



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 8, 2010



TO: Land Conservation and Development Commission

FROM: Bob Rindy and Michael Morrissey, Policy Analysts

SUBJECT: Agenda Item 9, July 22-23, 2010, LCDC Meeting

COMMISSION REVIEW OF THE 2009-11 POLICY AGENDA

I. AGENDA ITEM SUMMARY

This item is carried over from the June 2-4, 2010 LCDC meeting in John Day. At that meeting, the commission reviewed and discussed a 2009-11 LCDC Policy Agenda Status Report (Attachment A) following public testimony. The commission directed staff to create a GANTT chart (Attachment B) for the July meeting in order to better understand the department's resource and time constraints for the remainder of the biennium, relative to existing and proposed policy and rulemaking items. The commission also agreed that department staff would continue to work on specified continuing and proposed items: energy worker housing, farmland and forestland related housekeeping rulemaking, irrigation reservoir rulemaking, Transportation Planning Rule (TPR) activity, and Coastal Zone Management Act Federal Consistency rulemaking.

For additional information on this item, please contact Bob Rindy at 503-373-0050 ext. 229, bob.rindy@state.or.us or Michael Morrissey at 503-373-0050 ext. 320, michael.morrissey@state.or.us

II. REVIEW OF 2009-11 POLICY AGENDA

Under this item, the commission will determine whether additional policy projects should be undertaken this biennium and, if so, which ones. This item is intended as an opportunity for stakeholders and other interested persons to comment on the policy and rulemaking agenda, including progress so far with regard to the current agenda, or to propose additional policy initiatives for the commission's consideration this biennium.

The commission's policy agenda is a list of policy projects to improve and update statewide land use policy and/or rules, including changes necessary to respond to recent legislation, executive orders and litigation. State law (ORS 197.040) requires the commission to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission approved its 2009-11

Policy Agenda at a public hearing at the July 2009 meeting, after consideration at the April and June 2009 meetings.

Items recommended by the department for addition to the 2009-11 LCDC Policy Agenda are:

New items—work begun by staff

- Willamette Greenway boundary amendment – City of Portland
- Metro Reserves (uses allowed within reserves)
- Energy worker housing

New items—work not begun

- Solar generating facilities on agricultural lands
- Irrigation reservoirs on agricultural lands
- Division 6 (forest) and 33 (farm) housekeeping
- Public records (including fees)
- Delegation of authority

Items for consideration but not recommended for addition to the 2009-11 LCDC Policy Agenda at this time:

- Forest Template dwellings ("tract" definition)
- Wind generating facilities on forest lands
- Nonconforming uses on agricultural lands

III. COMMISSION OPTIONS

The commission may:

1. Accept the department's recommendation to add additional items to the 2009-2011 LCDC Policy Agenda; or
2. Deny the department's recommendation to add additional items; or
3. Modify the department's recommendation and approve or modify additional items.

IV. OVERALL RECOMMENDATION

The department recommends the commission amend its Policy Agenda for the 2009-2011 Biennium to include the additional projects described in the attached report.

ATTACHMENTS

- A. Policy Agenda Report from June 2010 Meeting plus Additional Comments
- B. GANTT Chart



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May 24, 2010

TO: Land Conservation and Development Commission

FROM: Bob Rindy and Michael Morrissey, Policy Analysts

SUBJECT: **Agenda Item 9, June 3-4, 2010, LCDC Meeting**

LCDC'S 2009-2011 POLICY AGENDA: PROGRESS REPORT AND UPDATE

This item is a status report on and update of the commission's 2009-11 Policy and Rulemaking Agenda. Under this item, the commission will determine whether additional policy projects should be undertaken this biennium and, if so, which ones. This item is intended as an opportunity for stakeholders and other interested persons to comment on the policy and rulemaking agenda, including progress so far with regard to the current agenda, or to propose additional policy initiatives for the commission's consideration this biennium.

The commission's policy agenda is a list of policy projects to improve and update statewide land use policy and/or rules, including changes necessary to respond to recent legislation, executive orders, and litigation. State law (ORS 197.040) requires the commission to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission approved its 2009-11 Policy Agenda at a public hearing at the July 2009 meeting, after consideration at the April and June 2009 meetings. The commission's current policy agenda is Attachment A to this report, and is also available at the following link to DLCD's website: <http://www.lcd.state.or.us/LCD/>.

For additional information on this item, please contact Bob Rindy at 503-373-0050 ext. 229, or by email bob.rindy@state.or.us or Michael Morrissey at 503-373-0050 ext. 320, michael.morrissey@state.or.us.

I. Overview of Commission's Policy and Rulemaking Agenda

As part of its overall statutory authority (see ORS 197.040), the Land Conservation and Development Commission (commission) is required to "adopt rules and ... any statewide land use policies that it considers necessary to carry out" land use statutes. The commission is also required to "review decisions of the ... [courts] to determine if goal or rule amendments are necessary." The commission is also required to "adopt, amend, or revise goals consistent with regional, county and city concerns."

The commission's practice is to adopt a Policy Agenda for each biennium, which includes a list and schedule of rulemaking projects and other "non-regulatory" policy initiatives. In determining its policy agenda, the commission considered a range of recommended policy projects to improve the state land use program and selected its list of 2009-2011 projects from that larger list of proposals. The commission also bases its consideration on the availability of staff resources to pursue policy work during the biennium. The list of approved policy projects to be pursued this biennium was organized in three categories: (1) Required Projects (such as by legislation, executive order or the courts), (2) Recommended High Priority Projects, and (3) Other Recommended Projects to be Pursued if Resources/Staff are available.

II. Progress to Date on 2009-2011 Commission Policy Agenda

Since the approval of the Policy Agenda last July, the department has pursued the "required" and the "recommended high-priority projects" described in the agenda. Many of these projects are complete, as described below. Other projects are underway, and some are expected to be concluded at this meeting. The third category of projects on the policy list, "Other Recommended Projects to be pursued if Resources/Staff are Available," consists of projects not yet underway but "in the cue" as staff resources are available. As such, this report makes recommendations regarding those projects. This report also describes a new category of projects, described under Part III of this report: Recommended New Policy Projects Not on the Current Policy Agenda. These are projects to address issues that were not placed on the agenda last July but that, in the view of the department, have become more pressing. Finally, this report, under Part IV, addresses requests for additional policy work suggested by other interests. (See Attachment B).

A. Required Policy Projects

The following projects were required by state legislation, Governor executive order or the courts, and were given the highest priority on the commission's Policy Agenda for the 2009-2011 biennium:

1. Rulemaking in response to LUBA decisions regarding RLUIPA: In response to recent LUBA and related court decisions applying the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), the commission directed the department to work with an appointed workgroup to consider amendments to the subject farmland administrative rules (OAR 660, division 33) regarding uses allowed on EFU zoned lands within 3 miles of an Urban Growth Boundary.

Status: The workgroup, chaired by Greg Macpherson, concluded its deliberations in April, 2010, and has proposed rule revisions for consideration at the June 2-4 LCDC meeting in John Day (see Item 7, June 2010 LCDC hearing). The proposed rule revisions would limit the design capacity of structures for uses involving assemblies of people. The design capacity for such structures would be limited to 100 people. The rules would apply to "assembly" uses identified in the LUBA decision including schools, churches, parks facilities that are not master-planned,

golf courses, certain community centers and living history museums. Other related new provisions are included in the proposed rules.

2. Alternative Energy Resources in the Territorial Sea: Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments scheduled for October 2009; map amendments will be scheduled in 2010).

Status: The commission adopted text amendments to the Territorial Sea Plan at its November 2009 meeting. Staff is currently working with other agencies, legislators, non-governmental organizations, fishermen, and university specialists on two elements: one is to acquire, via contracts, needed spatial information (areas important to fisheries, recreational use areas, areas of important ecological and habitat value, etc), which is expected to be completed by late 2010 or early 2011; the other is to develop needed technological capacity to acquire, synthesize, analyze, and display this information (i.e. marine spatial planning). The Coastal Program staff currently anticipates the opportunity in late 2010 to re-convene the Territorial Sea Plan Advisory Committee approved by the commission in 2008 to advise in developing the 2009 text amendments to begin work on advising on the development of the spatial component of the Territorial Sea Plan amendments. Plan maps from this exercise are not expected until second quarter of 2011.

3. Greenhouse Gas Emissions Task Force Legislative Recommendations: The department was directed to staff the Metropolitan Planning Organization (MPO) Greenhouse Gas Emissions Task Force, along with the Oregon Department of Transportation, to prepare legislative recommendations as required by House Bill 2186. The Task Force report was completed and presented to the Legislature in January 2010.

Status: See Agenda Item 6b. In February, the 2010 Legislature adopted SB 1059 which implements recommendations of the MPO Greenhouse Gas Emissions Task Force. The bill directs the commission to adopt rules setting targets for GHG emission reductions from light vehicles from the state's five smaller metropolitan areas. Portions of SB 1059 which require target rulemaking largely mirror provisions of HB 2001 – discussed below. In addition, SB 1059 requires that ODOT and DLCD coordinate and collaborate with metropolitan area local governments and others to develop detailed guidance for scenario planning, a toolkit, and a public outreach program.

In Item 6b, the department recommends that the commission authorize and direct the department to establish a rulemaking advisory committee to assist with target rulemaking under both SB 1059 and HB 2001. The department has also been working with ODOT to complete an interagency agreement to hire staff and a consultant to help complete the work required by SB 1059.

4. HB 2001 - Greenhouse Gas Emissions Goals and Planning: Directs the commission to adopt rules setting targets for reducing greenhouse gas emissions from light vehicle travel in the

Portland Metro area. The bill also charges Metro, in cooperation with local governments, to conduct scenario planning to cooperatively select a preferred scenario for meeting the target established by the commission. The scenario planning under HB 2001 would describe land use patterns to meet the reduction goals (work under this item is scheduled for 2011-2014).

Status: HB 2001 directed the commission to adopt rules to guide work by Metro to develop and implement land use and transportation scenario plans aimed at meeting state greenhouse gas (GHG) reduction goals by June 1, 2011. As noted in item 3, SB 1059 has essentially expanded the scope of target rulemaking required by HB 2001 to the state's other five metropolitan areas. The rulemaking advisory committee recommended in agenda item 6b will address rulemaking required by HB 2001 as well as SB 1059.

Department staff have been working with ODOT and Metro staff to develop a detailed work program for Metro's work to prepare and select a scenario plan over the next two to three years.

5. Metolius River ACSC: Adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments, as required by House Bill 3286.

Status: A public hearing was conducted December 3, 2009, in Camp Sherman regarding proposed rules to adopt the Metolius Area of Critical State Concern (ACSC) management plan, as directed by the Oregon legislature in House Bill 3298. LCDC considered adoption of this rule in public hearings conducted in the January and April meetings, and adopted the management plan by rule at its April meeting. Department staff is continuing to work with Jefferson County to clarify implementation of certain aspects of the rule. This rulemaking project is now complete.

6. Measure 49 Rulemaking Required by 2009 Legislation: Adopt procedural amendments to LCDC's Measure 49 implementing rules to carry out adjustments to the claims process enacted by 2009 House Bill 3225.

Status: (See Agenda Item 14). The commission adopted permanent amendments to Measure 49 rules (OAR 660, division 41) in January 2010 to implement House Bill 3225 (2009), and the department filed the rules with the Secretary of State's office on February 9, 2010. The commission also adopted temporary rules and rule amendments to Measure 49 rules during its regular meeting on April 22, 2010 to implement Senate Bill 1049 (2010), which were filed with Secretary of State on May, 7, 2010.

7. "Housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in House Bill 3099 regarding farm uses.

Status: This rulemaking is complete. In January 2010 the commission adopted conforming amendments to farmland rules in response to statutory changes enacted by House Bill 3099.

8. Coastal Zone Management Act Federal Consistency: Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act

to address changes to NOAA's federal consistency rules and other changes since the last update (1988) of OAR 660, division 35.

Status: The commission formally initiated the process to revise the commission's Federal Consistency rules (OAR 660-Division 35) at its meeting on January 21, 2010. Since that time, DLCD staff met with the state Citizen Involvement Advisory Committee (CIAC) to discuss the content of the rules and rule adoption process. The staff has developed draft language for legal review. DLCD continues to work with legal counsel at Oregon DOJ and with staff at the NOAA Office of Ocean and Coastal Resource Management (OCRM) to refine the language to ensure the proposed rules are consistent with state and federal law. The department intends to begin the formal rulemaking process during the summer of 2010 and schedule a commission hearing to consider rule amendments in September 2010.

9. TDR Pilot Program Rules: Adopt procedural rules for DLCD's Transfer of Development Rights Pilot Project authorized under House Bill 2228.

Status: (See Agenda Item 13b). The commission and the department have completed the rulemaking scheduled under this Policy Agenda task. LCDC adopted TDR Pilot Program rules at its January 2010 meeting. However, the department is requesting an extension of the June 1 deadline in the rule for submitting pilot projects to the department.

B. High Priority Policy Projects to be Pursued this Biennium

The commission directed the department to undertake several policy projects that, while not "required" (such as by legislation), are nevertheless considered by LCDC to be high priority in the current biennium. In addition to the three projects initially included on the Policy Agenda under this category, subsequent to adopting the Policy Agenda the commission has directed the department to work on two additional policy projects, concerning Metro urban and reserve rules and 2010 greenhouse gas emission legislation (described below under # 4 and 5).

1. Climate Change Adaptation: Begin to assist communities in preparing for the effects of climate change, in coordination with other state agencies and other stakeholders. This includes work on a state-level climate change adaptation plan, in coordination with state agencies through a state agency workgroup. It also includes statewide climate change mitigation planning, as described above; HB 2001 and HB 2186.

Status: (See Agenda Item 6a). The department has continued to work with agency directors and university programs to develop a statewide Climate Change Adaptation Framework. Following Governor Kulongoski's kick-off meeting in October 2009, a group of agencies and university programs have met to design the scope and broad objectives of the adaptation framework; and the mechanism to be established for agency coordination and collaboration. On January 11, February 17, and again on March 30, a large group of agency and university program directors attended a meeting coordinated by the department in order to review recommendations for this effort. The directors have agreed on a set of next steps. The directors also suggested continued

meetings by a group of agency and university staff who have been working on the detailed aspects of the framework and proposing options for the directors.

2. Urban Policy Forum: Conduct a public “policy forum” (or a series), including local governments and other stakeholders, to consider the following topics and determine consensus and future direction:

- Coordinated population forecasts;
- Public facilities finance and planning issues;
- Urban growth management process and policy issues, especially concerning UGBs and urban reserves.

Status: The department continues to meet internally and with external stakeholders to outline the issues for the forum and establish the process and timelines. The department is considering contracting for at least one “white paper” to scope issues and ideas for resolution regarding the public facility finance issues. The department is also working on “white papers” regarding population forecasting issues and urban growth management issues. It is anticipated that population forecast issues should be taken up first, possibly beginning late summer of 2010.

3. TPR work with ODOT: Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including OTC work on alternative mobility standards, STIP criteria, and the requirements of House Bill 3379.

Status: ODOT has convened a HB 3379 Advisory Committee to assist with developing an administrative rule and to make related recommendations to the Oregon Transportation Commission. Rob Hallyburton is the department’s representative on the ODOT advisory committee. ODOT is now in the process of developing a draft administrative rule to carry out the provisions for HB 3379. The department expects that the proposed rule will establish a process and considerations guiding OTC decisions to authorize waivers or extensions to meeting funding requirements in the TPR for economic development projects that would otherwise require that funding for improvements to state highways be reasonably likely during the planning period.

The department expects that the work of the advisory committee may result in additional recommendations for changes to either ODOT plans and policies or the Transportation Planning Rule. The department anticipates additional discussion of this issue in conjunction with or following ODOT’s preparation of a draft rule. (See also, Part IV of this report regarding suggestions from the City of Bend and COCO for TPR rulemaking).

4. Metro Urban and Rural Reserve Rule Adjustments: This minor rulemaking project was not on the Policy Agenda approved by LCDC in July 2009. However, in January 2010, LCDC directed staff to begin this project in response to concerns brought to the department’s attention by Metro and Metro area counties regarding certain restrictions on future amendments to plans and land use regulations in urban and rural reserve areas.

Status: The commission adopted minor rule amendments to the Metro urban and rural reserve rules at the April 22, 2010 meeting. These rule amendments were filed with the Secretary of State and became effective on April 30, 2010. In adopting these amendments, the commission directed the department to convene the previous (2007) workgroup to consider whether additional amendments should be considered. The department has scheduled an initial meeting of this group May 27, and anticipates that additional meetings will be scheduled. The department expects to report to the commission at its July 2010 meeting, with a possible rule adoption in early September.

5. Greenhouse Gas Emission Targets under SB 1059: This bill was adopted during the 2010 special legislative session. It directs the commission to adopt rules setting targets for metropolitan areas to reduce greenhouse gas (GHG) emissions from light vehicles. The bill also charges the department and ODOT with developing a series of related products to support target rulemaking and metropolitan scenario planning. These products include: developing a statewide strategy for reducing GHG emissions from the transportation sector, developing guidelines for metropolitan scenario planning, preparing a toolkit of measures and actions to reduce transportation GHG emissions, developing a public outreach program, and preparing a report and recommendation on funding scenario planning to the 2011 legislature. The bill includes additional positions for DLCD to conduct this work and directs ODOT to provide funding for these positions, as well as consultants to assist with preparing the required products.

Status: During March, the department worked with ODOT to develop an interagency agreement for how DLCD will use the funds for the new positions. The department and ODOT have also begun work on scoping requests for proposals for consultant services to help complete the various SB 1059 products that support scenario planning for greenhouse gas emission reductions. In June, the department will present recommendations to the commission for appointment of a rulemaking advisory committee to assist with preparing recommendations for the metropolitan area target rulemaking. SB 1059 and HB 2001 (from the 2009 session) require that the commission adopt rules setting targets for GHG emission reductions for the state's metropolitan areas by June 1, 2011.

C. Other Recommended Projects to be Pursued Depending on Staff Resources

The Policy Agenda included a list of additional policy projects that the department and the commission may consider later in the biennium if higher priority projects are completed and staff resources are available. These projects are described below. None of these projects is currently underway. This review of the policy agenda was intended as the opportunity for LCDC to review progress on the higher priority policy items, described above, and decide whether to pursue additional policy projects on this list. However, in addition to the projects identified for possible work this biennium, additional projects identified below in Section III of this report may in fact be more pressing and may take fewer staff resources than those described here. The July 2009 recommended list of projects is described below.

1. Affordable Housing: Continue consideration of potential policy actions suggested by LCDC's 2008 Affordable Housing Work Group, including possible rulemaking and/or legislation.

Recommendation: As part of its legislative proposal, the department provided the commission with a list of the main recommendations being considered by the 2008 workgroup. At its March meeting, LCDC recommended that all of these items would take a considerable amount of additional work in order to reach consensus on legislation or rulemaking, and as such, the department should not pursue them this biennium. However, one of the workgroup recommendations was approved by the commission as a possible 2011 legislative concept, concerning a policy-neutral redraft/recodification of statutes for "needed housing." The department has scheduled additional discussion with interest groups on this concept, and will report back to the commission in July.

2. HB 2229 Rulemaking: Consider and, if necessary, adopt rules regarding "nonresource land," especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under House Bill 2229. In connection with this same effort, the department recommends that the commission study and, if necessary, clarify the "forest lands" definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition.

Recommendation: The department recommends that the commission initiate the rulemaking described above, but not until March or April of 2011 (with a rule adoption in the summer or fall of next year) in order to allow time for completion of several other large projects already scheduled over the next six to nine months. Several counties have indicated an interest or intention to move forward with work allowed under HB 2229 (see Attachment C). The department had communicated to the legislature during the 2009 session that DLCD will probably have resources to work with only one county per biennium. The department suggests that some work as described above is needed to clarify process and substance issues prior to work by counties re-analyzing resource lands and nonresource lands.

3. State Agency Coordination: As authorized by House Bill 2230, amend rules under OAR 660, divisions 30 and 31, and take other actions necessary to update and streamline state agency coordination.

Recommendation: The department is recommending that work on this project be postponed until the 2011 biennium. The department does not have resources to pursue rulemaking or other work on this project in the current biennium.

4. Farm Stands: Reconvene a "farm stands work group" to consider concerns about farm stand sales of wine products.

Recommendation: The Association of Oregon Counties (AOC) has initiated a workgroup to consider the ancillary uses on agricultural land presenting challenges around the state, due to increased frequency and intensity. The workgroup is focusing on "events" on farm land, such as

musical, athletic, and wedding related events. DLCD is represented on this workgroup at the policy and technical committee levels. No additional action is suggested at this time.

5. Criteria for Zoning of Farmland: There is a need to clarify whether and under what circumstances farm profitability may be used to help define agricultural land.

Recommendation: No action on this item is recommended at this time (see HB 2229 discussion above).

6. Environmental Justice Task Force: Revise agency procedures as necessary, to implement Environmental Justice Task Force requirements in (2007) Senate Bill 420.

Recommendation: The Governor's Environmental Justice Task Force (EJTF) is in the process of working with agencies to begin identifying agency actions that implicate environmental justice, as well as assess training needs. The EJTF will continue to work with all agencies on broad issues, as well as individual agencies to evaluate specific programmatic operations and ensure compliance with this Act. The EJTF has met with about 2/3 of all state agencies, but has not yet met with DLCD for this purpose.

DLCD has accepted a Willamette University law student for an externship to fulfill his practicum requirement. This summer, Tapiwa Kapurura will research and report on environmental justice as it relates to DLCD. The report will address environmental justice issues in land use planning generally, and identify some issues specific to the Oregon program. The objective is to provide a framework for the department to evaluate where its actions intersect with environmental justice, and provide guidance for later policy and procedure review.

III. Items Not on the Current Adopted Policy Agenda that Should be Considered

Subsequent to the commission's adoption of its policy agenda in July 2009, several issues have arisen that should be considered for possible action this biennium. While the commission did not initially plan to address these issues during the 2009 – 2011 biennium, the department is recommending that the policy agenda be amended to include them.

1. Division 33 Rulemaking with Regard to Energy Worker Housing: Several counties in central and eastern Oregon are reporting an influx of workers associated with wind energy projects, and are also reporting a shortage of housing accommodations for such workers. The department has proposed that the commission consider temporary rules to address this situation, followed by permanent rulemaking in September of this year. The rules would allow temporary recreational vehicle (RV) campgrounds in exclusive farm use (EFU) zones under OAR 660-033-0130, in order to accommodate workers on wind energy projects during the coming construction season.

Recommendation: The department recommends the commission consider a temporary rule, as described above (See Agenda Item 8), and undertake permanent rulemaking for consideration of a permanent rule in September.

2. OAR Division 6, Forest Lands Template Dwellings Provisions: Some counties are reporting that property owners who were intended by LCDC to be allowed only one dwelling on a tract of land under “template dwelling” provisions at ORS 215.750 and OAR 660-006-0027(1), are able to site more dwellings by selling or otherwise transferring ownership of parcels within the tract to others. A “tract” is a parcel or group of parcels in single ownership. Because the statutory reference to “tract” is not tied to a date, tracts may legally be broken up into constituent parcels and sold, thereby qualifying each parcel for a template dwelling as part of a new “tract.” This is a loophole that needs to be corrected. LCDC faced a similar situation after the Craven vs. Jackson County Court of Appeals case in 1995 determined that the lack of a date tied to “tract” as used for lots of record meant that multiple lot of record dwellings could be approved for a single tract where lots were transferred into separate ownership. Thereafter, LCDC amended OAR 660-033-0130(3)(a) to add a new provision tying the tract reference to a fixed date. A Clackamas County planner recently submitted a petition to the department requesting that LCDC amend applicable rules to close the template dwelling loophole. Wasco County does not permit template dwellings at all and Lane County does not permit them in its primary forest zone.

Recommendation: The department recommends that the commission authorize the department to discuss this issue further with planning directors and other interests, followed by initiation of formal rulemaking regarding provisions under OAR 660-006-0027(1).

3. General “Housekeeping” Rulemaking, Including Farm and Forest Rules: LCDC typically conducts at least one “housekeeping rulemaking” per biennium to clean up or clarify various rules. For example, housekeeping clarification, streamlining and updating are needed for Division 6, Forest Lands and Division 33 Agricultural Lands. For uses authorized in forest zones, proposed housekeeping changes would be necessary for clarification and consistency of the Definitions and Inventory sections with Oregon Department of Forestry standards for identifying forest land, clarification on some uses allowed in forest zones (outdoor gatherings, commercial power generating facilities, youth camps), minor clarification of some land division and dwelling standards, and minor technical corrections to spelling, grammar and statutory or rule references. For division 33 Agricultural Lands proposed changes include moving parts of the Definitions section to the Identifying Agricultural Land section and amending the latter to incorporate new language for compliance with HB 3647 (soils bill). Other proposed changes include clarification on uses authorized on agricultural land (outdoor gatherings, commercial power generating facilities), updating for consistency with new Oregon Department of Environmental Quality standards for composting, minor clarification on some standards for permitted and conditional uses and dwellings in conjunction with farm use, a requirement for consistency with the *Brentmar* ruling, and minor technical corrections to spelling, grammar and statutory or rule references.

Recommendation: The department recommends that the commission undertake “housekeeping rulemaking” to address the issues above and possibly other “housekeeping” issues in other DLCD rules, to be identified by the department.

4. Division 33 Agricultural Land Requirements and Solar Energy: Modify energy facility rules for solar energy as was done two years ago for wind energy. Issues may include footprint, water usage, and land disturbance. Eastern Oregon counties are reporting greater interest in large solar arrays than in new wind energy projects, and several large, commercial solar arrays have already been approved. The current 12- and 20-acre thresholds that apply to commercial energy generating facilities on farmland, require an exception to be taken for virtually all such facilities. This is an impractical approach to siting a use that is coming more into use and that has a legitimate role to play in rural areas.

Recommendation: Initiate rulemaking on this topic. This rulemaking could be combined with rulemaking for the project described in # 2 above or # 5, below.

5. Rules for Wind Energy on Forestlands: Consider amendments to division 6, Forest Land, as was done for wind energy facilities on agricultural land. There is growing interest in siting wind energy facilities on forest land, particularly along the coast. The current 10-acre threshold that applies to commercial energy generating facilities on forest land requires an exception to be taken for most such facilities. This may or may not be the best approach to siting wind generating facilities. Issues that come into play in siting such facilities on forest land include: commercial timber harvesting, scenic and other natural resource values.

Recommendation: Initiate rulemaking for this topic. This rulemaking could be combined with rulemaking recommended under # 2 or #4, above.

IV. Recommendations for Additional Policy Work Suggested by Other Interests

Irrigation Reservoirs on Farm Land: The department expects to receive a request from the Oregon Board of Agriculture for consideration of a rule clarifying when reservoirs are allowed on lands zoned for exclusive farm use. Reservoirs are allowed as a farm use when located on property that is being irrigated, but are not clearly allowed on EFU lands that are not irrigated from the reservoir. The department recommends that the commission include this item on its policy agenda, in conjunction with the rulemaking on temporary housing for construction workers in campgrounds.

Transportation Planning Rule Revisions: The department has received a recommendation for rulemaking to revise the Transportation Planning Rule (TPR). The City of Bend, City of Ashland, League of Oregon Cities (LOC), and the Central Oregon Cities Organization (COCO) have submitted letters (Attachment B) that recommend the commission consider amendments to the Transportation Planning Rule. The cities and COCO are concerned that provisions of the TPR that apply to certain plan amendments and zone changes may be creating barriers to economic development and desired efficient urban development patterns. Problems occur when improvements to state highways are needed to meet ODOT's highway mobility standards. Typically, there is a mismatch between the 20-year planning period used in land use planning and the 6-year development STIP. As a result, local governments are forced to work with state and local partners to identify how needed improvements will be funded before a plan amendment

may be approved. ODOT is addressing this issue through HB 3379 rulemaking – discussed in Item B.3 above. The department is participating in the HB 3379 rulemaking and is using that process to assess whether consideration of amendments to the TPR may be warranted.

Given concerns expressed by COCO, LOC, the City of Bend, and the City of Ashland, the department recommends that the commission schedule a briefing on the HB 3379 rulemaking to better understand and monitor this issue to determine whether rulemaking is warranted. The department recommends that the briefing occur in September of this year.

V. Overall Recommendation

The department recommends the commission amend its Policy Agenda for the 2009-2011 Biennium to include the additional projects described in this report.

VI. Attachments

- A. 2009-2011 LCDC Policy Agenda Summary
- B. Comments and Proposals for Additional Projects
- C. County Letters of Interest Regarding HB 2229



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LCDC Policy Agenda for 2009-11



In August 2009, the Land Conservation and Development Commission (LCDC) approved a list of policy projects it intends to pursue in the 2009-11 biennium. LCDC also indicated its intent to revisit its policy agenda in the spring of 2010. LCDC's policy agenda is a list of projects to improve and update statewide land use policies and rules, including changes necessary to respond to recent legislation, executive orders, and litigation. State law (ORS 197.040) requires LCDC to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission's 2009-11 policy agenda includes:

A. Projects Required by the Legislature, the Governor or the Courts

1. In response to recent court decisions applying the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), work with an appointed workgroup to consider amendments to LCDC's farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people. (Scheduled for fall/winter of 2009).
2. Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments scheduled for October 2009; map amendments will be scheduled in 2010).
3. With the Oregon Department of Transportation, staff the Metropolitan Planning Organization (MPO) Greenhouse Gas Emissions Task Force to prepare legislative recommendations as required by House Bill 2186. (Task Force report due Jan. 2010; may continue through 2010).
4. Adopt state greenhouse gas emissions reduction "goals" for purposes of the Portland Metro Area "scenario planning" land use patterns to meet the reduction goals, as required by House Bill 2001 (administrative rules by June 2011; other work 2011-14).
5. Adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments, as required by House Bill 3286 (hearings Dec. 2009).
6. Adopt procedural amendments to LCDC's Measure 49 implementing rules to carry out adjustments to the claims process enacted by House Bill 3225 (temp. rules done, permanent rules in late 2009 or early 2010).
7. Adopt "housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in House Bill 3099 regarding farm uses (scheduled for Nov. 2009).
8. Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act to address changes to NOAA's federal consistency rules and other changes since the last update (1988) of division 35 (expected mid 2010)
9. Adopt procedural rules for DLCD's Transfer of Development Rights Pilot Project authorized under House Bill 2228 (early to mid 2010)

B. High Priority Policy and Rulemaking Projects (scheduling is dependent on resources; expectation is that some, but not all, of these will be done in 2009-11 biennium)

1. Begin to assist communities in preparing for the effects of climate change, in coordination with other state agencies and other stakeholders. This will include work on a state-level climate change *adaptation* plan, in coordination with state agencies through a state agency workgroup. It also includes statewide climate change *mitigation* planning, as described above; HB 2001 and HB 2186. (initial coordination meeting held Oct. 2009).
2. Conduct a public “policy forum” (or a series), including stakeholders and legislators, to consider the following topics and determine consensus and future direction:
 - Consider public facility finance and planning issues facing local governments, including those raised by the Big Look Task Force and the Revenue Restructuring Task Force, as well as by local governments, and consider land use strategies and policy amendments to address these concerns.
 - Explore changes to streamline and update statewide policy regarding urban growth management, including the priority of lands statutes, urban reserve requirements, population forecasting, Goals 9 and 10, governance and related topics (biennium).
3. Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including OTC work on alternative mobility standards, STIP criteria and the requirements of House Bill 3379. (beginning Oct. 2009)

C. Projects to be Pursued only if DLCD Resources are Available (expectation is that few, if any, of these items will be undertaken in the 2009-11 biennium)

1. Continue consideration of potential policy actions suggested by LCDC’s 2008 Affordable Housing Work Group, including possible rulemaking and/or legislation.
2. Consider and, if necessary, adopt rules regarding “nonresource land,” especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under House Bill 2229. Study and, if necessary, clarify the “forest lands” definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition.
3. As authorized by House Bill 2230, amend rules under OAR 660, divisions 30 and 31, and take other actions necessary to update and streamline state agency coordination.
4. Reconvene a “farm stands work group” to consider concerns about farm stand sales of wine products.
5. Analyze criteria for zoning of farmland.
6. Revise agency procedures as necessary, to implement Environmental Justice Task Force requirements in 2007 (Senate Bill 420).

For questions or additional information about LCDC’s 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext. 229, or e-mail at: bob.rindy@state.or.us, or Michael Morrissey at 503-373-0050 Ext. 320 or e-mail michael.morrissey@state.or.us.



CENTRAL OREGON CITIES ORGANIZATION

BEND, CULVER, LA PINE, MADRAS, MAUPIN
METOLIUS, PRINEVILLE, REDMOND, SISTERS

May 20, 2010

John VanLandingham, Chairman and Commission Members
Land Conservation and Development Commission

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: Request for TPR amendments

Chair VanLandingham, Director Whitman, and Commission Members,

It has come to our attention that the Land Conservation and Development Commission is considering policy agenda items for the remainder of the biennium. The Central Oregon Cities Organization respectfully requests that the Commission investigate and explore amendments to the DLCDC's Transportation Planning Rule.

It has been five years since the LCDC implemented rule changes to the Transportation Planning Rule (TPR) resulting from the Jaqua v. City of Springfield decision issued by the Oregon Court of Appeals. In this five year period, many cities within the Central Oregon Cities Organization have encountered difficulty in satisfying TPR requirements in contemplation of reasonable development proposals.

The TPR changes implemented in 2005 have raised the bar to an unachievable level and have resulted in a variety of unintended consequences, most significantly missed economic development opportunities. The 2005 changes, primarily those relating to "reasonably likely" funding of planned projects and concurrency (timing) of projects to coincide with perceived system need, seemed appropriate in the greater context of traditional public facilities planning.

However, when coupled with the reality of ...

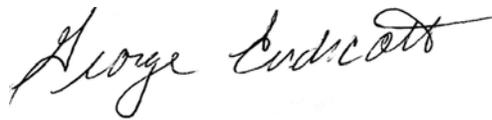
- Lack of state transportation funding to improve state highway facilities, which in many cases are functionally obsolete.
- Lack of legislatively approved funding mechanisms to generate additional funds to construct needed "big-ticket" infrastructure improvements.

- Additional state land use rules which mandate urban related transportation solutions within urban areas, yet require urbanization of non-resource lands irrespective of transportation system capacities or deficiencies.
- Unattainable state mobility standards based on archaic traffic engineering principles which lack system or corridor perspective.
- State access management and design standards which produce unwieldy and unreasonable solutions within urban areas.
- Highway and Rail proximity issues adding significant cost to projects and limiting local grid connectivity.

... the TPR has become an obstacle to economic development rather than a planning tool as intended.

The Central Oregon Cities Organization is a proponent of good transportation planning and we recognize the nexus of land use and transportation system impact. While we do not suggest eliminating the TPR, we do strongly feel that the rule needs to be amended in reflection of the many other rules and realities that local governments encounter when balancing the needs of land use (economic development), congestion and financial resources.

Respectfully,



George Endicott, Chair
Central Oregon Cities Organization



710 WALL STREET
P.O. BOX 431
BEND, OR 97709
[541] 388-5505 TEL
[541] 388-5519 FAX
www.ci.bend.or.us

May 19, 2010

John VanLandingham, Chairman and Commission
Members
Land Conservation and Development Commission

KATHIE ECKMAN
Mayor

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

MARK CAPELL
Mayor Pro Tem

JODIE BARRAM
City Councilor

RE: Request for TPR amendments

Chair VanLandingham, Director Whitman, and Commission Members,

JIM CLINTON
City Councilor

The City of Bend is providing input regarding the Transportation
Planning Rule (TPR) in anticipation of your rule making discussion at
your June 2010 meeting in John Day.

JEFF EAGER
City Councilor

TOM GREENE
City Councilor

The City of Bend understands and supports the intent of the TPR,
however finds that its implementation is an obstacle to providing local
economic development opportunities for existing and new businesses in
Oregon. The challenge can be traced to the amendment to the TPR
(OAR 660-12) in 2005 mandating that all projects necessitated by zone
change applications be fully funded by the end of the 20-year planning
period. As a result, any economic development project which causes an
'impact' on a state highway system must demonstrate how it will
'reasonably' pay or mitigate for large and expensive improvements
which, typically on a state highway, are beyond the financial capabilities
of most communities.

ORAN TEATER
City Councilor

ERIC KING
City Manager

It is important that municipalities mitigate their impacts to the state
highway system, but we need flexibility in when and how we fund those
mitigations, and it is critical that the State partner with local entities in
funding as well as finding alternative solutions. Bend has been working
through the Central Oregon Cities Organization (COCO) to develop
alternative concepts for addressing long term multi-modal transportation
needs. We believe ODOT should seek alternative mobility standards
that focus on a number of performance measures that are flexible, cost
efficient, and still create safe highways. In addition we have discussed
alternative mobility standards, a corridor approach to transportation
planning, as well as creating additional sources of revenue through
income tax sequestration.

The challenges that the City of Bend faces with the TPR as a barrier to economic development are particularly difficult for us because of our isolation from west coast markets and larger metropolitan areas. Consequently, we need to be very responsive to economic opportunities. Finding a solution is going to require a new approach to transportation planning and funding, and we are motivated to participate in innovative solution-oriented discussions with the State. The City's focus is on ensuring that adequate multi-modal transportation infrastructure can be developed to support economic development.

It is important in these difficult times that government remain flexible and make every effort to encourage industrial and commercial growth to help improve State and local prospects for job creation and long term economic stability, while also balancing the long term needs of our infrastructure.

Sincerely,

A handwritten signature in cursive script that reads "Kathie Eckman".

Kathie Eckman
Mayor
City of Bend



P.O. Box 928 • Salem, Oregon 97308
(503) 588-6550 • (800) 452-0338 • Fax: (503) 399-4863
www.orcities.org

May 21, 2010

John VanLandingham, Chairman
Members of the Land Conservation and Development Commission

Richard Whitman, Director
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: DLCD/LCDC Policy Agenda – TPR

The League has heard from cities during the course of the last year about their problems with transportation planning rule (TPR) implementation. Those problems seem to be growing – coupled with existing restricted revenue streams and the growing need for communities to provide economic/job based incentives.

During the last Local Officials Advisory Committee (to LCDC) meeting, this issue again rose during the course of the discussions about LCDC's policy agenda, and the concerns echoed broadly enough to warrant a request to the Commission to add this item to this biennium's policy agenda, for review and possible rulemaking.

ODOT has initiated work required by the passage of HB 3379; but it seems reasonably likely that the work will be narrowly focused to implement the requirements of the bill (performance measures, alternative mobility standards, adjustment in the planning period for a limited number of jurisdictions) , and not undertake a broader review of specific conflicts that local governments are experiencing with the implementation of the TPR with other statewide planning goals, including Goal 10 (Housing) and Goal 9 (Economic Development) – which lie within the purview of DLCD/LCDC. Having said this, I would also like to note that the majority of the HB 3379 work group members that attended the first (and to-date only) meeting also articulated the need and desire for a broader TPR look.

By illustration, I will mention below just a couple of concerns that we are hearing about. This is not an all-inclusive list, nor is it prioritized or necessarily the most significant; it is the tip of the iceberg. And whether these or other concerns with implementation were or were not intended outcomes of the TPR, the point today is that local governments, particularly cities, are struggling with how to integrate planning and TPR requirements – the outcomes of which have long term impacts on their ability to manage where and how growth occurs; their ability to serve that growth efficiently; and their ability to capitalize on near term economic opportunities that benefit both their citizens (jobs) and the state (income).

-Because of the timing of zone changes/comp plan amendments to traffic analysis and mitigation requirements, in order to avoid cost prohibitive mitigation, we have heard of cases where applicants are limiting back their requests, resulting in low or lower density development – contrary to density guidelines/requirements, potentially eventually

“Getting it done for Oregon's cities!”

resulting in a greater UGB land need, and leading to development scenarios that are primarily based on less-impacted transportation systems, whether they make good planning sense or not. Some cases include opportunities for high density mixed-use development.

-Extensive mitigation requirements have also been necessary for requests that include zone changes for vacant residential annexations, when actual development on the property to be annexed may not occur for several years after annexation is approved.

-Most city TSP's (approved by DLCD) are based on average traffic impacts within the UGB, not on the most intensive use scenarios. ODOT's guidance has required a worst case development assumption (from a traffic impact standpoint) to avoid a "significant effect", even when a city's comprehensive plan designations have been adopted and subsequently acknowledged by DLCD in the comprehensive plan, and a PAPA is consistent with the city's comprehensive plan is adopted. This situation has forced many cities to question what they can depend on (comp. plan) when reviewing a development application; or is the reality that all cities now face an expensive and time consuming process to amend their TSP's to assume worst case development from a traffic impact standpoint before they can move forward with new development opportunities?

Several strategies have been employed by cities to find a way to make the current requirements work, but this has resulted in additional spent resources, with some cities still being left stymied. Strategies such as:

-Utilizing a process to "condition" a zone change decision to require that the TPR be met with subsequent development, however, some city codes do not allow a zone change to be conditioned; or

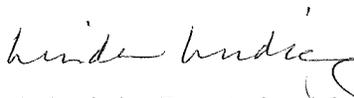
-Attaching a condition of approval to address the TPR through the PUD process, however, many cities have been instructed by DLCD to remove obstacles to needed housing that include removing planned development overlays at the request of the owner- which may undermine the city's ability to ensure that the TPR would be subsequently addressed; or

-Creating "holding" zones for annexed parcels, which effectively slows down the urbanization process and "value enhancement" of annexed properties.

Seemingly, these strategies are a stop-gap solution, which require extensive staff work and coordination as part of a process that is already extremely complex and time sensitive.

Thank you in advance for your consideration of this matter. I understand that representatives from the city of Lincoln City brought up their concerns with the transportation planning rule when LCDC was meeting there last month, and that several other cities or city organizations have shared their concerns and made a similar review request of the Commission.

Most Sincerely,



Linda Ludwig, Deputy Legislative Director

May 19, 2010

John VanLandingham, Chair
Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

SUBJECT: Transportation Planning Rule

Dear Chair VanLandingham and Members of the Commission:

The City of Ashland requests that LCDC consider including a broad look at the Transportation Planning Rule (TPR) as part of its 2009-2011 Policy Agenda. We would encourage LCDC to view this as a cooperative effort with the Oregon Transportation Commission (OTC)

We know that the Legislature passed HB 3379 in 2009 and that the Oregon Department of Transportation (ODOT) has begun work on the rulemaking required by this bill. While we appreciate efforts to look at delaying projects and other ways to measure vehicle congestion, neither HB 3379 nor the rulemaking will address some of the fundamental conflicts that exist between the Transportation Planning Rule and both other Statewide Planning Goals and HB 1059 that requires local governments to reduce the greenhouse gasses produced by passenger vehicles.

The City of Ashland has a longstanding commitment to Oregon's land use planning system and to equity in planning for all transportation modes. The City's comprehensive plan, land use regulations, and transportation plans focus on a transportation network that allows people to travel by transit, bicycle, or foot as easily as by car. This policy was originally adopted because the City Council felt that meaningful alternatives to the automobile are essential to the community's livability. Over time, we have come to believe that modal equity is also more financially and environmentally responsible than designing our community for the motor vehicle.

The City of Ashland recognizes that the TPR was originally drafted to ensure coordination between transportation and land use planning. In application, however, it actively works against good land use by focusing too much on motor vehicle travel. Jurisdictions end up planning to expand roads to accommodate an assumed ever-increasing number of motor vehicle trips rather than planning for land use that reduces dependence on the automobile. The existing TPR does not allow local jurisdictions to consciously decide to accept congestion, to assume reductions in trips made by cars and trucks, or to shift trips to transit, rail, walking, or bicycling. As such, the TPR discourages redevelopment and efforts to increase density because the infrastructure required is so auto-oriented that it works against walkable neighborhoods, employment areas, and commercial districts. Additionally, the required road projects are often expensive, which becomes itself an impediment to desired redevelopment and infill.

Ashland has run into the problems with the TPR recently. As the Commission knows from your recent visit to Ashland, we have been working on a Master Plan for redevelopment of the old Croman Mill site. This former mill site is over 60 acres in size and is critical to ensuring that we



have sufficient employment lands both for our economic health and to comply with Goal 9. To comply with the TPR, we conducted a transportation impact analysis and identified the impacts on City streets and highways owned and managed by the Oregon Department of Transportation. We found that several facilities will require capital improvements to increase the capacity to move passenger vehicles and trucks. Under the current TPR, not only do we need to identify these projects before we rezone the Croman Mill Site, but we also have to have a project financing plan in place prior to adopting the Master Plan. In addition to being prohibitively expensive, some of the projects that would be required conflict directly with some of the City's other land-use goals, including creating a pedestrian-friendly and transit oriented hub at one intersection and increasing the viability of another employment area at another. These projects all assume that we have to accommodate additional vehicle trips, rather than to use rail, transit, and other modes to move workers, residents, and goods. We believe that the expansion of the roads and streets – not increasing density of employment – will actually create the trips. Not only does the car focused approach limit our efforts to comply with Goal 14 and with Goal 9 but it also ultimately creates sprawl and decreases the livability of our community, which limits our success in complying with Goals 3, 4, and 5. Last but not least, planning for more capacity seems directly contrary to direction from the Oregon Legislature that we reduce VMT of passenger vehicles as a way to reduce greenhouse gas emissions.

The City of Ashland believes that DLCDC has a large stake in reconciling the conflicts that the TPR creates with other land use planning goals, and we hope that you include a much broader look at the TPR as part of your policy agenda.

Sincerely,



Martha J. Bennett
City Administrator

- c. Mayor and City Council
Bill Molnar, Community Development Department
Linda Ludwig, League of Oregon Cities



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

April 6, 2010

Richard Whitman, Director
Department of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97301-2540

DEPT OF

APR 07 2010

**LAND CONSERVATION
AND DEVELOPMENT**

Re: Forest Template – ORS 215.750(1) & OAR 660-006-0027(1)(f)

For some time now we have noted a 'loophole' within the OAR and ORS that allows an owner of multiple adjacent properties in the forest zones to develop dwellings on each parcel by simply switching names on the deed titles, rendering the contiguously owned property no longer a 'tract' by definition. For example, a person owning four contiguous properties can place the first property under a husband's name, the second under the wife, the third under both names and the last under the husband or wife's name. By performing this simple task through quit claim deeds the owners have now opened up each property for the template test provisions, potentially establishing a dwelling on each lot. Additionally, much of the time these separations basically void OAR 660-006-0027(1)(h)(i) because there is no longer a tract that includes an existing dwelling although much of the time there is a dwelling on the original tract.

The juggling of ownership, in order not to be considered a tract is not consistent with other such applications as provided within OAR 660-006. The comparable language within the lot of record language, OAR 660-006-0027(1)(a)(C) *"The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract."* The template test does not have this language. Because of this a property owner is not limited to the tract having a dwelling on November 4, 1993 and can take the tract out of common ownership, simply by changing the names on the current deeds. This allows contiguously owned property not to be defined as a tract as found in ORS 215.010(2), *"Tract" means one or more contiguous lots or parcels under the same ownership.* because there is no date in time such as found in OAR 660-006-0027(1)(a)(C).

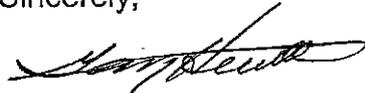
We find that since other portions of the OAR specifically limit development to a tract without a dwelling on November 4, 1993, the template test should have the same language as well. By including the tract language the property owner will be limited in developing multiple contiguous properties, holding the tract to one dwelling and consolidating those contiguous properties as part of the process, the same as OAR 660-006-0027(d)(B) *"When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the*

dwelling is allowed." This would be stronger if the language also required a deed restriction stating the consolidation cannot be repealed if the consolidation is 160 acres for instance. This change will limit residential development within our forest zones the same as for the lot of record.

We have had numerous applications where three, four and five parcels have been taken out of a tract and each parcel later receiving approval for a template dwelling as provided for in OAR 660-006-0027(1)(f) and ORS 215.750(1). The potential build out of our forest zones appears to be in conflict with the intent of limiting development as the lot of record language does. Additionally, the increased time limits for such development as provided in ORS 215.417 to not require immediate build out appear to limit the immediacy of such development. Ultimately, if the OAR and ORS continue to allow more dwellings on land within the forest zones through the template provisions it also allows more dwellings on less land within closer proximity which in turn increases fire issues and overcrowding of our forest lands.

We request these proposed changes within the OAR be applied consistently to fairly allow development within each provision, not providing an advantage to one process over the other.

Sincerely,



Gary Hewitt - Sr. Planner
Farm & Forest Specialist
Clackamas County Planning Division
Department of Transportation & Development

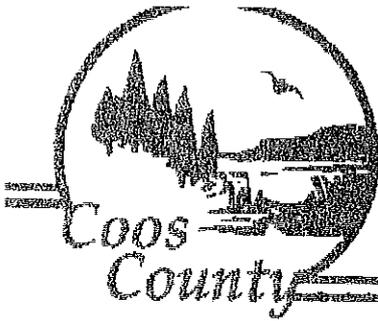
BOARD OF COMMISSIONERS

250 No. Baxter Street, Coquille, Oregon 97423

(541) 396-3121 Ext.247

FAX (541) 396-4861 / TDD (800) 735-2900

E-Mail: nwhitty@co.coos.or.us



NIKKI WHITTY KEVIN STUFFLEBEAN ROBERT E. "BOB" MAIN

May 6, 2010

Richard Whitman, Director
Oregon Department of Land Conservation
And Development
635 Capitol Street NE
Salem, OR 97301

In re: HB 2229

Dear Mr. Whitman:

Coos County would like to put forth our name to be considered as a pilot project for the implementation of HB 2229.

We are especially interested in Sections 5, 6 and 7 but with a slightly different twist in that we would like to incorporate that effort into a Regional Problem Solving Process. We have one city (North Bend) that is running out of room and we are beginning to identify with the City of Bandon some properties that should be county but are inside city limits and some properties that should be inside the city limits but are not. As we begin a review of our previous mapping, our cities and citizens must be involved in the process.

Please let us know if we can provide you with any additional details at this time.

Sincerely,

COOS COUNTY BOARD OF COMMISSIONERS

Kevin Stufflebean *Robert E. "Bob" Main* *Nikki Whitty*

Kevin Stufflebean, Chair / Robert E. "Bob" Main, Vice Chair / Nikki Whitty



JACKSON COUNTY

Oregon

Board of Commissioners

Dave Gilmour, M.D. (541) 774-6117
Dennis C.W. Smith (541) 774-6119
Jack Walker (541) 774-6118

10 South Oakdale, Room 214
Medford, Oregon 97501

May 6, 2010

Mr. Richard Whitman, Director
Department of Land Conservation & Development
635 Capitol Street NE, Ste. 150
Salem, OR 97301-2540

Re: House Bill 2229

Dear Mr. Whitman:

The Jackson County Board of Commissioners would like to express the County's interest in pursuing provisions of House Bill 2229 related to correcting zoning and mapping errors in areas designated farm and forest lands. The Board of Commissioners understands that the Land Conservation and Development Commission (LCDC) must make rules in order to clarify the particulars of how counties will utilize the remapping provisions of HB 2229. As the LCDC will be considering its rulemaking agenda in early June 2010, the County requests that the LCDC include rulemaking for HB 2229 on their Spring 2010 rulemaking agenda.

In addition, if the LCDC appoints a work group to assist them with rulemaking for HB 2229, the Board of Commissioners requests that a representative from the County be afforded an opportunity to participate in the work group.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS

Jack Walker, Chair

Dennis C.W. Smith, Commissioner

Dave Gilmour, Commissioner

DEPT OF

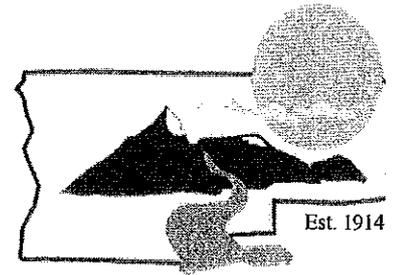
MAY 10 2010

LAND CONSERVATION
AND DEVELOPMENT

JEFFERSON COUNTY

COMMUNITY DEVELOPMENT DEPARTMENT

85 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-4462 • FAX: (541) 325-5004



June 3, 2010

Mr. John Van Landingham, Chair
Land Conservation & Development Commission
c/o Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2524

Subject: Agenda Item 9 - Discussion and Update of the Commission's 2009-11 Policy Agenda.

Dear Chair Van Landingham and Commissioners:

This letter is written on behalf of the Solar Farm Technical Advisory Committee (SoFTAC) which was recently formed by Jefferson County to discuss entitlement issues related to utility-scale solar farms. SoFTAC consists of members from different state agencies, Senator Wyden's office, Representative Huffman, Governor Kulongoski's office, Confederated Tribes of the Warm Springs, the University of Oregon, Oregon Natural Desert Association, renewable energy developers and others. Our first meeting was in March 2010 and our next meeting is scheduled for June 30. As a group we decided to work to amend the 12/20 acre limitations from OAR 660-033-0130 to better address siting issues specific to solar farms.

The State of Oregon has worked hard to emerge as a leader in the sustainable and renewable industries through the adoption of the Business Energy Tax Credits, the Renewable Portfolio Standard and other measures. The RPS mandate will be difficult to meet unless we change land use law to better analyze the impacts of such facilities – outright acreage limitations fall short of this goal. Through close coordination between local and state agencies we can implement regulations to assure appropriately sited facilities can be approved through a review process with reasonable timelines.

One focus of the SoFTAC will be the 20-acre maximum for power generation facilities in OAR 660-033-0130(22). As you know, the rules pertaining to power generation facilities on agricultural land were amended last year to better accommodate and analyze the impacts of wind facilities with new language found at OAR 660-033-0130(37). Central Oregon has many characteristics that make it attractive for utility-scale solar farm development including marginal resource lands with no irrigation and proximity to high capacity infrastructure. The hope is that this group will define a better solution than the acreage maximum and that OAR 660-033-0130 can be amended to better accommodate solar facilities in appropriate locations.

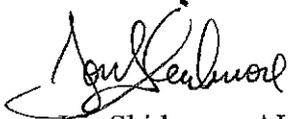
060310 SoFTAC LCDC Letter

EXHIBIT: 14 AGENDA ITEM: 9
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 6-3-10
PAGES: 4
SUBMITTED BY: Jon Skidmore

We request that the Commission to add this important policy issue to the Department's 2009 – 2011 Policy Agenda. Jon Jinings is a member of the group. I can pledge that the group will assist staff in reviewing the issues, drafting legislation and documentation for the Commission's review. We are hopeful that the Commission understands the entitlement challenges to renewable energy production facilities within OAR 660-033-0130 and will work with us to amend the rules. Please note our focus is to find solutions to siting such facilities on marginal resource lands.

Please contact me if you have any questions regarding the SoFTAC or this letter at 541-475-4462 or jon.skidmore@co.jefferson.or.us.

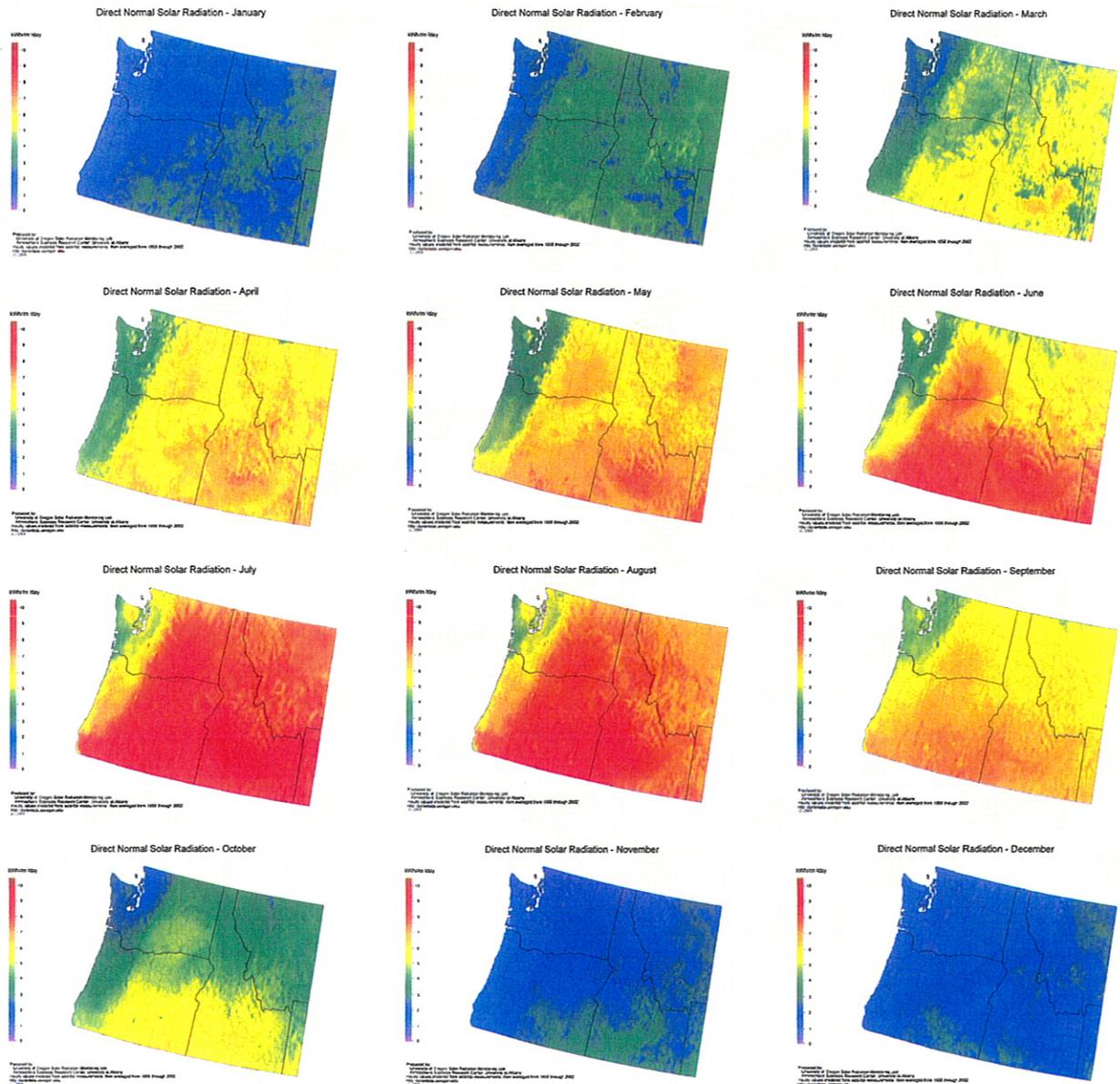
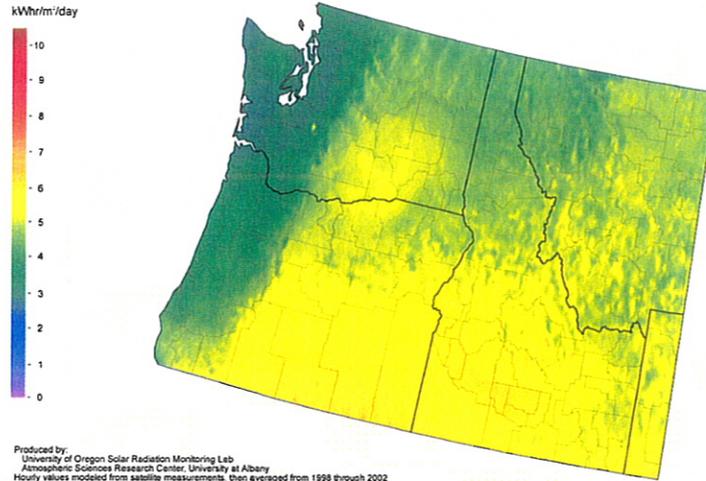
Sincerely,

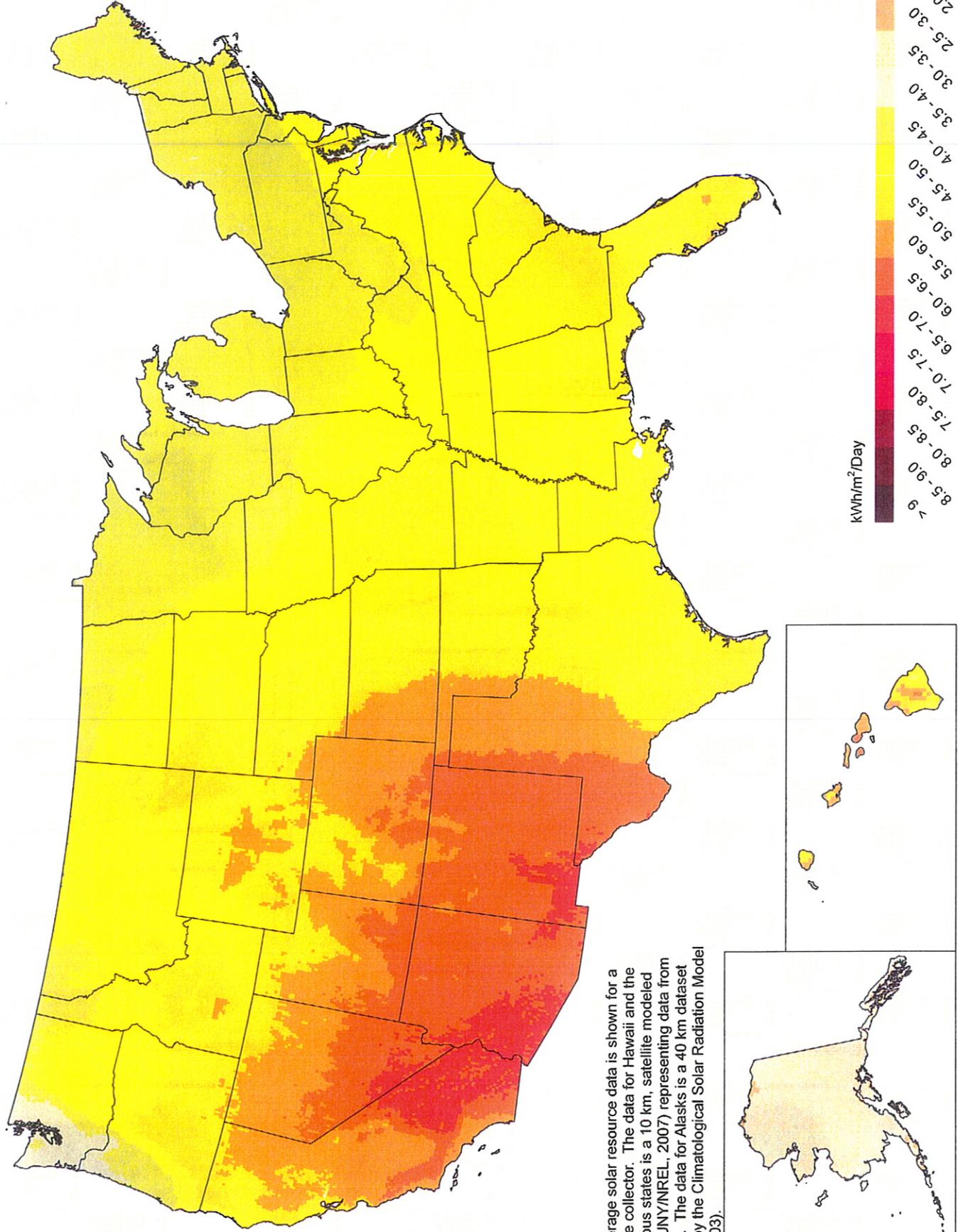
A handwritten signature in black ink, appearing to read "Jon Skidmore". The signature is written in a cursive style with a large initial "J" and "S".

Jon Skidmore, AICP
Planning Director/CDD Manager

Pacific Northwest Solar Resource—Beam Irradiance

Direct Normal Solar Radiation - Annual





Annual average solar resource data is shown for a tilt = latitude collector. The data for Hawaii and the 48 contiguous states is a 10 km, satellite modeled dataset (SUNY/NREL, 2007) representing data from 1998-2005. The data for Alaska is a 40 km dataset produced by the Climatological Solar Radiation Model (NREL, 2003).

Jon Skidmore

From: Troy Gagliano [TGagliano@enxco.com]
Sent: Wednesday, June 02, 2010 8:59 AM
To: michael.morrissey@state.or.us
Cc: Jon Skidmore
Subject: comments on Oregon Administrative Rule 660-033-0010(17)&(22)

Mr. Morrissey, good morning.

I am a solar project developer with enXco out of our Northwest Regional Office in Portland. (see info on our company at www.enxco.com). We have built 30 megawatts (MW) of solar projects in North America and have worked in wind energy since 1987. In total enXco has developed or services over 3,000 MW of renewable energy. We are actively seeking to build solar projects in Oregon and many neighboring states. I am involved with the Solar Farm Technical Advisory Committee and Jon Skidmore has helped me with some questions related to renewable energy permitting in his area of Oregon. I can't make this week's meeting in John Day but wanted to share some thoughts with you.

I am writing regarding Oregon Administrative Rule 660-033-0010(17)&(22) that poses the acreage limitations on high value farm land and non-high value farm land. While I can certainly understand the need to preserve farmlands and irrigated lands, I am concerned that these requirements also pertain to non-arable lands and non-irrigated lands which could be well suited to solar projects.

Large-scale solar development typically requires 8-10 acres of land per megawatt of energy production depending on the type of solar panel used. A 20 acre facility that can only fit a project of 2 to 2.5 MW in size may not justify expense. Utilities are seeking large projects in order to meet customer demands and state requirements to generate more power with renewables. A "large" project for Oregon would be 10 or more MW and that would require at least 100 acres.

Some thought to consider:

- Photovoltaic solar projects are simply a racking system, panels, and minimal equipment. They do not consume water during operation. The projects can easily be removed after their useful life (often 20 years) and the land returned to its formal state. Ares of the state with non-arable lands and no irrigation rights could be ideal for solar projects.
- The acreage limitation doesn't recognize the operational characteristics of utility scale solar farms – especially on non-high value farm land.
- Relying on interpretation of "commercial agricultural enterprise" does not provide certainty to developer.
- Goal 3 Exception is a daunting task with no certainty. A developer can't realistically gauge risk with an uncertain goal exception process. Goal exceptions vulnerable to appeal and are expensive and time consuming.

Thank you and please call me with any questions.

Troy Gagliano

Project Developer

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EXHIBIT: 15 AGENDA ITEM: 9
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 6-3-10
PAGES: 1 Jon Skidmore for
SUBMITTED BY: Troy Gagliano



June 2, 2010

Land Conservation and Development Commission
635 Capital Street NE, Suite 150
Salem, Oregon 97301-2450

Subject: 2009-2011 Policy Agenda

Dear Land Conservation and Development Commission,

Obsidian Finance Group (Obsidian) is a Portland, Oregon based hybrid advisory and investment group. Obsidian's team includes a 19 person full-time staff that consists of accountants, lawyers, chartered financial analysts, real estate experts, insolvency experts, finance professionals, and tax professionals. Obsidian Renewables, LLC is developing larger-scale, ground mounted photovoltaic (solar) facilities in Oregon. Obsidian's subsidiaries have purchased over 1,000 acres in southern and central Oregon for the express purpose of developing solar facilities on the property.

With respect to the LCDC 2009-2011 Policy Agenda and larger-scale solar development, Obsidian offers four important points:

- 1) *A significant amount of land in central and eastern Oregon zoned agriculture (including EFU land) is, in fact, non-resource land. Renewable energy development should be allowed on non-resource land, regardless of zoning classification, without satisfying the 12/20 rule. (OAR 660-033-130 (17) & (22))*

True non-resource land contributes little to the State's agricultural economy and will not support a Commercial Agricultural Enterprise as defined in OAR 660-33-0020(2). Land zoned non-resource is available for renewable energy development without the need to satisfy the 12/20 rule.

Land can be non-resource land in fact, even when zoned as agriculture (or range or forestry). Many counties do not even have non-resource zoning. But they do have lands that are often rocky, alkaline, prone to flooding, or without available water rights – factors that preclude contribution to a Commercial Agricultural Enterprise. These natural limitations alone can cause land zoned as resource or EFU to have little to no economic contribution to the agricultural economy.

- 2) *Marginally productive farmland that does not make a significant contribution to the State's agriculture economy and cannot support a Commercial Agricultural Enterprise should be permitted to be used for renewable energy development without satisfying the*

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12/20 rule. Marginal resource lands with Agriculture zoning classifications often have great renewable energy development potential, and it is good policy for such lands to be available for renewable energy development.

The purpose of the 12/20 rule is to protect the State's valuable agricultural economy and keep productive farmland in productive use. Marginally productive land is often closely associated with highly productive land. For example, many farms and ranches have 50 or more acres that are not in production due to rocks, soil conditions, water, etc. These "rough patches" do not themselves support a Commercial Agricultural Enterprise and should be allowed to be used for renewable energy.

Renewable energy development can be the best economic use for low-production farmland.

- 3) *Renewable energy development is consistent with the goals of a long term, sustainable, healthy, agriculture resource economy. The rules and policies of the LCDC should support integration of renewable energy into rural agricultural practices, not create a tension where renewable energy development is viewed as adverse or destructive to agriculture.*

When considering the State's long-term land use policies and goals, it only makes sense to consider renewable and sustainable energy as woven into the fabric. Please be open to the idea that solar panels or small wind generators installed on those portions of a larger farm or ranch property classified (or sub-classified) as non-resource or low production actually supports rather than precludes the health and future of a Commercial Agricultural Enterprise.

- 4) *The State's policy regarding the use of highly productive farmlands should continue to have the type of balancing of considerations that form the basis for the 12/20 rule, but there should be a new rule that recognizes the distinctive nature of solar farms.*

Let me illustrate by example. The Klamath Basin is an area where the historic impound and storage of water, and its use for irrigation and energy production is giving ground to other priorities. New irrigation strategies require new energy sources and renewable energy is a solution that is consistent with all of the State, federal and private objectives and priorities reflected in the Klamath Basin plans. A portion of the irrigated farmland should be able to be devoted to renewable energy because renewable energy can secure the ability to economically irrigate far into the future, thus assuming the survival of a very important Commercial Agricultural Enterprise.

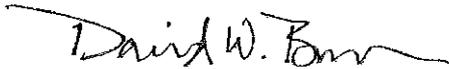
Land Conservation and Development Commission

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Rules modifying the 12/20 acre rule should recognize that developing solar farms is not treated in the same manner as the development of a coal plant or natural gas facility.

Thank you for your time and consideration. We would be pleased to work with staff on this.

Sincerely,

A handwritten signature in black ink that reads "David W. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Brown
Senior Principal
Obsidian Finance Group, LLC



**Planning & Development
Planning**

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May 28, 2010

Richard Whitman, Director
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

Subject: Transportation Planning Rule (TPR) comments

On June 2-4, 2010, the Land Conservation and Development Commission (LCDC) will be holding their next regular meeting to take action on policy agenda items for the remainder of the biennium. We understand that one topic that will be discussed is the Transportation Planning Rule (TPR). In anticipation of this discussion, the Department of Land Conservation and Development (DLCD) and LCDC have encouraged local jurisdictions to share their concerns regarding the TPR. We appreciate this opportunity and would like to provide the following comments in hopes of improving the effectiveness of the TPR.

Background

As DLCD staff is aware, implementation of the TPR over the last few years has been an unpredictable process to navigate, in part due to the various court decisions that have been issued. As it stands today, the TPR poses some serious implications for local jurisdictions in their efforts to plan for, and accommodate, growth in their communities. These circumstances are exacerbated by the fact that local governments are struggling financially to provide a variety of services to their communities. This includes the provision of adequate transportation facilities. The TPR is predicated on the concept that state, county and city governments will have all necessary transportation facilities in place or programmed (with funding strategies) for their respective planning periods. We understand that the HB 3379 committee may be addressing the question of adequate funding. Needless to say, the ability to accomplish this is an increasing challenge.

In Eugene, there are several city, county and state transportation facilities that are currently (or nearly) falling below the facility's performance standard. While some of these facilities may benefit from planned improvements included in our local Transportation System Plan (TSP), others are yet to be addressed. While some local streets have been problematic in evaluating the TPR, by in large, Eugene's biggest challenge has been related to ODOT facilities, as well as some Lane County facilities. Where no future improvements are planned, new development or redevelopment has been severely restricted, if not completely halted.

While the City of Eugene fully supports the intent and purpose of Goal 12 and the TPR, recent court rulings have created unintended consequences that in some cases, seem to be in conflict with other statewide planning goals.

Current Challenges

The current application of the TPR poses challenges both to local governments as they plan for growth, as well as individual property owners who are attempting to further develop their land. Following is a brief discussion of those challenges:

Privately Initiated Amendments: When reading the TPR, it appears that the main focus of the rule was to assure that larger scale changes in a community's land use plans require careful consideration of corresponding transportation impacts. Under these circumstances, one would expect that a local government would be undertaking some form of comprehensive amendment process, possibly involving its TSP as well. For privately initiated amendments, this is not the case. Typically, such requests are site specific and limited in scope. Under these circumstances, the comprehensive nature of the TPR does not match the realities of small scale, quasi-judicial proposals. This is especially true for zone changes.

OAR 660-012-0060(1) states that the TPR applies to amendments of functional plans, an acknowledged comprehensive plan or land use regulation. While previous rulings have determined that a zone change is considered an amendment of a land use regulation, we believe that the TPR, as written, does not account for the realities associated with typical zone changes requests.

The amendments described above address fundamental changes to a local government's adopted plans (Amendments of comprehensive plans and local land use or zoning codes). A zone change, by definition, is simply a request to conform a property's zoning to an adopted and acknowledged comprehensive plan designation. Regardless of this viewpoint, application of the TPR at the time of zone changes has created circumstances we believe are contrary to the state's objectives.

With respect to privately initiated actions, an applicant is responsible for bringing an entire transportation facility into compliance with accepted standards, if that facility is not identified for improvement on the city's TSP. While the TPR allows the city to lower its level of service, the prospect of amending the TSP in response to a simple zone change request is infeasible. Expecting other agencies to do the same for their respective facilities is even more unrealistic. This approach essentially means that one single property owner must bear the responsibility of mitigating a failing facility [as prescribed under 0060(2) or (3)]. In the case of ODOT facilities, the typical mitigation necessary far exceeds the capacity of a single property owner. In Eugene, this has resulted in applications either being withdrawn or severely reduced in scale to avoid mitigation.

Growth Management Planning: Eugene is in the process of developing its strategy for accommodating its 20 year growth needs. The challenge of ensuring adequate city transportation facilities to serve this growth is substantial, especially when many facilities are currently at, or near capacity. While the TPR does provide some limited relief valves (660-012-0060(2)(d) and 660-012-0060(6)), Eugene's primary challenge has been with ODOT facilities, and to a lesser degree, county facilities. While the city works closely with these agencies on transportation issues, it has little control for ensuring long term solutions on their respective facilities. In the absence of any additional flexibility within the TPR, Eugene may be precluded from pursuing strongly supported efficiency measures for growth within its UGB if these strategies affect already impacted facilities.

Unintended Consequences

Based on these and other circumstances, application of the TPR in Eugene is resulting in the following unintended consequences:

Discourages economic recovery

Given the circumstances above, potential projects along certain ODOT affected corridors have essentially been stifled at the prospect of addressing cost prohibitive mitigation measures. This has been especially true for small property/business owners. Several projects (both residential and commercial) have been pursued in Eugene, but ultimately withdrawn, solely because of the prospect of TPR mitigation. Unfortunately, the very areas in Eugene that are more readily able to accommodate additional growth or redevelopment are located in the vicinity of these impacted facilities.

Promotes sprawl

In order to avoid cost prohibitive mitigation, applicants that do proceed are scaling back or limiting their development requests to avoid the requirement for mitigation, resulting in low intensity development. This is especially frustrating when both the city and the applicant are attempting to promote efficient use of the land within the UGB only to find a developer reluctantly reduce the level of development in order to avoid costly mitigation. A recent example of this is a comprehensive plan amendment and zone change approval for a residential parcel. In order to avoid mitigation requirements, the applicant proposed to condition the decision so that the resulting number of units would not exceed 1 unit per acre. Instead of pursuing a project that could yield up to 350+ units (as allowed under the city's adopted plans), future development will be limited to 28 units.

In another instance, a 23 acre parcel designated for high density residential development in the City's Metro Plan and neighborhood plan reduced proposed density by over 300 dwelling units (13 units per acre) after realizing the mitigation costs necessary to satisfy the TPR. The resulting density is slightly above the minimum required for the high density designation. The loss of these 300 units will eventually need to be made up elsewhere.

Continued development scenarios such as this will ultimately require Eugene to consider larger UGB expansions in the future.

Precludes communities from balancing transportation and land use objectives

As currently applied, the TPR allows very little, if any, opportunity for local governments to balance its land use objectives with the transportation requirements specified in the TPR. For example, comprehensive plans and neighborhood plans that were adopted and acknowledged by the state cannot necessarily be relied upon as a blueprint for future growth. In essence, the TPR prohibits consideration of previously adopted plans (even if these studies contained transportation considerations) when evaluating a zone change request. For zone change requests that are simply attempting to bring properties into conformity with the adopted comprehensive plan designations, the TPR, not the comprehensive plan, is the primary determinant of future growth potential. Under this approach, the TPR essentially trumps any adopted land use goal, objective or policy.

Limits growth management solutions

The current application of the TPR raises serious concerns for how cities can plan for future growth. Eugene is in the process of evaluating how to accommodate its future housing and employment needs. As Eugene looks at efficiency measures for how to grow more densely within our UGB, we are already seeing many areas of the city potentially eliminated from consideration simply because they involve failing or near failing ODOT or county facilities with no programmed improvements. These circumstances can be especially frustrating when considering growth scenarios that emphasize less dependence on vehicle use. The flexibility allowed in the TPR (660-012-0060(6)), while helpful, provides minimal assistance in satisfying the TPR.

Opportunities for Improvement

Based on the experiences in Eugene, we would like to offer the following suggestions on how the TPR might be improved:

1. **Exempt Zone Changes:** As noted above, Eugene believes that zone changes should not be considered an “amendment of a land use regulation”. We have found that application of the TPR at the time of zone change is impacting the state’s land use and growth management objectives disproportionate to the potential transportation benefits that may be achieved (see comments above). While it might seem advantageous to mitigate potential traffic impacts before any actual development is proposed, such mitigation rarely occurs, as applications are either abandoned or scaled back significantly to avoid any mitigation.
2. **Flexibility to provide mitigation over the planning period:** Greater flexibility in both the thresholds for determining impact and the mechanisms for implementing mitigation measures would help realize feasible improvements while accommodating growth. Areas to address could include:
 - Clarify/Modify the term “Significant Affect”: The TPR provides minimal guidance as it relates to determining “significant affect”. Eugene has based its determination on “reasonable worst case scenarios” which is not defined in the TPR. While some clarification of “significant affect” would be helpful, the larger concern is determining a reasonable level of impact in the absence of any actual project. Without the benefit of having development proposals to evaluate, these hypothetical scenarios can vary greatly. Any potential definition should account for projects that may be higher or lower in intensity over time (not simply worst case scenarios for every proposal).
 - Work with ODOT to modify their mobility standards (Volume to capacity ratio) to be less restrictive and/or balanced with other land use objectives.
 - Minor vs. major transportation Improvements: Consider eliminating this distinction or modifying it at a minimum, as it is referenced in 660-012-0060(2)(e). Eugene has had 2 recent examples where mitigation was proposed by an applicant, that if determined to be major improvements under 0060(2)(e), could have precluded the mitigation from being provided because it would require an amendment to the city’s TSP (infeasible during a zone change process). If the affected agency supports the mitigation proposal, whether the mitigation is minor or major should be immaterial.
 - Phased Compliance: Consider amendments to allow greater flexibility in phasing mitigation. Consider allowing projects that are identified in adopted transportation system plans, whether funding is secured or not.

- 3. Make the burden of mitigation proportional to the impact:** Under the current TPR, the rule has no accommodation for considering the proportional impact of a particular request. In essence, the rule functions under a "last straw" concept. If a transportation facility is near failing and the next request pushes the impact beyond acceptable levels, that project is responsible for bringing the transportation facility up to the identified performance standard. Particularly when ODOT facilities are involved, there are rarely modest (and proportional) mitigation measures available to a developer that would bring the facility up to the identified performance standard to restore capacity. Rather, it is more common to see the necessary mitigation be a substantial project. For most applicants, these choices are completely infeasible and disproportionate to their project.

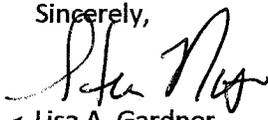
Given that these circumstances run contrary to other laws that limit a local government to imposing proportional mitigation (e.g. Dolan), we encourage the state to consider an amendment that bases the burden of mitigation in some proportional way. One option would be to consider a "fee in lieu" approach if no proportional mitigation is available.

- 4. Balance the needs of ODOT facilities with other statewide planning goals:** Under its current application, the TPR provides minimal means to balance the needs of other statewide planning goals, in particular Goals 9 and 10. While we support the need for maintaining effective and functioning transportation systems, we do not believe that it is in the best interest of our community or the state to do so at the expense of sound growth management strategies. Given the limited resources to local governments, as well as the state, we are concerned that under the current approach, TPR compliance may lead cities to make decisions based predominately on a path of least resistance (e.g. avoids substantial transportation mitigation). We would encourage LCDC and staff to consider greater flexibility in the TPR to enable actions that balance the objectives of Goals 9 and 10 with those in Goal 12.

While we realize that our comments call for a more comprehensive assessment of the TPR, we do believe that left unchecked, the circumstances we've described will become more common place throughout the state. Eugene has had the unenviable position of being at the leading edge of these impacts, as a result of recent court decisions in our community. However, we are hearing from other communities who are beginning to experience similar impacts.

We appreciate your willingness to listen and look forward to the opportunity of working with your office on potential solutions.

Sincerely,


for Lisa A. Gardner
Planning Director
City of Eugene

cc: John VanLandingham, Chair, LCDC
Linda Ludwig, LOC

Community Development
Planning Division
501 SW Madison Avenue
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May 25, 2010

John VanLandingham, Chair
Land Development and Conservation Commission
635 Capitol Street, NE, Suite 150
Salem, OR 97301

Local Implications of Transportation Planning Rule Implementation

Dear Chair VanLandingham and Commissioners,

We are writing to request your attention to a matter that has had a significant impact on the Corvallis planning program over the last few years. That issue is the implementation of the Transportation Planning Rule (TPR) and its effect upon our annexation and zoning district change decisions. This issue also has larger implications for the success of the statewide planning program, as explained in this letter. We ask that you consider a process to evaluate and amend the Transportation Planning Rule to address these issues.

As you are no doubt aware, OAR 660-012-0060(1) states that the requirements of the TPR must be addressed, "Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility...." This rule makes sense when one thinks about large-scale changes to land use regulations, functional plans, or comprehensive plans that could result in large, system-wide traffic impacts that would be outside the planned parameters of a jurisdiction's transportation system plan (TSP). To ensure orderly development and provision of appropriate transportation infrastructure to support such development, it is reasonable to require reassessment of traffic impacts and to ensure that appropriate mitigation for such impacts be provided in conjunction with large-scale "rule changes."

In the past, when considering zone change decisions that were consistent with Comprehensive Plan Designations, whether stand-alone within the City Limits, or done in conjunction with annexations, a finding that the proposed zoning was consistent with the Comprehensive Plan Designation was sufficient to demonstrate compliance with the TPR. This was because Corvallis' Transportation System Plan (TSP) was based on a model that took into account anticipated

development under Comprehensive Plan designations for the entire Urban Growth Boundary. Our TSP (like most prepared by local jurisdictions, to my knowledge) assumes that anticipated development within the UGB would create an average traffic impact, based on the assumption that there would be some uses that would create high amounts of traffic and others that would create less traffic.

At some point within the last few years our local ODOT representative made it clear that ODOT would no longer accept the argument that if a zone change is consistent with a Comprehensive Plan Designation, then it automatically complies with the TPR. The reason given was the potential for impacts beyond the average impacts assumed in our TSP. ODOT's position was clarified to state that, unless a jurisdiction has prepared a TSP that assumes "worst-case" development from a traffic impact standpoint, then a "significant effect" (per the language of the TPR) could occur. Consequently, the TPR would need to be addressed for these types of applications. Upon further request for clarification, ODOT staff provided a document, developed in April 2006, entitled, "Transportation Planning Rule (TPR) Reviews - Guidelines for Implementing Section 660-012-0060." (see attached excerpt of Section 3.2.14 - Analysis for Zone Changes in Conformance with Comprehensive Plan Amendments) The practical result of this for the City of Corvallis has been to make annexations and zone changes nearly impossible to approve.

The reason for our difficulty with this aspect of the TPR is because of the disconnect between the way the TPR is written and the way in which requirements for transportation system improvements are typically required at the local level. The TPR states that the issue of "significant effect" must be addressed at the time of a rule change - typically these are considered to be zoning district changes, land development code amendments, or comprehensive plan amendments. DLCD requires that we send a notice when we are considering one of these types of rule changes, and DLCD staff have been coordinating with ODOT to make sure the TPR is addressed. In order to sufficiently address the TPR we need to be able to demonstrate that if a proposed rule change could result in a "significant effect" that would worsen the performance standard of an ODOT transportation facility below acceptable levels (or that would send any additional trips to an intersection that is already "failing"), then mitigation for that impact is planned and funded, or will be required with development. However, it is not unusual for us to receive annexation applications that include only zone change and annexation requests, with no subdivision or other plan for development proposed in conjunction with the annexation. Actual development on a property that is annexed may not occur until several years after an annexation is approved.

Based on our understanding of "takings" law, in order to be Constitutionally permissible, required improvements and exactions by local governments must have a rational nexus and must be able to demonstrate rough proportionality to the anticipated impacts of a development. Therefore, it does not seem to be legally permissible to require transportation system improvements in association with an annexation/zone change approval if no impacts are associated with the approval. And, as you are no doubt aware, our City and most local

jurisdictions do not have adequate funding to allow these types of improvement projects to be included in our Capital Improvement Program. Therefore, we are largely dependant upon new development to make infrastructure improvements to mitigate for the impacts of the development. Additionally, it is not unusual for an improvement needed to bring a failing intersection back to an acceptable level of service to cost millions of dollars, which is typically well beyond the means available to the applicant for a small annexation. Although the TPR does not appear to address the need for rough proportionality, we certainly do!

Part of our particular problem in Corvallis is that ODOT's performance standards for a number of ODOT facilities and intersections within and around Corvallis are already below acceptable levels. The way the TPR is written, if any rule change might result in sending additional trips to a facility that is already failing, then minimally, mitigation for that impact must be established with the rule change. It is a "straw that broke the camel's back" type of scenario where a potential rule change that could potentially send a handful of trips to an intersection that is already failing would be obligated to provide mitigation to bring the failing intersection to an acceptable performance standard, or minimally, to mitigate for the potential "worst-case" traffic impacts of the rule change.

Some other jurisdictions utilize a process where it is possible to "condition" a zone change decision to require that the TPR be met with subsequent development. However, Corvallis Code does not currently allow us to "condition" a zone change and it is not clear to us how a zone change could be a contingent decision. Therefore, attaching a condition of approval to a zone change decision does not appear to be a viable option for addressing the TPR. Additionally, to condition a zone change such that development on a property could create no more additional trips than were allowed under the prior zoning (until such time as necessary traffic mitigation were in place) would effectively nullify the purpose for the zone change.

Another strategy that has been explored is attaching a condition of approval to address the TPR in conjunction with development on an annexed property through the Planned Development (PD) process. However, Corvallis, like Eugene and some other jurisdictions in Oregon, has been instructed by DLCD that we must remove obstacles to providing "needed housing" in our community through a clear and objective (non-discretionary, non-PD) process. Specifically, we have been required to put in place measures that require us to remove Planned Development Overlays from residential properties at the request of the owner (unless PD development is requested by an owner, or already established on the property through a Detailed Development Plan approval). The upshot for us is that, unlike in the past, the establishment of a Planned Development Overlay on a residential property no longer holds the binding force it once did. We cannot find that simply approving a Planned Development on a property in conjunction with an annexation/zone change application, or establishing a PD Overlay zone, will ensure that the TPR will be addressed through PD conditions. This is because PD approvals can expire and property owners can request to remove PD Overlays in the future and we would be obligated to approve

such a request under the “needed housing” rules. The recent Oregon Court of Appeals decision in Willamette Oaks, LLC v City of Eugene (232 OR App 29) has reinforced the problems with relying on a Planned Development Overlay to address the TPR in the future (that decision found that it was not permissible to delay the determination of whether potential development that would occur as the result of a "rule change" might result in a "significant effect" per the TPR).

Because of these issues, we have been in a bind regarding residential annexation applications for the past several years. One developer in particular has recently applied for the third time to annex particular properties into the City. Although we believe we may have found a way to adequately address the TPR through a planned development approval associated with the annexation and zone change requests, it remains to be seen whether this approach will be successful, and the convoluted process required is not a reasonable model to follow for all future annexations.

Aside from our particular issues with the TPR, we believe there are some larger issues with how implementation of the TPR seems to be inconsistent with some of the other goals of the Statewide planning program:

- Subverting Planned Urban Densities - By obstructing the ability to zone properties consistent with comprehensive plan designations, the TPR, as it is currently being implemented, is obstructing jurisdictions from achieving their planned densities, and may be contributing to the sprawl of development into other areas that are less subject to the dictates of the TPR, but which are less able to handle increased density. In other jurisdictions, we have heard reports that conditional zone changes mandate very low density development until such time that necessary transportation system improvements are completed. As noted previously, many of these necessary transportation system improvements are of such a scope that they cannot be realistically financed by private development or by local governments. Consequently, we seem to be “held hostage” to system improvements over which we have little control.
- Inconsistent with the Statewide Planning Program - Simply put, the Oregon program is predicated on establishing areas for urban growth and allowing for urban-level development in those areas. The current interpretation of the TPR is effectively denying jurisdictions’ ability to implement urban-level development within urban growth boundaries.
- Discouraging Economic Recovery - Potential projects along ODOT-affected corridors have been discouraged by the prospect of addressing cost-prohibitive mitigation measures. This is especially true for small business owners.

- Inconsistent with the Original Goals of the TPR? - In its infancy, the Transportation Planning Rule was touted as a set of regulations designed to reduce vehicle miles traveled by promoting alternative modes of transportation, etc. It is unclear how this has evolved into a regulation that seems to be designed to facilitate the flow of vehicles and freight along state highways. This goal also seems to run counter to recent statewide initiatives to reduce greenhouse gas emissions, etc. Typically, building increased highway capacity results in more vehicles on the highways: "If you build it, they will come."

In conclusion, we ask that you consider initiating a process to evaluate and amend the Transportation Planning Rule to address the issues raised in this letter. Clearly, there is a need for a larger funding solution to provide for needed improvements to state highways; however, holding local jurisdictions "hostage" until this issue is resolved is not a sustainable solution (in either sense of the word). Please feel free to contact me if you have any questions regarding the issues we've identified.

Respectfully,



Kevin Young, AICP
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kevin.young@ci.corvallis.or.us

cc. Ken Gibb, Community Development Director, City of Corvallis
Richard Whitman, Director, Oregon Department of Land Conservation and Development

Metro Review Schedule (Tentative)

Metro/Counties Reserves Decisions

Final local decisions – early June 2010
Submission to DLCD – mid to late June 2010
Notice of opportunity for objections – late June
Objections filed – late July
DLCD staff report – mid September
Exceptions – late September
LCDC hearing – October 20-22 (Portland)

Metro – Regional Transportation Plan

Final Metro decision - June
Submission to DLCD – late July
Notice of opportunity for objections – late July
Objections filed – mid to late August
DLCD staff report or director's decision – October
Appeal/Exceptions – November
LCDC hearing – December 1-3 (Grants Pass)

Metro Capacity/UGB Decision

Final Metro decision – December 2010
Submission to DLCD – early January 2011
Notice of opportunity for objections –
Objections filed – late July
DLCD staff report or director's decision –
Appeal/Exceptions –
LCDC hearing – April – June (2011)

EXHIBIT: 13 AGENDA ITEM: 9
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 6-3-10
PAGES: 1
SUBMITTED BY: DLCD



UNIVERSITY OF OREGON

Mr. John Van Landingham, Chair
Land Conservation and Development Commission
c/o Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

June 15, 2010

RE: Solar farms and land use planning

Dear John Van Landingham,

It is time to start planning for the solar energy contribution to the region's energy mix. Oregon and the Northwest are moving towards a more sustainable energy mix and energy efficiency, conservation, and all renewable technologies have appropriate roles to play in the region's energy future. Conservation and energy efficiency can meet only a portion of the region's growing energy requirements and hydroelectric resources in the region have been fully developed. Wind generation is showing great promise and during the next five to ten years, 5,000 MW of wind generating facilities in the Northwest are being planned.

Both wind and hydro are winter peaking resources. Solar is a summer peaking resource and significant deployment of solar energy technologies is needed to meet the growing summer electrical loads. To create a balanced renewable energy mix for the region, between 1,000 and 5,000 MW of solar generation will be needed. While some solar energy can be generated on rooftops and along highways, the majority will be generated in the sunnier areas of Oregon on underutilized land.

Oregon is at the forefront of research and development for the next generation of solar panels. A collaboration of Oregon's universities, private industry and developers are working on a myriad of concepts that would make solar panels more efficient, less expensive and feasible for mass manufacturing. Identifying areas in Oregon where solar farms can be established will spur the solar industry and reduce the time, risk, and cost for deploying solar systems. With much of the state east of the Cascades having excellent solar energy resource but poor agricultural value, Oregon should work together with the R & D efforts, facilitate local deployment of technologies manufactured in the state, and be a leader in developing and utilizing solar farms.

Studies that UO Solar Radiation Monitoring Laboratory conducted in 1980 for the Oregon Department of Energy showed that large tracks of land in central and south eastern Oregon are suitable for large scale solar developments. The optimum choices are lands which have marginal utilitarian value and are located near existing transmission lines. Some of this land is under forest and agricultural use and therefore not suitable for solar development. However, there are hundreds of thousands of acres in central and eastern Oregon that are not suitable for sustainable farming or forestry.

A "solar farm" can range in size from several megawatts to 100 MWs. In terms of the land mass required for such energy production, the range will be between 10 to 1000 acres. In Germany, 10 to 50

MW (30 to 150 acres) solar farms have already been installed and the incident solar energy in Germany is significantly less than in Oregon. In Oregon, with our large underutilized rangeland, we should be looking at solar farms of 100 or more acres per installation to make these installations economically viable.

With proper planning and management, solar farms can provide local jobs and income and help revitalize local economies. In order to provide for an orderly and sound deployment of solar farms in Oregon, lands suitable for solar farms should be identified with clear, consistent, and easy to use guidelines for permitting. This identification and permitting process would make solar development less risky and make Oregon more attractive to those interested in installing solar farms in Oregon. To minimize the need to install expensive transmission lines, initial sites should be located near transmission corridors. The transmission requirement initially excludes land in the more remote areas of Oregon. However, there are considerable areas in central and eastern Oregon located near transmission corridors that have a good solar resource and that are of marginal value for agriculture and do not have access to irrigation. Developing a clear policy and guidelines for deployment of solar farms on these poor agricultural lands will move Oregon closer to national leadership in solar energy and help sustain the economies in central and eastern Oregon.

Information enquires from planners and the solar industry have prompted me to write this letter. This is an important and timely issue and I suggest that it be added to the DLCD Policy Agenda for the 2009-2010 biennium to assure that state land use regulations properly address utility scale solar farm proposals in Oregon.

Sincerely,



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Cc Jon Skidmore

Proposed Policy & Rulemaking Timeline

| ID | Task Name | Priority | May | June | July | August | September | October | November | December | January | February | March | April | May | June | July |
|----|--|----------|-----|------|------|--------|-----------|---------|----------|----------|---------|----------|-------|-------|-----|------|------|
| 1 | 2009 - 2011 Rulemaking | 500 | | | | | | | | | | | | | | | |
| 13 | (S) M49 - SB1049 Permanent | 500 | | █ | █ | | | | | | | | | | | | |
| 30 | (C) CZMA - Consistency | 500 | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | | | | |
| 45 | (C) Territorial Sea Plan Map | 500 | | | | | | | | | █ | █ | █ | █ | █ | █ | █ |
| 51 | (C) SB 1059 GHG | 500 | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| 42 | (C) HB 2229 Reacknowledgement | 300 | | | | | | | | | | | █ | █ | █ | █ | █ |
| 18 | (S) Willamette Greenway | 200 | | █ | █ | █ | █ | █ | | | | | | | | | |
| 24 | (S) Metro Reserves | 200 | | █ | █ | █ | █ | █ | | | | | | | | | |
| 36 | (S) Energy Worker Housing | 200 | | █ | █ | █ | █ | █ | | | | | | | | | |
| 2 | (S) Div 006/033 Rulemaking (priority order): Solar on Agriculture; Irrigation Reservoirs; Housekeeping | 100 | | | | | █ | █ | █ | █ | █ | █ | | | | | |
| 5 | (S/C) Div 006/033 (not recommended at this time) Wind on Forest; Non-conforming Use on Ag; Forest Template | 100 | | | █ | █ | █ | █ | █ | | | | | | | | |
| 7 | (S) Delegation of Authority | 100 | | | | | | | | | | | | | █ | █ | █ |
| 10 | (S) Public Records Request/Fee | 100 | | | | | | | | | | | | | █ | █ | █ |
| 58 | 2009-2011 Policy | 500 | | | | | | | | | | | | | | | |
| 1 | Climate Change Adaptation | 400 | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| 3 | Urban Policy Forum (population forecast; infrastructure; urban growth) | 400 | | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| 8 | TPR/ODOT 3379 | 400 | | | | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| 11 | Farm Stands - Ancillary Uses | 300 | | | █ | █ | █ | █ | █ | █ | █ | █ | | | | | |
| 13 | Environmental Justice Task Force | 300 | | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |

500 - Required
 300 - Other Recommended
 100 - New Proposal

400 High Priority
 200 New Work begun

(H) Housekeeping
 (S) Simple
 (C) Complex