

T.L.A

## AGENDA COVER MEMO

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**AGENDA DATE:** October 25, 2005

**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works – Land Management Division

**PRESENTED BY:** Jeff Towery, Manager

**AGENDA TITLE:** REPORT/OREGON DEPARTMENT OF STATE LANDS DOCK,  
REGISTRATION ON THE SIUSLAW RIVER

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### I. MOTION

No motion is needed. This information is being presented at the request of the Board.

### II. ISSUE OR PROBLEM

The Department of State Lands (DSL) requires the registration of docks and is currently working on the Siuslaw River. As part of the registration process, each dock owner must show the dock complies with local land use laws. Some dock owners have expressed frustration with the DSL registration process. Some dock owners have also expressed confusion regarding the County's role in this process. On June 14, after a presentation by LMD, the Board directed staff create a method to assist dock owners in determining the legal status of their docks. The Board also directed staff to research the Clatsop County Code relating to docks. This is a report back regarding the status of these efforts. This memo will:

- Explain the process that LMD will use to expedite the requests of the dock owners.
- Provide an update on the number of docks that are registered and how many are remaining.
- Present the findings from the Clatsop County Code.

### III. DISCUSSION

#### A. Analysis

##### *Process*

Attachment "A" contains the brochure used as a general explanation of how to determine if an existing dock has local land use approval. If a dock existed prior to 1982, it is considered "grandfathered" for county approval, but it still needs to register with the state. If an existing dock did not exist prior to 1982, it must gain compliance

with current county codes before it can register with the state. The most common requirement is a special use permit.

On October 20, LMD will travel to Mapleton to meet with dock owners and other interested parties to discuss the County's role in the dock registration process, and to answer general questions about docks on the Siuslaw.

As requested by the Board, DLCD has been contacted. The Board was interested in what position DLCD would take if Lane County decided to "grandfather" existing docks as a means of establishing local land use approval. As of the date of this memo, no written response has been received, but one is anticipated before the Board meeting.

*Status of registration*

In January 2005, DSL sent LMD a list of 130 dock structures on the Siuslaw River that were in Lane County's jurisdiction. DSL eliminated 38 structures for various reasons, narrowing the total to 92 structures. The eliminated structures were either previously registered with DSL, had lease agreements with DSL, or were old pilings and/or remnant structures that were no longer being used. These are exempt from registration.

In March of 2005, DSL sent out 92 mailings to dock owners along the Siuslaw. Included in the mailing was a letter from Lane County addressing the requirements each dock owner needed to follow in order for them to comply with the local planning jurisdictions.

As of October 2005, 56 of the 92 structures have been registered with DSL. Five (5) have been confirmed removed, leaving a total of 31 to be registered with DSL. Of those 31, 15 do not show up on the 82' Aerial photographs. Of the 15 structures remaining, DSL has had correspondence with 8. Two (2) have applied for a Special Use Permit with Lane County.

*Summary of Dock Registrations*

<b>92</b>	<b><u>Private docks on the Siuslaw River that need to be registered w/ the state</u></b>
56	Registered w/ state
5	Structures Removed
31	Number of structures not registered with state, as of October 2005
<b>31</b>	<b><u>Structures not registered as of October 2005</u></b>
16	Existed prior to 1982 (grandfathered)
2	Special use permits submitted to LMD
8	Dock owners in contact with state and need a permit from LMD
5	Docks that need a permit from LMD, but no contact with state

*Clatsop County Code*

During the June 14, 2005, Board work session regarding the County's role in the DSL registration of private docks, reference was given to a Clatsop County Code that

'grandfathered' pre-existing docks. Staff investigated the Clatsop County Code with the following conclusions:

- Clatsop Co. has done one code amendment related to DSL registration of structures in/on State-owned waters. They have not created any exceptions for docks. The applicable section of the Clatsop County Code is found in the Non-conforming Uses and Structures Section 5.600.
- The definition section of the Clatsop County Code defines Floating Recreational Cabin and Floating Residence and Lawfully Moored as follows:

**FLOATING RECREATIONAL CABIN:** A moored floating structure used wholly or in part as a dwelling, not physically connected to any upland utility services except electricity, and is used only periodically or seasonally.

**FLOATING RESIDENCE:** A dwelling unit which floats on a water body and is designed such that it does not come into contact with land except by ramp. Floating residences may also be referred to as floating homes or houseboats. A floating residence is not equivalent to a floating recreational cabin or other similar recreational structure designed for temporary use. It is also not equivalent to a boathouse, designed for storage of boats.

**LAWFULLY MOORED:** To be lawfully moored, a floating recreational cabin or floating residence must be constructed upon or attached to piling or a dock by the owner or with the permission of the owner or lawful lessee of the piling or dock. If moored to a piling or dock, such piling or dock must have been installed or constructed and be maintained in compliance with all Federal, State and County requirements. If the floating recreational cabin or floating residence is attached to the shore, such attachment must also be by or with the permission of the owner or lawful lessee of the area of attachment. [*emphasis added*]"

- The Clatsop County Code establishes standards for floating residences and floating recreational cabins as follows:
  - i) "Any floating residence or floating recreational cabin in existence and lawfully moored prior to January 1, 2000, that complies with applicable County standards may be considered a legal nonconforming structure, and will be allowed, subject to the provisions of this Section. A property owner wishing to obtain nonconforming structure status shall provide documentation that substantiates that the floating residence or recreational cabin:
    - Was in existence and lawfully moored prior to January 1, 2000; [*emphasis added*]
    - Complies with applicable rules and regulations of the Oregon Division of State Lands; and
    - Complies with applicable rules and regulations of the Oregon Department of Environmental Quality.
    - Acceptable forms of documentation include but are not limited to, lease agreements, legal ownership records on file with the County Clerk, tax records, dated aerial photography, sworn affidavits and/or written reports."
  - ii) "A lawfully moored floating residence or recreational cabin in existence prior to January 1, 2000, that does not comply with County standards shall

have until January 1, 2006 to demonstrate compliance with those standards and qualify for legal nonconforming status.”

- The ‘grandfathering’ of floating residences or recreational cabins is different from docks which connect to the land. Generally, the County jurisdiction does not extend below the Ordinary High Water Mark and floating structures fall under the jurisdiction of the Division of State Lands. However, since docks connect to the land and at least a portion fall above the Ordinary High Water Mark, they fall within the County jurisdiction and therefore are subject to the Statewide Land Use requirements which are implemented by Lane Code.

In conclusion, the Clatsop County process is similar to our process. The Clatsop County Code requires that for the floating structures to be “grandfathered” the docks to which they are moored must have been installed or constructed and be maintained in compliance with all Federal, State and County requirements. The same Statewide Land Use requirements are applicable in Lane County which require docks to be installed or constructed and maintained in compliance with the applicable County land use and building code regulations.

#### **B. Alternatives/Options**

- ? To request additional information.
- ? To give direction, regarding any or all of the issues presented.

#### **IV. IMPLEMENTATION/FOLLOW-UP**

Staff will continue to work with DSL, the Corps, the Port of Siuslaw and the dock owners to ensure that the process to verify County land use approval is efficient and timely.

#### **V. ATTACHMENTS**

Attachment A – Brochure explaining the process for gaining land use approval for an existing dock.



# LAND MANAGEMENT DIVISION PUBLIC WORKS DEPARTMENT

125 E 8<sup>th</sup> AVENUE, EUGENE OR 97401

Planning: 682-3807

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## ***HOW TO DETERMINE IF YOUR DOCK HAS LOCAL LAND USE APPROVAL***

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This guide identifies the most common land use applications necessary to gain local land use approval to register a dock with the state. Because this is a general analysis that applies only to docks that exist below the ordinary high water mark, it may not address special situations that could apply to a single property. Any determination of additional permits necessary will be made on a case by case basis and will be identified in the Land Use Compatibility Statement.

### **How do I find out if my existing dock has local land use approval?**

#### **1. Land Use Compatibility Statement (\$50.80)**

Submit the Land Use Compatibility Statement application with the state dock registration form. Submit photos or any other evidence to show the dock existed prior to 1982, or that the dock was built with a County approved building permit.

#### **2. Was the dock built prior to 1982 or with a County approved building permit?**

**Yes:** Congratulations! Your dock complies with local land use laws. No other application is necessary.

**No:** Go to step #3.

#### **3. Does your property have an estuarine zone or coastal combining zone?**

**Yes:** You will need a Special Use Permit (\$1,210 or \$2,580). Depending on the specific combining zone, an additional investigation may be required (\$310 or \$634). Go to step #4.

**No:** Go to step #4.

#### **4. Building Permit**

If you answered "Yes" to #3, you can apply for a building permit if the required land use permits are approved.

If you answered "No" to #3, you can apply for a building permit immediately. The building code requirements for docks can be obtained from the Building Program (541-682-3823).

**SUPPLEMENTAL MEMO**

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**AGENDA DATE:**      **October 25, 2005**

**TO:**                      **Board of County Commissioners**

**FROM:**                 **Jeff Towery, Manager**  
                              **Land Management Division**



**AGENDA TITLE:**    **REPORT/OREGON DEPARTMENT OF STATE LANDS DOCK**  
                              **REGISTRATION ON THE SIUSLAW RIVER**

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Please find attached several pieces of correspondence relevant to this item.

January 3, 2005 letter from Steve Purchase, DSL to Jeff Towery

July 7, 2005 letter from Jeff Towery to Ann Hanus, DSL

July 25, 2005 letter from Steve Purchase, DSL to Jeff Towery

October 13, 2005 letter from Dave Perry, DLCD to Kent Howe



# Oregon

Theodore R. Kulongoski, Governor

January 3, 2005

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 378-3805  
FAX (503) 378-4844  
[www.oregonstatelands.us](http://www.oregonstatelands.us)

State Land Board

Mr Jeff Towery  
Manager  
Land Management Division  
Lane County Public Works Department  
125 E. 8th Ave  
Eugene, Oregon 97401

Theodore R. Kulongoski  
Governor

Bill Bradbury  
Secretary of State

Randall Edwards  
State Treasurer

RE: Small Residential Docks on State-Owned Waterways in Lane County

Dear Mr. Towery:

Over the past months we have been dealing with a number of issues relating to the registration and renewal of registration of small residential docks along state-owned waterways in Lane County. I know that this issue has been one of concern to your agency as well. The recent media attention has revealed that there remains some misunderstanding about our public service responsibilities.

The Department is conducting this work under authority found in state law (ORS 274.043) and the State Land Board's administrative rules (OAR 141-082). The registration of these docks offers owners of these structures proof of the right to occupy publicly owned land. This is important to the registrant, their insurer and prospective purchasers. In addition the registration process assures that the public trust interest (i.e. fisheries, navigation, recreation and commerce) in these waterways is protected.

In 1996, the Land Board's Waterway Leasing Task Force recommended that all unauthorized uses of state-owned land be inventoried and brought into compliance. As a result, the Land Board in 1998 enacted the dock registration program. Over 1,971 docks and similar structures have been authorized on various waterways throughout the state, many in Lane County. The revenue received from registrations goes into the Common School Fund.

Under current state law (ORS 197.180) the Department is unable to authorize use of its land that is not consistent with the existing Lane County Comprehensive Land Use Plan, Zoning Ordinances and Regulations. To do so puts the Department at risk of being in violation of state law and the local land use requirements. Many of the structures that are currently occupying state-owned waterways (i.e. submerged and submersible lands) were placed prior to enactment of the Comprehensive Plan; some have been placed after. Our initial registration of many of these structures was predicated on the assumption that they had been placed in compliance with the

applicable local land use requirements. In fact, many registrants certified as such. Later, we found that many were mistaken.

I am sure we share the mutual goal to find a way to authorize the docks and uses currently in place while assuring that future new uses are not sited or constructed until fully authorized by the Department after gaining compliance with the local land use plan, zoning ordinances and regulations.

With this goal in mind, I suggest that the County consider initiating a change in its land use plan to 'grandfather' those docks and uses currently existing on the state-owned waterways within Lane County. We have had some experience with the amendment process in Clatsop County as this same issue was identified during implementation of registrations on state-owned waterways in that area. There may be other options that we could explore too.

I appreciate Lane County's interests in resolving this matter as efficiently as possible in order to provide certainty in the long term for our constituents. We are ready to help.

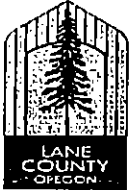
Sincerely,



Steve J. Purchase  
Assistant Director  
Field Operations

cc: Anna Morrison, Commissioner, Lane County  
Ann Hanus, DSL  
Dave Perry, DLCD, Waldport





## Lane County

LAND MANAGEMENT DIVISION  
125 EAST 8<sup>TH</sup> AVENUE  
EUGENE, OREGON 97401

PHONE: 541-682-3823  
FAX: 541-682-3947

July 7, 2005

Ann Hanus, Director  
Department of State Lands  
775 Summer St. NE, Suite 100  
Salem, OR 97301-1279

RE: Small Residential Docks on State-Owned Waterways in Lane County

Dear Ms. Hanus,

On June 14, 2005, the Board of Commissioners held a work session to review the County's role in the DSL effort to register private docks, primarily out of concerns expressed by some affected owners on the Siuslaw River. In a letter dated January 3, 2005, Steve Purchase suggested that the County pursue an amendment to its Comprehensive Plan in order to grandfather docks and uses currently existing on State-owned waterways inside Lane County. I have attached the letter for your review. Ultimately, the Board directed staff to present options that could result in grandfathering docks in a manner similar to the suggestion in the letter.

We are aware of the action taken by Clatsop County to establish standards for floating residences and floating recreational cabins. That approach seems to treat such uses as nonconforming structures if established before January 1, 2000 and in compliance with applicable DSL and DEQ requirements. Planning staff and County Counsel are still researching the issue to try to determine whether such an approach will address the concerns that have been presented to the Board and still comply with applicable Statewide Planning Goals. We are unaware of any county that has taken a similar action specifically related to docks but would certainly welcome any information you might have on alternative approaches that other jurisdictions may have implemented. My primary purpose in writing this letter is to gain some clarity in understanding the DSL perspective on this matter. Is it still the Department's position that a plan amendment is the preferred approach to this issue? If so, will the Department be willing to advocate on Lane County's behalf to the Department of Land Conservation and Development?

Let me also say that we have appreciated the efforts DSL staff have put into working with us and members of the public, particularly, Chris Castelli and Kevin Moynahan. I will look forward to hearing from you. Thank you for your attention to this matter.

Sincerely,

Jeff Towery, Manager  
Lane County - Land Management Division

Enclosure

Cc: Anna Morrison, Chair, Lane County Board of Commissioners  
Dave Perry, DLCD, Waldport



# Oregon

Theodore R. Kulongoski, Governor

REC'D JUL 27 2005

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 378-3805  
FAX (503) 378-4844  
www.oregonstatelands.us.

July 25, 2005

State Land Board

CC02  
JEFF TOWERY  
LANE COUNTY LAND MANAGEMENT DIVISION  
125 EAST 8<sup>TH</sup> AVENUE  
EUGENE OR 97401

Theodore R. Kulongoski  
Governor

Bill Bradbury  
Secretary of State

Randall Edwards  
State Treasurer

**RE: Small Residential Docks on State-Owned Waterways in Lane County**

Dear Mr. Towery:

Director Ann Hanus has requested that I respond to your letter dated July 7, 2005 regarding the proposed plan amendment to Lane County's Comprehensive Plan. There were two questions posed in this letter to the Department:

- 1) *Is it still the Department's position that a plan amendment is the preferred approach to this issue?*

The Department's position is that the decision to introduce a plan amendment should be left to the County's discretion. By law, the Department cannot issue any authorization if the use does not conform to local comprehensive land use planning and zoning ordinance requirements. If a structure is deemed not consistent with local planning ordinances, then consistency must be obtained before an authorization may be issued for that waterway structure. If an owner cannot or will not do what is required to bring a waterway structure into compliance with the local land use planning ordinances, then the structure must be removed from state-owned land.

The Department's suggestion of a plan amendment is one presented for the County's consideration. However it is up to the County to determine the preferred solution.

- 2) *If so, will the Department be willing to advocate on Lane County's behalf to the Department of Land Conservation and Development?*

If after consideration, the County decides to follow through with the Department's suggestion of amending its land use plan to grandfather certain structures eligible for registration, the Department will support that decision with the Oregon Department of Land Conservation and Development.

Should you have any questions or comments, please contact me at (503) 378-3805, extension 279.

Sincerely,

  
Stephen J. Purchase  
Assistant Director, Field Operations

C: Ann Hanus, Director  
Anna Morrison, Chair, Lane County Board of Commissioners  
Dave Perry, DLCD, Waldport



# Oregon

Theodore R. Kulongoski, Governor

Dept. of Land Conservation and Development  
Oregon Coastal Management Program

PO Box 451, 720 Mill Street

Waldport, OR 97394

(541)563-2056

FAX (541) 563-4022

Web: <http://www.lcd.state.or.us/coastal>

REC'D OCT 17 2005

October 13, 2005

Kent Howe, Planning Director  
Lane County Land Management  
125 E. 8<sup>th</sup> Ave.  
Eugene, OR 97401

Re: Legal, Non-conforming (i.e., "grandfathered") Docks

Kent:

We understand that the issue of grandfathering has been raised in the context of docks constructed in Lane County along the Siuslaw River. Pursuant to our phone conversation this morning, I wanted to confirm for you in writing our view on legal, non-conforming, or "grandfathered" uses.

Uses and activities under the county's jurisdiction, that were lawfully established prior to acknowledgement of the county plan and land use regulations by the Land Conservation and Development Commission on September 13, 1984 can be considered legal, non-conforming uses.

That is, plan policies and county regulations effective after the date of acknowledgement may not apply to pre-existing legal, non-conforming uses. Uses and activities established on or after the date of acknowledgement must comply with the county plan and land use regulations effective on September 13, 1984 or as amended thereafter.

I hope this information is helpful. If you have questions, please call.

Sincerely,

Dave Perry  
South Coast Regional Repr.  
Dept. Land Cons. and Dev.  
[dave.perry@state.or.us](mailto:dave.perry@state.or.us)