

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

<b>IN THE MATTER OF THE ENFORCEMENT )</b>	<b>ORDER DETERMINING</b>
<b>ORDER FOR THE CITY OF DAMASCUS )</b>	<b>PARTY STATUS</b>
<b>PURSUANT TO ORS 197.324 )</b>	
)	

**FACTS**

1. Pursuant to OAR 137-003-0001, a Notice of Contested Case Hearing (Notice) was provided to interested persons and organizations. The Notice outlined the procedures and requirements for becoming a party or limited party.
2. In response to the Notice, the following individuals and organizations requested party or limited party status:
  - Metro (party) – represented by Roger Alfred
  - Clackamas County (party) – represented by Stephen Madkour
  - City of Happy Valley (party) – represented by Chris Crean
  - Johnson Creek Watershed Council (limited party) – represented by Jason Howard
  - Citizens for Moving Damascus Forward (limited party) – represented by Richard Johnson
  - General Distributor’s, Inc. (limited party) – represented by Paul Hribernick
  - Karl Westcott (limited party) - representing himself
  - Lowell Patton (party) – represented by Bill Cox
3. The City of Damascus is a party to the proceeding, and the Department of Land Conservation and Development (DLCD) is participating as a party to the proceeding.
4. The City of Damascus and DLCD do not object to the participation of the potential parties and limited parties, with one exception.
5. DLCD questions whether Lowell Patton’s (Patton) petition satisfies the requirements for limited party status, as discussed below.

## CONCLUSIONS

1. The petitions for all the potential parties and limited parties except Patton (Timely Petitions) were timely filed and meet the requirements of OAR 137-003-0005.
2. The Timely Petitions demonstrate a personal or public interest that could be reasonably affected by the outcome of the proceeding.
3. The stated interests in the Timely Petitions are within the scope of DLCD's jurisdiction and within the scope of the Notice.
4. Each request in the Timely Petitions represents a different interest, not otherwise represented by DLCD or the City of Damascus. Together these petitioners represent the broad base of interests affected by this proceeding.
5. Patton's Petition for Party Status was filed on December 3, 2013. The time requirement for filing petitions for party or limited party status in the Notice was November 29, 2013. Patton's attorney explained that "[d]ue to an oversight \* \* \* [he] did not notice the short response time requirement." Although the petition was not filed timely, it was served on the parties, as required by OAR 137-003-0005(4), at the same time as the other petitions. Furthermore, no one objects to the untimely filing. Therefore, pursuant to OAR 137-003-0005(5), I find that good cause has been shown for the untimely petition and it is allowed.
6. As stated earlier, DLCD questions whether the Lowell petition satisfies OAR 137-003-0005(7)(b), which requires that the potential party's "affected interest [be] within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing." DLCD states that Lowell's attorney will address the requirements of OAR 137-003-0005(7)(b) in his initial brief, and DLCD requests that the hearings officer wait until after response briefs have been filed to rule on Lowell's petition. While I tend to agree with DLCD that the portion of Lowell's petition that states that he "wishes LCDC to order Damascus to allow processing of his development permit applications be handled by Clackamas County" is likely asking for relief outside the scope of the agency's jurisdiction and scope of the Notice, I also find that Lowell does have a personal interest that could be affected by the proceeding. I also find that that interest, as a large landowner who wishes to develop (similar to General Distributor's, Inc.) is within the scope of the agency's jurisdiction and the scope of the Notice. Rather than postpone ruling on the petition due to the quoted inartful language, I am allowing the petition. If

Lowell fails to address issues within the scope of the proceeding in his briefs, the irrelevant issues will likely not be considered other than to note their irrelevancy.

**ORDER**

**IT IS THEREFORE ORDERED** that the following named organizations and individuals are parties and limited parties to this contested case proceeding:

Metro (party);

Clackamas County (party);

City of Happy Valley (party);

Johnson Creek Watershed Council (limited party);

Citizens for Moving Damascus Forward (limited party),

General Distributor's, Inc. (limited party);

Karl Westcott (limited party); and

Lowell Patton (party).



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Fred Wilson  
Hearings Officer

December 16, 2013

Certificate of Mailing

I hereby certify that on this day I mailed ORDER DETERMINING PARTY STATUS to the parties listed below. I further certify that I served ORDER DETERMINING PARTY STATUS upon the parties listed below by e-mail:

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Dated this 16<sup>th</sup> day of December, 2013.

Casaria Taylor



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