



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

06/20/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bandon Plan Amendment
DLCD File Number 001-10

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: Friday, July 01, 2011

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Charli Davis, City of Bandon
Gloria Gardiner, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

JUN 13 2011

LAND CONSERVATION
AND DEVELOPMENT
For Online File Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Bandon**

Local file number: **Goal 18 Revision**

Date of Adoption: **6-06-2011**

Date Mailed: **6-07-2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 1-11-2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Comprehensive Plan amendment: Goal 18 Beaches and Dunes

Municipal Code revision of Chapter 17.76 Shoreland Overlay zone

Municipal Code revision to add Chapter 17.77 Beaches and Dunes Overlay (BDO) zone

Does the Adoption differ from proposal? Please select one

An exception for three properties in the affected area were approved by the Council. Findings of Fact are enclosed.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **N/A**

Acres Involved: **N/A**

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

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

Local Contact: **Charli Davis**

Phone: **(541) 347-2437**

Extension: **230**

Address: **PO Box 67**

Fax Number: **541-347-1415**

City: **Bandon OR**

Zip: **97411**

E-mail Address: **cdavis06@ci.bandon.or.us**

DLCD file No. 001-10 (18053) [16670]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ORDINANCE NO. 1582

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN TO INCLUDE REVISED COASTAL RESOURCE POLICIES WHICH ARE IN CONFORMANCE WITH GOAL 18 REQUIREMENTS AND AMENDING THE BANDON MUNICIPAL CODE TO INCLUDE CHAPTER 17.77 BEACHES AND DUNES OVERLAY (BDO) ZONE.

WHEREAS, the Comprehensive Plan is the document which ensures the City's conformance with the Statewide Planning Goals in the City of Bandon, and

WHEREAS, the City of Bandon recognizes that the City benefits from its coastal shoreline, and

WHEREAS, the City needs to regulate land use action in beaches and dune areas to minimize erosion, protect coastal resources, and meet the requirements of Goal 18 protection of these resources, and

WHEREAS, the Bandon Municipal Code is the implementation document of the Comprehensive Plan and sets forth the regulatory measures for development in the City of Bandon, and

WHEREAS, the Planning Commission has reviewed the proposed amendments and recommended approval to the City Council after properly noticed public hearings, and

WHEREAS, the City Council has determined that the proposed amendments are in compliance with state and local requirements.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Bandon that the City of Bandon Comprehensive Plan and the Municipal Code are hereby amended as contained in Exhibits A through F, said amendments are supported by the Findings of Fact contained in Exhibits G and H.

PASSED TO A SECOND READING this 6th day of June, 2011, on a roll call vote,
_____ : _____

ADOPTED by the City Council of the City of Bandon, this 6th day of June, 2011, on a roll call vote, _____ : _____



Mary Schamehorn, Mayor

Attest:



Matt Winkel, City Recorder

ESTUARINE RESOURCES GOAL 16

Goal 18

The ocean beaches and the Coquille River estuary have given Bandon its distinctive character. Bandon is the only city in Coos County located on the ocean and it contains most of the privately owned ocean view property in the county. The visual backdrop of the ocean and sea stacks from a number of points within the City provides a pleasant scenic experience that enhances tourism and the city's economic vitality. The physical and ecological setting, the local economy, and social life are all greatly influenced by the town's seaside location.

The abundance of scenic and recreational resources in and around Bandon offer a great many opportunities for visitors and residents. The geographic setting also presents challenges for planners and resource managers. Despite its rugged appearance, Oregon's coast is a fragile place where natural resources and coastal hazards become important considerations in the review and permitting process. If we use the land and water wisely, the coast can retain its beauty and abundance and risks to life and property can be minimized.

To accomplish this balancing act, the state of Oregon, local governments, such as the city of Bandon, and federal agencies in the 1970's, developed strong programs to protect the Oregon Coast. The heart of that program is four statewide planning goals for managing coastal resources, including estuaries; coastal shorelands, beaches and dunes, and ocean resources. This Coastal Resources section of the Bandon Comprehensive Plan integrates requirements from the statewide coastal goals and provides specific implementing policies.

Estuarine Resources Statewide Planning Goal 16

The City of Bandon shall recognize and protect the unique environmental, economic and social values of the Coquille Estuary and its associated wetlands.

The City shall also strive to protect, maintain and where appropriate, develop or restore the long term environmental, economic and social values, diversity, and benefits of the Coquille Estuary.

The City of Bandon Comprehensive Plan provides and shall continue to provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification (O.A.R. 660-17-000), as well as with the biological, economic, recreational and aesthetic benefits of the estuary.

The Plan protects and shall continue to protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality.

EXHIBIT A

POLICY A. ESTUARY CLASSIFICATIONS:

The City shall officially recognize the Coquille River Estuary as a Shallow Draft Development Estuary, consistent with the overall Oregon Estuary Classification. Further, the Plan's allowed uses and activities are, and must remain, consistent with the shallow-draft development designation and the estuarine management unit requirements of Goal #16.

This Policy recognizes that the Land Conservation and Development Commission (LCDC) and the Statewide Planning Goals Statewide Planning Goals Statewide Planning Goals limit the maximum allowable development of Oregon estuaries.

POLICY B. NATURAL ESTUARINE MANAGEMENT UNITS:

In the Coquille River Estuary, areas shall be designated as Natural Estuarine Management Units to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Natural Estuarine Management Units shall include, at a minimum, all major tracts of salt marsh, tideflats, and sea grass and algae beds.

POLICY C. CONSERVATION MANAGEMENT UNITS:

In the Coquille River estuary, areas shall be designated as Conservation Estuarine Management Units for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in the Natural Estuarine Management Units, and recreational or commercial oyster and clam beds not included in the Natural Estuarine Management Units. Areas that are partially altered and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

POLICY D. DEVELOPMENT MANAGEMENT UNITS:

In the Coquille River estuary, Development Estuarine Management Units shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development of alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, sub-tidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary not included in Natural or Conservation Estuarine Management Units.

In designating uses for these areas, the City shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

POLICY E, RESOURCE CAPABILITIES, CONSISTENCY, AND IMPACT ASSESSMENT:

The City concludes that all proposed actions (approved in this Plan) which would alter or potentially alter the integrity or the estuarine ecosystem have been based upon a full consideration of the impacts of the proposed alteration and a demonstration of the public's need and gain which warrant such modification or loss, except for uses and activities which require the resource capability consistency test as a condition within a particular management unit.

For uses and activities requiring the resource capabilities test, a clear presentation of the impacts of the proposed alteration shall be required. The impact assessment shall include:

1. The type and extent of alterations expected;
2. The type of resource(s) affected;
3. The expected extent of impacts of the proposed alteration of water quality and other physical characteristics of the estuary, living resources, recreational and aesthetic use, navigation and other existing and potential uses of the estuary; and
4. The methods which could be employed to avoid or minimize adverse impacts.

POLICY F, ESTUARINE FILL AND REMOVAL:

The City shall support dredge, fill or other reduction or degradation of estuarine values only if such activities are allowed in the respective Management Unit and:

1. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and,
2. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
3. If no feasible alternative upland locations exist; and
4. If adverse impacts are minimized.

This Policy shall be implemented by the preparation of findings by the City documenting that such proposed actions are consistent with the Comprehensive Plan, and with the criteria listed above.

This Policy recognizes that Goal #16 limits dredge, fill and other estuarine degradation in order to protect the integrity of the estuary.

POLICY G, TEMPORARY ALTERATIONS:

The City shall support as consistent with this Plan (without taking Exceptions to the Statewide Planning Goals Statewide Planning Goals Statewide Planning Goals) temporary dredge, fill or other structure or alteration to the estuary, to major freshwater marshes, or to shorelands identified as significant wildlife habitat when such temporary actions would not otherwise be

EXHIBIT A

allowed by the Plan. Such actions shall be limited to alterations in support of uses permitted by Goal #16 and providing that:

1. The temporary alteration is not for more than three years;
2. The short-term damage to the resource is consistent with the resource capabilities of the area; and
3. The area and affected resource is restored to its previous condition.

POLICY H: ESTUARINE MITIGATION REQUIREMENTS:

When dredge or fill activities are permitted in intertidal or tidal marsh areas, their effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained. Designated mitigation sites identified in the Plan shall be protected.

POLICY J: SOLUTIONS TO EROSION AND FLOODING PROBLEMS:

The City shall prefer non-structural solutions to problems of erosion and flooding in the Coquille Estuary to structural solutions. Where shown to be necessary and consistent with policy, water and erosion control structures such as jetties, bulkheads, seawalls and similar protective structures, and fill shall be designed to minimize adverse impacts on water currents, erosion and accretion patterns.

Further, where listed as an allowable activity within the respective Management Unit, riprap shall only be allowed in Development Estuarine Management Units upon finding that:

1. land use management practices and non-structural solutions are inadequate; and
2. adverse impacts on water currents, erosion and accretion patterns are minimized; and
3. it is consistent with the Development Management Unit objectives of LCDC Goal #16, Estuarine Resources Estuarine Resources.

Further, where listed as an allowable activity within the respective Management Unit, riprap shall only be allowed in Conservation Estuarine Management Units upon finding that:

1. land use management practices and non-structural solutions are inadequate; and
2. adverse impacts on water currents, erosion and accretion patterns are minimized and;
3. riprap is consistent with the resource capabilities of the area and the purposes of maintaining Conservation Management Units.

Further, where listed as an allowable activity within the respective Management Unit, riprap shall only be allowed in Natural Estuarine Management Units upon finding that:

1. there is a need to protect from erosion: uses existing as of October 7, 1977, unique natural resources and historic archaeological values, or public facilities;

EXHIBIT A

2. land use management practices and non-structural solutions are inadequate; and
3. it is consistent with the Natural Management Unit as set forth in this Plan and required by Goal #16; and
4. adverse impacts on water currents, erosion and accretion patterns and estuarine organisms and their habitat are minimized.

POLICY J, PROLIFERATION OF SINGLE-PURPOSE DOCKS AND PIERS:

The City shall restrict the proliferation of single purpose docks and piers by encouraging community facilities common to several uses and interests. The size shall be limited to that required for the intended use.

This Policy recognizes the requirements of Goal #16 and the environmental benefits of multi-purpose and multi-ownership docks and moorage facilities.

POLICY K, AUTHORITY OF OTHER AGENCIES:

The City shall recognize the authority of the following agencies and their programs for managing land and water resources:

1. the non-point discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL 92-500); and
2. the Fill and Removal Permit Program administered by the Department of State Lands under ORS 196.800-196-910; and
3. the programs of the State Soil and Water Conservation Commission and local districts.

This Policy recognizes that there are several agencies with authority over coastal waters, and that their management programs should be used rather than developing new or duplicatory management techniques or controls, especially as related to existing programs functioning to maintain water quality and minimize man-induced sedimentation.

LIMITING DREDGE AND FILL AS ESTUARINE RESTORATION POLICY L:

The City shall support estuarine dredge or fill actions as estuarine restoration when appropriate in areas where activities have adversely affected some aspect of the estuarine system and where such restoration would contribute to the objectives of Goal #16.

This Policy recognizes that not all estuarine dredge or fill actions may be considered estuarine restoration pursuant to LCDC Statewide Planning Goals Statewide Planning Goals Statewide Planning Goals.

COASTAL SHORELANDS

Goal 17

Statewide Planning Goal 17 addresses the protection of land contiguous with, or affected by the ocean and the estuaries. These lands are to be identified as coastal shorelands. Typically, Bandon's Coastal Shorelands are lands which abut, or are affected by the major bodies of water within the city limits.

The Coastal Shorelands were mapped as the Coastal Shorelands Boundary in the Coquille Estuary Management Plan (CREMP). Through a recent amendment to CREMP, the authority over the Shorelands was transferred to the City.

The protection of the Shorelands is accomplished through Chapter 17.76 of the Bandon Municipal Code.

Shoreland areas are classified in the Comprehensive Plan as management units based on the zones and Plan designations. The protection and allowed uses and activities in shoreland management units are implemented in Chapter 17.76, Shoreland Overlay Zone, of the Bandon Municipal Code.

COASTAL SHORELANDS GOAL 17: POLICIES

The City shall strive to conserve, protect and, where appropriate, develop or restore the resources and benefits of the coastal shorelands within its jurisdiction, recognizing their value for the protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources, recreation and aesthetics.

The City shall also manage these coastal shorelands in a way that is compatible with the characteristics on the adjacent estuary.

The City shall also strive to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat resulting from the use and enjoyment on the Coastal Shorelands of the Coquille Estuary.

The Plan and related implementing actions and permit reviews shall consider the critical relationships between shorelands and estuarine resources, and the geologic hazards associated with shorelands. The City shall, within the limit of its authority, maintain the diverse environmental, economic and social values of coastal shorelands, and maintain estuarine water quality, which shall include minimizing man induced sedimentation.

ESTUARINE BEACHES

Bandon's estuarine beaches shall be protected for uses necessary to support water-dependent and water-related activities where appropriate and for conservation activities where appropriate.

EXHIBIT B

POLICY M. FLOW-LANE DISPOSAL OF DREDGE MATERIAL IN DEVELOPMENT MANAGEMENT UNITS:

Flow-lane disposal of dredged materials shall be allowed in Management Unit #1 in the deep draft navigational channel adjacent to the boat basin provided that such disposal is monitored to assure that estuarine sedimentation is consistent with the purposes of the affected Natural and Conservation Estuarine Management Units and that all necessary local, state and federal permits have been obtained and their requirements satisfied.

A copy of the results of monitoring, if required by the permitting agencies, will be sent to the city and may satisfy the above monitoring requirement.

POLICY N. DREDGED MATERIAL DISPOSAL (DMD) SITES POLICY N.

The City shall protect identified dredged material disposal sites from new uses and activities which would prevent their ultimate use for dredged material disposal.

This Policy recognizes that sites designated in the Comprehensive Plan reflect the following key environmental considerations required by LCDC Goals:

1. Disposal of dredged material in upland or ocean waters or Via proper use of flow-lane disposal was given general preference in the overall site selection process;
2. Disposal of dredged material in estuary water is permitted in this Plan only when such disposal is consistent with state and federal law.
3. Selected DMD sites must be protected from preemptory uses.

POLICY O. PROTECTION OF MAJOR MARSHES AND SIGNIFICANT WILDLIFE HABITATS IN COASTAL SHORELANDS:

The City shall protect major marshes and significant wildlife habitat located within the Coquille River Coastal Shorelands Boundary. Uses in these areas shall be consistent with the area's natural values.

This Policy recognizes that special protective consideration must be given to key resources in coastal shorelands over and above the protection afforded such resources elsewhere in this Plan.

POLICY P. LIMITING DREDGE AND FILL AS ESTUARINE RESTORATION

The City shall support estuarine dredge or fill actions as estuarine restoration when appropriate in areas where activities have adversely affected some aspect of the estuarine system and where such restoration would contribute to the objectives of Goal #16.

EXHIBIT B

This Policy recognizes that not all estuarine dredge or fill actions may be considered estuarine restoration pursuant to LCDC Statewide Planning Goals.

POLICY Q. INTERTIDAL DREDGE MATERIAL DISPOSAL:

The City shall prohibit dredged material disposal in intertidal or tidal marsh areas except where such disposal is part of an approved fill project.

This Policy shall be implemented through operation of the waterway permit process as a response to a request for comment from the Department of State Lands.

This strategy recognizes that upland disposal, flow-lane disposal, and ocean disposal are alternatives to intertidal disposal.

POLICY R. REDEVELOPMENT OF WATERFRONT AREAS:

The City shall determine whether there are any existing, developed commercial/industrial waterfront areas which are suitable for redevelopment which are not designated for water-dependent uses. Plans shall be prepared for these areas which allow for a mix of water-dependent, water-related, and water oriented nondependent uses and shall provide for public access to the shoreline.

POLICY S. PUBLIC ACCESS:

The City in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access. Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

Note: Policy T, as part of the 2011 coastal resource amendments, was determined not to be needed and was removed.

BEACHES AND DUNES

Goal 18

Bandon's ocean beaches are divided into two categories, dune-backed and bluff-backed. The two areas of dune-backed beach are the northern section of Bandon Beach along the low lying area south of the Bandon Jetty and the southern area in the vicinity of Johnson Creek. Dunes have the vital function of protecting property landward of the dune from ocean flooding but they are very fragile and subject to destabilization if measures are not taken to protect them.

In the 1970's State, Federal and local agencies worked together to develop programs to protect the Ocean Coast. This section of the Bandon Comprehensive Plan integrates requirements of the Statewide Planning goals and provides specific implementation policies.

The ocean beaches and the Coquille River estuary have given Bandon its distinctive character. Bandon is the only city in Coos County located on the ocean and it contains most of the privately owned ocean view property in the county. The visual backdrop of the ocean and sea stacks from a number of points within the City provides a pleasant scenic experience that enhances tourism and the city's economic vitality. The physical and ecological setting, the local economy, and social life are all greatly influenced by the town's seaside location.

The abundance of scenic and recreational resources in and around Bandon offer many opportunities for visitors and residents. The geographic setting also presents challenges for planners and resource managers. Despite its rugged appearance, Oregon's coast is a fragile place where natural resources and coastal hazards become important considerations in the review and permitting process. If we use the land and water wisely, the coast can retain its beauty and abundance and risks to life and property can be minimized.

To protect these fragile natural resources, the state of Oregon, local governments, such as the city of Bandon, and federal agencies in the 1970's, developed strong programs to protect the Oregon Coast. This Beaches and Dunes section of the Bandon Comprehensive Plan integrates requirements from the statewide coastal planning goals and provides specific implementing policies.

Statewide Planning Goal 18

The City shall conserve; protect, and, where appropriate, develop and restore the resources and benefits of ocean beaches and dunes.

The City shall also strive to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

The Comprehensive Plan and related implementing actions shall provide for diverse and appropriate use of beach and dune areas. These uses shall be consistent with their ecological, recreational, aesthetic, water resource and economic values, and consistent with the natural

EXHIBIT C

limitations of beaches, dunes and dune vegetation for development. In addition, where dunes provide protection to inland areas from ocean or river flooding, they shall also be protected.

Coastal areas subject to this section, consistent with Statewide Planning Goal 18, shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune areas, such as deflation plains.

OREGON PARKS AND RECREATION DEPARTMENT (OPRD) JURISDICTION WITHIN BEACHES AND DUNE AREAS BEACHES AND DUNES BEACHES AND DUNES.

Bandon's western city limits extend to the line 16 feet above sea level which is described as the statutory vegetation line (svl) in O.R.S. 390.770. Oregon Parks and Recreation Department (OPRD) has jurisdiction over ocean shore activities and alterations westerly of the Statutory Vegetation Line or westerly of the actual line of vegetation, whichever is more landward.

POLICY U: AREAS SUBJECT TO GOAL 18 DEVELOPMENT RESTRICTIONS:

The City shall prohibit residential development(s) and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.

- The areas subject to these restrictions have been identified by the City of Bandon utilizing preliminary ocean flood analysis maps developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 2010 on behalf of FEMA for the purposes of identifying the 1% flood zone and the most landward extent of potential ocean flooding associated with the 1% storm. Although the ocean flood analysis data was ultimately develop to define FEMA velocity zones for the City of Bandon, the Beaches and Dunes Overlay zone is not a FEMA product nor is one implied. The purpose of the Beaches and Dune Overlay is to identify areas subject to ocean overtopping and wave undercutting that would be subject to Statewide Planning Goal 18 development restrictions.
- The city implements Policy U, V, and W with the Beaches and Dunes Overlay (BDO) Zone. In order to implement these policies the City of Bandon adopts the attached maps ("Beaches and Dunes Overlay (BDO) Zone – South Jetty Area", and "Beaches and Dunes Overlay (BDO) Zone - Johnson Creek Area") which utilize FEMA ocean flooding data, and identifying areas that are subject to the Beach and Dune Overlay (BDO) Zone which implements Statewide Planning Goal 18 requirements.
- Changes to the BDO Zone boundary or substantive provisions in the City of Bandon BDO Zone require concurrent amendments to the above maps; consistency with applicable comprehensive plan policies; and, compliance with the provisions of Statewide Planning Goal 18 (Beaches and Dunes).
- The City shall review the BDO boundary when new coastal hazard information becomes available from state or federal agencies (e.g., new or revised FEMA analyses) and revise the boundary when this new information indicates additional beach, foredune, or interdune areas subject to ocean undercutting or wave overtopping.

EXHIBIT C

- Other development in areas subject to this policy: The city shall only authorize other development in these areas if an application addresses Policy V below and the proposed development: a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and (b) Is designed to minimize adverse environmental effects.

The City has taken an exception to Statewide Planning Goal 18 for three (3) vacant lots in the Jetty Sewer District. The lots in the South Jetty area are, Lot 7, Block 27, Lot 2, Block 34 and Lot 3, Block 35 were committed to development when the Bandon Jetty Sewer Improvement District was formed. These lots are also shown on a map included with the findings related to these exceptions. The City has determined that other vacant parcels in the BDO area are not committed to development and would not otherwise qualify for a Goal 18 exception.

The City concludes that the areas identified above are subject to potential ocean overtopping and wave undercutting and the City shall not authorize residential, commercial, or industrial development within these areas.

POLICY V: CITY REVIEW CRITERIA IN BEACH AND DUNE AREAS:

The City shall base decisions on plans, ordinances and land use actions in beach and dune areas that are subject to Statewide Planning Goal 18, other than older stabilized dunes, on specific findings that shall include at least:

1. The type of use proposed and the adverse effects it might have on the site and adjacent areas;
2. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
 - (a) Methods for protecting the surrounding area from any adverse effects of the development; and
 - (b) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

POLICY W: MINIMIZE EROSION IN BEACH AND DUNE AREAS:

The City shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

POLICY X: BEACH FRONT PROTECTIVE STRUCTURES:

Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. For the purposes of this requirement "development" means houses, commercial

and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception

EXHIBIT C

to Policy U above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

1. visual impacts are minimized;
2. necessary access to the beach is maintained;
3. negative impacts on adjacent property are minimized; and
4. long-term or recurring costs to the public are avoided.

The following lots are not eligible for beachfront protective structures;

Map	Tax Lot	Map	Tax Lot	Map	Tax Lot
28-15-25Index	500	28-15-36BB	4000	29-15-1BB	1200
	600				1300
	700	28-15-36BB	1700		1400
	800				1800
28-15-25BD		28-15-36CB	1000		1900
	3700*	3701*	1100		
	4000*	4100*	1200	29-15-1BC	200 300
	8100*	8400*			400 500
	9100*	9000*	28-15-36CC	1100 1200	600 700
				1500 1600	

*None of these lots abut the vegetation line.³

POLICY Y: FOREDUNE BREACHING:

Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., maritime salvage and rescue operations, fire control, cleaning up oil spills, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

POLICY Z: APPLICABILITY:

This section of the City of Bandon Comprehensive Plan includes the majority of provisions associated with beaches and dune areas consistent with Statewide Planning Goal 18. If there is any conflicting language in other portions of the comprehensive plan, the provisions in this section prevail.

In cases where the requirements of these policies overlap or conflict with the requirements of other Comprehensive Plan policies, the more restrictive interpretation shall apply.

³ This graph was moved from Chapter 10, Coastal Resources, Inventory for the convenience of the reader.

EXHIBIT C

POLICY AA: THE JETTY

The City shall:

1. provide regulations which will protect the fragile eco-system in the area of the south jetty and Jetty Road;
2. protect the foredune west of Madison Avenue by developing a foredune stabilization and restoration plan to minimize the effects of overtopping, undercutting, and breaches caused by pedestrian traffic over the dune.
3. provide regulations for safe beach access that will not be detrimental to the foredune system
4. enhance the special character and appeal of the jetty as a unique community on the Oregon Coast by ensuring that future developments on the jetty will be consistent with its present character,
5. achieve balanced use of the jetty and to enhance its character by controlling residential and commercial development and taking into consideration the natural resources of the area.



EXHIBIT D

Beaches and Dunes Overlay (BDO) Zone - South Jetty Area



EXCEPTED
PROPERTIES

- 1 LOTS 7 & 8, BLOCK 27
- 2 LOT 2, BLOCK 34,
- 3 LOT 3, BLOCK 35

 Beaches and Dunes Overlay (BDO) Zone*
  Sewer District Boundary
Tax lots

*The Beaches and Dunes Overlay (BDO) Zone boundary was developed utilizing preliminary ocean front analysis maps developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 2010 on behalf of FEMA for the purpose of identifying the 1% flood zone and the most significant portion of potential ocean flooding associated with the 1% storm. Although the ocean front analysis maps were ultimately drafted to derive FEMA velocity zones for the City of Bandon, the Beaches and Dunes Overlay zone is not a FEMA product nor is one implied. The purpose of the Beaches and Dunes Overlay is to identify areas subject to ocean overtopping and wave overwashing that would be subject to Statewide Planning Goal 18 development restrictions. When the City which revised FEMA velocity zone maps the City will also review the BDO and make revisions if needed.



Prepared for the City of Bandon by the Oregon Coastal Management Program

BEACHES AND DUNES OVERLAY MAP
ORDINANCE 1582

EXHIBIT E

Beaches and Dunes Overlay (BDO) Zone - Johnson Creek Area



 Beaches and Dunes Overlay (BDO) Zone*

Tax lots



*The Beaches and Dunes Overlay (BDO) Zone boundaries were determined utilizing preliminary coastal flood analysis maps developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 2010 on behalf of FEMA for the purposes of identifying the 1% flood zone and the most landward extent of potential coastal flooding associated with the 1% storm. Although the coastal flood analysis maps were ultimately reviewed to define FEMA-vetted areas for the City of Bandon, the Beaches and Dunes Overlay zone is not a FEMA-protected risk or one created. The purpose of the Beaches and Dunes Overlay is to identify areas subject to coastal overwashing and wave oversteering that would be subject to additional Planning Code 19 development restrictions. When the City accepts revised FEMA-vetted zones, the City will also review the BDO and make revisions if needed.



Prepared for the City of Bandon by the Oregon Coastal Management Program

BEACHES AND DUNES OVERLAY MAP
ORDINANCE 1582

BANDON MUNICIPAL CODE

CHAPTER 17.77

BEACHES AND DUNES OVERLAY (BDO) ZONE

Sections:

17.77.010	Purpose.
17.77.020	BDO Zone Boundaries
17.77.030	Permitted and Prohibited Uses and Activities.
17.77.040	Conditional Uses and Activities.
17.77.050	Relationship Between the BDO Zone and the Underlying Zone.
17.77.060	Replacement of Lawfully Established Structures
17.77.070	Amendments to the Beaches and Dunes Overlay (BDO) Zone.

17.77.010 Purpose.

The purpose of the Beaches and Dunes Overlay (BDO) Zone is to implement the provisions of the Beaches and Dunes Section of the Coastal Resources Chapter of the City of Bandon Comprehensive Plan and Statewide Planning Goal 18 (Beaches and Dunes). The BDO boundary is identified by the City of Bandon utilizing preliminary ocean flood analysis maps developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 2010 on behalf of FEMA for the purposes of identifying the 1% flood zone and the most landward extent of potential ocean flooding associated with the 1% storm. The purpose of the Beaches and Dunes Overlay is to identify areas subject to ocean overtopping and wave undercutting that would be subject to Statewide Planning Goal 18 development restrictions.

17.77.020 Beaches and Dunes Overlay Zone Boundaries

The Beaches and Dunes Overlay Zone is shown on the City of Bandon zoning map and the more detailed supplemental maps that define the Beaches and Dunes Overlay Zone boundary.

- A. The Jetty (Beaches and Dunes Overlay (BDO) Zone Map - South Jetty Area)
- B. Johnson Creek Study Area (Beaches and Dunes Overlay (BDO) Zone Map - Johnson Creek Area)

17.77.030 Permitted and Prohibited uses and activities.

The Beaches and Dunes Overlay Zone is a limited use overlay zone. All uses and activities authorized by the underlying zone are subject to review and approval as outlined in this Chapter. Residential developments and commercial and industrial buildings are prohibited within the Beaches and Dunes Overlay Zone.

EXHIBIT F

17.77.050 Conditional uses and activities

Other development, not restricted in 17.77.020 above, shall only be allowed if the proposed development:

- A. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
- B. Is designed to minimize erosion in beach and dune areas by limiting the destruction of desirable vegetation and the exposure of stable and conditionally stable areas to erosion; and
- C. Mitigates any significant adverse environmental effects on the site and adjacent areas; and
- D. Is proposed to include
 - 1. temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation; and
 - 2. for protecting the surrounding area from any adverse effects of the development; and
 - 3. minimizes to insignificant levels, hazards to life, public and private property, and impacts to the natural environment which may be caused by the proposed use.

17.77.060 Relationship between the Beaches and Dunes Overlay Zone and the underlying zone.

The Beaches and Dunes Overlay (Beaches and Dunes Overlay) Zone is a limited use overlay zone. It identifies the location of existing Statewide Planning Goal 18 development prohibition areas within beach and dune areas. Uses and activities allowed within the underlying zone are limited as indicated in 17.77.030 above.

17.77.070 Replacement of lawfully established Structures

Any lawfully established structure which is located in the Beaches and Dunes Overlay Zone, may be replaced subject to the following:

- 1. The structure must be sited either within the same building footprint, or farther away from the ocean, if deemed appropriate by the City and the applicant to decrease coastal hazard risk, and
- 2. Replacement or repair of lawfully established structures shall be subject to all city, state and federal siting and construction requirements in effect at the time of the application.
- 3. Real property that is claimed by marine erosion and becomes part of the ocean beach will no longer be buildable land. If a dwelling is damaged or destroyed by coastal storm and ocean erosion there may be little or no buildable land remaining on which to rebuild. In addition, there may be jurisdictional or ownership issues which may impact or preclude replacement of the dwelling.

EXHIBIT F

17.77.080 Comprehensive Legislative Amendments to the Beaches and Dunes Overlay (BDO) Zone or BDO Zone Boundaries.

- A. The City may amend the boundary utilizing a legislative comprehensive plan amendment process, if a future comprehensive area wide analysis, consistent with Statewide Planning Goal 18, indicates that a boundary change is warranted.
- B. The analysis, and findings to develop a new boundary by the city must address Goal 18 development prohibition areas for residential and commercial/industrial structures (i.e. beaches, active foredunes, other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding) . In addition, other development in these areas should only be permitted if it:
 - 1. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
 - 2. Is designed to minimize adverse environmental effects.
- C. Notice to DOGAMI, OPRD, and DLCD, must be provided at least 45 days prior to the first evidentiary hearing.

FINDINGS OF FACT

SUPPORTING THE AMENDMENTS TO THE COMPREHENSIVE PLAN TO INCLUDE REVISED COASTAL RESOURCE POLICIES WHICH ARE IN CONFORMANCE GOAL 18 REQUIREMENTS, INCLUDING LIMITED EXCEPTIONS TO GOAL 18, AND AMENDING THE BANDON MUNICIPAL CODE TO INCLUDE CHAPTER 17.77 BEACHES AND DUNES OVERLAY (BDO) ZONE IN THE BANDON MUNICIPAL CODE

I. PROPOSAL/ACTION

The purpose of the amendments is to implement the provisions of Goal 18 and to provide for protection of the City's beaches and dunes. The City's current Goal 18 program requires a case by case review and weighing of substantial evidence which has led to significant uncertainty and cost to property owners. The City is in the process of clarifying these requirements with these proposed amendments. The proposal includes an exception to the Statewide Planning Goal 18 Beaches and Dunes Overlay Zone, that prohibits new residential, commercial and industrial structures, as required by Statewide Planning Goal 18, for three (3) lots within the sewer district boundary.

The Bandon City Council APPROVED the proposal as supported by these findings.

II. AUTHORITY

The amendment procedures established in the Bandon Municipal Code (Section 17.116.010) authorize the Planning Commission to initiate amendments to the Code and Comprehensive Plan. Section 17.116.010 authorizes the City Council to enact an ordinance which adopts those amendments if the Council concurs with the recommendation.

III. BACKGROUND AND HISTORY

Bandon's ocean beaches are divided into two categories, dune-backed and bluff-backed. The two areas of dune-backed beach are the northern section of Bandon Beach along the low lying area south of the Bandon Jetty and the southern area in the vicinity of Johnson Creek. Dunes have the vital function of protecting property landward of the dune from ocean flooding but they are very fragile and subject to destabilization if measures are not taken to protect them. In addition, the very nature of the this dynamic high hazard environment produces the need, as outlined in Statewide Planning Goal 18 and the City of Bandon Comprehensive Plan, to be very prudent in what development is allowed there.

EXHIBIT G

Therefore, Statewide Planning Goal 18 provides for the protection for beaches and dunes. The Goal requires that the City inventory the existing dune systems “to reduce the hazard to human life and property from natural or man-induced actions associated with these areas” and to protect dune forms which could be damaged by construction on or near these features.

The City of Bandon currently administers its “Beach and Dunes” provisions through a case by case approach based on various comprehensive plan provisions and code requirements. This includes identification of dune areas subject to ocean undercutting and wave overtopping where Statewide Planning Goal 18 prohibits development, and a determination in other areas subject to Goal 18 hazards related to whether it is safe to build. This case by case analysis is administered through the City’s conditional use process based on substantial evidence provided by the applicant and others. Over the years this process has been problematic for the City as various applicants have proposed development within these high hazard areas subject to Goal 18. This substantial evidence process requires applicants to hire consulting “experts” on a case by case basis to attempt to support development in these high risk areas. With various applications, and potentially conflicting “expert” opinions it has been difficult for the City to determine if they were making decisions consistent with their comprehensive plan and Goal 18. This has introduced uncertainty for the City, its citizens, and potential applicants.

IV. APPROACH AND RATIONALE

The City of Bandon has desired for some time to develop comprehensive plan and code provisions related to Statewide Planning Goal 18 that provide a clear and objective process, and greater certainty for the citizens of the City of Bandon. The City believes that the proposed Beach and Dune policies and provisions (Exhibit B), and the Beaches and Dunes Overlay (BDO) Zone (Exhibit C) not only meet these objectives but also are consistent with Statewide Planning Goal 18. The proposed amendments provide comprehensive plan language that aligns with Goal 18, Implementation Requirement (IR) 2. The amendments include an overlay zone which the City believes is consistent with IR 2. See attached BDO Overlay maps (Exhibit D and Exhibit E).

Implementation requirement 2 states that: “Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.” The proposed City of Bandon Comprehensive Plan Language mirrors the language in Goal 18.

The City is applying the Beaches and Dunes Overlay (BDO) to two (2) dune field areas known as the South Jetty Area and Johnson Creek area. These dune field areas include the landforms identified in Goal 18 Implementation Requirement 2 (i.e., beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding).

EXHIBIT G

It is common for communities along the Oregon coast to apply FEMA ocean flooding (velocity zones) boundaries within beach and dune areas to determine areas identified within Goal 18 which prohibit residential developments and commercial and industrial buildings by identifying the areas of those dune fields which are subject to ocean flooding. However, the City has been unable to use this approach until now as the City is aware that the existing FEMA maps were not accurate. The maps did not accurately reflect the extent of ocean flooding potential and FEMA indicated that a restudy was required. FEMA has since contracted with the Department of Geology and Mineral Industries (DOGAMI) to do this work. That new study is nearing completion for the Coos County area and the City has worked with the State geologists to obtain high quality preliminary ocean flooding information. This map information is described below.

V. REVISED COMPREHENSIVE PLAN PROVISIONS AND CODE REQUIREMENTS

The City has developed a revised set of beach and dune comprehensive plan provisions which are consistent with Statewide planning Goal 18. In addition, the City has developed an overlay zone (Beaches and Dunes Overlay (BDO) Zone) to implement these comprehensive plan provisions. The Department of Land Conservation and Development has reviewed these materials and concurs with this finding. These materials, adopted by the City Council, are attached as Exhibit B and C.

VI. USE OF MAP INFORMATION AND DATA

The Beaches and Dune Overlay (BDO) Zone boundary was developed utilizing preliminary ocean flood analysis maps developed by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 2010 on behalf of FEMA for the purposes of identifying the 1% flood zone and the most landward extent of potential ocean flooding associated with the 1% storm. Although the ocean flood analysis maps were ultimately developed to define FEMA velocity zones (ocean flooding) for the City of Bandon, the Beaches and Dune Overlay zone is not a FEMA product nor is one implied. The purpose of the Beaches and Dune Overlay is to identify areas subject to ocean overtopping and wave undercutting that would be subject to Statewide Planning Goal 18 development restrictions. When the City adopts revised FEMA velocity zone maps the City will also review the BDO and make revisions if needed. No changes are anticipated.

The Beaches and Dunes Overlay (BDO) Zone maps which reflect the map information and data indicated above are attached as Exhibit D and Exhibit E.

VII. PROPOSED GOAL 18 EXCEPTIONS

Proposed by City:

Pursuant to OAR 660-04-022, the City has proposed three (3) "Reasons" exceptions that would permit three (3) small lots to be developed within the Goal 18 Beaches and Dunes Overlay (BDO) Zone where the zone otherwise would not allow development in the future. The findings for those exceptions are attached as Exhibit F. The City believes that there are substantial reasons why these parcels qualify to be excepted from the Goal requirement, while other vacant parcels do not. Among these reasons is the fact that these 3 lots are within the sewer district boundary and have been committed to development for many years. Additionally, these 3 lots are not among the most seaward row of lots adjacent to the beach where ocean undercutting and wave overtopping hazards are the greatest. This combination of key findings together with other related findings within the attached document make these lots unique related to other lots within the beaches and Dunes Overlay (BDO) Zone. The City believes that no other lots would qualify for an exception and the city does not propose any others.

Exception Proposed by Property Owner:

During this Goal 18 program revision process, the City received a request for an additional exception. Although the applicants provided findings in an effort to support the exception, the City determined that adequate justification did not exist to authorize it. The proposed exception area is not located within the sewer district. For this reason, and others identified in the attached findings (Exhibit F, Page 7-10), the City believes this property is not committed to development. In addition, the bulk of this property is immediately adjacent to the beach (on the first set of lots) where the ocean undercutting and wave overtopping hazards are the greatest. Although there a number of parcels which have similar characteristics as this property, no other applicant requests for an exception were received by the City. In summary, the City does not believe this additional proposed exception is justified and accordingly, has not included the property among the exceptions proposed in this amendment to the Beaches and Dunes element of the Bandon Comprehensive Plan.

VIII. ESTUARY COMPREHENSIVE PLAN MODIFICATIONS

As part of the coastal resources comprehensive plan section updates, the City developed a revised estuary comprehensive plan section. The revisions are primarily reorganization in nature. These Amendments are included as Exhibit G.

IX. COASTAL SHORELANDS COMPREHENSIVE PLAN MODIFICATIONS

As part of the coastal resources comprehensive plan section updates, the City developed a revised coastal shorelands comprehensive plan section. The revisions are primarily reorganization in nature. These Amendments are included as Exhibit H.

EXHIBIT H

ORDINANCE 1582
GOAL 18 EXCEPTION
Lots 7 and 8, Block 27, Lot 2, Block 34 and Lot 3, Block 35
of the Amended Breakwater Addition
(The Jetty)
Est. October 3, 1906

FINDINGS OF FACT

EXCEPTION TO STATEWIDE PLANNING GOAL 18

I. ACTION:

A local government may adopt an exception to a statewide goal when reasons justify why the state policy embodied in the applicable goal should not apply. These exceptions apply to specific properties and do not establish a planning or zoning policy of general applicability in the city of Bandon. The City has justified an exception to Goal 18 for three (3) discrete lots in the Breakwater Addition. The three vacant parcels subject to this exception are described as Lot 7 and 8, Block 27, Lot 2, Block 34, and Lot 3, Block 35 of the Bandon Breakwater Addition (The Jetty). The lots lie within the Beaches and Dunes (BDO) Overlay Zone of the City's Municipal Code. The subject properties represent the only vacant lots in the Jetty Sewer District boundary that are situated within the Beaches and Dunes Overlay Zone

II. AUTHORITY:

The amendment procedures established in the Bandon Municipal Code (Section 17.116.010) authorize the Planning Commission to initiate amendments to the Code and Comprehensive Plan. Section 17.116.010 authorizes the City Council to enact an ordinance which adopts those amendments if the Council concurs with the recommendation.

III. PROPOSAL

The City has adopted a Beaches and Dunes Overlay Zone that prohibits new residential, commercial and industrial structures, as required by Statewide Planning Goal 18. However, the city has justified an exception for three parcels within the Beaches and Dunes Overlay Zone boundary that are within the sewer district boundary (Jetty Sewers Improvement District); are committed to residential development, otherwise meet the applicable exception criteria below.

IV. BACKGROUND

In accordance with Chapter 17.116.020 the Planning Commission initiated the attached Comprehensive Plan and Municipal Code and held the first evidentiary hearing on August 5, 2010. Subsequent hearings were held through 2010 and into 2011.

Statewide Planning Goal 18 provides for the protection for beaches and dunes. The Goal requires that the City inventory the existing dune systems "to reduce the hazard to human life and property from natural or man-induced actions associated with these areas" and to protect dune forms which could be damaged by construction on or near these features. To accomplish this, the Goal identifies certain landforms which are

EXHIBIT H

extremely hazardous and prohibit residential development, and commercial and industrial buildings. These dune forms include beaches, active foredunes and conditionally stable foredunes and deflation plains which are subject to ocean flooding. These areas are fragile and easily damaged. It is the City's responsibility to conform to statewide Goal 18 and to implement measures to protect these vulnerable dune forms. The City's former Goal 18 program required case-by-case review and resulted in uncertainty and cost to property owners. The City has clarified these requirements with the adoption of the Beaches and Dunes Overlay zone and associated regulations.

At their January 27, 2011 meeting, the Bandon Planning Commission recommended that the Council adopt proposed revisions to the Comprehensive Plan that implement statewide Goals 16, 17, and 18. The amendments included the addition of Chapter 17.77, Beaches and Dune Overlay to the Bandon Municipal Code.

There are several lots located outside of the sewer district that are not eligible for sewer service. Some of these lots are situated on a foredune, where development is prohibited, lie adjacent to the ocean shore, or are subject to wave velocity flooding. These properties are not considered to be committed to development, have not been valued as developable by the Coos County Assessor, and are not considered a candidate for a Goal 18 exception.

V. FINDINGS AND CONCLUSIONS

When declaring an exception, the City is required to meet the provisions of Statewide Planning Goal 2, Land Use Planning, Part II, Exceptions.

If a jurisdiction determines there are reasons consistent with OAR 660-004-0020 (2) and OAR 660-004-0022 (11) to use lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

1. The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

OAR 660-004-0020 (2) CRITERION (A): "Reasons justify why the state policy embodied in the applicable goals should not apply:

Finding: The Bandon Breakwater Addition was subdivided in 1906, but only a small number of lots were developed, due to the lack of urban services. In the 1980's the city began to explore options to provide sanitary sewers to the south jetty neighborhood. In 1988, the City Council commissioned a survey of the south jetty area to define the vegetation line of the Coquille River, the location of Redmon pond, and the ocean foredune. The survey was used to begin the discussion regarding the provision of water and sewer to properties on the South Jetty. In Resolution 88-52 the Jetty Water and Sewer Improvement District was established. The district was revised on several occasions until the final revision in July 1994. The sewer boundary comprised the map of committed lands required by the Farmer's Home Administration to qualify for the grants and loans available to the City for construction. One of the conditions on the funding requires conformance

EXHIBIT H

with Executive order 11988, that prohibits federal funds from being used to facilitate conversion of floodplains to urban uses. The City is obligated to serve the lots within the district, subject to the terms of the federal funding made available to the City for construction of the sewer collection system. The parcels subject to this exception are located inside that boundary.

Finding: The area consists of small subdivision lots with a mix of developed and undeveloped lots. The three (3) lots within this exception are the only undeveloped lots that are both within the sewer district and within the Goal 18 prohibition area. Each lot is adjacent to a developed parcel or separated by an alley from a developed parcel and abuts a developed parcel. These three parcels are the only such configured parcels inside the Jetty Sewer System. No lots westerly of the sewer district boundary are developed. The lots westerly of the sewer district have not been identified as buildable, are not assessed by the County Assessor as buildable, are within a high coastal hazards area, are within the Beaches and Dunes (BDO) Overlay Zone, and cannot be served by public sewer as they are outside the district. These lots are not committed to development. It should be noted that federal funding for creation of the sewer district prohibits expansion of the district in areas that are subject to flooding/ocean flooding. The comprehensive analysis provided by Department of Geology and Mineral Industries indicates that lots westerly of the sewer district are clearly subject to ocean flooding, wave overtopping and undercutting and are otherwise within a high coastal hazard area. Preliminary FEMA ocean flooding analysis substantiates these facts.

Finding: The area within the sewer district is platted and full urban services are available, and are thereby committed to residential development.

Finding: The subject parcels were designated in Resolution 95-12 as properties to be included "in the area within the 100-year floodplain where development would be allowed," and shown on the "Committed Lands" map attached to the letter from Ben McMakin to the City Council on 12-22-92. This map was the basis for the properties listed in Resolution 95-12 which comprised the Local Jetty Sewer Improvement District. The designation of committed lands was required by the Farmer's Home Administration at the time to qualify for the grants and loans available to the City for construction. The subject properties have paid the assessed amount required by the City to participate in the Jetty Sewer system.

Finding: Application of Goal 18 within the south jetty sewer district would deny owners of the three (3) vacant lots substantial property rights enjoyed by owners of similarly developed properties within the district.

Finding: The area of the exception is comprised of three (3) undeveloped lots within the sewer district boundary. Each lot is adjacent to multiple developed lots, with some being separated by an alley. These three parcels are the only such configured parcels inside the Jetty Sewer System.

Finding: A primary intent of the beaches and dunes goal, Implementation Requirement 2, is to protect dune areas from adverse effects of ocean flooding. For the three (3) lots for which an exception is being taken, this purpose will be achieved by the following requirements:

EXHIBIT H

1. A site investigation by a qualified expert to determine existing hazards on the site will be required to guide development; and
2. Proposed development will be subject to FEMA construction standards.

Conclusion: The City finds that the three parcels qualify as committed lands as shown on the “Committed Lands” map attached to the letter from Ben McMakin to the City Council on 12-22-92. This map was the basis for the properties listed in Resolution 95-12 which comprised the Local Jetty Sewer Improvement District. The committed lands inventory was required by the Farmer’s Home Administration at the time to qualify for the grants and loans available to the City for construction. The subject properties have paid the assessed amount required by the City to participate in the Jetty Sewer system.

Conclusion: The City finds that vacant lots in the Breakwater Addition, situated outside the sewer district can not meet this criterion.

Conclusion: The City finds that these three (3) exception lots within the sewer district meet this criterion.

CRITERION (B): Areas which do not require a new exception cannot reasonably accommodate the use:

Finding: There are vacant residential lots within the Bandon urban growth boundary. However, these lots are generally not lots which provide this proximity to the ocean. They cannot meet the development needs that are being met by the lots for which these three (3) exceptions are being taken.

Finding: There are other areas within the City where vacant lots are available that may provide this proximity to the ocean. However, these are also located in dune areas that would be subject to the Beaches and Dunes Goal.

CRITERION (C): The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.”

Finding: Presently, there are no Goal 18 exceptions in the City of Bandon.

Finding: There are Goal 18 exceptions in other areas of the Oregon coast but they are on the north coast. Because of the development pattern on the South jetty within the sewer district and the limited number of exceptions proposed it is determined that additional adverse impacts would be minimal compared to other areas which would require an exception.

Finding: The development area within the district, and in the vicinity of the proposed exceptions, does not contain any significant environmental features such as unique or critical wildlife habitats or wetland resources.

EXHIBIT H

Finding: The economic, social, and energy consequences of development on the lots for which an exception is being taken, within the sewer district of the Bandon south jetty area, are similar to those in any developed area designated for residential use where sewer service is available.

CRITERION (D): "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts".

Finding: The uses that will be permitted on the lots for which an exception is being taken are similar to the existing uses that are within the sewer district and also within the Beaches and Dunes Overlay (BDO) zone.

Finding: The City believes an exception is justified to allow the three lots within the exception to be developed as all other lots within the sewer district. The city has committed to development within these areas throughout the years. Development on these lots must be consistent with sound practices of development within coastal high risk areas and be subject to a detailed report and engineering from a licensed professional with experience in coastal hazards and processes.

Finding: The subject properties may be served by City services, sewer and water, from existing lines installed during the 1994 sewer district improvements. Lateral sewer and water connections are available. No main line extensions will be required to service these properties.

Finding: Parcel size is not a significant factor in this exception justification. More significant are other factors such as sewer service (i.e., within the existing sewer district boundary) together with not being located the most westerly and adjacent to the ocean shore.

Finding: Potential adverse impacts of proposed uses will be rendered compatible with other adjacent uses through various provisions of the zoning code. The impact of wind erosion and open sand movement are minimal due to the limited number of very small lots (3) for which an exception is being taken and will also be minimized with conditions on construction permits. The impacts of construction in an area subject to flooding will be addressed utilizing related City flood ordinance requirements.

Conclusion: The City finds that these three (3) exception lots are compatible with adjacent uses.

Conclusion: The City finds that these three (3) exception parcels meet the criteria for an exception in accordance with Statewide Planning Goal 2, Land Use Planning, Part II, Exceptions.

Criteria: 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

(11) Goal 18 – Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or is of minimal value; and

EXHIBIT H

Finding: Potential uses will be protected from geologic hazards and undercutting in the following manner. Uses located on these exception lots will be permitted only subsequent to a site investigation performed by a qualified professional.

Finding: Potential adverse impacts of proposed uses will be rendered compatible with other adjacent uses through various provisions of the zoning code. The impact of wind erosion and open sand movement are minimal due to the limited number of very small lots (3) for which an exception is being taken and will also be minimized with conditions on construction permits. The impacts of construction in an area subject to flooding will be addressed utilizing related City flood ordinance requirements.

Finding: Additionally, these 3 lots are not among the most seaward row of lots adjacent to the beach where ocean undercutting and wave overtopping hazards are the greatest.

Conclusion: The City finds that this criterion has been met.

Criteria: (b) The use is designed to minimize adverse environmental effects;

Finding: For dune areas where a site investigation is required the site investigation is required to specify measures that must be taken to minimize adverse environmental effects. Construction must take place consistent with the measures specified in the site investigation. Other applicable provisions of the CD-2 and SO zones also insure that adverse environmental effects are minimized.

Criteria: (c) The provisions of OAR 660-004-0020 shall also be met.

Finding: The criterion has been addressed above.

Conclusion: The City believes that three vacant parcels within the BDO Zone boundary which are also within the sewer district boundary (Jetty Sewers Improvement District) are committed to residential development and meet the applicable "reasons" criteria for an exception. The City has developed these findings to address this Statewide Planning Goal 18 provision, and associated exception criteria. The City further finds that lots located outside (and westerly of) the jetty sewer district that are within the Goal 18 prohibition area do not meet the reasons exception criteria outlined above.

EXHIBIT H

ADDITIONAL FINDINGS RELATED TO THE CITY DECISION TO NOT INCLUDE PROPERTY IDENTIFIED AS LOT 7, BLOCK 35, BREAKWATER ADDITION AS A PROPOSED GOAL 18 EXCEPTION

I. PROPOSAL

The City received a request by a property (or his representative) for an exception to the Statewide Planning Goal 18 Beaches and Dunes Overlay Zone that prohibits new residential, commercial and industrial structures, as required by Statewide Planning Goal 18. The lot (lot 7) is located on the north side of Sixth Street west of the Jetty Sewer boundary, and is a portion of an ownership consisting of Lots 6 and 7, Block 35, Breakwater Addition. Both lots are outside the jetty sewer boundary.

There are thirteen lots, held in six single ownerships, including the subject property, which are located outside of the sewer district and are not eligible for sewer service. Many of these lots are situated on a foredune where development is prohibited, lie adjacent to the ocean shore, and are subject to potentially severe wave velocity flooding. These properties are not considered to be committed to development, cannot be served by key services, have not been valued as developable by the Coos County Assessor, and are not considered a candidate for a Goal 18 exception. Lot 7, Block 35 of Breakwater Addition is among them.

V. FINDINGS AND CONCLUSIONS

A local government may adopt an exception to a goal, however, there is no requirement to do so. Exception proposals must meet applicable criteria and standards; if they can not they can not be approved. When declaring an exception, the City is required to meet the provisions of Statewide Planning Goal 2, Land Use Planning, Part II, Exceptions.

If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

2. The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

CRITERION (A): "Reasons justify why the state policy embodied in the applicable goals should not apply:

Finding: The Bandon Breakwater Addition was subdivided in 1906, but only a small number of lots were developed, due to the lack of urban services. In the 1980's the city began to explore options to provide sanitary sewers to a portion of the south jetty neighborhood. In 1988, the City Council commissioned a survey of the south jetty area to define the vegetation line of the Coquille River and the location of Redmon pond and the ocean foredune. The survey was used to begin the discussion regarding the provision of water and sewer to properties on the South Jetty. In

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Resolution 88-52 the Jetty Water and Sewer Improvement District was established. The district was revised on several occasions until the final revision in July 1994. The sewer boundary was mapped and was comprised of committed lands required by the Farmer's Home Administration (FHA) to qualify for the grants and loans available to the City for construction. One of the FHA funding conditions required conformance with Executive order 11988 which prohibits federal funds from being used to facilitate conversion of floodplains to urban uses. The City is obligated to serve the lots within the district, subject to the terms of the federal funding made available to the City for construction of the sewer collection system. The district can not be expanded to include other lots or parcels known by the City to be subject to flooding.

Finding: The subject property is one of thirteen (13) properties located outside the Jetty Sewer. The lots westerly of the sewer district have not been identified as buildable, are not assessed by the County Assessor as buildable, are within a high coastal hazards area, are within the Beaches and Dunes (BDO) Overlay Zone, and cannot be served by public sewer as they are outside the district. These lots are not committed to development. As indicated above, federal funding for creation of the sewer district prohibits expansion of the district in areas that are subject to flooding/ocean flooding. The Beaches and Dune Overlay Boundary was developed using preliminary ocean flood analysis maps developed by the Department of Geology and Mineral Industries (DOGAMI) which indicate that lots westerly of the sewer district are clearly subject to ocean flooding, wave overtopping and undercutting and are otherwise within a high coastal hazard area.

The sewer district cannot be extended to additional areas for which the City has credible information regarding the potential for flooding. District boundary formation and revisions are not land use actions but are based on federal funding requirements. These Federal funding requirements indicate that a determination by the City regarding the potential for flooding be made. If there is some uncertainty related to the potential for flooding the federal requirements require that this determination be made "to the satisfaction of the City". Although most of this area has been determined to be subject to flooding by existing FEMA FIRM maps, the City has been provided credible information indicating that these current FEMA maps do not accurately reflect the extent of ocean flooding potential in this area. FEMA indicated that a restudy was required to accurately reflect the potential for flooding, particularly ocean flooding) in this area. FEMA contracted with the Department of Geology and Mineral Industries (DOGAMI) to do this work. The new study is nearing completion for the Coos County area and the City has worked with the State geologists to obtain high quality preliminary ocean flooding information. Based on this credible information, the subject property is clearly within an area subject to velocity zone ocean flooding. The City can not authorize expansion of the sewer district to this area.

Finding: Resolution 95-12 designated the jetty properties to be served by the sewer system. The subject property was not among them. As indicated above the City did not "mistakenly leave the "Lot 7" Block 35 of Breakwater Addition out of the original sewer district boundary." It was specifically excluded as indicated above. The lots westerly of the sewer district were not considered committed lands as required by the Farmer's Home Administration at the time to qualify for the grants and loans available to the City for construction. The properties have paid no assessed amount required by the City to participate in the Jetty Sewer system.

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Finding: The exceptions proposed by the City are comprised of three (3) undeveloped lots within the sewer district boundary. Each lot is adjacent to multiple developed parcels. The three parcels are the only such configured parcels inside the Jetty Sewer System. "Lot 7" is not on so situated.

Finding: Lots westerly of the sewer district boundary only have development to the east while vacant lots within the district have the potential to be adjacent to urban development on multiple sides. The City has determined that the subject property is not an infill lot and is not committed to development simply because it has development adjacent to it to the east. To the contrary, the subject property is westerly of lands that are committed and planned for development and therefore is not appropriate for an exception.

Finding: The subject property is not an "infill" lot. The lot is not in an area that is mainly developed¹. It is outside an area that is mainly developed. The property was not passed over by previous development plans. It was specifically removed from any development plan. The subject property does not meet the definition of infill for the purposes of Goal 18. It does not meet requirement (b) of ORS 197.732.

Finding: The Bandon Municipal Code defines "Development" as any manmade change to improved or unimproved tracts of land, including, but not limited to, construction of buildings or other structures, mining dredging, filling, grading, paving, excavation or drilling operations located within the area. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes.

Finding: There is no grading, filling mining, dredging paving or drilling operation on the subject property. There is no structure on the property. The property has not been "improved" or developed. The appearance of the land has not changed. The property does not meet the Bandon Municipal Code definition of "developed".

Conclusion: The City finds that vacant lots in the Breakwater Addition, situated outside the sewer district, (including the subject Lot 7) do not meet this criterion as indicated above which are necessary for an exception to the Goal 18 development prohibition area.

Criteria: 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c) (11) Goal 18 – Fore dune Development: (11) Goal 18 – Fore dune Development: An exception may be taken to the fore dune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or is of minimal value;

Finding: The subject property does not meet this criterion as the bulk of the property is among the most seaward area adjacent to the beach where ocean undercutting and wave overtopping hazards are the greatest while the three (3) proposed exceptions are back two (2), or portions of two (2) lots, easterly and back from this highest risk interface.

¹ BMC Chapter 16.42 states "Infill" means the development of land located in an area that is mainly developed

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Criterion: (b) The use is designed to minimize adverse environmental effects;

Finding: The subject property is within a high hazard area adjacent, or nearly adjacent to the ocean shore. The significant hazard risk, combined with the lack of commitment of this property for development, preclude it from further consideration for an exception by the City.

Conclusion: The City finds that the vacant lot, identified as Lot 7, Block 35, of the Bandon Breakwater Addition, does not meet key aspects of applicable Goal 18 exception criteria as indicated above. Therefore the City is not proposing to move this proposal forward within the proposed Goal 18 amendments to the City of Bandon Comprehensive Plan and Municipal Code.



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DEPT OF

JUN 13 2011

LAND CONSERVATION
AND DEVELOPMENT

ATTENTION: PLAN AMENDMENT SPECIALIST
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