

**Routine Program Change**  
**Seeking to Incorporate the City of Toledo Comprehensive Plan and Municipal Code**  
**(Zoning Ordinance) into the Oregon Coastal Management Program**

**March 6, 2015**

**I. Introduction**

The Oregon Department of Land Conservation and Development (DLCD) seeks approval from the National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management (OCM) to incorporate the current version of the **City of Toledo Comprehensive Plan and Title 17, Zoning, of the City of Toledo Municipal Code**, into the Oregon Coastal Management Program (OCMP). DLCD requests OCM's concurrence that the incorporation of these provisions is a Routine Program Change (RPC) to the OCMP. This analysis identifies and describes the enforceable policies of these documents and explains why they constitute RPCs as described in 15 C.F.R. Part 923.

The Land Conservation and Development Commission (LCDC) acknowledged the City of Toledo's Comprehensive Plan as being in compliance with the Statewide Planning Goals on April 21, 1983. Portions of the plan pertaining to the Yaquina Bay estuary were approved on April 22, 1983. OCM approved the Comprehensive Plan and implementing zoning ordinance as RPCs of the OCMP on February 10, 1984. Subsequent to OCM approval, the City updated certain provisions and adopted an updated version of the plan, in 2001. The State of Oregon, through DLCD, has approved the updates. DLCD is now submitting to OCM the current versions of the plan and code, which include all changes subsequent to OCM's 1984 approval. The city's comprehensive plan and code apply to those parts of the Yaquina Bay estuary within city jurisdiction.

Section II of this analysis describes the legal and policy framework of Oregon's Coastal Management Program by summarizing the key elements of Oregon's land use planning system and statewide planning goals, including the relationships between state requirements and local land use plans and regulations, and between the statewide program and the OCMP. Section III lists and briefly describes the enforceable policies of the City of Toledo comprehensive plan and municipal code that DLCD seeks approval to incorporate into the OCMP. Section IV analyzes the five CZMA program approvability areas potentially impacted, and determines that this request qualifies as a routine program change. Finally, Section V contains a table of all City of Toledo enforceable policies that Oregon seeks to incorporate into the OCMP.

**II. Framework for Oregon's Approved Coastal Management Program**

**A. Oregon's land use planning program: state-local relationship**

As noted in OCM's review and approval of the Oregon Coastal Management Program in 1977, the Statewide Planning Program (ORS Chapter 197, Comprehensive Land Use Planning Coordination), is the principal mechanism by which the state ensures that local governments, with state oversight, balance conservation and development of coastal and other resources via statewide goals for land use planning. Local governments, such as Toledo, are required to adopt comprehensive land use plans that meet the statewide requirements and to make the day-to-day

land use decisions in conformance with the state-approved, goal-based plans. Since the mid-1980s, the LCDC has found the plans and ordinances of all cities and counties in Oregon to be in compliance with the goals, thus providing the state with more than 25 years of a functional statewide land use program based on local implementation of state goals. The state, through the LCDC and DLCD, also reviews changes to local plans and ordinances for compliance with state requirements.

## **B. Statewide Planning Goals**

The nineteen statewide planning goals (<http://www.oregon.gov/LCD/goals.shtml>), which are adopted as administrative rules (Oregon Administrative Rules Chapter 660, Division 015), express the state's policies on land use and (along with additional administrative rules) provide standards for local land use planning and decision-making. Some goals set standards for how certain types of land are to be planned and zoned; for example Goal 18 sets specific standards for development on various types of dunes. NOAA/OCM has approved these statewide planning goals and related administrative rules as core components of the OCMP.

The central purpose and requirements of the statewide planning goals are:

**Goal 1 CITIZEN INVOLVEMENT:** requires local governments to provide "the opportunity for citizens to be involved in all phases of the planning process;" requires each city and county to have a citizen involvement program and a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.

**Goal 2 LAND USE PLANNING:** outlines procedures for planning; specifies elements of comprehensive planning and requires local jurisdictions to adopt enforceable "implementation ordinances" to carry out the plan's policies; requires local land use decisions to conform with adopted comprehensive plan and ordinances.

**Goal 3 AGRICULTURAL LANDS:** defines "agricultural lands;" requires counties to inventory soil types and designate such lands as agricultural lands based on soil type and actual use and to "preserve and maintain" those lands through zoning.

**Goal 4 FOREST LANDS:** defines "forest lands;" requires counties to inventory forest capability, identify forest land, and adopt policies and ordinances to "conserve forest lands for forest uses."

**Goal 5 OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES:** requires local plans to address more than a dozen natural and cultural resources (e.g. wildlife habitats, wetlands, historic sites); establishes a process for each resource is to be inventoried and evaluated by local governments; creates options for local governments to protect identified significant resources.

**Goal 6 AIR, WATER AND LAND RESOURCES QUALITY:** requires local comprehensive plans and ordinances to be consistent with state and federal regulations on solid waste, groundwater pollution, municipal sewerage discharge, air emissions, etc.

**Goal 7 AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS:** seeks to protect development from natural hazards (e.g. floods, landslides, and erosion); requires jurisdictions to

use hazard inventories supplied by state agencies and apply "appropriate safeguards" (i.e. floodplain zoning) to those areas.

**Goal 8 RECREATION NEEDS:** requires jurisdictions to plan for recreational opportunities based on an inventory of recreational resources, evaluation of areas and facilities for recreation, and projected demand for recreation.

**Goal 9 ECONOMY OF THE STATE:** calls for diversification and improvement of the economy; requires local jurisdictions to inventory existing and potential commercial and industrial lands, determine future needs for such lands, and plan and zone lands sufficient to meet those needs.

**Goal 10 HOUSING:** specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing.

**Goal 11 PUBLIC FACILITIES AND SERVICES:** calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection; links provision of new services to urbanization policies in Goal 14.

**Goal 12 TRANSPORTATION:** aims to provide "a safe, convenient and economic transportation system;" requires consideration of multiple transportation modes; links funding for transportation facilities to transportation plans.

**Goal 13 ENERGY:** seeks to use land use plans to control development to "maximize the conservation of all forms of energy, based upon sound economic principles."

**Goal 14 URBANIZATION:** requires cities to work with counties to estimate future population growth and related needs for land in unincorporated areas and to jointly designate sufficient land to meet those needs; requires each city jointly with its county, to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land."

**Goal 15 WILLAMETTE GREENWAY:** pertains only to those jurisdictions that touch on or include the Willamette River Greenway; not applicable in the Coastal Zone.

**Goal 16 ESTUARINE RESOURCES:** establishes state-level estuary classification system and designates each of 22 estuaries into one of four categories: Natural, Conservation, Shallow-draft Development, and Deep-draft Development; establishes planning and management requirements for each category; specifies land uses and activities permissible in those areas; emphasizes habitat protection; links closely to Goal 18.

**Goal 17 COASTAL SHORELANDS:** defines a shoreland planning area along the ocean shore, estuaries, and other water bodies and requires local governments to map the shoreland boundary; specifies how certain types of land and resources within the shoreland area are to be managed; emphasizes unique coastal land uses (e.g. port facilities) and requires protection of sites for "water-dependent" or "water related" uses.

**Goal 18 BEACHES AND DUNES:** specifies planning standards for protecting or developing various types of dunes; prohibits most development on beaches and active foredunes; prohibits ocean shorefront protective structures for most development built after 1977; establishes

standards for dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

**Goal 19 OCEAN RESOURCES:** seeks to “conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf;” creates basis for planning and management of state ocean waters through the state Territorial Sea Plan; establishes requirements for state agencies rather than cities and counties.

### **C. The Oregon Coastal Management Program**

NOAA’s 1977 approval of the Oregon Coastal Management Program pre-dated development and state approval of coastal local government plans and ordinances (most of which occurred between 1978 and 1985), but was predicated on the understanding that “the central authority by which Oregon will implement the program is SB 100” (subsequently codified as ORS Chapter 197). NOAA approval also included the statewide planning goals, including the coastal goals, and the statutory authorities of several state agencies (e.g. Department of Environmental Quality). In the years following this 1977 approval all coastal local governments created and adopted comprehensive plans and ordinances, which LCDC reviewed and approved, and which OCM approved for incorporation into the OCMP via Routine Program Changes (RPC).

Local land use plans and ordinances were expected to be reviewed and amended in response to individual situations or pursuant to ORS Chapter 197, which requires local plans to be periodically reviewed and amended to reflect changes in laws, requirements for meeting the statewide planning goals, community needs, development, and other factors. Many local plan changes are minor in nature and do not involve substantive policy changes. Although the underlying policies have not substantively changed, DLCD would like to incorporate the most recent versions of the plan and code into the OCMP. The analysis below discusses the current plan policies that DLCD seeks to incorporate as enforceable policies.

### **III. Comprehensive Plan and Municipal Code Chapters Incorporated as Enforceable Policies**

While DLCD seeks to incorporate the entire City of Toledo Comprehensive Plan and Zoning Ordinance into the OCMP, DLCD has identified specific sections of each to be used as “enforceable policies” for federal consistency purposes. As required by 16 USC 1453(6a) and OCM guidance, the enforceable policies are legally binding and contain standards of sufficient specificity to guide private and public uses. These policies, contained in discrete sections of the plan and ordinance, are briefly discussed in subsections A and B, below, and listed in table form in Section V.

DLCD is submitting enforceable policies contained in the following documents:

- City of Toledo Comprehensive Plan
- City of Toledo Municipal Code Title 17, Zoning
- City of Toledo Municipal Code Title 18, Miscellaneous Land Use Regulation

## **A. CITY OF TOLEDO COMPREHENSIVE PLAN**

The city's comprehensive plan establishes the basis for land use regulation throughout the city. It is well-organized and clear in its goal and objective statements. However, most of these policy statements are directed at the city, rather than applicants. Other objective statements, while meant to provide specific policy guidance, are not written in such a way as to be construed as enforceable within the meaning of 16 USC 1453(6a). Thus, DLCDC has determined that only the following plan policies are enforceable for federal consistency purposes.

### **Article 2: Land Use Planning**

Objective 2(B): Specifies purposes of the nine land use zones identified on the city zoning map; the zones are implemented by the zoning ordinance.

### **Article 16: Estuarine Resources**

Objective 6: Provides criteria for allowing dredge, fill, or other loss of natural estuarine values.

### **Article 17: Coastal Shorelands**

Objective 5: Requires the maintenance of riparian vegetation.

Objective 6: States preference for non-structural solutions to erosion and flooding; requires protective structures and fill to minimize adverse impacts.

Objective 7: Public access requirement.

## **B. CITY OF TOLEDO MUNICIPAL CODE**

**Title 17 – Zoning Ordinance.** Zoning regulations for land uses and activities within the city of Toledo.

Chapter 17.04: Provides definitions that, while not enforceable policies *per se*, are necessary to interpret and apply other enforceable policies throughout Title 17. Also classifies the city's planning and zoning structure, including a reference to the zoning map, which is available online at:

<http://www.cityoftoledo.org/documents/Planning/Toledo%20Zoning%20Map.pdf>.

Chapters 17.08 – 17.36: Regulate development in eight zones (single-family residential, general residential, commercial, light industrial, industrial, natural resource, water-dependent, public lands). The standards include criteria for uses permitted outright, conditional uses, lot sizes, setback requirements, signs, and special standards applicable to the particular zone.

Chapter 17.48: Provides vehicle access and clear vision requirements..

Chapters 17.56, 17.64 – 17.68: Provides criteria for nonconforming uses, variances, and conditional uses.

## **Title 18, Miscellaneous Land Use Regulations**

Chapter 18.04: Regulates development in riparian and significant wetland areas.

### **IV. This Action is a Routine Program Change**

The incorporation of the enforceable policies listed above of the current City of Toledo Comprehensive Plan and Municipal Code into the OCMP does not substantially alter any of the five program areas detailed in 15 CFR 923:

#### **1. Uses subject to management (Subpart B)**

This action does not substantially change the uses subject to management specified in the OCMP (navigation and transportation; residential/urban/industrial, including energy production; agriculture and forestry; recreation; fish and wildlife production and utilization; public facilities; mining and minerals; and restoration) or those originally included in the City of Toledo Comprehensive Plan and Municipal Code approved by OCM in 1984. The State of Oregon requires the plan and ordinance to implement Oregon's statewide planning goals, which require local jurisdictions to set standards for various uses, including those set forth in the OCMP. Because the uses permitted by the plan and ordinance must be consistent with the statewide planning goals and because the city has not added any new uses, incorporation of the updated plan and ordinance into the OCMP merely refines and does not substantially change the uses subject to management.

#### **2. Special management areas (Subpart C)**

This action does not change the criteria for designating areas of particular concern, or areas for preservation or restoration. Statewide planning goals 16 through 18 set the criteria and procedures for establishing and managing estuarine areas (Goal 16), coastal shorelands (Goal 17), and beaches and dunes (Goal 18). The City of Toledo Comprehensive Plan and Municipal Code merely set policies and standards for designating and managing these areas within city jurisdiction.

#### **3. Boundaries (Subpart D)**

This action applies only to lands under the jurisdiction of the City of Toledo. It does not change Oregon's inland or seaward coastal zone boundary, nor does it change the status of excluded lands.

#### **4. Authorities and organization (Subpart E)**

This action does not change Oregon's authority or organization, nor does it alter Oregon's administration of the OCMP. Oregon's land use system and statewide planning goals establish criteria and standards for local planning; the city plan and ordinance simply implement those standards.

#### **5. Coordination, public involvement and national interest (Subpart F)**

This action does not change any coordination, public involvement, or national interest provisions of the OCMP.

**V. Enforceable Policies Table**

<b>Changes to the OREGON COASTAL MANAGEMENT PROGRAM</b>				
<p>The OREGON COASTAL MANAGEMENT PROGRAM (OCMP) seeks to incorporate the following provisions of the <b>City of Toledo Comprehensive Plan and Municipal Code</b> into its federally-approved coastal management program. The following table identifies specific provisions that DLCD seeks to incorporate as enforceable policies and that DLCD anticipates using for Federal Consistency review purposes.</p>				
State/Local Legal Citation	Name/Description of State or Local Law/Regulation/Policy/ Program Authority or Change	Enforcement Mechanism(s)	Date Adopted by State	Date Effective in State
<b>ADDED:</b>			mm/dd/year	mm/dd/year
City of Toledo Comprehensive Plan and Municipal Code, Titles 17 and 18	* DLCD seeks to incorporate the City of Toledo Comprehensive Plan and Municipal Code, Titles 17 and 18, into the OCMP in their entirety. However, DLCD only seeks to incorporate the provisions listed below as enforceable policies.	ORS Chapter 197; Toledo Comprehensive Plan and Toledo Municipal Code 17.04.030 <sup>1</sup> (via City planning and permit process, hereinafter planning /permit process.	1983-2015	1983-2015
<b>CITY OF TOLEDO COMPREHENSIVE PLAN</b>				
<b>Article 2 Land Use Planning</b>				
Objective 2(B)	Purposes of land use zones on city zoning map	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
<b>Article 16 Estuarine Resources</b>				
Objective 6	Criteria for allowing dredge, fill, in estuarine areas	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
<b>Article 17 Coastal Shorelands</b>				
Objective 5	Riparian vegetation requirements	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Objective 6	Criteria for shoreline protective structures	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Objective 7	Public access	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015

<sup>1</sup> “No building, structure, or premise shall hereafter be used or occupied and no building or part there of shall be erected, moved, reconstructed, extended, enlarged or altered contrary to the provisions of this ordinance.”

<b>CITY OF TOLEDO MUNICIPAL CODE</b>				
<b>Title 17 Zoning</b>				
Chapter 17.04: Sections 17.04.020 – 17.04.070	General provisions, including Definitions, Compliance, Classification of Zones, Zoning Map	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.08: Sections 17.08.010 – 17.08.090	Single Family Residential Zone (R-S)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.12: Sections 17.12.010 – 17.12.090	General Residential Zone (R-G)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.16: Sections 17.16.010 – 17.16.050	Commercial Zone (C)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.20: Sections 17.20.010 – 17.20.040	Light Industrial Zone (L-I)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.24: Sections 17.24.010 – 17.24.040	Industrial Zone (I)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.28: Sections 17.28.010 – 17.28.030	Natural Resource Zone (N-R)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.32: Sections 17.32.010 – 17.32.040	Water-Dependent Zone (W-D)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.36: Sections 17.36.010 – 17.36.030	Public Lands Zone (P-L)	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.48: Sections 17.48.030 – 17.48.050	Access Requirements	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.56: Sections 17.56.010 – 17.56.070	Nonconforming Uses and Structures	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.64: Sections 17.64.010 – 17.64.070	Conditional Use Permits	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
Chapter 17.68: Sections 17.68.010 – 17.68.060	Variances	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
<b>Title 18 Miscellaneous Land Use Regulations</b>				
Chapter 18.04: Sections 18.04.010 – 18.04.080	Riparian Protection	ORS Chapter 197; city planning/permit process	4/21/1983	1983-2015
<b>REMOVED:</b>				
City of Toledo Comprehensive Plan and Municipal Code			1983	1983