



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



January 4, 2008

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director  
Jon Jinings, Central/Eastern Oregon Regional Representative  
Doug White, Community Services Specialist

SUBJECT: **Agenda Item 4, January 23-25, 2008, LCDC Meeting**

**REVIEW OF A DIRECTOR'S DECISION TO APPEAL TO THE  
LAND USE BOARD OF APPEALS (LUBA)**

**KLAMATH COUNTY**

**I. RECOMMENDATION**

The director recommends, based on the information contained in this report, that the Commission authorize the department to proceed with the appeal of a Klamath County decision to the Land Use Board of Appeals. The department filed a Notice of Intent to Appeal with LUBA on January 2, 2008. It was necessary for the department to file the Notice of Intent to Appeal because the 21-day filing period will expire prior to the Commission's next scheduled meeting.

**II. CASE SUMMARY**

This case involves Klamath County's decision to amend its residential dwelling siting standards in the Significant Resources Overlay for Big Game Winter Range.

This matter first came to the attention of the department when staff attended a meeting with the Klamath County Board of Commissioners and the Oregon Department of Fish and Wildlife (ODFW) on January 26, 2007. The meeting was to discuss making changes to the residential dwelling siting standards for big game habitat areas that are zoned for residential development and for which an exception to Goals 3 and 4 was already taken. It was also the departments understanding at that time that no changes were being considered that would affect the siting standards applied to lands zoned for resource or

non-resource use.<sup>1</sup> There was general agreement at that time that it would be appropriate to consider applying a different set of siting standards to big game habitat areas that are already developed and zoned into smaller residential lots or parcels, then the existing acknowledged siting standards that apply to lands zoned for resource use.

On March 28, 2007, the department received from the county a notice of proposed comprehensive plan and land use regulation amendment. The proposal at that time was a revised ESEE analysis and amendment the residential development standards to remove the density provisions of Section 57.070(2)(a) and (b) from land zoned residential and non-resource, and only apply them to lands in a resource zone. The department provided written comments on the proposal. The department did not oppose the county wanting to make changes to the residential siting standards that apply in big game habitat areas zoned for rural residential uses, except to comment that such changes would require an amendment to revise county's ESEE analysis under Statewide Planning Goal 5. Please see the department's April 23, 2007 letter attached.

On November 6, 2007, Klamath County adopted an amendment to the residential dwelling siting standards in the Significant Resources Overlay for Big Game Winter Range (County Ordinance 45.67). The amendment was signed by County Board of Commissioners on December 1, 2007, and received by the department on December 17, 2007. The adopted amendment removed the following dwelling density and siting standards, without an amendment to the comprehensive plan to include a new or revised ESEE analysis pursuant to Goal 5:

- a. Residential home sites (including accessory buildings) on parcels fronting a public road shall be located:
  - 1) Not more than 330 feet from an existing dwelling; or
  - 2) Not more than 150 feet from a side property; and
  - 3) Not more than 100 feet from an existing public road.
  
- b. Residential homes sites (including accessory buildings) on parcels not fronting a public road may be permitted if:
  - 1) Not more than 7 other dwellings exist within a 640 acre square centered on the center of the subject property in mapped areas of impacted (low-medium density) deer winter range; or
  - 2) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject property in mapped areas of important (high density) deer winter range; or
  - 3) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject property in mapped areas of pronghorn antelope or rocky mountain elk range.

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<sup>1</sup> In this case, "non-resource lands" are those lands not subject to the definitions of "Agricultural Lands" under Goal 3 and "Forest Lands" under Goal 4 (OAR 660-004-0005(3)).

Pursuant to Commission rules (OAR 660-001-0220), the department by this report notified Klamath County of its intent to appeal its decision. The opportunity exists for Klamath County to appear before the Commission to discuss the merits of the department's appeal. The county is also being informed about the factors in OAR 660-001-0230(3), below, upon which the Commission will base its decision on whether or not direct the department to proceed with this appeal.

### **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**

This case involves the interpretation of Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), because the decision involves an amendment to the county's acknowledged Goal 5 protection standards applied to big game winter range, because the amendment does not include an identification of potential conflicting uses and an analysis of the ESEE consequences of allowing new conflicting uses, and the decision does not appear to be coordinated with the program objectives of the Oregon Department of Fish and Wildlife. The impacts of removing most of the county's acknowledged residential siting standards applied to big game winter range habitat areas involves adherence with Goal 5 and OAR 660, division 23, including an amendment to the comprehensive plan to include a new or revised ESEE analysis. No such analysis was performed by the county.

#### **(b) Whether a Ruling in the Case will Serve to Clarify State Planning Law**

A ruling in this case will help to explain that when amending an acknowledged resource protection program under Goal 5 the requirements of that goal, as well as other goals, apply. If the county's interpretation is correct that no new or revised ESEE analysis is required the county would be free to change every other Goal 5 program without

reconsideration the comprehensive plan (i.e., ESEE) that required those standards in the first place.

A ruling in this case would also help clarify the obligations under Goal 5 and its rule when a local government changes or revises an acknowledged resource protection program that was already established by the goal.

**(c) Whether the Case has Important Enforcement Value**

Not at this time.

**(d) Whether the Case Concerns a Significant Natural, Cultural or Economic Resource**

The case involves removal of most of the county's acknowledged residential dwelling siting standards that apply to **all** areas of unincorporated Klamath County designated as significant Big Game Winter Range Habitat under Goal 5. The department's Notice of Intent to Appeal of the county's decision includes a joint appeal filed by the Oregon Department of Fish and Wildlife (See attached ODFW's November 6, 2007 letter to Klamath County).

**(e) Whether the Case Advances the Objectives of the Agency's Strategic Plan**

This appeal advances the objectives of the Agencies Strategic Plan by helping to ensure that local government programs adopted to protect natural resources, and promote healthy environments and natural landscapes that contribute to Oregon's livability are maintained for future generations.

**(f) Whether there is a Better Way to Accomplish the Objective of the Appeal, such as Dispute Resolution, Enforcement Proceedings or Technical Assistance**

No alternative method of resolving the issues has been identified.

**V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION**

The department recommends that the Commission support the Director's recommendation and proceed with an appeal of the Klamath County land use decision.

***Proposed Motion:*** I move that the Commission approve a department appeal of the subject decision from Klamath County to the Land Use Board of Appeals because the information included in this report demonstrate that OAR 660-001-0230(3) (a), (b) (d) and (e) apply.

***Alternative motion:*** I move the Commission not approve an appeal of the subject decision from Klamath County because \_\_\_\_\_.

- Attachments:
- A. Notice of Proposed Amendment to DLCD, received March 28, 2007
  - B. Klamath Final Decision, Ordinance 45.66 for File Number ZC 13-07
  - C. DLCD's letter to Klamath County, dated April 23, 2007
  - D. ODFW's letter to Klamath County, dated November 6, 2007

**ATTACHMENT A**  
**Notice of Proposed Amendment to DLCD, received March 28, 2007**

PLAN AMENDMENT TRACKING SHEET

AMENDMENT PROPOSED 15991

Jurisdiction : KLAMATH COUNTY

Jurisdiction Abbrev : AKLAM

DLCD File No : 005-07 Local File No : CLUP/ZC 5-07

Proposal Summary :

Amend the Klamath County Goal 5 Economic, Social, Environmental and Energy Analysis (ESEE) for Big Game and the Land Development Code Article 49. The update includes modification of zone text addressing residential dwelling siting and density standards for both resource and non-resource lands inside the Big Game Overlay. This proposal was received with 27 days before both the first evidentiary hearing and the final hearing.

Locally Identified Affected Agencies:

U.S. Fish and Wildlife, U.S. Bureau of Land Management, U.S. Forest Service, Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Klamath Tribes, Klamath County.

Proposal Received : 3/28/2007

First Evidentiary Hearing : 4/24/2007

Days Notice to First Evid. Hearing: 27

Final Hearing : 4/24/2007

Days Notice to Final Hearing: 27

Local Contact: Les Wilson

541-883-5121 EXT :

Field Representative : JJ

AS Supervisor : DW

Notice of Proposed Amendment :

Number of Amendments : 6

DLCD Notice of Participation :

Statewide Goals: 5

PROPOSAL REVIEW

Department Participation : YES

Reviewer : DW (lead), JJ

Time Spent on Review :

Final Due : 4/17/2007

Mail Deadline : 4/18/2007

Response Sent :

Fax Deadline : 4/23/2007

Response Type :

3801 1

# Notice of Proposed Amendment

DEPT OF  
 MAR 28 2007  
 LAND CONSERVATION  
 AND DEVELOPMENT  
 For DLCD Use Only

THIS FORM **MUST BE RECEIVED** BY DLCD  
**45 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING**  
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18 AND SENATE BILL 543,  
 EFFECTIVE JUNE 30, 1999

Jurisdiction: Klamath County Local file number: CLUP/ZC 5-07  
 Date First Evidentiary hearing: 4/24/2007 Date of Final Hearing: 4/24/2007  
 Date this Notice of Proposed Amendment was mailed to DLCD: 3/27/2007

Is this a **REVISED** Proposal previously submitted to DLCD?  YES  NO Date Submitted: \_\_\_\_\_  
 Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment  
 Land Use Regulation Amendment  Zoning Map Amendment  
 New Land Use Regulation  Other: \_\_\_\_\_

Briefly Summarize Proposal. Do not use technical terms. Do not write "See Attached". (limit of 500 characters)  
Legislative amendment to acknowledged Klamath County Goal 5 ESEE for Big Game, per KCLDC Article 49. Including modification of zone text addressing residential dwelling siting and density standards for both resource and non-resource lands inside the Big Game Overlay. ESEE program adjustment to provide clarity.

Plan Map Changed from: N/A to: N/A  
 Zone Map Changed from: N/A to: N/A  
 Location: Klamath County Acres Involved: \_\_\_\_\_  
 Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: 5  
 Is an Exception Proposed?  YES  NO  
 Affected State or Federal Agencies, Local Governments or Special Districts:  
DLCD, Klamath County, ODFW, ODF, US Fish & Wildlife, US BLM, USFS, Klamath Tribes

Local Contact: Les Wilson Phone: (541) 883-5121 Extension: 3085  
 Address: 305 Main Street City: Klamath Falls Zip: 97601  
 Fax Number: 541-885-3644 Email Address: lwilson@co.klamath.or.us

DLCD File No.: 005-07(15991)

## **SUBMITTAL REQUIREMENTS**

This form **must be received** by DLCD **at least 45 days prior to the first evidentiary hearing** per ORS 197.610, OAR Chapter 660 - Division 18 and Senate Bill 543 effective on June 30, 1999.

1. This form must be submitted by local jurisdictions only.
2. When submitting, please print this form on green paper.
3. Send this Form and TWO (2) Copies of the Proposed Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

4. Unless exempt by ORS 197.610 (2), proposed amendments must be **received** at the DLCD's SALEM OFFICE at least **FORTY-FIVE (45) days before the first evidentiary hearing on the proposal.** The first evidentiary hearing is usually the **first public hearing** held by the jurisdiction's planning commission on the proposal.
5. Submittal of proposed amendments shall include the text of the amendment and any other information the local government believes is necessary to advise DLCD of the proposal. Text means the specific language being added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal is not adequate.
6. Submittal of proposed map amendments must include a map of the affected area showing existing and proposed plan and zone designations. The map should be on 8-1/2 x 11 inch paper. A legal description, tax account number, address or general description is not adequate. Text of background and / or reason for change request should be included.
7. Submittal of proposed amendments which involve a goal exception must include the proposed language of the exception.
8. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or email your request to [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

# DRAFT

## Klamath County Planning Goal 5 2007 Big Game Economic, Social, Environmental and Energy Analysis (ESEE Analysis)

### Amendment

This ESEE analysis is based on an adjustment to the Klamath County Planning Goal 5 program to provide clarity to site development in Comprehensive Plan Goal 5 acknowledged and mapped areas.

#### Economic

The 1984 Big Game ESEE identified wildlife recreational activities as an important economic stimulus. These activities are self-generating impacts that must be considered as economic opportunities which exist as the county moves from a resource based economy to one of a service economy. Recreational activities have lead to an increase in residential development on previously zoned lands within wildlife overlay areas because of a desire to deal with a high quality site.

Big Game habitat in Non-forest lands may be viewed as a negative economic impact to community because the lands are typically poor soils for forest with limited vegetation and are usually associated with game habitat. Non-resource lands may be viewed as transitional lands between seasonal habitat and therefore with limited economic value as a resource.

The Economic Impact to the community is greater than that found by the farm or timber operator. A residential landowner has significant economic resources committed to development of a dwelling versus a farm or forest operator. The economic commitment for a farm or forest operator is the production of the land.

Big Game habitat in Resource lands is a positive economic consideration for the community because acreages are rather large and density is limited whereby maximizing both farm and timber production. Additionally, the economic benefits from recreational activities on large acreages appear virtually untapped.

The Economic Impact perception for Big Game preservation as it relates to economic analysis is much less when the farm or timber operator's dwelling is evaluated strictly to that of siting of residential dwellings for residential uses without resource activities. The low economic impact perception is further modified to a positive position when matched with recreational opportunities, such as hunting ranches. The higher density of residential dwellings found on small parcels and platted subdivisions may have created a shift in Winter Range activities that was not originally considered in the acknowledged ESEE.

The Economic Impact to the Big Game Winter Range as it relates to the wildlife (Deer, Elk, and Antelope) cannot be measured in monetary terms. The fundamental economic impact to wildlife is directly correlated to the amount or degree of available food source.

# DRAFT

## Social

The positive social consequence of protecting Big Game Winter Ranges continues as originally identified in the 1984 ESEE.

The negative social consequences of limiting residential development (and construction) in habitat areas continues as identified in the 1984 ESEE. However, the original ESEE did not consider the social impacts of permitting additional dwellings in isolation on both Non-Resource and Exception lands. The social impacts of a single dwelling sited in the Overlay must be measured in both economic and environmental terms as well. Social human isolation attracts elements of society that require enforcement of societal norms that contribute to assist in the long-term management of wildlife habitat. Rural density of human populations becomes self-policing and contribute to an increased awareness of wildlife habitat.

## Environmental

The environmental consequences found in the 1984 Klamath County and 5 ESEE do not appear to be in conflict with the county's development policies. Big Game populations continue to flourish (increase) in the existing habitat in spite of increased development pressure. The environmental consequences for residential development on pre-ESEE platted lots and subdivisions appears consistent with the original ESEE statement. Residential development in our winter range areas will have little interference because each development project carries site-specific development restrictions (control logs, restrictions on road vehicles, site-specific appropriate fencing standards).

## Energy

The energy consequences identified in the 1984 ESEE identified limitation of trip generation. The proportionate population balance between urban and rural does appear to be trending toward increasing urban. An increase in urban population mitigates associated negative impacts identified in 1984. Human populations will continue to migrate to urban centers therefore contributing to a proportionate reduction in energy demands from rural areas in wildlife habitat areas.

- 
- Include prior to hearing:
    - Factoids
    - Bullets
    - Alternative analysis
    - Final editing
  
  - Working with Doug White, DLCD to format final draft

## ESEE CONSEQUENCES:

### Economic

Wildlife recreational activities provide an important stimulus to the county economy. Although income from these activities is not all generated within the county, a substantial share of the recreational dollar is left with county businesses. The estimated recreation value of big game in the county is tabulated as follows: deer \$2,811,420; elk \$29,475; antelope \$21,264; bear \$16,225. In addition to hunting, many days of recreation are expended in non-consumptive uses of wildlife such as photography and animal watching. These activities also serve to bolster the county economy.

Each year the Department of Fish and Wildlife spends valuable staff time attempting to study and resolve conflicts between big game management and nonresource land uses. A county plan which would minimize conflicts would prove to be a cost saving measure for the Oregon Department of Fish and Wildlife.

The negative economic consequences of applying regulations are generally borne by individuals who must abide by certain restrictions to their property. In some instances this can become a financial hardship to an individual.

### Social Consequences

The positive social consequences of protecting big game winter ranges are a maintenance of the outstanding outdoor quality of life associated with Klamath County.

The negative social consequences of limiting development in habitat areas restricts some individuals from developing their land for intense nonresource uses such as subdivision. Personal financial hardship may be a social as well as economic by-product of strict adherence to a prescribed regulation.

### Environmental

Opportunities for big game to flourish in a habitat without repeated interference or disturbances from man are a positive environmental consequence. Other animal species requiring large open space environment also benefit from low density requirements.

### Energy

The energy consequences of limiting intense development in big game winter ranges should be positive. Trip generation

associated with development in remote parts of the county will be minimized by density and development restrictions. As a result, development will occur closer to cities and services.

#### Management Program

- o The Significant Resource Overlay shall be applied to big game winter ranges, the antelope range north of Bly, and the significant wetland areas.
- o Densities within big game winter ranges shall be limited.
- o Siting criteria aimed at reducing the impact of development in winter ranges shall be considered when development is proposed in significant big game winter ranges.
- o Resource zoning and appropriate minimum lot sizes protect black bear habitat and the majority of the antelope range.
- o Other wildlife habitat is protected by the riparian setback around wetland areas and the Significant Resource Overlay applied to significant wetland areas.

RESOURCE: Big Game Ranges ESEE Paper

LOCATION: See Maps

CONFLICTING USES:

1. Vehicular access and resulting human disturbance.
2. Subdivision and resulting human activity including impacts of domestic dogs.
3. Population density.

DISCUSSION:

Deer are the most abundant big game species in the county. Summer range requirements are generally easily met with approximately 63% of the summer range under public ownership. Mule deer migrate to winter ranges where they may be placed under stress due to crowded conditions, insufficient food, and severe winter weather. They must rely on body fat reserves to maintain their condition during stormy periods. Disturbance by human activity during this stress period reduces body fat reserves through unnecessary movement to avoid such disturbances. The loss of body condition for does can result in a poor fawn survival rate. While subdivisions on winter ranges reduce the range area deer use, the impacts of human activity, particularly domestic dogs, extends well beyond the boundaries of the subdivision. With two thirds of this winter range habitat lying in private ownership, it becomes increasingly important for the county to protect big game winter ranges.

Approximately 300 Rocky Mountain Elk are found in Klamath County. The majority of these animals are located in the Gearhart Mountain Wilderness area where development and road access are limited.

Black bear are concentrated primarily in the western portion of the County largely on public lands. Private lands in bear habitat areas are zoned principally for forestry uses. These uses are compatible with bear habitat. No conflicts are anticipated.

A small population of antelope are found in the southeastern portion of the County. Most of the animals migrate into California during the winter months, returning to Klamath County in April. With the exception of the antelope habitat area located north of Bly on the Wildlife Habitat map, antelope habitat areas are primarily located on federal lands which will be maintained in large lots sizes and which will be governed by the Oregon Forest Practices Act for habitat protection.

The Significant Resource Overlay will be applied to the antelope habitat lying north of Bly.

KLAMATH COUNTY PLANNING DEPARTMENT  
305 MAIN STREET  
KLAMATH FALLS, OR 97601

Attn: Plan Amendment Specialist  
DLCD  
635 Capitol St NE, Ste 150  
Salem, OR 97301-2540



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03/27/2007  
Mailed From: 97604  
US POSTAGE

PLAN AMENDMENT TRACKING SHEET

AMENDMENT PROPOSED 15991

Jurisdiction : KLAMATH COUNTY

Jurisdiction Abbrev : AKLAM

DLCD File No : 005-07 Local File No : CLUP/ZC 5-07

Proposal Summary :

Amend the Klamath County Goal 5 Economic, Social, Environmental and Energy Analysis (ESEE) for Big Game and the Land Development Code Article 49. The update includes modification of zone text addressing residential dwelling siting and density standards for both resource and non-resource lands inside the Big Game Overlay. This proposal was received with 27 days before both the first evidentiary hearing and the final hearing. **Revised Notice:** received 8/23/2007. This revision was received 33 days prior to both the first evidentiary hearing and the final hearing.

Locally Identified Affected Agencies:

U.S. Fish and Wildlife, U.S. Bureau of Land Management, U.S. Forest Service, Oregon Department of Fish and Wildlife, Oregon Department of Forestry, Klamath Tribes, Klamath County.

Proposal Received : 8/23/2007

First Evidentiary Hearing : 9/25/2007 Days Notice to First Evid. Hearing: 33

Final Hearing : 9/25/2007 Days Notice to Final Hearing: 33

Local Contact: Les Wilson 541-883-5121 EXT :

Field Representative : JJ AS Supervisor : DW

Notice of Proposed Amendment : Number of Amendments : 6

DLCD Notice of Participation :

Statewide Goals: 5

PROPOSAL REVIEW

Department Participation : Yes

Reviewer : DW JJ Time Spent on Review : 3.00

Final Due : 09/18 Mail Deadline : 09/19

Response Sent : Yes Fax Deadline : 09/24

Response Type : Letter

FORM

1

# Notice of Proposed Amendment

*Revised*

STATE OF OREGON  
 DEPT OF  
 AUG 23 2007  
 LAND CONSERVATION  
 AND DEVELOPMENT  
 For DLCD Use Only

THIS FORM MUST BE RECEIVED BY DLCD  
 45 DAYS PRIOR TO THE FIRST EVIDENTIARY HEARING  
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18 AND SENATE BILL 543,  
 EFFECTIVE JUNE 30, 1999

Jurisdiction: Klamath County Local file number: ZC 5-07 Ordinance # to be assigned later

Date First Evidentiary hearing: 9/25/2007 Date of Final Hearing: 9/25/2007

Date this Notice of Proposed Amendment was mailed to DLCD: 8/22/2007

Is this a REVISED Proposal previously submitted to DLCD?  YES  NO Date Submitted: 3/27/2007

- |   |   |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment        | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment             |
| <input type="checkbox"/> New Land Use Regulation                  | <input type="checkbox"/> Other: _____                     |

Briefly Summarize Proposal. Do not use technical terms. Do not write "See Attached". (limit of 500 characters)  
Legislative amendment to acknowledged Klamath County Goal 5 for Big Game, per KCLDC Article 49. Modification of zone text addressing residential dwelling siting standards for both resource and non-resource lands inside the Big Game Overlay.

Plan Map Changed from: N/A to: N/A

Zone Map Changed from: N/A to: N/A

Location: Klamath County Acres Involved: \_\_\_\_\_

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: 5

Is an Exception Proposed?  YES  NO

Affected State or Federal Agencies, Local Governments or Special Districts:  
DLCD, Klamath County, ODFW, ODF, US Fish & Wildlife, US BLM, USFS, Klamath Tribes

Local Contact: Les Wilson Phone: (541) 883-5121 Extension: 3085

Address: 305 Main Street City: Klamath Falls Zip: 97601

Fax Number: 541-885-3644 Email Address: lwilson@co.klamath.or.us

DLCD File No.: 005-07 (15991)

## SUBMITTAL REQUIREMENTS

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**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

4. Unless exempt by ORS 197.610 (2), proposed amendments must be **received** at the DLCD's SALEM OFFICE at least **FORTY-FIVE (45) days before the first evidentiary hearing on the proposal**. The first evidentiary hearing is usually the **first public hearing** held by the jurisdiction's planning commission on the proposal.
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7. Submittal of proposed amendments which involve a goal exception must include the proposed language of the exception.
8. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or email your request to [maru.ulloa@state.or.us](mailto:maru.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

*Klamath County Land Development Code  
Article 57.070*

b. Antelope: 160 acres

c. Elk: 160 acres

2. Residential Development Standards

a. Residential home sites (including accessory buildings) on parcels fronting a public road shall be located:

- 1) Not more than 330 feet from an existing dwelling; or
- 2) Not more than 150 feet from a side property boundary; and
- 3) Not more than 100 feet from an existing public road.

b. Residential home sites (including accessory buildings) on parcels not fronting a public road may be permitted if:

- 1) Not more than 7 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of impacted (low-medium density) deer winter range; or
- 2) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of important (high density) deer winter range; or
- 3) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of pronghorn antelope or rocky mountain elk range.

c. Residential home sites (including accessory buildings) shall not be sited within a critical habitat area or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.

d. Fencing on the perimeter of property shall only be for livestock control purposes; fencing around home sites shall enclose no greater than 1 acre, and where designed to exclude wildlife shall not be placed within critical habitat or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.

e. Approval of a dwelling shall be conditioned upon the resident filing a statement with the property deed agreeing to control free-roaming dogs and off-road vehicle use during the period November through April.

D. Geothermal Resources

Development proposals coincident with identified geothermal resource shall comply with the provisions of Article 59.040 of this code.

E. Archeological Resources

*Existing text to be amended*

**ARTICLE 57**  
**SIGNIFICANT RESOURCE OVERLAY**  
**(SRO)**

Amendment to Article 57.070(C)  
Clean with underline

2. Residential Development Standards

a. Residential home sites (including accessory buildings) on lawfully created parcels or within platted subdivision, in a Rural Residential or Non-Resource zone, which front a public or private road shall be located:

1) Not more than 330 feet from an existing dwelling; or

- or -

2) Not more than 150 feet from a side property boundary; and

a) Not more than 100 feet from an existing public road

- or -

b) Not more than 100 feet from the point of legal access to the lot or parcel.

b. Residential home sites (including accessory buildings) on lawfully created parcels or tracts located in a Resource zone, that front a public road shall be located:

1) Not more than 330 feet from an existing dwelling; or

2) Not more than 150 feet from a side property boundary; and

3) Not more than 100 feet from an existing public road.

c. Residential home sites (including accessory buildings) on parcels not fronting a public road in a Resource zone may be permitted if:

1) Not more than 7 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of impacted (low-medium density) deer winter range; or

- 2) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of important (high density) deer winter range; or
  - 3) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of pronghorn antelope or rocky mountain elk range.
- c. Residential home sites (including accessory buildings) shall not be sited within a critical habitat area or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife, when the habitat area or migration corridor has been identified in the Comprehensive Plan.
- d. Fencing on the perimeter of property shall only be for livestock control purposes; fencing around home sites shall enclose no greater than 1 acre, and where designed to exclude wildlife shall not be placed within critical habitat or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.
- e. Approval of a dwelling shall be conditioned upon the resident filing a statement with the property deed agreeing to control free-roaming dogs and off-road vehicle use during the period November through April. Said agreement shall include a statement recognizing damage from wildlife may occur when siting a dwelling or accessory building in the Significant Resources Overlay.

**ARTICLE 57**  
**SIGNIFICANT RESOURCE OVERLAY**  
**(SRO)**

Amendment to Article 57.070(C)

Markup Text

Text removed is identified as removed

Text inserted is identified as *inserted*

2. Residential Development Standards

a. Residential home sites (including accessory buildings) on lawfully created parcels or within platted subdivision, in a Rural Residential or Non-Resource zone, which front a public or private road shall be located:

1) Not more than 330 feet from an existing dwelling; or

- or -

2) Not more than 150 feet from a side property boundary; and

a) Not more than 100 feet from an existing public road

- or -

b) Not more than 100 feet from the point of legal access to the lot or parcel.

b. Residential home sites (including accessory buildings) on lawfully created parcels or tracts located in a Resource zone, that front a public road may shall be permitted if located:

1) Not more than 330 feet from an existing dwelling; or

2) Not more than 150 feet from a side property boundary; and

3) Not more than 100 feet from an existing public road.

c. Residential home sites (including accessory buildings) on parcels not fronting a public road in a Resource zone may be permitted if:

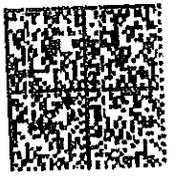
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  - 2) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of important (high density) deer winter range; or
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- d. Fencing on the perimeter of property shall only be for livestock control purposes; fencing around home sites shall enclose no greater than 1 acre, and where designed to exclude wildlife shall not be placed within critical habitat or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.
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KLAMATH COUNTY PLANNING DEPARTMENT  
305 MAIN STREET  
KLAMATH FALLS, OR 97601

Attn: Plan Amendment Specialist

DLEED

135 Capital St NE, SE 150  
Salem OR 97301-2510



PostNet

049JB2030434  
\$01.140  
08/22/2007  
Mailed From 97601  
US POSTAGE

# *Klamath County*

*Planning Department*

302 Main Street  
Klamath Falls, OR 97601  
541-883-3611 (FAX)

August 3, 2007

Dear Concerned Citizen,

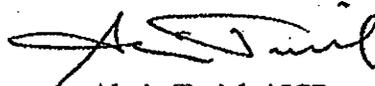
**RE: LAND DEVELOPMENT CODE CHANGES – RURAL COMMERCIAL USES**

You may remember receiving notice earlier this summer of the Board of County Commissioners Public Hearing on Ordinance 45.50 held on July 3, 2007. At their hearing the BOCC determined by a 3-0 vote that the County would not adopt proposed Ordinance 45.5 (attached). Since that time, the BOCC has determined a second public hearing should be held on the matter to provide an opportunity for additional testimony.

A second Public Hearing is now scheduled for **Tuesday, 28 August 2007 at 7 PM** (see attached re-notice). Your property was identified as potentially affected by the proposed Ordinance because it is located outside an unincorporated community or urban growth boundary and is (likely) zoned for commercial use.

We apologize for any inconvenience. If you have any questions, please feel free to call me at 541-883-5121 Ext. 3079.

Sincerely,



Alwin Turiel, AICP  
Planning Director

# DRAFT

## BEFORE THE BOARD OF COMMISSIONERS FOR THE COUNTY OF KLAMATH

**IN THE MATTER OF AMENDING:**

**ORDINANCE 45.50**

**ARTICLE 52.4 General Commercial (CG) SECTION 52.440**

**ARTICLE 52.6 Recreation Commercial (CR) SECTION 52.640**

**ARTICLE 52.8 Transportation Commercial (CT) SECTION 52.840**

### **OF THE KLAMATH COUNTY LAND DEVELOPMENT CODE**

WHEREAS, The Klamath County Planning Department, in response to an order of the Land Conservation and Development Commission's Periodic Review Work Task 22; Compliance with Statewide Planning Goal 14 and the Curry County Decision, is amending Articles 52.4, Section 52.440; 52.6, Section 52.640; and 52.8, Section 52.840 to add language to PROPERTY DEVELOPMENT STANDARDS; and

WHEREAS, The Klamath County Planning Department provided proper public notice for the Klamath County Planning Commission public hearing on 22 May 2007; and

WHEREAS, On 22 May 2007, the Klamath County Planning Commission recommended approval of Articles 52.4, Section 52.440; 52.6, Section 52.640; and 52.8, Section 52.840 to add language to PROPERTY DEVELOPMENT STANDARDS; and

WHEREAS, Individual property owner notice of this Ordinance was timely mailed to all potentially affected property owners of rural commercial land outside urban growth boundaries and unincorporated communities in accordance with ORS 215.503(6); and

WHEREAS, On 3 July 2007 at the first public hearing on this Ordinance the Board of County Commissioners approved Articles 52.4, Section 52.440; 52.6, Section 52.640; and 52.8, Section 52.840 as shown below.

### **NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF KLAMATH COUNTY ORDAINS AS FOLLOWS:**

The Klamath County Land Development Code is amended to include Articles 52.4, Section 52.440; 52.6, Section 52.640; and 52.8, Section 52.840 to read as follows:

#### **PROPERTY DEVELOPMENT STANDARDS**

- I. Commercial development on land outside of an Urban Growth Boundary or Unincorporated Community Boundary is subject to the following standards:
  1. An exception to Goal 14 is required if the proposed development does not fall within the use categories described in subsections (2), (3) and (4), below.
  2. New or expanded commercial uses intended to serve the rural area or the needs of the traveling public are not subject to the building size limitation of subsection (4) of this section when permitted through a Type II administrative review. Such uses may be permitted as a Type I use when building square footage does not exceed 3,500 square feet.
  3. Rural commercial uses primarily designed to serve resource industries (e.g., farming, forestry or mineral extraction) are not subject to the building size limitation of subsection (4) of this section when permitted through a Type II administrative review. Such uses

# DRAFT

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- may be permitted as a Type I use when building square footage does not exceed 3,500 square feet.
4. Building size for small scale, low-impact commercial uses not listed in (1) and (2), above shall not exceed 3,500 square feet of floor space per building unless an exception to Statewide Planning Goal 14 is taken.
  - J. Small-scale, low impact commercial uses on land within Unincorporated Communities are subject to the following standards (see OAR 660-022-0030(10)):
    1. Building size shall not exceed 8,000 square feet of floor space in an Urban Unincorporated Community.
    2. Building size shall not exceed 4,000 square feet of floor space in any other type of Unincorporated Community.
  - K. A lawfully established commercial use that existed prior to December 13, 2005 may expand to occupy a maximum of 4,000 square feet of floor area per building, or an additional 50% of the floor area currently occupied, whichever is greater.
  - L. All non-commercial uses that lawfully existed prior to adoption of this Ordinance shall be considered lawfully established non-conforming uses, which may be restored to their prior lawfully approved size if destroyed or substantially damaged.

This ordinance shall be effective thirty (30) days from the date of passage.

Dated this \_\_\_\_ day of June 2007

FOR THE BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

# DRAFT

## **RE-NOTICE OF ADDITIONAL PUBLIC HEARING**

**THIS IS TO NOTIFY YOU THAT KLAMATH COUNTY HAS PROPOSED  
A LAND USE REGULATION THAT MAY AFFECT THE PERMISSIBLE USES OF  
YOUR PROPERTY AND OTHER PROPERTIES**

***Klamath County Periodic Review Task 22 - Rural Commercial Lands***

***Remand of Ordinance 45.50***

As a result of an order of the Land Conservation and Development Commission, the Klamath County Planning Commission and Board of County Commissioners prepared Ordinance Number 45.50. A SECOND public hearing on the Ordinance will be held on **AUGUST 29, 2007, at 7:00 p.m.** in the second floor Commissioner's Hearing Room, Klamath County Government Center located at 305 Main Street, Klamath Falls, Oregon.

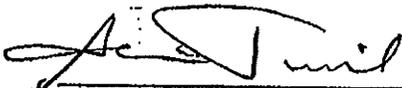
The Board of Commissioners has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zones, and may change the value of your property. Affected zones include General Commercial (CG), Recreation Commercial (CR) and Transportation Commercial (CT). The ordinance would amend the Klamath County Land Development Code (KCLDC) to add square foot limitations on building sizes for certain commercial uses outside urban growth boundaries and unincorporated communities.

If adopted, Ordinance 45.50 would be effective 30 days later. Ordinance 45.50 is included with this notice and is also available for inspection at the Klamath County Planning Department located at 305 Main Street, Klamath Falls, Oregon. Additional copies of Ordinance Number 45.50 are available for purchase at a cost of \$0.25 per page.

**The County requests that oral testimony at the hearing be limited to five minutes per speaker.** Persons who wish to provide extensive testimony are encouraged to submit their comments in writing. Written comments submitted at least seven days prior to the hearing will be provided to the Commissioners before the hearing.

A copy of the rules governing conduct of land use hearings (KCLDC Article 31) and all documents and evidence relied on by the County are available for inspection at no cost and can be provided at a reasonable cost, if requested. For additional information concerning Ordinance 45.50, you may call the Klamath County Planning Department at 541-883-5121 Extension 3079.

*If assistance is needed to participate in a County meeting, please contact the Human Resources Office at 541-883-4296 (Voice/TDD). Notification at least 48 hours prior to the meeting will assist the County in providing reasonable accommodation.*



**Alwin Turiel, Planning Director**

F:\PERIODIC REVIEW WORK TASKS\16 RURAL COMMUNITIES & LANDS\RESUBMIT G14 WKTSK 22\TASK 22 Rural Commercial  
MAILED\_BM56 Notice(2).doc

**BOARD OF COUNTY COMMISSIONERS  
KLAMATH COUNTY PLANNING COMMISSION**

**Public Hearing  
August 28, 2007  
6:00 p.m.**

**A G E N D A**

**∨ PC ONLY ∨**

**ITEM #1**

**Planning Commission Work Session 6:00 pm**

**∨ BOCC ONLY ∨**

**ITEM #2**

**Task 22 Periodic Review 7:00 pm**

**Consideration of amendments to the Klamath County Land Development Code (KCLDC), Articles 52.4 (General Commercial), 52.6 (Recreational Commercial) and 52.8 (Transportation Commercial) relating to building size limitations for certain rural commercial uses. (Periodic Review Task 22 Remand of Ordinance 45.50)**

**Board of County Commissioners – John Elliott, Al Switzer, Bill Brown  
Planning Commission – Ernest Palmer, Robert Daggett, Jack Markgraf, Steve Rajnus, Rich Kehr, Jim Uerlings, Judy Armstrong, Robert Moore, Bvelyn Oldenkamp**



# FAX TRANSMITTAL

## Oregon Department of Fish and Wildlife

Klamath Watershed District Office  
1850 Miller Island Road West  
Klamath Falls, OR 97603

TO: Les Wilson

FAX NUMBER: 885-3644

From: Tom Collom

Phone Number: (541) 883-5732

Date: 8/16/07 Time: 3:30 pm

Fax Number: (541) 883-5521

Pages To Follow: 1

Comments/Instructions: Hold Harmless Language  
That we discussed.

<input type="checkbox"/>	Please circulate	<input type="checkbox"/>	Take necessary action	<input type="checkbox"/>	Prepare reply
<input type="checkbox"/>	For your information	<input type="checkbox"/>	Please investigate	<input type="checkbox"/>	As you requested
<input type="checkbox"/>	For your signature	<input type="checkbox"/>	For your comments	<input type="checkbox"/>	Initial and return
<input type="checkbox"/>	Edit and return	<input type="checkbox"/>	Call me	<input type="checkbox"/>	Originals to follow

**DISCLAIMER OF RIGHT TO CLAIM DAMAGES AGAINST  
OREGON DEPARTMENT OF FISH AND WILDLIFE**

I / WE, THE UNDERSIGNED, UNDERSTAND AND ACCEPT AS A  
CONDITION OF RECEIVING A ~~CONDITION~~ USE PERMIT FOR THE  
CONSTRUCTION OF A DWELLING IN AN AREA IDENTIFIED AS CRITICAL  
WILDLIFE HABITAT, THAT WE DISCLAIM AND WAIVE ANY AND ALL RIGHT OR  
CLAIM FOR DAMAGES OF ANY KIND FROM THE OREGON DEPARTMENT OF  
FISH AND WILDLIFE OR LAKE COUNTY FOR ANY DAMAGE DONE BY WILDLIFE  
ON THE PROPERTY AND IMPROVEMENTS CONSTRUCTED UNDER THE  
CONDITIONAL USE PERMIT GRANTED HEREIN.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Notary Public of Oregon

# Klamath County

Planning Department

507 Main Street  
Klamath Falls, OR 97601  
541.885.8644 (FAX)

To: Klamath County Planning Commission

From: Alwin Turiel, Planning Director 

Date: 21 August 2007

Re: KCLDC Update – Procedural Chapters 10, 20 & 30 – 28 August 2007 PC WORKSESSION

Staff proposed revisions to KCLDC Chapters 20 (Review Procedures) and 30 (Public Hearings, Notice and Appeal) are attached to this memo. The purpose of the proposed revisions is to bring the KCLDC into compliance with State law, specifically the procedural requirements of ORS Chapters 197 and 215.

At the time of mail out staff revisions for Chapter 1 (General Provisions) were not complete. A completed draft will be available at the 28 August 2007 work session. If the Planning Commission deems appropriate, amendments to the first three chapters of the KCLDC can be scheduled for public hearing at the 25 September 2007 regular meeting.

A strategic amendment to KCLDC Article 57 (Significant Resource Overlay), Section 57.070(C)(2) (Big Game Winter Range – Residential Development Standards) is also included in the Planning Commission packet for the work session. The proposed changes would eliminate separate siting standards for dwellings on parcels that do not front a public road. Instead, all new dwellings would be required to be sited within specified distances of an existing accessway (e.g., public or private road). If the Planning Commission chooses, this proposed amendment could also be scheduled for public hearing on 25 September 2007.

Finally, copies of ORS 197.195 (Limited Land Use Decision) and ORS 197.360 (Expedited Land Divisions) are included in your packet. These statutory provisions must be added to the KCLDC to take advantage of their provisions. Currently, neither limited land use decisions nor expedited land divisions are recognized in the KCLDC. Adding provisions to address the concerns raised regarding limited land use decisions and expedited land divisions would be most appropriate in Chapter 40 (Application Procedures), which would be the next round of amendments after the procedural amendments required for Chapters 1, 20 and 30.

*Klamath County Land Development Code*  
*Article 5-2.070*

b. Antelope: 160 acres

c. Elk: 160 acres

2. Residential Development Standards

a. Residential home sites (including accessory buildings) on parcels fronting a public road shall be located:

- 1) Not more than 330 feet from an existing dwelling; or
- 2) Not more than 150 feet from a side property boundary; and
- 3) Not more than 100 feet from an existing public road.

b. Residential home sites (including accessory buildings) on parcels not fronting a public road may be permitted if:

- 1) Not more than 7 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of impacted (low-medium density) deer winter range; or
- 2) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of important (high density) deer winter range; or
- 3) Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of pronghorn antelope or rocky mountain elk range.

c. Residential home sites (including accessory buildings) shall not be sited within a critical habitat area or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.

d. Fencing on the perimeter of property shall only be for livestock control purposes; fencing around home sites shall enclose no greater than 1 acre, and where designed to exclude wildlife shall not be placed within critical habitat or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife.

e. Approval of a dwelling shall be conditioned upon the resident filing a statement with the property deed agreeing to control free-roaming dogs and off-road vehicle use during the period November through April.

D. Geothermal Resources

Development proposals coincident with identified geothermal resource shall comply with the provisions of Article 59.040 of this code.

E. Archeological Resources

*Existing text to be amended*

**ARTICLE 57**  
**SIGNIFICANT RESOURCE OVERLAY**  
**(SRO)**

Amendment to Article 57.070(C)

Markup Text

Text removed is identified as removed

Text inserted is identified as *inserted*

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a) Not more than 100 feet from an existing public road

- or -

b) Not more than 100 feet from the point of legal access to the lot or parcel.

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**ARTICLE 57**  
**SIGNIFICANT RESOURCE OVERLAY**  
**(SRO)**

Amendment to Article 57.070(C)  
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**ATTACHMENT B**  
**Klamath Final Decision, Ordinance 45.66 for File Number ZC 13-07**



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

## NOTICE OF ADOPTED AMENDMENT

December 18, 2007



TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Klamath County Plan Amendment  
DLCD File Number 005-07 [ORIGINAL LOCAL FILE NO. CLUP/ZC 5-07]

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

**DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 4, 2008**

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Les Wilson, Klamath County

<paa> yl

# 2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DEPT OF

DEC 17 2007

LAND CONSERVATION  
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: Klamath County Local file number: ZC 13-07 Ord 45.67

Date of Adoption: 12/13/2007 Date Mailed: 12/14/2007

Date original Notice of Proposed Amendment was mailed to DLCD: 8/22/2007

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

**Legislative amendment to acknowledge Klamath County Goal 5 for Big Game per KCLDC Article 57. Modification of text addressing residential dwelling siting standards for both resource and non-resource lands within the Big Game Overlay.**

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

**Adopted Ordinance changed from proposed text to delete paragraph sections 2A & 2B and adding text to section 2D & renumbering.**

Plan Map Changed from: N/A to: N/A

Zone Map Changed from: N/A to: N/A

Location: Klamath County Acres Involved: N/A

Specify Density: Previous: N/A New: \_\_\_\_\_

Applicable Statewide Planning Goals: 5

Was an Exception Adopted?  YES  NO

DLCD File No. \_\_\_\_\_

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment...

Forty-five (45) days prior to first evidentiary hearing?  Yes  No

If no, do the statewide planning goals apply?  Yes  No

If no, did Emergency Circumstances require immediate adoption?  Yes  No

Affected State or Federal Agencies, Local Governments or Special Districts:

**DLCD, Klamath County, Dept. of Forestry, Oregon Dept. of Fish & Wildlife, US Fish & Wildlife, US BLM, USFS, Klamath Tribes.**

Local Contact: **Les Wilson, Interim Director** Phone: **(541) 883-6121** Extension: **3085**

Address: **305 Main Street** City: **Klamath Falls**

Zip Code + 4: **97601** Email Address: **lwilson@co.klamath.or.us**

### ADOPTION SUBMITTAL REQUIREMENTS

This form must be mailed to DLCD within 5 working days after the final decision  
per ORS 197.610, OAR Chapter 660, Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:  
**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material; if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form onto 8-1/2x11 green paper only, or call the DLCD Office at (503) 373-0050, or fax your request to (503) 378-5518, or Email your request to **maria.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST

BEFORE THE BOARD OF COMMISSIONERS  
FOR THE COUNTY OF KLAMATH

RECEIVED  
DEC 10 2007  
by Board of Commissioners

IN THE MATTER OF AMENDING ARTICLE 57.070(C)(2)  
OF THE KLAMATH COUNTY LAND DEVELOPMENT CODE

ORDINANCE 45.67

WHEREAS, the Klamath County Planning Department is amending Article 57.070(C)(2) (Residential Development Standards) to provide language for clarification in residential dwelling siting standards in the Significant Resources Overlay for the Big Game Winter Range; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on November 6, 2007 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, to bring the Klamath County Land Development Code in conformance with previous land use practices, the Planning Department recommended approval of ORDINANCE 45.67, amending Article 57.070(C)(2) (Residential Development Standards); and

WHEREAS, on November 27, 2007, based on testimony entered and consideration of the whole record, including the proposed Ordinance text identified in the Staff Report, the Klamath County Planning Commission adopted as its own the alternative Ordinance text. Based upon adoption of alternative Ordinance text, the Klamath County Planning Commission concluded the application is in conformance with Article 49 of the Klamath County Land Development Code and Comprehensive Plan, and forwarded a recommendation of approval of Ordinance Number 45.67 to the Board of County Commissioners; and

WHEREAS, on November 6, 2007, based on testimony entered and consideration of the alternative Ordinance text adopted by the Klamath County Planning Commission and upon a unanimous recommendation for approval, the Board of County Commissioners unanimously APPROVED Ordinance Number 45.67, as amended.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF KLAMATH COUNTY  
ORDAINS AS FOLLOWS:

*Article 57.070(C)(2) (Residential Development Standards) of the Klamath County LAND DEVELOPMENT CODE is amended to include the following language:*

**ARTICLE 57.070(C)(2) -- RESIDENTIAL DEVELOPMENT STANDARDS**

- A. Residential home sites (including accessory buildings) shall not be sited within a critical habitat area or a migration corridor as may be identified by the Oregon Department of Fish and Wildlife, when the habitat area or migration corridor has been identified in the Comprehensive Plan.

B. Fencing provisions shall apply as a condition of approval for any new fences constructed as part of development of a property in conjunction with a conditional use permit or site plan review.

a. New fences on the perimeter of the property shall be designed to permit wildlife passage. The following standards and guidelines shall apply:

1. The distance between the ground and bottom strand or board shall be at least 16 inches.
2. The height of the fence shall not exceed 44 inches above ground level.
3. Smooth wire and wooden fence that allow passage of wildlife are preferred. Woven wire fences are discouraged.

b. Exceptions:

1. Fences around home sites designed to exclude wildlife from gardens, flowerbeds, orchards, etc., shall enclose no more than 1 acre.
2. Corrals used for working livestock.

C. Approval of a dwelling shall be conditioned upon the resident filing a statement with the property deed agreeing to control free-roaming dogs. Said agreement shall include a statement recognizing damage from wildlife may occur when siting a dwelling or accessory building in the Significant Resources Overlay.

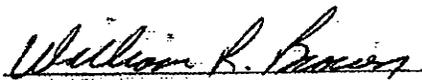
D. Approval of a dwelling shall be conditioned upon applicant filing a restrictive covenant with the property deed agreeing to restrict off-road vehicle use from November to April. Farm or Forest tax deferred property is exempt from this covenant, but off-road use is limited to property management, and owner is required to show proof that property is in tax deferral, at time of development.

Dated this 13<sup>th</sup> day of December, 2007

**FOR THE BOARD OF COMMISSIONERS**

  
Chairman

  
Commissioner

  
Commissioner

  
County Counsel  
Approved as to form

**NOTICE OF APPEAL RIGHTS**

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.

ATTACHMENT C  
DLCD's letter to Klamath County, dated April 23, 2007



# Oregon

Theodore R. Kulongoski, Governor

April 23, 2007

Les Wilson  
Klamath County Planning Department  
305 Main Street  
Klamath falls, Oregon 97601

## Department of Land Conservation and Development

Central Oregon Regional Office  
888 NW Hill Street, Suite 3  
Bend, OR 97701-2942

Rural Regional Representative (541) 318-2890  
Urban Regional Representative (541) 318-2899  
Community Service Specialist (541) 318-8193  
Fax (541) 318-8361

Web Address: <http://www.oregon.gov/LCD>



**SUBJECT:** Comprehensive Plan Text and Land Use Regulation Amendment Proposal  
Regarding Big Game Habitat (DLCD PAPA File #005-07, Klamath County File  
#CLUP/ZC 5-07)

Dear Les:

Thanks for the opportunity to comment on the above-referenced post acknowledgment plan amendment to revise the county's BSEE Analysis and land use regulations for big game habitat under Statewide Planning Goal 5. Please enter this letter into the record of all hearings on this proposal.

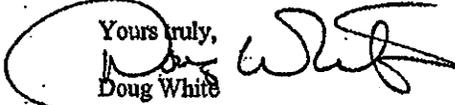
The department has been involved in this proposal since it was first considered. The county is correct that in order to revise its current regulations with regards to big game habitat they must also revise the current BSEE (Economic, Social, Environmental and Social) consequences analysis contained in the county's acknowledged comprehensive plan under Goal 5. We have had several phone calls and e-mails regarding how best to proceed, but in general agreement was reached that in order to apply a different set of big game habitat protection standards to the county's rural residential exception areas that a good set of maps showing zoning, parcels or tax lots and development within big game habitat areas is needed.

The draft BSEE analysis contained in the notice is a good start and will also help explain why the changes being proposed satisfy Goal 5. Since the notice was issued, county staff has forwarded to me most of the maps showing rural residential exceptions within big game habitat. We understand that additional maps are also being prepared. A draft of the proposed changes to the big game habitat standards have not been submitted for our review.

To date, the information provided for our review does not justify any changes to the county's plan and land use ordinances. However, as we discussed we believe it's appropriate to consider applying a different standards to areas already committed or developed to rural residential uses than to areas zoned resource and non-resource.

We are committed to assisting the county and ODFW in addressing your concerns as well as assure compliance with Goal 5. Thank you once again for the opportunity to comment on the proposal. If you have any questions or concerns, please don't hesitate to contact me at 541-318-8193 or by e-mail at [doug.white@state.or.us](mailto:doug.white@state.or.us), of Jon Jinings, your regional representative at 541-318-2890, or by e-mail at [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us).

Yours truly,

  
Doug White

Community Services Specialist

cc: Jon Jinings, Darren Nichols, Central Files

**ATTACHMENT D**  
**ODFW's letter to Klamath County, dated November 6, 2007**



# Oregon

Theodore R. Kulongoski, Governor

**Department of Fish and Wildlife**  
Klamath Watershed District  
High Desert Region  
1850 Miller Island Road West  
Klamath Falls, Oregon 97603  
(541) 883-5732  
FAX (541) 883-5521

November 6, 2007



Ernie Palmer  
Chairman  
Klamath County Planning Commission  
305 Main Street  
Klamath Falls, OR 97603

Re: Proposed Amendments to Article 57 Klamath County Land Development Code (September 25, 2007 Draft)

Dear Mr. Palmer:

The purpose of this letter is to provide Oregon Department of Fish and Wildlife (Department) comments on proposed amendments to Article 57 of Klamath County's Land Development Code (September 25, 2007 draft). The Department understands that these proposed amendments are scheduled for consideration at a legislative hearing on November 6, 2007 by Klamath County Planning Commission and Board of County Commissioners.

The Department understands that the purpose of this legislative hearing is to review only the proposed amendment to Article 57, specifically 57.070(C) of Klamath County's Comprehensive Plan. This section outlines residential development standards that apply if a parcel is located within a Significant Resource Overlay.

### Private Road Definition

From a wildlife standpoint, the purpose of these residential development standards is to cluster development, and thereby maintain open space and habitat quality. Roads have been shown to significantly reduce habitat quality for big game. In section 2a of the proposed amendment, the term "private road" is added to the residential development standards. The Department recommends criteria be included which specifies that the "private road" is pre-existing and existed by a certain date that can be documented (i.e. dated aerial photo or recorded legal easement). This language would protect habitat quality by ensuring that "private roads" are not constructed in the big game winter range overlay for the sole purpose of meeting the standard and circumvents the intent of the rules to protect wildlife habitat.

ODFW Comments Proposed Amendments to Article 57  
Klamath County Land Development Code  
(September 25, 2007 Draft)

Lawfully Created Parcel or Tract

Based on the history of land use planning in Klamath County, the Department is unclear on the definition of "lawfully created parcels or tracts" used in section 2a and 2b of the proposed amendment. Prior to implementation of Oregon's Land Use Planning process in the 1970's, Klamath County approved many subdivisions in what would become the significant big game winter range overlay. After acknowledgement of the Comprehensive Plan, Klamath County continued to approve land use applications, which did not comply with Klamath County's Land Development Code relative to Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) resources. The Department received no notification of these land use applications, so it could not advise the County in their review process. This resulted in development of substandard parcels with resultant habitat loss or degradation of big game winter range. It also resulted in new property owners not being notified by the County that their property was within a big game winter range overlay. The Department does not challenge the validity of these parcels as they currently exist. However, the Department is concerned that the amendment language will allow creation of additional substandard parcels. For example, following implementation of Oregon's Land Use Planning process, Klamath County created several areas zoned R-5 within the big game overlay. Under this proposed amendment would a landowner be allowed to divide a 10 acre parcel and "lawfully create" two 5 acre parcels in an overlay area zoned R-5? ODFW recommends no new substandard parcels be created within the significant big game winter range overlay.

Recognition of Critical Habitat and Migration Corridors

Language in section 2c of the proposed amendment (page 2) states that critical habitats and migration corridors be designated in the Comprehensive Plan. It is the Department's understanding that big game winter ranges, and other Goal 5 protected resources adopted in the Comprehensive Plan are critical habitats. However, in the Klamath County Comprehensive Plan and/or Land Development Code these habitats are referred to as "significant" not critical. Therefore, no critical habitats are designated. Prior to this proposed amendment, Klamath County did not require the adoption of migration corridors used by wildlife into the Comprehensive Plan. If the County chooses to limit consideration of critical habitat or migration corridors to those "adopted as part of the County's Comprehensive Plan", the Department requests that this change not be implemented until ODFW has the opportunity to identify these areas and complete the process of having them adopted in the Comprehensive Plan. If this request is not acceptable, the Department recommends that the County maintain existing language, which allows site-specific review on a case-by-case basis for various development proposals.

Clarification of Reference to Elk

Under 2c #3, the Department recommends making a minor housekeeping edit to add Roosevelt elk. The new text should read: "Not more than 3 other dwellings exist within a 640 acre square centered on the center of the subject parcel in mapped areas of pronghorn antelope, rocky

ODFW Comments Proposed Amendments to Article 57  
Klamath County Land Development Code  
(September 25, 2007 Draft)

mountain elk, or Roosevelt elk.” This language would be consistent with the overlays adopted in the comprehensive plan.

Definition of Wildlife Compatible Fence

In section 2d the amendment proposes the addition of “wildlife compatible fence.” To clarify this proposal for landowners and county staff ODFW recommends the Planning Commission consider the following language (which is consistent with ODFW, Bureau of Land Management, and U.S. Forest Service standards):

*The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.*

*A. New fences on the perimeter of the property shall be designed to permit wildlife passage. The following standards and guidelines shall apply:*

- 1. The distance between the ground and bottom strand or board shall be at least 16 inches.*
- 2. The height of the fence shall not exceed 44 inches above ground level.*
- 3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.*

*B. Exemptions:*

- 1. Fences around home sites designed to exclude wildlife from gardens, flowerbeds, orchards, etc., shall enclose no more than 1 acre.*
- 2. Corrals used for working livestock.*

Department Involvement in Klamath County Land Use Planning

The Department’s primary concern is maintenance of the quality and usability of big game winter ranges by ensuring open spaces and low road densities. This will provide secure habitat and forage areas with little disturbance. The Department remains concerned about the creation of substandard parcels within the big game winter range overlay.

In recognition of the importance of big game winter ranges, the Department began delineating winter ranges beginning in the 1960’s. The Department conducted deer tagging studies, horseback surveys, aerial surveys, and radio telemetry research to delineate big game winter ranges. In addition, the Department continues to conduct annual trend route surveys (ground and helicopter) on a portion of winter ranges each year.

Statewide Planning Goal 5 is the most important Oregon statewide planning goal related to fish and wildlife. Goal 5 directs counties to protect critical wildlife habitats; one of which is big game winter range. Following adoption of Oregon’s land use planning laws, the Governor’s Office directed the Department to work with counties to identify those Goal 5 resources specific to wildlife. In the early 1980’s, the Department worked closely with Klamath County, county

ODFW Comments Proposed Amendments to Article 57  
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appointed citizen advisory committees, and the general public during the comprehensive planning process to identify the overlays and standards. The significant big game winter range

overlays adopted by Klamath County are much smaller than the biological winter range. Because they have the mildest winter temperatures and least snow accumulation, winter ranges typically are low elevation non-forested habitats with a south or west aspect. In Oregon these winter ranges are about 65% privately owned. These private lands are usually located in the areas with the mildest conditions during the most severe winters. If Oregon is to maintain its big game populations, counties must maintain open space and habitat quality on these winter ranges. This is why land use planning is so important for maintaining wildlife resources.

Thank you for providing the opportunity to comment. If you have any questions please feel free to contact me by phone (541-883-5732) or email: [thomas.r.collom@state.or.us](mailto:thomas.r.collom@state.or.us).

Sincerely,

Tom Collom  
District Wildlife Biologist  
Klamath Watershed District  
Oregon Department of Fish and Wildlife

Cc: Klamath County Planning Commission Members  
Klamath County Board of County Commissioners  
Les Wilson, Klamath County Planning Director  
Bob Hooton, ODFW Klamath Watershed Manager  
Patty Snow, ODFW Land Use Coordinator