



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

July 22, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Florence Plan Amendment
DLCD File Number 002-08



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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 4, 2008

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: Gloria Gardiner, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative
Michelle Pezley, City of Florence

<paa> ya/

NR01
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DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Florence**

Local file number: **PC 0811 TA 01**

Date of Adoption: **7/8/2008** Ord. dated 7/7/08

Date Mailed: **July 14, 2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: April 7, 2008

- | | |
|---|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input checked="" type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Provide exceptions to building within 100 feet of an open dune and vegetative stabilization requirements for active sand dunes where it can be shown by accepted engineering practices or treatment, or an City approved mitigation plan that no significant sand hazards are likely to occur.

Does the Adoption differ from proposal? **Yes**, Please explain below:

The City of Florence also added criteria to approve the accepted engineering practices or treatment

Plan Map Changed from: **n/a** to:

Zone Map Changed from: **n/a** to:

Location: **City Limits of Florence**

Acres Involved: **0**

Specify Density: Previous: **n/a** New: **n/a**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD # 002-08 (16823)

CITY OF FLORENCE
Ordinance No. 24, Series 2008

**IN THE MATTER OF AMENDING THE FLORENCE CITY CODE (FCC) TITLE
10, CHAPTER 7: SPECIAL DEVELOPMENT STANDARDS.**

WHEREAS, the Florence City Council initiated the text amendments on March 24, 2008 per FCC 10-1-3 (C-1); and

WHEREAS, the Planning Commission held a duly advertised public hearing on June 10, 2008 in accordance with reference ORS 197.610 (1) to consider the legislative amendment and the City sent notice of the proposed code amendment to Department of Land, Conservation and Development on April 9, 2008, not less than 45 days prior to the first initial evidentiary hearing of June 10, 2008; and

WHEREAS, the Planning Commission's hearing was noticed in the Siuslaw News on May 30th and June 4th and 7th, 2008, and notice was also mailed to all property owners of open sand dunes and those within 100 feet of open dunes as shown on the City of Florence Hazards Map in accordance with FCC 10-1-3 (C-2); and

WHEREAS, the Planning Commission, after considering the evidence in the record, found that proposed text amendment to change the Title 10, Chapter 7 as shown in Exhibit B is consistent with the applicable criteria in the Florence Realization 2020 Comprehensive Plan adopted Resolution PC 08 11 TA 01; and

WHEREAS, the notice of a City Council public hearing was also mailed to all property owners of open sand dunes and those within 100 feet of open dunes as shown on the City of Florence Hazards Map on June 16, 2008, and notice for the City Council public hearing was published in the Siuslaw News on June 28th, July 2nd and 5th in accordance with FCC 10-1-3 (C-2); and

WHEREAS, the City Council held a public hearing on July 7, 2008 at Florence City Hall Council Chambers, and

WHEREAS, the City Council finds the text amendment in Exhibit B is consistent with applicable criteria in Florence Realization 2020 Comprehensive Plan; and

NOW THEREFORE, THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

Section 1: Adopt Findings of Fact (Exhibit A)

Section 2: Amending the existing FCC, Title 10 Chapter 7 Special Development Standards 10-7-3-E and H, as shown in Exhibit B

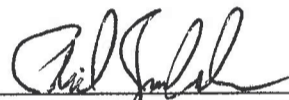
Section 3: The City shall send notice of adoption of this code amendment to DLCD and those who participated in the proceedings or requested such notice within five working days of this decision as required by ORS 197.615 (1) and (2).

Section 4: This ordinance becomes effective 30 days after adoption.

Passed by the Florence City Council this 7th day of July, 2008.

AYES	<u>5</u>
NAYS	<u>0</u>
ABSTAIN	<u>0</u>
ABSENT	<u>0</u>

APPROVED BY THE MAYOR, this 7th day of July, 2008.



Phil Brubaker, MAYOR

ATTEST:

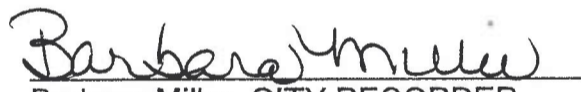

Barbara Miller, CITY RECORDER

EXHIBIT A: FINDINGS OF FACT
CITY COUNCIL

Public Hearing Date: July 7, 2008 **Planner:** Michelle Pezley
Ordinance 24, Series 2008 City of Florence

I. **PROPOSAL DESCRIPTION**

Proposal: Amendments to the Florence City Code (FCC) Title 10, Chapter 7, Special Development Standards to allow exceptions to the 100 feet building setback and vegetative stabilization requirements for active sand dunes where it can be shown by accepted engineering practices or treatment, or a city approved mitigation plan that no significant sand hazards are likely to occur.

Council initiated code amendment on March 24, 2008

Notice: Notice of Planning Commission Public Hearing was mailed to property owners of open sand dunes and those within 100 feet of open dunes. The open dunes that were highlighted are close to the Pacific View Business Park, close to the Ocean Dunes Golf Course and Bureau of Land Management (BLM) property behind Fred Meyer that runs to Sand Ranch. (See Exhibit C and D) Notice for the Planning Commission public hearing was also published in the Siuslaw News on May 30th and June 4th and 7th, 2008. On June 16, 2008, a notice of the City Council meeting was sent to affected property owners. The City Council public hearing was published on June 28th, July 2nd and 5th in the Siuslaw News.

The City of Florence received an email from Dave Sullivan on June 8, 2008 suggesting additional wording to Title 10, Chapter 7, 3-B for Munsel Creek and other Drainageways (see Exhibit G). On June 8, 2008, Mr. Carl Slusser questioned the reasoning behind adding an exception to the code (See Exhibit H).

At the public hearing, James Genereaux testimony in support of the text amendment and how the text amendment might be applied to his property north of Fred Myers. Jenny Velinty spoke at the public hearing as neutral, asking about Oak Street extension would be abandoned if the code amendment were enacted. Milt Pepiton stated that he objects to the wording of "city approved mitigation plan." James Wellington also disagreed with "city approved mitigation plan" nor he did not want to City to approve a mitigation plan for perpetuity.

On June 21, 2008, James Genereaux emailed a letter of support. Mr. Genereaux provided nine points which his support of the text amendment is based on (See Exhibit J).

The preparation of this report was made possible in part through financial assistance provided by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, through a grant to the Department of Land Conservation and Development.

II. NARRATIVE

FCC 10-7 applies special development standards to areas with potential natural hazards. An active sand dune is a potential natural hazard. FCC 10-7-3-E requires a 100-foot building setback from the leading edge of an active sand dune. FCC 10-7-3-H requires mitigation of the potential hazard of an active sand dune with vegetative stabilization.

Some portions of FCC 10-7 provide for exceptions to specific special development standards where potential harmful effects of a particular hazard are mitigated or eliminated. For example, FCC 10-7-3-B & D & J respectively allow for Planning Commission approval of exceptions to the special development standards for the following potential hazards: Munsel Creek and other drainage ways, river cutbanks, Yaquina soil. No exceptions are provided for active dunes in FCC 10-7-3-E & H. However, it is unlikely that the original writers of the code anticipated a situation within the City limits where an active sand dune could not be stabilized with vegetation. Vegetative stabilization is not always an option for preventing and mitigating the potential hazards of an active sand dune. Environmental restrictions on vegetative stabilization of active sand dunes are a recent development.

This proposed text amendment will allow for Planning Commission approval of an exception for the special development standards in FCC 10-7-3-E & H with alternative mitigation methods, where it can be shown by accepted engineering practices or treatment, or an existing city approved mitigation plan that no significant sand hazards are likely to occur. An example of this is the BLM forty acres in North Florence. It is an active sand dune, but the BLM will not allow vegetative stabilization on the property due to environmental concerns. Therefore, alternative methods must be used to mitigate the potential hazard of the BLM active sand dune for adjoining properties.

James Genereaux, the developer of Munsel Lake Village just north of Fred Myers proposed that there should be exceptions for building next to active sand dunes and near the leading edge if development can show that treatment or engineering practices can mitigate or significantly decrease the sand hazard. On March 24, 2008, the City Council agreed to initiate the amendments within Title 10, Chapter 7: Special Development Standards.

III. REFERRALS

Notice of the proposed Text Amendment was sent to Department of Land, Conservation and Development (DLCD) on April 9, 2008, not less than 45 days prior to the proposed first evidentiary hearing of June 9, 2008, as required by state law.

Referrals were also emailed to Florence Police Department, Lane County Land Management, Florence Public Works, Florence Code Enforcement, the BLM and the Oregon Coastal Management Program. No comments were received.

IV. **APPLICABLE REVIEW CRITERIA**

Realization 2020 Florence Comprehensive Plan

Chapter 1, Policies 4, 5, and 6

Chapter 2, Residential Policy 1

Chapter 5, Open Spaces and Scenic, Historic, and Natural Resources: Native Vegetation, Policy 3

Chapter 7, Policies 1, 2, and 4

Chapter 18, Policies 1, 2, 3, 4, 5, and 7

Statewide Land Use Planning Goal:

Goal 18: Beaches and Dunes (OAR 660-015-0010(3))

Oregon Revised Statutes (ORS):

ORS 197.250, ORS 197.610; ORS 197.615, and ORS 227.215

V. **FINDINGS**

The criteria are listed in bold followed by the findings of fact.

Realization 2020 Florence Comprehensive Plan

PLAN ADOPTION, AMENDMENTS, REVIEW AND IMPLEMENTATION

Implementation of the Plan takes many forms. The most obvious are zoning, subdivision, design review, and special land use ordinances. These ordinances must conform to the Plan. (p. 3)

The following findings will demonstrate the how the proposed changes do conform to the Plan.

Chapter 1: Citizen Involvement

Policy 4: Official City meetings shall be well publicized and held at regular times. Agendas will provide the opportunity for citizen comment.

Notice of the Planning Commission public hearing for this land use decision was published in the Siuslaw News on May 30th, June 4th and 7th. Notices of the Planning Commission public hearing were also mailed

to property owners of open sand dunes and those that were within 100 feet of the leading edge of an active dune as indicated in the Hazards Map and aerial photos from 2005. The agenda packet was on the city's website and available for review at City Hall. The agenda for each meeting includes a public comment period and the public has a separate opportunity to testify on matters scheduled for public hearing, including the subject amendment. Notice of the Planning Commission June 10th public hearing on the proposed amendment was published on the city's website by May 28, 2008. The staff report was released and made available at the City Planning Department offices and the City Manager's office on June 2, 2008.

Notice of the City Council public hearing was mailed to the same properties on June 16, 2008. The Notice of the City Council Public Hearing as published in the Siuslaw News on June 28th, July 2nd and July 5th, 2008. The staff report was posted on the City's website with the Agenda packet and copies were available at City Hall on June 30th.

Policy 5: Records of all meetings where official action is taken shall be kept at City Hall and made available on request to the public.

The Planning Commission and City Council meetings are recorded by video and audio. The Planning Commission's meeting was video taped and was shown on the Local Cable Station and via the City's Website. The City Council meetings are shown live on the Local Cable Station as well as downloaded from the City's Website. The audio recordings of both meetings are available on request to the public at City Hall. The City also places Planning Commission and City Council minutes on the web for the public to view.

Policy 6: Planning documents and background data shall be available to interested citizens.

Background data and any documents relating to the file are available for the public to view and copies are available for purchase for a reasonable cost at The Florence City Hall located at 250 Highway 101, Florence, Oregon.

Chapter 2: Land Use

Policy 1: Designation and location of land uses shall be made based on an analysis of documented need for land uses of various types, physical suitability of the lands for the uses proposed, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impact on environmental, economic, and social and energy factors.

The analysis and land use designation described in Policy 1 has been completed for all land within the City as part of the Florence Realization 2020 Comprehensive Plan. The analysis included the physical suitability of the lands for the proposed uses in each zoning district, as well as environmental, economic, economic, social and energy factors. The proposed amendment will not change existing City of Florence land use designations or zoning, which are the subject of this policy.

What the proposed text amendments will provide is a closer look at the potential impacts the environment will have on a site and surrounding property owners. The proposed amendments will simply add some site-specific flexibility to allow buildings within 100' of the leading edge of an active sand dune, with alternative mitigation measures when vegetative stabilization is not permitted on an active sand dune with findings by the Planning Commission that no significant sand hazard will be likely to occur.

Chapter 5: Open Space and Scenic, Historic, and Natural Resources: Native Vegetation

Policy 3: The City shall continue to require vegetative stabilization of steep slopes and cutbanks. The emphasis will be on the use of native plant materials where possible. However, since slope/bank stability is the paramount concern in these situations, the City will approve the plant materials that best stabilize the slope/bank, even if they are not native plant materials.

The leading edge of the sand dune is the bottom of the sloped dune. The current code requires open sands to be stabilized with European beach grass. European beach grass is not native plant material; however, it has been effective at stabilizing open sands. The proposed text amendment will allow other types of grasses to stabilize the open dunes.

Chapter 7: Development Hazards and Constraints

Policy 1: The City shall restrict or prohibit development in known areas of natural hazard or disaster in order to minimize risk to citizens, reduce the hazard of loss of life and economic investments, the costs of expensive protection works, and public and private expenditures for disaster relief.

The proposed text amendment will continue to prohibit or restrict development when there is a potential hazard from active sand dunes if

the applicant cannot prove that the proposed mitigation plan will eliminate significant sand hazards.

Policy 2: Prior to development taking place in known areas of potential natural hazard, applicants shall provide a Site Investigation Report which clearly determines the degree of hazard present and receive City approval for the measures to be taken to reduce the hazard.

The code amendments will not change the requirements for a Site Investigation Report as outlined in FCC 10-7-4. Applicants shall continue to be required to provide a Site Investigation Report that clearly determines the degree of hazard present and receive City approval for the measures to be taken to reduce the hazard.

Policy 4: For those areas that have excessive slopes or conditions which constitute a geological hazard, proposed developments shall be keyed to the degree of hazard and to the limitation on the use imposed by such hazard. Accepted engineering practices shall determine the extent of development allowed. The City may require a professional engineer's report to fulfill this requirement.

The text change will provide the ability for the Planning Commission to approve a mitigation plan which will implement this policy by requiring site-specific tailoring of mitigation measures to plan for the potential hazard based in part upon professional engineering experience and expertise.

Chapter 18: Beaches and Dunes:

Policy 1: Due to the sandy soils and the fragile nature of the vegetative covering, care shall be taken during construction to minimize the amount of grading, excavation, removal of trees and other natural vegetation in order to insure the stability of the soils. All open sand area (pre-existing or newly created) shall be planted or stabilized as soon as practicable after construction is completed. Using accepted re-vegetation techniques, sand areas shall be returned to their previous level of stability, or at least to a conditionally stable level, following completion of construction for large parcels or tracts, stabilization of the entire area may not be necessary as determined after consideration of a Site Investigation Report.

Policy 1 is implemented by city code provisions governing approval of subdivisions, planned unit developments, and other development permits. The policy applies primarily to construction of site improvements and to disturbances of sandy soils during construction and stabilization of sand

after construction. The proposed text amendment will not alter this requirement. All open sand area shall still be planted or stabilized as soon as practicable after construction is completed. The proposed code amendment specifically provides for and requires a City approved alternative sand mitigation plan where vegetative stabilization is prohibited and/ or impracticable on the property of state or federal agencies. After construction, sand areas shall still be maintained at least at a conditionally stable level.

The code provision that is proposed for amendment does not apply during construction, but rather to the long-term management of potential sand hazards. Sand mitigation plans shall only be approved where it can be shown by accepted engineering practices or treatment, or an existing city approved mitigation plan that no significant sand hazards are likely to occur, in the long term.

Policy 3: Site investigation reports shall describe and analyze topography; past, present and foreseeable erosion; geologic conditions such as soils characteristics; ground and surface water conditions, including potential for flooding; potential impacts of construction on site and nearby areas, including ground stability, and alterations to drainage and ground water; and alternate design and/or site plans which would minimize hazard damages both to the proposed development and to nearby property. The degree of analysis required shall be appropriate to the risk presented by the site and the proposed project.

The proposed text amendment will not change the provisions which require site investigation reports. All code requirements for site investigation reports will remain in full force and affect.

Policy 4: No development or improvement shall take place on open or conditionally stable sand formation before an adequate site investigation by a qualified person determines that the site is adequately stabilized and the stabilization effort will not contribute to sand movement into other areas and thereby create adverse conditions.

The proposed code amendments do not authorize construction or improvements on open or conditionally stable sand formations and therefore Policy 4 is not applicable. The proposed code amendments relate to development that is adjacent to open sand dunes, and the amended code will continue to provide protection from potential sand hazards for property that is adjacent to active sand dunes.

Policy 5: Open space designations of open dune sand within the Florence area shall not be required on private property. Stabilization efforts shall not be prohibited except where stabilization measures will have a detrimental impact on adjoining properties.

The subject text amendment authorizes measures to mitigate potential hazards of active sand dunes only where such measures are supported by expert testimony based upon professional expertise. Application of the amended standard will be on a case-by-case basis, and potential adverse impacts upon adjoining properties will be relevant to any determination of the efficacy of the alternative measure.

Policy 7: A Site Investigation Report shall be required for major partitions and subdivisions on any unstable or conditionally stable dune, dunal areas with slopes over 12 percent, deflation plains, marshes and wetlands, or interdunal areas. These dune forms are represented on the Soils Map contained in the Appendix of this Plan.

The proposed text amendment does not alter existing code requirements for site investigation reports. This plan provision is fully implemented by FCC 10-7-4.

**Statewide Land Use Planning Goal 18: Beaches and Dunes
(OAR 660-015-0010(3))**

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include, at least, (a) the type of use proposed and the adverse effects it might have on the site and adjacent areas, (b) temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation, (c) methods for protecting the surrounding area from any adverse effects of the development, and (d) hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

The proposed text amendment will provide flexibility for development next to open active sand dunes where vegetative stabilization is prohibited. The mitigation plan that will have to be approved by the Planning

Commission shall demonstrate that the plan will prevent significant sand hazards. The criteria for approval are based on the Goal 18. The applicant would be required to demonstrate that the mitigation plan will have no significant effects on the site, surrounding property, wildlife and water supply.

Oregon Revised Statutes (ORS):

ORS 197.250, ORS 197.610; ORS 197.615, and ORS 227.215

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the Land Conservation and Development Commission. [1973 c.80 §32; 1977 c.664 §19; 1981 c.748 §29a; 1983 c.827 §56a]

As shown above, the proposed text amendment does comply with Statewide Land Use Goals and Florence Realization 2020 Comprehensive Plan.

197.610 Local government notice of proposed amendment or new regulation; exceptions; report to commission. (1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing. The director shall notify persons who have requested notice that the proposal is pending.

(2) When a local government determines that the goals do not apply to a particular proposed amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:

- (a) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615 (1) and (2); and**
- (b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may appeal the decision to the**

board under ORS 197.830 to 197.845.

- (3) When the Department of Land Conservation and Development participates in a local government proceeding, at least 15 days before the final hearing on the proposed amendment to the comprehensive plan or land use regulation or the new land use regulation, the department shall notify the local government of:
- (a) Any concerns the department has concerning the proposal; and
 - (b) Advisory recommendations on actions the department considers necessary to address the concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.
- (4) The director shall report to the Land Conservation and Development Commission on whether the director:
- (a) Believes the local government's proposal violates the goals; and
 - (b) Is participating in the local government proceeding. [1981 c.748 §4; 1983 c.827 §7; 1985 c.565 §27; 1989 c.761 §20; 1999 c.622 §1]

Notice was mailed to DLCD on April 9, 2008, 45 days prior to planned public hearing date of May 27, 2008. The public hearing was then scheduled for June 10, 2008. The notice included the text amendment which was initiated by City Council and memo from the City Manager's office which was part of the March 24, 2008 agenda packet (See Exhibit E). The City also mailed our local DLCD representative a copy of this staff report prior to the Planning Commission's public hearing. We also provided him with the amendments as recommended by the Planning Commission.

- 197.615 Local government notice of adopted amendment or new regulation; content; notice by director. (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the Department of Land Conservation and Development a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director. If the text and findings are mailed, they shall include a signed statement by the person mailing them indicating the date of deposit in the mail.**
- (2)(a) On the same day that the text and findings are mailed or**

delivered, the local government also shall mail or otherwise submit notice to persons who:

- (A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive plan or land use regulation or the new land use regulation; and
 - (B) Requested of the local government in writing that they be given such notice.
 - (b) The notice required by this subsection shall:
 - (A) Describe briefly the action taken by the local government;
 - (B) State the date of the decision;
 - (C) If delivered by mail, include a certificate of mailing containing a statement signed by the person mailing it indicating the date the notice was deposited in the mail;
 - (D) List the place where and the time when the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, and findings, may be reviewed; and
 - (E) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845.
- (3) Not later than five working days after receipt of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this section, the director shall notify by mail or other submission any persons who have requested notification. The notice shall:
- (a) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845; and
 - (b) List the locations where the comprehensive plan or land use regulation amendment or new land use regulation may be reviewed. [1981 c.748 §5; 1983 c.827 §9; 1999 c.255 §1]

The adopting ordinance requires that City of Florence send notice to DLCD within 5 days of the City Council's final decision. The notice will provide the findings of fact, final decision for text amendment and signed ordinance. Notices will also be sent to any one who commented in the process or otherwise requested notice as listed above.

- 227.215 "Development" defined; regulation of development. (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.
- (2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the

requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city. [1975 c.767 §11 (enacted in lieu of 227.220 to 227.270); 1977 c.654 §3]

The proposed text amendment will open the possibility of development near active dunes where vegetation stability is prohibited, if the applicant can demonstrate that the mitigation plan will not have significant adverse affects on the site or surrounding property owners.

VIII. EXHIBITS

- B. Proposed Text Amendment from Planning Commission
- C. Hazards Map
- D. Aerial Photo of Florence, 2005
- E. City Manager's memo to Council with Council's initial text amendment
- F. Excerpt from City Council Meeting Minutes from March 24, 2008
- G. Email from Dave Sullivan from June 8, 2008
- H. Email from Carl Slusser dated June 8, 2008
- I. Planning Commission minutes from June 10, 2008
- J. Email from James Generaux dated June 21, 2008

TITLE 10
CHAPTER 7

SPECIAL DEVELOPMENT STANDARDS

10-7-3: DEVELOPMENT STANDARDS: The following standards shall be applied to development in potential problem areas unless an on-site examination shows that the condition which was identified in the Comprehensive Plan did not in fact exist on the subject property. These standards shall be applied in addition to any standards which may be shown to be necessary as a result of a site investigation.

- A. Special Flood Hazard Area: All uses proposed in the flood area shall conform to the provisions of the National Flood Insurance Programs.
- B. Munsel Creek and Other Drainageways: A fifty foot (50') setback shall be required for all buildings from the creek channel, except by Planning Commission approval where it can be shown by accepted engineering practices or treatment that no erosion hazards, slide potential, or possible flood damage are likely to occur, and that riparian vegetation will be protected.
- C. Foredunes: No grading or breaching of foredune is permitted.
- D. River Cutbanks: No building shall be permitted within fifty feet (50') of a river cutbank unless the bank has been stabilized. Planning Commission approval, upon review of findings from site investigation report, is necessary for a lesser distance, using the same criteria as for Munsel Creek (Section 10-7-3-B)
- E. Active Dune Advancing Edge: No building shall be permitted within one hundred feet (100') of the leading edge of an active dune, except by Planning Commission approval where it can be shown by accepted engineering practices or treatment, or a city approved mitigation plan that no significant sand hazards are likely to occur. Applicant shall demonstrate that the proposed or existing mitigation plan will minimize potential sand hazards to both the proposed development and to nearby properties. Applicant shall also demonstrate that the mitigation plan will have no significant adverse affects on the site, adjacent property, the City's sole source aquifer and wildlife.
- F. Ocean Flooding Tidal Flooding, Tsunami: (See subsection A above, Special Flood Hazard Area).
- G. Slopes Greater than Twelve Percent: For development on steep slopes, a foundation design and grading with provision for retaining walls or excavated banks shall be carried out according to plans prepared by a registered engineer and approved by the City.
- H. Active Dune Sands: Open sand will require primary vegetative stabilization as with European beach grasses and secondary stabilization with any of a variety of shrubs and trees (excluding noxious plants) in conjunction with any development except, where vegetative stabilization is prohibited on the property of state or federal agencies, and it can be shown by accepted engineering practices or treatment, or a city approved mitigation plan that no significant sand hazards are likely to occur. Applicant shall demonstrate that the proposed or existing mitigation plan will minimize potential sand hazards to both the proposed development and to nearby properties. Applicant shall also demonstrate that the mitigation plan will have no significant adverse affects on the site, adjacent property, the City's sole source aquifer and wildlife. Stabilization may be required prior to development in cases where there are large unstabilized areas.
- I. Brallier and Heceta Soils: In general these soils are not suitable for development. Should development occur, structures would be built on pilings or fill as designed by a registered engineer.

- J. Yaquina Soils and Wet Areas: In areas with seasonal standing water, construction of a drainage system and/or placement of fill material shall be required according to plans prepared by a registered engineer and approved by the City. (Ord. 625, 6-30-80; amd. Ord. 669, 5-17-82)

CITY OF FLORENCE
250 Highway 101
Florence, OR 97439

TO:

Attention: Plan Amendment
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635 Capitol St. NE, Suite 150
Salem, OR 97301-2540

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