

**GOVERNING BOARD MEETING
OREGON DEPARTMENT OF GEOLOGY & MINERAL INDUSTRIES**

Thursday, September 26, 2013
Salem, Oregon

1) Call to Order:

Chair Larry Givens called the meeting to order at 8:10 am.

2) Introductions:

Board Chair Larry Givens, Vice Chair Douglas MacDougal and Board Members Lisa Phipps, Charles Vars, and Dennis Luke were present.

DOGAMI Staff in attendance:

Vicki McConnell, State Geologist

Gary Lynch, Assistant Director, MLRR

Andree Pollock, Assistant Director, GS&S

George Priest, Geologist

Rachel Smith, Project Operations Manager

Larry Knudsen, Assistant Attorney General, representing DOGAMI

Carol DuVernois, Executive Assistant

Others:

Larry Tuttle, Center for Environmental Equity

Matt Crall, Oregon Department of Land Conservation and Development

Richard Rogers, Oregon Building Codes Division

Tim Marshall, Knife River Corp

1 **3) Approval of Minutes of July 12, 2013 Portland Meeting Minutes: (Board) *Action***
2 *Item*

3 **Motion: Luke moved and MacDougal seconded motion to approve minutes as**
4 **written. Motion carried.**

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6 **4) Board Business:**

7 a. **Governance Key Performance Measure discussion:** *Information Item*

8 The Board members completed self-evaluations and discussed the outcome. It was
9 noted that Board training is available online through the state's iLearn website.

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11 b. **Election of Board Chair and Vice-Chair.** *Action Item*

12 After discussion and nominations Larry Givens and Douglas MacDougal agreed to
13 continue serving in their roles for another year.

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15 **Motion: Lisa Phipps moved to elect Larry Givens as Board Chair and Douglas**
16 **MacDougal as Vice-Chair. Dennis Luke seconded the motion. Motion carried.**

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5) SB 379 Tsunami Inundation Zone: (Board and DOGAMI staff)

a. Public testimony on this agenda item.

There was no public comment.

b. The Board and staff reviewed the findings and recommendations of the SB 379 advisory group and DOGAMI staff regarding revisions to the tsunami inundation zone (ORS 455.446 and 455.447; OAR 632-005).: Action Item

McConnell and Priest briefed the Board on the issue. Givens believes this may put DOGAMI in an adversarial role with Building Codes Division. McConnell noted that there is a small subset of buildings that are affected by the inundation line and that we give evacuation and mitigation advice, but do not have an enforcement role.

Priest outlined the presentation he gave to the Advisory Committee, which detailed the five tsunami size classes in relation to probabilistic modeling done in two different studies and how they compare to the current SB 379 tsunami inundation line.

As per the Governing Board direction DOGAMI assembled an ad hoc advisory committee to review the state of the science regarding tsunami inundation modeling and mapping and how that information relates to the present-day tsunami inundation zone (SB 379 maps). The inundation zone (or line as it is frequently referred to) along the Oregon coast is required by statute (ORS 455.446 and .447) and places certain restrictions or prohibitions on specific facilities within the zone, or seaward of the line. DOGAMI staff developed the line in 1995 based on the best tsunami science available at the time and the Governing Board adopted the publication of that line in rule in 1996 (OAR Chapter 632 Division 005).

The goal set before the advisory committee was to compile recommendations to the Board about the best or most suitable tsunami inundation line taking in consideration new tsunami inundation science. To that end the committee had a spectrum of choices from “the present-day line is satisfactory” to “develop a completely new line using new and emerging science”.

After internal review and discussion the agency concurs with the primary recommendations of the committee with the following discussion.

1. The agency agrees that the present-day hand drawn paper maps on 1:24,000 USGS topographic maps are not sufficient tools for local building codes.
2. Ideally probabilistic mapping should occur once costs are more reasonable and the resulting inundation lines be adopted into building codes. There is no plan for this to occur in Oregon nor are there any identified funds for such a project.
3. Of the recently completed deterministic tsunami inundation lines released by DOGAMI as maps (Tsunami Inundation Map series) the “Large” inundation line that captures 95% of all inundation models best represents the intent of the law

61 to restrict certain facilities from being built seaward of the most likely tsunami.
62 Note that the “Medium” inundation line is the closest to the existing SB 379 line
63 thus this recommendation will increase the restricted zone.

- 64 4. It should be noted that the existing law allows exemptions in the building codes
65 and the existing rules allow exceptions by way of Board decision that allow site
66 specific waiving of the restrictions.
- 67 5. The advisory committee went further in their review and findings than initially
68 requested. The committee feels that DOGAMI’s role in the exception process is
69 weak in the statutes and rules and that DOGAMI’s role in the consultation
70 process is not well defined or documented by the agency. To date there has not
71 been an appeal to the Governing Board for an exception to any restriction
72 imposed by the statutes and rules. The number of required consultations for
73 building code exemptions or due to type of building has been few. One of our
74 biggest challenges is making sure the local building code departments and
75 inspectors are aware of the SB 379 zone and the restrictions.
- 76 6. If the Board decides to go forward with rulemaking to adjust the SB 379 zone it is
77 the agency’s recommendation that at least 3 informational public meetings are
78 held along the coast to bring the proposed change before the local governments
79 and citizens for feedback and discussion. It is also the agency’s recommendation
80 to review the policy and intent behind the statutes and to review of the
81 administrative rules to clarify DOGAMI’s role in consultations and explore cost
82 reimbursement.
- 83 7. This will be a costly project for the agency at a time when discretionary funding
84 is at an all time low. The agency requests permission to bring forward a priority
85 policy package in our next budget to cover the costs of outreach and rulemaking.

86
87 Luke recommended looking for another agency willing to share the cost of holding
88 informational meetings to get feedback from local government and emergency
89 managers on the coast. Phipps wanted to make sure the Board’s role in consultations
90 are not left out of the discussions.

91
92 MacDougal wanted to note that there will likely be people who believe that changing
93 the line to the L scenario would entail going too far too fast, and may be content with
94 the M line until probabilistic mapping takes place, in light of our lean budget era.
95 McConnell noted that the modeling used in the studies is the most cutting-edge in the
96 world at this point, and the lines developed with probabilistic mapping would most
97 likely not be that much different from the lines in the deterministic models. She said
98 that we would be doing a disservice to the state if we do not use the new digital data.
99 Vars cautioned that we must be realistic about the rarity of these large earthquake
100 events and the uncertainty of one of these events occurring. The large events occur
101 every five to ten thousand years, and it should be casually mentioned that it was only
102 nine thousand years ago that humans began cultivated agriculture.

103

104 **Motion: The Board recommends that the agency proceed when funds become**
105 **available with at least three informational meetings on the coast to determine**
106 **feelings on moving the SB 379 line and using the better maps, and when that process**
107 **is complete to report back to the Board about possible rulemaking options to**
108 **implement the recommendations. Vars seconded the motion.**
109

110 Discussion: MacDougal, we should perhaps make it stronger; such as the Board
111 recommends, based on the information it has, that the L line that maps be changed to
112 conform to that and we invite the input of the public through three informational
113 meetings to give feedback to the Board on that recommendation.
114

115 It needs to be clear that the Board agrees that the L line should be the revised SB 379
116 line. However, the Board will not move into formal rulemaking until it receives
117 considerable feedback from coastal people, and the Board is asking the agency to look
118 for available funds to hold at least three informational meetings. Phipps believes the
119 phrasing of “when funds become available” is too nebulous, and we should just say in
120 the motion that we do it, because the agency can seek partnerships without it being a
121 condition of the motion. The agency could also come forward with a Policy Option
122 Package in the next budget. Luke noted that sometimes if a Board recommends that
123 you do something, it will move into a higher position in the budget and strategic plan.
124

125 **Motion and second were withdrawn after discussion.**
126

127 Luke asked the Director for recommended language for a motion.
128

129 **Motion: Luke moved that the Board agrees with the agency’s recommendation that**
130 **the Large tsunami inundation line scenario best represents the intent of the SB 379**
131 **inundation zone, and directs the agency to move ahead with at least three**
132 **informational meetings on the coast to collect public input and directs the agency to**
133 **come back to the Board with recommendations for possible rulemaking after the**
134 **conclusion of the informational meetings. MacDougal seconded. Motion carried**
135 **unanimously.**
136

137 Luke suggested that every new commercial building require a geotech study and
138 building codes division make all those studies available online.
139

140 **6) Break**

141

142 Phipps asked the Board to consider another motion.
143

144 **Motion: To make a commitment to consider policy issues raised by the SB 379**
145 **Advisory Committee in conjunction with this process, specifically looking at the**
146 **exceptions outlined in the current rule, the issues that were raised around those**

147 **exceptions, the role of DOGAMI, and consider whether the Board and agency should**
148 **have a stronger or lesser role.**

149

150 Discussion: If Building Codes makes the exception for a certain building, the developer is
151 required to come to DOGAMI for mitigation and evacuation advice, and nothing beyond
152 that. They aren't required to follow the advice, or prove they've followed the advice. It
153 may be more useful to give the state and local building officials the authority to require
154 the developer to come back with a report after meeting with DOGAMI with what the
155 agency's recommendations are and allow the local building officials have enforcement
156 authority.

157

158 **Motion was read back to the Board after discussion. MacDougal seconded the motion.**
159 **Motion carried unanimously.**

160

161 **7) Agency Updates:** (Vicki McConnell & Gary Lynch)

162 a. **State of the Agency and Geologic Survey and Services Program**
163 **update:** *Update Item*

164 McConnell briefed the Board on recent agency activity, including new projects,
165 completed projects, meetings and conferences attended by staff, staffing changes and
166 agency synergy.

167

168 b. **Summary of operational and enforcement activities for surface**
169 **mining and oil and gas and geothermal regulatory programs:** *Update*
170 *Item*

171 Mining Enforcement:

172 We recently filed a Notice of Violation for mining without a permit on a site near Myrtle
173 Creek. At the time of this update, staff were working with the BLM and others to
174 resolve the issues.

175

176 Mining Update:

177 The number of mining permits is at a record high (902). In talking with industry officials,
178 production appears to be increasing statewide. That bodes well for the biennial
179 revenue forecast.

180

181 The Calico TRT met June 11, 2013 to review permitting process status and progress. We
182 are currently trying to schedule a Calico Project Coordinating Committee meeting
183 October 30, 2013 for the purpose of briefing the committee on the final quarter of 2013
184 and expectations for 2014.

185

186 The MLRR program is in process of hiring both an NRS2 Reclamationist position and the
187 Permit Coordinator position, finally bringing the program to full staffing level.

188

189 Geothermal or Oil & Gas Enforcement: There are no Oil & Gas or Geothermal
190 enforcement actions at this time.

191

192 Geothermal Update (see accompanying map for site locations):

193 The current number of geothermal permits is 28 and 6 Geothermal Prospect permits.
194 On September 6, 2013, US Geothermal Inc. held an open house and ribbon cutting
195 ceremony for their Neal Hot Springs Geothermal Power Plant in Vale, Oregon. The
196 geothermal power plant averages 17 megawatts and represents a major step forward in
197 diversifying Oregon's renewal power supply portfolio. Governing Board Chair Givens
198 and Director McConnell attended the ceremony.

199

200 Over the previous three years Surprise Valley Electric has drilled two production wells
201 and one geothermal injection well near the town of Paisley in central Oregon. Surprise
202 Valley Electric is currently developing the supporting infrastructure in preparation of
203 constructing a 3 megawatt power plant. The department will continue to update the
204 Board on the development and construction activities of the Paisley geothermal field.

205

206 The Newberry Volcano – Enhanced Geothermal Systems Project: Alta Rock continues to
207 assess the results of the 2012/2013 injection and hydro-shearing activities in order to
208 plan and conduct further hydro-shearing activities within the upcoming year.

209

210 Olene KBG LLC identified a high temperature geothermal resource at Olene Gap. It is
211 expected that both ORMAT (Glass Buttes) and Olene KBG LLC (Olene Gap) will submit
212 new applications to drill several wells within the upcoming year.

213

214 Oil & Gas Program Update:

215 The total number of active O&G permits remains 106, and there is 1 O&G Seismic
216 program permit. DOGAMI has received 3 applications to drill new gas production wells
217 in the Mist gas field. These applications are currently under review. Additionally within
218 the upcoming year, NW Natural Gas is planning further development of their gas
219 storage field within the upcoming year.

220

221 Note: Several companies have recently contacted the department interested in
222 permitting new oil and gas and geothermal projects across the State within the
223 upcoming year. The department will continue to update the Board on the status of
224 future development and any new permitting activities.

225

226 **8) Administrative Rules for implementation of recent legislation:** (Vicki McConnell,
227 Gary Lynch, AAG Knudsen)

228

a. Public testimony on these agenda items only

229 Larry Tuttle of the Center for Environmental Equity had procedural questions. HB 2248
230 may affect other state agencies such as Water Resources, DEQ, and Fish and Wildlife. He
231 would like to know if those agencies will need to look at their own rules in light of our
232 new rules. He would like to know what the statutory antecedent is for a couple of the
233 rules. AAG Knudsen said it would be best for DOGAMI to adopt its rules then let the
234 other agencies tune up their rules as necessary.

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b. **HB 2248 rules – staff introduced draft rules for implementation of DOGAMI policy bill to revise consolidated mine permitting:** *Action Item*

AAG Knudsen detailed where the agency was in rulemaking for HB 2248, the focus of which is the consolidated application process, which was formerly only used for chemical process mining, and moving certain other types of metal mining into that process. The chemical process consolidated application permit is relatively unique in the state, in that it has a mechanism that all of the interested state agencies participate through a technical review team and a policy committee, which develop the information that is necessary for the permits, work through the permit applications to make sure they are correct, issue permits that are internally coordinated, and then have an expedited appeal period. In some respects it is like the Energy Facility Siting Council (EFSC) siting process, but none of the agencies lose their independent authority. There is also a mechanism for DOGAMI to work to resolve any inconsistencies that might occur in the process.

The intent of the bill is to move all of the metal mining activities, other than gravity separation, into the consolidated mining permit operation. The one substantive area that will change is fees, because the existing consolidated permitting statutes are clear in that the permittee pays those costs associated with the permit application, but do not provide that the fees were paid prior to the initial application. Part of the consolidated permit process is a lot of up-front work, so we brought that into the rules. The proposed Division 37 rules amendments are intended to make Division 37 comply with this expanded breadth of permitting. The recommendation of the agency is to go ahead and take draft rules out on public notice for rule making rather than have the Board authorize the agency to appoint and advisory committee, because we are not trying to establish new policy, the legislature has already done that.

Lynch noted that there was some initial negative response to the bill, but he and McConnell met with representative mining operators in eastern Oregon to explain the bill to them.

Knudsen addressed Mr. Tuttle’s question about other state agencies that may be affected by the bill. He said that DEQ has rules primarily related to heap-leach mining. He does not believe these rules will need to be changed substantively, but there may be some technical changes needed to conform. The ODF&W rules may have more substantive revisions. We will need to look at those, but he does not think it is worthwhile to those other agencies to devote time to rulemaking until these rules are in place, that way ensuring consistent terminology and process. We will reach out to them to inform them that rule changes are coming and invite comments, which should trigger a need within their agencies to determine if someone may need to be done. We have built-in coordination mechanisms already, and will be briefing them on this to make sure that coordination happens.

279

280 We asked for new language in rule 0155 in regards to the fees, but policy is not at issue;
281 it is merely to detail how that might work and how not to get caught in a bind if the
282 company stops progress, and make sure the state and the environment does not get
283 caught holding the bag.

284

285 What was moved into Division 37 was taken out of Division 35, but the Division 35 rules
286 were adopted in the 1980's and there have been many changes since then. There were
287 also problematic provisions in those rules that the legislature removed, so that body of
288 rules got a bigger tune-up than the rest, but the basic concept and intent is the same.

289

290 If the Board authorizes the agency to move forward, they will prepare a final draft which
291 will be used for purposes of public notice and public hearings. There will likely be
292 changes made to that draft before they are brought back to the Board for adoption.

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294 Phipps and MacDougal had several questions about details of the draft that Knudsen
295 explained to the Board's satisfaction.

296

297 **Motion: Luke moved that the agency move forward with rulemaking dealing with ORS**
298 **Chapter 517, Divisions 35 and 37, to bring them into compliance with House Bill 2248,**
299 **and other changes that have occurred since the last rulemaking process and that no**
300 **advisory committee be used. Vars seconded the motion. No further discussion.**
301 **Motion carried unanimously.**

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303 c. **HB 2202 – Staff introduced draft rules for implementation of**
304 **changes to mined land reclamation act in response to new**
305 **limitations on mining on Class 1 and 2 soils in the Willamette Valley:**
306 *Action Item*

307

308 AAG Knudsen explained the concept behind HB2202 which came out of discussions
309 between the Farm Bureau (FB) and the Oregon Concrete Aggregate Producers
310 Association (OCAPA). The underlying concept is that it is always controversial to mine
311 aggregate on high-value farm land because you have two very important competing
312 resources. So you want the mine to be as deep as possible in a realistic, economically
313 feasible manner. There is also a need to coordinate what the local governments are
314 doing in terms of land use, and DLCD, and the aggregate producer and the DOGAMI
315 operating permit to make sure the permit makes the right call in terms of the permit
316 conditions necessary to make things happen. The bill has some terms that perhaps not
317 everyone agrees upon and we think it would be a very good idea to have the FB and
318 OCAPA and other interested parties get together and help us develop the rule to
319 implement this. He pointed out that from a rulemaking standpoint, this bill is not a big
320 re-write, and once we hear from an advisory committee then we can finish it fairly
321 quickly. Knudsen recommended that we put together a draft for the advisory

322 committee, and seek to limit the meetings to one or two on the substance and
323 economic impact of the bill.

324

325 The agency is asking for the authority to constitute the advisory committee, and then
326 would follow the normal procedure and bring a draft rule back to the Board for
327 authorization of rulemaking to proceed.

328

329 **Motion: Luke moved to authorize the Board delegation to the State Geologist to**
330 **appoint a rules advisory committee and move forward with the rulemaking process.**
331 **Vars seconded the motion. Motion carried unanimously.**

332

333 **9) Set Time and Date for next meeting: (Board)**

334 The next meeting will be held in Portland on Monday, November 25, 2013, at 8:30 am.

335

336 **10) Additional Public Comment:** (three minutes limit per person unless otherwise
337 specified at the meeting by the Chair)

338 Larry Tuttle of the Center for Environmental Equity discussed Calico and the Grassy
339 Mountain prospect. Seabridge, the company from which Calico obtained the lease rights
340 to Grassy Mountain has reacquired one fifth of the stock of Calico and has options for
341 another five percent of the stock, which suggests to him that Seabridge will probably be
342 involved in the ultimate development of the site. That is neither good nor bad, but it
343 suggests that there is probably going to be over the next few weeks a move afoot to
344 figure out who the financial partners are going to be for Calico.

345

346 The other issue is the risk of Calico not involving the Bureau of Land Management in this
347 proposal. He does not know what their objective is precisely, but he fears that part of
348 their strategy is to let the state process go on and then exert pressure back on the state
349 agencies when they are ready to apply for a NEPA proposal. He cautions that this could
350 create a political firestorm at some point and the Board should be aware of that
351 possibility. He knows there is a Project Coordinating Committee meeting planned for
352 October 30th, and he wants to make sure that the state agencies do not end up being an
353 extension of the public relations and public information output on Calico's behalf.

354

355 He believes this is going to be a continuing issue. What standards will be set up for
356 holding public meetings and spending public money when Calico drags its feet, which it
357 has been doing since the March 8th approval of its plan to begin collecting baseline
358 material?

359

360 He also has an issue with the Project Coordinating Committee and is that just really for
361 the benefit of Calico or is there a real public purpose. He has some concerns about the
362 mixed roles of the Vice Chair of the Technical Review Team. Tuttle listened to the
363 testimony provided to the House Committee on Agriculture and Natural Resources, and
364 he believes the Vice Chair will need to decide whether he is the cheerleader-in-chief for
365 Calico and the Grassy Mountain Project or whether he is a technical advisor. The Vice

366 Chair of the Technical Review Team is a DEQ employee but he is also a part of the
367 Regional Solutions Team and as such, his primary task is to tout business development.
368 As Vice Chair of the TRT, his primary responsibility is to the technical side rather than
369 the political side. Tuttle will commit these concerns to writing and submit them to the
370 Board and the TRT. He has raised his concerns to the Vice Chair, so the Vice Chair is
371 aware of Mr. Tuttle's concerns. He is hoping to avoid as many political blow-ups on this
372 project as he possibly can. Calico is not reluctant to use its political connections on this
373 project.

374

375 **11) Adjourned and moved to invited luncheon with Land Conservation and**
376 **Development Commission (LCDC)**

377

378 **12) Co-chaired meeting with DOGAMI Governing Board and Land Conservation and**
379 **Development Commission**

380

381 The Board had lunch with LCDC and then convened a joint meeting. The staff of both
382 agencies collaborated on several presentations on hazards, including tsunamis,
383 landslides, and floods, and on hazard mitigation planning and future collaboration. The
384 Board and Commission expressed a desire to meet more often, or at the very least
385 report to one another on mutual projects, concerns, and interagency collaboration.

386

387 **Action Items:**

- 388 1. Memo to Governor's Office recommending Lisa Phipps be considered for
389 another term on the Board. Done
390 2. Identify a replacement for Vars.
391 3. Agency will begin searching for partners and/or funding to hold SB379 public
392 meetings.

393

394

APPROVED:

Larry Givens, Chair

Douglas MacDougal, Vice Chair

Charles Vars

Lisa Phipps

Dennis Luke