From: Rindy, Bob
To: Howard, Lisa
Subject: FW: LCDC Policy Agenda for 2011-13
Date: Wednesday, August 10, 2011 11:45:07 AM

Bob Rindy

From: Mitch Rohse [mailto:mitchrohse@comcast.net]
Sent: Tuesday, August 09, 2011 2:48 PM
To: 'Rindy, Bob'
Cc: Laren WOOLLEY, DLCD; Katherine Daniels, DLCD
Subject: RE: LCDC Policy Agenda for 2011-13

Bob, please forward the following memo to the commission for its meeting on August 17.

To: Land Conservation and Development Commission
From: Mitch Rohse, Planning Consultant
Subject: Request for Rule-Making Pertaining to Transfer of Development Rights

There is a little-known policy problem that I hope LCDC can fix with some simple rule-making. The problem has to do with transfer of development rights (TDR). When the 2009 legislature passed SB 763, the lawmakers defined key terms too narrowly. In doing so, they precluded (probably inadvertently) the use of TDR in certain situations where it not only should be allowed but encouraged, namely in coastal communities threatened by rising sea level and severe coastal erosion. TDR has the potential to be a useful tool where relocation to more secure upland areas becomes necessary. With TDR, shorefront property endangered by sea level rise or coastal erosion would be a sending area, while secure upland property would be the receiving area. The problem with SB 763 is that it implies that sending areas can only be "resource land." Most of the coastal areas that may be subject to sea level rise and severe erosion are unincorporated rural communities designated for various levels of residential development, and hence are not resource land.

The key passages from SB 763 that I'm concerned about are these definitions:

> **(8) "Sending area" means a designated area of resource land from which development credits generated from forgone development are transferable, for uses or development not otherwise allowed, to a receiving area.**
> **. . .**
>
> **(11) "Transferable development credit system" means a land use planning tool that allows the record owner of a lot, parcel or tract of resource land in a sending area to voluntarily sever and sell development interests from the lot, parcel or tract for purchase and use by a potential developer to develop a lot, parcel or tract in a receiving area at a higher intensity than otherwise allowed.**

I am not aware of any coastal communities that are presently considering relocation or that need this form of TDR immediately. Some communities, however, would like to have TDR as a long-term contingency option to be used if and when the threat of coastal erosion and ocean flooding become a major risk. They would like to have the TDR policy mechanism in place if relocation should become necessary. At the present time, however, such a policy seems to be prohibited by the state law. I realize that LCDC cannot use rule-making to amend a statute, but I wonder whether it could use its rule-making authority to clarify that the definitions in SB 763 don't necessarily prohibit TDR in all situations where the sending areas are not resource lands.

The extent to which relocation of at-risk communities might be needed in the future is, of course, difficult to predict. FEMA and USACE already have relocated several shoreline communities in Alaska to upland areas, but the hazard there stemmed mainly from a decline in winter ice along the shore that previously had acted as a sort of natural seawall to protect the communities from severe winter storms. Obviously, that's not a problem we would see along Oregon's coast. But well-documented sea level rise and increases in winter storm wave heights here may cause relocation to be necessary in some of our coastal communities at some point. Needless to say, that would be an exceedingly difficult and expensive undertaking, so anything we can to do facilitate the process would help. Making the state's TDR provisions applicable in such situations would be one way to do that.

Thank you very much for your attention and action on this matter. Please don't hesitate to contact me if you have any questions or comments.

Mitch Rohse

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From: Rindy, Bob [mailto:bob.rindy@state.or.us]
Sent: Monday, August 08, 2011 3:14 PM
To: bob.rindy@state.or.us
Cc: Rue, Jim; Morrissey, Michael
Subject: LCDC Policy Agenda for 2011-13

You are invited to participate in discussions of LCDC's Policy Agenda. The Oregon land use program is always changing in response to new and emerging issues and the needs of communities statewide. The Policy Agenda is a plan for changes to the program. The Land Conservation and Development Commission (LCDC) encourages citizens, local governments and stakeholders to help set its Policy Agenda at the beginning of each biennium. The agenda sets priorities for the 2011-13 biennium, including projects to adopt or amend administrative rules, conduct information forums, propose legislation, or participate in other policy projects.

LCDC has scheduled two pubic meetings to consider ideas and recommendations. These meetings will occur August 17 in Portland and October 5-7 in Grants Pass. The first meeting, August 17, will begin the discussion with public and staff input, including oral and written testimony. After the meeting for the next six weeks the commission and department will continue to seek input and recommendations, with

anticipated adoption of the Policy Agenda at LCDC's October meeting in Grants Pass.

The following link provides background information on this topic, including information about the hearing times and locations, and how to mail or email ideas and recommendations.

http://www.oregon.gov/LCD/docs/meetings/lcdc/081711/Item_7_Policy_Agenda.pdf

The following link is the LCDC agenda for the August meeting, including location information:

http://www.oregon.gov/LCD/docs/meetings/lcdc/081711/lcdcmtgnot081711.pdf

Please call or email if you have questions or need additional information. Thank you,

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