



Oregon

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Department of Land Conservation and Development

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May 20, 2010



TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Dale Blanton, Senior Coastal Policy Analyst
Laren Woolley, Coastal Shores Specialist

SUBJECT: **Agenda Item 4, June 2-4, 2010, LCDC Meeting**

REVIEW OF A DIRECTOR'S DECISION TO INTERVENE IN RUDELL V. CITY OF BANDON BEFORE THE LAND USE BOARD OF APPEALS (LUBA 2010-037)

I. RECOMMENDATION

The director recommends, based on the information contained in this report, that the commission authorize the department to continue as an intervenor to support of the City of Bandon's decision to deny a Conditional Use Permit and Plan Review in an area subject to Goal 18 (Beaches and Dunes). Robert and William Rudell, who are represented in the case by Dan Terrell of the Law Office of Bill Kloos, PC, filed a Notice of Intent to Appeal with LUBA on April 29, 2010 (LUBA No. 2010-037). The department filed for intervenor status on May 20, 2010, the day on which the period for intervention closed. There are statewide planning goal requirements at issue in this appeal, and the department participated during the City of Bandon hearings on this application. The director seeks approval from the commission under OAR 660-001-0210(2) to continue to participate in this case as an intervenor.

The City of Bandon has asked that the Department of Land Conservation and Development participate in this LUBA case in order to assist the city in defending its decision, which concerns several statewide planning goal requirements as described in this report.

II. CASE SUMMARY

On April 13, 2010, the City of Bandon denied Robert and William Rudell's application for a Conditional Use Permit and Plan Review to authorize construction of a single family dwelling within the Shoreland Overlay Zone, and Plan Review authorization within the CD-2 Zone (Controlled Development).

The city determined that the dwelling is not allowed because it would be located on a foredune that is subject to ocean undercutting and wave overtopping. Goal 18 (Beaches and Dunes) Implementation Requirement 2 provides that:

"Local governments * * * shall prohibit residential developments and commercial and industrial buildings on beached, 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 city implements Goal 18 through its Controlled Development and Shoreland Overlay Zone. In addition, the city requires development in suspected hazard areas to be supported by review and an expert report that demonstrates it is safe to build on the site. The Planning Commission found that the applicant had not proven that the soils on the subject property are appropriate or safe for the proposed pile foundation, and that "[t]he submitted report does not include the required information needed to make a determination that it is safe to build." The City Council adopted the Planning Commission findings, and further found that "the submitted report does not adequately describe what affect pile foundation or compaction of the near surface soils will have on neighboring properties, the foredune, drainage and construction and therefore the City Council found the criteria had not been met."

The city implements the Goal 18 foredune development restrictions through a requirement that states: "No structures shall be located on identified foredunes." Planning Commission findings on this point conclude, "As previously stated in the original staff report, the City maintains the entire property is located on a foredune, and therefore the Planning Commission found this criterion has not been met."

The City Council further found:

"The submitted delineated toe of the foredune is located at the 16' elevation mark. The applicant's own submission shows no setback from the 16' elevation mark as evidenced on the drawings.

The applicant submitted two separate delineations, each with their own idea of where the location of the 'toe' of the foredune was located. Mr. Michael 'Migs' Scalici stated on the record the delineation was an 'educated guess' and 'subject to interpretation.'

The Planning Commission has determined the foredune is west of the Local Improvement District. The City Council agrees with this interpretation of the Planning Commission and therefore the City Council finds all of the subject property is located on a foredune subject to overtopping and undercutting and therefore approval of this application cannot be granted." (Emphasis in original)

During the local process, the applicant raised a number of issues related to requirements in the City of Bandon's acknowledged comprehensive plan and land use regulations; Goal 18 (Beaches and Dunes); and Goal 10 (Housing). The applicant also raised issues related to statutory

requirements to provide “needed housing,” and the related requirements for “clear and objective” approval standards outlined in ORS Chapter 197.

III. APPEAL FACTORS

The commission’s decision to approve or deny the director’s request to intervene in this case must be based on one or more of the following factors under OAR 660-001-0230(3):

- (a) Whether the case will require interpretation of a statewide planning statute, goal or rule;
- (b) Whether a ruling in the case will serve to clarify state planning law;
- (c) Whether the case has important enforcement value;
- (d) Whether the case concerns a significant natural, cultural or economic resource;
- (e) Whether the case advances the objectives of the agency’s Strategic Plan;
- (f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

If the commission finds that one or more of the following factors is met, then the commission should approve the director’s request.

We note that we do not yet know what issues the petitioner will raise in their brief. While we generally believe the underlying Goal 18 questions will certainly be part of the appeal, we do not know whether the Goal 10 and clear and objective standards issues will be raised.

IV. ANALYSIS

(a) Whether the case will require interpretation of a statewide planning statute, goal or rule.

This case will require the interpretation of LCDC Goal 18 (Beaches and Dunes) as applied to the approval of residential development on a foredune in terms of the application of the goal and goal definitions to a specific set of facts.

(b) Whether a ruling in the case will serve to clarify state planning law.

A ruling in this case will clarify the requirements of Goal 18 in limiting or prohibiting development in dunal areas. In addition, there may be issues concerning the relationship between Goal 18 limitations on development and the requirements for clear and objective standards in the needed housing statutes and Goal 10.

(c) Whether the case has important enforcement value.

The case has important enforcement value because the department would be supporting a local government partner in implementing hazard protection requirements on the ocean shore.

(d) Whether the case concerns a significant natural, cultural or economic resource.

The land involved is an important foredune area with significant hazard protection and coastal management implications.

(e) Whether the case advances the objectives of the agency's strategic plan.

The department's strategic plan includes a strategic goal to "Protect farm, forest, coastal and other natural and economic resources." Intervening in this case will support the City of Bandon in applying Statewide Planning Goal 18 (Beaches and Dunes) requirements to protect and conserve coastal and natural resources, and to implement the vision of the citizens as reflected in Bandon's acknowledged comprehensive plan and land use regulations.

(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings or technical assistance.

Because of the nature of the beach and dune environment and the Goal 18 provisions, it is not likely that this case is suitable for mediation or other type of dispute resolution.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the commission approve the director's request to intervene in the appeal of the City of Bandon's denial of residential development in a foredune and hazard area. Under ORS 197.090, the commission must give the applicant and the local government the opportunity to testify concerning whether or not at least one of the factors listed in OAR 660-001-0230(2) is met.

Proposed Motion: I move that the commission authorize the department to continue to participate as an intervenor in the Land Use Board of Appeals proceeding for Rudell v. City of Bandon (LUBA 2010-037) in order to support the city and ensure the proper application and implementation of Statewide Planning Goal 18.

ATTACHMENTS

- A. City of Bandon Findings of Fact in File Number: PZ09-030**
- B. City of Bandon's request for DLCD participation in LUBA 2010-037**
- C. Statewide Planning Goal 18 (Beaches and Dunes)**

CITY OF BANDON

FINDINGS OF FACT AND DECISION OF THE CITY OF BANDON CITY COUNCIL



FILE NUMBER: PZ 09-030

LOCATION: 28-15-25 BD, TL 8400
Northwest properties off of 6th Street, west of Madison Avenue

APPLICANT: Robert Rudell and William Rudell
840 Ocean Drive SW
Bandon, OR 97411

PROPERTY OWNER: Same

REPRESENTATIVE: Dan Terrell
Representing the Law Office of Bill Kloos, PC

Mayor:
Mary Schamehorn

Councilors:
Claassen
Drew
Hundhausen
Procetto
Tiffany
Vick

REQUEST: **Conditional Use and Plan Review. Conditional Use** - To be allowed to construct a single-family dwelling within the Shoreland Overlay Zone. **Plan Review** to be allowed to construct a single-family dwelling with the CD-2 Zone.

STAFF REVIEWER: Michelle Hampton, City Planner

HEARING DATE: April 5, 2010

RECORD CLOSED: April 12, 2010

FINAL VOTE: **Ayes:** **Councilors:** Claassen, Drew, Hundhausen, Procetto, Tiffany, and Vick

APPROVAL OF FINDINGS OF FACT AND DECISION:

April 13, 2010

FINAL VOTE: **Ayes:**

ORDER: **Plan Review:** Denied
Conditional Use: Denied

SIGNED: _____
Mary Schamehorn, Mayor
City Council

April 13, 2010
Date

APPLICABLE STANDARDS AND CRITERIA:

1. CITY OF BANDON COMPREHENSIVE PLAN

A. Section I – Plan Policies

- 1. Coastal Resources
- 2. Ocean Resources

B. Section II – Inventories

- 1. Chapter 10 – Coastal Resources
 The South Jetty and the Bluff
- 2. Chapter 13 – Estuary Management
 Beaches and Dunes, Statewide Planning Goal 18

2. CITY OF BANDON MUNICIPAL CODE

A. Title 17 – Chapter 17.24 – Controlled Development 2 (CD-2) Zone

- | | | | |
|----------------------|---------------------|----------------------|----------------------|
| 1. Section 17.24.010 | Purpose | 6. Section 17.24.060 | Lot size |
| 2. Section 17.24.020 | Permitted Uses | 7. Section 17.24.070 | Yards |
| 3. Section 17.24.030 | Conditional Uses | 8. Section 17.24.080 | Height of Structures |
| 4. Section 17.24.040 | Limitations on Uses | 9. Section 17.24.090 | Lot Coverage |
| 5. Section 17.24.050 | Signs | | |

B. Title 17 – Chapter 17.76 – Shoreland Overlay (SO) Zone

- | | | | |
|----------------------|---|-----------------------|----------------------------------|
| 1. Section 17.76.010 | Purpose | 8. Section 17.76.080 | Information to be provided |
| 2. Section 17.76.020 | Permitted Uses and activities | 9. Section 17.76.090 | Resource capabilities test |
| 3. Section 17.76.030 | Conditional Uses and activities | 10. Section 17.76.100 | Dredge, fill, or other.... |
| 4. Section 17.76.040 | Correspondence with underlying zone | 11. Section 17.76.110 | Impact assessment |
| 5. Section 17.76.050 | Special Provisions | 12. Section 17.76.120 | Coordination with DSL.... |
| 6. Section 17.76.060 | Supplemental provisions for estuarine and shoreland uses/activities | 13. Section 17.76.130 | Shoreland uses/activities matrix |

7. **Section 17.76.070** Notification of public Agencies

C. Title 17 – Chapter 17.92 – Conditional Uses

- | | | | |
|-----------------------------|---|------------------------------|---|
| 1. Section 17.92.010 | Authorization to grant or deny conditional uses | 3. Section 17.92.030 | Existing uses |
| 2. Section 17.92.020 | Authorization to impose conditions | 4. Section 17.92.040 | Approval standards for conditional uses |
| 5. Section 17.92.050 | Conditional use cannot grant | 8 Section 17.92.080 | Minor modification(s) of a conditional use |
| 6. Section 17.92.060 | Application for a conditional use | 9. Section 17.92.090 | Standards governing conditional uses |
| 7 Section 17.92.070 | Major modifications to approved plans | 10. Section 17.92.100 | Time limits on meeting physical improvement requirements and conditions |

3. FINDINGS OF FACT:

1. **Location:** 28-15-25 BD, Tax Lot 8400. The subject property is located on the northwest end of 6th Street, west of Madison Avenue in what is commonly known as the Jetty area.



2. **Zoning and Plan Designation:** The subject property is zoned Controlled Development 2 (CD-2) and is within the Shoreland Overlay Zone (SO). The subject property has received a Letter of Map Amendment (LOMA) from the Federal Emergency Management Agency (FEMA) in May of 2008. The 1991 Comprehensive Plan land use classification for the subject property is Controlled Development Area (CDA).

The purpose for this area is: "This special classification is intended to recognize the scenic and unique quality of Bandon's ocean front and view areas and to maintain the quality of Bandon's ocean front by carefully controlling the nature and scale of future development in the area. It is intended that a mix of uses would be permitted, including residential, tourist commercial, and recreational. Future development is to be controlled in order to enhance the area's unique qualities." Appropriate Areas: "The CDA includes...the jetty area,..."

3. **Site Description:** The subject tax lot is two separate discreet parcels. Parcel 6 is 44.5' on the north property line and 64' on the south property line and approximately 94' in width. Parcel 7 is 40' x 94'. Combined total square footage of the two tax lots are approximately 8,850 square feet. The property is located at the northwest edge of 6th Street SW, west of Madison Avenue.

The property slopes upward from east to west with an elevation as low as 13.16' (per the applicant) or 13.2' (per survey submitted to FEMA) to 18.40' (per the applicant) or 17.5 (per survey submitted to FEMA).

- 4. Sanitary Sewer Services:** The subject property is located outside of the sewer district boundary and is currently not eligible for sanitary sewer services under the current contract obligations through Rural Utility Services (RUS) and the City of Bandon.

The property drainage has been adequately addressed; however drainage for the proposed street improvements has not been adequately addressed by the applicant's engineer.

- 5. Property deemed unbuildable:** Submitted for the record is an affidavit from the Coos County Assessor's Office showing the subject property was determined by the City to be undevelopable in December 2003. The Coos County Assessor reassessed the subject property as unbuildable and corrected property values accordingly.
- 6. Surrounding Zoning and Land Uses.** All properties surrounding the subject property are zoned Controlled Development 2 (CD-2) with the exception of Natural Resource/Open Space to the immediate west (beach). There are two vacant lots to the south of the subject property and two vacation rentals within 100' radius of property.
- 7. Proposal.** The applicant is requesting to be allowed to construct a single-family dwelling on tax lot 8400, which are a permitted use within this zone and a conditional use within the Shoreland Overlay Zone. This request is permitted within the CD zone, which requires Plan Review, but must also meet development requirements for the Shoreland Overlay Zone, Comprehensive Plan which includes the Transportation System Plan, and Statewide Planning Goals 17 and 18.
- 8. Public Notice and Comments.** Public Notices were distributed in accordance with Chapter 17.120 by City Planner Davis and an affidavit stating such has been submitted for the file.
- 9. Pre-Conference Application:** This request was brought to Planning Staff including the City Manager (who is also the Planning Director) on May 4, 2009. At that time the applicant was informed the City Council would need to approve inclusion of the property into the Local Improvement District (LID) and would need to approve the extension of 6th Street SW prior to any decision being made by the Planning Commission and/or staff regarding development on the subject property.
- 10. Development Review Board:** The proposed information was brought to the Development Review Board (DRB) on November 23, 2009. The DRB concluded the location of the water and sewer lines could not be approved as submitted, and drainage had not been adequately addressed for the street surface. The DRB noted that pervious surfaces are not allowed within the City, and a special exception would have to be granted prior to any development within the City right-of-way. The DRB also concluded the application would need to be reviewed again, once approval from City Council and Planning Commission had been obtained. The DRB was not reviewing the application for approval, but to give guidance to staff for report to the Planning Commission.

11. IN GENERAL THE COUNCIL ADOPTS THE FINDINGS OF FACT OF THE PLANNING COMMISSION DATED FEBRUARY 25, 2010 IN TOTAL, BUT EXPANDING ON THIS, THE COUNCIL FURTHER FINDS AS FOLLOWS:

A. Title 17 – Chapter 17.24 – Controlled Development 2 (CD-2) Zone

1) 17.24.010 Purpose.

The purpose of the CD-2 zone is to protect and enhance the unique character, natural resources and habitat characteristics of the Bandon Jetty and its bluff area, to provide for the development of a coastal village atmosphere, and to exclude those uses which would be inconsistent with the area’s character.

THE PLANNING COMMISSION FOUND: The applicant has indicated the structure would not encroach onto the Natural Resource area (foredune). The proposed construction is consistent with surrounding dwellings, except that the structure will have pile foundation. Structures in the Jetty area are mainly slab on grade.

The applicant has indicated the majority of the exterior will be cedar shingles with painted hardiboard paneling and wood framing. This type of material is used throughout the Jetty area. The use of a single-family dwelling is also consistent with the purpose of the CD-2 Zone. The **Planning Commission found** these criteria have been met.

THE CITY COUNCIL FURTHER FINDS: The evidence submitted by the applicant shows the “toe” of the foredune at an elevation of 16’ using NGVD 29. The submitted drawings show the deck of the structure to be located less than 1’ of the 16’ elevation mark and the proposed pier foundation is less than 4’ from the “toe” of the foredune as delineated and presented by the applicant. The **Council found** the proposed plan will not protect the natural resources in the area and therefore this criterion has not been met.

2) 17.24.020 Permitted uses.

In the CD-2 zone, the following uses are permitted outright provided that the use promotes the purpose of the zone and all other requirements of this title are met:

A. Single-family dwellings, or manufactured dwellings as defined in Title 16;

THE PLANNING COMMISSION FOUND: The request is for a single-family dwelling and therefore the **Planning Commission found** this criterion had been met.

THE CITY COUNCIL FURTHER FINDS: The request is a permitted use within the CD-2 Zone, however all other requirements of this title have not been met and therefore the **City Council found** this criteria has not been met.

3) 17.24.030 Conditional uses.

N/A for this request under this section of the code.

4) 17.24.040 Limitations on use.

A. Drive-up uses are prohibited.

B. All new uses or structures or major exterior alterations of existing structures in the CD-2 zone shall comply with the following:

1. **The developer shall be required to gain approval from the planning commission during a plan review in public session regarding the design and siting of the structure(s) and all other requirements of this title. The approval or denial of a proposed land use resulting from this review will occur as a limited land use decision and shall require notice to property owners in the notice area (see Section 17.120.070).**
2. **The use or structure must conform to this chapter.**
3. **The exterior of all structures will utilize natural wood material and be of a rustic appearance in accordance with the purpose of the zone (Section 17.24.010).**
4. **Metal-sided buildings are prohibited.**

THE PLANNING COMMISSION FOUND: As previously stated, this request is a permitted use within the CD-2 Zone, proper noticing has been completed for both the plan review and conditional use application, the exterior of the structure will utilize mainly cedar shingles and wood materials and therefore the **Planning Commission found** the criteria listed above have been met.

THE CITY COUNCIL FURTHER FOUND: The Planning Commission denied the plan review and therefore the **City Council found** Section 17.24.040 (1) has not been met.

C. Plans shall be reviewed to assess the possible presence of any geologic hazard. If any part of the subject lot is in an area designated as a moderate or severe hazard area on the Bandon Bluff Inventory Natural Hazards Map or if any geologic hazard is suspected, the planning commission shall require a report to be supplied by the developer which satisfactorily evaluates the degree of hazard present and recommends appropriate precautions to avoid endangering life and property and minimize erosion. The burden of proof is on the landowner to show that it is safe to build.

1. **The following identifies the reports which may be required:**
 - a. **Soils Report. This report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading, design criteria for corrective measures, and options and recommendations covering the carrying capabilities of the sites to be developed in a manner imposing the minimum variance from the natural conditions. The investigation and report shall be prepared by a professional civil engineer currently registered in the state of Oregon.**
 - b. **Geology Report. This report shall include an adequate description, as defined by the city manager or designate, of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions in the proposed development, and opinions and recommendations as to the carrying capabilities of the sites to be developed. The investigation and report shall be prepared by a professional geologist currently registered in the state of Oregon.**
 - c. **Hydrology Report. This report shall include an adequate description, as defined by the city manager or designate, of the hydrology of the site,**

conclusions and recommendations regarding the effect of hydrologic conditions on the proposed development, and options and recommendations covering the carrying capabilities of the sites to be developed. The investigation and report shall be prepared by a professional civil engineer currently registered in the state of Oregon.

- 2. The planning commission may waive any of these reports if it decides that they are irrelevant to the site.**

THE PLANNING COMMISSION FOUND: The property is not listed on the Bandon Bluff Inventory Natural Hazards Map (created in May 1979), however there are geologic hazards suspected for this property. No waivers were requested or approved.

THE CITY COUNCIL FURTHER FOUND: Geologic hazards are suspected for this property and all reports are required.

INFORMATION PROVIDED AS OUTLINED IN STAFF REPORT:

- a. Soils Report:** Mr. Ralph Dunham, P.E., of Stuntzner Engineering completed the SURFICIAL SOIL CHARACTERISTICS REPORT. While this report does evaluate the soils on the property, it does not address the other requirements imposed by this section.

Mr. Dunham states,¹ “Under lying soils in both soil types have relatively good bearing strengths for foundations at depth, however the top 3 feet or more are loose, evidenced by the shallow test pits and rapid rate of percolation. This promotes either deep foundations (as proposed) or removal and compaction of the near surface soils. Proposed foundation is piling at this time, which the soils are well suited for. Further study will be required however to establish pile design criteria.” He later states in his report², “Building code requirements and the City of Bandon land use planning requirements will effect the actual placement of the home.” and “No specific setbacks were recommended in the Manual, however the decision for siting a dwelling includes setback from existing velocity zones (this case approximately 60 feet), from protective structures (foredune) and building construction (allowance for flow through structures). Due to historic deposit of sand in this area since the construction of the Coquille River Jetty, and the proposed building construction type (elevated pier foundation system), the setback for this structure appears adequate.”³

The proposed foundation depth is 30’ to 40’ below existing grades as submitted in the Geotechnical and Geologic Evaluation submitted by Robin Warren, R.G. Mr. Warren also states, “In addition to subsurface investigations performed to date, we recommend soil borings be completed at the lot prior to construction to further evaluate subsurface conditions and to provide the engineering information necessary to confirm structural and geotechnical design of the house foundations. Information obtained from the borings will verify the appropriate type and installation methods for the foundations and

¹ Page 176, paragraph 1, Discussion

² Page 176, paragraph 2, Discussion

³ Page 177, paragraph 1

provide the foundation contract information regarding installation conditions.”⁴

THE PLANNING COMMISSION FOUND: The applicant has not proven that the soils on the subject property are appropriate or safe for the proposed pile foundation. The submitted report states the dwelling should be set at least 60’ back from the toe of the foredune, which is not being proposed. Mr. Dunham suggests that if the pile foundation cannot be accommodated, then “removal and compaction of the near surface soils” will need to be completed. However, Mr. Dunham does not state how this will affect the property, drainage, construction, etc.

The burden of proof is on the landowner to show that it is safe to build. The submitted report does not include the required information needed to make a determination that it is safe to build and therefore the **Planning Commission found** the applicant has not met this criterion.

THE CITY COUNCIL FURTHER FINDS: The submitted report does not adequately describe what affect pile foundation or compaction of the near surface soils will have on neighboring properties, the foredune, drainage and construction and therefore the **City Council found** the this criteria had not been met.

INFORMATION PROVIDED AS OUTLINED IN STAFF REPORT:

- b.** Geology Report: As noted above, Robin Warren, R.G. completed the Geotechnical and Geologic Evaluation. Staff noted several discrepancies in the “site description” portion of this report, but overall the submitted information met the requirements of the Geology Report. However, opinions and recommendations as the carrying capabilities of the site could not be made for the foundation until the applicant has further evaluated subsurface conditions and can provide the engineering information necessary to confirm structural and geotechnical design of the house foundations.

THE PLANNING COMMISSION FOUND: The burden of proof is on the landowner to show that it is safe to build. The submitted report does not include the required information needed to make a determination that it is safe to build and therefore the **Planning Commission found** the applicant has not met this criterion.

THE CITY COUNCIL FURTHER FINDS: Mr. Robin Warren of Applied Geotechnical Engineering and Geologic Consulting LLC submitted the Geology Report. The report states foundations should be setback at least 15’ east from the toe of the foredune to protect the foredune from damage or disturbance during construction activities. There is a discrepancy between the delineated foredune report submitted and the plans submitted as to where the toe of the foredune is located. The **City Council found** the applicant has not demonstrated the proposed structure would be setback at least 15’ from the toe of the foredune as recommended by the geologist.

Mr. Warren has also applied the FEMA 540 sq. ft. rule as determining the location safe from erosion and for development. The **City Council found** this rule no longer applies to the Pacific Coast and cannot be considered as a barrier of protection.

The **City Council found** the applicant has not met this criterion.

⁴ Page 208, paragraph 2, Foundation Support
Rudell
28-15-25 BD, TL 8400
Conditional Use and Plan Review

INFORMATION PROVIDED AS OUTLINED IN STAFF REPORT:

- c. **Hydrology Report:** Mr. Ralph Dunham, P.E., of Stuntzner Engineering completed the Hydrology Report. Most of the information provided in this report was exactly the same as the information provided in the soils report. As previously mentioned in staff's recommendation, this report does not address the improvements to the City street and additional water run-off from this improvement, which is needed for the property to be developed. Mr. Dunham does state, "The soils are also very well suited for utilizing a dry pit for roof drainage to replenish natural groundwater and/or eliminate requirements for public drainage systems. Note however public roadways, although the ground may be suited for dry pit drainage, require an Underground Injection System permit from the Oregon Dept. of Environmental Quality, which includes as one of the criteria that ground water not be within 10' vertically of the injections site. This is unlikely due to its lower elevation, and therefore the use of pervious surface improvements is recommended over impervious pavements such as asphalt or concrete. The high permeability of the surface soils lends itself to rapid drainage. No drainage issues were noted in this basin according to the 1999 City of Bandon, Storm Drain Master Plan, produced by the Dyer Partnership".

Again, this report suggests the Dyer Partnership (City Engineer) Storm Drain Master Plan states "No major drainage problems were reported, observed, or predicted within this basin." This statement is accurate; however, the next paragraph goes on to state, "Future development within the basin will be limited due to the controlled development zoning designation for the area. However, some residential and commercial development could occur along with further development of the public access to the jetty site. Increased development will require improvements to the storm drain system on a case by case basis."

THE PLANNING COMMISSION FOUND: The burden of proof is on the landowner to show that it is safe to build. The submitted report does not include the required information needed to make a determination that it is safe to build and therefore the **Planning Commission found** the applicant has not met this criterion.

THE CITY COUNCIL FURTHER FOUND: The proposed construction also includes improvement to the City right-of-way.. The Transportation Plan states any request to open a street requires Council approval. The submitted plans shows the proposed street opening to be substandard (16' wide instead of 28') and made of pervious surface (gravel) or be constructed to 16' AC. There are no calculations submitted for full City street standards and therefore the **City Council found** this criterion has not been met.

- D. No structures shall be located on identified foredunes. Breaching of foredunes shall only be allowed on a temporary basis in a dire emergency and shall be followed immediately by replenishment of sand, structural or binding material and vegetation, to the height of the surrounding existing dune. It shall be the responsibility of the developer or the party responsible to rebuild any breach or reestablish any vegetation that is removed, displaced or damaged on any bluff, foredune, or in construction or site preparation. Such reestablishment shall begin as soon as possible after the aforementioned activity is complete. If the**

reestablishment is not started immediately, the city manager or designate shall require a bond in a sufficient amount to cover the costs of such rebuilding or reestablishment of vegetation.

THE PLANNING COMMISSION FOUND: The applicant has submitted a written report delineating the toe of the foredune. This report was completed by Michael “Migs” Scalici for the City of Bandon. The City maintains the entire property is located on a foredune as evidence by the applicants own submission A12; titled RUDELL LOT 8400 BEACH & DUNE PROFILE. This submission shows the dune with an average slope of 4.6 degrees for what appears to be the entire length of the lot.

Mr. Scalici mapped the toe of the foredune as being located on the subject property at an elevation of 15.75’ (approximately) on the north side and 16’ on the southside. This is not consistent with the map submitted within this same report shown as Figure 10 which shows the back edge of the foredune as being 10’ west of the 16’ contour line. The report written by Mr. Scalici also indicates the “toe” of the foredune is at an elevation of 16’; the applicant has consistently stated throughout written testimony the structure would be setback 15’ from the “toe” of the foredune. However, when reviewing the maps submitted by the applicant (A02, A03, A04, and A05 (where the roof line extends past the 16’ elevation)) it appears the deck would actually be located on the 16’ elevation mark, thus no setback is being proposed.

As previously stated in the original staff report, the City maintains the entire property is located on a foredune, and therefore the **Planning Commission found** this criterion has not been met.

THE CITY COUNCIL FURTHER FINDS: The submitted delineated toe of the foredune is located at the 16’ elevation mark. The applicants own submission shows no setback from the 16’ elevation mark as evidenced on the drawings.

The applicant submitted two separate delineations, each with their own idea of where the location of the “toe” of the foredune was located. Mr. Michael “Migs” Scalici stated on the record the delineation was an “educated guess” and “subject to interpretation”.

The Planning Commission has determined the foredune is west of the Local Improvement District. The City Council agrees with this interpretation of the Planning Commission and therefore **the City Council finds** all of the subject property is located on a foredune subject to overtopping and undercutting and therefore approval of this application cannot be granted.

E. Minor modifications to existing structures...
N/A for this request.

F. Recreational vehicles, trailer houses, boats eighteen (18) feet in length or greater, shall not be stored in a required front yard. For the purposes of this section, limitation on the storage of recreational vehicles shall apply only to recreational vehicles six feet six inches in height or greater.

THE PLANNING COMMISSION FOUND: The applicant has not requested to be allowed to store any recreation vehicles, etc. and therefore the **Planning Commission found** this criterion is not applicable to the request.

THE CITY COUNCIL FURTHER FOUND: The City Council agreed with the Planning Commission finding and the **City Council found** this criterion is not applicable to the request.

G. All homes in the CD-2 zone, including but not limited to conventionally constructed homes and manufactured homes, shall utilize at least eight of the following design features:

- | | |
|---|--|
| 1. Garage or carport, constructed of finish materials matching the residence; | 9. Cupolas; |
| 2. Roof with a pitch at or greater than 3/12; | 10. Covered porch or entry area; |
| 3. Hip Roof; | 11. Recessed entry area; |
| 4. Gables; | 12. Pillars or posts; |
| 5. Mullioned windows | 13. Bay windows; |
| 6. Eaves with a minimum projection of six inches; | 14. Window shutters; |
| 5. Tile or architectural grade shingles (not composition shingle); | 15. Clerestory windows; |
| 6. Dormers; | 16. Exterior siding – Horizontal lap siding (cedar shake or shingle) |
| 7. Horizontal lap siding. | 17. Exterior siding – Combination of cedar shake and shingle siding or lap siding with stone |
| 8. Offsets on the building face or roof of at least two feet; | |

THE PLANNING COMMISSION FOUND: The applicant has indicated #'s 5, 6, 8, 10, 11, 12, 13, and 17 will be utilized as design features and therefore the **Planning Commission found** this criterion had been met.

THE CITY COUNCIL FURTHER FOUND: The City Council agreed with the Planning Commission finding and the **City Council found** this criterion had been met.

5) 17.24.050 Signs.

In the CD-2 zone only the following signs are permitted:

- A. One name plate or home occupation sign including signs for vacation rentals...for each dwelling. The sign shall not be directly illuminated;**
- B. One temporary sign, not more than four square feet in area, advertising the sale, lease or rental of the property. The sign shall not be illuminated;**

THE PLANNING COMMISSION FOUND: The applicant had stated no signs were proposed for the property. The **Planning Commission found** these criteria are not applicable to this request.

THE CITY COUNCIL FURTHER FOUND: The City Council agreed with the Planning Commission finding and the **City Council found** this criterion is not applicable to the request.

6) 17.24.060 Lot size.

In the CD-2 zone, except as provided in Section 17.104.050, minimum lot size shall be as follows:

- A. For a single-family dwelling, a lot shall be a minimum of five thousand four hundred (5,400) square feet.**

- B. Lots shall have a minimum of forty (40) feet of street frontage. This frontage shall be physically accessible.**
- C. Lot depth shall be ninety (90) feet.**

THE PLANNING COMMISSION FOUND: The subject property meets A and C of the above criteria. The lot size is approximately 8850 square feet, and the depth is approximately 94’.

As stated in the original staff report, and referenced for incorporation herein, the applicant has not shown approval from the City Council that 6th street can be extended allowing for the required 40’ of street frontage that is physically accessible. The **Planning Commission found** criterion B had not been met.

THE CITY COUNCIL FURTHER FOUND: The submitted information indicates the applicant is requesting a variance to the street standards. A conditional use cannot grant a variance. The City Council must approve any street openings and any street openings to substandard conditions.

The City Council has determined the proposed street would extend into the foredune and the City Council does not have authority to grant development on the foredune, therefore the **City Council found** criterion B had not been met.

7) 17.24.070 Yards.

Except as provided in Section 17.104.060, in the CD-2 zone, yards shall be as follows:

- A. The front yard shall be at least twenty (20) feet.**
- B. Each side yard shall be a minimum of five feet, and the total of both side yards shall be a minimum of thirteen (13) feet, except that for corner lots, a side yard abutting a street shall be at least fifteen (15) feet.**
- C. The rear yard shall be at least ten (10) feet, except that in such a required rear yard, storage structures (less than fifty (50) square feet), and other non-habitable structures may be built within five feet of the rear property line, provided that they are detached from the residence and the side yard setbacks are maintained. Such structures shall not be used as or converted for habitation, shall not be connected to any sewer system and shall not exceed sixteen (16) feet in height.**
- D. Where a side yard of a new commercial structure or bed and breakfast inn abuts a residential use, that yard shall be a minimum of fifteen (15) feet.**

THE PLANNING COMMISSION FOUND: The front line is the property line that separating the lot from the street. In this case the south property line is considered the front, making the north property line the rear. The side lines are the east and west property lines. The applicant has submitted a plot plan showing the foundation line (A02), a main floor plan showing the setbacks for decks, porches and bay window (A04), and a plan showing the roofline (A05). While A02 and A04 shows the setbacks, A05 does not. After reviewing these three plans, it appears the roofline extends beyond the decks and baywindow and therefore is extended within the required setbacks. Eaves are allowed to encroach the setbacks 18”.

Criterion A has not been met as the roofline (as measured by the scale submitted) encroaches

into the required front setback by 2'. The roofline for the east and west property lines appears to meet Criterion B. The roofline from the north property line encroaches into setback by 2' and therefore criterion C has not been met. Criteria D is not applicable.

THE PLANNING COMMISSION FOUND: The **Planning Commission found** Criterion A and C has not been met.

THE CITY COUNCIL FURTHER FOUND: The City Council determined the plans submitted at the January 28, 2010 Public Hearing was not to scale and could not be considered. The original plans submitted for review with the application were to scale and showed the roofline encroached into the required front and rear setback by 2'. The **City Council** agreed with the Planning Commission and **found** Criteria A and C had not been met, Criterion B had been met and Criterion D was not applicable.

8) 17.24.080 Height of structures.

In the CD-2 zone, no building shall exceed a height of twenty-eighty (28) feet, except that additional height above twenty-eighty (28) feet but not exceeding thirty-five (35) feet shall be considered a conditional use....

THE PLANNING COMMISSION FOUND: The applicant has stated the maximum height of the structure will be 26' from grade (A06). However, the applicant notes this is a "minimum" grade. The City requires the applicant to show the highest point of the structure from the lowest point of **native** grade. Without knowing what native grade is, the **Planning Commission found** this criterion had not been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had not been met.

9) 17.24.090 Lot coverage.

In the CD-2 zone, buildings shall not occupy more than fifty (50) percent of the lot area.

THE PLANNING COMMISSION FOUND: The total square footage of the lot is approximately 8,850; the total square footage occupied by **buildings** is a total of 2,490 square feet. The **Planning Commission found** the total lot area occupied by buildings is less than fifty (50) percent and therefore this criterion has been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

B. Chapter 17.76 - SHORELAND OVERLAY (SO) ZONE

1) 17.76.010 Purpose.

The purpose of the shoreland overlay zone is to implement the provisions of the shoreland management units adopted in the city's comprehensive plan. The uses for each shoreland management unit are shown in Table 17.76.130, Shoreland Uses/Activities Matrix. These management units are shown on the city's zoning map.

The requirements of this overlay zone are applied in addition to the requirements of the underlying zone. In cases where the requirements of this zone overlap or conflict with the requirements of the underlying zone, the more restrictive shall apply.

THE PLANNING COMMISSION FOUND: This request is a permitted use within the CD-2 Zone, but requires a Conditional Use Permit within the Shoreland Overlay (SO) Zone (management unit 2).

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

2) 17.76.020 Permitted uses and activities.

Permitted uses and activities are designated for each management unit in Table 17.76.130, Shoreland Uses/Activities Matrix. To resolve possible conflicts, the following rules shall apply:

- A. Uses permitted in the shoreland overlay zone but conditional uses in the underlying zone shall be conditional uses.**
- B. Uses permitted in the shoreland overlay zone but not permitted in the underlying zone shall not be permitted.**
- C. Activities not listed in the underlying zone shall be permitted or not permitted according to this overlay zone.**

3) 17.76.030 Conditional uses and activities.

The conditional uses listed in Table 17.76.130, Shoreland Uses/Activities Matrix, may be allowed when in accordance with Chapter 17.92, applicable conditions of approval listed as footnotes on the table, and applicable policies of the comprehensive plan. Plan estuary Policies "A" through "U" are included herein by reference and made a part of this title.

4) 17.76.040 Correspondence with underlying zone.

Specific uses listed in the underlying zone but not listed in this overlay zone shall be considered under the general category of use which corresponds to the specific use.

THE PLANNING COMMISSION FOUND: The subject property is located within a Controlled Development (CD) Zone and within the Shoreland Overlay Uses/Activities Matrix under Management Unit #2. No estuary policies pertain to this property. The **Planning Commission found** the request is permitted through the conditional use process and therefore the Planning Commission may act on this request and the criteria in the above three separate sections of this code have been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

5) 17.76.050 Special provisions.

All uses and activities, whether permitted or conditional, must conform to the standards listed below and the shoreland uses/activities matrix, appearing as Table 17.76.130 in this chapter. These standards are applicable to wetlands shown on the

National Wetlands Inventory Map and other inventory maps of the city.

THE PLANNING COMMISSION FOUND: This criterion and the listed uses and activities do not pertain to this request.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

6) 17.76.060 Supplemental provisions for estuarine and shoreland uses/activities–pre-application conference.

A. The following provisions shall be applied as applicable to implement Chapter 17.64:

The applicant may request a pre-application conference which will be held within ten (10) days of the request.

- A. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of this title and the comprehensive plan, provide for an exchange of information regarding applicable elements of the comprehensive plan and city ordinances, determine what technical and design assistance will be needed to aid the applicant, identify previously approved development proposals of a similar nature into conformance with necessary state and/or federal permit requirements, indicate what information will be required to review the application, and otherwise identify policies and requirements of this title that create opportunities or pose constraints for the proposed development.**

THE PLANNING COMMISSION FOUND: A pre-application conference was held on May 4, 2009. The applicant was notified of the procedural requirements of the Bandon Municipal Code and the comprehensive plan. Staff had notified the applicant the street opening and extension of the sewer district boundary would need to be approved by the City Council and advised that this approval should be received prior to submittal of the application. During the pre-application conference, the applicant was notified of the foredune restrictions and informed this would pose constraints for any proposed development.

THE CITY COUNCIL FURTHER FOUND: The applicant was made aware of the procedural requirements of the Bandon Municipal Code and the comprehensive plan. The **City Council found** the applicant was given the information and opportunity to request street opening and sewer line extension prior to requesting approval for the conditional use and plan review, was informed of the foredune restrictions and constraints this proposal may have and therefore this criterion had been met.

7) 17.76.070 Notification of public agencies.

For conditional uses within the shoreland overlay zone, the following agencies shall be notified by mail according to the notice provisions as stated in Section 17.120.090:

A. State agencies:

- 1. Division of State Lands,**
- 2. Department of Fish and Wildlife,**
- 3. Department of Environmental Quality;**

- B. Federal agencies:**
 - 1. Army Corps of Engineers,
 - 2. National Marine Fisheries Service,
 - 3. U.S. Fish and Wildlife Service;
- C. Other notification (where applicable):**
 - 1. State Water Resource Department (uses including appropriation for water only),
 - 2. State Department of Geology and Mineral Industries (mining and mineral extraction only),
 - 3. State Department of Energy (generating and other energy facilities only),
 - 4. Department of Economic Development (docks, industrial and port facilities and marinas, only).

THE PLANNING COMMISSION FOUND: The Planning Commission found the appropriate agencies have been noticed as stated in Section 17.120.090 and therefore this criterion has been met.

THE CITY COUNCIL FURTHER FOUND: The City Council agreed with the Planning Commission and found this criterion had been met.

- 8) **17.76.080 Information to be provided.**
In addition to the information listed in Chapter 17.92 and in the underlying zone and in other parts of this title, the following information may be required, as applicable:
- A. Identification of resources existing at the site;**
 - B. Description of the types of alteration to occur, if any, including information detailing the extent of the alteration, such as:**
 - 1. Area measurement,
 - 2. Site coverage,
 - 3. Depth to which alterations will extend,
 - 4. Volume of material removed or placed as fill;
 - C. Effects of the proposed use on physical characteristics of the estuary and the proposed site, such as:**
 - 1. Flushing,
 - 2. Patterns of circulation and other hydraulic factors,
 - 3. Erosion and accretion patterns,
 - 4. Salinity, temperature and dissolved oxygen,
 - 5. Biological and chemical oxygen demand,
 - 6. Turbidity and salinity characteristics of the water;
 - D. Effects of the proposed use on biological characteristics of the estuary and shorelands such as:**
 - 1. Benthic habitats and communities,
 - 2. Anadromous fish migration routes,
 - 3. Fish and shellfish spawning and rearing areas,
 - 4. Primary productivity, resting, feeding and nesting areas for migratory and resident shorebirds, wading birds and other waterfowl,
 - 5. Riparian vegetation,
 - 6. Wildlife habitat;
 - E. Effects of the proposed use on other established uses in the area;**

- F. **Impacts of the proposed use on navigation and public access to shoreland or estuarine areas;**
- G. **Assurance that structures have been properly engineered;**
- H. **Alternative project designs and/or locations which have been considered in order to minimize preventable adverse impacts;**
- I. **Steps which have been taken to minimize or avoid adverse impacts;**
- J. **If application has been made to the Corps of Engineers or Oregon Division of State Lands for permit approval, applications for local approval shall include the federal/state permit application and information submitted with that request;**
- L. **A set of findings which demonstrate compliance with the applicable policies, standards, the criteria required by the comprehensive plan and this title;**
- M. **Maps, photographs, or other descriptive materials showing how the siting, design, operation and maintenance chosen by the applicant meets the policies, standards and criteria of the comprehensive plan and this title.**

THE PLANNING COMMISSION FOUND: The criteria for this section is the above information **may be** required. The applicant has submitted information and maintains the information submitted satisfies the above criteria. The applicant was notified that the above criteria would need to be submitted in order for the City to deem the application complete.

Criteria A.

The Planning Commission maintains some of the information submitted does not accurately address the above criteria. The applicant has indicated a natural resource (foredune) is located on the western edge of the subject property. The City maintains all of the subject property is located on a foredune.

Criteria B.

The applicant has submitted structural calculations for the proposed plans. However, no foundation plans were submitted showing the calculations in relation to the actual structure. The engineer, Mr. Ralph Dunham of Stuntzner Engineering, verbally assured the Planning Commission that the submitted calculations are in relation to the floor plans and have been properly engineered. Mr. Dunham stated some alterations may be needed when actual drawings are submitted.

The applicant has submitted some of the required information and/or testimony to satisfy the above criteria, however staff contends not all of the submitted information is acceptable or complete and therefore the **Planning Commission found** criteria A and G have not been met.

THE CITY COUNCIL FURTHER FOUND:

Criteria A.

There was a discrepancy between the submitted delineation of the resources on site (foredune) and the proposed drawings showing the siting of the structure.

The City maintains all of the subject property is located on a foredune, subject to overtopping and undercutting

Criteria B.

The submitted proposal shows area measurement and site coverage. The proposal does not show the volume of materials to be removed or placed as fill. The proposal does not adequately describe the depth to which alterations will extend, including how the pile foundation will be placed and how the placement will alter the foredune and surrounding areas.

The **City Council found** the applicant had submitted some of the required information and/or testimony to satisfy the above criteria, however contends not all of the submitted information is acceptable or complete and therefore criteria A and G had not been met.

- 9) **17.76.090 Resource capabilities test.**
- 10) **17.76.100 Dredge, fill, or other significant reductions or degradations.**
- 11) **17.76.110 Impact assessment.**
- 12) **17.76.120 Coordination with Division of State Lands (DSL) state/federal waterway permit reviews.**

THE PLANNING COMMISSION FOUND: Sections 17.76.090 through Sections 17.76.120 is not applicable to this application.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion was not applicable to the application.

- 13) **17.76.130 Shoreland uses/activities matrix.**
Shoreland uses/activities in the SO zone are shown in the following table:

Table 17.76.130: SHORELAND USES/ACTIVITIES MATRIX

Shorelands Mgmt Unit No.	1	2	3A	3E	4	5	6	7	8	9	10	11	12
Plan Designation	PF	CD	MC	ESWD	PF	UR	OTC	OS	CD	PF	NR	NR	CD
Uses:													
Residential	NP	CU	P	NP	NP	P	P	NP	P	NP	NP	NP	CU6

P: Permitted CU: Conditional Use

THE PLANNING COMMISSION FOUND: The subject property is located within Shorelands Management Unit No 2; Plan Designation is Controlled Development (CD); the requested use is Residential (which requires a Conditional Use Permit). Under this matrix, no fill is allowed in this area. The Planning Commission has determined that some fill, through the grading and fill permit process, may be allowed for construction and landscaping in this area. **The Planning Commission found** the applicant has submitted a conditional use permit for this request and therefore this criterion has been met.

THE CITY COUNCIL FURTHER FINDS: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

D. Title 17 - Chapter 17.92. – Conditional Uses.

1) 17.92.010 Authorization to grant or deny conditional uses.

Conditional uses are those which may be appropriate, desirable, convenient or necessary in the zoning district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Applications for uses designated in this title as conditional uses may be granted, granted with modifications or denied by the planning commission in accordance with the standards and procedures set forth in this chapter.

THE PLANNING COMMISSION FOUND: The request is permitted within the CD-2 Zone, however, the Shoreland Overlay Zone requires the applicant receive a conditional use to site a residential structure in this area. The Planning Commission has the authority to act on this application and may grant, grant with modifications or deny the application in accordance with the standards and procedures set forth in this chapter.

THE CITY COUNCIL FURTHER FOUND: The Planning Commission denied the application in accordance with the standards and procedures set forth in this chapter. The **City Council** upheld the Planning Commission's decision in accordance with the standards and procedures set forth in this chapter.

2) 17.92.020 Authorization to impose conditions.

In approving an application for a conditional use or the modification of an existing and functioning conditional use, the city may impose, in addition to those standards and requirements expressly specified by this title, any additional conditions which the city considers necessary to assure that the use is compatible with other uses in the vicinity and to protect the city as a whole. These conditions may include but are not limited to:

- A. Changing the required lot size or yard dimensions;**
- B. Limiting the height of the building(s);**
- C. Controlling the location and number of vehicle access points;**
- D. Requiring additional right-of-way areas or changing the street width;**
- E. Requiring public improvements, including, but not limited to streets, sidewalks, sewer and water line extensions, and bike paths;**
- F. Changing the number of off-street parking and loading spaces required;**
- G. Limiting the number, size and location of signs;**
- H. Requiring diking, fencing, screening or landscaping to protect adjacent or nearby property;**
- I. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;**
- J. Limiting the hours, days, place and manner of operations;**
- K. Limiting or setting standards for the location and intensity of outdoor lighting;**
- L. Setting requirements on the number, size, location, height and lighting of signs;**
- M. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas.**

THE PLANNING COMMISSION FOUND: Criteria A-D, F-G, J, and L: The

Planning Commission may place conditions on this application including, but not limited to, the all of the above. However, the **Planning Commission found** the applicant had met the criteria for A-D, F-G, J, and L of the above requirements (or they are not applicable to this request).

Criteria E, H, I, K and M:

The **Planning Commission** found the application had not met all criteria for approval. The applicant has not stated the exact type of foundation that will be used and therefore cannot make a determination if vibration due to pile driving will create an adverse effect on the foredune or surrounding properties.

THE CITY COUNCIL FURTHER FOUND: The **City Council found** the above criteria would be applicable if the application had been approved, however the application was denied and therefore the above criteria are not applicable.

3) **17.92.030 Existing uses.**
N/A to this application.

4) **17.92.040 Approval standards for conditional uses.**
The approval of all conditional uses shall be consistent with:

- A. The comprehensive plan;**
- B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;**
- C. That the site size and dimensions provide adequate area for the needs of the proposed use;**
- D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;**
- E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;**
- F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;**
- G. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district;**
- H. All other requirements of this title that apply.**

THE PLANNING COMMISSION FOUND:

Criteria A: Criteria within the Comprehensive Plan:

The Planning Commission maintains the information provided within the recommendation written earlier in the staff report applies to this criterion, referenced for incorporation herein. The Planning Commission also references and includes the letter from the DLCDC as it pertains to this criterion. The following are excerpts from the recommendation.

- 1) **Foredune:** The City has determined that all of the subject property is located on a foredune and that the Comprehensive Plan, Zoning Code and Statewide Goal 18 prohibit development on foredunes.

THE CITY COUNCIL FURTHER FOUND:

1) **Foredune:** The proposed structure would be located on the foredune and the comprehensive plan specifically prohibits this activity.

2) **Beach and Dune Erosion:**

The Comprehensive Plan states, “It is the policy of the City of bandon to regulate land use actions in beach and dune areas in order to minimize erosion and protect coastal resources. In areas identified as “younger stabilized dunes”, “open sand”, the City shall require a site review prior to development. The review shall, at a minimum address hazards to life and public/private property, and recommend appropriate precautions that would avoid endangering life or property and minimize erosion of beaches, cliffs, and dune forms.” The Plan further states, “The City shall prohibit breaching of the foredune except to replenish sand supply in interdune areas, or on a temporary basis in an emergency, and only if breaching and following restoration is consistent with sound principals of conservation. No structures shall be developed on the foredune.

THE CITY COUNCIL FURTHER FOUND: There is not adequate evidence that the construction of the foundation and pilings will not result in damage to the dune, and surrounding properties and structures. There is not adequate evidence that the proposed site is a younger stabilized dune. There is credible, reliable evidence that the property is a foredune subject to overtopping and undercutting and no structures shall be developed on this property.

3) **Coastal Shorelands, Statewide Planning Goal 17 and Beaches and Dunes, Statewide Planning Goal 18:**

The Comprehensive Plan states “The City shall strive to conserve; protect, and where appropriate, develop and restore the resources and benefits of dune areas within the coastal shorelands of the Coquille Estuary. 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 Plan and related implementing actions shall provide for diverse and appropriate use of dune areas consistent with the ecological, recreational, aesthetic, water resource and economic values, and consistent with the natural limitations of dunes and their vegetation for development or use. Where dunes provide protection to inland areas from ocean or river flooding, they shall be protected.

The applicant has submitted written verification of the LOMA received from FEMA. While a LOMA has been received, it does not mean the property is not subject to other flood hazards.

The Shoreland Solutions report indicated that the FEMA maps are not accurate for specific sites in this area. In addition, FEMA methodology used in this area related to ocean erosion has been deemed by FEMA as not appropriate in the Pacific Northwest and has been dropped. FEMA is in the process of remapping this area. For purposes of determining coastal hazard risks the City can and should rely on best available information. Based on that information the city has determined that the LOMA received by the applicant is not adequate to determine this area is available for development based on the City’s Goal 18 program. The City contends that while the property has received a LOMA through the

FEMA process, this property is still located within a coastal high hazard area and must comply with the City Comprehensive Plan, Statewide Goal 18, and any other regulations of the Bandon Municipal Code as it relates to development on this property and surrounding area.

THE CITY COUNCIL FURTHER FOUND: The foredune provide protection to inland areas from ocean flooding and should be protected. There is not adequate evidence the proposed construction will protect the foredune.

4) Transportation:

Staff contends Council approval for any street opening within this basin is necessary prior to the approval of any development. Staff also contends the subject property and the street right-of-way is located on a foredune and approval for opening and extending the street is not allowed in accordance with the Bandon Municipal Code and the Comprehensive Plan and therefore the City Council cannot grant the request.

Staff also asserts emergency evacuation for the Jetty area is critical. The applicant states that this proposal is infill development, however, this property has been deemed undevelopable (and reassessed as such), is outside of the LID (sewer district boundary), located on a foredune, and located within a coastal hazard area. Staff has reviewed the sewer district boundary and found there are still 16 (+) lots available for infill within the district boundary and roughly 41 dwellings already constructed. The Jetty area is located within the tsunami inundation zone and has only one access road for emergency evacuations and emergency vehicles. Madison Avenue will be paved to allow for pedestrian emergency evacuations only.

The Transportation System Plan (TSP), Section 7.000. Conditional Uses: Authorization to Grant or Deny Conditional Uses states: “Summary: This section recognizes that certain conditional uses may be appropriate in the various zoning districts, but may have characteristics which would not be compatible with other uses in a zone, either due to the nature of a conditional use or its location in relation to other uses or public facilities. Transportation issues specifically listed which could result in denial of a conditional use or imposition of conditions include, ‘the creation of traffic hazards or parking problems or other adverse conditions which may be injurious to the public safety, welfare, comfort, and convenience.’”

The **Planning Commission found** Criterion A had not been met.

THE CITY COUNCIL FURTHER FOUND: The subject property has been deemed unbuildable by the Comprehensive Plan.

The **City Council** agreed with the Planning Commission and **found** this criterion had not been met.

Criteria B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;

THE PLANNING COMMISSION FOUND: The **Planning Commission found** Criterion

B had been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

- C. That the site size and dimensions provide adequate area for the needs of the proposed use;**
- D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;**
- E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;**

The Planning Commission contends this property is located on a foredune, has been deemed undevelopable, is subject to ocean flooding and is within a significant coastal hazard risk area. The subject property does not have the size or dimensions to provide for the proposed single family dwelling. The Planning Commission found Criteria C, D, and E had not been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** Criteria C, D, and E had not been met.

- F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;**

The City sewer system has adequate capacity, as submitted by the applicant's engineer and confirmed by the City's engineer, to serve the proposed dwelling. The applicant is relying on a LOMA received from FEMA and methodology that FEMA has determined to be inaccurate for the Pacific Northwest, to prove that it is safe to develop on the subject property and therefore the City should allow for the extension of sanitary sewer and the opening and extension of 6th Street for access to the property.

The Planning Commission contends the subject property, including the City right-of-way is located on a foredune, is subject to ocean flooding and is within a significant coastal hazard risk area. Further, this property has been deemed undevelopable and assessed as such.

The Comprehensive Plan and Bandon Municipal Code prohibit development on a foredune. The City can and should utilize best available information in determining if district boundaries are protected from areas of coastal erosion and ocean flooding. The City believes, based on best available information that this area is subject to coastal hazard and ocean flooding and should not be included within the sewer district boundary. The Planning Commission incorporates the findings within the attached DLCDC letter by reference in support of Staff's recommendation.

Approval from the City Council to extend public facilities to the subject property has not been submitted or approved and therefore, the **Planning Commission found** the applicant has not proven that the required public facilities are available or can be made available to the subject property and therefore this criterion has not been met.

THE CITY COUNCIL FURTHER FOUND: The subject property is located on a foredune that is subject to overtopping and undercutting and approval to extend the City street is prohibited within the comprehensive plan and the Bandon Municipal Code.

G. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district;

THE PLANNING COMMISSION FOUND: The **Planning Commission** found this request will not substantially limit or preclude the use of surrounding properties for residential purposes and therefore this criterion had been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had been met.

H. All other requirements of this title that apply.

THE PLANNING COMMISSION FOUND: The Planning Commission noted throughout the application areas where requirements have not been met. The **Planning Commission** found this criterion had not been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion had not been met.

5) 17.92.050 Conditional use cannot grant variances.

A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title. A variance application may be filed in conjunction with the conditional use permit by filing an application with the city using forms prescribed for that purpose.

THE PLANNING COMMISSION FOUND: The applicant is not requesting a variance that can be approved by the Planning Commission, and therefore no variance will be granted by this request. The **Planning Commission** found this criterion had been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** these criteria had been met.

6) 17.92.060 Application for a conditional use.

additional items are necessary to understand and make a decision on the application. **The applicant for a conditional use proposal shall be the recorded owner of the property or an agent authorized in writing by the owner. They may initiate a request for a conditional use permit or the modification of an existing, functioning conditional use permit by filing an application with the city using forms prescribed for that purpose.**

In addition, the following shall be supplied by the applicant:

- A. Twelve (12) copies of the site development plan(s) drawn to scale and necessary data or narrative which explains how the development conforms to the standards;**
- B. The required fee;**

- C. The conditional use plan, data and narrative shall include the following:**
- 1. Existing site conditions,**
 - 2. A site plan for all proposed improvements,**
 - 3. A grading plan,**
 - 4. A landscape plan,**
 - 5. Architectural elevations of all structures,**
 - 6. A sign plan,**
 - 7. A copy of all existing and proposed restrictions or covenants;**
- D. In the case where any or all of the above are unnecessary, as in the case of a change of use in an existing structure, the planning director shall determine which items in subsection (C)(1) through (7) of this section will not be required for application. The planning commission may request additional items if they determine that these**

THE PLANNING COMMISSION FOUND: Criteria A – D: The applicant has submitted a deed of record showing ownership, the required copies of the original site development plan and the required fee. The applicant has submitted a narrative to the conditional use application. Items 1-7 in Section C have been submitted with this application with the exception of a sign plan. The applicant has indicated a sign will not be requested or placed on the subject property. Any landscaping that will require approval of a grade and fill permit must be reviewed and approved by the City and therefore the **Planning Commission found** these criteria have been met.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** these criteria had been met.

- 7) 17.92.070 Major modifications to approved plans**
8) 17.92.080 Minor modification(s) of a conditional use permit

THE PLANNING COMMISSION FOUND: Section 17.92.070 and 17.92.080 are not applicable to this application.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** these criteria are not applicable to this application.

- 9) 17.92.090 Standards governing conditional uses.**
A conditional use shall comply with the standards and purpose of the zone in which it is located except as these standards may have been modified in authorizing the conditional use or as otherwise provided as follows:

THE PLANNING COMMISSION FOUND: Section 17.92.090 is not applicable to this application.

THE CITY COUNCIL FURTHER FOUND: The **City Council** agreed with the Planning Commission and **found** this criterion is not applicable to this application.

- 10) 17.92.100 Time limitation**
A. A conditional use permit shall become void one (1) year after approval, or after

such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permit activity is being regularly conducted on the premises.

- B. The Planning Commission may extend a use permit for an additional period of one (1) year, subject to the requirements of this title.
- C. A conditional use permit shall become void if the use is discontinued for a period of one year.

11) **17.92.110 Violation of conditions**

The Planning Commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Sections 17.120.080 through 17.120.160. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.

THE PLANNING COMMISSION FOUND: The Planning Commission found the conditional use had not been granted and therefore these criteria are not applicable.

THE CITY COUNCIL FURTHER FOUND: The City Council agreed with the Planning Commission and found these criteria are not applicable.

FOR ALL OF THE ABOVE REASONS THE CITY COUNCIL UPHELD THE PLANNING COMMISSION'S DECISION TO DENY THE APPLICATION FOR PLAN REVIEW AND A CONDITIONAL USE TO CONSTRUCT A SINGLE FAMILY DWELLING WITHIN THE CD-2 ZONE AND THE SHORELAND OVERLAY ZONE INCLUDING, BUT NOT LIMITED TO:

Foredune: The applicant has not submitted accurate information. Due to the numerous discrepancies within the text of the submitted report, the elevations noted in the report and on the site plans, and the surveys submitted a determination of the exact foredune could not be made.

The Comprehensive Plan prohibits development on a foredune subject to overtopping and undercutting and the City has relied on credible, reliable evidence to determine the subject foredune is subject to wave overtopping and undercutting.

Site Plans: The discrepancies in the original site plans. Some are to scale and some are not to scale. The applicants' submitted additional site plans at the January 28, 2010 Public Hearing and they too were not to scale. Determination that the submitted site plans meet the requirement of the code cannot be accomplished with the submitted plans.

Required reports: The submitted Soils, Geology, and Hydrology report do not adequately provide enough information to make a determination that the proposed construction is safe to build, will not adversely impact the natural resources and surrounding properties, and drainage

has not been adequately addressed.

Unbuildable: The comprehensive plan states the property is unbuildable. The subject property has been deemed unbuildable by the City, an affidavit has been submitted into the record from the Coos County Assessor's office deeming the property unbuildable, and the property has been re-assessed as unbuildable.

Public Facilities: The applicant has not sought or received approval from the City Council to open the street, open the street to substandard levels or receive sanitary sewer. The applicant has not shown that the public facilities are available or can be made available.



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May 11, 2010

Bob Bailey
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Dear Mr. Bailey,

As you may be aware, the City of Bandon received a request to allow for the construction of a single-family dwelling within a Controlled Development Zone (CD2) and within the Shoreland Overlay Zone. Both the Planning Commission and the City Council concluded the property and proposed structure would be located on a foredune subject to overtopping and undercutting, a direct violation of statewide planning goals and the City's comprehensive plan and zoning ordinance. The City of Bandon, for the above and other deficiencies, has denied the two separate applications; one for a Conditional Use and one for a Plan Review.

The applicants have appealed the City's decision to LUBA. It is the City's position the denial of this application was warranted for the protection of the foredune and surrounding properties. DLCD submitted written, detailed analysis of their position of the statewide planning goals and may participate as a party in the case before LUBA.

During the application process of this request, the City was grateful to receive assistance from DLCD staff

The City of Bandon intends to vigorously defend the decision to deny this application. The City is seeking support from the DLCD in helping to defend this decision and would respectfully request the DLCD file to Intervene in this LUBA proceeding.

Please consider this request. Any help from your department would be greatly appreciated. If you have any questions, please feel free to contact me.

Sincerely,

Michelle Hampton
City Planner

Oregon's Statewide Planning Goals & Guidelines

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.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of this goal.

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

USES

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat as identified through application of Goals 5 and 17.

IMPLEMENTATION REQUIREMENTS

1. 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.

2. 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. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that 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.

3. Local governments and state and federal agencies 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.

4. Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater

from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.

5. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "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 to (2) above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

(a) visual impacts are minimized;

(b) necessary access to the beach is maintained;

(c) negative impacts on adjacent property are minimized; and

(d) long-term or recurring costs to the public are avoided.

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

7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if

the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:

- (a) Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;
- (b) Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;
- (c) Identify and set priorities for low and narrow dune areas which need to be built up;
- (d) Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and
- (e) Prohibit removal of sand from the beach-foredune system.

The Commission shall, by January 1, 1987, evaluate plans and actions which implement this requirement and determine whether or not they have interfered with maintaining the integrity of beach and dune areas and minimize flooding and erosion problems. If the Commission determines that these measures have interfered it shall initiate Goal amendment

proceedings to revise or repeal these requirements.

GUIDELINES FOR GOAL 18

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Space, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. INVENTORIES

Local government should begin the beach and dune inventory with a review of Beaches and Dunes of the Oregon Coast, USDA Soil Conservation Service and OCCDC, March 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;
2. Patterns of erosion, accretion, and migration;
3. Storm and ocean flood hazards;

4. Existing and projected use, development and economic activity on the beach and dune landforms; and
5. Areas of significant biological importance.

B. EXAMPLES OF MINIMAL DEVELOPMENT

Examples of development activity which are of minimal value and suitable for development of conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. EVALUATING BEACH AND DUNE PLANS AND ACTIONS

Local government should adopt strict controls for carrying out the Implementation Requirements of this goal. The controls could include:

1. Requirement of a site investigation report financed by the developer;
2. Posting of performance bonds to assure that adverse effects can be corrected; and
3. Requirement of re-establishing vegetation within a specific time.

D. SAND BY-PASS

In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. PUBLIC ACCESS

Where appropriate, local government should require new developments to dedicate easements for public access to public beaches,

dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. DUNE STABILIZATION

Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. OFF-ROAD VEHICLES

Appropriate levels of government should designate specific areas for the recreational use of off-road vehicles (ORVs). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

H. FOREDUNE GRADING PLANS

Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an area-wide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.

Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;
- Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;
- Identifying appropriate sites for public and emergency access to the beach.