



Oregon

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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Patty Snow, Coastal Division Manager
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SUBJECT: **Agenda Item 4, July 22-23, 2021, LCDC Meeting**

OCEAN-FRONTING PUBLIC ROAD PROTECTION RULEMAKING INITIATION

I. AGENDA ITEM SUMMARY

Department of Land Conservation and Development (DLCD) staff will ask the Land Conservation and Development Commission (LCDC or commission) to initiate rulemaking focused on creating a new land use planning goal exception option to allow structural shoreline protection for public, ocean-fronting roads built prior to 1977. Currently, under land use planning Goal 18 (Beaches and Dunes), only development that existed as of January 1, 1977, is eligible to apply for shoreline armoring permits. This new proposed option would provide a more specific way for public roads and highways (such as Highway 101) along the oceanfront to seek structural protection from coastal erosion through a local government goal exception process.

Staff will also review the department's preliminary schedule for the rulemaking effort, as well as the interests staff have identified for Rules Advisory Committee members.

Purpose. Two-fold: to provide an overview of the rulemaking process, and to ask LCDC to initiate rulemaking. The rule would create a specific exception option in OAR 660-004-0022 for public roads developed prior to January 1, 1977 to be eligible for shoreline armoring.

Objective. Initiate rulemaking.

For further information about this report, please contact Meg Reed, Coastal Shores Specialist at 541-514-0091 or meg.reed@dlcd.oregon.gov.

II. BACKGROUND

The purpose of this proposed rulemaking is narrowly focused – to provide a more specific option for public roads and highways (such as Highway 101) along the oceanfront to seek structural protection from coastal erosion through a local government goal exception process. As proposed, a specific reason would be added to OAR 660-004-0022 (in Goal 2: Land Use Planning) for Statewide Planning Goal 18 (Beaches and Dunes) to include public highways and roads developed prior to January 1, 1977 as eligible for shoreline armoring. Shoreline armoring is the placement of structural material on the oceanfront with the intention of minimizing the risk of coastal erosion to development (e.g., riprap, seawalls). Currently, under Goal 18, only certain types of development that existed as of January 1, 1977 is eligible to apply for shoreline armoring permits. ‘Development’ is defined as houses, commercial and industrial buildings, and vacant but improved subdivision lots. Under the current language, roads (such as Highway 101) are not eligible for shoreline armoring.

The intention of this provision of Goal 18 is to limit the placement of shoreline armoring structures to those areas where development existed prior to 1977. This policy effectively places a cap on the amount of ocean shore that may be hardened, and thus limits the negative cumulative impacts of such hardening. Shoreline armoring fixes the shoreline in place, traps sediment, and cause scouring and lowering of the beach profile, which can result over time in the loss of Oregon's public beaches. New development must account for shoreline erosion through non-structural approaches (e.g., increased setbacks). In the face of increased ocean erosion occurring in conjunction with climate change, limiting hard structures and allowing natural shoreline migration is a critical policy tool for conserving and maintaining Oregon's public beaches.

However, public facilities and roads, including those that were developed prior to 1977, are not currently included in the definition of development eligible for shoreline armoring under Goal 18. In particular, some sections of state Highway 101 are oceanfront and vulnerable to the hazards of coastal erosion. This highway, which was built in the 1960s, is an essential lifeline road that connects coastal communities and provides links to the rest of the State. Exposed, ocean-fronting sections account for about 20 miles or less total. The Oregon Department of Transportation is currently conducting a study to assess this number more exactly. If this road were to become inaccessible, it could cause major challenges for transportation and safety. While there may be options for the road to be moved or re-routed in some areas, this option may be extremely costly; impact sensitive habitats; and/or be infeasible because of the mountainous and landslide-prone terrain.

In 2019, DLCD convened a focus group of interest groups, local government staff, and state agencies to review the equity and consistency of the shoreline armoring provision of Statewide Planning Goal 18. Focus group members considered information related to the practical, political, technical, and scientific aspects of Goal 18 shoreline armoring

requirements. The focus group concluded in September 2019 with several proposals for next steps, one of which was to commence rulemaking to create a specific land use planning goal exception option in OAR 660-004-0022 for public roads developed prior to January 1, 1977, to address some of the challenges stated above. While this change would not guarantee approval of a land use planning goal exception, it could help streamline the goal exception process with local governments specifically for these types of roads.

A different option, an amendment directly to Goal 18 to include public roads in the definition of development eligible for shoreline armoring was ultimately considered to be infeasible by the focus group. In 2002, LCDC and the Oregon Transportation Commission attempted a Goal 18 amendment to include Highway 101 in the definition of development eligible for shoreline armoring. However, the goal amendment proposal was ultimately withdrawn because of opposition from multiple parties. Rulemaking to address these roads more specifically through the local government process was seen as a more feasible and balanced approach by the focus group members, particularly because of the minimal miles of exposed roads. The option staff are recommending would operationalize that process – exceptions taken at the local level as described in more detail in the next section.

A. THIS RULEMAKING PROCESS

The department proposes to form a rulemaking advisory committee (RAC) to provide guidance and suggestions during the development of the new rule language and the fiscal impact associated with the proposed rulemaking. Because this rulemaking is specific to the Oregon coast, staff are looking for RAC members who live, work, or have a specific interest in the coast. In addition, the agency has defined these priority populations and interests for recruitment:

- Public transportation
- Tourism sector
- Commerce
- Coastal recreation
- Senior and/or retired persons
- Emergency management
- Civic organizations
- Environmental or conservation groups
- State and local government
- Public works
- Small businesses
- Academia
- People living with disabilities
- Low-income Oregonians
- Youth (Under 25)

Commissioners may find the open recruitment for RAC members on DLCD's website [here](#) through July 30. Staff will then review applications and send formal invitations to applicants in early August 2021.

The department and the RAC will accept written comments at any time during the rulemaking process and will provide opportunities for verbal comments at the meetings

as time allows. While the RAC is an advisory body, it will not hold public hearings. All RAC meetings will be open and viewable to the public online.

B. PROPOSED SCHEDULE

Staff have developed a preliminary schedule for RAC meetings and LCDC hearings with an anticipated rule effective date of spring 2022. The preliminary schedule is to conduct three RAC meetings between September and November 2021. Meetings will be approximately four to six weeks apart. Rule language will be finalized in November. The target is to have the first LCDC public hearing in January 2022, a geographic hearing on the coast in February 2022, and final public hearing and adoption with LCDC in March 2022.

III. RECOMMENDED ACTION

The department recommends that the commission initiate rulemaking to create a Land Use Planning Goal 2 exception option to allow structural shoreline protection for public, ocean-fronting roads built prior to 1977.

Recommended motion: I move the commission initiate rulemaking and authorize the director to appoint a rulemaking advisory committee consistent with the recommendations in the staff report.

Optional motion: I move the commission delay initiation of the proposed rulemaking project to [insert duration of delay and the reason].

IV. ATTACHMENTS

A. GOAL 18: PRE-1977 DEVELOPMENT FOCUS GROUP FINAL REPORT