



LAND USE PLANNING AND CONSULTING SERVICES

846 A STREET
SPRINGFIELD, OREGON 97477
(541) 302-9830
WWW.METROPLANNING.COM

PLANNING COMMISSION HEARING LETTER

January 14, 2025

Florence Planning Commission
c/o Wendy Farley Campbell,
Community Development Director
City of Florence
250 Highway 101
Florence, OR 97439

RE: Leturno/A&D Bay Street, LLC; PC 24 29 CPA 01; Map 18-12-34-12-008000 and 008100.

Dear Commissioners:

The applicant requests a Plan Diagram Amendment (17-1)¹, a Zoning Map Amendment and a text amendment to the Old Town Area A zone. The existing Plan diagram and the zoning map are based on incorrect data relating to the location of the State defined water line and are thus flawed for planning purposes. The proposal corrects this flaw.

The Old Town A prohibition against general dwellings on these parcels is inconsistent with the underlying designation. This property was inventoried in the RCP as being preserved for residential development based on designation and does not lie within the mixed use designation. The text amendment fixes this flaw.

¹ All references in this letter to the "Plan Diagram" are a reference to Diagram Map 17-1 and not the General diagram. The General Comprehensive Plan map designates this entire area as Downtown. The City policy choice has been made that this general designation implements the DE designation and the Shorelands Designation (as well as many others). As such, no change is needed to the General Comprehensive Plan Map.

Because the proposal corrects errors in the City’s land use documents, the proposed fix benefits all parties, including the City as City planning should be based on accurate documents and information.

It is important to note that the proposal does not change the Comprehensive Plan designation of the property and does not remove any commercial land from the CLI. All existing commercial uses continue to be allowed by the Old Town A zoning district.


The applicant has added an amendment to the DE zoning district to allow nonconforming structures to retain their nonconforming status. This is essential for the preservation of preexisting structures along the waterfront.

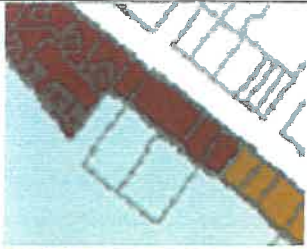


I. STAFF REPORT

The Director supports the proposed amendments.

For clarity, the proposal:

1. Does not change General Comprehensive Plan Designation of “Downtown.”
2. Corrects the boundary between **existing** MU designations based on the State’s definition.
3. Corrects the boundary between **existing** Zoning designations based on the State’s definition.
4. Modifies the text of the zoning subdistrict to allow broad residential development consistent with Comprehensive Plan Designation.
5. Modifies the language of the DE zone to allow nonconforming structures to continue.

Document	Existing designation/zoning	Result of current proposal	Supporting Map excerpt
General Comp Plan Designation	Downtown (entire property)	No change; no amendment requested.	

MU Comp Plan Designation Map 17-1:	Shoreland Res Dev 3 (SRD) /Estuary Dev F1 ² (ED)	Adjustment of <u>boundary</u> . No change in MU designations.	
Zoning District	Old Town Area (OT) /Development Estuary (DE)	Adjustment of <u>boundary</u> between districts. No change in base zoning.	
Zoning Sub District	Old Town Area A (OT-A) /Development Estuary (DE)	Minor change in text of the OT-A language to properly reflect Residential designation. No map change.	

II. PART 1: PLAN DIAGRAM AMENDMENT (MAP 17-1) AND ZONE MAP AMENDMENT.

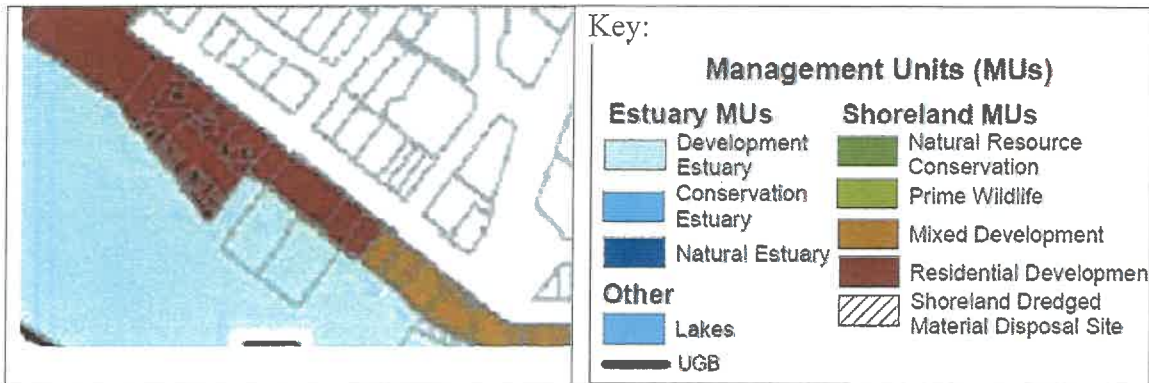
The Director consolidated the Plan Diagram Amendment and Zone Map Amendment into a single City resolution action: Resolution PC 24-29 CPA 01. As stated above, the Director recommends approval.

A. Background

² Based on the definition of the F1 MU in the Comp Plan (Pg. XVI-16), the property lies within the F1 MU. *“Management Unit F1 (Bay Bridge Marina), from the eastern boundary of MU #2 to the western boundary of Tax Lot 7900, T18R12WS34-12, near Kingwood Street. The channel is nearer the opposite shore in this unit. Existing development consists of a private marina which requires dredging. At the time of the 1978 inventory, there was a small area of tidal marsh, a small mud clam bed and a small area of eelgrass near the Ivy Street pump station. The substrate is primarily sand. Moorage facilities for recreational boats were considered appropriate in this area. Commercial or industrial uses were not considered appropriate, due to the proximity to residential development.”*

The background of the designation and zoning of the property is set out in the applicant's application narrative. In summary, the tract (TLs 8000/8100) is currently split designated Development Estuary Management Unit F/Residential Shorelands Management Unit 3. The dividing line between the two designations is the "mean higher high tide" with the Development Estuary designation lying shoreward of that line, and the Residential Shorelands designation lying landward of that line.

Graphic 1: Current designation (snip)



The issue is that the diagram does not accurately represent the location of the "mean higher high tide" as that term is defined by the State of Oregon. Thus, the location of the boundary between the two designations (light blue and burgundy) is not correct.

Because State Law and the Florence Comprehensive Plan requires zoning must match the implementing designation, the boundary between the zoning districts is also incorrect.

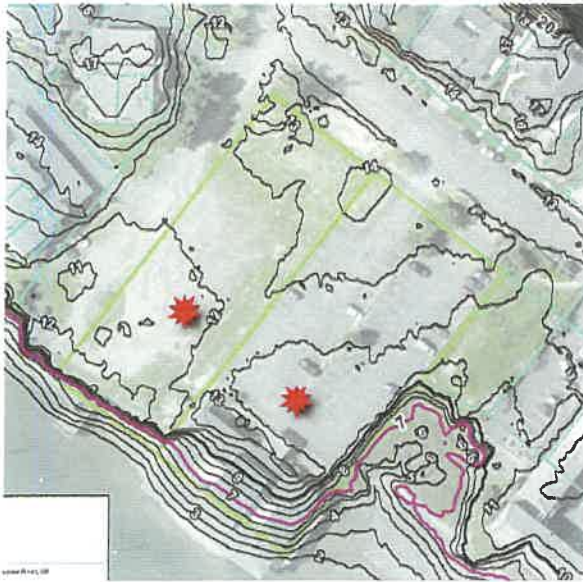
The request under this Resolution does nothing more than correct the location of the line based on the State's definition of "mean higher high water."

B. Ordinary Higher High Water

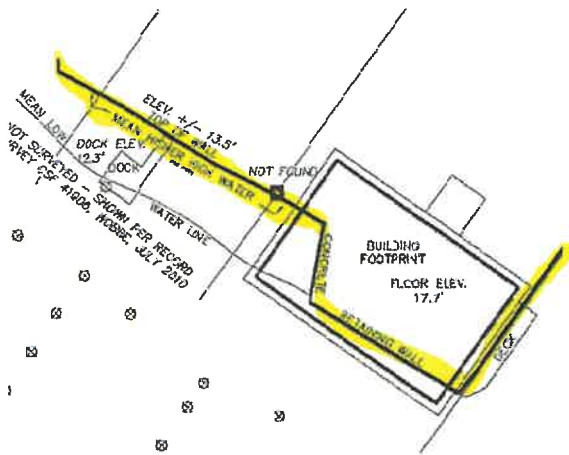
NOAA clarified that "mean high tide" and "mean high water" are the same,

"The "official term" for this tidal datum is Mean High Water (MHW). This tidal datum is often referred to as "Mean High Tide"; which was the historical term for this tidal datum used until the 1950's / 1960's." (NOAA, Thu, Oct 10, 7:57 AM, Todd Ehret. Oceanographer, NOAA's Center for Operational Oceanographic Products and Services)

Based on this definition, the location of the line is shown on the below in purple.



As staff points out, the above diagram is further refined by the existing bulkhead.



The applicant requests that the Planning Commission accept this location as “mean higher high water” boundary and acknowledge that this line is the boundary between the Development Estuary MU and the Residential Shorelands MU (and implementing zoning). Map 17-1 shall be amendment accordingly consistent with the Director’s Findings.

III. PART 2: ZONING TEXT AMENDMENT PC 24-41 TA 02

This amendment relates only to the portion designated Residential Shoreland (3.2 Bay Bridge MU) and zoned Old Town/Old Town Area A. State law requires that the zoning of the property be consistent with the property's designation. Currently, they are inconsistent and thus the City's zoning ordinance is unlawful.

All parties agree that the landward portion of the property is designated Residential Shoreland. This designation was inventoried and slated for general Residential development.

A. Plan support for allowing residential development on the property.

The zoning text amendment is necessary to comply with state law. The proposed text amendment modifies the zoning district so that it is consistent with the Comp Plan designation of Residential Development and related policies. The amendment is narrowly drafted to ensure that the language only applies to those properties designated for residential use in the Comprehensive Plan. The result is that residential development is allowed on eight (8) additional parcels, five (5) of which are already irrevocably committed to residential use via developed condominium plat.



The Comprehensive Plan explicitly anticipates that this land be preserved for residential use. Residential use was not to be restricted.

This property is designated Residential Shoreland/Residential Development 3.2 Bay Bridge MU (page XVII-12)³.

*“This designation, within the city limits of Florence, recognizes that there are certain shoreline areas which have **been committed to residential use** by their development patterns over many years. The underlying assumption of this MU is that the **residential character should remain undisturbed**. Preservation and enhancement of riparian vegetation is a necessity along the estuary and coastal lakes, regardless of any development.”*

Thus, as part of the Comprehensive Plan process, the City Council made the policy determination to recognize and allow general residential development on this property. The beauty of the proposed text amendment is that it allowed compliance with the Comprehensive Plan while still allowing all other mixed uses allowed in the Old Town A zone.

In short, the inclusion of this property in Old Town A, without some allowance for general residential use, was an error that was and is unsupported by the Comprehensive Plan. It was designated for residential use and consistent zoning should have been applied. It is unclear how this mistake occurred, but the subject proposal corrects it.

To ensure that the proposed text amendment has limited impact and density limitations cannot be abused, the proposed text language was carefully crafted. It uses **existing** language from Old Town B, and leaves **prohibiting** language intact⁴.

³ “Management Unit 3.2 (Bay Bridge): The inland extent of the area includes that area south of the following boundary: starting at Rhododendron Drive east to the point where Greenwood Street would cross Rhododendron Drive (east boundary of city property); then south to First Street; and east along First Street to the western edge of the Ivy Street pump station; then southwest to Bay Street; then south east to Kingwood Street. This MU is **mostly developed in residential uses**, including **Bay Bridge Condominiums**. Public access is available at Kingwood, Juniper, and Ivy Streets. Some of the rights-of-way in this area have not been developed. The terrain is low and accessible to the river. Water and sewer services are available. Although the estuary adjacent to this unit is designated Development and there is an existing marina that is not in operation at present, **the shoreland area is already committed to residential use**. Commercial water-dependent and water related uses will be permitted but **it is expected that the area will remain primarily residential.**”

⁴ Proposed new language:

FCC 10-17A-2.A. Permitted Uses

Residential: multi-unit, single unit attached, duplexes, tri-plex, four-plex where the subject property is designated Shorelands Residential Development Management Unit.

FCC 10-17A-2.C. Prohibited Uses

1. The text amendment only applies to the subzone (Old Town A) and only applies to eight (8) parcels within that subzone, five (5) of which are already developed with single family dwellings. These eight parcels are designated Residential Shoreland, and as discussed, should have been zoned accordingly. The proposal results in limited additional residential development and thus very little additional Tsunami or Flood Hazard risk.
2. The base zone of Old Town (which includes subzones Old Town A and B) allows residential use. The proposed text amendment results in broader residential uses, but 'more of the same' with regard to the number of people living in the area.
3. The applicant is suggesting a condition to ensure development remains limited in the foreseeable future.
 - a. Condition: To ensure compliance with the Tsunami Zone and to mitigate risk, development of the subject properties will be limited to 10 units per acre. This condition may be lifted after 2032 upon approval by the Planning Commission.

Residential, single unit (unless part of mixed uses *or unless designated Shorelands Residential Development MU* as listed in permitted or conditional uses)

Residential: multi-unit, single unit attached, duplexes, tri-plexes, four-plexes (unless part of mixed use development *or unless designated Shorelands Residential Development MU* as listed in permitted or conditional uses)

IV. PART 3: ZONING TEXT AMENDMETN TO THE DE ZONE TO ALLOW NONCONFORMING STRUCTURES TO CONTINUE.

This amendment is necessary to allow use of the existing building in an efficient and economical manner. Without this amendment, the building will be split-zoned. This is not ideal for the City or the property owner. To correct this situation, the applicant is proposing an amendment to FZO 10-19-4.

FDO 10-19-4-F currently reads,

*Conditional Uses: Outside of Areas Managed for Water Dependent Activities, the following uses and activities are allowed in the estuary with a Conditional Use Permit (Type III review), subject to the applicable criteria. ****

10. Water-related uses, non-water-dependent uses, and non-water-related uses, provided no dredge or fill is involved and it is not possible to locate the use on an upland site. Non water-dependent and non-water-related uses and structures that existed as of July 7, 2009 will retain their non-conforming status for five years from the date the use is abandoned or the structure is destroyed; and the existing structure for the same use may be replaced; the provisions of non-conforming uses in the Florence City Code notwithstanding.

The subject properties are not managed for Water Dependent Uses. The exiting structure was built as a restaurant and marina roughly 1989 by Tony Chu. The pilings for the marina remain. Remnants of the pier, gang plank and fuels box still. The building existed as Baybridge Steak and Seafood for a number of years and then became the Lotus Seafood Palace. The Lotus ceased to operate in fall of 2003.

The applicant requests to remove sunset date for nonconforming structures that were abandoned, which would help several properties in this zone and allow these nonconforming uses and structures to organically change over time. The applicant proposed the following edits to allow nonconforming structures to continue,

*10. Water-related uses, non-water-dependent uses, and non-water-related uses, provided no dredge or fill is involved and it is not possible to locate the use on an upland site. **Notwithstanding the non-conforming use provisions in the Florence City Code, [n]**on water-dependent and non-water-related uses and structures that existed as of July 7, 2009 will: **(1)** retain their non-conforming status for five years from the date ~~the use is abandoned or~~ the structure is destroyed; **(2) retain***

their non-conforming status where the nonconforming use or structure is abandoned until such time the use or structure is converted to a conforming use; and (3) the existing structure for the same use may be replaced.; ~~the provisions of non-conforming uses in the Florence City Code notwithstanding.~~