

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room 'A'
Monday, September 24, 2012

Planning Commissioners Present: Jim Patrick, Mark Fisher, Rod Croteau, Gary East, Glen Small, and Bill Branigan.

Planning Commissioners Absent: Jim McIntyre.

Citizens Advisory Committee Members Present: Bob Berman.

Citizens Advisory Committee Members Absent: Lisa Mulcahy.

DLCD Representative Present: Patrick Wingard.

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Audience Member Present: Suzanne Dalton.

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. Because there were guests, introductions were made. Patrick turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. DLCD Training: Oregon Land Use System – Final Part. Tokos noted that this was the third and final installment of this training from the website www.coastalatlas.net/training. He said we will be wrapping up with Chapters 7 through 9, which deal with coastal-specific statewide planning goals. With that in mind, he also had provided the draft of the Newport area visual assessments prepared as part of the State's effort to update the Territorial Sea Plan.

Referring to the last training session, Berman asked about the responsibility for estuaries. Tokos explained that the City is responsible for estuary planning. The Port will coordinate with the City and has to obtain permits. He said that the Port is more an economic development focused entity.

Chapter 7 covers Goal 17, Coastal Shorelands. The aim of Goal 17 is to protect major natural resources in coastal shorelands while allowing development where appropriate and consistent with the geological and resource limitations of the area. It also includes measures to reduce hazards to life and property. The shorelands planning area is generally west of Highway 101, but in some areas where the highway is further inland, the planning area is defined by specific roads. The planning area includes areas within 1,000 feet of all estuaries and coastal lakes. Within the planning area, the local government must inventory the nature, location and extent of hazards; habitat; water-dependent uses; economic resources; recreational resources; and aesthetics to provide a basis for further planning, conservation, and development.

Using this resource inventory information, local governments have adopted shorelands boundaries that are contiguous with the ocean, estuaries and lakes, and includes: areas subject to ocean flooding; land within 100 feet of the ocean shore or 50 feet of an estuary or coastal lake; geologically unstable land that affects the shoreland; riparian resources and vegetation, especially those that stabilize the shore; significant shoreland and wetland biological habitats; areas necessary for water-dependent and water-related uses; land with exceptional aesthetic or scenic quality associated with the water body; and coastal headlands.

Goal 17 specifies uses within shoreland areas that are permitted outright and those that are subject to conditions; with emphasis on protecting habitat, headlands, aesthetic resources, and areas needed for water-dependent uses. For uses in water-dependent shorelands, Goal 17 requires local land use policies and zoning to support water-dependent development and limit conflicting uses. Water-related uses provide goods or services needed by water-dependent uses. Two examples are fueling stations for marinas and stores for fishing gear or repair. Uses, such as restaurants, RV parks, and warehouses, that do not require direct access to coastal waters are not considered water-related or water-dependent and have low priority for development in estuarine and shoreland areas. In 1999, the LCDC amended Goal 17 to change requirements related to water-dependent shorelands to encourage reuse of water-dependent development. The new requirements are applicable if local governments make changes to their existing water-dependent shoreland designations. The amended goal requires local estuary plans to protect a minimum amount of shorelands for water-dependent uses including areas currently used for such water-dependent activities as wharves, piers, docks, mooring piling, and boat ramps. Local plans also must account for lands developed for water-dependent uses previously that still possess structures or facilities that can be used in the future. Shoreland areas identified as mitigation sites

under Goal 16 (Estuarine Resources) are protected from new uses and activities that would prevent restoration or addition to the estuarine ecosystem. Shoreland planning also requires that upland dredged material disposal sites be identified and protected from new uses and activities that would prevent their use for dredged material disposal. Riparian vegetation in shorelands along coastal waters must be maintained and, where appropriate, restored and enhanced. Development in coastal shorelands is subject to a variety of natural and geological hazards, including erosion and flooding. Preferred solutions are land management practices and non-structural measures; but any structures, such as seawalls or riprap, that are considered necessary should be designed and built to limit impacts on water currents and protect adjacent and nearby areas from erosion or other adverse effects. Only with adequate review and safeguards should shorelands be developed in areas subject to severe hazards that could result in the loss of life and property.

Under Oregon's Beach Law, the ocean shore is open to the public; and the beds of most lakes, waters and lands within estuaries subject to tidal flooding are also open to public use. Goal 17 requires governments to identify; maintain; and, where possible, increase public access to these areas. Existing access must be retained or replaced if sold, exchanged, or transferred. Rights-of-way may be vacated to permit redevelopment if public access across the affected site is retained.

Tokos noted that the City does have shorelands habitat overlay, but it is fairly rudimentary. We haven't delved into that with great emphasis in the past. We do have some areas that are of particular interest, such as Yaquina Head and state parks. Regarding aesthetics, the City didn't adopt rules that protect scenery. Fisher asked about the progress of the wave energy project. Tokos noted the draft results attached with the work session packet. He noted that he, Berman, Mayor McConnell, and Councilor Roumagoux had participated on the City's behalf in identifying resources. He said that once the State has those assessments completed, they will work that into a matrix that will provide resources. He said classes will be established for the resources; such as class one (Yaquina Head) where nothing can distract from the view in that area, class two where something may be okay if it doesn't stand out, and class three where it doesn't warrant significant protection. They are also working on buffers; how big is it, and what are the foreground, the mid-ground, and the background. They will be developing standards for development in each of those areas, and they are developing maps defining those. Tokos said that his expectation is that as that gets more refined, they will bring it back to us to get our feedback. Berman said that when they went out and did the three sites he was surprised that they weren't doing all of the sites shown on the map the Commission had reviewed. He noted that the state parks were reserved for the State to do. He said he will be curious to see what they came up with. Tokos agreed that it is unfortunate that the State wasn't taking local input on state parks.

Croteau asked if the City gets involved in public beach access. Tokos said the County has a lot of access issues. You cannot vacate rights-of-way without protecting beach accesses. Patrick mentioned Agate Beach, and Tokos agreed that Circle Drive is a great example.

Tokos noted that this chapter discussed water-dependent and water-related. He said that the Commission is fairly familiar with that. Most of those along the Bay are either one or the other. He noted that water-dependent is very strict on what it will allow. On the positive side, it makes sure that land is available for things like NOAA for example. Without that designation, we may not have had that land available. He said there have been proposals to reduce that area; but under the State's program, it is nearly an impossible task to do. We have to maintain what we have. Tokos noted that dredge sites will likely be on the list of things to do before long. He talked about the Port's dredge disposal site getting too small, so it is something that may come up before the Planning Commission in the future.

Chapter 8 regards Goal 18, Beaches and Dunes. Goal 18 defines beaches as gently sloping areas of loose material, such as sand, gravel, or cobbles that extend from the low-water line to a definite change in the material type, landform, or vegetation line. The Goal defines a dune as a hill or ridge of sand built up by the wind along sandy coasts and further breaks it down into more specific dune definitions. These features are the result of dynamic, natural forces of waves and wind and take many shapes and sizes and are always changing. The objectives of Goal 18 are to conserve, protect, and, where appropriate, develop or restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or human-induced actions in these areas. Local jurisdictions use zoning and policies to meet these objectives.

Local governments must inventory all beach and dune areas. As most of these inventories were adopted in the early to mid-1980s, most of these contain only general information. Some jurisdictions have updated inventories with more recent information, particularly in the form of GIS maps and data. As beaches and dunes shift over time through erosion and accretion, OCMP works closely with DOGAMI and other agencies to provide updated information to local governments. Local governments are required to regulate uses and activities on beaches and dunes that may cause erosion, alteration, or otherwise create adverse impact on important scenic, biological, and habitat areas. Requirements include limitations on the location of certain types of development, requirements to minimize adverse environmental effects, and protect development from geologic hazards, wind erosion, ocean undercutting, and ocean flooding.

Goal 18 identifies four types of dunes. Active dune forms include foredunes and hummocks with little or no vegetation. An active dune is still moving, growing, or shrinking, with the wind and sand. A foredune is the ridge of sand closest to and

parallel to the beach, while a hummock is a circular elevated mound of sand, usually without vegetation. Recently stabilized dune forms have sufficient vegetation to begin to stabilize the dune but no significant soil build-up. Loss of vegetation would render it active again so it is too fragile for any structure. These dune forms include conditionally stable dunes, conditionally stable foredunes, dune complexes, and younger stabilized dunes. European beach grass has become a principal agent for stabilizing dunes on the Oregon coast. Older stabilized dunes are a third form of dune type. They are stable today, with established vegetation and significant soil development, and are expected to remain so; especially if undisturbed. These dunes are often covered with shore-pine forests and a dense growth of coastal shrubs. Interdune forms, the fourth dune type, are low-lying areas between dunes that are scoured by wind and are under water part of the year due to the high water table during the rainy season. As the wind blows somewhat parallel to the coast during most of the year, it carries away the dry sand to the level of the water table, which creates what is called a deflation plain (a wet, low-lying area typically found behind a foredune).

Goal 18 establishes a three-tiered hierarchy for development: development generally allowed on older stabilized dunes; development prohibited on beaches, active foredunes, foredunes subject to ocean undercutting or wave overtopping, and interdune areas subject to ocean flooding; and development conditionally allowed on most other dune types, subject to environmental review and compliance with applicable criteria and conditions.

Goal 18 strictly regulates beachfront protective structures and prohibits them if development didn't exist before January 1, 1977 (the effective date of the Goal). Homes and other development built near the beach prior to that time often are protected from erosion caused by ocean waves. The most common beachfront protective structure is riprap (large rocks placed to absorb the energy from waves). Other protective structures include retaining walls, seawalls, and revetments. These so-called hard structures are discouraged because they can create erosion and other problems for adjacent areas, alter sand movement and water currents, reduce public access to the beach, and create unpleasant visual and aesthetic impacts. The OPRD issues permits for any structures on or adjacent to the beach. In the few cases where new beachfront structures are approved, they must be designed and built to minimize adverse environmental effects.

Because dune grading can alter the dune system and accelerate erosion or create other hazards for adjacent and nearby properties, Goal 8 allows dune grading only in areas committed to development or inside a city's UGB when it is conducted as part of an overall plan for managing foredune grading. The OPRD will not authorize dune grading until such a plan has been completed. A foredune grading plan must consider the entire beach and the area subject to sand build-up or accretion. It must be based on geological information and maintain a specific minimum dune height of four feet above the 100-year flood elevation to ensure the grading will not lower a dune so much that developed areas behind it are subject to ocean flooding for a 100-year storm event.

Fisher asked if in the picture showing the house nearly covered by the sand dune, could that person clear it on his own or would it have to be the whole block. Wingard said that Waldport has addressed that by coming up with a comprehensive plan. He said that Bay Shore has maybe seven different reaches, all with different standards. He said that is a good example of why you don't build on active foredunes. Tokos asked if we would be getting new maps showing the boundary of what the State considered dunes. Wingard noted that Laren Woolley is working on following up with what Steve Williams had worked on for years, and DLCD is applying with NOAA to have someone come in to assist with that. Tokos said that with the old foredune map, it is hard to tell where the boundaries are. He said we don't have a lot of it; the most likely applicant is OPRD. They have the most jurisdiction involving dunes and are the most likely to have some development in a dune; such as trails, interpretive displays, viewing areas, etc. He said there are some in the Coho/Brant area that are already developed, and Southshore has been worked out. He said the mapping is so bad that it is unclear how far inland the dunes go. He wondered if that mapping can't be made available when all the detailed LIDAR they have been using for geologic and tsunami zones clearly shows the dune areas. He said it's just a matter of that being a priority.

Chapter 9 discusses Goal 19, Ocean Resources. The Pacific Ocean defines the western edge of Oregon with its weather, waves, currents, and tides affecting nearly every aspect of the environment of the coast and being a part of a large marine ecosystem. The purpose of Goal 19 is to conserve marine resources and ecology to provide long-term ecological, economic, and social benefits for future generations. The Goal places a higher priority on protecting renewable resources than developing non-renewable ocean-related resources. State and federal agencies are expected to coordinate with local jurisdictions.

Jurisdiction over the ocean is shared by federal and state governments. The State owns the ocean floor from shore out to three nautical miles (the Territorial Sea). From three nautical miles to 200, the federal government has jurisdiction over the seabed, resources, and uses. From the shore to the edge of the continental margin about 40 miles out to sea, Oregon has acknowledged an interest but not ownership over ocean resources or direct regulatory authority; and this is called the Ocean Stewardship Area.

In general, the OPRD has jurisdiction over the ocean shore, which includes the dry sand beaches as well as the area out to extreme low tide, including rocky intertidal areas. The DSL controls the seabed from mean high water out to three nautical miles (the extent of state jurisdiction). Other state agencies having authority are: the ODF&W for marine fisheries, wildlife,

and habitats; the DEQ for ocean water quality and response to oil spills; the State Marine Board for boater registration and safety; and the OSP for enforcement of fish and wildlife regulations. The DLCD is responsible for coordinating all planning for the state's Territorial Sea. The training states that, although the boundaries of coastal counties extend seaward to the limits of state jurisdiction, local governments have no planning or regulatory authority or responsibility in the Territorial Sea. Federal agencies having authority over resources and uses in Oregon's Territorial Sea include: The US F&W Service owns and manages nearly all of more than 1400 rocks and islands as the Oregon Islands National Wildlife Refuge; The US Army Corps of Engineers has authority over structures or material on the seabed such as dredged materials, telecommunication cables, and anchors for wave energy devices; the US Coast Guard is responsible for responding to spills of oil or hazardous material; the National Marine Fisheries Service regulates ocean fisheries and also has responsibility for some species such as marine mammals; the Bureau of Ocean Energy Management (BOEM) has jurisdiction over the seabed and authority to lease wave energy devices; and the US EPA establishes and monitors ocean dumping sites.

The LCDC adopted Oregon's Territorial Sea Plan in 1994. It covers the coastal high-tide area out to three nautical miles and is based on the requirements of Goal 19. It is a coast-wide strategy to protect Oregon's valuable and vulnerable ocean areas while enabling appropriate development. It requires state and federal agencies to analyze the effects of proposed activities on ocean resources and the marine environment. The Plan is amended as needed by DLCD as well as the Ocean Policy Advisory Council (OPAC).

Fisher wondered where the agency, BOEM, came from. Tokos said he was unsure, but felt it came about as a result of the wave energy industry. He noted that Councilor Allen is involved with BOEM. Tokos told Wingard that the statement that local jurisdictions have no planning authority over the Territorial Sea is a little strong. He felt the County would feel that way as well. He suggested that DLCD might want to take a look at saying that. Wingard said he had mentioned that at the staff meeting and was told they had softened that and weren't going to change it. Tokos said even though the Cities don't really have jurisdiction, but the Goal does specifically state that "aesthetics are to be protected". He said that has been a hot topic with the visual assessments. He noted that it also says that fisheries and habitat take top priority, and recreation will be protected as well. It didn't talk about wave energy at all. Tokos said this training presentation needs a little bit of work.

Patrick noted that where the wave energy has to come on shore is most likely going to be in a residential area. Tokos said it would be a conditional use application under our code because it is a utility under our code. It still goes to the Planning Commission and is subject to conditional use standards. The Commission can only look at the upland part of it, even though the discussion will likely be about the entire project. The decision can only be based on what we have jurisdiction over. Patrick wondered if the City's jurisdiction ends at the high- or low-water level. Tokos will check into that. Berman noted that Newport is one of two finalists for permanent location for wave energy devices. Tokos said those folks have talked to him, and he encouraged them to do a lot of outreach. If they hone in on Newport, there will likely be more community discussion before it lands in front of the Planning Commission. Tokos said they were looking in Agate Beach but were concerned about slopes. They are looking at this as a long term investment, so they don't want to put it in an area that might slide. They will have to work with the public utility districts. Patrick said they have to be concerned about the ground fishing areas. Tokos said the visual assessments are done. That is one component. The other is protecting fisheries and habitat. Tokos said how he sees it working is that there will be a joint agency review team, and there will be local government representation on that team. When the Cities and Counties are affected, they need to be on it. That team will provide a recommendation to DSL, who will make the final decision of whether the project moves forward or needs to be modified. There will be the standard option for appeals through state agencies to appeal the state agency's decisions. Berman asked about the time frame. Tokos said they are trying to have the visual assessments by January. The wave energy folks are starting to get concerned about the length of time. The state is putting together these regulations. This is all new and is kind of cutting edge stuff. Berman said it was by coincidence that they were assessing Moolack Beach when the test site was actually being installed out there. He said it is definitely visible; and if there were fifty of them out there, it would be disruptive to the aesthetics. Branigan added that that is a small model out there now. Fisher said this might be more defensible if they showed that the money from electricity is coming into Lincoln County. He said the money is going to whoever owns the large grids. Patrick said the utility can count that as part of their renewable resources. Croteau said some of the devices can be done far off shore. Tokos added that some are not even visible from the surface. He said the designs are still very fluid; we don't know when or what we will see. Fisher said he was disappointed that the fishing community gave in so easily.

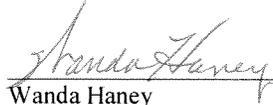
Tokos asked the Commissioners if they had any feedback on this training to provide to the State. Fisher thought the things Tokos had already mentioned. Croteau thought it gave a good overview of the process. He said he is unsure he could get enough to apply to a real situation; but the overview was done well. Patrick said it gave a good overview of what we don't know and where we fit. Berman said he found the most valuable information to be where it talks about the actual procedures and what you can and can't do; conflicts of interest and recusal; the day-to-day things that happen at this table. Patrick thought that at some point, the Commission should have the ethics people back for a refresher.

Wingard asked if Tokos expected the Territorial Sea Plan update to be brought back to local jurisdictions. Tokos said his sense is that once the program gets pulled together, they were going to do one more check-in before this gets finalized. He thinks it

would be wise for them to do that. He noted that DLCD staff was forced to move quickly, and not all jurisdictions have had a chance to be involved; Newport was lucky. Tokos thought they should take every opportunity to get this information back to local governments and give the local governments an opportunity to provide feedback to them before they make it final. He noted that some of the numbers don't match up in different phases for the same site; so they will have to go back and reconcile those. Wingard agreed that several issues had come up in Tillamook County, and many questions had been raised at the coastal meeting in Salem last week. He said he would pass on Tokos' comments.

B. Adjournment. Having nothing further to discuss, the work session meeting adjourned at 7:00 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant