

ORDINANCE NO. 910

AN ORDINANCE AMENDING THE CITY OF GEARHART ZONING ORDINANCE TO CLARIFY VEHICULAR ACCESS, VEGETATION TRIMMING AND REMOVAL IN THE BEACHES AND DUNES OVERLAY DISTRICT

WHEREAS, the City Council finds there is a need to clarify existing ambiguous language in GZO Section 3.12 Beaches and Dunes (B.A.D.) Overlay District to identify distinctive types of vegetation, the pruning and trimming and of trees; public versus private land regulations; and vehicular access to dune areas, and;

WHEREAS, the City Council finds administration of the existing B.A.D. Zone Section 3.1240 2 D. Pruning and Trimming of Vegetation provisions and Section E. Vehicular Access to Dune Areas is ineffective and difficult to enforce, and needs clarity, and;

WHEREAS, the City Council finds there is a need to cross reference B.A.D. Zone pruning and trimming provisions with Section 6.183 Revegetation Standards and Section 6.195 Preservation and Removal of Trees for consistency, and;

WHEREAS, the amendments are based on the recommendations of the Dunes Committee dated 7-7-17, the findings in the City Staff Report dated 4-4-18, extensive public meetings, comments, letters and public hearings by the Planning Commission and City Council; and

NOW, THEREFORE the City of Gearhart ordains the Gearhart Zoning Ordinance shall be amended as follows:

Section 1. Amendments

Amending the Gearhart Zoning Ordinance Article 3 Section 3.12 B.A.D. Zone Section 3.1240 2 D and E; and Article 6 Supplementary Provisions Section 6.183 Revegetation Standards and Section 6.195 Preservation and Removal of Trees as described in the attached Exhibit A

Section 2. Effective Date

This ordinance will be read two times and will be effective 30 days after the second reading.

Passed by the City Council of the City of Gearhart this 6th day of June 2018

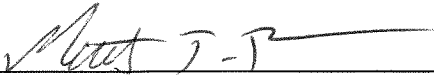
YEAS: 4

NAYS: 1

ABSENT: 0

ABSTAIN: 0

Signed and approved by the Mayor of the City of Gearhart this 6th day of June 2018.



Matt J. Brown, Mayor

ATTEST:



Chad Sweet, City Administrator

EXHIBIT A

4-26-18

PROPOSED AMENDMENTS TO THE B.A.D. OVERLAY DISTRICT

Recommendation No. 1

Current Code:

Section 3.1240 E. Vehicular Access to Dune Areas

Motorized Vehicles shall be permitted in dune areas within the B.A.D. Overlay District only with specific permission of the City Administrator, and where it is necessary for permitted activities in the zone. The City Administrator shall be responsible for issuing permits for a specified period of time and shall impose conditions on such access.

Proposed Code:

Section 3.1240 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.

Recommendation No. 2

The existing provisions of Ordinance Section 3.1240.2.D Pruning and Trimming of Vegetation should be repealed and the following provisions should be adopted in their place:

Current Code:

D. Pruning and Trimming of Vegetation

- (1) The removal, destruction or uprooting of vegetation shall be prohibited.*
- (2) Trimming or pruning of vegetation shall be the minimum necessary to protect views and prevent a fire hazard while maintaining the vigor of the plants to be trimmed. The amount of thinning, pruning or trimming shall not exceed 50% of the plants present growth.*
- (3) Pruning and trimming shall occur only after a specific program which specifies the vegetation to be trimmed and the extent of trimming proposed has been approved by the City.*
- (4) The requirements of this sub-section ((2) (d) of Section 3.1240) shall not apply to that portion of the B.A.D. Overlay District lying east of Neacoxie Blvd. and east of the building line between Pacific Way and 3rd Street.*

Proposed Code:

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 ocean 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.

Recommendation No. 3

The Committee notes that, in addition to the provisions of Section 3.12 which regulate vegetation-management activities within the B.A.D. Overlay District generally, there is also a provision in Ordinance Section (6.195.5.C) which allows the City Administrator to issue a permit for removal of trees which are larger than 12" diameter (measured at a height of four and one-half feet above ground). The provision in Section 6.195.5.C is not consistent with the Committee's Recommendation No. 3 and, therefore, the Committee recommends that Section 6.195.5.C be repealed.

Current Code:

~~C. Thinning, trimming or pruning of trees within the BAD Zone may be permitted by the City Administrator for view and fire protection, thinning not to exceed 50%.~~

Below are necessary cross-references for code consistency with the proposed B.A.D. Zone amendments. The italicized language and strike-thru sections amend these sections of the GZO.

SECTION 6.180 EXCAVATION, FILL, GRADING AND REVEGETATION.

SECTION 6.183 REVEGETATION STANDARDS

The following standards shall apply to all areas from which vegetation is removed by either natural or man caused means. *Except that in the Beaches and Dunes Overlay Zone vegetation removal and revegetation unrelated to the earth movement and earth removal standards of this section are provided in B.A.D. Zone Section 3.1240 2.D.*

1. Areas from which vegetation is removed shall be replanted in accordance with the sections below within on growing season after the removal.
2. Areas on the Active or Conditionally Stable Dune from which beach grass is removed shall be replanted with beach grass or other native and typical vegetation for the area.

3. All other areas shall be planted with a plant material that will achieve 70% ground coverage within three years of planting.

SECTION 6.184 PERMIT REQUIRED

1. Any person undertaking a program of vegetation removal in excess of 1000 square feet, or excavation, fill and/or grading in excess of 50 cubic yards, shall first obtain a permit from the City Administrator.
2. Such permit shall be granted only after the presentation of revegetation plan that conforms to the standards above.
3. For an area on which construction is proposed, the permit may be part of the building permit.
4. Permit fees shall be assessed in accordance with the fee schedule established by resolution of the City Council.

SECTION 6.185 VIOLATIONS

Violations of this section, including non-conformance with the provisions of a revegetation permit, shall be penalized as provided in Article 15.

SECTION 6.195: PRESERVATION AND REMOVAL OF TREES

1. Purpose:

The purpose of this section is to recognize that trees are a significant aesthetic and environmental resource within the City of Gearhart and to create conditions favorable to the preservation of this plant heritage for the benefit of the current and future residents of the City. The purpose is not to prohibit the removal of all trees, but to ensure that mature trees are removed only where necessary, and to permit the reasonable development and use of property.

2. Definition: For the purpose of this section, "tree" is defined as follows: Any tree greater than twelve (12) inches in diameter as measured four and one half (4-1/2) feet above the existing grade.

3. Applicability: *This section applies to the removal of trees in the City of Gearhart, except that in the B.A.D. Overlay Zone the preservation and removal of trees are regulated by that zone in Section 3.12.*

4. Requirements:

- A. Any person proposing to remove, cut down, or otherwise destroy more than five trees within a twelve month period shall first obtain a tree removal permit from the City. The Planning Commission may grant or deny a request for a tree removal permit on the basis of the criteria set forth below in Section 6.195(5), except as provided in Section 6.195(6) below.

- B. Such conditions as are deemed necessary and appropriate to ensure the proper enforcement of this section may be made part of the removal permit. Such conditions may involve, but are not limited to the following:
 - (1) The replacement of the trees proposed for removal with trees of a suitable type, size and location.
 - (2) A Plan for protecting trees on the project site during and after development.
 - (3) Restrictions on cuts, fills and grading within the vicinity of remaining trees.
 - C. Tree removal that is to be undertaken in conjunction with a specific development project shall occur only after a building permit has been issued, or the Planning Commission or City Council has approved an activity requiring the removal of the trees.
 - D. An approved tree removal permit shall be void after one year from its issuance unless a shorter period was specified as a condition for approval.
5. Criteria: The granting of a tree removal permit shall be based on a finding that at least one of the following criteria is met:
- A. Necessity to remove trees which poses a safety hazard.
 - B. Necessity to remove trees which are diseased. Evidence of disease shall be provided by a qualified forester or arborist.
 - C. Necessity to remove trees in order to construct proposed improvements, including the placement of structures and on-site sewerage disposal facilities, access ways, utilities, need to make essential grade changes, and other authorized activities.
 - D. Solar access; and the need to remove trees which deposit needles or other debris on rooftops.
- The burden of proof is on the applicant to show that other design alternatives which do not require the tree removal are not practical or will create a significant economic hardship.
6. Exception:
- A. The City Administrator or designee may grant the immediate removal of trees which pose a safety hazard or dangerous condition, or for a required septic system emergency repair.
 - B. The City Administrator may permit the removal of trees within the footprint of the proposed building, access, or on- site sewage treatment system upon approval of the building permit.
 - ~~C. Thinning, trimming or pruning of trees within the BAD Zone may be permitted by the City Administrator for view and fire protection, thinning not to exceed 50%.~~

7. Appeal. Appeals of a decision of the City Administrator or Planning Commission shall be in accordance with Section 13.060.
8. Enforcement. Enforcement of this section shall be in accordance with Article 15 of this ordinance, or by other ordinances the City Council may adopt to implement the purpose of this section.

Exhibit A

Dune Vegetation Recommendations

04/04/2018

Contents

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This document is the culmination of work by a citizen committee of volunteers appointed by City Council in April 2017. After multiple meetings the Dunes Vegetation Committee presented its research document and four recommendations (dated 7-7-17) to the Council at a work session on Tuesday, October 10th. The City Council then held two more work sessions to discuss and amend the recommendations.

Below you will find 4 recommendations organized into 3 sections as follows:

1. Recommendation from the Dunes Vegetation Committee
2. Current code as written in the Gearhart Zone Code
3. Proposed code language from the Dunes Vegetation Committee as proposed to be amended by the City Council.

Legend:

- Words in italics are from the Gearhart Zone Code as written now.
- Words crossed out were removed by the City Council.
- Words underlined were added by the City Council.

Recommendation No. 1

Dune Vegetation

The existing provisions of Ordinance Section 3.1240.2.E (concerning Vehicular Access to Dune Areas) should be repealed and the following provisions should be adopted in their place:

Current Code:

E. Vehicular Access to Dune Areas

Motorized Vehicles shall be permitted in dune areas within the B.A.D. Overlay District only with specific permission of the City Administrator, and where it is necessary for permitted activities in the zone. The City Administrator shall be responsible for issuing permits for a specified period of time and shall impose conditions on such access.

Proposed Code:

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. ~~for law enforcement, police department, fire department, and other emergency purposes, and in response to actual emergencies.~~

(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

Dune Vegetation

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.

Recommendation No. 2

~~In order to prevent the use of motorized vehicles which is prohibited under the Ordinance, the City should install locked gates (or other access control devices) at all points where motorized vehicles are able to enter the B.A.D. Overlay District.~~

Recommendation No. 2 is not supported by staff or council. Gates are costly, unsightly, a hindrance during emergencies, and not likely supported by the citizenry.

Recommendation No. 3

The existing provisions of Ordinance Section 3.1240.2.D (concerning Pruning and Trimming of Vegetation) should be repealed and the following provisions should be adopted in their place:

Current Code:

D. Pruning and Trimming of Vegetation

- (1) The removal, destruction or uprooting of vegetation shall be prohibited.*
- (2) Trimming or pruning of vegetation shall be the minimum necessary to protect views and prevent a fire hazard while maintaining the vigor of the plants to be trimmed. The amount of thinning, pruning or trimming shall not exceed 50% of the plants present growth.*
- (3) Pruning and trimming shall occur only after a specific program which specifies the vegetation to be trimmed and the extent of trimming proposed has been approved by the City.*
- (4) The requirements of this sub-section ((2) (d) of Section 3.1240) shall not apply to that portion of the B.A.D. Overlay District lying east of Neacoxie Blvd. and east of the building line between Pacific Way and 3rd Street.*

Proposed Code:

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:

Dune Vegetation

(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 ~~any residential structure~~ 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% ~~20% (or 30%)~~ of trimming/thinning of shore pines along with minimum vertical trimming of shore pines to maintain ocean 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

Dune Vegetation

is located within 100 feet of the building edge of ~~any residential~~ a house, garage or attached decking structure, 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 ~~any residential~~ 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.

Recommendation No. 4

The Committee notes that, in addition to the provisions of Section 3.12 which regulate vegetation-management activities within the B.A.D. Overlay District generally, there is also a provision in Ordinance Section (6.195.5.C) which allows the City Administrator to issue a permit for removal of trees which are larger than 12" diameter (measured at a height of four and one-half feet above ground). The provision in Section 6.195.5.C is not consistent with the Committee's Recommendation No. 3 and, therefore, the Committee recommends that Section 6.195.5.C be repealed.

Current Code:

C. Thinning, trimming or pruning of trees within the BAD Zone may be permitted by the City Administrator for view and fire protection, thinning not to exceed 50%.

Council recommends changing the text of the above code to mirror Recommendation No. 3 proposed code (D). (Page 3 of this packet)

CITY OF GEARHART CITY COUNCIL
STAFF REPORT

April 16, 2018

To: Gearhart City Council
From: Carole Connell, City Planner
City File #17-005ZTA

I. SUMMARY OF REQUEST

Gearhart City Council considered legislative zone code text amendments to address noxious weed removal, tree trimming, scenic view protection, wildlife habitat and emergency access in the Beaches and Dunes Overlay Zone (B.A.D.).

- These proposed changes are to clarify existing ambiguous language that does not specify distinct types of vegetation and adds methods for code administration,
- These proposed changes do not address dune grading or removal and is not a dune management plan.
- These proposed changes are not a wildlife habitat management plan.
- These changes only address the B.A.D. Overlay Zone and does not make changes or add limitations outside of the B.A.D. Overlay Zone.
- State guidelines were used in the development of these proposed changes. Any items not addressed in these proposed changes are subject to state guidelines.

A public hearing before the Gearhart City Council was held on April 11, 2018. The proposed amendments amend Article 3 B.A.D. Overlay Zone and Article 6 Supplementary Provisions. The proposed amendments are attached marked as Exhibit A. The Dune Committee Recommendations (7-7-17) are also attached.

II. APPLICABLE REVIEW CRITERIA AND PROCEDURES

A. Applicable Criteria of the Gearhart Zoning Ordinance (GZO)

1. Article 3 Section 3.12 B.A.D. Overlay District
2. Article 6 Supplementary Provisions
3. Article 11 Amendments
4. Article 13 Administrative Provisions
5. Gearhart Comprehensive Plan

B. Background

In 2017 City staff and citizens raised questions about implementation of existing standards for vegetation removal in the dunes. The City conducted a Town Hall meeting on this topic on January 5, 2017. City staff proposed minor amendments to clarify Section 3.1240 2 D. The Planning Commission held the first public hearing on April 13, 2017 and City Council

held a public hearing on May 3, 2017. Because of the diverse opinions about vegetation removal in the dunes, after the first hearings City Council decided to put the amendments on hold and establish the Dunes Citizen Advisory Committee to develop recommendations for vegetation removal. The committee met for about three months and drafted four recommendations. Their recommendations were based on a wide range of wildlife vegetation research documents. These can be reviewed on the city website under Community/Beach Dune Vegetation link/ Gearhart Dune Vegetation Drop Box. The Council then held three public work sessions November 11, 21 and January 30, 2018 to review the committee's proposed amendments. A second Council hearing is scheduled for April 11, 2018.

III. AGENCY & CITIZEN WRITTEN COMMENTS

The following documents are in the record of the initial hearings in 2017.

- A. Dept. of Land Conservation and Development: Meg Reed suggested revisions 3-3-17
- B. Gearhart Police Chief: Jeffrey Bowman 3-14-17
- C. Gearhart Fire Chief: Bill Eddy Fire Chief 3-17-17
- D. Marcia McLeary email: no address or date
- E. Nancie Clark: 11-6-16, 4-13-17 and 4-23-17
- F. Sharon Kloepfer: 3-25-17, 4-13-17 and 4-23-17
- G. John Green & Margaret Green: 2-9-17, 3-25-17, 4-13-17 and 4-23-17 (2 letters)
- H. ODOT: Ken Shonkwiler 3-30-17
- I. Stewart Shultz: letters dated 2-8-17, 4-13-17 and 4-24-17
- J. Thad Clark: 4-13-17 and 4-23-17
- K. Truman Seely: 10-29-16 and 4-13-17
- L. Robert Buzzard III: 4-13-17
- M. Robin Cavendish: 4-12-17
- N. Tara Sinclair: 4-13-17
- O. Margaret Marino: 4-11-17 draft amendment 4-21-17
- P. Department of Forestry: Neal Bond 4-24-17
- Q. Deputy Fire Marshal Randolph "Tad" Petersen to Ms. Kloepfer: 4-26-17
- R. Tom & Alix Meier Goodman and Laura Meier: 4-17-17
- S. Greg Goodman and Susan Schnitzer: 4-16-17
- T. Susan Workman: 4-17-17
- U. Mark Gregoire: 4-19-17
- V. Chris Conway 4-19-17
- W. Morrie (Joanne) Conway: 4-19-17
- X. Charles & Caroline Swindells: 4-20-17
- Y. Bill Berg: for 5-3-17
- Z. Linda Hoard: 4-26-17
- AA. Wayne Meucci & Jane Schott: 4-26-17
- BB. Bill Corti: 4-25-17**
- CC. Dianne Widdop: 4-26-17
- DD. Joe Gregoire 4-27-17
- EE. Michael Hoard 4-27-17
- FF. Adam Amato 4-27-17
- GG. Bonnie Delaney 4-27-17
- HH. Jack Delaney 4-27-17

- II. Clark Cumpston & Karyl Fox 4-27-17
- JJ. "Chinook Observer" 4-26-16
- KK. "Protect your Home from Wildfire"
- LL. "Safety Zones" Interagency Standards for Fire and Fire Aviation Operations
- MM. U.S. Dept. of the Interior Fish and Wildlife Service letter 10-4-16, and email from Daniel Elbert of said agency 12-18-16
- NN. Kathleen Sayce, Ecologist quoted by the "Daily Astorian" 1-6-17
- OO. Vanessa Blackstone, Wildlife Biologist quoted by the "Daily Astorian" 1-6-17
- PP. Margaret Marino 5-1-17
- QQ. Sand Dune Vegetation Committee Meeting Minutes 4-24-17
- RR. Richard Schroeder letter and photographs 5-2-2017
- SS. Lisa Cerveny 5-1-2017
- TT. David Bowes 5-4-17

4-11-18 Testimony:

1. Melissa Graeper 4-11-18
2. Anna Levin 4-11-18
3. Margaret Marino 4-11-18
4. Mary Murphy 4-10-18
5. Richard Piacintin 4-10-18
6. Kary; Fox & Clark Cumpston 4-10-18
7. John Kingery 4-10-18
8. Lisa Cerveny & David Russell 4-10-18
9. Alix Meier 4-11-18
10. Liz Kingery Warren 4-11-18
11. Jim furnish 4-11-18
12. Kathy & Augie Gatto 4-11-18
13. Bonnie Delaney 4-11-18
14. Jack Delaney 4-11-18
15. Jeff Miller 4-11-18
16. Bill Berg 4-11-18

IV. FINDINGS OF COMPLIANCE FOR THE PROPOSED CODE AMENDMENTS

A. GZO Section 3.12 Beaches and Dunes Overlay District

The purpose of the district is described as follows:

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 is consistent with the natural capabilities of these land forms.

Zone boundary: The B.A.D. zone area is the eastern boundary of Dune Hazard Line. The western boundary is the low water line of the Pacific Ocean. For explicit detail of the eastern boundary line see Section 3.1220. The northern boundary is the north terminus of

Fairway Ave. (Highlands) and the southern boundary is the south terminus of South Ocean Avenue.

Land ownership: The dunes are publicly and privately owned. Public ownership including the public right-of-way of Neacoxie Blvd. is from Wellington Avenue at the southern terminus to E Street and resumes at 2nd Street extending north to 10th Street. Property ownership from E Street north to Pacific Way is privately owned to the water, except for one parcel west of D Street. Oceanfront property north of 10th Street to the north terminus of North Ocean Avenue is also privately owned. From there the beach front is publicly owned to the north city limits.

B.A.D. Overlay Zone Section 3.1240 2 D of the zone currently permits pruning and trimming of vegetation as follows:

A. Pruning and Trimming of Vegetation

- (1) *The removal, destruction or uprooting of vegetation shall be prohibited.*
- (2) *Trimming or pruning of vegetation shall be the minimum necessary to protect views and prevent a fire hazard while maintaining the vigor of the plants to be trimmed. The amount of thinning, pruning or trimming shall not exceed 50% of the plants present growth.*
- (3) *Pruning and trimming shall occur only after a specific program which specifies the vegetation to be trimmed and the extent of trimming proposed has been approved by the City.*
- (4) *The requirements of this sub-section ((2) (d) of Section 3.120) shall not apply to that portion of the B.A.D. Overlay District lying east of Neacoxie Blvd. and east of the building line between Pacific Way and 3rd Street.*

Reason to amend the above section: It started with citizen interest to remove noxious weeds and confusion as to how to interpret or measure “50% of the plants present growth” in item (2) above. It was determined a need exists to clarify how to administer existing vegetation removal in the B.A.D. Zone. In addition, city fire and police providers have identified unsafe emergency access to the dunes south of the city due to increasing vegetation growth. Oceanfront property owners are concerned about diminishing scenic ocean views due to vegetation growth, and fire protection. Wildlife enthusiasts object to vegetation removal that currently provides wildlife habitat. The proposed amendments are intended to address these issues.

B. GZO Section 11.040 Amendment Criteria.

The Gearhart Zoning Ordinance requires that before amendments to the text of the zoning ordinance are approved, findings will be made that the amendments are consistent with the goals and policies of the Comprehensive Plan, and that there is a public need for the proposed amendment. The following is a response to the code amendment approval criteria:

1. IS THE AMENDMENT CONSISTENT WITH THE POLICIES OF THE COMPREHENSIVE PLAN?

The proposed code amendments relate to the Comprehensive Plan policies as follows:

(1) Citizen Involvement, Revision, Implementation and Process Goals (LCDC Goal 1 & 2)

Comprehensive Plan Goals 1 and 2 are intended to assure citizen involvement is provided in the amendment process. Policy 1 states *“the City will ensure that citizens, including residents and property owners, have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and development of policies.”*

The planning process requires a factual basis for decisions, citizen opportunities for input and a legislative decision in this case. Legislative decisions require an advertised public hearing process with a recommendation by the Planning Commission and a decision by the City Council based on findings that there is a public need for the amendments and that the amendments are in compliance with the Gearhart Comprehensive Plan.

FINDINGS: The City finds they have provided a 17-month process to ensure the citizens have been heard and that the proposed amendments reflect the broader community interest.

The City conducted a public Town Hall Meeting on January 5, 2017 to listen to a panel of experts discuss vegetation growth in the Gearhart beach dunes. Notice of a public hearing of the amendment was published, posted and mailed to affected property owners on March 24, 2017 advertising both the Planning Commission and City Council hearings. The DLCD was notified more than 35 days before the initial Planning Commission hearing scheduled for April 13, 2017, in accordance with GZO Article 13 Administrative Provisions. All meetings are taped to maintain a record.

The City Council directed formation of the Gearhart Dune Vegetation Committee and asked them to develop dune vegetation management recommendations. The Committee met for three months and the Council reviewed their recommendation at three public works sessions. A second City Council hearing was scheduled for April 11, 2018.

(2) Open Space, Scenic Areas, Historic and Natural Resources (LCDC Goal 5)

The Gearhart Open Space, Scenic Areas, Historic and Natural Resources (Goal 5) and Goal policies strive to conserve, preserve, and protect open space, scenic areas, historic and natural resources in and around the Gearhart Community for future generations.

FINDINGS: The City finds the code amendments support the goal to conserve, preserve and protect open space and natural resources and enhance native species growth. The amendments support city goals to protect the open space and scenic views so that future generations may enjoy the natural beaches and dunes in Gearhart. The adjustments are limited to clarify existing language so that noxious weeds can be removed, destroyed or uprooted and replaced with native vegetation without affecting the foredune; and that limited tree trimming will be allowed to protect scenic ocean views that are an important natural resource to Gearhart.

(3) Air, Water, and Land Resource Quality (LCDC Goal 6)

The Air Water and Land Resource Quality policies assure there will be standards that protect air, water, and land resource quality including laws that prevent noise pollution.

FINDINGS: The City finds the code amendment does not directly relate to this goal.

(4) Geology and Geologic Hazards; Flood Hazards (LCDC Goal 7)

The Gearhart Geology, Geologic Hazards and Flood Hazards policies shall work in coordination with applicable local, state, and federal standards to identify geologic hazard areas and flood hazard zone identified by the FEMA Flood Rate Insurance Map.

FINDINGS: The City finds the code amendment may relate to flood hazard protection policies. DLCD staff recommends revegetation with native plants for sand stabilization, and that noxious weed removal not lower the elevation of the foredune. The amendments acknowledge these recommendations by requiring timely revegetation with native plants and grasses where noxious weeds are removed.

(5) Recreation (LCDC Goal 8)

The Gearhart Recreation Goal policies encourage further development of recreation facilities in the Gearhart area that are commensurate with air, land, water, environmental, and scenic resources.

FINDINGS: The City finds the dunes are active recreation areas for city residents and visitors. The limited amount of vegetation removal proposed to be permitted will not significantly affect the condition or use of the dunes recreation area. Removal of noxious

weeds will allow for replacement with native vegetation that is more attractive to native wildlife. Tree trimming and fire access vegetation removal will reduce some of the existing bird habitat enjoyed by bird watchers. During the initial Town Hall meeting in January 2017 the Department of Fish and Wildlife and the U.S. Dept. of the Interior stated some vegetation removal is not expected to affect an endangered bird species.

(6) Economy and Energy (LCDC Goal 9 and 13)

The Gearhart Economy and Energy Goal policies ensure a stable and healthy economy in Gearhart through all available resources, both human and natural resources.

FINDINGS: The Pacific Ocean and the Gearhart dunes are a prominent natural resource in the community. Protection of their open space and scenic view qualities is an important city goal, as described in Plan Goal 5 discussed above. The protection of scenic ocean views will also maintain property values of oceanfront land which significantly contribute to the local tax base and the local economy. The proposed tree trimming amendments will help to maintain scenic views.

(7) Housing (LCDC Goal 10)

The Gearhart Housing Goal policies ensure decent, affordable housing and housing availability for all residents of the Gearhart area.

FINDINGS: The City finds the code amendments do not directly relate to this goal.

(8) Public Facilities and Services (LCDC Goal 11)

The Gearhart Public Facilities and Services Goal policies assure compliance with applicable local, state, and federal environmental noise, air, water, and solid waste standards. It is city policy to provide for the safety of the citizens through adequate fire and police protection. It is city policy to place a high priority on the Police and Fire Departments. (Plan page 17)

FINDINGS: The City finds the code amendments will aid fire, police and emergency access to Gearhart beaches and dunes, as well as to dwellings abutting the dunes.

Historically the fire road has been a first line of defense. It was a fire break allowing firefighters to fight a fire before it got to the homes. Due to heavy vegetation growth it's no longer safe to send firefighters into the south part of the dunes if a fire were to happen.

Over the last 10 to 15 years the fire load including larger woody materials such as scotch broom and trees have grown up to the fire lane. Thicker, larger, woody materials burn much hotter and longer than beach grass. Beach grass in comparison is relatively easy to put out

quickly. Larger diameter woody materials are much more difficult as they produce much hotter and dangerous fires. The more dense the woody material you have in an area the greater a fire break needs to be.

Without an adequate access to the fire road, firefighters may be required to abandon firefighting on the dunes and move to a defensive position along Ocean Avenue and wait for the fire to come to them. Another use of the fire road would be a safety zone for people enjoying the dunes to escape a tsunami or a fire if it were to happen at a time such as the 4th of July.

For public safety assurance to Gearhart property owners, residents and visitors, the maintenance of adequate fire access to land and structures in and adjoining the dunes is a high priority of the city. The proposed amendments are necessary to assure there will be adequate fire and emergency access in the dunes.

(9) Transportation (LCDC Goal 12)

The Gearhart Transportation Goal policies are established to provide and encourage safe, convenient, and economic systems for all modes of transportation in the Gearhart area.

FINDINGS: The City finds the code amendments promote improved and safe access to the beaches and dune area.

(10) Urban Growth (LCDC Goal 14)

The Gearhart Urban Growth Goal policies are established to manage urban growth.

FINDINGS: The City finds the code amendment does not directly relate to this goal.

(11) Necanicum Estuary (LCDC Goals 16)

The Gearhart Necanicum Estuary Goal policies are established to maintain all identified marsh areas in their natural, productive condition. Estuary restoration projects are encouraged.

Plan page 27 Goal: *It is the goal of the city to protect riparian (streambank) vegetation within the Necanicum Estuary.*

FINDINGS: Streambank vegetation protection and maintenance of riparian vegetation are policy priorities. Improved access to the fire road will not occur on the banks of the

Necanicum Estuary. The amendments promote removal of noxious weeds and the replanting of native vegetation primarily in the dunes, not necessarily on the streambanks. The tree-trimming standards are not likely to significantly affect the streambank.

Plan page 29 Policy: *Fish and wildlife habitat of the Necanicum estuary system contributes a great deal to the environmental quality and the economy of the area. Actions that would reduce habitat value of the estuary shall be carefully evaluated in this light. The ODFW shall be consulted as wherever such actions are proposed in order to determine the impacts.*

FINDINGS: The ODFW and other agencies were invited to the Town Hall meeting in January 2017 to discuss the dune vegetation issue. Some professionals suggested returning the dunes to their historic prairie character. Vanessa Blackstone, a wildlife biologist from Oregon Parks and Recreation said though some species will lose while others will benefit, and the species that use the area are not considered endangered (*Daily Astorian* 1-6-17). Other experts provided analysis of the wildlife habitat in the dunes. There were a variety of opinions on the effect of tree removal on wildlife habitat. There was general consensus for the need to remove noxious weeds as well as to avoid vegetation removal during bird nesting season as recommended by Kathleen Sayce, ecologist. The city recommends that guidelines for vegetation removal be developed for distribution to property owners.

Plan page 29 Policy 2: *Existing public ownerships, rights-of-way and similar public easements in estuary shorelands provide access to or along the estuary shall be replaced if sold, exchanged or transferred. Right-of-ways may be vacated to permit redevelopment of shoreland areas provided public access across the affected area is retained.*

FINDINGS: The dunes are both publicly and privately owned. Most but not all of the emergency access road is on publicly owned land or in the public right-of-way of Neacoxie Blvd. The above policy requires that public access be maintained in the estuary area. The amendments will assure that the access road is unobstructed and accessible for all types of emergencies.

(12) Coastal Shorelands (LCDC Goal 17)

The Gearhart Coastal Shorelands Goal is to conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent waters; and

Goal

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 of the coastal shoreland area.

FINDINGS: The Coastal Shorelands goal promulgates protection of human life and property, as well as the fish and wildlife habitat. The primary purpose of the amendments is to provide emergency access off the beach and adequate area for firefighters to deploy and fight a wildland fire in the subject area. In addition the amendments allow for the eradication of noxious weeds in the dunes and some tree trimming to retain scenic ocean views.

The City finds the growth of trees and shrubs south of South Ocean Avenue to the beach and has become a fire hazard to human life and property. The Fire Chief provided testimony that a wildland fire in the subject area would be left to burn itself out because the amount of flammable fuel load would be too hazardous for firefighters to operate. Therefore a fire could endanger life and property. According to a publication by the Interagency Standards for Fire and Fire Aviation Operation:

"For radiant heat only, the distance separation between the firefighter and the flames must be at least four times the maximum flame height. This distance must be maintained on all sides, if the fire has ability to burn completely around the safety zone. Convective heat from wind and/or terrain influences will increase the distance required."

If the trees are 20 feet tall, the flame length being 30 feet, 4 times is 160 feet for a safety zone. The City is not proposing a full-sized safety zone but more of a deployment site for firefighters, an area that firefighters may escape through, or deploy shelters in the event of fire overrunning the firefighters. It would also serve as an escape route for people visiting the park.

The City finds the current condition of the fire access road is a hazard to property and human life. Some vegetation removal is necessary to restore safe emergency access to the dunes. At the potential loss of some bird habitat, the City finds the goal to reduce hazard to property and human life is of highest priority.

(13) Beaches and Dunes (LCDC Goal 18)

The Gearhart Beaches and Dunes Goal is to conserve, protect and where appropriate develop and restore the resources and benefits of coastal beach and dune area. In addition, the goal is to reduce the hazard to human life and property from actual or man-induced actions associated with coastal beach and dune area.

Policy 14: Permanent revegetation shall be started at the site during the next growing season after construction. Final grading or utility placement time limitations will be dependent upon circumstances.

Policy 17: The City will evaluate the impact of a proposed land-use action on surrounding areas.

FINDINGS: The City finds the code amendments promote the elimination of noxious weeds and the restoration of native vegetation in the dune area. The amendments also seek to reduce fire hazards to human life and property in the dunes and surrounding areas.

The City finds there is evidence of bird and other wildlife habitat in the subject area. The proposed land use action to remove and destroy a limited amount of vegetation may negatively impact bird habitat in the area. Evidence of bird habitat in the area has been identified by several professional experts including the U.S. Department of Interior Fish and Wildlife Service, Vanessa Blackstone, Wildlife Biologist for the Oregon Parks and Recreation, Kathleen Sayce, Ecologist, Margaret Marino and several resident bird watchers.

The City finds the proposal may affect the habitat of endangered and non-endangered bird species. Daniel Elbert of the U.S. Department of the Interior stated the Snowy Plover would not likely benefit from the proposal unless the European beach grass is also removed. He concluded that the (endangered) species list would not be impacted. Vanessa Blackstone said, though some species will lose while others will benefit, the species that use the area are common not endangered. Margaret Marino said there are species in the area that rely on the wild crab apple trees, and that timing of the control methods will address the possible impacts on nesting periods. Kathleen Sayce also said management would be seasonally specific and not during nesting season.

The U.S. Department of the Interior letter dated 10-4-16 provided background on the Endangered Species Act and references to the species list. The letter said the endangered species list identifies threatened endangered proposed candidate species and critical habitat that may occur within the proposed project. According to the agency major construction would require a Bio Assessment to determine whether the project may affect listed or proposed species and/or designated habitats. In the case of a project that is not considered major construction the Service suggests a biological evaluation, similar to a Bio Assessment, to determine whether the project may affect species habitat.

The City finds there are differing opinions from professionals and birders on the impacts the proposal may have on wildlife habitat in the subject area. The Dune Vegetation Committee

reviewed extensive research and documentation to support their recommendation. Those documents are on the city website and provide additional background materials.

(14) Ocean Resources (LCDC Goal 19)

The Gearhart Ocean Resources Goal policies are established to assure cooperation with appropriate state and federal agencies in conserving the long-term values, benefits and natural resources of the near-shore ocean and the continental shelf.

FINDINGS: The City finds the code amendment is not directly related to this goal.

2. IS THERE A PUBLIC NEED FOR THE AMENDMENTS?

The City Council finds there is a need to protect wildlife habitat. But to balance competing city goals the findings in this report indicate there is also a need to control the growth of vegetation and noxious weeds in order to fight fires in the dunes or fires on structures adjacent to the dunes to assure the safety of the firefighters, as well as to protect scenic ocean views and eliminate the growth of noxious weeds, while still providing wildlife habitat.

V. CONCLUSION AND RECOMMENDATION

The City Council recognizes policy trade-offs are necessary to meet all goals and polices of the Comprehensive Plan because some goals are competing with others. In balance, the City Council finds this issue requires a certain amount of compromise in order to meet each goal. The City Council welcomes additional fine-tuning of the amendments that respects each goal yet may bring the compromise into better balance.

Based on the findings in this report, the City Council approved the proposed amendments to Article 3 B.A.D. Overlay Zone and Article 6 Supplementary Provisions (Exhibit A) as modified. Further, Council directs staff to prepare guidelines for citywide circulation describing best practice methods and timing of vegetation removal.