

SECTION 3.12: B.A.D. OVERLAY DISTRICT: BEACHES AND ACTIVE DUNES OVERLAY DISTRICT

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SECTION 3.1210 PURPOSE

The intent of this overlay zone is to regulate activity in beach, active dune, recently stabilized dune, and interdune areas in order to protect the fragile nature of this landscape by ensuring that development inconsistent with the natural capabilities of these land forms.

SECTION 3.1220 GENERAL PROVISIONS

1. Dune Hazard Line:

Implementing the restrictions on development referred to in Beaches and Dunes Policy #1 of the Comprehensive Plan, the City has established an Ocean Front Hazard Line west of which very minimal uses will be allowed. This line was adopted by the City based on Dr. Leonard Palmer's report, "The Stability of Coastal Dunes", dated January 1978. The map indicating the exact location of this line is on file at City Hall.

The Dune Hazard Line serves as the eastern boundary of the Beaches and Dunes Overlay Zone, whose western boundary is the low water line of the Pacific Ocean. The uses permitted in this zone are described in Section 3.1230.

2. Ocean Front Building Line:

An Ocean Front Building Line will be established in those areas described below in order to prevent the building of protrusive structures to the detriment of neighboring view properties. The westward extent of the Line will be established as follows:

- (1) Beginning at the southern intersection of Neacoxie Boulevard and South Ocean Avenue, a 15-foot setback from the eastern Neacoxie Boulevard right of way line.
- (2) From E Street north to Pacific Way along South Ocean Avenue, a line extending west 135 feet and parallel to the west right of way line from E Street north to Pacific Way.
- (3) From the south right of way line of Pacific Way, a line 85 feet west of the west right of way of Ocean Avenue extending north across the City Park and parallel to Ocean Avenue, and including lots 16, 17, 18, 19 and 20, Block 1, Kruse's First Addition.
- (4) From the south property line of Lot 26, Block 1, Kruse's First Addition, north to and including Lot 3, Block 3, Oceanside Addition, a line 15 feet east of and parallel to the east right of way line of Neacoxie Boulevard.

- (5) For tax lots 602 and 600, T6NR10W Map 4DA, a line 150 feet west of the west right of way line of Neacoxie Boulevard, as established in October 1983 by Planning Commission decision.
- (6) For tax lot 500, T6 R10 Map 4DA, (the McKinnon property), a line 150 feet west of and parallel to the west right of way line of Neacoxie Boulevard, established by the City Council on appeal in October 1988.
- (7) A line established by the extent of westward development for the Windward Condominiums, Tax lot 40000 T6R10 4DA, Supplemental map 2, Pacific Terrace, T6R10 4DA, Supplemental map 1, 90000, and Surfside Condominiums, T6R10W 4DA, Supplemental map 1, 60000. At such time that these properties are destroyed and need to be reconstructed, the oceanfront building line would be established by the City after a public hearing and input from technical resources.
- (8) In the Pacific Palisades development, a line extending west from the west right of way line of Ocean Avenue 135 feet for the length of and parallel to Ocean Avenue.
- (9) In the Highlands Development, the oceanfront building line established by the development plat and Clatsop County.
- (10) A map of the Oceanfront Building Line shall be maintained in City Hall.
- (11) The only uses that can be made of the land west of the building line will be those allowed in the B.A.D. Overlay District referred to in Section 3.1230.

3. Warning and Disclaim of Liability

The degree of protection from erosion or accretion required by this section is considered reasonable for regulatory purposes. This does not imply that development permitted within the B.A.D. Overlay District will be free from erosion. This ordinance shall not create a liability on the part of the City of Gearhart or any officer, employee, or official thereof, for any damages due to erosion that results from reliance on the provisions of this section or any administrative decision lawfully made there under.

SECTION 3.1221 RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL DEVELOPMENTS
PROHIBITED

Residential development and commercial and industrial buildings are prohibited in areas ocean ward of the established dune hazard line appearing on maps at City Hall.

For areas where a hazard line has not been established, the extent of ocean flooding hazard and wind erosion hazard shall be established on a site by site basis through site specific investigations.

In the area referred to the investigation shall be conducted by a qualified individual or individuals such as an engineering geologist whose qualifications shall be approved by the Planning Commission prior to completing the site investigation.

The investigation shall be completed and the hazard line established prior to the issuance of a building permit.

In establishing the extent of ocean flooding on the site, the same criteria as used in The Stability of Coastal Dunes study shall be employed.

Development will only be permitted on that portion of the site, if any, that the site investigation has established as not subject to ocean flooding hazard and where the impacts of wind erosion to the site and adjacent properties will be minimal.

The site investigation shall be undertaken at the developer's expense and the City shall submit the report to the United States Soil Conservation Service and may submit the report to other agencies, and a written report shall be requested from them.

The City shall give full consideration to all responses, oral or written, in making its determination, after the Public Hearing.

SECTION 3.1222 PROCEDURE FOR ESTABLISHING THE DUNE HAZARD LINE OF SECTION 3.1220(1)

The procedure for establishing the Dune Hazard Line referred to in Section 3.1220 is as follows:

1. The City Planning Commission shall after a quasi-judicial hearing, determine the dune hazard line. Their decision shall be in writing and shall include express written findings of fact supporting their position. All interested parties are encouraged to submit findings with their various positions. A decision by the Planning Commission shall become final after a lapsed period of fifteen days from the date of mailing of a notification of the decision, unless appealed to the City Council within that fifteen-day period.
2. Before the City Planning Commission may act on the establishment of a line, it shall hold a public hearing, giving notice of the public hearing in the manner described in Section 13.050.
3. The City Planning Commission shall review all testimony and exhibits and responses, if any, of the soil conservation service, other agencies and individuals, at the public hearing, including the site investigation report which shall be received as an exhibit.
4. The Planning Commission decision, with findings of fact, shall be sent by certified mail to the applicant within ten working days from the date of the action, and shall include notice of the manner in which appeal of the decision may be made to the City Council.

SECTION 3.1230 USES PERMITTED OUTRIGHT A permitted use is a use which is permitted outright subject to the applicable provisions of this code. If a use is not listed as a permitted use, it may be held to be a similar unlisted use under the provisions of Section 13.091.

1. For beach or dune areas located west of the Ocean Front Building Line, the following uses are permitted subject to the provisions and the standards of Section 3.1240. The Ocean Front Building Line shall be mapped on the Zoning Map of the City of Gearhart.
 - A. Pedestrian beach access including boardwalks.
 - B. Subsurface sewage disposal systems subject to approval by the Oregon Department of Environmental Quality, subject to approval by DEQ and the Building Official. Revegetation shall be approved by the Building Official.
 - C. Foredune breaching.

- D. Beachfront protective structures.
- E. Sand fencing.
- F. Pruning or trimming of vegetation.
- G. Parcels projecting west to the State of Oregon Zone Line will be permitted to have ancillary uncovered structures subordinate to the primary use of the property, including but not limited to windbreaks constructed of glass or other clear materials, flagpoles, decks not higher than 36” above existing grade, lawn ornaments and furniture, play equipment and landscaping, including lawn installation. Such uses or activities shall be east of the Dune Hazard Line.
- H. Parcels having a west property line that is east of the State of Oregon Zone Line shall comply with the Applicable Zone Standards, Article 4 (Exception to Standards) and Article 6 (Supplementary Provisions) of the Zoning Ordinance.

SECTION 3.1235 PROHIBITED USES A prohibited use is one which is expressly prohibited in the zone. In addition, uses not specifically listed as permitted or conditional in the zone, or deemed to be similar uses permitted to Section 13.091 are also prohibited.

- 1. The sale or holding out for sale, or allowing others to sell or hold out for sale, more than (1) new or used vehicle, motor home, trailer, recreational vehicle, motorcycle, or boats at any one time on a tax lot.¹

SECTION 3.1240 B.A.D. OVERLAY DISTRICT STANDARDS

1. General Standards

General standards for uses located in the area described by Section 3.1230 (1) are:

- A. The use is adequately protected from any geologic hazard, wind erosion, undercutting, ocean flooding and storm waves or is of minimal value.
- B. The use is designed to minimize adverse environmental effects both to the site and adjacent area.
- C. Methods have been developed for protecting the surrounding area from any identified adverse effect of the development.
- D. Temporary and permanent sand stabilization programs have been proposed, consistent with Section 3.1240, 2A (4).

2. Specific Standards

Specific Standards for uses located in the area located described by Section 3.1240, 1 A-D.

A. Foredune Breaching

All of the following conditions must be met:

- (1) The breaching is required on a temporary basis for emergency purposes such as fire control or the alleviation of flood hazard.

- (2) The breaching does not endanger existing development.
- (3) The breaching does not adversely impact critical habitat for snowy plovers.
- (4) The areas affected by the breaching are restored according to an approved restoration plan. At a minimum, foredunes shall be restored to the original dune profile.

B. Beachfront Protective Structures

- (1) The priorities for shoreline stabilization for erosion control are, from highest to lowest:
 - a. Proper maintenance of existing riparian vegetation.
 - b. Planting of riparian vegetation.
 - c. Vegetated riprap.
 - d. Where riprap, is proposed as a protective measure, evidence shall be provided that higher priority methods of erosion control will not work.
- (2) Structural shoreline stabilization methods for beachfront protection shall be permitted only if:
 - a. There is a critical need to protect property that is threatened by erosion hazard.
 - b. Impacts on adjacent property are minimized.
 - c. Visual impacts are minimized.
 - d. Access to the beach is maintained.
 - e. Long-term or recurring cost to the public are avoided; and
 - f. Riparian vegetation is preserved as much as possible.
- (3) Beachfront protective structures for beach and dune areas shall be permitted only where development existed on January 1, 1977. 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. Lots or parcels where development existed of January 1, 1977 are identified in the Comprehensive Plan.
- (4) Riprap shall conform to the following construction standards:
 - a. The revetment includes three components: an armor layer, filter layer of gravel stone (beneath the armor layer) and a toe trench (the seaward extension of a revetment structure).
 - b. The revetment slope is constructed to a slope that is between 1-1/2:1 to 2:1.
 - c. The trench is constructed and excavated below the winter beach level or to the existing wet sand level during the time of construction.
 - d. Revetments shall be covered with fill material such as sand or soil and vegetated with beach grass, willow or other appropriate vegetation.
- (5) A seawall or bulkhead shall be designed by a registered civil engineer.
- (6) The shoreline protection structure shall be the minimum necessary to provide the level of protection required.

- (7) The emergency placement of riprap to protect buildings from imminent threat shall be permitted without a permit. However, the City, Oregon Parks Division and the
- (8) Oregon Division of State Lands shall be notified when riprap is placed along the beachfront. Measures taken as a result of emergency conditions will be inspected. Alterations or removal of the material placed to conform to City and State standards may be required.
- (9) The City may require that proposed structural shoreline stabilization abutting a street-end, or other public right-of-way, incorporate steps, paths or other physical improvements to enhance public access to coastal waters.

C. Sand Fencing

- (1) The need for sand fences has been established as the result of a site investigation by a registered geologist, and is part of an overall dune stabilization program.
- (2) Accretion areas that result from sand fence placement will not adversely affect adjacent property.
- (3) Accretion areas will not form the basis for reestablishing the location of the ocean front hazard line.

D. Pruning, Trimming and Removal of Vegetation and Trees

It is the City's policy to limit the removal, destruction or uprooting of vegetation within the B.A.D. Overlay District, except as reasonably necessary to accomplish the following objectives: (a) elimination of diseased or dead vegetation, (b) elimination of noxious weeds, (c) limited pruning, thinning, and removal of trees for the purposes of preventing the spread of forestation beyond areas which are already heavily treed, managing views, reducing the risk of fire, and otherwise enhancing public safety, and (d) within the area lying within 100 feet of the building edge of a house, garage, or attached decking, mowing of beach grass and small shrubs and removal of trees for ornamental and fire-prevention purposes, all as more particularly described below. Therefore, all removal, destruction or uprooting of vegetation is prohibited within the B.A.D. Overlay District, except as specifically provided herein.

Further, any removal activities shall not lower the elevation of the foredune. Disruption of dune sand shall be kept to a minimum and repair or replanting may be required. Any work in the B.A.D. on lands that Oregon Park and Recreation maintains and controls must also be permitted through OPRD.

- (1) Diseased or Dead Vegetation. Every public and private owner of real property within the B.A.D. Overlay District is permitted to remove any diseased or dead vegetation from the property owner's own property.
- (2) Noxious Weeds. Every public and private owner of real property within the B.A.D. Overlay District is permitted to remove noxious weeds from the property owner's own property. For the purposes of this section, "noxious weeds" shall include Scotch Broom and all other plant species which are listed as noxious weeds by the Oregon Department of Agriculture.

- (3) Trees. Every public and private owner of real property within the B.A.D. Overlay District is permitted to prune, trim, or remove from such property any tree located on the property owner's own property which has a trunk diameter of six inches or less, with such diameter being measured at a height of four and one-half feet above ground level.

Each such property owner is also permitted to prune and trim any tree located on the property owner's own property which has a diameter exceeding six inches, measured at a height of four and one-half feet above ground level, but any such pruning or trimming of such larger trees shall be limited to allow 30% trimming or thinning of spruce and other varieties but no vertical trimming. Allow 30% of trimming/thinning of shore pines along with minimum vertical trimming of shore pines to maintain views. Trees over 6 inches in diameter may only be trimmed, thinned, or vertically trimmed once per calendar year. Vertical trimming is defined as cutting the main trunk near the top to reduce the height of a tree.

All trimming on city property must be permitted by the City along with a plan from a tree trimmer/arborist showing how much will be trimmed and taking the aesthetics and health of the tree into account.

- (4) Fire Buffer Safety Zone: Every public and private owner of real property within the B.A.D. Overlay District is permitted to remove from such property owner's own property any tree which is located within 100 feet of the building edge of a house, garage or attached decking, and each such property owner is permitted to mow to ground level any beach grass, small shrubs, and other vegetation which is on such property owner's own property and within 100 feet of the building edge of a house, garage or attached decking. A permit must be applied for on public property.
- (5) Any property owner which engages in any of the vegetation-management activities which are permitted under this section is required to properly remove from the B.A.D. Overlay District substantially all of the organic debris material which results from such vegetation-management activities promptly after such activities have taken place.
- (6) Any action which a property owner is permitted or required to take under this section may be taken by the property owner either directly or indirectly (through the use of a contractor, or agent, or by allowing a third party to take the permitted action with the property owner's consent).
- (7) Guidelines. The City shall make available to the public a written set of guidelines which shall advise property owners regarding methods for permitted pruning, trimming, and removal of vegetation which are recommended in order to make such efforts effective, while mitigating potential negative impact to other surrounding vegetation or to nearby wildlife and wildlife habitat.

E. Motorized Vehicles

It is the City's policy to limit the use of motorized vehicles within the B.A.D. Overlay District to only such uses as are reasonably necessary, as further specified below. Therefore, all motorized vehicles are prohibited within the B.A.D. Overlay District, except as specifically provided below. For the purposes of this section, the term "motorized vehicles" shall include automobiles, trucks, motorized mowers, brush hogs, and other similar motorized equipment.

- (1) Emergency vehicles (police, fire and ambulance) and public works vehicles are permitted to operate within the B.A.D. Overlay District as reasonably necessary.
- (2) Non-emergency vehicles operated by the City or its contractors are permitted to operate within the B.A.D. Overlay District as reasonably necessary for maintenance of equipment associated with the City's water system.
- (3) On private land motorized mowers, brush hogs, and other similar motorized equipment are permitted within that portion of the B.A.D. Overlay District lying within 100 feet of the building edge of any house, garage, or attached decking.
- (4) Other than as provided in paragraphs 1, 2, and 3 above, vehicles may operate within the B.A.D. Overlay District only with advance permission from the City as evidenced by a vehicle access permit issued by the City Administrator. The City Administrator may issue such a permit to any public or private owner of real property contained within or abutting the area within the B.A.D. Overlay District, or to such property owner's contractor or agent, upon receipt of an application from such property owner specifying: (a) the purpose of the requested access, (b) the type of vehicle for which access is requested; (c) the specific areas of the B.A.D. Overlay District for which access is requested, including the proposed location at which any permitted vehicle will enter and exit the B.A.D. Overlay District; and (d) the dates and hours of day on which access is requested.

Upon receipt of such an application, the City Administrator shall issue a permit to the applicant if the City Administrator determines that the access requested by the applicant is reasonably necessary in order for the applicant to conduct lawful activities on property owned by such party (and otherwise permitted under this Ordinance) and that the requested access will not cause unreasonable environmental damage to the B.A.D. Overlay District. Any such permit shall state the period of time during which the permittee shall be allowed to operate a vehicle within the B.A.D. Overlay District (including specific dates and hours of day), as well as the specific areas in which such operation is allowed, the type of vehicle for which access is allowed, and the activities which may be performed with the allowed vehicle.

3. Additional Standards

Additional standards for uses located in the B.A.D. Overlay District.

A. Geologic Hazard Site Investigation Report.

- (1) A geologic hazard site investigation may be required by the Building Official or the Planning Commission as part of their review of a use listed in Section 3.1230(1). The site investigation shall be prepared at the applicant's expense.
- (2) The purpose of the geologic hazard site investigation report is to provide findings and conclusion that the proposed structure or activity will be reasonably protected from identified hazards and that the structure or activity will not have an adverse effect on adjacent uses or property.
- (3) The geologic report shall include the results of a preliminary site investigation and where recommended in the preliminary report, a detailed site investigation.

- a. The purpose of the preliminary site report is to identify and describe existing or potential hazards in areas proposed for development. The report shall be based on site inspections conducted by a registered geologist.
- b. The preliminary site report shall either recommend that a more detailed site investigation report is needed to fully disclose the nature of on-site hazards or it shall conclude that known hazards were adequately investigated, and recommend development standards.
- c. The preliminary site report shall include plan diagrams of the general area, including legal descriptions and property boundaries, and geographic information as required below:
 - 1. Identification of each dune landform (according to the Goal 18 system of classification);
 - 2. History of dune stabilization in the area;
 - 3. History of erosion or accretion in the area, including long-term trends;
 - 4. General topography including spot elevation;
 - 5. Base flood elevation and areas subject to flooding, including flood areas shown on the NFIP maps of Gearhart or Clatsop County;
 - 6. Location of perennial streams or springs in the vicinity;
 - 7. Location of the state beach zone line;
 - 8. Location of beachfront protective structures in the vicinity;
 - 9. Elevation and width of the foredune crest;
 - 10. Land grading practices, including standards for cuts and fills and the proposed use and placement of excavated material.
 - 11. Elevations shall relate to the National Geodetic Vertical Datum of 1929, NGVD.
- d. The purpose of a detailed site investigation is to fully describe the extent and severity of identified hazards. Such investigation shall be required where recommended in a Preliminary Site Report. The Detailed Site Report shall be based on site inspections or other available information and shall be prepared by a qualified person, such as a registered civil engineer or engineering geologist.
- e. The report of a detailed site investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations.

f Summary Findings and Conclusions.

The preliminary detailed site reports shall include the following summary findings and conclusion:

1. The proposed use and the hazards it might cause to life, property, and the natural environment;
2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure;
3. Measures necessary to protect the surrounding areas from any hazards that are a result of the proposed development;
4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.

g The City may require that either the preliminary or detailed site report be reviewed by a qualified independent third party. The applicant shall be responsible for defraying the cost of such a third-party review.

4. Site Development Requirements.

All development within the B.A.D. Overlay District shall comply with the following requirements:

A. Land Grading Practices.

1. If the development involves removal of vegetation in any location or combination of locations, of an area larger than 2,000 square feet, a wind erosion plan will be employed to ensure sand stabilization on the construction site during and after construction.
2. No excavation shall be done earlier than thirty (30) days prior to the start of construction. Following completion of construction, excavation areas shall be revegetated. The revegetation shall return the site to its pre-construction level of stability or further increase the area's stability.
3. Land grading shall be limited to the minimum necessary for building placement and shall result in the least topographic modification practical.

B. Removal of Sand.

1. For property located west of the ocean front hazard line, sand shall not be removed from the beach and dune system.

C. Public Access Provision

A development (e.g. subdivision, planned development, multifamily structure, or condominiums) which borders a B.A.D. Overlay District that makes provisions for more than ten dwelling units shall provide common beach access trails or walkways. A minimum of one common beach access shall be provided, for each 400 feet of beach frontage. The beach access shall be designed so that it is connected to a public street.

D. Inspection and Certification

The Building Official, or other official specified by the City Council, shall inspect for defects in the restoration or construction of improvements. Upon completion of these improvements, the property owner and Building Official shall sign a statement stipulating the following:

1. That all required improvements are complete;
2. That these improvements are in compliance with the minimum standards specified by the City for their construction;
3. That these improvements are free and clear of any encumbrance or lien.

