

**SUPPLEMENTAL AGENDA COVER MEMO**

Memorandum Date: October 24, 2006  
Agenda Date: October 25, 2006

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**TO:** Lane County Board of Commissioners

**DEPARTMENT:** Public Works Department, Land Management Division

**PRESENTED BY:** Kent Howe, Planning Director  
Stephen Vorhes, Assistant County Counsel

**TITLE:** DISCUSSION AND ORDER/IN THE MATTER OF RESPONDING TO THE LUBA REMAND OF THE DECISION ENACTING ORDINANCE NO. PA 1229 AND SUPPORTING THAT ORDINANCE BY ADOPTION OF ADDITIONAL SUPPLEMENTAL FINDINGS TO FURTHER SHOW HOW MODIFICATIONS TO THE *LANE COUNTY COASTAL RESOURCES MANAGEMENT PLAN* COMPLY WITH STATEWIDE GOAL 16 (LMD File PA 05-5506, City of Florence & Shelter Cove Homeowners Association)

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**A. Background**

Since preparation of the agenda cover memo and proposed Order, additional comments were received raising concerns about the proposed Order. Those comments include:

1. Suggested language to be added to the Board Order to address future planning efforts around alterations and structures in the Siuslaw River estuary. Attached email with revised order sent October 22, 2006, from Bill Fleenor.
2. Comments about the proposed Order and whether it adequately addresses the LUBA remand. Attached emailed October 23, 2006, letter from James D. Brown on behalf of LandWatch Lane County and the Oregon Shores Conservation Coalition, petitioners at LUBA.

**B. Analysis**

As indicated previously, the supplemental findings, the description of the evidence in the record and the analysis contained in the proposed Order and Exhibit B all respond to the LUBA remand and establish that the amendments to the CRMP did not affect its compliance with Goal 16. The specific language added to the plan, the plan itself and the subsequent review of specific proposals for development in the redesignated area by the permitting authorities combine to provide sufficient consideration of "potential cumulative impacts of the alterations and development activities envisioned" by the amendments enacted by the Board in Ordinance No. PA 1229. The suggestions made in the comments provided to date do not point out anything in the record that was not already considered. If the Board is interested in investigating additional planning efforts suggested by the comments, it could be something to include in a discussion of the planning work program. It is not required by Goal 16, as NOAA Fisheries indicated in a letter that followed the one cited by counsel for the LUBA petitioners. Record 192-193.

There is a considerable body of evidence in the record addressing the impacts that may occur as a result of the change in the designation for Sub-Area C-1, including impacts from erosion control activities contemplated at the time of the original Board action. The

evidence in the record analyzes impacts already considered and described in the acknowledged CRMP and shows that the potential cumulative impacts of the change in designation for Sub-Area C-1 are negligible and consistent with the overall cumulative impacts already anticipated for all the uses allowed in the entire estuary by the acknowledged CRMP. The added text included in the original Board action sufficiently describes the consideration of cumulative impacts from any erosion control activity and there is no need for further language. The acknowledged CRMP already included analysis of all the potential uses, including erosion control structures, in all the various management units throughout the estuary.

In addition, the CRMP policies and provisions discussing impact assessments clearly contemplate more detailed impacts analysis when specific development proposals are submitted. That analysis can lead to extensive impacts assessments under federal, state and local regulations, including the provisions of Florence City Code Title 10, Chapter 19. Among other things, those zoning provisions implementing the CRMP establish the requirements for making estuarine resource capability determinations and impact assessments, including a “[d]etermination of the potential cumulative impact of the proposed development” where necessary. FCC 10-19-6C.1.i. The evidence in the record shows that, due to changes in the ecological condition of the area, the amendment to the CRMP is consistent with all the Goal 16 requirements for comprehensive plans and with those amendments, the CRMP reflects sufficient consideration of “potential cumulative impacts of the alterations and development activities envisioned” by the amendments. The proposed Board Order does cite to the evidence in the record supporting the additional text, explains how the redesignated area buffers other more productive areas and connects that language to the impacts analysis to address the shortcomings identified by the LUBA remand decision.

For those reasons, adoption of the original proposed Order is recommended.

**VORHES Stephen L**

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**From:** Bill Fleenor [info@kimillia.com]  
**Sent:** Sunday, October 22, 2006 10:39 PM  
**To:** VORHES Stephen L  
**Cc:** SORENSON Peter; Bill Dwyer  
**Subject:** RE: Shelter Cove "Cumulative Impacts Analysis" questions...

Stephen,

I've reviewed the attached document and have added an additional paragraph. I believe that if we add this language, we should see a greatly diminished chance of a LUBA appeal.

Please let me know what you think?

Bill F.

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**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON**

**ORDER No. 06-10-25-1**

- ) **IN THE MATTER OF RESPONDING TO THE LUBA**
- ) **REMAND OF THE DECISION ENACTING ORDINANCE**
- ) **NO. PA 1229 AND SUPPORTING THAT ORDINANCE BY**
- ) **ADOPTION OF ADDITIONAL SUPPLEMENTAL FINDINGS**
- ) **TO FURTHER SHOW HOW MODIFICATIONS TO THE**
- ) **LANE COUNTY COASTAL RESOURCES MANAGEMENT**
- ) **PLAN COMPLY WITH STATEWIDE GOAL 16 (LMD File PA**
- ) **05-5506, City of Florence & Shelter Cove Homeowners Assoc.)**

**WHEREAS**, on February 22, 2006, by means of Ordinance No. PA 1229 the Board of County Commissioners amended the Lane County *Coastal Resources Management Plan* (CRMP) text and diagram by the redesignation of ten acres of Management Unit C identified as "Sub-Area C-1" from "Natural" to "Conservation" on Map 1 of the Plan and the addition of text describing that change as requested in the application filed by the City of Florence and the Shelter Cove Homeowners Association; and

**WHEREAS**, that action was appealed to the Oregon Land Use Board of Appeals (LUBA) and on September 8, 2006, LUBA issued its decision upholding the county action on most of the issues raised by the petitioners, but remanding the actions based on two issues as described in the LUBA decision attached as Exhibit "A" and incorporated herein; and

**WHEREAS**, in response to the LUBA remand, supplemental findings and analysis based on evidence in the record, which is attached hereto as Exhibit "B" and incorporated herein, have been prepared containing additional detail on consideration of potential impacts of the change and specifically addressing the text added to the Plan; and

**WHEREAS**, Lane County recognizes that the Siuslaw River in the vicinity of Florence has been dramatically altered by man-made structures, especially erosion control structures, and these structures will most likely interfere with the natural flow of the river and the health of ecosystem -- although all the detailed impacts are unknown at this time. Furthermore, the county acknowledges that additional man-made structures will likely cause more problems for the estuary, the river and present and future homeowners. Lane County also recognizes that a long term, proactive plan governing when, and how, further alternations and structures can be approved must be addressed, including a commitment to solid cumulative impacts analyses in the future, using the best available information and science, as required by Goal 16. The County will also make every effort to implement more specific language concerning shoreline protective structures and the criteria for their placement, in compliance with the analyses required by Goal 16; and

**WHEREAS**, the Board of County Commissioners has reviewed the record and is now ready to take action based upon the evidence and testimony already in the record.

**NOW THEREFORE, IT IS HEREBY ORDERED** that the findings previously adopted in support of Ordinance No. PA 1229 are further supplemented as described in Exhibit "B" attached and incorporated here by this reference to establish that the evidence in the record confirms the changes to the Lane County *Coastal Resources Management Plan* adopted by that ordinance do not affect its compliance with Statewide Planning Goal 16 and the Board further concludes the cumulative impacts of activities authorized by the changes are adequately addressed by the amendments to the CRMP, the evidence and analysis contained in the record and the fact that more specific impact analysis will be considered further in more detail in subsequent permitting decisions reached before any development occurs.

**ADOPTED** this 25th day of October, 2006.

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Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date \_\_\_\_\_ Lane County

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OFFICE OF LEGAL COUNSEL



**Cascade Resources**  
ADVOCACY GROUP

James D. Brown  
Staff Attorney  
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October 23, 2006

Via Electronic Mail and First Class U.S. Mail

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Re: Order and Supporting Findings Addressing Remand in *Oregon Shores et al. v. Lane County*, LUBA No. 2006-048

Dear Messrs. Howe and Vorhes,

Thank you for the opportunity to provide you with comments regarding the proposed order and supporting findings addressing the remand in the above matter. I provide these comments on behalf of the Petitioners to the LUBA appeal: Land Watch Lane County and the Oregon Shores Conservation Coalition. Petitioners request that these comments be provided to the Lane County Board of Commissioners and be included in the record for the hearing.

The first principle concern of Petitioners is that the proposed order does not include any amendment to the Lane County Coastal Resource Management Plan (CRMP) as required by Goal 16 and the opinion of LUBA. Goal 16 states: "Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections." LUBA Opinion at 7 (emphasis added). In addressing this requirement, LUBA stated that the County must at the least conduct a "general" cumulative impacts analysis and the results of that consideration must be included in the comprehensive plan, in this case the CRMP. LUBA Opinion at 9.

While the findings in support provide additional analysis of the evidence in the record, no additional language is proposed for the CRMP. LUBA's opinion instructs the

While the findings in support provide additional analysis of the evidence in the record, no additional language is proposed for the CRMP. LUBA's opinion instructs the County to adopt plan language regarding cumulative impacts. The proposed order fails to do this and instead concludes that no further language is necessary, which is contrary to the instructions of the LUBA decision and Goal 16.

The language that must be adopted must include an analysis of potential cumulative impacts of the alterations and development activities envisioned. The plan amendment that is the subject of this appeal will conditionally allow the use of hardened erosion control or "riprap". Goal 16 requires that the plan consider the potential cumulative impacts of that use because the proposed plan amendment does not foreclose the use of riprap as a potential alternation or development activity.

The second principle concern of Petitioners is the lack of evidence in the record regarding cumulative impacts on the estuary as a whole. The evidence provided by the applicant and examined in the proposed supplemental findings address impacts to the area of the proposed amendment. There is no dispute that the immediate area has been degraded by continued erosion. The concern of Petitioners and echoed by commenting agencies is the potential cumulative impact on the larger estuary. See, e.g., Record at 266-67 (comments of National Marine Fisheries Service). The proposed supplemental findings acknowledge that erosion at other locations has degraded the area of the proposed amendment. Supp. Findings at 9-10 (stating "The cumulative impacts of the area's redesignation are impacted by the fact that the surrounding estuary has been hardened against erosion.") What will be the similar impact to other estuaries if further erosion control is allowed at this site? This is the cumulative impacts analysis required by Goal 16; an analysis that the record does not include. At the least, as indicated by LUBA, there is no evidence to support the current proposed textual amendment to the CRMP: "The sensitivity of the more productive adjacent estuary is buffered by the moderate designation of this estuary management unit." LUBA Opinion at 27-29. Confusingly, this is a textual amendment that the proposed supplemental findings themselves refer to as "cryptic" but do not propose any alternative of the language. Supp. Findings at 7.

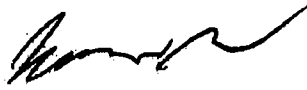
In summary, Petitioners have reviewed the proposed amendment and have concern with the lack of amendment to the CRMP to address the requirements of Goal 16 and the LUBA remand. Additionally, Petitioners are concerned by the lack of evidence in the record regarding impacts to areas outside of the area where erosion control would occur and the unsupported textual amendment to the CRMP that adjacent areas will be buffered by the redesignation.

Petitioners request that you address the issues raised in this letter before proceeding to approve the redesignation. Please do not hesitate to contact me to discuss.

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Letter to Messrs. Howe and Vorhes  
October 23, 2006  
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Sincerely,



James D. Brown  
On Behalf of Petitioners LandWatch  
and Oregon Shores

cc: Stephanie Schultz, via electronic mail  
Emily Jerome, via electronic mail