



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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### NOTICE OF ADOPTED AMENDMENT

July 25, 2006

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Dunes City Plan Amendment  
DLCD File Number 002-05



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 9, 2006**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Dave Perry, DLCD Regional Representative  
Teri Tinker, City of Dunes City

<paa> ya/ph

**DLCD NOTICE OF ADOPTION**

**LAND CONSERVATION AND DEVELOPMENT**

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

Jurisdiction: Dunes City Local File No.: N/A

(If no number, use none)

Date of Adoption: 11/13/06 Date Mailed: 7/19/06  
(Must be filled in) (Date mailed or sent to DLCD)

9/13/05

Date the Notice of Proposed Amendment was mailed to DLCD: \_\_\_\_\_

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

1. Denial of portion of the application modifying the Dunes City Comprehensive Plan and re-zoning tax lots 200 and 201.

2. Amended code section 156.093(b)(2) to provide additional protections to Booth Island from adverse impacts from residential developments.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Instead of removing property from the Overlay District, added requirements

of development to the Open Space Overlay District on Booth Island to protect

open space resources.

Plan Map Changed from : \_\_\_\_\_ to \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to \_\_\_\_\_

Location: Assessor's map 20-12-03-10 Acres Involved: 28+

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: 2, 5

Was an Exception Adopted? Yes: \_\_\_\_\_ No: X

DLCD File No.: 002-05(14676)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

Affected State or Federal Agencies, Local Governments or Special Districts: \_\_\_\_\_  
ODF&W, US Fish & Wildlife

Local Contact: Teri Tinker Area Code + Phone Number: 541-997-3338

Address: P.O. Box 97 City: Westlake

Zip Code+4: 97493 Email Address: teritimescity@charterinternet.com

## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Larry.French@state.or.us](mailto:Larry.French@state.or.us) - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

**EXHIBIT A**  
**FINDINGS OF FACT FOR ORDINANCE 184**

Approval of the foregoing requested zoning code amendments is consistent with Section 156.214(B)(1), (2) and (3) of the city's zoning code. Section 156.214(B)(1), (2) and (3) provides:

- B. Criteria. Zoning, rezoning, and amendments to this part shall be approved only when substantive and probative evidence establishing specific findings of fact have been made that the zoning, rezoning, and amendments to this part conform to all of the following criteria:***
- (1) The proposed change conforms to, or is not inconsistent with, the comprehensive plan.***
  - (2) It has been demonstrated that there is a public need for the change, and that need is best achieved by this proposal.***
  - (3) The proposal is consistent with the purpose and intent of the district classification proposed.***

Approval of the proposed amendments are consistent with the provisions as follows:

- (1) The proposed change conforms to, or is not inconsistent with, the comprehensive plan.**

The comprehensive plan includes Open Space provisions that are intended to acknowledge and enhance the natural values and benefits associated with open space while continuing the residential use of Booth Island. The proposed amendments provide a heightened acknowledgement and protection of open space values (over that currently provided by the current code provisions) while providing for limited residential use of the island. Furthermore, the proposed amendments significantly reduce the number of potential new parcels/dwelling sites on the un-platted portion of Booth Island by more than 67%.

The proposed amendments to Section 156.093 (Booth Island) include provisions that require compliance with other code provisions for the protection of wetlands, riparian and shoreland areas. The proposed amendments include provisions that prohibit uses on Booth Island that are inconsistent with open space values, including the prohibitions of fencing of property boundaries, hunting, livestock and, with exceptions, vegetation removal. The proposed amendments include provisions that limit the painting of structures to earth tone colors consistent with the natural setting of Booth Island. Each of the aforementioned provisions add specific protections of open space values that are not specifically provided for in the existing code provisions covering Booth Island.

Furthermore, and possibly most importantly, the proposed amendments include provisions that place parcel size limitations on the un-platted area of Booth Island which result in a maximum of nine residential parcels on the un-platted area of the island. Six of those parcels, which would be located on TL's 3000 and 200, owned by the applicants, will cumulatively have an average parcel size of 3.5 acres. The proposed amendments will eliminate the current one-acre minimum parcel size provisions relating to Booth Island provided by the underlying R-1 zoning and will limit the number of structures on the island. By reducing the number of residential dwellings on the island from the potential of 32 dwellings (under the current underlying R-1 zoning) to a certain 9 dwellings, the proposed amendments bring development of the island down to a level more consistent with open space values than currently provided by the R-1 zoning.

**2. It has been demonstrated that there is a public need for the change, and that need is best achieved by this proposal.**

Approval of the proposed amendments will fulfill a public need to provide protection of open space values on Booth Island while providing for limited residential use of the island. Currently, the code provisions relating to Booth Island require a variance for any proposed structures. Current city zoning code provisions for obtaining a variance contain requirements that are nearly unachievable in a normal development situation. Applicants for variances are required to demonstrate existing extraordinary circumstances or hardships specific to each structure. While the underlying zone allows for a residential dwelling on parcels at least one acre in size, the overlay zone's variance requirements create a threshold for development that may be impossible to achieve. No known or legitimate extraordinary circumstances exist on the island and hardships that would lead to a successful variance application are inconceivable. Furthermore, in the unique situation of Booth Island, neither the applicant nor staff can identify a plausible argument supporting a finding that an applicant for a dwelling is being denied a right that others in similar circumstances are allowed.

It is the applicants' understanding that the city's enactment of the Booth Island Open Space Overlay Zone was not intended to terminate all subsequent residential development on the island thereafter. Furthermore, the applicants do not believe that the city intended to create a building or partitioning moratorium on the island with the enactment of the open space provisions. The intent of the amendments is to eliminate the existing variance provisions of the city's code while adding additional protections of open space values that do not currently exist in the code relating to Booth Island. The end result is the protection of open space values on the island with the provision of limited residential development--values which do not currently exist together under the current code. A public need exists that will be fulfilled by approval of the proposed code amendments.

**3. The proposal is consistent with the purpose and intent of the district classification proposed.**

As stated previously herein, approval of the proposal achieves the goals and purposes of the open space overlay zone while allowing limited residential development of Booth Island. By approving the proposed amendments, the city achieves a dual purpose and cleans up unmanageable existing code language that currently either limits or effectively prevents the achievement of either goal. Provisions will be added to specifically require compliance with other code provisions relating to development and open space such as provisions for wetlands, riparian areas and shorelands. Provisions will be added that limit residential development to levels below that allowed by the underlying R-1 zoning district. Approval of the two aforementioned sets of provisions will provide for a marriage of the two ostensibly-competing considerations of open space and development and will improve the regulation of uses on Booth Island.

**Statewide Planning Goals**

The following statewide planning goals are relevant to the proposed comprehensive plan map amendment and zoning map amendment: 1 – Citizen Involvement; 2 – Land Use Planning; 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources; 6 – Air, Water and Land Resources; Goal 8 – Recreational Needs; 9 – Economic Development; 11 – Public Facilities and Services; 17 – Coastal Shorelands. The following are findings for each of the relevant goals:

**Goal 1 – Citizen Involvement**

The plan amendment is filed concurrently with a zone change request from Open Space Overlay (OS) to Residential (R-1). Dunes City Code §156.212 identifies the hearing and notice requirements with regard to amendments to the zoning map and amendments to the zoning ordinance. The City provided public notice for the comprehensive plan amendment and rezone proposal. In addition, pursuant to Oregon Revised Statutes 197.610 and Oregon Administrative Rule Chapter 660 – Division 18, the City provided notice to the Department of Land Conservation and Development at least 45 days prior to the first evidentiary hearing for the Comprehensive Plan Map amendments and other amendments that are a part of the application.

**Goal 2 – Land Use Planning**

Goal 2 requires that City land use plans and actions be consistent with the city's comprehensive plan. The proposal is consistent with Dunes City's comprehensive plan in that it reconciles the internal conflict of the current language of Section 156.093 of the Dunes City Code where residential development is technically allowed but only under standards that are impossible

to meet. The current proposal allows limited development but under conditions that will require that the resource values of Booth Island be protected.

### **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources**

Goal 5 states that local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability. It further states, "Local governments and state agencies are encouraged to maintain current inventories of the following resources: a. Historic Resources; b. Open Space; c. Scenic Views and Sites." Dunes City has adopted a Local Wetland Inventory and Riparian Inventory that designates significant wetland and riparian areas. This inventory lists terrestrial and aquatic species in the Dunes City area some of which make use of the Booth Island natural resources. In the absence of a specific inventory of other scenic and open space resources present on Booth Island, the proposed Code amendment drastically reduces the maximum residential buildout on Booth Island, a primary method of preserving the scenic and open space quality of this area. The open space and scenic value of the island are further protected by a limitation on the number and size of docks.

Consistent with Goal 5, the proposal addresses wildlife resources in the following manner: The riparian and shoreland areas are protected through restrictions on vegetation removal, a limitation on access to homesites, and the retention of woody debris. Restrictions on motorize vehicles, fencing, hunting and the prohibition on the ownership of domestic animals also acts to preserve wildlife and its habitat.

The proposed amendments to Section 156.093 of the Dunes City Code balances property ownership with the protection of the Goal 5 resources on Booth Island.

### **Goal 6 – Air, Water and Land Resources**

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future proposed development, in conjunction with existing development, is consistent with applicable state and federal environmental quality standards. It also requires that future development does not degrade land resources or impede availability of such resources.

The proposal addresses the air, land and water resources of Booth Island in the following manner: Vegetation removal is restricted as is access through the riparian and shoreland areas. All structures are required to have fire retardant roofs and dwellings are restricted in size. The use of motorized vehicles is also restricted, reducing noise and air pollution.

## **Goal 8 – Recreational Needs**

Goal 8 requires that local governments shall provide for the recreational needs of citizens of the state in coordination with private enterprises and state and federal agencies.

Uses consistent with the Open Space Overlay designation of Booth Island include low intensity recreational uses such as “hiking, walking, observation, and other similar uses.” This property is not required to be put to recreational uses, however additional residential development will allow low intensity, recreational uses as defined in §156.093 Booth Island.

## **Goal 9 – Economic Development**

Goal 9 requires that the economic development projections and the comprehensive plan which is drawn from the projections should take into account the availability of the necessary natural resources to support the expanded industrial development and associated populations. The plan should also take into account the social, environmental, energy, and economic impacts upon the resident population. The applicants have provided no information that would provide reasons to change the Comprehensive Plan text regarding the subject property based on any economic indicators.

## **Goal 17 – Coastal Shorelands**

Goal 17 states that “Lands contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands.” It further states that uses of coastal shoreline areas shall be consistent with natural values. The fifty feet of shoreline along Booth Island is defined as coastal shorelands by the state and by Dunes City Code 156.092. The comments provided by ODFW staff indicate that the shoreline habitat of Booth Island” is considered to be in excellent condition”, “plays a vital role in providing spawning, rearing, and feeding habitat for the lakes warm water fishes, as well as for juvenile coho salmon and cutthroat trout.”

The proposal includes a number of provisions that address the preservation of wildlife habitat. Included are the restrictions on vegetative removal, the retention of woody debris along the shoreline, and the restrictions on hunting, fencing, and the ownership of domestic animals. All of these provisions, and the limitation on residential buildout, work to ensure that wildlife habitat will remain largely undisturbed on Booth Island.



**ORDINANCE NO. 184**

**AN ORDINANCE AMENDING ORDINANCE 50 AND MODIFYING SECTION 156.093  
OF THE DUNES CITY CODE**

WHEREAS, on January 17, 2006, Marvin & Darlene Beckman submitted an application to change the Dunes City Comprehensive Plan to remove the Open Space Overlay designation from Booth Island and to rezone tax Lots 200 and 201, Lane County Assessor's Map 20-12-00-00, to remove the Open Space Overlay Zone; and

WHEREAS, on February 16, 2006 this proposal was deemed complete by Dunes City; and

WHEREAS, subsequent to public hearings before the Dunes City Planning Commission the proposal was modified to include changes to Section 156.093 of the Dunes City Code; and

WHEREAS, public hearings on this proposal were held by the Dunes City Planning Commission on April 20, 2006, May 18, 2006, and May 23, 2006 and the Planning Commission made a recommendation to the City Council of Dunes City that the portion of the proposal modifying the Dunes City Comprehensive Plan and rezoning tax lots 200 and 201 be denied but that the proposed amendment to Section 156.093 of the Dunes City Code be approved; and

WHEREAS, the City Council of Dunes City heard the Beckman proposal at a public hearing on June 8, 2006 and voted to deny the portion of the application modifying the Dunes City Comprehensive Plan and rezoning tax lots 200 and 201; and

WHEREAS, at its June 8 meeting, the Dunes City Council voted to continue its hearing on the portion of the Beckman proposal that amends Section 156.093 of the Dunes City Code until July 13, 2006; and

WHEREAS, personal notice of the July 13, 2006 City Council meeting was mailed out on June 13, 2006 to individuals living within 300 feet of the properties affected by the amendment to Section 156.093 of the Dunes City Code; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Sections 156.214(B)(1), (2) and (3) of the Dunes City Code.

**NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:**

**Section 1.** Dunes City Code Amendment. Section 156.093 of the Dunes City Code shall be modified as follows:

*§ 156.093 BOOTH ISLAND.*

(A) *Un-platted areas. An Open Space Overlay Zone shall apply to the areas of Booth Island that were unplatted as of 7/13/78.*

- (B) *Permitted uses. On the unplatted areas of Booth Island, the following uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this part:*
- (1) *Low intensity uses such as hiking, walking, observation, and other similar uses are allowed.*
  - (2) *Residential use and structures which can meet underlying zone limitations and the following requirements through site review of the following requirements:*
    - (a) *Compliance with the following provisions of the Wetlands and Riparian Overlay Zone:*
      1. *Sections 156.120, 156.121, 156.122, 156.123, and 156.124.*
    - (b) *Compliance with the following provisions of the General Development Standards and Requirements:*
      1. *Sections 156.136, 156.137, 156.139, and 156.140.*
    - (c) *Compliance with the erosion control provisions of Exhibit B of Ordinance 181.*
    - (d) *No fencing of property boundaries shall be allowed.*
    - (e) *Livestock, pets or domesticated animals are prohibited.*
    - (f) *No hunting shall occur within the Open Space Overlay Zone.*
    - (g) *Vegetation removal shall be limited to 25 feet area around the dwelling site, its pathways, accessory structures and facilities. Vegetation removal shall be allowed for solar access, but limited to no more than needed based upon a solar site analysis utilizing sunchart methodology as required by Oregon Department of Energy tax credit standards as certified by ODE tax credit certified technician.*
    - (h) *All structures shall be of stick-built construction. Recreational vehicles, trailers and manufactured dwellings are prohibited for residential use. Dwelling structures shall be limited to 2000 square feet of living space. All structures shall be constructed with earth tone coloration consistent with the natural setting of Booth Island.*
    - (i) *Motorized vehicles are limited to all-terrain vehicles for transportation use only. Recreational use of motorcycles and all-terrain vehicles is prohibited.*
    - (j) *Fire retardant roofs on all structures.*

- (k) *Compliance with subsurface disposal standards of Sections 2.c. of Ordinance 181.*
- (l) *Motorized vehicles used for transportation purposes shall be used only on clearly marked pathways designed for common use and minimal vegetation disturbance and removal. Access easements for all parcels shall be recorded at the time of first partition application approval.*
- (m) *Construction materials for all allowed structures will be transported to all of the newly created parcels (Map 20120000 TL200 and Map 20120310 TL 3000) from a single access point, using only the designated pathways. Access easements for all parcels shall be recorded at the time of first partition application approval. The dock and/or loading area shall be designed with riparian vegetation protection measures and the location of the access point shall be agreed upon by expert and land owners.*
- (n) *The first 50 feet perpendicular to the shoreline (from water to upland on the island) shall be a "no touch" zone with no disturbance to vegetation, no building, and no recreational activities. The only exception to this "no touch" shall be docks specified below in section (p) for water access for boats and passive recreational activities.*
- (o) *Woody debris shall be left along the shoreline and in the 100 foot riparian buffer and aquatic plant life with the exception of invasive noxious plants shall be left undisturbed.*
- (p) *All docks shall be no larger than 400 square feet with a maximum shoreline width of 20 feet.*
- (q) *Only one residential structure and one accessory or facility structure, of 500 square foot or less, will be allowed per lot between 50 to 100 feet of the OHW.*
- (3) *The following parcels shall be limited in size as follows:*
  - (a) *Assessor's Map No. 20-12-03-10 TL 3001 : Tax Lot 3001 shall not be further partitioned or subdivided and shall contain the same area as exists on the date in 2006 that this provision was enacted.*
  - (b) *Assessor's Map No. 20-12-03-10 TL 3100 : Tax Lot 3100 shall not be further partitioned or subdivided and shall contain the same area as exists on the date in 2006 that this provision was enacted.*
  - (c) *Assessor's Map No. 20-12-00-00 TL 201: Tax Lot 201 shall not be further partitioned or subdivided and shall contain the same*

or larger area as exists on the date in 2006 that this provision was enacted.

- (d) *Assessor's Map No. 20-12-00-00 TL 200 and 20-12-03-10 TL 3000: Tax Lots 200 and 3000 shall be considered together for the purposes of this provision and the total number of parcels that may be created from Tax Lots 200 and 3000 together shall not exceed six and the six parcels shall cumulatively average greater than 3.5 acres.*

**Section 2.** Findings. Although not a part of this Ordinance, the City Council adopts the findings in support of this action as set forth in the attached Exhibit "A".

**Section 3.** Repeal. The prior code language repealed or changed by this Ordinance remain in full force and effect prior to the effective date of this Ordinance.

**Section 4.** Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**ADOPTED BY THE DUNES CITY COUNCIL THIS 13th DAY OF JULY, 2006.**

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstain: \_\_\_\_\_ Absent: \_\_\_\_\_

\_\_\_\_\_  
Sheldon Meyer, Mayor

\_\_\_\_\_  
Joanne Hickey, City Recorder