

**STAFF REPORT
OF THE PLANNING DEPARTMENT
FOR THE CITY OF BANDON, OREGON**



FILE NUMBER: 23-046, Coastal Public Access

REQUEST: Amend the Comprehensive Plan and Title 17 of the Bandon Municipal Code to address Coastal Public Access.

LEAD CITY STAFF: Dana Nichols, Planning Manager

PUBLIC HEARING DATE: Planning Commission, August 24th, 2023 at 7:00 PM
City Council, October 2nd, 2023 at 7:00 PM

NOTICING INFORMATION: PAPA Notice Submitted to DLCD on June 22nd, 2023
Notice published on the City’s website on August 3rd, 2023

APPLICABLE CRITERIA: BMC (Bandon Municipal Code) Chapter 16.32, Zone Changes and Amendments

Purpose of Staff Report:

Staff reports provide the reviewing body and community members with information regarding current land use requests and the staff’s analysis of the application. The staff report provides preliminary information and recommendations. The reviewing body will consider the staff report as well as public testimony and other materials submitted to the City in writing, when making decisions on the application.

I. Background

The City of Bandon received a planning assistance grant from the Department of Land Conservation and Development (DLCD) in 2021 and has been working with Claire Fiegner, DLCD’s former Coastal Public Access Coordinator since. The project focused on addressing access to Bandon’s coastline, which includes points from both the beach and estuary. The project began with an inventory of all access points, which were mapped to show developed and undeveloped locations. Next, the existing policies and codes were reviewed for consistency with Statewide Land Use Planning Goal 17, Coastal Shorelands and then new goals and policies were crafted to meet current needs. Finally, draft codes were developed to implement the aspirational policies outlined in the Comprehensive Plan.

The implementation requirement of Goal 17 states: *Local governments in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access.*

Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

The following proposal contains proposed amendments to the City's Comprehensive Plan and to Chapter 17.76, Shoreland Overlay Zone, of the Bandon Municipal Code.

II Proposed Ordinance/Comprehensive Plan Language

The City's Comprehensive Plan currently addresses the bare minimum requirement of Goal 17 by stating the following:

PUBLIC ACCESS POLICY T.

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

Staff recommends expanding on this Policy to include the following (also attached here for context within the existing Comprehensive Plan):

Definitions:

For the purpose of this policy, unless otherwise specifically provided, certain words are defined as follows:

ACCESSIBILITY- *access that specifically refers to disability related needs and barrier removal processes that meet and/or exceed ADA regulation within coastal access.*

ACCESSIBILITY FEATURES FOR SIGNAGE- *include but are not limited to translation of message into languages reflective of the community, ADA color, font, and design guidelines, use of symbols, inclusion of braille and tactile (raised) letters, and placement for effective communication. ADA- The Americans with Disabilities Act of 1990 or ADA is a civil rights law that prohibits discrimination based on disability and sets a baseline standard for accessibility.*

COASTAL SHORELINE PUBLIC ACCESS – *the ability of the public to have access along coastal waters of the State to reach, touch, view and enjoy coastal shorelines and waters. Public access sites may include features such as paths, trails, stairs, ramps, boardwalks, boat ramps, piers, docks, fishing platforms, and other water access and viewing amenities. Generally, public access is provided along publicly owned property, road ends, road rights-of-way, and other access easements. Other amenities associated with public access sites include parking, interpretive signage, emergency evacuation signage, restroom facilities, and accessibility features for people with accessibility challenges ranging from mobility, cognitive and sensory needs.*

COASTAL SHORELANDS- Lands contiguous with the ocean, all estuaries, and all coastal lakes.

COASTAL WATERS – defined as ocean, estuary, and lakes located within the coastal zone.

CULTURAL RESOURCE - evidence of past human activity, which may include sites, districts, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture.

DUNE COMPLEX- Various patterns of small dunes with partially stabilized intervening areas. **DUNE, CONDITIONALLY STABLE**- A dune presently in a stable condition, but vulnerable to becoming active due to fragile vegetative cover.

PRIMARY ACCESS SITES- physical or visual access points that are currently developed with access amenities, these sites are open to the public.

SECONDARY ACCESS SITES- sites that are in public ownership but not developed with trails and access amenities, these sites are closed to the public. These Secondary sites can be developed for increased coastal public access needs.

Goals:

1. *Develop a comprehensive public access program to protect, maintain, and provide increased public access to coastal waters including ocean, estuaries, and lakes, for current and future generations.*
2. *Balance the protection of cultural and natural resources with the need for public access and recreational use of coastal waters.*
3. *Encourage equitable coastal shoreland access for all residents and visitors with a focus on marginalized communities including accessibility for those with disabilities.*
4. *Consult with local Tribal Governments for protection of archeological sites and cultural resources during planning, maintenance, and development of coastal shoreland public access sites.*

Policies:

City Role/General Coordination

1. *(Coastal Shorelands) The City in coordination with Oregon Parks and Recreation Department (OPRD) shall develop and implement a program to protect, maintain and provide increased public access to coastal waters. Existing public ownerships, rights-of-way, and similar public easements for coastal shorelands that provide primary or secondary access to or along the estuary, ocean or lake, shall be retained or replaced if sold, exchanged or transferred. Rights-ofway may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.*
2. *(Coastal Shorelands) An inventory of current public access sites to coastal shoreland waters will be maintained and is included in this Comprehensive Plan along with a map (Map 1) showing the location of the listed access sites (Table 1). The inventory shall contain both primary and secondary access sites.*

3. *(Coastal Shorelands, Estuary, Beaches and Dunes) Identify and increase public access sites to coastal shorelands by acquiring land and easements when appropriate. New shoreland access sites must have easements for public access in place if located on private property.*
4. *(Natural Resources, Scenic and Historic Areas, and Open Spaces, Estuarine Resources, Coastal Shorelands, Beaches and Dunes) Public access programs should consider and balance negative impacts of public access on cultural and natural resources along coastal shorelands. The City shall coordinate with appropriate state or federal agencies and tribal governments including but not limited to USFWS, ODFW, and Coquille Indian Tribe, to ensure that any negative impacts from public access to cultural and natural resources along coastal shorelands are mitigated and/or avoided.*
5. *(Beaches and Dunes) Identify and maintain select public access points as emergency vehicle access and coordinate with local emergency service providers on where these entry points are located.*
6. *(Transportation) Improvements to the City's Transportation System Plan shall include a section that addresses equitable coastal shoreline access and accessibility through any public transit services offered to and from coastal shoreline access points.*
7. *Adopt implementing ordinances to protect, maintain, and enhance public access to coastal waters.*

Recreation Standards

8. *(Recreation) Development or improvement of access sites should include appropriate, adequate, and inclusive signage. Signage should be provided in languages reflective of the community and include a spectrum of accessibility features to accommodate multiple abilities and identities. Accessibility features for signage include, but are not limited to ADA color, font, and design guidelines, use of symbols, inclusion of braille and tactile (raised) letters, and placement for effective communication.*
9. *(Recreation) The City will collaborate with local tribes when developing a public access plan. The City will also consult the tribe when considering new access sites or making improvements to existing sites, and ensure that sites highlight traditional tribal knowledge, which may include archaeological and ecological expertise of the area in interpretive materials.*
10. *(Recreation) The development or improvement of public access sites shall be designed to include accessible and equitable access features with the intent to meet or exceed ADA standards. Accessible and equitable access features that strive to reduce barriers of people accessing Oregon's coastal shorelands may include features such as ADA accessible parking, restrooms, signage, pathways or docks, as well as offering seasonal mobility mats, beach wheelchairs, accessible boat ramps and fishing piers, and transportation to access sites.*
11. *(Recreation) Adequate parking, restroom and accessibility infrastructure will be provided and maintained at coastal shoreland access sites. These amenities shall be provided to the public at no or a nominal cost.*

Development Standards

12. *(Beaches and Dunes) Criteria for review of all shoreline stabilization measures shall require that necessary access to the beach is maintained. Unless public access is deemed unsafe, or public*

access would damage cultural or natural resources, shoreline stabilization permits will require, in addition to other requirements, that the proposed project will not restrict any primary or secondary public access sites. Shoreline stabilization projects that abut street ends and other public rights-of-way shall incorporate steps or paths or other improvements that protect or improve public access.

13. *(Beaches and Dunes) Unless public access is deemed unsafe, or public access would damage cultural or natural resources, new public or commercial developments shall be encouraged to provide public access to coastal shorelands.*
14. *(Beaches and Dunes) Access to or through dunes areas, particularly conditionally stable dunes and dune complexes, shall be controlled and designed to maintain the integrity, vegetation, and uniformity of the dunes. Dunes provide scenic value and protect development from hazards such as coastal erosion, flooding, and wildfire.*
15. *(Estuary, Coastal Shorelands) In the design of fill projects, port and marina facilities, excavation projects, or development of waterfront areas, new public access to the estuary shall be mandatory to the extent compatible with the proposed use.*
16. *(Estuary) Community and public docks or moorages are encouraged. The City shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.*
17. *(Transportation) The City shall consider accessibility elements when developing and amenitizing emergency evacuation (tsunami) routes.*
18. *(Natural Resources, Scenic and Historic Areas, and Open Spaces) Protect archaeological and historic resources at or near coastal shoreland public access sites, consistent with the standards of the State Historic Preservation Office (SHPO), affected tribal governments, and federal laws. Coordinate and consult with appropriate tribal governments on these issues.*

Proposed Actions:

The City shall:

1. *Develop a comprehensive public access program.*
2. *Maintain and update public access inventory map and data (on a minimum of a decadal basis in partnership with DLCD's shoreline public access inventory)*
3. *Review and strengthen implementing ordinances to protect public access sites and align with updated public access policies.*
4. *Require that all development be consistent with the priorities and policies of the Comprehensive Plan and implementing ordinances.*
5. *Update all forms, information sheets (for the public), and processes associated with the updated public access policies.*

This section of the Comprehensive Plan will also include a reference map of all public access sites and a table, briefly describing those sites (attached).

Title 17 of the Bandon Municipal Code includes the Shoreland Overlay Zone (Chapter 17.76) which is where staff proposes making amendments to implement the Comp Plan policies.

*Proposed language is *italicized*.

Chapter 17.76

SHORELAND OVERLAY (SO) ZONE

Sections:

17.76.010 Purpose.

17.76.020 Permitted uses and activities.

17.76.030 Conditional uses and activities.

17.76.040 Correspondence with underlying zone.

17.76.050 Special provisions.

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

17.76.070 Notification of public agencies.

17.76.080 Information to be provided.

17.76.090 Resource capabilities test.

17.76.100 Dredge, fill, or other significant reductions or degradations.

17.76.110 Impact assessment.

17.76.120 Coordination with Division of State Lands (DSL) state/federal waterway permit reviews.

17.76.130 Shoreland uses/activities matrix.

17.76.140 *Public Access*

17.76.140 *Public Access.*

Public Access points, as identified in the Comprehensive Plan, "City of Bandon Shore Access Sites", shall be developed, maintained or improved as required by Public Access Policy T. As applicable, the following provisions may apply to both permitted and conditional uses in the zone:

- 1. Existing public access to coastal shorelands shall be retained or replaced if sold, exchanged, or transferred. Rights-of-way may be vacated to permit redevelopment provided public access across the affected site is maintained.*
- 2. New access sites must have easements or access agreements in place prior to city approval.*
- 3. The development or improvement of public access sites shall be designed to include accessible and equitable access features with the intent to meet and exceed ADA standards.*
- 4. Shore and beachfront protective structures shall ensure that public beach access is maintained and not impeded by development.*
- 5. Unless public access is deemed unsafe, or public access would damage cultural or environmental resources, structural shoreland stabilization permits must not restrict any existing public access sites, as identified in the Comprehensive Plan.*

6. *Structural shoreline stabilization projects that abut street ends and other public rights-of-way shall incorporate improvements that protect or improve public access.*
7. *New public or commercial development shall dedicate easements for public access, as required by Public Access Policy T.*
8. *Prior to the dedication or development of new public access points, the City will coordinate with the following public agencies to determine if there are any impacts to cultural and environmental resources along coastal shorelands:*
 - *Coquille Indian Tribe*
 - *USFW*
 - *ODF*
9. *In the design of fill projects, new port marina facilities, excavation projects, or development of waterfront areas, new public access to the estuary shall be mandatory to the extent compatible with the proposed use.*
10. *Individual docks or piers shall be allowed by a Type II process, after finding that the proposed request meets the standards listed in Public Access Policy T.*

III. Procedural – Required Burden of Proof

The proposed ordinance will amend existing chapters within Title 17, Zoning, as well as the City's Comprehensive Plan. A legislative amendment is subject to Chapter 16.32.020 of the Bandon Municipal Code, which is as follows:

The Planning Commission (and ultimately the City Council) shall, "review the proposed amendments to the text of the zoning ordinance to determine consistency with the comprehensive plan and that the amendment will not adversely affect the city's or the developer's ability to satisfy land use, transportation and utility service needs or capacities. The proposed amendment shall also be reviewed to determine the suitability of the uses proposed in terms of slope, geologic stability, flood hazard, wetlands, and other relevant hazard or resource considerations."

As mentioned above, the City is required to develop and implement a program to provide increased public access to coastal shorelands, which is accomplished through this proposed code and plan amendment. The Comprehensive Plan, related to Coastal Shorelands, states:

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

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

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

Shorelands of the Coquille Estuary.

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

Staff finds that this proposal helps to strengthen the city's ability to enforce and implement the aspirational policies previously listed in the code, and expounds on the overall importance of coastal shoreland access to our community. Throughout this process, Staff and DLCD have given presentations in work sessions to City committees and have found that there is a desire to continue to preserve, maintain, and improve public beach access sites, especially for our vulnerable populations. Bandon's topography and bluff formations make it difficult to find opportunities to improve beach access for those in a wheelchair, or those who may have difficulty walking up and down stairs. The proposed code addresses a variety of ways in which we can make our beaches more accessible.

Further, as we continue to see more development along the waterfront, it's important to protect or enhance access points that are not yet developed. Geomorphology and impacts from storms may, at some point, affect where our access points are located. By inventorying all public access points now, and identifying them as potential access points for the future, we are ensuring we won't lose access through street vacations or other development. This code also requires Staff consult with other affected agencies to determine impacts to environmental or cultural resources that may be located along the shoreline.

IV. Recommendations

Staff recommends the Planning Commission forward an approval of the amendments as presented. The Planning Commission may amend the proposed text prior to Council approval.