this section.
- 45 (9) The county shall:

1 **(a) Apply the provisions of this section and the master plan as the only standards and**
 2 **criteria for approval or amendment of the master plan and applications for associated land**
 3 **divisions and development permits submitted pursuant to this section; and**

4 **(b) Process the master plan and applications for associated land divisions as land use**
 5 **applications pursuant to the procedural review provisions of the acknowledged comprehen-**
 6 **sive plan and land use regulations.**

7 **SECTION 4.** Section 3, chapter 636, Oregon Laws 2009, as amended by section 1, chapter 888,
 8 Oregon Laws 2009, and section 1, chapter 404, Oregon Laws 2011, is amended to read:

9 **Sec. 3.** (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation commu-
 10 nities may be established as specified in sections 2 to 5, chapter 636, Oregon Laws 2009.

11 (2) If, within one year after June 29, 2009, the owner of a Metolius resort site notifies the De-
 12 partment of Land Conservation and Development that it has elected to seek approval of a small-
 13 scale recreation community, the owner may, within six years after June 29, 2009, apply to a county
 14 for approval of a small-scale recreation community.

15 (3) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon
 16 Laws 2009, may be established only in conjunction with a transfer of development opportunity from
 17 a Metolius resort site. A transfer of development opportunity must be carried out through an
 18 agreement between the owner of a Metolius resort site and the owner of the site proposed for de-
 19 velopment of a small-scale recreation community. In the agreement, the owner of the Metolius resort
 20 site must:

21 (a) Agree to limit the use of the Metolius resort site, consistent with the management plan in
 22 consideration for the opportunity to participate in the development of the small-scale recreation
 23 community; and

24 (b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:

25 (A) Limits the use of the Metolius resort site to be consistent with the management plan;

26 (B) Allows public access to that portion of the site that is not developed; and

27 (C) Contains other provisions, as required by the Department of Land Conservation and Devel-
 28 opment, that are necessary to ensure that the conservation easement is enforceable.

29 (4) A small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon
 30 Laws 2009, must be sited:

31 **(a)** On land that is within a county that has, on June 29, 2009, a seasonally adjusted average
 32 annual unemployment rate over the preceding 10 calendar years that is more than 110 percent of
 33 the unemployment rate for the entire state over the same period, as reported by the Employment
 34 Department, and *[that]* is either:

35 *[(a)]* **(A)** Planned and zoned for forest use; or

36 *[(b)]* **(B)** Rural and not subject to statewide land use planning goals relating to agricultural
 37 lands or forestlands[.]; **or**

38 **(b) Land that is a heritage guest ranch.**

39 **(5) Except as provided in subsection (4)(b) of this section,** a small-scale recreation commu-
 40 nity authorized under sections 2 to 5, chapter 636, Oregon Laws 2009, may not be sited on land that
 41 is:

42 (a) Within an area identified as “Area 1” or “Area 2” in the management plan.

43 (b) Within an area described in ORS 197.455 in which destination resorts may not be sited.

44 (c) Within an area protected by or inventoried as a significant resource in an acknowledged
 45 comprehensive plan provision implementing statewide land use planning goals relating to:

1 (A) Open space, scenic and historic areas and natural resources;

2 (B) Estuarine resources;

3 (C) Coastal shorelands; or

4 (D) Beaches and dunes.

5 (d) Within an area identified as subject to a natural hazard by an acknowledged comprehensive
6 plan provision implementing a statewide land use planning goal relating to protection from natural
7 hazards.

8 **SECTION 5.** Section 4, chapter 636, Oregon Laws 2009, as amended by section 2, chapter 888,
9 Oregon Laws 2009, is amended to read:

10 **Sec. 4. (1) When developed on land described in section 3 (4)(a), chapter 636, Oregon Laws**
11 **2009**, a small-scale recreation community authorized under sections 2 to 5, chapter 636, Oregon Laws
12 2009, must meet the following development standards:

13 (a) The community must be located on a tract that contains 320 or fewer acres of land.

14 (b) The community must consist of 240 or fewer units and have as its primary purpose the pro-
15 vision of overnight lodging units.

16 (c) The community may contain one restaurant containing 5,000 or fewer square feet, and ac-
17 cessory uses necessary to the operation of the community, including accessory recreational facili-
18 ties.

19 (d) The owner of the property must spend at least \$1.5 million on off-site resource enhancement
20 or restoration projects on nearby public lands that will be used by individuals from the community.

21 (e) The community may not include a golf course or related facilities.

22 (f) The community must be developed and operated in a sustainable manner by meeting the fol-
23 lowing criteria:

24 (A) When fully developed, the community must use reclaimed water as the primary source of
25 water for any irrigation of grounds.

26 (B) Facilities for snowmobiling or other motorized recreational activities are not permitted.

27 (C) At least 50 percent of the tract on which the community is located must be dedicated to
28 permanent open space that is contiguous and demonstrates the biological viability of the site as
29 habitat or that provides ecosystem services to the area.

30 (D) Significant natural resource functions and values on the site must be preserved.

31 (E) Impervious surfaces, including rooftops and paved roads, trails and parking areas may not
32 exceed 35 percent of the total site area.

33 (F) Potable water usage must achieve a 20 percent reduction below standard code-built devel-
34 opments. Reclaimed water usage for nonpotable water needs may account for the entire reduction
35 required.

36 (G) Stormwater must be managed on-site. Off-site runoff must be limited to predevelopment
37 runoff rates.

38 (H) A restaurant, lodge or other nonresidential building must be designed and constructed to
39 meet regionally or nationally recognized design standards for sustainable design that are acceptable
40 to the county having land use jurisdiction over the proposed development site.

41 (I) Residential buildings must be designed and constructed to meet regionally or nationally re-
42 cognized design standards for sustainable design that are acceptable to the county having land use
43 jurisdiction over the proposed development site. The developer must achieve certification for all
44 buildings, with at least 50 percent of the buildings achieving a top-tier rating under the rating sys-
45 tem selected.

1 (J) Additional housing capable of housing at least 50 percent of the peak season employees must
2 be provided on-site.

3 (2) In addition to the development standards described in subsection (1) of this section, **when**
4 **developed on land described in section 3 (4)(a), chapter 636, Oregon Laws 2009**, a small-scale
5 recreation community must:

6 (a) Develop an environmental operations manual that describes core practices for operating the
7 small-scale recreation community, including:

8 (A) Waste reduction, recycling and diversion practices.

9 (B) Cleaning and site maintenance practices.

10 (C) Staff education practices.

11 (D) Commitment of the community to environmental stewardship.

12 (b) Establish a conservation stewardship organization, as a separate nonprofit entity funded
13 through income generated by the development, that is charged with:

14 (A) Development of a baseline study that establishes the current level and condition of the local
15 environment. As part of the baseline study, the organization must develop a long-term stewardship
16 plan that targets net creation and rehabilitation of resources, on-site and off-site.

17 (B) Ongoing review, election and management of habitat restoration projects that implement the
18 goal of the long-term stewardship plan.

19 (C) Education and outreach on environmental stewardship.

20 (c) Organize and manage volunteers working to conserve local resources.

21 (d) Monitor performance of energy and water usage and site development standards versus ac-
22 tual practice.

23 (e) Audit and publish annually a report of the community's performance result for the preceding
24 year.

25 **SECTION 6.** Section 5, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 888,
26 Oregon Laws 2009, is amended to read:

27 **Sec. 5.** (1) An application for a small-scale recreation community under sections 2 to 5, chapter
28 636, Oregon Laws 2009, may be filed only by the owner of a Metolius resort site and the owner of
29 the site on which development of the small-scale recreation community is proposed and must be filed
30 jointly by the owners. The owners shall file a copy of the application with the Department of Land
31 Conservation and Development at the same time that the owners file the application with the county
32 having land use jurisdiction over the proposed development site.

33 **(2) When developed on land described in section 3 (4)(a), chapter 636, Oregon Laws 2009:**

34 [(2)] (a) A county shall review an application for a small-scale recreation community under
35 sections 2 to 5, chapter 636, Oregon Laws 2009, as a conditional use in a forest zone and as a land
36 division under ORS chapter 92.

37 [(3)] (b) In addition to the standards set forth in sections 2 to 5, chapter 636, Oregon Laws 2009,
38 the small-scale recreation community must meet the land division standards and other development
39 standards of the county, including standards for streets, utilities and services, unless the standards
40 conflict with sections 2 to 5, chapter 636, Oregon Laws 2009. If the development standards of the
41 county are dependent on the zoning of the site, the county shall apply the development standards
42 for the county's most dense rural residential zone.

43 [(4)] (3) If more than two applications for a small-scale recreation community are filed under
44 sections 2 to 5, chapter 636, Oregon Laws 2009, and a county has not yet approved an application,
45 the department shall determine which of the applications may proceed, taking into consideration:

1 (a) The time at which each application was filed;

2 (b) The unemployment rate in the counties, if more than one county is involved; and

3 (c) The findings set forth in section 1, chapter 636, Oregon Laws 2009.

4 [(5)] (4) When two applications for small-scale recreation communities have been approved, ad-
5 ditional applications may not be considered.

6 [(6)] (5) A county may charge a fee to cover the costs of processing an application.

7 **SECTION 7. (1) As used in this section, "Deschutes Basin ground water study area" has**
8 **the meaning given that term in ORS 540.531.**

9 **(2) The Water Resources Department shall periodically review the department program**
10 **for the Deschutes Basin ground water study area. The review shall include, but need not be**
11 **limited to, the identification of regulatory and statutory changes that may improve the pro-**
12 **gram in order to address and mitigate injury to existing water rights and spring systems and**
13 **to offset measurable reductions of scenic waterway flows.**

14 **(3) The department shall report to the Legislative Assembly every five years on outcomes**
15 **of the department program for the Deschutes Basin ground water study area. The report**
16 **shall include, but need not be limited to, program impacts on other users of the Deschutes**
17 **River Basin, the potential timing of mitigation, identification of zones of impact, a review**
18 **of impacts on the headwaters of the Metolius River and other key reaches of the Metolius**
19 **River system, the potential timing of federal, state and local storage improvements and other**
20 **issues identified by stakeholders.**

21 **SECTION 8. There is appropriated to the Water Resources Department, for the biennium**
22 **beginning July 1, 2013, out of the General Fund, the amount of \$100,000 for the purpose of**
23 **carrying out the provisions of section 7 of this 2013 Act relating to review and reporting re-**
24 **quirements for the Deschutes County ground water study area.**

25 **SECTION 9. ORS 540.155 is repealed.**

26 **SECTION 10. This 2013 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
28 **July 1, 2013.**

29