




# City of Bandon


555 Hwy 101, PO Box 67  
Bandon, OR 97411  
(541) 347-2437

*Bandon by the Sea*

## AGENDA REPORT

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Torrey Contreras, City Manager 

**INITIATED BY:** Dana Nichols, Planning Director 

**DATE:** March 4<sup>th</sup>, 2024

**SUBJECT:** **ITEM 4.2 ORDINANCE 1662, AMENDMENTS TO THE COMPREHENSIVE PLAN AND TITLE 17 OF THE BANDON MUNICIPAL CODE TO ADDRESS COASTAL PUBLIC ACCESS.**

### BACKGROUND:

The City of Bandon received a planning assistance grant from the Department of Land Conservation and Development (DLCD) to review our Coastal Public Access policies and make changes to our city codes and comprehensive plan, where applicable. The project began with an inventory of all access points, then a review of existing policies and codes for consistency with Statewide Land Use Planning Goal 17, Coastal Shorelands, before new goals and policies were crafted to meet current needs. Finally, draft code language was developed to implement the aspirational policies outlined in the Comprehensive Plan.

At the October meeting, the City Council held a public hearing to consider the proposed amendments. A motion was passed to approve the proposed amendments and direct staff to prepare an Ordinance and findings for adoption at the next regularly scheduled City Council meeting. The City Council passed the Ordinance to a first reading at their November meeting, however a full City Council was not present, so a second reading is required before the Ordinance can be adopted.

Due to the recent litigation surrounding improved trails, Staff recommends adopting the ordinance as presented and setting the effective date for six months from now. This will allow Staff to close out the grant that was received to complete the work, and also provides additional time for the State legislature to develop a solution to the recreational immunity gap left by the outcome of *Fields v. City of Newport*.

### ANALYSIS OF THE ISSUES:

The implementation requirement of Oregon Land Use Planning 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*

Coastal Public Access, Ordinance 1662  
December 4<sup>th</sup>, 2023  
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*the affected site is retained.* The city's proposed policies and plan changes exceed the minimum implementation requirements set by the statute.

At the last meeting, the City Council discussed the impacts of Nicole Field v. the City of Newport, a recent court case that essentially ended recreational immunity for improved trails. This Ordinance adoption only creates a plan for future trail development and has no immediate impact on existing trails.

**FISCAL IMPACT:**

No fiscal impact expected.

**RECOMMENDATION:**

The following is recommended to the City Council:

1. Request the City Attorney read Ordinance 1662 by Title only. (Second Reading)
2. Motion: Adopt Ordinance 1662 by roll call vote.

Attachments: Attachment 1: Ordinance 1662  
Attachment 2: Record of Decision (Findings)

ORDINANCE 1662

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN AND TITLE 17 OF THE BANDON MUNICIPAL CODE TO ADDRESS COASTAL PUBLIC ACCESS AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF BANDON ORDAINS AS FOLLOWS:

**Section 1. Title 17 Zoning**

17.76, Shoreland Overlay Zone, is amended as follows (strikeout shows removed language, bold shows additions):

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 or 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
  - USFWS
  - ODFW
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.

## **Section 2. City of Bandon Comprehensive Plan**

### Policy S: Public Access

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

### **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-of-way 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.

**Section 3. Maps**

The City also adopts the Map 1 and Table 1 referenced in the City of Bandon Comprehensive Plan and attached here as Exhibits A & B, respectively.

**Section 4.** The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference error contained herein or in other provisions of the Bandon Municipal Code, to the provisions added, amended, or repealed herein.

**Section 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. Further, if this Ordinance is remanded back to the City Council for further action by the Oregon Land Use Board of Appeals, those sections, subsections, sentences, clauses, phrases or portions that do not require action on remand shall be deemed separate, distinct, and independent provisions and such remand shall not affect their validity or effect.

**Section 6.** This Ordinance shall take effect six months from the date of approval, on September 4<sup>th</sup>, 2024.

PASSED to a second reading this 4 day of March 2024 on a roll call vote, 6-0-0.

ADOPTED by the City Council this 4 day of March 2024 on a roll call vote, 6-0-0.

  
Mary Schamehorn, Mayor

Attest:

  
June Hinojosa, City Recorder





# City of Bandon

555 Hwy 101, PO Box 67  
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March 6<sup>th</sup>, 2024

Land Conservation and Development Commission  
Attn: Citizen Involvement Advisory Committee  
DLCD Salem Office  
635 Capitol St NE, Suite 150  
Salem, OR 97301-2540

To whom it may concern:

The City of Bandon respectfully requests that the Land Conservation and Development Commission's Citizen Involvement Advisory Committee accept our request to allow the City's Planning Commission to assume the responsibility to implement the City's Citizen Involvement Program. Currently, the Bandon Municipal Code states that the Committee for Citizen Involvement shall be made up of members of the City's governing body, advisory commissions, and members-at-large. In a small community, it has been challenging to maintain active participation of all members, and with limited staff, coordinating these meetings has also proven difficult. In an effort to efficiently and effectively implement our Citizen Involvement Program, the City prefers to use the services of our Planning Commission.

The Planning Commission meets the requirements set forth in OAR 660-015-0000(1) and meet regularly to allow for public input. The City proposes designating a portion of each well-publicized public Planning Commission meeting as a time to discuss the Citizen Involvement Program and ensure we are meeting our statutory requirements.

If you have any questions about our proposed change, please feel free to contact the City of Bandon for more information.

Sincerely,

A handwritten signature in blue ink that reads "Mary Schamehorn".

Mary Schamehorn,  
Mayor of Bandon