

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 **ORDINANCE # 477**

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5
6 **Relating to land use planning; amending Ordinances # 466 and 473 and LCC1.1385;**
7 **and declaring an emergency.**
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10 WHEREAS on August 8, 2012 by Ordinance # 466 Lincoln County adopted the
11 Bayshore Dune (Foredune) Management Plan and Strategy (“Bayshore Plan”) and changes
12 to Lincoln County Code (LCC) Chapter 1, Land Use Planning to implement the Bayshore
13 Plan; and

14 WHEREAS the County amended those provisions on March 14, 2014 by Ordinance
15 # 473. The amendments changed the Code requirements for use of “Qualified
16 Professionals” to develop permit applications; and

17 WHEREAS following further consultation with the parties who developed the Code
18 provisions, including Oregon State Parks and the Oregon Department of Land Conservation
19 and Development, the County determined that additional amendments to the Bayshore Plan
20 and Lincoln County Code would facilitate implementation of projects under the Plan; and

21 WHEREAS this matter was referred to the Lincoln County Planning Commission
22 under LCC 1.1230, which held a hearing on this matter, and unanimously recommended
23 amendment of the Lincoln County Code as set for below.
24

25 Now, therefore, the Lincoln County Board of Commissioners Ordains as follows:
26

27 **SECTION 1.** This Ordinance amends Ordinances # 466 and # 473.

28 **SECTION 2.** LCC 1.1385 is amended to read:

29 1.1385 Foredune Management Overlay Zone

30 (1) Purpose:

31 The purpose of the Foredune Management Overlay Zone is to implement the
32 management strategy, monitoring and maintenance program and other components as
33 specified in the Bayshore Dune and Foredune Management Plan (Bayshore Plan) adopted
34 under LCC 1.0108. The overall objectives of the foredune management strategy for
35 Bayshore, located on the Alsea Spit, listed in order of descending priority are:

1 (a) To maintain or improve on the ability of the foredune to protect properties from
2 ocean flooding and wave erosion;

3 (b) To minimize the inundation of improvements by accumulation of wind-blown
4 sand;

5 (c) To maintain and improve public access to the beach; and

6 (d) To maintain, or restore ocean views.

7 (2) Applicability:

8 The provisions of this section shall apply to the area delineated in Figure 2 of the
9 Bayshore Plan, encompassing seven (7) Management Units located along the seaward edge
10 of the Alsea Spit and one Management Unit (MU8) at the tip of the spit fronting on the
11 Alsea Bay.

12 (3) Definitions:

13 As used in this section:

14 (a) "Dune nourishment" means augmentation of the natural sediment supply within
15 a foredune area.

16 (b) "Foredune grading" means alteration of the foredune area through sand transfer
17 or removal of sand by mechanical means in order to accomplish view grading and/or
18 preventative grading.

19 (c) "Infrastructure grading" means removal of sand which is physically inundating
20 roadways, beach accesses, septic systems, and underground utilities, thereby causing
21 damage, impeding vehicular and pedestrian movements, and otherwise interfering with
22 service provision and operations related to the impacted infrastructure systems.

23 (d) "Management Unit" means a discrete segment of foredune area identified,
24 described and numbered as a Management Unit in the Bayshore Plan.

25 (e) "Preventative grading" means the removal of sand which threatens to inundate a
26 structure from the immediate vicinity of the structure.

27 (f) "Qualified Professional" means either an Oregon Registered Geologist or
28 Certified Engineering Geologist, with experience working on Pacific Northwest beaches.

29 (g) "Remedial grading" means removal of sand from a developed lot which is
30 physically inundating a structure and causing damage or preventing access to the structure,
31 or removal of sand from a vacant lot which is threatening to inundate adjoining lots.

32 (h) "Sand Removal" means the mechanical movement of sand to alternative
33 disposal areas outside the Foredune Management Area.

34 (i) "Sand Transfer" means the mechanical or natural movement of sand within and
35 between management units.

36 (j) "View grading" means grading of dune areas for the purpose of restoring,
37 obtaining, or maintaining views from existing structures.

38 (4) Uses:

39 In areas subject to the provisions of this section, all uses permitted under the
40 provisions of the underlying zone are permitted, subject to the additional requirements and
41 limitations of this section. Notwithstanding any contrary provisions of LCC 1.1930, the

1 following activities are also permitted, subject to the requirements and limitations of this
2 section:

- 3 (a) Foredune grading.
- 4 (b) Infrastructure grading.
- 5 (c) Remedial grading on individual developed or vacant lots.
- 6 (d) Dune nourishment.
- 7 (e) Vegetation planting, stabilization and maintenance.
- 8 (f) Sand fencing.
- 9 (g) Sand transfer.
- 10 (5) Prohibited Uses:

11 The following uses and activities are prohibited in the Foredune Management
12 Overlay Zone:

13 (a) Sand removal, except transfers between and within Management Units
14 consistent with the Bayshore Plan: Management Strategy.

15 (b) Dune grading below the elevations established in the Bayshore Plan:
16 Management Strategy.

17 (6) Dune Grading Permit Required:

18 (a) In the Foredune Management Overlay Zone, no foredune grading may be
19 undertaken unless a Foredune Grading Permit has been obtained from Lincoln County.

20 (b) In the Foredune Management Overlay Zone, no remedial grading, or
21 infrastructure grading may be undertaken unless a Remedial/Infrastructure Grading Permit
22 has been obtained from Lincoln County.

23 (7) Foredune Grading Permits:

24 (a) Procedure:

25 (A) Application, review, decision and appeals for Foredune Grading Permits shall be
26 conducted in the manner provided for in LCC 1.1210(2). In acting to approve an
27 application for a Foredune Grading Permit, the Planning Division or the Planning
28 Commission may impose, in addition to the conditions specifically set forth herein, any
29 conditions determined to be necessary to ensure that authorized grading, restoration and
30 maintenance activities will be consistent with the policies and requirements for the affected
31 Management Units as set forth in the Bayshore Plan.

32 (B) Foredune Grading Permits shall be valid for a period five (5) years from the date
33 of issuance.

34 (C) Foredune Grading Permits may be renewed as follows:

35 (i) Prior to the expiration of the permit, the permittee shall submit a written request
36 to the Planning Division for renewal of the permit. Such a request may be accompanied by
37 a report prepared by a Qualified Professional as defined in Section 1.1385(3)(f) who
38 establishes, based on current conditions, that the grading, restoration and maintenance
39 activities authorized by the permit are consistent with the policies and requirements for the
40 affected Management Units as set forth in the Bayshore Plan. If not prepared by a Qualified
41 Professional as defined in Section 1.1385(3)(f), the permittee shall submit a certification

1 that the grading, restoration and maintenance activities authorized by the permit are
2 consistent with the policies and requirements for the affected Management Units as set forth
3 in the Bayshore Plan, acknowledge that the certification was not prepared by a Qualified
4 Professional as defined in Section 1.1385(3)(f) and acknowledge that the permittee assumes
5 responsibility for actions taken pursuant to the permit.

6 (ii) Review, decision and appeal for requests for renewal of Foredune Grading
7 Permits shall be undertaken in accordance with LCC 1.1210(2). In acting upon a request for
8 renewal of a Foredune Grading Permit, the Planning Division or the Planning Commission
9 may impose, in addition to the conditions specifically set forth herein, any conditions
10 determined to be necessary to ensure that authorized grading, restoration and maintenance
11 activities will be consistent with the policies and requirements for the affected Management
12 Units as set forth in the Bayshore Foredune Management Plan.

13 (iii) If beach and foredune conditions change to such an extent during the permit
14 period that renewal of an existing foredune grading permit is not appropriate, then a new
15 permit application, including a new grading plan and permit conditions, is required. The
16 Qualified Professional as defined in Section 1.1385(3)(f) may make this determination in
17 the report specified in (i) above.

18 (b) Foredune Grading Plan

19 Applications for Foredune Grading Permits shall be accompanied by a Foredune Grading
20 Plan. Foredune Grading Plans may be prepared by a Qualified Professional as defined in
21 Section 1.1385(3)(f) or the permittee who shall submit a certification that the grading,
22 restoration and maintenance activities authorized by the permit are consistent with the
23 policies and requirements for the affected Management Units as set forth in the Bayshore
24 Plan, acknowledge that the certification was not prepared by a Qualified Professional as
25 defined in Section 1.1385(3)(f) and acknowledge that the permittee assumes responsibility
26 for actions taken pursuant to the permit. Foredune Grading Plans shall contain at least the
27 following information, set forth in sufficient detail to establish that the proposed grading,
28 restoration and maintenance activities will be consistent with the policies and requirements
29 for the affected Management Units as set forth in the Bayshore Plan:

30 (A) Narrative describing the proposed work;

31 (B) Plan view and elevations expressed in NAVD 88 of existing conditions in the
32 work area;

33 (C) Plan view and elevations expressed in NAVD 88 of proposed modifications in
34 the work area, demonstrating general consistency with grading profiles for the Management
35 Unit(s) in which the work is to be performed;

36 (D) Identification of needed remedial and/or infrastructure grading within the project
37 area and a description of how such grading will be integrated into the proposed work;

38 (E) Surveyed profiles for subarea grading designs sufficient to establish a baseline
39 for monitoring;

40 (F) Revegetation plans consistent with the specific Management Unit
41 recommendations;

1 (G) Monitoring and maintenance plan for the work area consistent with the
2 requirements of this section;

3 (H) Identification of the person(s) responsible for supervising the project; and

4 (I) Identification of sand disposal area(s).

5 (c) Foredune Grading Permit Decision Criteria:

6 A decision to approve a Foredune Grading Permit shall be based on the
7 following findings:

8 (A) The proposed grading, restoration, monitoring and maintenance plan
9 encompasses an entire Management Unit or a contiguous segment of not less than 400 feet,
10 as measured along the statutory vegetation line;

11 (B) The proposed grading will not reduce the height of any foredune below four feet
12 above the V-zone Base Flood Elevation;

13 (C) The plan incorporates, to the extent practicable, all needed remedial and
14 infrastructure grading within the project area; and

15 (D) The proposed grading, restoration, monitoring and maintenance plan is
16 consistent with the policies and requirements for the affected Management Units as set forth
17 in the Bayshore Plan.

18 (d) Foredune Grading Permit Conditions

19 In addition to any conditions imposed pursuant to sub-section (7)(a)(A), all
20 Foredune Grading Permits shall be subject to the following conditions:

21 (A) Sand removal is prohibited. Transfers between and within Management Units
22 is permitted in accordance with the approved Foredune Grading Plan;

23 (B) No foredune shall be reduced in height to less than four feet above the V-zone
24 Base Flood Elevation;

25 (C) **Except as provided for in subsection (D),** [G]grading shall be conducted
26 only between February 1 and April 1, or between October 1 and October 31;

27 (D) **Grading may be conducted at any time if it is determined that adequate**
28 **temporary stabilization measures can be provided prior to permanent revegetation**
29 **provided for in subsection (E).**

30 (E) Upon completion of authorized grading activities, **any required temporary**
31 **stabilization shall be established.** Permanent revegetation shall be accomplished in
32 accordance with the approved Foredune Grading Plan;

33 (F) Within 30 days of completion of the initial grading and revegetation, the
34 permittee shall submit to the director a written statement from a qualified professional as
35 defined in Section 1.1385(3)(f) or the permittee that the project has been completed in
36 conformance with the provisions of the Foredune Grading Plan;

37 (G) Within one year of completion of the initial grading and revegetation, and
38 annually thereafter during the time within which the permit remains valid, the permittee shall
39 submit a monitoring report prepared by a qualified professional defined in Section
40 1.1385(3)(f) or the permittee that shall include:

41 (i) Profiles of the project area;

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NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing ordinance to be omitted. New sections are in **boldfaced** type.

- 1 (ii) Photographic documentation of the current condition of the project area;
2 (iii) Recommendations for any vegetation maintenance needs, including repair of
3 vegetation, replanting of blow out areas, and fertilization;
4 (iv) Recommendations for any needed shaping of the foreslope and/or maintenance
5 grading of the foredune crest;
6 (v) Recommendations for any remedial or infrastructure grading;
7 (vi) Recommendations for the placement of sand fencing; and
8 (vii) Specified time frames for performing recommended maintenance activities;
9 (H) All maintenance activities and treatments recommended in the annual
10 monitoring report required by this subsection shall be completed by the permittee within the
11 time frames set forth in the report.

12 (8) Remedial/Infrastructure Grading Permits

13 Pursuant to Section 7(c)(C) of this Section, where practicable, all remedial and
14 infrastructure grading shall be established as part of a foredune grading permit. In cases
15 where needed remedial and infrastructure grading cannot be accomplished as part of a
16 foredune grading permit, such grading may be permitted in accordance with this subsection.

17 (a) Procedure:

18 (A) Application, review, decision and appeals for Remedial/Infrastructure Grading
19 Permits shall be conducted in the manner provided for in LCC 1.1210(1). In acting to
20 approve an application for a Remedial/Infrastructure Grading Permit, the Planning Director
21 or the Planning Commission may impose, in addition to the conditions specifically set forth
22 herein, any conditions determined to be necessary to ensure that authorized grading,
23 restoration and maintenance activities will be consistent with the policies and requirements
24 for the affected Management Units as set forth in the Bayshore Plan.

25 (B) Remedial/Infrastructure Grading Permits for remedial grading shall authorize
26 grading on a single lot or parcel only, except for infrastructure grading within dedicated
27 road right of ways which may be authorized for all or any portion of a road right of way.

28 (C) Remedial/Infrastructure Grading Permits shall be valid for a period one year
29 from the date of issuance.

30 (D) Remedial/Infrastructure Grading Permits may be renewed prior to the date of
31 expiration upon written request of the permittee and a determination by the Planning
32 Division that all applicable conditions have been complied with.

33 (b) Remedial/Infrastructure Grading Permit Conditions

34 In addition to any conditions imposed pursuant to sub-section (8)(a)(A), all
35 Remedial/Infrastructure Grading Permits shall be subject to the following conditions:

36 (A) All remedial and infrastructure grading activities shall be performed in a
37 manner that avoids alteration of the existing height of the foredune and does not
38 significantly damage existing vegetation;

39 (B) All sand removed from a property during remedial grading shall be moved
40 up and over the foredune seaward of the building and shall be accomplished in a manner
41 that minimizes disturbance to existing dune height, vegetation, and the beach;

1 (C) Only one disposal access shall be allowed on the property for the purpose of
2 pushing sand up and over the foredune seaward of the structure. The access shall be limited
3 to the minimum width necessary to accommodate the equipment being used and in no case
4 wider than 8 feet. Upon completion of the project, the access shall be re-contoured to the
5 height of the existing adjacent dune;

6 (D) On properties where the foredune has been previously lowered below the
7 undisturbed foredune height on the rear (seaward) yard, the foredune shall be allowed to
8 build up and no grading is allowed;

9 (E) Permanent stabilization of any portion of the foredune disturbed by remedial
10 sand removal activities shall be accomplished through planting, fertilization, and
11 maintenance of European beachgrass. Beach grass shall be planted at a spacing of 18
12 inches and carried out between November 1 and April 1. After initial planting and
13 fertilization, stabilization shall include follow-up fertilization. Planting shall also include
14 the re-contoured area used for the disposal access road. Documentation of revegetation
15 efforts shall be provided to the Planning & Development Department within 10 days after
16 planting has been completed;

17 (F) Remedial grading adjacent to structures shall be limited to the following:

18 (i) Rear yard: (Rear yard is the yard seaward of the structure). Sand may be
19 removed to the level of the top of the sill of the foundation within 10 feet of the building, or
20 the base of an existing deck.. From the 10-foot line, all grading shall slope upward to where
21 it intersects the ground surface of the existing dune at a ratio of 2:1 (horizontal:vertical).

22 (ii) Side yards: Sand may be removed to the level of the top sill of the
23 foundation within 10 feet of the building (if possible). From the 10-foot line, sand grading
24 shall slope upward at a ratio of 2:1.

25 (iii) Front yard: All sand that is landward of the building may be removed down
26 to the sill level of the foundation, provided removal does not create slopes of more than 2:1
27 with adjacent properties. Grading may not lower the front yard below the level of adjacent
28 streets or roads except to clear sidewalks or driveways; and

29 (G) Remedial grading on vacant lots shall conform to the following
30 requirements:

31 (i) Vacant lots shall, at a minimum, be graded to alleviate sand sloughing
32 hazards to adjoining properties by grading the slopes of the vacant lots so they do not
33 exceed gradients of 2:1 (horizontal:vertical). Such minimal grading is expected to require
34 regular maintenance to maintain a maximum slope of 2:1.

35 (ii) Vacant lots should optimally be graded to elevations that are similar to
36 adjoining lots but in no case shall be lowered below an elevation which is 4 feet above the
37 BFE for the relevant management unit.

38 (iii) A site-specific plan should be prepared specifying where the sand will be
39 placed on the beach or lower seaward side of the foredune.

40 (iv) Vegetation Stabilization: Graded areas shall be stabilized with vegetation
41 after completion of grading as indicated below:

1 1. Planting and fertilization for vacant lots and associated disposal areas
2 shall be carried out during rainy months between November 1 and April 1 in accordance
3 with specifications in the Bayshore Plan, except that approved disposal areas within the
4 typical tidal range need not be vegetated.


5 2. Barriers should be constructed around graded vacant lots to prevent
6 trampling of the planted areas.

7
8 **SECTION 3.**

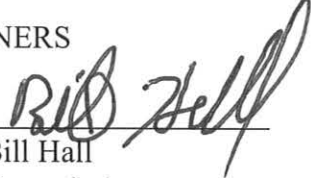
9 The Board finds that the adoption of this Ordinance is urgently needed in order to
10 continue efforts to complete projects caused by the sand inundation in the Bayshore Area.
11 Therefore, this Ordinance being necessary for the immediate preservation of the public
12 health and safety, an emergency is declared to exist and this Ordinance shall take effect
13 upon its passage.

DATED this 3rd day of September, 2014.

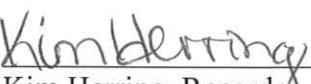
LINCOLN COUNTY BOARD OF COMMISSIONERS


Terry N. Thompson
Chair


Doug Hunt
Commissioner


Bill Hall
Commissioner

ATTESTED TO:


Kim Herring, Recorder

APPROVED AS TO FORM:


Wayne Belmont, County Counsel

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