



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



September 17, 2009

TO: Land Conservation and Development Commission  
FROM: Paul Klarin, Marine Affairs Coordinator  
SUBJECT: **Agenda Item 10(c), October 1-2, 2009, LCDC Meeting**

## COMMISSION BUSINESS AND REPORTS

### **Appointment of a Hearings Officer Related to the Adoption of a Rule to Amend the Territorial Sea Plan**

#### **I. SUMMARY**

Request for permission to hold a public hearing, and permission to appoint a hearings officer to conduct the hearing, on a proposed rule to amend the Territorial Sea Plan. The proposed public hearing is *in addition to* a subsequent rulemaking hearing that would be conducted with the full commission prior to consideration of the proposed changes to the Territorial Sea Plan.

#### **II. RECOMMENDED ACTION**

The department recommends that the Land Conservation and Development Commission (LCDC) conduct a public hearing on the proposed amendment of the Territorial Sea Plan within the geographic area that will be affected by the amendment. The department suggests that the Ocean Policy Advisory Council (OPAC) meeting in Florence on October 23, 2009 is an appropriate venue to conduct the public hearing, as the OPAC will be considering its recommendations to the commission for the amendment at that meeting. The department also requests that the commission appoint Dale Blanton as hearings officer for the public hearing.

#### **III. BACKGROUND**

Under Executive Order No 08-07, Governor Kulongoski instructed the department to seek recommendations from OPAC concerning the appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy siting projects, and that the final amendment recommendations be provided to LCDC on or before December 1, 2009. The OPAC Territorial Sea Plan workgroup began its work on the proposed amendment in late 2008 and forwarded a draft version of the amendment to the department on May 15, 2009. On December 5, 2008, the commission approved the creation of the Territorial Sea Plan Advisory

Committee (TSPAC) to assist the department in the development and to recommend an amendment to the Territorial Sea Plan for renewable energy development in the territorial sea. Based on the draft provided by the OPAC workgroup, TSPAC, at its meeting on September 11, 2009, voted unanimously to forward a final draft version of the amendment, Part Five of the Territorial Sea Plan: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, to the commission for its consideration. At the same time, TSPAC forwarded the recommendation on Part Five of the Territorial Sea Plan to OPAC for their final review and consideration.

Under ORS 183.335(3), when an agency is required to hold a hearing on a proposed rule that would apply to a limited geographic area within Oregon, the hearing must be held at a place convenient for the majority of residents within that area. Here, we are voluntarily holding the hearing, so ORS 183.335(3)(b) does not expressly apply. However, because the TSP amendment rulemaking arguably affects or applies to only a limited geographic area, we are recommending that the commission hold a hearing within the geographic area. The OPAC meeting in Florence, where OPAC will review and discuss that proposed amendment, is an appropriate venue for the public hearing -- as many of the stakeholders who are interested in the proposed TSP amendment will be present.

### **III. DRAFT PART FIVE OF THE TERRITORIAL SEA PLAN**

The draft Part Five of the Territorial Sea Plan, “Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities,” would establish policies, implementation standards and project plan requirements for renewable energy facilities to be sited within the state’s territorial sea. The policy and implementation requirements are based on those contained in Goal 19 Ocean Resources and the existing policies and implementation requirements contained in Parts One and Two of the Territorial Sea Plan. The advisory committee and state agencies used the experience and knowledge they obtained through the Reedsport Settlement Agreement as one source for developing this proposal. The Reedsport Settlement Agreement was designated and conducted as an Oregon Solutions Project by Governor Kulongoski for Ocean Power Technology’s permit application to the Federal Energy Regulatory Commission.

The new Part Five would make three major changes to the current plan. The Policy section will further clarify and refine existing policies as they will apply specifically to the renewable energy facility development. The Implementation Requirements section will establish a process for state agencies to coordinate their actions in reviewing project proposals, and will also provide additional detail on the required content and protocols for conducting the inventory and effects evaluation that must be conducted by applicants who are requesting state authorizations for renewable energy projects. Finally, the Plan Development section outlines the types of plan information that will be required for the development and operation of a renewable energy facility including plans for phased development, facility design, project operation, contingency, emergencies, inspections, monitoring, adaptive management, decommissioning, financial assurances, and stakeholder agreements.

**IV. DRAFT MOTION**

***Proposed Motion:*** I move the commission accept the department’s recommendation to conduct the public hearing for amendment of the Territorial Sea Plan at the OPAC meeting on October 23, 2009 in Florence and that Dale Blanton be appointed as hearings officer to conduct the hearing.

**Attachment A.** Draft Part Five of the Territorial Sea Plan, Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities

# Oregon Territorial Sea Plan

## DRAFT PART FIVE:

# Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities

PART FIVE of the Territorial Sea Plan describes the process for making decisions concerning the development of renewable energy facilities (*e.g.* wind, wave, current, thermal, etc.) in the state territorial sea, and specifies the areas where that development may be sited. The requirements of Part Five are intended to protect areas important to renewable marine resources (*i.e.* living marine organisms), ecosystem integrity, marine habitat and areas important to fisheries from the potential adverse effects of renewable energy facility siting, development, operation, and decommissioning and to identify the appropriate locations for that development which minimize the potential adverse impacts to existing ocean resource users and coastal communities.

Oregon's renewable energy portfolio lists ocean energy as a renewable energy source with potential to reduce dependence on fossil fuels.<sup>1</sup> Renewable ocean energy facilities development may present opportunities to apply technologies that rely on wave, wind, current or thermal energy, that may potentially reduce the environmental impact of fossil fuels. If developed in a responsible and appropriate manner, in accordance with the requirements of this Part and other applicable state and federal authorities, renewable ocean energy may help preserve Oregon's natural resources and enhance our quality of life.

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## A. Renewable Energy Facilities Development

### 1. Background

Oregon's territorial sea has been identified as a favorable location for siting renewable energy facilities for research, demonstration and commercial power development. These facilities may vary in the type and extent of the technologies employed and will require other related structures, equipment or facilities to connect together, anchor to the seafloor and transfer energy to on-shore substations. The State of Oregon will require the proper siting and development of these facilities in order to minimize damage to or conflict with other existing ocean uses and to reduce or avoid adverse effects on marine ecosystems and coastal communities.

State agencies, including the Oregon Departments of State Lands, Fish and Wildlife, Parks and Recreation, Environmental Quality, Land Conservation and Development, Water Resources, Energy, and Geology and Mineral Industries, need specific policies and standards for considering the siting and regulation of renewable energy facility development in the territorial sea. The State also needs specific policies and standards to guide federal agencies in the siting

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1 and regulation of renewable energy facilities development located in federal waters adjacent to  
2 the Oregon territorial sea.<sup>2</sup>

3  
4 **NOTE: *The following policies and implementation requirements are mandatory. Decisions***  
5 ***of state and federal agencies with respect to approvals of permits, licenses, leases or other***  
6 ***authorizations to construct, operate, maintain, or decommission any renewable energy***  
7 ***facility to produce, transport or support the generation of renewable energy within Oregon's***  
8 ***territorial waters and ocean shore must comply with the requirements mandated in the***  
9 ***Oregon Territorial Sea Plan. The enforceable policies of the Territorial Sea Plan and the***  
10 ***Oregon Coastal Management Program are applicable to those federal actions that affect***  
11 ***Oregon's coastal zone and are subject to the federal consistency requirements of the federal***  
12 ***Coastal Zone Management Act.***

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## 15 **2. Policies**

16 The following policies apply generally to renewable energy facilities within the Oregon  
17 Territorial Sea, and establish the guiding principles for the implementation requirements listed  
18 in section B. When making decisions to authorize the siting, development, operation, and  
19 decommissioning of renewable energy facilities within the territorial sea, state and federal  
20 agencies shall<sup>3</sup>:

- 21
- 22 **a.** Maintain and *protect* renewable marine resources (*i.e.* living marine organisms),  
23 ecosystem integrity, *marine habitat* and *areas important to fisheries* from adverse  
24 effects that may be caused by the installation or operation or removal of renewable  
25 energy facility by requiring that such development or operation:  
26
    - 27 1.) Avoid adverse effects to the integrity, diversity, stability and complexity of the  
28 marine ecosystem and coastal communities, and give priority to the conservation and  
29 use of renewable marine resources as a first priority;
    - 30
    - 31 2.) Minimize effects by limiting the degree or magnitude of the action and its  
32 implementation;
    - 33
    - 34 3.) Rectify or mitigate the effects that occur during the lifetime of the facility by  
35 monitoring and taking appropriate corrective measures through adaptive management;  
36 and
    - 37
    - 38 4.) Restore the natural characteristics of a site to the extent practicable when the facility  
39 and structures are decommissioned and removed.
    - 40
  - 41 **b.** Protect marine renewable resources, the biological diversity and functional integrity of  
42 marine ecosystem, important marine habitat, areas important to fisheries, navigation,  
43 recreation and aesthetic enjoyment as required by Statewide Planning Goal 19.
  - 44
  - 45 **c.** Promote direct communication and collaboration between an applicant for a state or  
46 federal authorization for the siting, development and operation of renewable energy  
47 facilities and affected ocean users and coastal communities to reduce or avoid conflicts.

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1 Agencies will strongly encourage applicants to engage with local, state and federal  
2 agencies, community stakeholders, tribal governments and affected ocean users in a  
3 collaborative agreement-seeking process prior to formally requesting authorization to  
4 initiate a project.<sup>4</sup>

- 5
- 6 **d.** Limit the potential for unanticipated adverse impacts by requiring, as necessary, the use  
7 of pilot projects and phased development to collect data and study the effects of the  
8 development on the affected marine resources and uses.
- 9
- 10 **e.** Promote the research and responsible development of ocean-based renewable energy  
11 sources including wave, tidal and wind, that meet the state's need for economic and  
12 affordable sources of alternative renewable electric power.
- 13

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14

15 **B. Implementation Requirements**

16

17 State and federal agencies shall apply the following implementation requirements when  
18 considering a proposal for the placement or operation of a renewable energy facility  
19 development within the Oregon Territorial Sea. Regulating agencies shall comply with the  
20 standards and procedural requirements in Part Five of the Territorial Sea Plan as prescribed  
21 below. This includes the cables, connectors or other transmission devices that connect, anchor,  
22 support or transmit energy between the separate components within a renewable energy  
23 facility. The requirements in Part Four, Uses of the Seafloor for Telecommunication Cables,  
24 Pipelines, and other Utilities, will apply to the utility cables that transmit the electrical energy  
25 from the renewable energy facility to the on-shore substation. The requirements in Part Two,  
26 Making Resource Use Decisions, Sections A and B, will not apply to the evaluation, siting or  
27 operation of renewable energy development or other related structures, equipment or facilities.

28

29 **1. Siting: areas designated for renewable energy facilities development.**

30

31 **a. In State Waters:**

32 Pursuant to the requirements for amending the Territorial Sea Plan under ORS 196.471,  
33 to carry out the policies of the Oregon Ocean Resources Management Act and  
34 consistent with the statewide planning goals, the Land Conservation and Development  
35 Commission will designate areas of the territorial sea appropriate for the development  
36 of renewable energy facilities.<sup>5</sup> (see appendix C map) Renewable energy facilities  
37 development of the state lands of the territorial sea lying seaward of Extreme Low  
38 Water (which is the seaward boundary of the Ocean Shore State Recreation Area) shall  
39 be sited within the areas designated for that use so as to avoid, reduce or mitigate the  
40 adverse effects of that development, and to protect: renewable marine resources,  
41 biological diversity and functional integrity of marine ecosystem, important marine  
42 habitat, and areas important to fisheries, as defined in Statewide Planning Goal 19  
43 Ocean Resources.

44

45

46 **b. In Federal Waters:**

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1 The Oregon Department of Land Conservation and Development will review federal  
2 decisions to permit, license, or otherwise authorize renewable energy facilities  
3 development within the waters and seafloor of the outer continental shelf adjacent to the  
4 Oregon Territorial Sea for consistency with the Oregon Territorial Sea Plan and the  
5 applicable enforceable policies of the Oregon Coastal Management Program. Federal  
6 actions that affect any land or water use or natural resources of the Oregon Coastal  
7 Zone shall be supported by environmental studies and analysis, as prescribed below, to  
8 ensure compliance with the enforceable policies of Oregon Territorial Sea Plan and the  
9 Oregon Coastal Management Program.<sup>6</sup>

10  
11  
12 **2. State Agency Review Process**

13  
14 Pursuant to ORS 196.485 and ORS 197.180, state agencies shall apply the policies and  
15 provisions of the Oregon Ocean Resources Management Plan and Territorial Sea Plan, and  
16 Goal 19 Ocean Resources as required to conform with State Agency Coordination  
17 Programs (OAR chapter 660, divisions 30 and 31).

18  
19 The Department of State Lands shall coordinate the review of requests for approvals of  
20 leases, temporary use permit, easements and removal-fill in consultation with the  
21 Departments of Fish and Wildlife, Parks and Recreation, Environmental Quality, Land  
22 Conservation and Development, Water Resources, and Geology and Mineral Industries,  
23 Energy, and coastal local governments, and tribal governments as appropriate. These  
24 agencies, with the addition of the regulating federal agencies, will constitute the joint  
25 agency review team (JART) described in subsection B.3 below. Pursuant to the federal  
26 Coastal Zone Management Act, the Department of Land Conservation and Development  
27 will review the consistency determination submitted by the applicant for federal  
28 authorization for a renewable energy facilities development to ensure the project is  
29 consistent with enforceable policies of the Oregon Coastal Zone Management Program,  
30 including the Territorial Sea Plan.

31  
32 **3. Project Review Process and Coordination**

33  
34 The Department of State Lands (DSL) shall convene a joint agency review team (JART), in  
35 order to facilitate the coordination of state and federal agencies as they apply their separate  
36 regulatory, proprietary, or other authorities to the review of a proposed renewable energy  
37 facility development. The team shall consist of the state and federal agencies with  
38 regulatory or planning authority applicable to the proposed project and location; DSL shall  
39 also request that affected local jurisdictions, if any, participate in the JART review and may  
40 also invite local or statewide interest groups and advisory committees to participate too.  
41 The joint agency review team will coordinate the review process, and comment on the  
42 adequacy of the resource inventories and effects evaluations required under subsection B.4  
43 Resource Inventory and Effects Evaluation Standards, below, and NEPA environmental  
44 assessments and environmental impact statements. The joint agency review team will also  
45 consider the adequacy of the information provided for the operation plan, as required under  
46 Section C. Operation Plan Development below, including the monitoring requirements,  
47 mitigation measures, adaptive management plans, construction and operational performance

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1 standards, or any other special conditions that a regulating state agency may apply pursuant  
2 to the lease, permit, license or other authorization.

3  
4 The Department of State Lands shall require that an applicant provides documentation  
5 verifying their communication and coordination efforts with local communities, interest  
6 groups and advisory committees. Those efforts shall, at a minimum, include information on  
7 the proposed project operation protocols, response to emergencies and procedures for on-  
8 going communication as specified in Section C. Operation Plan Development, below.

9  
10 **4. Resource Inventory and Effects Evaluation Standards**

11  
12 Regulating agencies will require the applicant to provide a resource inventory and effects  
13 evaluation, as required by this subsection, prior to making any decision. State agencies will  
14 assist the applicant by providing available data and other information as applicable to the  
15 review process.

16  
17 **a. Sufficiency of Inventory and Evaluation.**

18 The resource inventory and effects evaluation shall be sufficient to identify and quantify  
19 the short-term and long-term effects of the proposed renewable energy facility  
20 development on the affected marine resources and uses.

21  
22 **b. Purpose of the Effects Evaluation**

23 The purpose of the effects evaluation is to determine whether the proposed actions can  
24 meet the policies and standards for the protection of resources, resource users and  
25 coastal communities referred to above in subsection A.2, Policies. The evaluation will  
26 help identify where the applicant needs to address deficiencies. The authorizing agency  
27 will use the evaluation to develop specific measures for environmental protection and  
28 mitigation, measures to protect ocean uses, monitoring, and adaptive management.

29  
30 **c. Use of Available Environmental Information.**

31 Regulating agencies may allow the applicant to use existing data and information from  
32 any source when complying with the requirements for resource inventory and effects  
33 evaluation. All data and information used for the inventory and evaluation, including  
34 existing data from federal environmental impact statements or assessments, shall meet  
35 the same standards of adequacy required for the inventory and the evaluation.

36  
37 **d. Inventory Content**

38 To evaluate the magnitude of the proposed project, the likelihood of the effects of the  
39 project, and the significance of the resources and uses that the project may affect,  
40 regulating agencies shall require that the applicant include consideration of the  
41 following factors in the inventory:

- 42  
43 1) Proposed factors associated with the development, placement, operation,  
44 maintenance, and decommissioning of the project:  
45 A) Location (using maps, charts, descriptions, etc.);  
46 B) Numbers and sizes of equipment, structures;  
47 C) Methods, techniques, activities to be used;  
48 D) Transportation and transmission systems needed for service and support;

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- 1 E) Materials to be disposed of and method of disposal;
- 2 F) Physical and chemical properties of hazardous materials, if any, to be used or
- 3 produced;
- 4 G) Navigation aids; and
- 5 H) Proposed time schedule.
- 6
- 7 2) Location and description of all affected areas, including, but not limited to:
- 8 A) Site of the renewable energy facility;
- 9 B) Adjacent areas that may be affected by physical changes in currents and
- 10 waves caused by the facility;
- 11 C) Utility corridor transiting territorial sea and ocean shore; and
- 12 D) Shoreland facilities.
- 13
- 14 3) Physical and chemical conditions including, but not limited to:
- 15 A) Water depth;
- 16 B) Wave regime;
- 17 C) Current velocities;
- 18 D) Dispersal, horizontal transport, and vertical mixing characteristics;
- 19 E) Meteorological conditions; and
- 20 F) Water quality.
- 21
- 22 4) Bathymetry (bottom topography) and Shoreline Topography (LIDAR)
- 23
- 24
- 25 5) Geologic structure, including, but not limited to:
- 26 A) Geologic hazards, such as faults or landslides of both marine and shoreline
- 27 facility areas;
- 28 B) Mineral deposits;
- 29 C) Seafloor substrate type; and
- 30 D) Hydrocarbon resources.
- 31
- 32 6) Biological features, including, but not limited to:
- 33 A) Critical marine habitats (see Definitions);
- 34 B) Other marine habitats;
- 35 C) Fish and shellfish stocks and other biologically important species;
- 36 D) Recreationally or commercially important finfish or shellfish species;
- 37 E) Planktonic and benthic flora and fauna;
- 38 F) Other elements important to the marine ecosystem; and
- 39 G) Marine species migration routes.
- 40
- 41 7) Cultural, economic, and social uses affected by the project including, but not
- 42 limited to:
- 43 A) Commercial and sport fishing;
- 44 B) State or Federally protected areas;
- 45 C) Scientific research;
- 46 D) Ports, navigation, and Dredge Material Disposal sites;
- 47 E) Recreation;
- 48 F) Coastal Communities Economy;

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- G) Aquaculture;
- H) Waste water or other discharge;
- I) Utility or pipeline corridors and transmission lines;
- J) Military Uses; and
- K) Aesthetic Resources.

8) Significant historical, cultural or archeological resources.

9) Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project.

**e. Written Evaluation.**

Regulating agencies shall require the applicant to submit a written evaluation of all the reasonably foreseeable adverse effects associated with the development, placement, operation, and decommissioning of the proposed renewable energy facility. For purposes of the evaluation, the submittal shall base the determination of “reasonably foreseeable adverse effects” on scientific evidence. The evaluation shall describe the potential short-term and long-term effects of the proposed renewable energy facility on marine resources and uses of the territorial sea, continental shelf, onshore areas and coastal communities based on the inventory data listed in subsection 4.d above and the following considerations:

1) Biological and Ecological Effects:

Biological and ecological effects include those on critical marine habitats and other habitats, and on the species those habitats support. The evaluation will determine the probability of exposure and the magnitude of exposure and response, as well as the level of confidence (or uncertainty) in those determinations. The evaluation need not discuss highly speculative consequences. However, the evaluation will discuss catastrophic environmental effects of low probability. Factors to consider include, but are not limited to:

- A) The time frames/periods over which the effects will occur;
- B) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;
- C) Maintaining populations of threatened, endangered, or sensitive species;
- D) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
- E) The probability of exposure of biological communities and habitats to adverse effects from operating procedures or accidents.

2) Current Uses:

Evaluate the effects of the project on current uses and the continuation of a current use of ocean resources such as fishing, recreation, navigation, port activities.

Factors to consider include, but are not limited to:

- A) Local and regional economies;
- B) Archeological and historical resources; and

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1 C) Transportation safety and navigation

2  
3 3) Geologic Hazards

4 Evaluate the potential risk to the facility, in terms of its vulnerability to certain  
5 hazards and the probability that those hazards may cause loss, dislodging, or drifting  
6 of structures, buoys, or facilities. Consider both the severity of the hazard and the  
7 level of exposure it poses to the renewable marine resources and coastal  
8 communities. Hazards to be considered should include the scouring action of  
9 currents on the foundations and anchoring structures, slope failures and subsurface  
10 landslides, faulting, tsunamis, and variable or irregular bottom topography.

11  
12 4) Cumulative Effects

13 Evaluate the cumulative effects of a project, including the shoreland component, in  
14 conjunction with effects of any prior phases of the project, past projects, other  
15 current projects, and probable future projects.<sup>7</sup> The evaluation should analyze the  
16 biological, ecological, physical, and socioeconomic effects of the renewable energy  
17 facility development and of other renewable energy facility projects along the  
18 Oregon coast, while also taking into account the effects of existing and future  
19 human activities and the regional effects of global climate change.

20 A) In conducting the cumulative effects analysis, the applicant should focus on  
21 the specific resources and ecological components, as detailed under subsection  
22 4.d above, that may be affected by the incremental effects of the proposed  
23 project and other projects in the same geographic area. The evaluation should  
24 consider whether:

- 25 1) the resource is especially vulnerable to incremental effects;
- 26 2) the proposed project is one of several similar projects in the same  
27 geographic area;
- 28 3) other developments in the area have similar effects on the resource;
- 29 4) these effects have been historically significant for this resource; and
- 30 5) other analyses in the area have identified a cumulative effects concern.

31  
32 B) The Joint Agency Review Team may determine the scope of the cumulative  
33 effects analysis through a set of guidelines developed by JART that regulating  
34 agencies will require for phased development projects as described below under  
35 subsections f.3 and section C.1. The JART will make a determination from the  
36 analysis to inform location, scale, scope and technology of the phased development  
37 project; to provide input on any other factors it determines to be relevant; or both.  
38 The renewable energy project developer will conduct a comprehensive cumulative  
39 effects analysis at the initial phase of a development designed to inform future  
40 phases of development. The regulating agencies and project developer will use  
41 adaptive management or a similar process to evaluate the project at each subsequent  
42 phase; the intent of such evaluation is to inform the design, installation and  
43 operation of successive phases.

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1  
2 **f. Insufficient/Incomplete Information**

3 An applicant may not be able to obtain or provide the information required by section  
4 B.4 above due to the lack of data available about the effect that the proposed  
5 development may have on environmental resources and uses. When a regulating  
6 agency determines that the information provided by the applicant is not sufficient or  
7 complete enough to fulfill the requirements of section B.4,<sup>8</sup> the agency has the  
8 following options:

9  
10 1) Agency Discretion

11 The regulating agency may terminate the decision-making process or suspend the  
12 process until the applicant provides the information.

13  
14 2) Pilot Project

15 The regulating agency may recommend that an applicant conduct a pilot project to  
16 obtain adequate information and data and measure the effects. Pilot projects are  
17 renewable energy facility developments which are removable or able to be shut  
18 down quickly, are not located in sensitive areas, and are for the purpose of testing  
19 new technologies or locating appropriate sites.<sup>9</sup> The agency's decision to allow the  
20 use of a pilot project is for the purpose of obtaining the data and information  
21 necessary to fulfill the requirements of section B.4., and shall be based on the  
22 following approval criteria:

23  
24 A) The exclusive purpose of the pilot project shall be to provide information on  
25 the performance, structural integrity, design and environmental effects of a  
26 specific renewable energy technology or its supporting equipment and  
27 structures.

28 B) The applicant shall complete adequate inventories of baseline conditions, as  
29 required by subsection 4.d above, prior to conducting the pilot project.

30 C) The risk of adverse effects from the pilot project shall be insignificant,  
31 because:

- 32  
33 1. of low probability of exposure of biological communities and habitats;  
34 2. of low sensitivity of the biological communities and habitats to the  
35 exposure; or  
36 3. the effects of exposure to sensitive communities and habitats will be  
37 insignificant.

38  
39 D) The pilot project shall not adversely affect any "critical marine habitat" (see  
40 Appendix A: Glossary of Terms).

41  
42 E) The pilot project will have a term, not to exceed five years, and authorization  
43 for the project will include a standard condition requiring project alteration or  
44 shutdown in the event that an unacceptable level of environmental effect occurs.

45  
46 F) The pilot project shall avoid significant or long-term interference with other  
47 human uses of marine resources, and will require decommissioning and site

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1 restoration at expiration of the authorization period if federal and state  
2 authorization for a commercial renewable energy facility is not sought.

3  
4 G) All data shall be in the public domain subject to ORS 192.410 et seq.

5  
6 H) Work Plan: The applicant shall provide a written work plan which will  
7 include, but not be limited to the following: <sup>10</sup>

- 8  
9 1. A list of the information needed to satisfy the requirements of section  
10 B.4. above.  
11 2. Specific pilot project objectives to obtain the needed information and an  
12 explanation of how the study or test design will meet the objectives.  
13 3. Description of study or test methods to meet the objectives, such as:  
14 (a) Literature review;  
15 (b) Collection of any needed baseline data;  
16 (c) Hypotheses to address the study objectives;  
17 (d) Descriptions of field sampling and data-analyses methods to be  
18 used; and  
19 (e) Use of adequate controls to allow the effects of the proposed  
20 action to be separated from natural fluctuations in resources and habitats.  
21  
22 4. Supporting documentation demonstrating that the study design is  
23 scientifically appropriate and statistically adequate to address the research  
24 objectives.  
25  
26 5. Descriptions of how the data and analyses will be reported and delivered  
27 to the authorizing state agency for review and approval.  
28

29 3) Phased Development

30 The regulating agency may recommend that an applicant conduct a project as a  
31 phased development in order to obtain adequate information and data and to  
32 measure the incremental effects of each phase prior to further or complete build-out  
33 of the project. Phased development projects are renewable energy facility  
34 developments which are limited in scale and area, but are designed to produce  
35 energy for commercial use. The applicant for a phased development project will  
36 need to comply with the requirements of section B.4. The agency's decision to  
37 allow the use of a phased development project is designed to allow for commercial  
38 energy production while obtaining certain data and information that are necessary to  
39 fulfill the requirements of section B.4., but can only be obtained through the  
40 monitoring and study of the effects of the development as it is installed and operated  
41 for a discrete period of time.  
42

43 **g. Test Facility**

44 Applications for a permit, license, or other authorization for the installation and use of  
45 an experimental or test device at the Northwest National Marine Renewable Energy  
46 Center Mobile Test Berth Site zone, are not subject to the requirements of Section B.  
47 See Section D: Northwest National Marine Renewable Energy Center Mobile Test  
48 Berth Site, below, for the specific requirements for the use of these facilities.

1  
2  
3  
4 **C. Operation Plan Development**

5 The regulating agency shall require the applicant to submit an operation plan as a condition of  
6 approval for a state or federal permit, license, lease or other authorization for renewable energy  
7 facility development. The operation plan must explain the procedures and mechanisms that the  
8 operator will employ so that the facility will comply with regulatory standards and other  
9 conditions of permit or license approval related to water and air quality, adverse environmental  
10 effects, maintenance and safety, operational failure and incident reporting. The operation plan  
11 shall be designed to prevent or mitigate harm or damage to the marine and coastal environment  
12 and at a minimum shall include the following information:  
13

14 **1. Phased Development Plan**

15 The regulating agency may require that a facility be developed in phases in order to  
16 determine whether the environmental effects of the structures and the operation of the  
17 facility are consistent with the inventory and effects evaluation conducted under section  
18 B.4. The requirements for an operation plan listed in this subsection would apply to each  
19 stage of the phased development so as to account for any changes in design, technology or  
20 operation that may result from monitoring the initial phase of the operation. The state and  
21 federal joint agency review team will assist the developer in assessing the environmental  
22 effects of the initial phase and in determining what, if any, changes in the development and  
23 operation of future phases of the facility might be necessary to mitigate or prevent harm or  
24 damage to the marine ecosystem.  
25

26 A facility that has been developed to the full extent of its design and operating capacity  
27 may, during the lifetime of its authorization, require systematic improvements to the  
28 technology, structures and operational procedures that were originally authorized. The  
29 regulating agency will require a new facility development plan, as appropriate and  
30 necessary, to provide the data and information for the redevelopment and operation of the  
31 new facility components.  
32

33 **2. Facility Development Plan**

34 A plan is required that describes the physical and operational components of the proposed  
35 facility and must contain, at minimum, detailed technical information, data, protocols and  
36 references for:  
37

- 38 **a.** Structural and project design, materials used, anchoring and installation information;  
39 **b.** All cables and pipelines, including lines on project easements;  
40 **c.** A description of the deployment activities;  
41 **d.** A listing of chemical products used;  
42 **e.** A description of vessels, vehicles, aircraft and the transit lanes that will be used;  
43 **f.** A general description of the operating procedures and systems;  
44 **g.** Construction schedule; and  
45 **h.** Other information as required by the Department of State Lands.  
46

47 **3. Project Operation Plan**

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1 The operation plan is required that describes, at a minimum, information regarding the  
2 routine environmental monitoring, safety management and emergency response procedures,  
3 facility inspections, and the decommissioning of the project. The operation plan should  
4 explain the procedures and mechanisms that will be employed so that the facility will  
5 comply with regulatory standards and other conditions of permit or license approval related  
6 to water and air quality, environmental protection and mitigation, facility maintenance and  
7 safety, operational failure and incident reporting. An operation plan will include the  
8 following information:

9  
10 **a. Contingency Plan:**

11 A plan to describe how the facility operator will respond to emergencies caused by a  
12 structural or equipment failure due to human error, weather, geologic or other natural  
13 event. The plan should include a description of the types of equipment, vessels and  
14 personnel that would be deployed, the chain of command or management structure for  
15 managing the facility repairs, recovery or other forms of remedial action, and the  
16 process and timeline for notification of state and federal authorities.

17  
18 **b. Inspection Plan:**

19 A plan to provide for the implementation of a routine inspection program to ensure the  
20 mechanical, structural and operational integrity of renewable energy project facilities  
21 and other related structures, equipment or facilities. In addition, unscheduled  
22 inspections are to be required after any major geologic or meteorologic event to ensure  
23 continued operational safety and environmental protection.

24  
25 **c. Monitoring Plan:**

26 A plan to provide for the implementation of a routine standardized monitoring program  
27 for potential impacts on specific resources as specified by the resource inventory and  
28 effects evaluation. The operator shall monitor activities related to the operation of the  
29 facility and demonstrate that its performance satisfies specified standards in its  
30 approved plans. Monitoring shall be sufficient to accurately document and quantify the  
31 short-term and long-term effects of the actions on the affected resources and uses.  
32 Plans for monitoring must include, at a minimum:

- 33  
34 1) A list of the information needed to satisfy an effects evaluation.  
35  
36 2) Specific study objectives to obtain the needed information and explanation of  
37 how the study design will meet the objectives.  
38  
39 3) Description of study methods to meet the objectives, such as:  
40  
41 A) Literature review;  
42 B) Collection of needed baseline data;  
43 C) Hypotheses to address the study objectives;  
44 D) Descriptions of field sampling and data-analyses methods to be used; and  
45 E) Use of adequate controls, such as control sites, to allow the effects of the  
46 proposed action to be separated from natural fluctuations in resources and  
47 habitats.  
48

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- 1 4) The monitoring plan will include supporting documentation demonstrating that  
2 the study design is scientifically appropriate and statistically adequate to address  
3 the research objectives.<sup>11</sup>  
4
- 5 5) The monitoring plan will include a description of the method that will be used to  
6 report and deliver data and analyses information to the authorizing state agency  
7 for review in a timely and efficient manner.<sup>12</sup>  
8  
9

10 **d. Adaptive Management Plan**

11 An adaptive management plan to provide a mechanism for incorporating new findings  
12 and new technologies into the operation and management of the project. The adaptive  
13 management plan shall include performance standards that are based on results of the  
14 resource inventory and effects evaluation and incorporated in the study design of the  
15 monitoring plan as described in subsection 3(c.) above. The plan will explain the  
16 processes for how adaptation measures are applied to the operation of the project.  
17 When the monitoring results show that the performance standards are not being met due  
18 to the operation of the facility, adaptation measures designed to bring the operation into  
19 compliance with the performance standard will be applied to the operation of the  
20 project. The adaptive management plan will explain processes for how adaptation  
21 measures will be applied to the operation and management of the project. The adaptive  
22 management plan should account for:

- 23
- 24 1) Variable conditions in the marine environment;
- 25 2) Change in the status of resources;
- 26 3) New information provided by monitoring of the project;
- 27 4) Data and information provided by research and from other sources;
- 28 5) New technologies that would provide for greater protection of ocean resources;
- 29 6) Ocean fisheries, or other ocean uses to be protected from adverse effects and  
30 operational conflicts; and
- 31 7) Unanticipated cumulative effects.  
32  
33

34 **4. Decommissioning Plan:**

35 An applicant is required to provide a plan to restore the natural characteristics of the site to  
36 the extent practicable by describing the facilities to be removed.<sup>13</sup> The plan should include;  
37 a proposed decommissioning schedule; a description of removal and containment methods;  
38 description of site clearance activities; plans for transporting and recycling, reusing, or  
39 disposing of the removed facilities; a description of those resources, conditions, and  
40 activities that could be affected by or could affect the proposed decommissioning activities;  
41 results of any recent biological surveys conducted in the vicinity of the structure and recent  
42 observations of marine mammals at the structure site; mitigation measures to protect  
43 archaeological and sensitive biological features during removal activities; and a statement  
44 as to the methods that will be used to survey the area after removal to determine any effects  
45 on marine life. A decommissioning plan should identify how the project owner will restore  
46 the site to the natural condition that existed prior to the development of the site, to the  
47 extent practicable.  
48

1  
2 **5. Financial Assurance Plan:**

3 The applicant must provide a financial assurance compliance plan that describes their  
4 ability to comply with the state regulating agency requirements for financial assurance  
5 instruments to guarantee performance, and any other financial terms and conditions that  
6 may be applied. Wave energy facilities or devices shall comply with the requirements of  
7 ORS 274.867 (Wave energy; financial assurance; rules),<sup>14</sup> and the administrative rules  
8 issued by the Department of State Lands OAR 141-140-0080 and OAR 141-140-0090 to  
9 implement this statutory authority.

10  
11  
12 **6. Agreements:**

13 Applicants are required to communicate with traditional ocean users and stakeholders with  
14 an interest in the area of the proposed project to address issues of concern.<sup>15</sup> Applicants are  
15 encouraged to memorialize agreements with those ocean users and stakeholders on the  
16 specific actions that the applicant will take to address their issues of concern.

---

17  
18  
19 **D. Northwest National Marine Renewable Energy Center Mobile**  
20 **Test Berth Site**

21  
22 **1. Test Berth Site Plan**

23 The Northwest National Marine Renewable Energy Center mobile test berth zone is  
24 established to conduct short-term experimental testing of renewable energy technologies at  
25 the mobile test berth facility.

26  
27 **2. Test Berth Site Use**

28 Applications for a permit, license, or other authorization for the installation and use of the  
29 Northwest National Marine Renewable Energy Center mobile test berth zone, is not subject  
30 to the requirements of Section B. above.

31  
32 An experimental or test devise or other structure for use at the Northwest National Marine  
33 Renewable Energy Center mobile test berth zone is required to obtain any applicable  
34 license, permit or authorization, but is not subjects to Section B or C, above.

## Appendix A: Definitions and Terms

As used in Part Five, unless the context requires otherwise, the following definitions shall apply:

**Applicant:** An applicant for a state permit, license, lease or other authorization for renewable energy facilities development or other related structures, equipment or facilities will be referred to as "the applicant".

**Important marine habitat:** (Goal 19) are areas and associated biologic communities that are:

- a.) important to the biological viability of commercially or recreationally caught species or that support important food or prey species for commercially or recreationally caught species; or
- b.) needed to assure the survival of threatened or endangered species; or
- c.) ecologically significant to maintaining ecosystem structure, biological productivity, and biological diversity; or
- d.) essential to the life-history or behaviors of marine organisms; or
- e.) especially vulnerable because of size, composition, or location in relation to chemical or other pollutants, noise, physical disturbance, alteration, or harvest; or
- f.) unique or of limited range within the state.

**Areas important to fisheries:** (Goal 19)

- a.) areas of high catch (e.g., high total pounds landed and high value of landed catch); or
- b.) areas where highly valued fish are caught even if in low abundance or by few fishers; or
- c.) areas that are important on a seasonal basis; or
- d.) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or
- e.) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.

**conservation:** a principle of action guiding Oregon's ocean-resources management, which seeks to protect the integrity of marine ecosystems while giving priority to the protection and wise use of renewable resources over nonrenewable; as used in the Oregon Ocean Resources Management Plan, the act of conservation means "that the integrity, diversity, stability, complexity, and the productivity of marine biological communities and their habitats are maintained or, where necessary, restored" and "...accommodat(ing) the needs for economic development while avoiding wasteful uses and maintaining future availability. (Territorial Sea Plan Appendix A: Glossary of Terms)

**critical marine habitat:** means one or more of the following land and water areas:

- a.) areas designated as "critical habitat" in accordance with federal laws governing threatened and endangered species; or
- b.) areas designated in the Territorial Sea Plan as either:
  - 1.) as needed for the survival of animal or plant species listed by state or federal laws as "threatened", "endangered", or "sensitive". Such areas might include special areas used for

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1 feeding, mating, breeding/spawning, nurseries, parental foraging, overwintering, or haul  
2 out or resting. This is not intended to limit the application of federal law regarding  
3 threatened and endangered species; or

4 2.) "unique" (i.e. one of a kind in Oregon) habitat for scientific research or education  
5 within the Oregon territorial sea. (Territorial Sea Plan, Part Two)

6  
7 **ecosystem:** the living and non-living components of the environment which interact or function  
8 together, including plant and animal organisms, the physical environment, and the energy  
9 systems in which they exist. All the components of an ecosystem are interrelated. (Oregon  
10 Statewide Planning Goals)

11  
12 **habitat:** the environment in which an organism, species, or community lives. Just as humans  
13 live in houses, within neighborhoods, within a town or geographic area, within a certain region,  
14 and so on, marine organisms live in habitats which may be referred to at different scales. (see  
15 also "critical marine habitat", "important marine habitat") (Territorial Sea Plan Appendix A:  
16 Glossary of Terms)

17  
18 **important marine habitat:** marine habitats that must be specifically considered when an  
19 inventory-and-effects evaluation is conducted pursuant to Goal 19: including but not limited to:  
20 habitat necessary for the survival and conservation of Oregon renewable resources (e.g. areas  
21 for spawning, rearing, or feeding), kelp and other algae beds, seagrass beds, seafloor gravel  
22 beds, rock reef areas and areas of important fish, shellfish and invertebrate concentration.  
23 (Oregon Statewide Planning Goal 19).

24  
25 **Renewable Energy Facility or Facilities:** For the purposes of this chapter of the Territorial  
26 Sea Plan, the term "renewable energy facilities development or other related structures,  
27 equipment or facilities," means energy conversion technologies and devices that convert the  
28 energy or natural properties of the water, waves, wind, current or thermal to electrical energy,  
29 including all associated buoys, anchors, energy collectors, cables, control and transmission  
30 lines and other equipment that are a necessary component of an energy conversion device  
31 research project, demonstration project or commercial operation. The terms "renewable energy  
32 facility" or "renewable energy facilities" will be used to describe any and all components of  
33 these developments

1  
2  
3

## Appendix B: Endnotes

---

<sup>1</sup> The state's renewable energy portfolio is described under ORS 469A.025 Renewable energy sources. (1) Electricity generated utilizing the following types of energy may be used to comply with a renewable portfolio standard to include: (a) Wind energy, (b) Solar photovoltaic and solar thermal energy, (c) Wave, tidal and ocean thermal energy, and (d) geothermal energy.

<sup>2</sup> A listing and description of the state and federal agencies with regulatory, consultation or other authority or responsibility for management of ocean resources is located in Part 1 of the Territorial Sea Plan.

<sup>3</sup> State and federal agencies making decisions to authorize the siting, development and operation of renewable energy facilities development or other related structures, equipment or facilities within the Oregon Territorial Sea, will be referred to as "the regulating agency" or "regulating agencies".

<sup>4</sup> The Department of State Lands pre-application requirements under OAR 141-140-0040 (Rules Governing the Placement of Ocean Energy Conversion Devices on, in or over State-Owned-Land within the Territorial Sea) requires applicants to meet with the agency prior to applying for a lease or temporary authorization.

<sup>5</sup> ORS 196.471 Territorial Sea Plan review requirements, provides in part (1) The Land Conservation and Development Commission shall review the Territorial Sea Plan and any subsequent amendments recommended by the Ocean Policy Advisory Council to either the Territorial Sea Plan or the Oregon Ocean Resources Management Plan and make findings that the plan or amendments: (a) Carry out the policies of ORS 196.405 to 196.515; and (b) Are consistent with applicable statewide planning goals, with emphasis on the four coastal goals. (2) After making the findings required by subsection (1) of this section, the commission shall adopt the Territorial Sea Plan or proposed amendments as part of the Oregon Coastal Management Program.

<sup>6</sup> The regulations for federal consistency with approved state coastal programs are prescribed in 15 CFR 930. Energy projects are defined under § 930.123 Definitions as (c) The term "energy project" means projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.

<sup>7</sup> National Environmental Policy Act (NEPA), defining "cumulative effects" as: "the impact on the environment encompassing the environmental (ecology, biology, physical) parameters and human dimension (economic, social, etc.) which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such actions (40 CFR § 1508.7)."

<sup>8</sup> One measure of whether the information provided by an applicant is sufficient are the federal consistency regulations under § 15 CFR 930.58 Necessary data and information (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification.

<sup>9</sup> Pilot Project has the same meaning as prescribed under the Department of State Lands Rules Governing the Placement of Ocean Energy Conversion Devices on, in, or over state-owned land within the Territorial Sea in OAR 141-140-0020 (7) "Demonstration Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, installation, operation, or removal of an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.

<sup>10</sup> Pilot projects that are authorized under the standards and conditions of this subsection f (2) are not required to fulfill the requirements of Section C below. The standards and requirements of Section C will apply to an

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application for authorization to expand the pilot project from a short-term limited scope facility to a commercial operation scale facility.

<sup>11</sup> Standardized monitoring protocols would result in data sets that are comparable and transferable among sites and technologies. The protocols would include a Before, After, Control, Impact (BACI) experimental study design.

<sup>12</sup> Example: the data and analysis will be applied to determine if conditions meet the standard established under the Oregon Department of Environmental Quality Biocriteria OAR 340-041-0011, as; Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.

<sup>13</sup> The requirement for a decommissioning plan is based upon, and will be applied by, the Department of State Lands under OAR 141-140-0080(5)(e) Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal. The decommissioning of the transmission cable is required under 141-083-0850 Cable Easement Terms and Conditions (6) If determined necessary by the Division in consultation with the easement holder and other interested parties, and if permitted by the applicable federal agency(ies) regulating the cable, the easement holder shall remove the cable from the state-owned submerged and submersible land within one (1) year following the termination of use of the cable or expiration of the easement.

<sup>14</sup> (2) Unless exempted under rules adopted by the director under this section, an owner or operator of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in Oregon's territorial sea, of the facility or device; and

(b) Any corrective action required to be taken at the site of the facility or device.

(3) The financial assurance requirements established by subsection (2) of this section may be satisfied by any one or a combination of the following:

(a) Insurance;

(b) Establishment of a trust fund;

(c) A surety bond;

(d) A letter of credit;

(e) Qualification as a self-insurer; or

(f) Any other method set forth in rules adopted by the director.

<sup>15</sup> The Department of State Lands rule on Pre-Application Requirements, OAR 141-140-0040, provides:

"Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with:

"(a) Department staff to discuss the proposed project; and

"(b) Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility."

DIVISION 43

Areas of Critical State Concern

**660-043-0100**

**Metolius Area of Critical State Concern**

(1) The Land Conservation and Development Commission adopts and incorporates by this reference the management plan included at pages 36 to 48 (Section VI), in the commission's recommendation submitted to the 75th Oregon Legislative Assembly on April 12, 2009, as directed by the Oregon Legislative Assembly in Oregon Laws 2009, chapter 712.

(2) As directed by Oregon Laws 2009, chapter 712, the commission amends the management plan to require that:

(a)(A) The commission shall give notice of proposed amendments to the management plan to the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs Indian Reservation; and

(B) If either governing body files a written objection to the proposed amendment, the commission may adopt the proposed amendment only if the commission finds by clear and convincing evidence that the proposed amendment meets the requirements of 2009 Or Laws, chapter 712, subsection \_\_\_\_.

(b) Development of a small scale-recreation community within township 13 south, range 10 east, sections 20, 21, 28 and 29 in Jefferson County be limited such that all units must be sited within up to 25 clusters that may be connected only by a road system.

(c) Any limitation in the management plan referring to annual average water use means annual average consumptive water use.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.405; Or Laws 2009, ch 712.

Hist.:



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



September 17, 2009

TO: Land Conservation and Development Commission  
FROM: Michael Morrissey  
SUBJECT: **Agenda Item 10(d), October 1-2, 2009, LCDC Meeting**

## **Commission Business and Reports, Appointment of a Hearings Officer for Public Hearing Related to LCDC Adoption of Metolius ACSC Management Report**

### **I. AGENDA ITEM SUMMARY**

This item is a request for the commission to appoint a hearings officer in furtherance of legislative direction to the Land Conservation and Development Commission (LCDC) to adopt the Metolius Area of Critical State Concern management plan by rule, with no changes except those specified in statute.

### **II. SUMMARY OF RECOMMENDED ACTION**

Staff recommends that the commission appoint a hearings officer to conduct a public hearing in the area of the Metolius ACSC on December 3. Although a public hearing is required to comply with statutory requirements for state agencies adopting rules, in this case the legislature also has directed that there be no change to the Metolius Area of Critical State Concern management plan.

### **III. BACKGROUND**

House Bill 3298, enacted by the 2009 legislature, declares the Metolius River basin to be an Area of Critical State Concern (the "Metolius ACSC") and approves an accompanying management plan for the area. That management plan had been submitted to the legislature by LCDC as a recommendation, in accordance with ORS 197.405 – 197.410. The legislature approved the management plan under HB 3298 and directed LCDC to adopt the plan, by administrative rule, with no changes, except for three specific changes.

In order for LCDC to adopt the management plan by rule, several requirements must be met. First, adoption of the rule (in a new division 43 Areas of Critical State Concern), must be preceded by notice under Measure 56. Measure 56 (ORS 197.047) requires the agency to mail notice at least 90 days prior to the final public hearing on a proposed new or amended

administrative rule that restricts the use of private real property. The department mailed that Measure 56 notice on September 3, 2009, and identified December 3, 2009 as the hearing date with regard to the proposed rulemaking.

Next, provisions of ORS 183.335 require that when such rulemaking applies to a limited geographic area within Oregon, the hearing must be held at a place convenient for the majority of residents within that area. Therefore, the hearing will need to take place in or near the Metolius Area of Critical State Concern.

Due to the fact that the commission has no discretion and must adopt the management plan, with no changes except those specified in HB 3298, the department recommends that the commission delegate the task of conducting the public hearing to a hearings officer appointed by the commission. ORS 183.325 describes the process for delegating authority for rulemaking relative to conducting a hearing:

"Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of this chapter."

#### **IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTION**

The department recommends the commission appoint a hearings officer to conduct the public hearing for the Metolius ACSC management plan. The hearing will be held in or near the Metolius Area of Critical State Concern on December 3, 2009.

***Proposed Motion:*** I move the commission accept the department's recommendation and appoint \_\_\_\_\_ as the hearings officer to conduct a public hearing on the Metolius ACSC management plan.

***Alternative Motion:*** I move the commission not approve the department's recommendation, and instead hold a special meeting of the commission to conduct a public hearing on the Metolius ACSC management plan.

#### **V. ATTACHMENTS**

##### **A. Proposed OAR 660-043-0100**

# LCDC PROPOSED MEETING DATES

## 2010

January '10						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February '10						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March '10						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April '10						
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May '10						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June '10						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July '10						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August '10						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September '10						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October '10						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November '10						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December '10						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

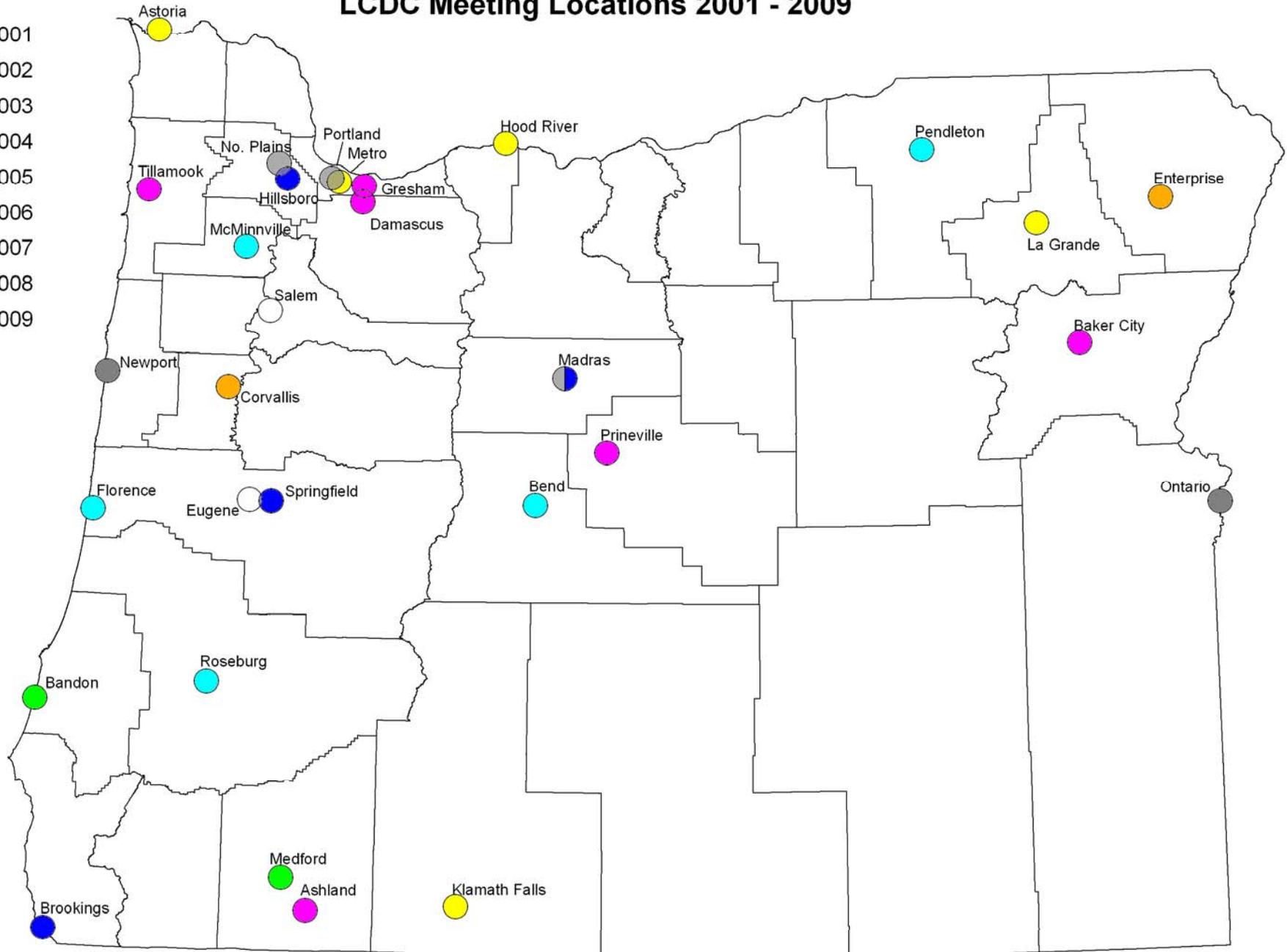
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Yellow = Proposed Dates  
 Green = Holidays, furloughs

### LCDC Meeting Locations 2001 - 2009

- 2001
- 2002
- 2003
- 2004
- 2005
- 2006
- 2007
- 2008
- 2009





# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



September 17, 2009

TO: Land Conservation and Development Commission  
FROM: Richard Whitman, Director  
SUBJECT: **Agenda Item 10(e), October 1-2, 2009, LCDC Meeting**

### COMMISSION BUSINESS & REPORTS

#### Proposed 2010 Meeting Schedule

Below is a proposed 2010 meeting schedule for the Land Conservation and Development Commission. There are eight meetings, scheduled approximately every five to six weeks. Locations were selected based on past meeting locations as well as where particular land use decisions are likely to be made involving commission action.

DATE	LOCATION
January 20-22	Salem
March 3-5	Bend
April 21-23	Newport, Lincoln City, Dallas or Woodburn
June 2-4	Portland, Burns or John Day
July 21-23	Salem or Portland
September 8-10	Burns or John Day
October 20-22	Grants Pass or Lakeview
December 1-3	Salem

#### ATTACHMENTS

- A. 2010 CALENDAR
- B. MAP OF LCDC MEETING LOCATIONS 2001-2009