



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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Steve Spinnett, Mayor  
City of Damascus  
19920 SE Highway 212  
Damascus, Oregon 97089

Dear Mayor Spinnett:

On November 15, 2013, the Land Conservation and Development Commission (LCDC) voted to initiate enforcement proceedings regarding the City of Damascus (City) pursuant to ORS 197.324. This action was taken in response to the City's failure to make adequate progress towards its compliance schedule, failure to comply with LCDC orders, and failure to adopt a comprehensive plan and land use regulations as required by ORS 197.757.

The enforcement proceedings are carried out through a contested case hearing. A copy of the official notice of the contested case hearing and my appointment of Fred Wilson as the hearings officer are enclosed with this letter. Please review the notice carefully, as the statutory timelines for the contested case hearing are relatively short, and made shorter by the fact that we are approaching several holidays. In establishing the schedule, every effort has been made to accommodate the holidays, while adhering to the statutory and rule deadlines.

In taking this action last week, LCDC expressed its sadness at needing to take this step, noting the several extensions and technical assistance the City has been given to complete its comprehensive plan and land use regulations. Ultimately, LCDC has obligation to enforce the requirements of the statewide land use planning program.

Please contact me or Jennifer Donnelly, Regional Representative (Metro Area) if you have any questions about LCDC's November action.

Sincerely,

Jim Rue  
Director

Enclosures

**BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON**

<b>IN THE MATTER OF THE ENFORCEMENT )</b>	<b>NOTICE OF</b>
<b>ORDER FOR THE CITY OF DAMASCUS )</b>	<b>CONTESTED CASE</b>
<b>PURSUANT TO ORS 197.324 )</b>	<b>HEARING</b>
<b>)</b>	

On November 15, 2013, the Land Conservation and Development Commission (the “Commission”) initiated enforcement proceedings under ORS 197.324 against the City of Damascus (the “City”) for the City’s failure to make satisfactory progress toward its compliance schedule, failure to comply with Commission orders, and failure to adopt a comprehensive plan and land use regulations within four years of the date of incorporation.

Pursuant to ORS 197.324, the Commission must conduct a contested case proceeding on the enforcement matter. Persons eligible to request party or limited party status in the contested case proceeding may petition for party status by submitting a written request to the hearings officer. **The Hearings Officer must receive the petition by 5:00 pm on November 29, 2013.** Petitions untimely filed shall not be considered, and the requesting persons will have waived any right to participate in the contested case, unless the Hearings Officer determines that good cause has been shown for failure to file timely. The requirements for eligibility and the contents of the petition for party status are discussed in detail below.

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

**Time and Place of Hearing**

The contested case hearing will begin with the filing of sworn, direct written testimony on December 20, 2013.

**Issues to Be Considered**

The issues to be considered at the hearing are whether the City failed to make satisfactory progress toward its compliance schedule, failed to comply with Commission orders, or failed to adopt a comprehensive plan and land use regulations within four years of the date of incorporation, and what corrective actions and/or interim measures the Commission should impose under an enforcement order.

Parties have the right to respond to all issues properly before the hearings officer and to present evidence and witnesses on those issues.

### **Authority and Jurisdiction for Hearing**

The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 and Chapter 197 of the Oregon Revised Statutes; the administrative rules of the Department of Land Conservation and Development; OAR chapter 660, division 45 and OAR 660-001-0005 (which adopts the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedures Act, effective January 1, 2008); and the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedures Act, OAR 137-003-0001 to 137-003-0092 as modified in OAR 660-001-0005.

A list of the statutes and rules applicable to this proceeding is attached to this notice (Attachment A).

### **Right to Attorney**

Pursuant to OAR 660-001-0005(2), parties and limited parties may be represented by an attorney or an authorized representative, subject to the requirements of ORS 183.457 and OAR 137-003-0008. Parties are ordinarily and customarily represented by counsel. A party is not required to be represented by counsel, unless it is an agency, trust, corporation or association. If a party is not represented at the hearing and during the hearing it determines that representation by an attorney is necessary, such party may not request a recess to secure the services of an attorney. The Department will be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.

### **Hearings Officer**

The person presiding at the hearing is known as the Hearings Officer. The Hearings Officer for this matter is:

Fred Wilson, c/o Department of Land Conservation and Development, 635 Capitol Street, N.E., Suite 150, Salem, Oregon 97301; email [william.f.wilson@state.or.us](mailto:william.f.wilson@state.or.us).

The Hearings Officer does not have the authority to make the final decision in the case. The final decision will be made by the Commission.

### **Persons Eligible to Request Party Status or Limited Party Status**

Individuals and organizations have the right to request party or limited party status in the contested case proceeding as provided in OAR 137-003-0005.

The City is a party to the contested case and therefore is not required to petition for party status.

The Department will participate in the contested case with all of the rights of a party.

### **Submittal Requirements-Petition to Request for Party or Limited Party Status**

Persons eligible to request party or limited party status in the contested case proceeding must send a written petition to the Hearings Officer. Two copies of the petition for party status must be submitted by first class or certificate mail to the Hearings Officer by November 29, 2013.

Petitions may be submitted by email before November 29, 2013; however, the email must be followed by mailing the petition. The Hearings Officer for this matter is:

Fred Wilson, c/o Department of Land Conservation and Development, 635 Capitol Street, N.E., Suite 150, Salem, Oregon 97301; email [william.f.wilson@state.or.us](mailto:william.f.wilson@state.or.us).

Additionally, please submit one copy of the petition to the Department, c/o Jennifer Donnelly, Regional Representative (Metro Area):

Jennifer Donnelly, 635 Capitol Street, N.E., Suite 150, Salem, Oregon 97301; email [jennifer.donnelly@state.or.us](mailto:jennifer.donnelly@state.or.us).

The Hearings Officer must receive the petition by 5:00 p.m. on November 29, 2013. If the Hearings Officer does not receive the petition within the time stated, the requesting person(s) will have waived any right to participate in the contested case, unless the Hearings Officer determines that good cause has been shown for failure to timely file. The petition must contain all of the information described below.

#### **Contents of a Petition for Party or Limited Party Status**

A petition for party or limited party status must comply with the requirements of OAR 137-003-0005(3) and include:

- a. Names and addresses of the petitioner and of any organization the petitioner represents;
- b. Name and address of the petitioner's attorney, if any;
- c. A statement of whether the request is for participation as a party or a limited party, and if, as a limited party, the precise area or areas in which participation is sought;
- d. If the petitioner seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- e. If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest; and
- f. A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in OAR 137-003-0005(3)(d) or (e).

#### **Consideration of Submitted Petitions**

The Hearings Officer will decide whether to grant party status based on the above and the following factors, as provided under OAR 137-003-0005(7):

- a. Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

- b. Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;
- c. When a public interest is alleged, the qualifications of the petitioner to represent that interest;
- d. The extent to which the petitioner's interest will be represented by existing parties.

### **Date of Pre-hearing Conference**

The pre-hearing conference will be conducted on December 5, 2013, beginning at 1:30 p.m. Parties and persons who have requested party or limited party status may participate in the pre-hearing conference either by attending in person at the Basement Hearing Room, Oregon Department of Agriculture Building, 635 Capitol Street, N.E., Salem, Oregon 97301 or via teleconference by calling 1-888-557-8511, Participant Code: 7169286.

Failure to raise an issue in the pre-hearing conference constitutes waiver of that issue in the contested case. Parties must also provide at the pre-hearing conference copies of all documents intended to be offered as evidence, and the names of all witnesses expected to testify.

Following the pre-hearing conference the Hearings Officer will issue a pre-hearing order, which shall establish the schedule for the contested case hearing, which will commence with the filing of sworn, written direct testimony, as set out above. The remainder of the hearing schedule will be determined by the Hearings Officer and may include submission of written responsive and rebuttal testimony, and in-person cross-examination before the Hearings Officer.

### **Discovery**

Discovery is not permitted in this proceeding.

### **Witnesses**

A witness must testify under oath or affirmation to tell the truth. The Hearings Officer will issue subpoenas for witnesses upon a showing that their testimony is relevant to the case and is reasonably needed by the requesting party to establish its position. If a party is represented by an attorney, that attorney may issue subpoenas for attendance of witnesses at the hearing. Payment of witness fees and mileage to the person subpoenaed is the requesting party's responsibility.

### **Record**

The record of the proceeding to date, including information in the Department files on the subject of this contested case, will automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

### **Default**

If no other person requests party status and the City fails to appear at the hearing, an order by default may be entered.

### **Proposed Order and Exceptions**

The Hearings Officer will issue a proposed order in the form of findings of fact, conclusions of law and recommended action by the Commission. Parties will be provided with a copy and you will be given an opportunity to make written objections, called “exceptions,” to the Hearings Officer’s recommendations. Parties will also be notified when exceptions to the proposed order must be filed, and whether parties may appear and make oral argument to the Commission on their exceptions.

### **Final Order**

The Commission will render the final order in this case. The Commission may modify the proposed order issued by the Hearings Officer. If the Commission modifies the proposed order in any substantial manner, its order will identify the modification and explain why the Commission made the modification.

### **Appeal**

If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.482.

November 22, 2013

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Jim Rue, Director  
Oregon Department of Land Conservation  
and Development

**Attachment A: LIST OF STATUTES AND RULES PURSUANT TO ORS 183.415**

**OREGON ADMINISTRATIVE PROCEDURES ACT**

**Statutes**

ORS Chapter 183

ORS 183.310 to 183.315

ORS 183.411 to 183.497

**Administrative Rules**

OAR Chapter 137, Division 3

OAR 137-003-0000 to 137-003-0092

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**Statutes**

ORS Chapter 197

ORS 197.015

ORS 197.040

ORS 197.045(4)

ORS 197.175

ORS 197.250

ORS 197.251 to 197.254

ORS 197.319 to 197.335

ORS 197.350(3)

ORS 197.747

ORS 197.757

**Administrative Rules**

OAR Chapter 660, Division 45

OAR 660-045-0020

OAR 660-045-0100 to OAR 660-045-0150

OAR 660-045-0170 to OAR 660-045-0180

OAR 660-001-0005



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**Department of Land Conservation and Development**

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TO: Fred Wilson

FROM: Jim Rue, Director

SUBJECT: Appointment of Hearings Officer: City of Damascus Enforcement Proceedings

On November 15, 2013, the Land Conservation and Development Commission (LCDC) initiated enforcement proceedings regarding the City of Damascus.

As part of that action, LCDC delegated to the director authority to appoint a hearings officer to conduct the contested case, including pre-hearing matters, the contested case hearing, and preparation of a proposed order for LCDC's consideration and action. In accordance with the authority delegated to me by LCDC, I am appointing you as the hearings officer for this matter.

Because you are acting on behalf of LCDC, and not the department, please do not consult with Assistant Attorney General Steve Shipsey, who is representing the department in this matter. You should also avoid any discussions regarding the merits of this matter with me or other department staff.

If you have any questions about this appointment, please let me know.

FOR THE COMMISSION:

Jim Rue, Director

Department of Land Conservation and  
Development

cc: LCDC

Carrie MacLaren, Department of Land Conservation and Development

Jennifer Donnelly, Department of Land Conservation and Development

Steve Shipsey, Department of Justice