



# Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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January 12, 2012

TO: Land Conservation and Development Commission (LCDC)

FROM: Jim Rue, Acting Director  
Karen Swirsky, Central Oregon Regional Representative

SUBJECT: **Agenda Item 2 – Request to Appeal, January 26, 2012, LCDC Meeting**

**REVIEW OF A DIRECTOR'S DECISION TO PARTICIPATE IN  
A CASE BEFORE THE LAND USE BOARD OF APPEALS**

**DESCHUTES COUNTY**

**I. RECOMMENDATION**

The director recommends, based on the information contained in this report, that the commission authorize the department to proceed with intervention in the appeal of a Deschutes County decision to the Land Use Board of Appeals. The department filed a notice of intervention with LUBA on January 11, 2012. It was necessary for the department to file the notice because the filing period expired prior to the commission's next scheduled meeting.

The department recommends the intervention in order to support the county's decision.

**II. CASE SUMMARY**

On November 30, 2011, the Deschutes County Board of Commissioners gave final approval to a legislative plan amendment to define a need for limited and managed supply of large-lot industrial sites across a three-county region. Deschutes County is acting first, while Crook and Jefferson counties are expected to subsequently adopt the plan. The plan authorizes cities in the region that do not have a qualifying site to add one of six authorized large-lot industrial sites to their UGB providing certain conditions are met. Conditions include restrictions on use, land division, infrastructure funding commitments, joining the regional management structure, and conducting a local site inventory and location analysis to comply with the necessary land use requirements. A third party participant in the planning effort has filed an in intent to appeal.

The department devoted considerable staff resources and grant funding to the planning effort. Technical assistance funding in the current biennium will help the region define and implement the regional governance plan to ensure the plan is followed and the sites are properly vetted.

### **III. APPEAL FACTORS**

To proceed with an appeal, the commission must base its decision on one or more of the following factors from OAR 660-001-0230(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objectives of the agency's Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

### **IV. ANALYSIS**

#### **(a) Whether the case will require interpretation of a statewide planning statute, goal or rule**

The case involves the interpretation of Oregon Revised Statute (ORS) 195.025<sup>1</sup> regarding county coordination of comprehensive plans; Statewide Planning Goal 9, Economic Development; and Oregon Administrative Rule (OAR) chapter 660, division 9. The statute is involved because the county's action was first and foremost an application of its authority to coordinate the comprehensive plans within its boundaries. Goal 9 will be interpreted because the decision coordinated economic development planning within the county. The department does not believe OAR chapter 660, division 9 applies to the county's decision, but expects it to be raised in the appeal.

#### **(b) Whether a ruling in the case will serve to clarify state planning law**

This is the first instance of a county coordinating an industrial lands need analysis for its entire area. Regional economic development planning is encouraged by commission policy in OAR chapter 660, division 9. The department believes that this case will provide a valuable ruling for other counties contemplating similar plan coordination.

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<sup>1</sup> 195.025 (1): "In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county...."

**(c) Whether the case has important enforcement value**

The department finds that this criterion does not apply.

**(d) Whether the case concerns a significant natural, cultural or economic resource**

The decision under appeal is intended to help the region promote significant economic development actions.

**(e) Whether the case advances the objectives of the agency's strategic plan**

One of the department's guiding principles is to sustain a prosperous economy and a strategic goal in the plan is to encourage economic development. The subject case is an innovative attempt by a group of local governments to improve the effectiveness of economic development efforts in their region. This appeal will help define whether additional policy development will be required in order to promote the existing policy objective of regional coordination and cooperation.

**(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance**

The department finds there could be a better alternative, but the appeal was made by another entity. If the parties agree to dispute resolution, the department would participate. The department provided considerable technical assistance to the county and worked closely with the appellant throughout development of the Regional Economic Opportunities Analysis.

**V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION**

The department recommends that the commission support the director's decision to participate in the appeal and proceed with a department intervention in the Deschutes County case.

***Proposed Motion:*** I move that the commission authorize the department to participate in the subject decision from Deschutes County at the Land Use Board of Appeals based on the information included in this report and its demonstration that OAR 660-001-0230(3) (a), (b), (d) and (e) apply.

***Alternative motion:*** I move the commission not authorize the department to appeal the subject decision from Deschutes County for the following reason(s): \_\_\_\_\_.

**ATTACHMENTS**

- A. Deschutes County letter requesting LCDC intervention
- B. Deschutes County REOA summary
- C. Notice of intent to intervene



DEPT OF

JAN 11 2012

LAND CONSERVATION  
AND DEVELOPMENT

**Board of County Commissioners**

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(541) 388-6570 • Fax (541) 385-3202

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board@co.deschutes.or.us

Tammy Baney  
Anthony DeBone  
Alan Unger

January 5, 2012

Jim Rue, Deputy Director  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

**RE: Regional Economic Opportunity Analysis / Request for Formal Participation**

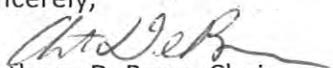
Dear Deputy Director Rue,

I am writing to thank you for your partnership over the last two years that led to the establishment of an integrated plan that addresses an unmet regional need for large-lot industrial sites in Central Oregon. Deschutes County, through its governing body, is exercising its statutory coordinating authority to address an unmet regional need for large-lot industrial sites. With your support, Central Oregon is recognized as a leader in developing an innovative land use approach to economic development planning. This letter contains three requests. First, Deschutes County asks that the Department of Land Conservation and Development (DLCD) formally participate at the Land Use Board of Appeals (LUBA). Second, as the region begins implementing the Regional Economic Opportunity Analysis (REOA), the tri-county area stands to benefit by your agency's continued involvement and expertise. Lastly, Deschutes County welcomes opportunities to discuss larger issues associated with this work program at a statewide level to ensure that Central Oregon's effort to attract large-lot employers remains on track to be successful.

1000 Friends of Oregon, on December 21, 2011 submitted a Notice of Intent to Appeal. They intend to appeal the Deschutes County Board of Commissioners (Board) land use decision that adopted a REOA and Regional Large Lot Industrial Policies into Deschutes County's Comprehensive Plan (plan amendment). In light of this event, on January 4, the Board unanimously agreed to request the formal participation at LUBA of your agency as well as Business Oregon and Department of State Lands. Those respective state agencies will be receiving a separate letter from the Board.

The Board thanks you in advance for considering this request. Collaboration and broad engagement have been instrumental to date in the development of a REOA, Deschutes County's adopted plan amendment, and a \$35,000 implementation grant funded by your agency and awarded to Central Oregon Intergovernmental Council. DLCD's continuing involvement at LUBA and throughout the implementation process will help ensure that Central Oregon will be able to diversify its regional economy by successfully attracting large lot employers.

Sincerely,



Anthony DeBone, Chair

Deschutes County Board of Commission

*Enhancing the Lives of Citizens by Delivering Quality Services in a Cost-Effective Manner*



# Central Oregon Regional Economic Opportunity Analysis

In 2008, the Oregon Economic and Community Development Department's (now Business Oregon) industrial lands specialist Bev Thacker stated in a letter, "Large, ready to go industrial sites have been the state's most significant development challenge and one of the most noticeable changes in real estate trends in [the] last few years." She specifically identified a statewide need of industrial lands of 100-200 acres in size.

Economic Development for Central Oregon (EDCO) has identified similar challenges for the tri-county (Deschutes, Jefferson and Crook) region. Executive Director Roger Lee and others have repeatedly stated that site selectors often will not even visit the region if only one or two sites are available. The arrival of Facebook, while unique in many regards, has put Central Oregon on the international map for data centers among other potential large lot employers. However, the region lacks a supply of sites and cities' traditional Economic Opportunity Analyses (EOAs) do not account for such a land demand.

This project aimed to determine if such a land demand exists and, if so, to identify the deficiency. The study documented an unmet land need for large lot industrial sites in the region. On November 30, 2011 Deschutes County adopted a Comprehensive Plan amendment to officially recognize the REOA as a technical study, and a series of policies that establish the legal basis to encourage cities to address this unmet employment land need and a planning framework for creating a regional entity to oversee the program.

Below are a summary of the legal basis for the REOA and major findings.

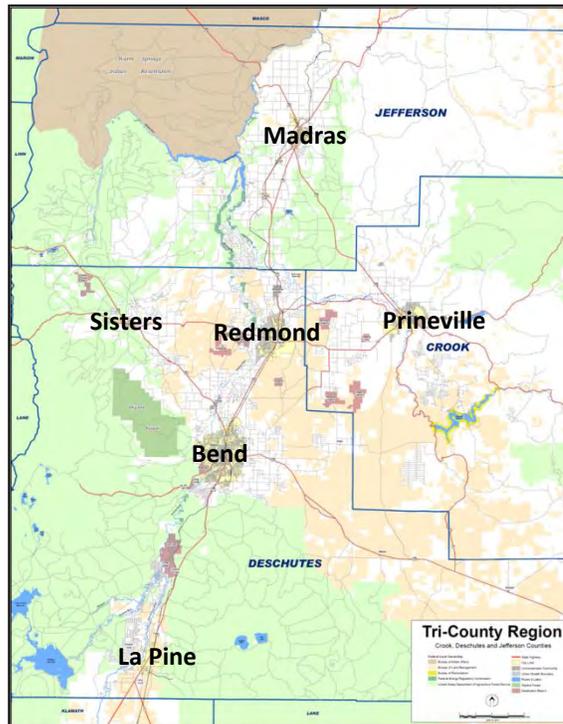
## 1. CHOICE.

Identifying and implementing a program to create a large-lot land supply that enables Central Oregon to compete for industrial recruitment is a policy the Board of County Commissioners can choose to pursue. Deschutes County, through its governing body, can exercise its statutory coordinating authority (ORS 195.025) to address an unmet regional need for large-lot industrial sites. The County can demonstrate that the evidentiary record and findings support a regional approach to large-lot industrial siting and that it is consistent with Oregon's Land Use Program.

## 2. OAR DIVISION 9.

This division implements Statewide Planning Goal 9: Economic Development. Two sections of this division are applicable to this project.

- a. OAR 660-009-0010 states, "This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth



## NEW REGIONAL APPROACH

1. Two DLCD Technical Assistance (TA) Grants funded:
  - a) \$50,000 for a technical study to determine a regional land need not currently recognized in existing City EOAs (Phase 1, 2009-2011).
  - b) \$25,500 for Regional Governance Approaches, Site Suitability Characteristics, Model Large Lot Industrial Overlay Zone (Phase 1, 2009-2011)
  - c) \$35,000 to establish regional authority (Phase 2, 2011-2013 Coming Soon)
2. Created a Regional Advisory Committee to oversee the project. Members included: cities, counties, EDCO, COIC, 1000 Friends of Oregon, Central Oregon Realtors Association, DLCD, DSL and Business Oregon.
3. RAC hired Johnson Reid consultant team, with expertise in real estate development and land use economics
4. Traditional industrial land need is determined based on a formulaic approach (population & employment projections are applied to square feet per employee ratio to arrive at an acreage need). This new regional approach addresses the recent demand of large-lot employers and rapidly growing industries that are building production and research capabilities to establish global scale.
5. Deschutes County is exercising its statutory coordinating authority (ORS 195.025) to address an unmet regional need for large-lot industrial sites. This authority can assure there is an integrated comprehensive plan between the County and its respective cities by encouraging them to address a short-term specialized employment land need.
6. Deschutes County also voluntarily coordinating with Crook and Jefferson Counties and their respective cities as authorized in ORS 190.003- 190.620 to exercise their coordination authority with parallel plan amendments.

boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.”

Deschutes County’s Comprehensive Plan and legislative amendment do not apply to areas within UGBs. Cities that choose to adopt and implement the REOA will need to demonstrate compliance with this division.

b. OAR 660-009-0030 provides for multi-jurisdiction coordination.

**3. LAND DEMAND.**

A critical mass of competitive and diverse vacant, developable industrial sites is needed in order for site selectors representing potential industrial recruitment to consider the region. Economic development focuses on short-term, 5-year time frames – not 20-year planning horizons as required by the Statewide Planning Program. The entire Central Oregon REOA program focuses on the short term land need. The table below shows the short-term need for economic development purposes, and the state’s required 20-year land need. The minimum is a 50-acre site and, one of the larger sites must be located near the region’s geographic and workforce center in either Bend or Redmond.

**Recommended Competitive Large Lot Industrial Inventory**

	50-100 acres	100-200 acres	200 + acres	TOTAL
<b>SHORT-TERM</b>				
# of Sites	3	2	1	6
Jurisdictions	3	2	1	
<b>LONG-TERM</b>				
# of Sites	10	5	2	17
Jurisdictions	5	3	2	

**4. CENTRAL OREGON’S COMPETITIVENESS.**

Competing as a cohesive region allows Central Oregon to market a larger available work force, the size of which is often a key locational criterion for firms. While geographically separate, the jurisdictions in the region function in a manner similar to other metropolitan areas, which often share boundaries. The shared economic function within Central Oregon supports a regional approach to economic development, particularly with respect to large traded sector industries.

**5. REGIONAL AUTHORITY.**

The Central Oregon Intergovernmental Council (COIC) is the beneficiary of a second DLCD TA Grant and will be using it to formalize their organization as the regional authority to organize, coordinate and promote large-lot industrial strategy.

**6. SITE-NEED CHARACTERISTICS.**

Physical: 50 acres or above. Flat slopes. Rectangular sites.

Transportation: accessible or in close proximity to auto/truck, rail and air service.

Utilities: water, sewer, natural gas, electricity/power, telecommunications.

Location: acceptable distance to work force.

Special considerations: willing property owner to sell at market consistent price and participate in infrastructure investments to support the development.

**7. IMPLEMENTATION NEXT STEPS.**

(1) Adoption of Deschutes County’s Comprehensive Plan amendment. (2) Jefferson and Crook Counties adopt similar plan amendments. (3) COIC becomes the regional authority. (4) Cities comply with statewide planning program requirements to change land designations for large lot employment sites, and collaborate with willing property owners. (5) Cities adopt plan amendments and Large Lot Overlay Zone. (6) EDCO markets the region’s short-term supply of vacant, developable sites.

**COMPREHENSIVE PLAN  
 AMENDMENT**

**GOAL**

- To build a strong and thriving regional economy by establishing and actively maintaining a competitive portfolio of large lot employment sites and coordinating public investments, policies and regulations to support regional and state economic development objectives in Central Oregon.

**POLICIES (abbreviated)**

- The short term supply of 6 sites is a community development objective of Central Oregon for establishing large-lot industrial uses.
- Replenishing the short term inventory shall be initiated when large lot employers demonstrate a commitment to short term sites completing land use entitlements and executing site development permits, including building permits, subject to the following replenishment mechanism:
  - Only a total of 6 vacant and developable sites shall ever be made available at one time.
- Cities are required to comply with state land use program when requirements when changing land designations or amending a UGB.
- Establish a regional authority via MOUs signed all participating cities and counties.
- Cities receive formal support from EDCO that potential sites contain necessary site characteristic and standards as defined in the REOA to attract large lot users.
- Deschutes County, fulfilling coordination duties specified in ORS 195.025 shall approve and update its comprehensive plan when cities designate regionally significant sites.

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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, )  
 )  
 Petitioner, )  
 )  
 v. ) LUBA No. 2011-121  
 )  
 DESCHUTES COUNTY, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

MOTION TO INTERVENE

I.

The Oregon Department of Land Conservation and Development (DLCD), Department of State Lands (DSL), and Business Oregon move to intervene on the side of Respondent Deschutes County in the above-captioned appeal. Movants DLCD, DSL, and Business Oregon are represented by Assistant Attorneys General Steven E. Shipsey and Erin L. Donald whose address and phone number are as follows:

Natural Resources Section  
General Counsel Division  
Department of Justice  
1162 Court Street N.E.  
Salem, Oregon 97301-4096  
Phone: 503-947-4342

II.

The facts establishing Movants' right to intervene are as follows: Movant DLCD appeared before Deschutes County, including by letters dated July 5, 2011 (Attachment 1) and October 18, 2011 (Attachment 2), and orally at the August 25, 2011 Planning Commission meeting (Attachment 4 at 1), and the Board of Commissioners' October 31, 2011 meeting (Attachment 5 at 10). Movant DSL appeared before Deschutes County,

1 including by letter dated October 31, 2011 (Attachment 3) and orally at the Board of  
2 Commissioners' October 31, 2011 meeting. (Attachment 5 at 11). Movant Business Oregon  
3 appeared before Deschutes County, including orally at the August 25, 2011 Planning  
4 Commission meeting (Attachment 4 at 2) and the Board of Commissioners' October 31,  
5 2011 meeting. (Attachment 5 at 6-8).

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III.

8 Pursuant to OAR 661-010-0050(3), this motion is accompanied by State of Oregon  
9 warrant #2549543 payable to the Land Use Board of Appeals in the amount of \$100.00 as a  
10 filing fee.

11 DATED this 11<sup>th</sup> day of January 2012.

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Respectfully submitted,

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JOHN KROGER

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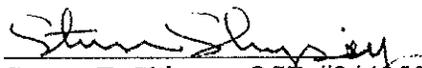
Attorney General

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Steven E. Shipsey, OSB #944350  
Erin L. Donald, OSB #042730  
Assistant Attorneys General  
Of Attorneys for DLCD, DSL, and  
Business Oregon

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