



Oregon

# COASTAL NOTES

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## LCDC AND DLCD READ THE RIOT ACT ON THE HOUSE FLOOR

by Onno Husing, Legislative Fellow

Oregon's famous land use planning system remains vulnerable. As I sat and watched the House debate on the DLCD budget I came to realize just how close we are to having a legislative revolution on this issue. The budget finally passed 35-25 but not after some serious debate. Representative Tom Hanlon (whose Ways and Means Subcommittee handled the DLCD budget) carried the bill on the floor. Hanlon, made every effort to remind his fellow legislators that this was a budget bill and not a substantive bill. Therefore, argued Hanlon and others, this was no time to take out your frustrations on the agency. Further, the argument went, by punishing the agency with huge cutbacks in the budget would only slow the permitting process for development and could hamper growth in the state.

But many legislators would not be denied their opportunity to beat up on LCDC/DLCD. The minority leader Larry Campbell opened the attack. "There is no agency in this state government that listens less to the Legislature than DLCD and LCDC". He continued by warning DLCD not to pursue rule-making on Goal 4 until the Legislature gets a look at it. "If LCDC ignores us, this shot across their bow will be nothing compared with the torpedo they will receive next legislative session!" As an example of LCDC's arrogance, Campbell stated that "we told them last session to look at secondary lands and all they did was turn around and make it tougher to do things on primary lands!" Campbell compared this floor action with the last step and the warning a parent gives to their child before they take their bike away (despite his misgivings, he still urged passage of the budget).

Next Representative Stan Bunn weighed in. Bunn noted that he was one of the few legislators still around from 1973 when SB 100 was enacted. "The land use process since then has gone in a direction I would have never supported", Bunn stated. He declared that the Legislature is partly to blame. "The split Legislature sends different messages to LCDC because the Legislature can't or won't make decisions on the tough issues, we let them (LCDC) decide them for us", Bunn stated. Bunn also speculated that LCDC will, "divide and conquer the agriculture and forestry lands if we let them." Accordingly, Bunn argued the budget should be voted down and that the Legislature should take a more active role in land-use planning.

Then Representative Bernie Agrons entered the fray. In a harsh tone of voice I have not previously heard from this gentleman, Agrons thundered, "I have no sense of confidence in anything that agency does! They don't come close to matching my desires or the desires of the people of this state", Agrons complained. Agrons noted that LCDC is "tearing the body politics in this state apart!" Agrons said that every time legislators get a commitment from LCDC that agreement is broken. "And since the Legislature only meets biennially, like spawning salmon then die and go away, they have taken advantage of us". As a result, like Bunn, Agrons thinks the Legislature should take over major elements of the land use planning process. Agrons urged voting no on the budget and summarized his remarks, "There are certain issues that are so central to the well being of the state that we don't trust them to agencies, examples of those areas of the law are

issues such as revenue and criminal law, and now I believe land use planning should also not be trusted to bureaucrats, maybe the entire process should be done on the floor of the Legislature, I don't know of a better way to keep the system accountable."

Representative Dominy held the middle ground view. He stated that he has always been in favor of land use planning (although every speaker of the day prefaced their remarks with what seemed to be the obligatory statement, "While I support land use planning..."), Dominy thinks the process has gone too far. He hoped, however, that we would not take away money that is necessary to "plan for the future".

Next, freshman legislator Kelly Clark piled on. Noting that he does some land use as a part of his legal practice, Clark recalled that the Attorney General recently characterized the land use planning process as having become "fossilized, legalized, and trivialized". Clark thought that one group in the state had captured the land use planning system, "And that group happens to have a thousand members" (a thinly veiled reference to 1000 Friends of Oregon, a Portland based environmental group). "Those individuals have brought an elitest perspective to land use planning", said Clark.

Clark observed that while we should recognize that LCDC and DLCD are in transition, there has evolved an, "institutional arrogance". As an example, Clark mentioned that 33 members of the Legislature wrote a four-page detailed letter to the agency and never got a response. As a further example of this arrogance, Clark said that once he had a conversation with a commissioner

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## CORMORANT BILL WATERED DOWN BY SENATE RULES COMMITTEE

The salmon marking bill (HB 2735) inched its way to the Senate Floor last week in the Senate Rules Committee. (Senate Rules, you might ask? It went to that committee because it was one of the only committees open). Since there were several Senators in that committee that did not appreciate the idea of harassing cormorants, the cormorant hazing program was reduced to a hatchery study program.

The bill now merely asks ODFW to review a number of their hatchery practices to see how the survival rate for smolts could be improved. No additional budget was appropriated for the study. Even though ODFW received a large budget this session, there are no guarantees that ODFW will really do anything substantive in this area. They have been accused of dragging their feet for years and this bill appears to be another invitation to delay. There may be other means to push them, however, especially under HB 3336. It can be expected that hatchery practices may be a major concern of the enhancement board established under the bill.

The other part of the original bill - the salmon marking provisions - also was subject to a protracted debate (rare at this stage of the session) on the substance of the state's hatchery policy. The discussion centered on whether private hatcheries should be on "an equal footing" with state hatcheries and STEP projects, or whether the state should exert special control over private hatcheries. A compromise was fashioned based on some technical considerations of the differences in brood stock used in private versus public hatcheries. Therefore, with respect to those key differences, the committee approved more stringent controls over private hatchery practices.

In other action before the Senate Rules Committee, the Sturgeon bill, HB 2985, was moved to the Senate Floor with a do-pass recommendation.

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from LCDC and when Clark informed the commissioner that the Legislature was contemplating rewriting Goal 4, the commissioner stated he didn't think the Legislature had the authority to do so. Clark was amazed at the remark. Since LCDC and DLCD derive their entire existence and rulemaking authority from statutes - passed by the Legislature - Clark correctly found it is absurd to think that the Legislature couldn't move on Goal 4.

That's what makes the current situation so scary. As Clark warned, if LCDC/DLCD doesn't fully understand or appreciate the Legislature's powers and do everything to reach an accommodation with the Legislature, the land use planning ball game in this state could be over. Clark also warned that certain groups in the state may use the initiative process to overturn the appellation. Clark speculated, "If that occurs, then we will look back in a few years and say, gee, wasn't that (the statewide land use planning) an interesting experiment".

Representative Paul Hanneman argued in favor of passing the budget. Hanneman informed the House, "There are three ways to change the direction of an agency, first by statute, the second would be to change the commissioners (although Hanneman thought the Governor did not have the desire to take this step), and third, to change the Director of the Agency and to pursue a scaled down pilot program approach rather than a statewide erratic program". Hanneman noted that there is now a new director and that pilot programs are starting with volunteer counties. Hanneman stated, "But to attack the budget of the agency is nothing more than symbolism; this is not the time or place to deal with major substantive problems".

Several others echoed Hanneman's sentiments saying that the Ways and Means Committee had put together the best budget package for the agency that it could and that now some members of the Legislature were "flogging a dead horse". As a counter to this argument, Representative Markham

noted that everytime he tries to pass a bill that would straighten out the LCDC mess he can't get it heard before committee. Therefore, according to Markham, attacks on the budget may be the only way to send LCDC/DLCD a message.

Toward the end, Representative Ray Baum couldn't resist the opportunity. Baum stated, "The state's land use planning system is a good idea gone bad. It has run-amuck; for those outside of Portland that missed the Oregon comeback, that agency wants to make them permanently the Oregon outback!"

Hanlon skillfully closed the debate by defusing earlier arguments. Hanlon noted that there is a new director that has pledged to work closely with the Legislature, that the issue of secondary lands will be treated through voluntary pilot programs, and that LCDC has promised not to promulgate further rules until it has received the go-ahead from the Legislature (a response to Clark's earlier statements that his letter had gone unanswered).

After Thursday's debate on the House Floor, absent strong leadership and compromise, a showdown in the near future between the Legislature and LCDC/DLCD seems inevitable.



**HOUSE PREPARES FOR BLOODY FLOOR FIGHT OVER GILLNET BAN!**

Last week was all quiet on the gillnet ban front (HB 3219). The "conceptual amendments" offered during the previous work session on the bill (see last week's *Coastal Notes*) linking the bill to further action by Washington State, were issued. However, in last minute wrangling, it appears that House Water Policy will have to re-open to formally adopt those amendments. Presumably, that will happen early next week. Once formally adopted, the bill will probably move to the House floor for consideration.

Therefore, until the amendments hit the floor, participants in this war are in the eye of the hurricane - it was stormy when HB 3219 was brought back from the grave, its quiet now, and the storm will rage again when the bill hits the floor. Behind the scenes phones are ringing of the hook in various House members offices, campaigns have been initiated, "vote counts" by lobbyists continue (each side trying to narrow the number of uncommitted voters down and then to pressure them) and other subtle and overt means to pressure legislators are underway.

**PRESIDENT BUSH RESTATES HIS WETLANDS POLICY**

In a news report this week President Bush reiterated his "no net loss" policy for the nation's wetlands. In a speech before "Ducks Unlimited", the news report stated that Bush will be signing additional wetlands legislation. OCZMA will be following this issue carefully and will try to find out precisely what if any effect new legislation would have on wetlands issues in Oregon (since we are bound by federal law there will be some effect). Heavy handed federal enforcement in this region of the country has already marked the Bush Administration's approach. The best example of this new approach is the requirement that retroactive mitigation or restoration occur for fills that occurred in the late 1970's and early 1980's when the federal ground rules for wetlands were murky.



**SENATE BILL 3 STILL WAITING SENATE FLOOR ACTION**

In what can figuratively be referred to as a traffic jam, SB 3 (the state wetlands reform bill) is still languishing in the Ways and Means Committee where it is stalled along with a number of other bills. All indications are that the bill is not in trouble. SB 3 watchers just have to be patient. The Ways and Means Committee is continuing to digest all the legislation that must pass through that committee on the way to the floor of the Senate and the House.

While things wind down in other parts of the Captitol, the atmosphere in the corridor between the Ways and Means hearing rooms and offices has intensified. It's remarkable to do a daily accounting of what the committee spent. During the closing days of the session it's not unusual for the committee to appropriate several hundred million dollars a day with budgets like capital construction. Those who try to estimate when the session will end all watch Ways and Means closely because if things bog down there, the session will almost certainly drag on.

In addition, if budgets start failing on the floor of either the House or the Senate—as did the Justice Department's budget this week—that also pushes the date of the end of the session back.

**OIL COMPANIES ANNOUNCE NATIONWIDE OIL SPILL RECOVERY RESPONSE SYSTEM**

*by Onno Husing, Legislative Fellow*

Last week *Coastal Notes* reported substantial progress has been achieved on alerting some of the key people in Washington D.C. of the availability of European oil spill recovery technologies (also, see earlier issues of *Coastal Notes* for a full description of the Coastal Caucus's findings). This week it was front page news that the oil companies have voluntarily moved to adopt these technologies on their own! It appears from the news stories that the oil companies plans are nearly identical to the ones proposed at the suggestion of the European equipment suppliers. There will be five major sites where oil spill recovery teams will be prepared round the clock to react to a spill. In addition, there will be other

support or "staging areas". Most importantly, the companies have called for centralized authority to handle oil spills be placed in one agency - the Coast Guard. Again, this approach is identical to the system established in Europe and that we reported on earlier.

The plan may cost the oil companies somewhere in the neighborhood of \$75 million (for the entire system). Some environmentalists have responded critically stating that the oil companies were merely heading off Congressional action that could place even further demands on the companies. While the Congress will certainly evaluate the effectiveness of these plans, we are pleased that progress in this matter is so evident.