

Allison Hinderer

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Sent: Thursday, June 10, 2021 3:39 PM
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Subject: EXTERNAL: 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: Applicant's Second Open Record Submittal.pdf; Exh A - NWI Map Subject Properties.pdf; Exh B - DLCD_LincCo_commentletter_01-02-03-LUPC-21.pdf; Exh C - Survey of Beach Accesses.pdf; Exh D - Photos of January 2021 Flooding.pdf
Importance: High

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Hi Sarah and Allison,

Please find the attached for submittal in the above matter. Please also confirm receipt. Additional submittals will follow. Thank you.

Best,
Sarah



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June 10, 2021

Sarah Absher, Director
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Department of Community Development
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RE: 851-21-000086-PLNG-01; Applicant's Second Open Record Submittal

Dear Sarah,

This firm represents the Applicants who are 22 owners of beachfront properties in the Pine Beach and George Shand Tracts subdivisions, in the above-captioned matter. This letter responds to new issues raised by materials submitted during the First Open Record period. Please include this letter and attachments in the record of the above referenced matter.

1. The proposal is consistent with Goal 5 and all of the other applicable Statewide Planning Goals.

Some commentors argued that the proposal is not consistent with the Statewide Planning Goals, including Oregon Shores' June 3, 2021 letter asserting the applications fail to demonstrate consistency with Goals 5 through 13 and Goal 17. (Comments and Testimony Received June 3rd pdf, p. 145 of 185). The problem with the opposers' comment in this regard is that they fail to explain how the demonstration of consistency with all of the statewide planning goals submitted with the original application narrative, is in any way deficient. Opponents' conclusory statements that the submitted materials and analyses are inadequate, provide no specificity that either the Applicants or the Planning Commission can respond to. They certainly provide no basis to deny the proposal. Regardless, in response, the Applicants supplement their analyses here.

As an initial matter, and as the application explains in the application narrative, the goals that apply here impose planning requirements upon the County and goal compliance is established based upon consistency with the County's Comprehensive Plan and code. Thus, here with respect to Goal 5, the proposal is consistent with Goal 5 if it is consistent with the County's Goal 5 Comprehensive Plan element. The proposal is entirely consistent with the County's Goal 5 Plan Element.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces and the Goal 5 rule at OAR 660 divisions 16 and 23 require local governments (and the state) to: inventory specific resources; determine which areas or sites are resource sites and to what degree inventoried resources are to be protected; and adopt criteria to regulate uses at those inventory

sites consistent with the designated level of protection. In short, in order to trigger Goal 5, the subject property must propose development on an inventoried Goal 5 site or must impact one of the protected Goal 5 resources. The proposal does neither.

Goal 5 identifies specific resources to be inventoried. The Tillamook County Comprehensive Plan Natural Resources Element (Goal 5) implements Goal 5 in its various sections related to natural resources, environmental resources, economic resources, and state and federal programs that concern Goal 5 resources. The Comprehensive Plan includes inventories, findings and related policies. The Subject Properties are not listed on any of the County's Goal 5 inventory sites and the proposal does not impact any Goal 5 designated resources. That means that the proposal is consistent with Goal 5.

In fact, the County's Plan expressly discusses the relationship of Goal 5 to the Estuarine Resources Goal 16 and the Coastal Shorelands Goal 17 and explains that coastal resources are covered under County Plan compliance for State Goals 16 and 17, and not under Goal 5. In this regard, County Plan Section 1.1c explains:

“Goal #5 lists fifteen types of resources that are subject to inventory and possible protection. A number of these resources are also addressed by the Estuarine Resources Goal and the Coastal Shorelands Goal. Generally, the resource protection requirements of the Estuarine Resources Goal and the Coastal Shoreland Goal are more stringent than the requirements of the Natural Resources Goal.

“Thus, when one of the Goal #4 resources is located in either an estuarine or coastal shoreland area, the appropriate resource inventory and protection requirements of the Estuarine Resources Goal or the Coastal Shorelands Goal are applied. Therefore, these resources are not covered by this element of the Comprehensive Plan.” (Plan, Goal 5, p. 4-5, Sec. 1.1c).

The County's Comprehensive Plan lists the scope of each of the fifteen Goal #5 resource inventories as including all land areas with two exceptions:

“8. Natural Areas – all land outside the Coastal Shoreland planning area and estuarine areas.

* * *

“15. Scenic Views and Sites – *all lands outside of the Coastal Shoreland.*” (Plan, Goal 5, p. 5, Sec. 1.1c) (Emphasis supplied).

The County Plan defines “natural areas” to “include land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitat for plant, animal, or marine life, for the study of its natural, historical, scientific, or paleontological features, or for the appreciation of its natural features”. (Plan, Goal 5, p. 53, Sec. 1.3c). However, as noted under #8 above, the definition of the term “natural areas” is limited to

land that is outside the Coastal Shoreland planning area. Similarly, for scenic views and sites, the Plan inventories sites “whose value is derived primarily from their aesthetic features rather than sites where scenic quality may be part of its overall value as a natural, or historic site or wildlife.” (Plan, Goal 5, p. 59-60, Sec. 1.3d). The Plan goes on to state: “The scenic resources of the County’s coastal areas are addressed in the Plan’s Coastal Shoreland Element.” *Id.* The Plan takes a similar “addressed in the County’s Coastal Shoreland Element” approach for fish habitat (Plan, Goal 5, p. 24, Sec. 1.3b.2). The County Comprehensive Plan also establishes that the Subject Property is NOT designated as big game range on the County’s big game habitat plan map. (Plan, Goal 5, p. 14).¹ Further, there are no wetlands on any of the subject properties. There are no identified wetlands on the subject properties inventoried in the County’s Comprehensive Plan, nor are there any wetlands identified on the subject properties on the National Wetlands Inventory (NWI) map. The NWI map of the subject properties is provided with this letter as Exhibit A.

Significantly, the County’s Comprehensive Plan also does not list the Subject Properties as a coastal shoreland natural area or coastal shoreland scenic view and site. (Plan, Goal 17). As a result, the proposal is consistent with Goal 5 because the proposal does not impact any identified Goal 5 resources, as a matter of law.

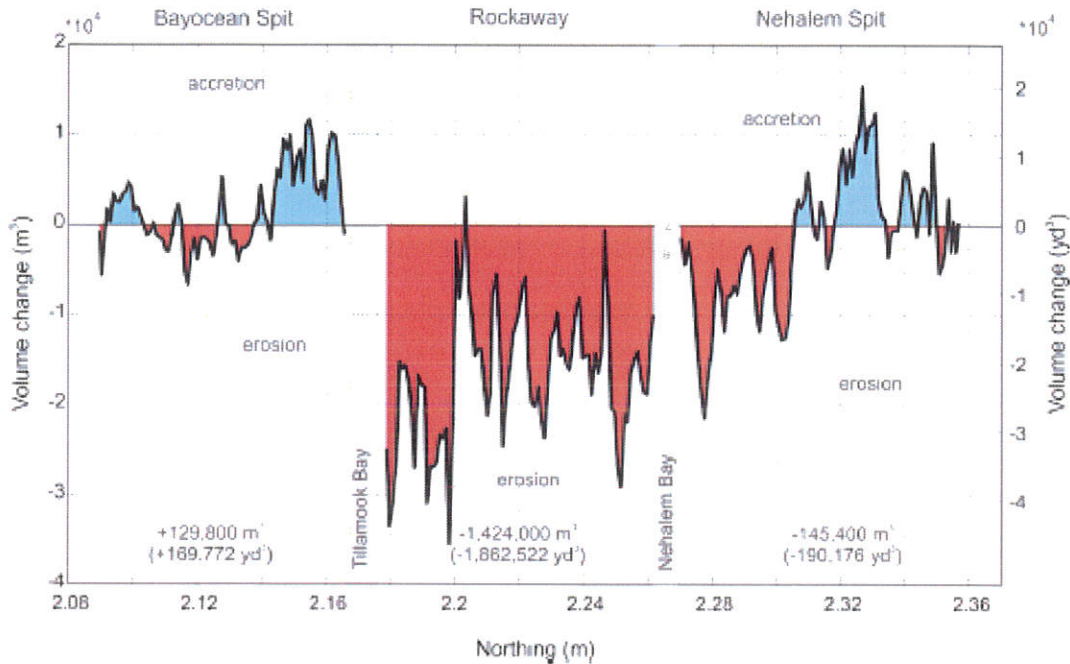
One final point is worth reiterating. The Subject Properties have also received a number of exceptions to specific statewide planning goals to include exceptions for Goals 3, 4, 11, 14 and 17. Because an exception has already been taken to allow urban residential development at the Subject Properties, they are exempt from having to demonstrate compliance with these or any other goal for which an exception has been approved.

2. The unique circumstances surrounding the approval and development of the two subdivisions, appropriately located under Goal 18’s restrictions on the location of development, entitle the properties to the protections afforded by Goal 18.

Some opponents argue that the Applicants have not adequately explained the unique circumstances that would justify a reasons exception for the subject properties. *See, e.g.,* Surfrider Foundation, letter dated May 27, 2021, p. 5 (Comments and Testimony Received June 3rd pdf, p. 6 of 185). Despite having addressed this issue numerous times, we embellish it in view of DLCD’s wholly appropriate June 7, 2021 (DLCD Gleneden Beach letter, attached to this letter as Exhibit B) supporting a Goal 18 reasons exception in Lincoln County to allow construction of badly needed BPS in Gleneden Beach. DLCD’s analysis in that situation should be applied here to similarly support the proposed BPS. There, the unique circumstance is that

¹ “Open Space” as that term is used in Goal 5 and the Plan means lands used for agriculture or forest use or, when left in a natural state or its present use promotes certain water and soil quality or planning values. (Plan, Goal e, p. 12-13, sec. 1.3a). As the Plan explains: “Open space is considered a non-site-specific resource.” *Id.* at p. 13. The subject properties are planned and zoned for urban levels of residential use and the proposal is located on the residential lots of the subdivision within the urban unincorporated community. The property is not “open space” as that term is used in Goal 5 or the County Plan.

most of Gleneden Beach is already rip rapped. Here the unique circumstances are (1) when the Subject Properties' subdivisions were approved and most houses built, the beach was prograding and no change to that phenomenon was anticipated in the various site investigation reports. All development here was found to be consistent with Goal 18's "appropriate development" prong; (2) a change in the Subject Properties' subregion of the Rockaway Beach littoral cell in the winter of 1997 initiated a unique and dangerous erosive change to the littoral cell's subregion that is significant and unique to this subregion. The rest of the littoral cell continues to prograde – deposit sand:



(3) the Subject Properties are in the equivalent of an acknowledged urban city. The only difference is that this acknowledged urban "city," is unincorporated. However, Twin Rocks-Barview-Watseco shares all features with any other city – it has urban water, sewer, electricity, gas, and small lot residential uses that are allowed and developed. Just as DLCD would not demand the City of Portland be foreclosed from protective preparations for the Cascadia Subduction earthquake on the hope that Portland be destroyed to return to a forest under Goal 4, DLCD cannot demand the Twin Rocks-Barview-Watseco significant urban community that DLCD has acknowledged complies with all Goals, may not be protected against the natural hazards it faces.

DLCD's Gleneden Beach letter recognizes that the differing priorities contained in Goal 18 can demonstrate that "there are reasons to justify why the state policy embodied in Goal 18, Implementation Requirement 5 should not apply" when there are specific unique conditions that apply, compared to other areas along the Oregon coast. DLCD Gleneden Beach letter, p. 3. DLCD's Gleneden Beach letter demonstrates that there are appropriate instances for granting a reasons exception to Goal 18 Implementation Requirement 5's restrictions on BPSs, and that this Tillamook County proposal is one of them.

As explained above and in our earlier response to DLCD’s letter on the subject proposal, the historical shoreline 70-year accretion patterns and the fact that the subdivision was approved in the manner set forth by Goal 18, with dwellings designed to be set back by more than 270 feet from the shoreline, and with an intervening natural, vegetated dune common area to ward-off ocean encroachment, distinguishes this site from nearly all others on the coast. Few residential developments can claim that they were developed at locations where a Goal 18 exception was not required because of nearly a century of beach progradation prior to approval, only to be faced with ocean threats not foreseen by either Goal 18 or the experts at the time of approval. *See, e.g.,* West Consultants’ May 27, 2021 Technical Memorandum, p. 4 (citing source that in 1994 there had been westerly accretion of shoreline of at least 1,000 feet since 1939). The subdivision approvals here located the residential dwellings hundreds of feet away from the ocean shoreline, precisely in the manner authorized by Goal 18. To borrow a graphic example from the San Diego Surfrider website (Comments and Testimony Received June 3rd pdf, p. 154 of 185), the subdivision development was located with an adequate setback as provided by Goal 18, not on a slide plane. The subdivisions here are where they are supposed to be and the houses are where DLCD has decided and acknowledged they should be consistent with all state goals.

The issue raised in this proceeding is whether, when a subdivision development is approved entirely consistent with Goal 18’s provisions that authorize “appropriate develop[ment]”, in an acknowledged urban unincorporated community, that development is also entitled to benefit from Goal 18’s provisions that allow measures to reduce hazards to human life and property. In other words, having conformed to the restrictions imposed by Goal 18, and being acknowledged to comply with all Goals, the (acknowledged) appropriate development is entitled to the benefits allowed by Goal 18.

The situation present here is truly exceptional. Applicants are not aware of any similarly situated residential developments, approved consistent with Goal 18’s siting requirements such that there was a several hundred-foot natural dune buffer between the sea and residential development due to a 70-year historic pattern of beach accretion/prograding, that is now threatened by ocean encroachment. Certainly, no other party has identified any like-situated properties. The situation present here meets all standards, as DLCD’s Gleneden Beach letter explains them.

3. The analysis and design of the beachfront protective structure address the concerns raised by opponents.

Opponents raise several other issues related to the BPS. The response below addresses each.

The BPS does not make beach access more difficult.

The arguments that the proposed BPS makes beach access more difficult, are mistaken and can only be made because the persons making them have not reviewed the application. As the Applicants made clear and the West Consultant’s May 27, 2021 letter explains even clearer still (p. 13) and as the construction plans submitted prior on June 3, 2021 plainly show, the

existing access routes to the beach, both the subdivision mandated access on the north of the Pine Beach subdivision, as well as the access easement at the south end of the George Shand Tracts, are preserved by the design of the BPS. In that regard, a survey of the existing beach accesses was prepared and used to update the design of the proposed BPS. That survey is submitted with this letter as Exhibit C. Furthermore, the path of the access easement includes a ramp which will facilitate, not hinder persons seeking to access the beach. There will be no climbing over boulders as commenters have suggested, and there will be no denial of any person's right of access. Currently, users of the easement must navigate over and around driftwood logs that have gathered on the shore. The proposed BPS make the access better, not worse.

Two additional points should be made. First, some comments refer to the access points as public accesses. *See, e.g., Oregon Shores Conservation Coalition, letter dated June 3, 2021, p. 2 and attached Declaration of Easement (Watseco blocks) (Comments and Testimony Received June 3rd pdf, p. 138 and 151 of 185).* As the Declaration of Easement expressly states, the easement is for the benefit of the properties covered, not the general public. While no one has prevented anyone's access, the access that exists is not a public access and this point must be clear. Likewise, as the Pine Beach Subdivision Replat expressly states, the walkways are part of the subdivision's common area and are "private walkways for access to the beach."

Second, the BPS is located entirely on private property, not on the beach. This is plainly evident by the fact, which opponents concede, that this application does not require Oregon Parks and Recreation Department (OPRD) review or approval. Because the BPS is proposed for location on foredune on private property still vegetated and because of the design elements noted above, opponent claims that the proposed BPS will restrict access to the beach or access along the beach are simply incorrect. The property owners have the right to use their property where the BPS is proposed; the public has no claim to it and persons not authorized by either easement who would walk on it would be trespassing. The BPS will be situated in the owners' backyard.

The BPS design reflects predicted climate change impacts and is adequate and appropriate for its intended purpose.

Some comments raised concerns about global climate change or made arguments that because future sea level rise and related storm events may overwhelm the BPS, that the County should deny the applications. Respectfully, those arguments lack merit.

West Consultants' May 27, 2021 Technical Memorandum discusses the "need" for the BPS and what it is designed to address. The Technical Memorandum explains,

"The proposed revetment is required to reduce the risk of damage to life, property, and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides." May 27, 2021 Technical Memorandum, p. 2.

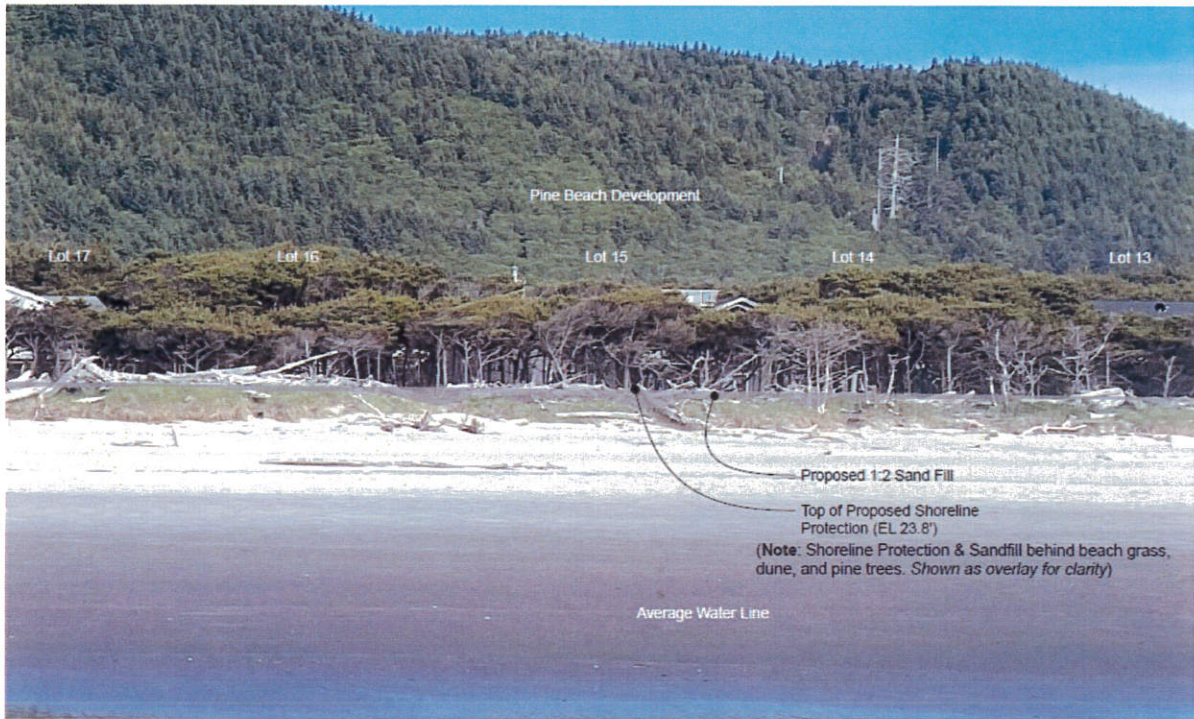
As the Technical Memorandum further explains, these properties are currently experiencing coastal flooding during high tides combined with high wave run-ups such as those that occurred with the King Tides in February 8-12, 2020. *Id.* p. 1. The properties also

experienced coastal flooding in January 2021 as was documented in the video shown as part of the Applicants' presentation at the May 27, 2021 hearing. Additional photos documenting the 2021 flooding are attached to this letter as Exhibit D. The purpose of the structure is not to prevent harm from all potential future events. Indeed, that would be a near-impossible standard to meet. As the May 27, 2021 Technical Memorandum's Figure 4 demonstrates, in a worst-case scenario, potential coastal erosion will destroy nearly every residence in the urban unincorporated community as well as a good portion of the Oregon Coast Highway. Just as nothing requires the County to base decisions upon 1,000-year flood events or other natural hazards of biblical proportions, nothing requires the County to reject a design that addresses the needs for which it is intended to mitigate.

Furthermore, as the May 27, 2021 Technical Memorandum explains, the analysis and design of the proposed BPS use resource materials that take into account the effects of sea level rise and total water levels. May 27, 2021 Technical Memorandum, p. 6. The calculations used in determining the adequacy of the BPS indeed factor in the effects of climate change, contrary to opponents' assertions otherwise. Notwithstanding, West Consultants has provided a Second Supplemental Technical Memorandum, submitted with this letter as Exhibit E, that explains that the proposed BPS will provide the necessary level of protection for the subject properties against future dune erosion over the next 20 years, even with estimated sea level rise. As the supplemental memorandum explains, the proposed BPS will significantly reduce the risk of coastal flooding even at the end of 2041.

The BPS will be visually imperceptible to both property owners and beachgoers.

Some opponents commented that the BPS will be visually unappealing and contrast the native coastal landscape. *See, e.g.*, Surfrider Foundation letter, dated May 27, 2021 (Comments and Testimony Received June 3rd pdf, p. 5 of 185). Those statements also betray that the commenters have not reviewed the application. As explained in the application and in West Consultants' design plans (Application, Exhibit F), the top of the BPS will be at an elevation of 23.8 feet, with just 3 feet above the ground. The BPS will have the appearance of a natural, vegetated foredune. The top of the BPS will be covered in sand and replanted with native beach grasses and other native vegetation, will be regularly maintained by the property owners and periodically recovered with sand and replanted with vegetation. Given the height and undulations of the vegetated foredune that will remain oceanward of the BPS, most of the BPS will not even be visible from the ocean shore. *See* BPS Modeling Images, Exhibit F. Where the BPS will be visible, you will have to look for it – its sand covering and vegetation will make it visually imperceptible; the proposed BPS will be indistinguishable from a natural dune. In this regard, modeling images of the BPS attached to this letter show its lack of visual impacts. The image below shows that the BPS will be barely visible from the ocean shore (BPS represented by gray overlay):



Photos of the Subject Properties from the beach are also provided with this letter as Exhibit G to give a sense of how the BPS will seamlessly blend into the coastal landscape. Photos of the backyards of the Subject Properties will be submitted under separate cover.

The BPS is designed to mitigate potential adverse impacts on adjacent properties or the beach.

Some opponents contend that the BPS will categorically have an adverse impact on adjacent properties and on the overall beach system. Such statements are presented as if they are a fact in all instances, generally rely on examples from other locations such as California or North Carolina and are not supported by any analysis related to this particular littoral cell and its subregion. The West Consultants analyses included in the record refutes such categorical assertions.

Contrary to opponent’s assertions, West Consultants’ analysis of BPSs in the area show “none of the other revetments in the Rockaway subregion show pronounced erosion at the ends of the revetment.” May 27, 2021 Technical Memorandum, p. 13. Summarizing from its March 2021 technical memorandum in the record, West Consultants repeated that, due to the BPS’s design:

“[T]here will be no impacts to the surrounding properties (properties in the Rockaway Beach subregion) since it will not direct additional water to the surrounding property, increase wave heights/wave runup, or adversely impact the natural littoral drift of sediment along the coast. The northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion, and

rocks will be placed to reduce the potential increase in velocities around the structure ends.” *Id.*

In short, the proposed BPS has been designed to prevent the type of adverse impacts on adjacent properties that opponents assert must occur with any revetment.

Similarly, West Consultants examined the Rockaway Beach littoral cell, which extends from Cape Falcon to Cape Madreas (the Subject Properties located in the Rockaway subregion). May 27, 2021 Technical Memorandum, p. 4. The Technical Memorandum notes that the proposal will only increase the total revetment length in the littoral cell by 0.8% and the revetment in the subregion by 2.8%. *Id.* The potential impact of the proposed BPS, located above the stillwater line but below the total waterline (stillwater line plus wave runup) makes the BPS a Type II structure in the Weggel classification system, which indicates that the structure will have minimal impacts on the coastal processes within the littoral cell system. *Id.* at 11. There is and can be no evidence otherwise.

The West Consultants’ May 27, 2021 Technical Memorandum concludes:

“The proposed revetment will have no distinguishable adverse impacts to the shoreline since it will be located above the 1% annual chance of exceedance still water line, and the amount of sediment loss from the proposed structure is small relative to the active sediment volume within the surf zone.” *Id.* at 13.

None of opponents’ assertions regarding the possible impacts from the proposed BPS is site-specific and based on an analysis of existing conditions, and so fail to carry weight compared to the West Consultants’ site-specific evidence and analyses.

The Applicants have explored and exhausted other mitigation measures and locations.

Comments suggest that the Applicants have not explored other options to the proposed BPS. They are mistaken.

As the West Consultants’ May 27, 2021 Technical Memorandum explains, various alternatives to the proposed BPS were considered for this site, each was considered an inferior solution than the one that is proposed. *See, May 27, 2021 Technical Memorandum, p. 2-3.* A review of the eight alternatives listed shows that each have greater adverse impacts, or will not address the need, compared to the proposed BPS. Furthermore, the Planning Commission should not forget that the posited “best solution” of a naturally vegetated foredune was implemented as part of the Pine Beach subdivision approval. In addition to being required to locate dwellings approximately 80 feet from the rear (western) property line, the subdivision had a 157-foot natural common area between development and the ocean shore. *See, Construction Drawings, Pine Beach Development and Ocean Blvd. Properties, submitted June 3.* That “natural alternative” failed.

Some have argued that the Applicants should have explored “other locations.” The DLCD response in the Gleneden Beach situation agrees with the obvious – that “(mitigation of

ongoing shoreline erosion) can only be placed on the beachfront of the identified properties because of the locational need of the erosion mitigation protection.” DLCD, June 7, 2021 letter (Exhibit B), p. 3. *See also*, p. 4 (“The applicants contend that because beachfront protective structures need to be placed in a specific location in order to be effective that the only place they can exist is in the specified exception area (ocean-fronting).”). This is clearly correct.

Other opponents have argued that the property owners should consider relocating the residences, with the Surfrider Foundation arguing that it helped relocate a house 50 feet away from a deteriorating bluff in Coos Bay. Surfrider Foundation, letter dated June 3, 2021, p. 3 (Comments and Testimony Received June 3rd pdf, p. 182 of 185). Unfortunately, the situation here could not be farther from that in the example cited by the Surfrider Foundation. Here, the dwellings have been located on the eastern-most portions of the properties. There is no 50 feet eastward to move the dwellings. Moving the dwellings would require movement to property that the owners here do not own, have no rights to and the abandoning of their properties. Nothing about Goal 18 or any other applicable regulation requires that. No reasonable person would consider that a reasonable option.

Applicants have submitted evidence that demonstrate that other mitigation measures have been explored and properly rejected in favor of the proposed BPS. And there is no dispute that it is proposed in the only location it can be to be effective.

The fact that the possibility exists that the subject properties will be beach in the future does not provide a basis to prevent the property owners from protecting their property. Acting as opponents recommend sets up the County for an unconstitutional taking of the Applicants’ property.

At least one post-hearing comment argues that since the shoreline is receding, the properties will be “the beach in a few years” as a reason to deny the application. *See, e.g.*, Pennington testimony (Public Comments/Testimony After Hearing pdf, p. 11 of 16).

The plain fact is that the Subject Properties are private property that the federal Fifth Amendment and Oregon Constitution, Article 1, § 18 prohibit the government from presuming to take. The Subject Properties are not the public beach.

Furthermore, the flaw in that argument is laid bare when one looks at other natural hazards throughout the state. One does not decide to not protect the City of Portland from potential harm due to an anticipated Cascadia Subduction event in the belief that letting that development be destroyed will allow the land to become farm and forest land again. One protects such urban development from anticipated natural hazards as Goal 7 requires. Goal 7 requires the same in this instance. The urban development represented by this urban unincorporated community is equally entitled to protection from natural processes as the City of Portland. The fact that one might suppose those natural forces to be immense at some point in the distant future is no basis to conclude that appropriate responses to protect properly approved development must be forbidden.

The “it will be a beach in a few years anyway” reasoning also amounts to a preemptive taking of land. Property owners have a Constitutional right to reasonable use of and to protect their land and lawfully established uses on that land. The idea that a government would adopt a position based on the notion that nature should be allowed to take the land, is abhorrent to reasonable persons and is one the Applicants are confident Tillamook County will reject.

The Planning Commission should reject such arguments.

4. The applications must be evaluated based on the evidence in the record and the standards applicable to the applications. Arguments that attempt to relitigate prior decision-making on this or other sites cannot be used to deny the applications.

As Applicants explained in their June 3, 2021 submittal, these applications must be based upon the standards and criteria contained in the adopted plan and code. *Waveseer of Oregon LLC v. Deschutes County*, 308 Or App 494, 501 (2021); *Jones v. Willamette United Football Club*, 307 Or App 502, 514 (2020). Comments submitted since the hearing seek to impose standards not in any code or adopted rule and seek to impermissibly relitigate prior decisions. The Planning Commission should reject such efforts.

Oregon Shores Conservation Coalition’s June 3, 2021 letter (at p. 10, note 11) (Comments and Testimony Received June 3rd pdf, p. 146 of 185), invokes two recent state documents to suggest that they impose requirements on the County to adopt certain priorities and presumptions, and to take certain actions in a manner that leads to denial of the applications. Oregon Shores is mistaken.

The first document is the Oregon Climate Change Adaptation Framework (“Framework”), which explains its “recommendations are designed to strengthen interagency coordination and consideration of equity, diversity, and inclusion in program planning and delivery.” Framework, p. i. And while its recommendations are intended for state agencies, the document recognizes that many state programs are implemented in collaboration with local government and community partners. *Id.* However, the Framework’s provisions are merely recommendations; there is nothing in the document that requires the County to do anything.

The second cited document is the State of Oregon Climate Equity Blueprint (“Blueprint”). Its introduction explains that it recognizes that certain communities have borne the brunt of climate change impacts “due to years of historic inequities created and maintained by governments” (Blueprint, p. 2), and that it is a “living document” intended to be improved and updated over time to provide a set of best practices to guide governments. Blueprint, p. 5. Like the Framework, the Blueprint provides a series of recommendations, not mandates or requirements, to help guide governments.

Neither document imposes standards or requirements that are not already contained in the County’s Plan and code.

Other post-hearing materials challenge the original Pine Beach replat approval as well as the riprap authorization granted to the Shorewood RV Resort. *See, e.g.*, Berrie e-mail dated May 31, 2021 (Public Comments/Testimony After Hearing pdf, p. 12-13 of 16).

The Pine Beach replat approval is a final land use decision that can no longer be challenged. Any claims that the decision was made in error or based on inaccurate evidence constitute an impermissible collateral attack on that land use decision. Furthermore, Ms. Berrie's arguments that Ms. Cummings had evidence that refutes the evidence relied upon by the 1994 decision maker is belied by the fact that, while the County's initial decision was remanded due to the application of the wrong approval criteria (adopted after the application was submitted), failure to interpret County code provisions in the first instance and inadequate findings, the subsequent County decision on remand became final, without appeal, and is not subject to collateral attack now. *See Cummings v. Tillamook County*, 26 Or LUBA 139 (1993) (remanding initial county decision). Further, Ms. Cummings and Ms. Berrie submit no evidence to support their claim that historic conditions along this portion of beach were different than what the professional reports approved by the County in the 1990s determined. Their unsupported statements provide no basis to disregard the Applicants' evidence and the 1994-97 County findings and decisions.

Additionally, while the purpose of this proceeding is not to justify the riprap at the Shorewood RV Resort, certain factual statements concerning the riprap at the RV park, its effects and why certain actions were taken are readily refutable and should be corrected. First, neither the riprap at Shorewood RV Resort nor the riprap for the three properties to the north of it were required to obtain an "exception" to Goal 18. *See*, Application Exhibit E: OR Parks & Recreation 2015 Beachfront Protective Structure Inventory. All four properties are "Eligible for Protection" under Goal 18, Implementing Measure #5 and did not require an exception. Second, the beach erosion along the entire beach north and south of Shorewood RV Resort is not a result of riprap being placed at that location. The historic imagery included throughout the record shows that when erosion started, it was consistent from the Barview Jetty to Twin Rocks, starting well westward of Shorewood, well before and after the riprap was installed at Shorewood RV Resort.

These arguments provide no basis to recommend denial of the proposal.

5. DLCD's submittal of mapping from DOGAMI's O-20-04 report provides no basis upon which to deny the applications.

DLCD submitted on June 3, 2021 via e-mail, mapping concerning the 15 tax lots at issue with minor comments in the e-mail and on an attached map. (Comments and Testimony Received June 3rd pdf, p. 184-85 of 185). DLCD provides no explanation why it submitted the materials nor takes any position regarding the materials. Without more, it is impossible for Applicants and the Planning Commission to comment on any issue DLCD thinks the materials raise or a position DLCD may wish to take. However, the submitted materials warrant comment regardless.

DLCD's document reflects DOGAMI data from 2004. DLCDC concedes that "This information is provided for informational purposes only." DLCDC, email dated June 3, 2021 (Comments and Testimony Received June 3rd pdf, p. 185 of 185). The map itself contains the most significant language for land use purposes. The map states:

"It is important to note that the 1975 beach and dune mapping undertaken by the US Department of Agricultural Soil Conservation Service is still the official and adopted inventory for the County." DLCDC Map (created on 6/3/2021) (Comments and Testimony Received June 3rd pdf, p. 185 of 185).

DLCD's June 3, 2021 submittal, by its own terms, has no significance. DLCDC's actions amount to a party submitting transportation information for "informational purposes", knowing full well that if a local government relies upon the "for informational purposes" material to make its decision, that decision is reversible.

One final point is worth noting. The submitted document shows nothing that the evidence in the record does not already establish. The record establishes that at the time the subdivision was approved, the subject properties were part of a younger stabilized foredune environment that was not subject to wave erosion, runup, overtopping or inundation. If it had been, the subdivisions could never have been approved under Goal 18. It is the fact that these properties are now subject to wave erosion, runup, overtopping and inundation (now categorized as active foredunes) that the Applicants need the requested BPS.

DLCD's June 3, 2021 materials provide no basis upon which to deny the Application.

Conclusion

The Applicants appreciate your efforts to review the evidence in the record to evaluate it under the applicable standards. The Applicants hope the Planning Commission will agree to help them save their homes and properties.

Thank you.

Very truly yours,



Wendie L. Kellington

CC: Clients

Exhibits:

Exhibit A – National Wetlands Inventory Map

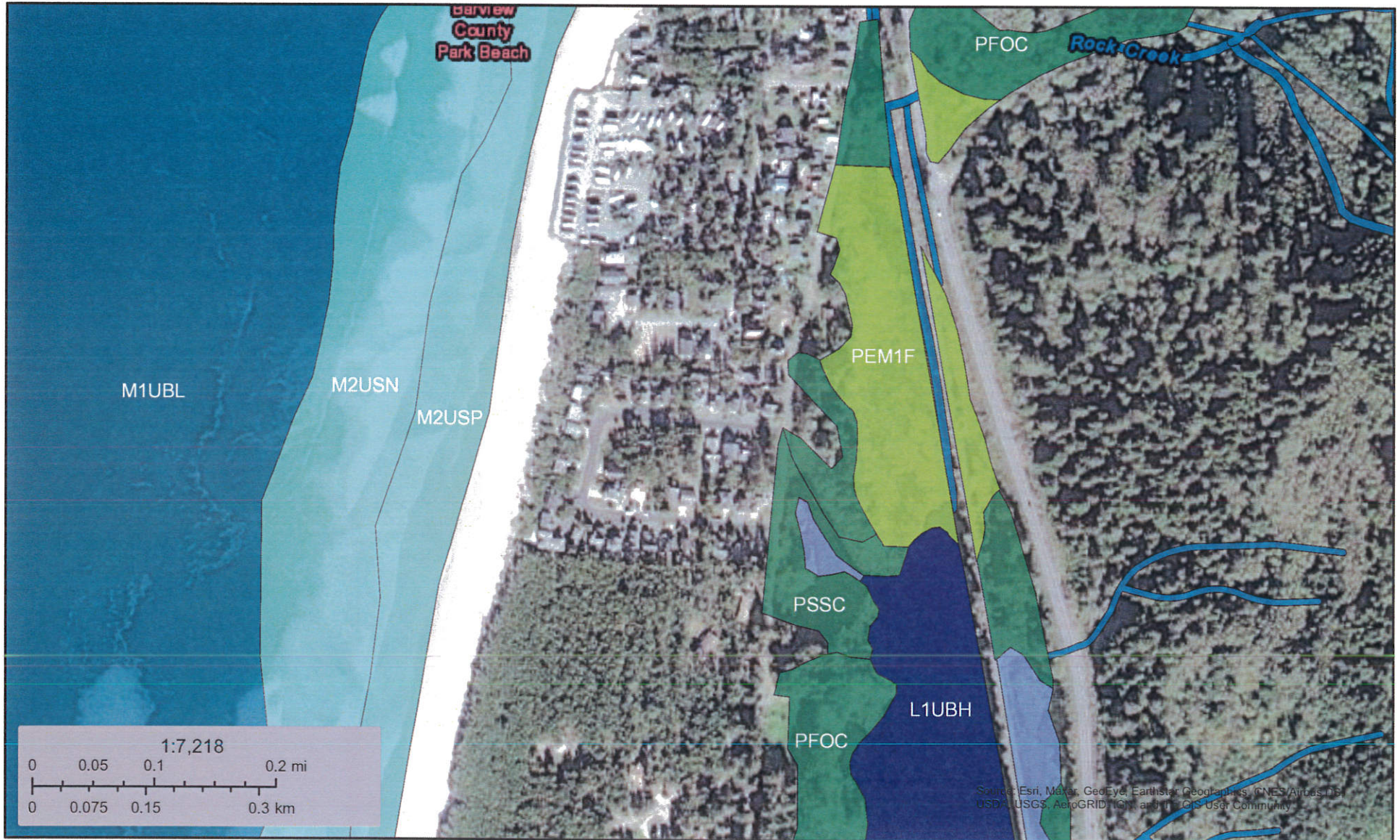
Exhibit B – DLCDC Lincoln County BPS Comment Letter

- Exhibit C – Survey of Beach Accesses
- Exhibit D – 2021 Coastal Flooding Images
- Exhibit E – West Consultants’ Second Supplemental Memorandum
- Exhibit F – BPS Modeling Images
- Exhibit G – Photos of Subject Properties



U.S. Fish and Wildlife Service
National Wetlands Inventory

Pine Beach



June 9, 2021

Wetlands

- | | | |
|---|---|--|
|  Estuarine and Marine Deepwater |  Freshwater Emergent Wetland |  Lake |
|  Estuarine and Marine Wetland |  Freshwater Forested/Shrub Wetland |  Other |
| |  Freshwater Pond |  Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

810 SW Alder Street, Suite B

Newport, OR 97365

www.oregon.gov/LCD



June 7, 2021

Onno Husing, Director
Lincoln County
Department of Planning & Development
210 SW 2nd St
Newport, OR 97365

Re: Goal exception applications for three locations in Gleneden Beach

Dear Mr. Husing,

Thank you for the opportunity to provide written testimony regarding three applications to Lincoln County to adopt exceptions to Statewide Planning Goal 18 ("Goal 18"), Implementation Requirement 5, that would allow for the construction of beachfront protective structures on three sites in Gleneden/Lincoln Beach. The properties at issue in the applications are the WorldMark Gleneden Resort, the SeaRidge Condominiums, and four adjacent single-family homes at 4755, 4805, 4815, and 4825 Lincoln Avenue. Please enter this letter into the record of the hearing for each of these applications.

The Department of Land Conservation and Development (department) has based this testimony on its review of the Narrative Statement dated March 18, 2021, the Supplemental Analysis for the Lincoln Avenue Projects, the Narrative Supplement for the SeaRidge Condominium Association, the Supplemental Narrative Statement dated June 3, 2021, and the Lincoln County Planning Department Staff Report.

Eligibility for Beachfront Protective Structures

It is our understanding that the above referenced properties are seeking a pathway to place beachfront protective structures along the oceanfront to mitigate ongoing ocean erosion. The County has not identified these areas as developed as of January 1, 1977 in the Lincoln County Comprehensive Plan. Goal 18, implementation requirement #5 provides:

Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 'development' means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.

The Staff Report correctly determines that the three locations subject to the request do not meet the definition of development because they were developed after 1977. (Staff Report at pp. 3-4.) This determination is consistent with the following information:

- Utilizing the 1977 aerial imagery from the Army Corps of Engineers, no qualifying development (residential, commercial, or industrial buildings) was present on any of these tax lots.
- The locations of the WorldMark Gleneden Resort and SeaRidge Condominiums were not part of a statutory subdivision in 1977. Therefore, these sites are not eligible under the definition of development.
- For the Lincoln Avenue Homes: although Lincoln County approved the original plat “Cummins Addition” in July 1948, the county officially vacated that subdivision on December 11, 1951. The vacation order, which is on file in Lincoln County, references that there were no improvements to the site at the time of vacation (*e.g.*, no roads and no utilities). Therefore, on January 1, 1977, there was no eligible development on this site, and it was not part of a statutory subdivision. The lots are now part of another subdivision, known as Pacific Panorama, which the county approved in December 1978. Thus, on January 1, 1977, there was no eligible development on the oceanfront parcels at this site and it was not part of a statutory subdivision.

Therefore, the department agrees with the Staff Report that each of the applicants needs an exception to the prohibition on beachfront protective structures for post-1977 development provided in Statewide Planning Goal 18: Beaches and Dunes, in addition to any local criteria.

OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

The department agrees with the applicants that a “reasons” exception to Goal 18 is necessary in this case. The provisions of OAR 660-004-0022 specify the pathway for the applicants.

Specifically, OAR 660-004-0022(1) provides:

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

The Staff Report refers the Planning Commission to the Narrative Statement for analysis of this rule; however, the Applicants have provided a more thorough OAR 660-004-0022 analysis in their Supplemental Narrative Statement. The department testimony is based on that latter submittal because it describes and addresses relevant cases interpreting the administrative rule.

The applicants state that there is a demonstrated need for an exception to place beachfront protective structures in order to avoid the loss of these properties from erosion based on the unique circumstances of this littoral cell (beach system) and in order to be consistent with requirements or guidelines of several Statewide Planning Goals (7, 8, 9, 10, and 18). They also state that the proposed exception use (mitigation of ongoing shoreline erosion) can only be placed on the beachfront of the identified properties because of the locational need of the erosion mitigation protection.

The department agrees that there are reasons to justify why the state policy embodied in Goal 18, Implementation Requirement 5 should not apply based primarily on the specific conditions of the sites in this beach system that are unique compared to other oceanfront areas in Lincoln County and the Oregon coast. While the general effects of climate change, sea level rise, and El Niños are occurring coastwide, those phenomena occurring in a littoral cell that has extensive beachfront protective structures that cut off sand supply to an already depleted system is unique. The Staff Report and Supplemental Narrative Statement both describe the circumstances in this stretch of the Siletz littoral cell. This is further addressed below. However, the arguments that there is a demonstrated need for housing, recreation, and economic activities are not any more compelling than can be argued elsewhere on the Oregon coast in other areas that are also ineligible for beachfront protection.

As seen in the recent LUBA decision regarding general reasons exceptions under OAR 660-004-0022(1)(a), Goal 9 does not place any specific *requirements* on a County to serve as the basis for a reasons exception under OAR 660-004-0022(1)(a). Goal 9 planning requirements apply to urban areas. *See* OAR 660-009-000 and 660-009-0010(1) (Division 9 implements requirements of Goal 9 and applies to areas within urban growth boundaries). Economic arguments, as put forth in this application, are not reason enough to justify an exception decision, as similar economic arguments could be made for other locations along the Oregon coast that are similarly not eligible for beachfront protection. Likewise, the application does not establish that there are *requirements* or obligations on the County related to Goal 8 or 10. Goals 7, 8, 9, and 10 are among the statewide goals that generally provide planning guidance. *See* OAR 660-004-0010(2)(c)-(f).

OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements

If the provisions of OAR 660-004-0022(1) are found to be satisfied, the review may then turn to the provisions of OAR 660-004-0020. In addition to the above, there are four tests to be addressed when taking an exception, which are set forth in Statewide Planning Goal 2, Part II and more specifically in OAR 660-004-0020(2)(a) – (d). Those criteria are:

1) Reasons that justify why the state policy embodied in the applicable goal should not apply;

The applicants state that to save their homes and resort buildings by placing riprap on a beach that has been documented to have diminished natural resources and is already lined with such protective structures accomplishes both a balancing of economic and natural resources in the use

of coastal land, and the reduction of a major hazard to human life and property. According to the experts consulted by the applicants, the proliferation of beachfront protective structures on Gleneden Beach is causing and will continue to cause significant harm to the few properties left unprotected. The beachfront protective structures along this stretch of beach have resulted in a disruption to littoral cell processes and movement of sand, increasing erosion at unprotected sites. In addition to the harm caused by the general proliferation of protective structures, specific protective structures adjacent to the ineligible properties may also be causing direct, local erosion to their bluffs, further aggravating the problem.

The Staff Report identifies that the core purpose of Goal 18, Implementation Requirement 5 is to stop the proliferation of beachfront protective structures in order to preserve beaches and littoral cell functionality. The department agrees with staff that, in this instance, the case can be made that the state policy cannot be achieved in the Gleneden-Lincoln Beach area.

2) Areas which do not require a new exception cannot reasonably accommodate the use;

The applicants contend that because beachfront protective structures need to be placed in a specific location in order to be effective that the only place they can exist is in the specified exception area (ocean-fronting). The sites are some of the only lots in this stretch of beach that are not already protected by riprap. In supplemental documentation, the applicants do explain that they have tried nonstructural solutions (such as sand nourishment) previously, which have only provided temporary protection. A geotechnical analysis of the properties asserts that the current wave height and energy (which is expected to increase) and other contributing forces of erosion (tide elevations, beach variability, littoral drift, bluff composition, etc.) eliminate the possibility of alternative, nonstructural protective measures. It is the opinion of the experts consulted by the applicants that an exception to Goal 18 to construct beachfront protective structures are necessary and warranted for the properties.

3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site;

The applicants contend that preservation of the existing development and the economic benefits of those places outweigh the preservation of a natural shoreline along the small gaps in the existing beachfront protective structures lining Gleneden Beach. Installation of beachfront protective structures in these three locations would create a minimal increase in the percentage of the littoral cell that is already armored or eligible to become armored.

An assessment provided by the applicants finds that “the surrounding habitat is low-quality due to the highly developed nature of Gleneden Beach with high recreational use and approximately 90-percent of the shoreline currently ripped. A field survey of the Resort area found that there

are no rare plants or wildlife in the terrace habitat, bluff, or swash zone on the subject property; the site is not located within, nor is it connected to, any estuarine resources; there are no nearby historic properties or cultural/archeological resources; there is no suitable nesting or foraging habitat for endangered or threatened wildlife on or adjacent to the subject property; there is no sign of geologic interests or fossil beds at the site; and the proposed revetments are not expected to impact air or water quality.” Therefore, the applicants state that construction of a revetment on the sites is not expected to be more significantly adverse than if it were constructed in an area of similar circumstance.

4) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

The addition of three beachfront protective structures on this stretch of beach will be compatible with other adjacent uses because this littoral cell is already almost entirely armored. As submitted in the application materials, Gleneden Beach “has the longest stretch and highest density of shorefront protective structures along the Oregon coast.” Approximately 75 percent of the coastline is already armored in this littoral cell.

Key Concerns

While the department agrees that this area has unique challenges from both human-induced and naturally occurring coastal hazards, the department does not agree with all the applicants’ arguments and does not recommend that the county adopt each of the arguments presented in the Narrative Statement.

- The applicants repeatedly claim that the placement of beachfront protective structures along the shoreline of each of the three proposed locations will solve all threats to the properties from coastal hazards and not incur further harm to the beach or surrounding properties. It is important to note that erosion will continue to occur in these locations and the impacts of climate change will continue to exacerbate those conditions. Beachfront protective structures can provide a level of protection for development but will need to be continually maintained and may fail over time. Additionally, the structures themselves will continue to impact the beach in this area by withholding sediment and fixing the shoreline in place, as the other structures have already done. This will impact north/south beach access over time as sea levels continue to rise. Beachfront protective structures do not conserve nor protect the beach and dune environment, they protect development from the impacts of coastal erosion. The County should evaluate beach access impacts as a result of these requests.
- The applicants state, but do not establish, that the proposed beachfront protective structures, if approved, would also mitigate against seismic hazards. That is not consistent with general understanding of beachfront protective structures. Conventional riprap and seawall designs intended to mitigate for coastal erosion in front of private property will likely not survive an earthquake event or subsequent tsunami. Instead,

riprap rocks have the potential to become hazardous during a tsunami event, where they could act as ballistics. As seen in Japan in 2011, many of the coastal defenses there failed due to the tremendous hydraulic forces exerted by the tsunami, leading to fatalities. All references made to seismic hazards should not be a basis for granting the exception. (pp. 17, 28, 35, 41, 46, 59 of 3/18/21 Narrative Statement)

- While the applicants acknowledge they will need an ocean shore alteration permit from Oregon Parks and Recreation Department (OPRD) for the ultimate design and construction of a beachfront protective structure, they are presumptive in asserting that OPRD will approve a permit and the design as currently presented. (p. 47 of 3/18/21 Narrative Statement)
- The applicants do not acknowledge that the soil modifications and landscaping features that they installed in their yards and bluffs that have now become exposed due to the ongoing erosion have contributed to the extreme erosion of the properties and the dangerous conditions on the beach at this time. (p. 36 of 3/18/21 Narrative Statement)
- It does not appear that the applicants consulted the Lincoln County Plan Inventory for significant wildlife habitat in beach and dune areas. A commissioned report by the applicants did find that there are no rare plants or wildlife or other significant natural resources; however, this should be checked against the County's own adopted inventories to confirm. (p. 49 of 3/18/21 Narrative Statement)
- Beachfront protective structures do not protect ocean resources. The Ocean Resources Goal only applies to activities in the Territorial Sea and does not apply in this case. (p. 51 of 3/18/21 Narrative Statement)
- The applicants argue that protecting the properties in question is important to protecting housing supply and affordability within Lincoln County. Most of these properties are not primary residences nor would they be considered "affordable." This argument is not particularly strong as there is evidence that second homes and vacation units also diminish housing supplies and increase housing costs. (p. 53 of 3/18/21 Narrative Statement)
- The applicants do not need any permits from DLCDD. (p. 58 of 3/18/21 Narrative Statement)
- This application request is a foundation for a series of future applications from OPRD and Lincoln County for the permitting of a BPS, none of which are guaranteed at this stage of the process.

Conclusion

The Staff Report, Narrative Statement, and Supplemental Narrative Statement provide detailed information about the unique circumstances of the Lincoln-Gleneden Beach area of the Siletz littoral cell and provide several compelling reasons to justify a reasons exception for Goal 18, Implementation Requirement 5 and consistency with the Lincoln County Comprehensive Plan,

Lincoln County Planning Department
June 7, 2021
Page 7 of 7

Zoning Code, and Statewide Planning Goals. However, the applications also contain some arguments and assertions that are not a valid basis for a reasons exception under state law. We recommend that the County carefully consider all the relevant facts and findings in making a final decision.

Thank you for this opportunity to comment. Please enter this letter into the record of these proceedings. If you have any questions, please contact Meg Reed, Coastal Shores Specialist, at (541) 514-0091 or meg.reed@state.or.us.

Sincerely,



Patty Snow, Coastal Program Manager
Oregon Coastal Management Program
Department of Land Conservation and Development

cc: Meg Reed, Oregon Department of Land Conservation and Development
Lisa Phipps, Oregon Department of Land Conservation and Development
Steven Shipsey, Oregon Department of Justice
Jay Sennewald, Oregon Parks and Recreation Department

Survey of Beach Accesses

C. WAYNE COOK LAND SERVICES
 3180 ALDERCREST
 TILLAMOOK OREGON
 (503) 842-6380



Photos of January 2021 Flooding



Photos of January 2021 Flooding



Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 10, 2021 3:44 PM
To: Sarah Absher; Allison Hinderer
Cc: Sarah Mitchell
Subject: EXTERNAL: Pine Beach Back yards and path images - 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: 13 Pine Beach path.jpg; 14 Pine Beach Path.jpg; 1 Southernmost Pine Beach Lot backyard.jpg; 2 next lot south to north back yard.jpg; 3 next lot south to north back yard.jpg; 4 next lot south to north back yard.jpg; 5 next lot south to north back yard.jpg; 6 next lot south to north back yard.jpg; 7 next lot south to north back yard.jpg; 8 next lot south to north back yard.jpg; 9 next lot south to north back yard.jpg; 10 Pine beach path.jpg; 11 Pine Beach path.jpg; 12 Pine beach path.jpg

[NOTICE: This message originated outside of Tillamook County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Hi Sarah and Allison,

Attached for the record of the above matter are additional images of the path and backyards of the Pine Beach lot. All the best, Wendie





























Allison Hinderer

From: Anuradha Sawkar <anu@crag.org>
Sent: Thursday, June 10, 2021 3:44 PM
To: Sarah Absher; Allison Hinderer; Melissa Jenck
Cc: Phillip Johnson, Oregon Shores/CoastWatch; Oregon Shores Conservation Coalition
Subject: EXTERNAL: Oregon Shores ORP2 Comment, Tillamook County Files 851-21-000086-PLNG-01, -PLNG
Attachments: 2021.06.10 FINAL Or. Shores Test. Tillamook Files 851-21-000086-PLNG-01_851-21-000086-PLNG [Pine Beach].pdf

[NOTICE: This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe.]

Dear Sarah,

Please find attached Oregon Shores' second open record period comment on the above Applications. Please confirm receipt of this email and the attached document.

I appreciate your time.

Thanks, Anu

--

Anuradha Sawkar
Associate Attorney
Crag Law Center
3141 E Burnside Street
Portland, Oregon, 97214
503-233-8044
anu@crag.org
She/Her/Hers

Protecting and Sustaining the Pacific Northwest's Natural Legacy.



OREGON SHORES CONSERVATION COALITION

June 10, 2021

Tillamook County Planning Commission
c/o Planning Director Sarah Absher
Community Development
510-B Third Street
Tillamook, OR, 97141

Via Email to: sabsher@co.tillamook.or.us, ahindere@co.tillamook.or.us,
mjenck@co.tillamook.or.us

**Re: Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG
Land Use Applications for Goal Exception, Flood Plain Development Permit
Second Open Record Period Comments of the Oregon Shores Conservation
Coalition**

Dear Chair Heckerroth and members of the Tillamook County Planning Commission:

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively “Oregon Shores”) to be included in the file for Tillamook County File Nos. 851-21-000086-PLNG-01 (Goal Exception) and 851-21-000086-PLNG (Flood Plain Development Permit) [Applications]. They are provided as part of the second open record period deadline for submission of written comment in response to existing materials in the record, as established at the Tillamook County Planning Commission’s May 27, 2021 public hearing on this matter. Oregon Shores submitted comments for inclusion within the evidentiary record for the public hearing and first open record period in this matter, timely filed with the Tillamook County Department of Community Development (TCDCD).¹ Oregon Shores hereby adopts in

¹ As discussed previously, Oregon Shores timely filed its comment for public hearing via email on Thursday, May 27, 2021 at 3:45 PM. A send receipt demonstrating this fact was enclosed in our comment for the first open record period in this matter. Oregon Shores respectfully requests that the TCDCD correct the planning file in this matter to reflect this timely submission of Oregon Shores’ public hearing comment prior to the close of the record in this matter.

full and incorporates by reference our previous comments in the record, which expressed serious concerns about the Applicants' failure to meet the criteria required for a Goal 18 exception and lack of meaningful analysis regarding the potential adverse impacts arising from the proposed shoreline protection structure ("SPS").² Please continue to notify us of any further decisions, reports, or notices issued in relation to these Applications.

It is crucial that the Planning Commission conduct a robust review prior to approval of a goal exception and development of harmful SPS in a highly dynamic coastal environment. Oregon Shores provides these additional written comments in order to further underscore the apparent deficiencies in the Applicants' public hearing (Public Hearing Comment) and first open record period submissions (ORP1 Comment) in support of their March 29, 2021 Application narrative. As discussed below, these submissions fail to demonstrate that the proposed exception is consistent with the applicable goal exception criteria, and fail to meaningfully address concerns raised regarding impacts to the public's shoreline, coastal ecosystems, adjacent properties, the public's access to the beach, and public safety. Upon the current record, the Applicants have not demonstrated compliance with the applicable approval criteria set forth in the Statewide Planning Goals ("Goals"), the Oregon Revised Statutes ("ORS"), applicable Oregon Administrative Rules (OARs), the Tillamook County Comprehensive Plan (TCCP), and the Tillamook County Land Use Ordinance (TCLUO).³ For the reasons discussed below, Oregon Shores strongly argues that the Planning Commission should recommend denial in this matter.

Location of Proposed SPS

Per the Staff Report, the subject properties are oceanfront properties located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary, specifically within the Watseco region of the unincorporated community. The unincorporated community is bordered by the urban growth boundaries of the City of Garibaldi to the south and the City of Rockaway Beach to the north. Uses in the area are predominantly residential with recreational facilities located to the north (Shorewood RV Park), to the south (Camp Magruder) and further to the east across Oregon State Highway 101 (Twin Rocks Friends Camp). Natural features identified in the area include Smith Lake, a coastal lake. It should also be noted that there appear to be two beach access points, one apparently south of Pine Beach Tax Lot 114 and one apparently north of Pine Beach Tax Lot 123.

Relevant statutory boundaries (including the line of upland vegetation and the SVL), tax lots, beach access points, and the exact contours of the proposed SPS in relation to the public's beach as well as beach access points are difficult to ascertain from the Applicants' enclosed plan view⁴ of the proposed riprap revetment structure, map of the proposed exception areas and

² Hardened shoreline protection structures (synonymous with "beachfront protective structures") include riprap revetments, concrete seawalls, bulkheads, and the like. These structures are somewhat different, but the publicly available evidence indicates that the harmful impacts of each are substantially the same and should be considered as such by the Planning Commission for the purposes of review.

³ Staff Report, 2. Oregon Shores does not concede that either the Public Hearing Comment or the ORP1 Submission are consistent with any of these listed criteria.

⁴ *Applications*, Ex. F, Fig. 4, 7.

adjacent lands,⁵ and West technical memos. The images enclosed in the Staff Report in this matter are similarly unclear.⁶ Further, per Oregon Shores' review, this data is not clearly described in the Applications, Public Hearing Comment, ORP1 Comment, the WEST memo, or the WEST Supplement.

The WEST Supplement notes that “[a]pproximately 5.6% (5,930 ft of 106,200 ft) of the entire Rockaway Beach littoral cell has some riprap or concrete wall revetment.” However, this misses context relevant to evaluating the proposal against the applicable criteria, and potential adverse impacts in the particular subregion that will be impacted. As noted previously, the West Memo failed to meaningfully address potential adverse impacts to the public’s beach, beach access, coastal ecosystems (particularly non-hardened shoreline areas and dunes), and adjacent properties (including Camp Magruder) as required by the applicable criteria in Goal 18, Goal 2, the TCCP Goal 18 element, and others. Although the West Supplement includes some discussion on potential impacts, it similarly fails to meaningfully address the short-term, long-term, and cumulative impacts of the proposed SPS inconsistent with Goal 18, IR 1 and the criteria required for a reasons exception, committed exception, and a developed exception. Specifically, the Supplement:

- States, absent meaningful supporting evidence or analysis, that “the proposed revetment will have no distinguishable adverse impacts to the shoreline since it will be located above the 1% annual chance of exceedance still water line, and the amount of sediment loss from the proposed structure is small relative to the active sediment volume within the surf zone.”
- States, absent meaningful supporting evidence or analysis, that “[t]he proposed revetment structure will have no distinguishable adverse impacts to beach access or surrounding properties.”
- Notes that “[t]he proposed revetment will include a ramp for the northern beach access and terminate north of the southern access. Both areas will be maintained by the property owners.” This fails to address the concerns raised by several members of the public about impacts to these access points, and does not offer any explanation as to how access will be maintained in the face of potential adverse impacts of the proposed SPS.
- States, absent meaningful supporting evidence or analysis, that “[t]he northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion, and rocks will be placed to reduce the potential increases in velocities around the structure ends.”
- States, absent meaningful supporting evidence or analysis, that “none of the other revetments in the Rockaway subregion show pronounced erosion of the ends of the revetment.”⁷

Figure 2 in the West Supplement indicates that the shoreline approximately 2 miles north of the existing Shorewood RV SPS and approximately 1 mile south of Pine Beach Tax Lot 114 up until riprap just north of the jetty are currently undeveloped with riprap. As discussed in

⁵ *Applications*, Ex. R.

⁶ *Staff Report*, Ex. A.

⁷ *WEST Supplement*, 13.

Oregon Shores' previous comments, any addition of riprap or hardened SPS (including an increase of 2.8 percent)⁸ will have short-term and long-term impacts upon the beach or dune where it is located, and impacts on adjacent properties north and south of the SPS (particularly non-hardened shorelines and dunes). An effective "no impact" assessment is unsupported, and insufficient to address the applicable criteria, including Goal 18, Goal 2, TCCP Goal 18 element, and the development standards and criteria of the Beach and Dune Overlay Zone (TCLUO Section 3.530, et. seq.) and the Flood Hazard Overlay Zone (TCLUO Section 3.510, et. seq.)

The Applications assert that "Because the proposed protective structure is east of the statutory vegetation line and east of the line of established vegetation, OPRD's authority is not invoked."⁹ Absent a clear site plan, it is impossible to assess the basis for this assertion. Goal 18 applies regardless of whether the proposed SPS is within Tillamook County's (i.e., east of the SVL or established line of upland vegetation, whichever is further landward) or OPRD's jurisdiction (west of the same). However, if portions of the proposed SPS are located on areas west of these lines, an OPRD permit may be required. Absent clarification, the County should not approve these Applications.

The above information is crucial for a robust evaluation of the Applications' proposal against the applicable criteria, and in particular, the relevant goal exception criteria. Prior to any final decision in this matter, the County should request that the Applicants submit a clear and detailed site plan of the proposed SPS in relation to adjacent properties and features (including existing riprap north and south of the proposed SPS), with sufficient time for public review.

I. The Properties are ineligible for an SPS under Goal 18.

Goal 2, Oregon's land use planning goal, provides for three types of exceptions: (1) developed (or built), (2) committed, and (3) reasons (or demonstrated need).¹⁰ Because the Public Hearing and the ORP1 Comment in support of the Applications advance each of these three types of exceptions as a basis for the proposed exception to Goal 18,¹¹ an overview of both Goal 18 and the Goal 2 exceptions process in context of the proposed request is necessary for an appropriate and informed decision in this matter. Goal 18 is discussed in this section.

The Goal 2 exception process is discussed in sections II – IV below. In the present case, the Applications initially justified the Goal 18 exceptions for the proposed SPS on the specific reason presented in OAR 660-004-0022(11). In the alternative, the Applications relied upon a committed exception to justify the proposal. The Public Hearing Comment and ORP1 comment also advance an exception to develop the proposed SPS via the catch-all provision at OAR 660-

⁸ *WEST Supplement*, 4.

⁹ *Application Narrative*, 1.

¹⁰ Goal 2, Part II (July 2019), available at

https://www.oregon.gov/lcd/Publications/compilation_of_statewide_planning_goals_July2019.pdf; ORS 197.732(2)(a)-(c); OAR 660-004 – Interpretation of Goal 2 Exception Process; OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements; OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c); OAR 660-004-0025 Exception Requirements for Land Physically Developed to Other Uses; OAR 660-004-0028 Exception Requirements for Land Irrevocably Committed to Other Uses.

¹¹ *Pub. Hrg. Comment*, 30.

004-0022(1), based on the requirements of Goal 7 (Hazards), Goal 10 (Housing), Goal 11 (Public Facilities and Services), and Goal 18 itself. In the alternative, the Public Hearing Comment and ORP1 Comment also appear to rely upon a developed (or “built”) exception to justify the proposed SPS. It should be noted that the Applicants have the burden of proof to show in this case that an exception to Goal 18 is justified. Contrary to the Applications, Public Hearing Comment, and ORP1 Comment’s assertions, no applicant is simply “entitled” to a goal exception under the law. As discussed below, because none of the 15 properties subject to this request are eligible for SPS under Goal 18, IR 5, the Applicants must demonstrate and the County must approve one of three types of goal “exceptions” to Goal 18.

A. Goal 18 Overview: Purposes and Policies

The Land Conservation and Development Commission’s (LCDC’s) goal for beaches and dunes is “[t]o conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.” In other words, development may not be allowed where it is inconsistent with Goal 18’s mandate to conserve and protect coastal beach and dune areas.¹² If development is consistent with Goal 18’s mandate to conserve and protect (i.e., “appropriate”), LCDC’s goal is then to reduce the hazard to human life and property from natural or man-induced actions associated with beaches and dunes. It is important to note that Goal 18 is aimed at reducing impacts that may be caused by the proposed development, not reducing risks to life and property that are caused by natural hazards.¹³

Comprehensive plans, such as the acknowledged TCCP, must conduct inventories to identify beach and dune areas. Based upon this identification, comprehensive plans are required to establish policies and uses to achieve Goal 18’s mandate to conserve and protect coastal beach and dune areas.¹⁴ Uses must be based on two factors: the capabilities and limitations of beach and dune areas to sustain development, and the need to protect the natural resources found in beach and dune areas identified through the application of Oregon Statewide Planning Goals & Guidelines, Goal 5 (open spaces, scenic and historic areas, and natural resources), and Goal 17 (coastal shorelands).¹⁵

¹² *Waugh v. Coos Cnty.*, LUBA No. 93-129, 26 Or LUBA 300, 305–306 (1993).

¹³ *Borton v. Coos County*, LUBA No. 2005-153, 52 Or LUBA 46, 59 (2006).

¹⁴ Goal 18.

¹⁵ As noted in the Staff Report:

Tillamook County's Comprehensive Plan was adopted in 1981. Tillamook County met its obligation as a local jurisdiction to inventory local beaches and dunes and developed implementing policies reflecting permissible uses based upon the capabilities and limitations of beach and dune areas to sustain different levels of use or development and also developed policies and prohibitions that protect areas of critical environmental concern. These policies contained within the Goal 18 element of the Tillamook County Comprehensive Plan reflect the seven (7) implementation requirements described in Statewide Planning Goal 18, and are carried out in a regulatory capacity through TCLUO Section 3.530: Beach and Dune Overlay Zone.

Staff Report, 4. TCCP Goal 18, Section 2 contains implementing policies for permissible uses based on the capabilities and limitations of beach and dune areas as well as policies and prohibitions to protect areas of critical environmental concern.

Goal 18, Implementation Requirement 1 (Goal 18, IR 1) requires local governments and state agencies to make specific findings in reviewing proposed land use actions for beach and dune areas other than older stabilized dunes.¹⁶ Specific findings shall include the following:

- (a) The type of use proposed and the adverse effects it might have on the site and adjacent areas;
- (b) Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
- (c) Methods for protecting the surrounding area from any adverse effects of the development; and
- (d) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.¹⁷

Goal 18, Implementation Requirement 2 (Goal 18, IR 2) requires local governments to prohibit residential developments as well as commercial and industrial buildings on beaches, active foredunes, conditionally stable dunes subject to ocean undercutting or wave overtopping, and interdune areas subject to ocean flooding. Under Goal 18, IR 2, other development in these areas may be allowed only upon presenting the findings required by Goal 18, IR 1, and a findings demonstrating that the proposed development:

- (a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
- (b) Is designed to minimize adverse environmental effects.¹⁸

Relocating a construction setback line, which makes building construction potentially allowable within an area classified as an active dune, violates Goal 18, Implementation Requirement 2. *Gray v. Clatsop County*, LUBA No. 90-167, 22 Or LUBA 270 (1991).

Goal 18, Implementation Requirement 3 (Goal 18, IR 3) requires local governments to regulate actions in beach and dune areas to minimize resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.¹⁹ The structure proposed in this case will both destroy existing vegetation and modify current or wave patterns, leading to increased beach erosion. The County must carefully regulate the proposal in accordance with Goal 18, IR 3.

As noted in Oregon Shores' previous comments, hardened SPS will adversely impact the beaches, bluffs, and dunes upon and adjacent to which they are built. Thus, to achieve that goal

¹⁶ Goal 18, Implementation Requirement 1 (Goal 18, IR 1).

¹⁷ *Id.*

¹⁸ Goal 18, IR 2.

¹⁹ Goal 18, IR 3.

with respect to conserving and protecting the resources and benefits of coastal beach and dune areas, Goal 18, Implementation Requirement 5 (Goal 18, IR 5) generally restricts the placement of SPS to those areas where “development existed” as of 1977.²⁰ Goal 18, IR 5 specifically states:

Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "*development*" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.²¹

Further, such structures shall be approved only if they meet certain criteria for review of all shore and beachfront protective structures. These criteria for review of all shore and beachfront protective structures shall provide that:

- (a) visual impacts are minimized;
- (b) necessary access to the beach is maintained;
- (c) negative impacts on adjacent property are minimized; and
- (d) long-term or recurring costs to the public are avoided.²²

In other words, Goal 18 precludes shore hardening for new development in areas that were undeveloped, as defined by Goal 18, IR 5, as of January 1, 1977. New development must instead account for shoreline erosion through non-structural approaches (e.g., increased setbacks, moving the upland structure itself).²³

The proposed and preferred development in this case is a hardened SPS: specifically, the installation of a riprap revetment along roughly 880 feet of the public’s beach. As noted by the DLCDC, the proposed use is not the SPS, but rather, the “mitigation of shoreline erosion” which the Applicants assert threatens their upland structures.²⁴ The question under Goal 18 is not whether these properties should continue to exist as they are, or even whether the upland structures should continue to exist where they are, but rather whether the Applicants can lawfully install an SPS.

As discussed previously and at length in Oregon Shores’ comment for public hearing and for the first open record period, the Applications fail to establish that either the Pine Beach or the Ocean Shore properties constitute a development for the purposes of the date-certain limitation

²⁰ Goal 18, Implementation Requirement 5 (Goal 18, IR 5).

²¹ Goal 18, IR 5.

²² *Id.* See also OAR 736, Div. 20 (OPRD rules implementing these criteria, in part).

²³ Edward J. Sullivan, *Shorelands Protection in Oregon*, 33 J. Env’tl. Law & Litigation 129, 150 (2018) (citing Matt Spangler, Senior Coastal Policy Analyst, DLCDC) [hereinafter *Sullivan*].

²⁴ Note that while the Goals do not appear to directly define the term “use,” the term “use” for the purposes of the TCLUO is defined as: “The purpose for which a structure is designed, arranged, or intended, or for which a unit of land is developed, occupied or maintained.” TCLUO Sect. 11.030.

in Goal 18, IR 5. None of these properties contained qualifying residential, commercial, or industrial developments or buildings as of January 1, 1977, within the meaning of the term “development” under Goal 18, IR 5. Neither the Public Hearing Comment nor the ORP1 comment meaningfully establish otherwise. Further, neither the Pine Beach nor the Ocean Shore properties constituted “vacant subdivision lots which [were] physically improved through construction of streets and provision of utilities to the lot” as of January 1, 1977, and thus are not developments within the meaning of Goal 18, IR 5 for the purposes of eligibility for a SPS. As discussed previously, the Pine Beach properties were not developed until 1994. In addition, the Ocean Shores Boulevard properties, which were part of the “George Shand tracts” in 1950, were not part of a statutory subdivision as of January 1, 1977. Neither the Public Hearing Comment nor the ORP1 comment meaningfully argue otherwise. Therefore, the Applicants require a Goal 18 exception for the proposed SPS development.

B. The Applicants’ materials fail to meaningful address impacts to the State’s ownership of the wet and dry sand of Oregon’s shores, as well as the public’s use and enjoyment thereof.

As a property and public law matter, the ownership and use of beaches in Oregon is unquestioned.²⁵ The State of Oregon owns and manages the dry sand beach in the public interest, the use of which is preserved now and forever for free and uninterrupted public use.²⁶ Access to the public’s beach is protected under the Beach Bill, Goal 17, Goal 18, and their implementing regulations.²⁷ County land use planning within beach and dune areas such as the one at issue must carefully consider impacts to the public’s use and access of the beach, and ensure all decision-making is consistent with the legislature’s paramount policy as set forth within the Beach Bill at ORS 390.610.

The Applicants here fail to provide any analysis demonstrating consistency with Goal 18 policies. The purpose of Goal 18 is not to allow ineligible properties, which had constructive notice that hardened SPS was an inappropriate shoreline mitigation measure for protecting short-term private property interests under Oregon’s Beach Bill and Land Use Planning legal frameworks, to simply develop such structures when natural coastal processes could threaten upland structures. Allowing ineligible properties to harden their shoreline simply because coastal erosion is present sets a harmful, contradictory precedent for future Goal 18 implementation. The policies of Goal 18 are clear and the law demonstrates that shoreline hardening in this instance is unlawful. As stated above, exceptions to Goal 18, IR 5 have led developing highly hazardous coastal areas with insufficient setbacks, leading to further proliferation of these harmful structures.²⁸ Oregon Shores strongly encourages the Planning Commission to reexamine the

²⁵ *Sullivan*, 136; The wet-sand area of the beach is in public ownership, and the dry-sand area is subject to a prescriptive use by the public through the doctrine of custom. *Thornton v. Hay*, 254 Or 584, 595–596, 462 P2d 671 (1969); *Stevens v. City of Cannon Beach*, 317 Or 131, 854 P2d 449 (1993).

²⁶ Birthright, vii.

²⁷ See ORS 390.630; ORS 390.632. See, e.g., OAR 736-020-0001 (2017) (requiring permits for significant activity along Oregon’s ocean shores, an essential prerequisite for the assertion of public ownership), OAR 660-015-0010(2) (providing increased public access).

²⁸ Oregon Shores strongly argues that even in areas where an exception to Goal 18, IR #5 is taken, new developments in coastal areas should be designed to be readily moveable and with sufficient setbacks to avoid the need for SPS.

standards currently governing the issuance of ocean shore permits and evaluate how state departments coordinate with local governments to discourage ill-advised development that may require hardened structures. A reexamination will assist the Planning Commission, as well as the public, in understanding how ocean shore permits will be evaluated and issued in the face of increased coastal erosion resulting from climate change and shoreline development pressures, while preserving the basic principle that a natural shoreline is to be preserved where development did not exist before the adoption of Goal 18.

II. The Applicants' materials fail to justify a built exception to Goal 18.

The Public Hearing Comment seeks to justify a developed exception to Goal 18.²⁹ Goal 2, Part II and ORS 197.732(2)(a) describe when a local government may take a built exception.³⁰ Specifically, a local government may take a "developed" exception if:

"The land subject to the exception is *physically developed* to the extent that it is no longer available for uses allowed by the applicable goal."³¹

In this case, the applicable goal is Goal 18, and the relevant question is whether the area slated for the proposed development (i.e., the foredune upon which the proposed SPS development will be installed) is physically developed to the extent that it is no longer available for uses allowed by Goal 18 (i.e., conservation and protection of beaches and dunes). The administrative rule offers further guidance on the type of evidence that must be assembled to justify a "developed" exception. Specifically, OAR 660-004-0025(2) states:

- Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception.
- The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception.
- The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact.
- The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities.³²

The rule also sets forth an important caveat: "Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception."³³ Case law notes that the standard for approval of a physically developed and a committed exception is "demanding."³⁴ As discussed below, the Applicants fall well short of those demanding standards.

²⁹ *Pub. Hrg. Comment*, 30-33.

³⁰ *See also* OAR 660-004-0025(1), (administrative rule describing a "developed" exception).

³¹ ORS 197.732(2)(a); *see also* Goal 2, Part II; OAR 660-004-0025(1), (stating the rule, and also noting that "Other rules may also apply, as described in OAR 660-004-0000(1).")

³² OAR 660-004-0025(2).

³³ OAR 660-004-0025(2).

³⁴ *Sandgren v. Clackamas County*, LUBA No. 95-038, 29 Or LUBA 454, 457 (1995).

The Applicants' materials fail to establish that the circumstances of the site of the proposed exception is physically developed with uses not allowed by an applicable Goal 18. Here, the Public Hearing Comment states that "[t]he Subject Properties are in an acknowledged urban unincorporated community, with an acknowledged medium density residential zone and plan designation." While it is true that a portion of the subject properties are developed with upland structures, the Applicants' conclusion on this basis that "they are not 'available' to be undeveloped with residential development, as [Goal 18, IR 2] contemplates for a dune subject to overtopping and undercutting" is unsupported. First, the proposed area for the SPS is currently undeveloped, and therefore available for the conservation and protection uses prioritized by Goal 18. As noted by DLCD, while it is clear that this area is now subject to ocean flooding, the developments already exist lawfully, and the County's beach and dune landform inventory under Goal 18 has not changed. Again, the question at hand is not whether these properties should continue to exist where they are, but rather whether they can install their preferred SPS on the eroding foredune fronting the subject properties.

The Applicants appear to suggest, absent meaningful support, that the proposed SPS is "a part of" residential development. To the contrary, the use sought is mitigation of shoreline erosion, and alternative measures permissible under Goal 18 to alleviate said shoreline erosion (including, but not limited to, moving the upland structures) are still available within the proposed exception areas. The Applicants do not meaningfully argue otherwise. That the Applicants' preferred measure (i.e., a hardened SPS) is currently impermissible under Goal 18 does not support a conclusion that the land subject to the exception is physically developed such that it is unavailable for uses allowed by Goal 18.

The Applicants assert that "it is certain that Goal 18 would, today, prohibit any and all of the acknowledged approved medium intensity residential development that is allowed and that exists on each of the Subject Properties because the dune is now eroding."³⁵ However, the Public Hearing Comment fails to meaningfully support this assertion. Even assuming this is true, it is irrelevant. Again, the question here is not whether the homes should continue to exist where they are, but whether the Applicants' preferred shoreline mitigation use should be approved (i.e., hardened SPS). That a naturally occurring feature exists on each of the subject properties (i.e., an eroding foredune) does not constitute evidence sufficient to support a conclusion that the area is physically developed and thus unavailable for uses allowed by Goal 18.

Per case law interpreting this rule, the existence of sewer or utility lines and such improvements to undeveloped lots do not justify a developed exception, and the Applicants fail to meaningfully establish otherwise. Further case law suggests that the "built" exception standard requires that a proponent and a county must find that a subject property has been physically developed to such an extent that all uses under the applicable goal are precluded. The Applicants' fall well short of that standard here.

³⁵ *Public Hearing Comment*, 32.

For the above reasons, the Applicants fail to demonstrate consistency with the criteria required to justify a “built exception.” As such, the Planning Commission should recommend denial of the Applications.

III. The Applicants’ materials fail to justify a committed exception to Goal 18.

As noted in Oregon Shores’ previous comments, the Applicants’ materials fall well short of the high bar required to justify a committed exception. Goal 2 and ORS 197.732(2)(b) set forth the circumstances under which a local government may take a “committed” exception. A local government may adopt an exception to a goal if:

The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.³⁶

To demonstrate that an area is irrevocably committed to non-resource use, as that term is defined under OAR 660-004-0005,³⁷ it must be shown that the uses allowed by the applicable goal are “impracticable.”³⁸ The focus is on whether existing circumstances render the uses impracticable, not speculative future circumstances. The impracticability requirement is clarified by OAR 660-004-0028(3):

Whether uses or activities allowed by an applicable goal are impracticable as that term is used in [ORS 197.732(2)(b)], in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is “impossible.” ***

Subsections (2) and (6) of OAR 660-004-0028 provide detailed guidance as to the factors that a local government must take into account when evaluating whether an area is “irrevocably committed” to a use not allowed by the applicable goal. As noted in previous comments, the Applications and subsequent materials fail to meaningfully address these criteria sufficient to conclude that the relationship between the proposed exception area and the adjacent lands demonstrate that it is “irrevocably committed” to uses not allowed by Goal 18.

³⁶ Goal 2, Part II.

³⁷ OAR 660-004-0005(2) defines “Resource Land” as land subject to one or more of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Under OAR 660-004-0005(3), “Nonresource Land” is land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Importantly, the rule states that “Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to non-resource land.” Contrary to the Applicant’s suggestion, the areas upon which the proposed SPS will be located are resource lands for the purposes of evaluation.

³⁸ OAR 660-004-0028(1)

Several cases address the factors in subsection (2) of OAR 660-004-0028, and emphasize that the focus of the analysis for an irrevocably committed exception is on the adjacent land, uses on said land, and their impact on the subject parcels, and not on the subject parcels themselves. As noted previously, the Applications failed to base the justification for a committed exception on adjacent lands and uses. The Public Hearing Comment and ORP1 comment similarly fail to address adjacent lands and uses, and their impacts on the proposed exception area, contrary to this rule.

Finally, the Applicants appear to suggest that existing exceptions inapplicable to the proposed exception area (i.e., other exceptions to Goals 18, 17, 14, 11, 4 and 3), OAR 660-022-0010(9), OAR 660-022-0050, and TCCP Goal 14, p. 14-20 (at 3.2(B) Policies) somehow meet the criteria, in the alternative, for a committed exception. The Applicants fail to meaningfully explain the relevance of these exceptions and criteria to addressing the factors contained in Subsections (2) and (6) of OAR 660-004-0028, and fail to explain how this information supports a determination that adjacent lands and uses make uses allowed by Goal 18 impracticable in the proposed exception area.

For the above reasons, the Applicants' materials fail to demonstrate consistency with the criteria required to justify a committed exception.

IV. The Applications fail to establish a demonstrated need under OAR 660-004-0022(1), on the bases of Goal 7 (Natural Hazards), Goal 10 (Housing), Goal 11 (Public Facilities and Services), and Goal 18 itself.

The Applicants seek a reasons exception to Goal 18 generally (and specifically, to both Goal 18, IR 2 and Goal 18, IR 5). Under Goal 2 (Land Use Planning) and ORS 197.732(2)(c), a county may approve a "reasons" exception to a goal requirement if four standards are met:

- (a) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (b) Areas which do not require a new exception cannot reasonably accommodate the use;
- (c) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."³⁹

OAR 660-004-0020 elaborates on these four standards contained within the statute. In addition, OAR 660-004-0022 provides a set of standards for evaluating whether the first of the

³⁹ Goal 2, Part II(c); ORS 197.732(2)(c).

above standards is met, that is, whether "reasons" justify why the state policy embodied in the applicable goals should not apply.

OAR 660-004-0022(1) is a generic, "catch-all" provision that provides standards for reasons exceptions in the absence of other, goal-specific rules. One of those standards is that there must be a "demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19."⁴⁰ Subsequent subsections of OAR 660-004-0022 set out a number of goal-specific rules. Two of those subsections are specific to Goal 18. OAR 660-004-0022(10) provides standards for a reasons exception to the restriction of foredune breaching contained in Goal 18, Implementation Requirement 6 (Goal 18, IR 6)⁴¹ where an existing dwelling located on the foredune is experiencing sand inundation and the sand grading. OAR 660-004-0022(11) provides standards for taking a reasons exception to the foredune use prohibition in Goal 18, IR 2.

In order to find that reasons justify a goal exception, there must be sufficient information provided in the record and reasoning to support each of the criteria. As the Oregon Court of Appeals explained: "an exception must be just that – exceptional."⁴² LUBA reiterated this fact in two recent holdings relevant to this case: *Or. Shores v. Coos Cnty.*, __ Or. LUBA __, (LUBA No. 2020-002, May 4, 2021 at 32, 33) and *Confederated Tribes et. al. v. City of Coos Bay*, __ Or. LUBA __, (LUBA No. 2020-012, May 4, 2021 at 27-28). The Applicants' proposal that Tillamook County set forth within the TCCP and TCLUO an amendment and justification for a Goal 18 exception at the proposed sites warrants careful consideration to assess consistency with this "exceptional" standard. As shown below, the Applicants' proposal falls short of meeting this bar.

A. First Goal Exception Requirement: Reasons Justify Why the State Policy Embodied in the Goals Should Not Apply.

OAR 660-004-0020. Goal 2, Part II(c), Exception Requirements

- (2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
 - (a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount

⁴⁰ OAR 660-004-0022(1)(a).

⁴¹ Goal 18, IR 6 states:

Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

⁴² *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 731 (1984).

of land for the use being planned and why the use requires a location on resource land;

OAR 660-004-0020(2)(a) requires the Applicants identify “reasons” as to why Goal 18 criteria regarding should not apply to the subject properties. Applicants’ various reasons for granting an exception to Goal 18 do not demonstrate adequate “reasons” under OAR 660-004-0020(2)(a). The Applicants list their own various reasons for exceptions to Goal 18, including:

- Citing to the WEST memo and Supplement, which as discussed throughout this comment and previously, is inadequate to address the criteria contained within Goal 18, IR 2, Goal 2 exception criteria, and the relevant TCCP and TCLUO criteria.
- Noting the “documented history of beach progradation in the decades prior to approval” of the Pine Beach Subdivision replat and development on the Ocean Shore Boulevard Properties, and that “the expert analysis that there was no demonstrable reason at the time that pattern of beach growth should stop, nevertheless reverse;”
- Noting that the County's comprehensive planning documents did, and still do, show the area as one having a prograding beach instead of a retrograding or even stable beach

However, the Applicants’ materials fail to recognize that establishing consistency with ORS 197.732(c) requires more than just presenting any possible reason, however pressing, to justify an exception to Goal 18. The Applicants fail to assert any “reasons,” based on Goals 3-19 as this provision requires, sufficient to establish a demonstrated need and thus fail to meet this criterion.

OAR 660-004-0022(1). Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

Under OAR 660-004-0022(1)(a), if a use is not specifically provided for, the reasons shall justify why the state policy embodied in the applicable goals should not apply. This provision is a “catch-all” that provides standards for reasons exceptions in the absence of other, goal-specific rules. Acceptable reasons include: There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

- (A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or
- (B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

OAR 660-004-0022(1)(a) requires the Applicants to establish a “demonstrated need” for the proposed use or activity based on the requirements of one or more of Goals 3 to 19.

Subsequent subsections of OAR 660-004-0022 set out a number of goal-specific rules;⁴³ however, none of these subsections apply in this case. The Applicants appear to assert the “demonstrated need” is based primarily on “several Goals, including Goal 7 (Natural Hazards), Goal 10 (Housing), Goal 11 (Public Facilities and Services), and even Goal 18 itself.”⁴⁴ In the present case, the Applicants fail to show there is a “demonstrated need” based upon the requirements of the highlighted goals.

First, the Applicants misstate the purpose and policy behind Goal 18. Specifically, the Applicants’ materials present an illogical justification for the proposed Goal 18 exception by implying that in order to uphold the intent of Goal 18, the County must grant an exception to Goal 18 under OAR 660-004-0022(1)(a). The Public Hearing Comment asserts:

Moreover, the second express goal of Goal 18 is “[t]o reduce the hazard to human life and property from natural or man-induced actions associated with these areas.” That requirement includes protection from natural actions, including the drastic natural change in beach progradation to regression. The hazards to life and property in this instance are not man-induced, they are natural in origin.⁴⁵

As noted in Section I above, this interpretation of Goal 18 is inaccurate. The law states that development under Goal 18 may not be allowed where it is inconsistent with the mandate to conserve and protect. However, if development is consistent with the mandate to conserve and protect, LCDC’s goal is then to “reduce the hazard to human life and property from natural or man-induced actions associated with [beaches and dunes].” Contrary to the Applicants’ statement that Goal 18’s second mandate includes protections from “natural actions,” case law has conclusively held that Goal 18 is aimed at reducing the impacts caused by proposed development (such as the proposed SPS at issue) and *not* reducing risks to life and property that are caused by natural hazards (such as the natural eroding foredune in this case).⁴⁶

Applicants then state that: “Goal 18 further commands that “Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of*** dune areas consistent with their*** recreational*** and economic values***.”⁴⁷ However, this is an incomplete recitation of Goal 18’s mandate. In full, the text provides:

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their *ecological*, recreational,⁴⁸

⁴³ Goal 18 is the only stated goal in these applications that has enumerated goal-specific rules. See OAR 660-004-0022(10) (enumerating reasons justified for foredune breaching); OAR 660-004-0022(11) (enumerating reasons justified for foredune development).

⁴⁴ Combined Narrative at 37.

⁴⁵ *Public Hearing Comment*, 21.

⁴⁶ *Borton v. Coos County*, LUBA No. 2005-153, 52 Or LUBA 46, 59 (2006).

⁴⁷ *Public Hearing Comment*, 21.

⁴⁸ The Applicants’ materials do not explicitly advance Goal 8 as a basis for demonstrated need, and fail to establish that the proposed SPS is even consistent with the requirements of the Goal itself, let alone as a basis for a reasons exception. As discussed previously, the proposed SPS is likely to cause significant harm to the public’s use, enjoyment of, access to, and recreation upon the beaches and dunes in the vicinity of the proposed exception area.

*aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.*⁴⁹

Read in full, the Applicants' conclusion that "[t]he appropriate use of the dune areas here is that which the County governing body has determined to be appropriate in establishing the acknowledged Twin Rocks-Barview-Watseco urban unincorporated community, with medium density residential use that the County's acknowledged plan and Buildable Lands Inventory determines is appropriate" is clearly inconsistent with the law, which requires that Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate uses consistent with the ecological, aesthetic, and water resource values (in addition to the recreational and economic values of these areas), subject to the natural limitations of beaches, dunes, and dune vegetation areas for development. Further, the Applicants fail to establish that the County is failing or at risk of failing to provide for diverse and appropriate uses, consistent with this criterion. That the proposed properties are ineligible for developing the proposed SPS does not support that conclusion, and the Applicants' materials fail to argue otherwise.

The Applicants fail to show a demonstrated need under Goal 18. The primary purpose of Goal 18 is to "conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas," and the Applications' materials fail to address this mandate. This omission and the Applicants' various interpretations of Goal 18⁵⁰ overlooks and oversimplifies the "push and pull" that this Goal 18 contemplates with respect to balancing conservation, protection, and hazard reduction. As stated above, this goal limits the placement of beachfront protective structures to areas where development was present prior to 1977 to limit the cumulative impacts of shoreline hardening. Development under Goal 18 may not be allowed where it is inconsistent with the mandate to conserve and protect, and Goal 18 is aimed at reducing the impacts caused by proposed development and *not* reducing risks to life and property that are caused by natural hazards.

As stated above in Section I, the purpose behind Goal 18 is to prevent the proliferation of harmful hardened SPS, like riprap, on the Oregon Coast. As acknowledged repeatedly in publicly available scientific literature and even indicated by the Applicants' own narrative and WEST technical reports, rippapped shorelines and the proliferation of shoreline protective structures will only continue to cause significant harm to beaches due to the structures starving the beach of sediment and increasing erosion. Increasing the amount of riprap in the Pine Beach area not only directly impedes the purpose of Goal 18, but also increases the risks to public health and safety by encouraging more shorefront protection and development rather than incentivizing setbacks and movement away from shoreline areas and coastal hazards. Thus, Applicants cannot satisfy a reasons exception under OAR 660-004-0020(2)(a) and OAR 660-004-0022(1)(a) on the basis of Goal 18 itself, and thus their applications should be denied.

Second, the Applicants fail to show a demonstrated need under Goal 7.⁵¹ The purpose of Goal 7 is "[t]o protect people and property from natural hazards." Goal 7 (see OAR 660-015-

⁴⁹ Goal 18.

⁵⁰ *Application Narrative*, 57-62.

⁵¹ It should be noted that Goals 7, 8, 9, and 10 are among the statewide goals that generally provide planning guidance. See OAR 660-004-0010(2)(c)-(f).

000(7)), generally requires local governments to adopt development restrictions or safeguards to protect people and property from natural hazards. The term “natural hazards” means “floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.”⁵² In other words, under Goal 7(A)(2), “coastal erosion” is one of the hazards the County should protect against. Goal 7 requires that local governments adopt inventories, policies, and implementing measures “to reduce risk to people and property from natural hazards.” Goal 7 A.2. Goal 7’s implementing measures are based on two principles:

- First, local governments must avoid “development in hazard areas where the risk to people and property cannot be mitigated.” Goal 7 C.3.a.
- Second, local governments must prohibit the siting of essential facilities, major structures, hazardous facilities, and special occupancy structures in hazard areas unless the risk to public safety can be mitigated or an essential facility “is needed within a hazard area in order to provide essential emergency response services in a timely manner.” Goal 7 C.3.b.

The Applicants are correct that Goal 7 requires the County to plan for natural hazards and then implement that plan by making decisions consistent with Goal 7 and the TCCP Goal 7 element. In other words, Goal 7 merely provides the County with planning guidance for managing natural hazards. Sections 2.4 and 2.5 of the TCCP Goal 7 element fulfill the County’s Goal 7 planning obligations with respect to erosion and flood hazards, respectively. TCCP Goal 7, Section 2.4(a) states, in full:

a. Prevention or remedial action [for erosion] *shall include any or all* of the following:

1. Maintenance of existing vegetation in critical areas;
2. Rapid revegetation of exposed areas following construction;
3. The stabilization of shorelines and stream banks with vegetation and/or riprap;
4. Maintenance of riparian buffer strips;
5. Structural accommodation of increased runoff in areas of development;
6. Seasonal restriction of construction in critical areas;
7. Set-back requirements for construction or structures near slope edge, stream banks, etc.; and,
8. Any other measures deemed appropriate to deal with site specific problems.

It is true that any or all of these measures may be permissible, subject to and consistent with restrictions and priorities contained within the applicable Goals and statutes. However, TCCP Goal 7, Section 2.4(a) does not require or obligate the County to use hardened SPS to prevent erosion much less approve an exception to Goal 7 and the TCCP’s Goal 7 element to allow private entities to do so, and the Applicants’ materials fail to argue otherwise. The Applicant’s assertion that failure to approve the proposed exception for the Applicants’ preferred

⁵² Goal 7.A.2. Note that this definition of “natural hazards” does not preclude local governments from identifying and planning for other natural hazards. Goal 7 A.2.

shoreline mitigation measure (i.e., hardened riprap) measure would mean the County would fail to comply with the TCCP implementation measure to fulfill its planning obligation under Goal 7, is unsupported and contrary to the case law governing OAR 660-004-0022(1)(a). Further, given that the proposed SPS will increase erosion and the need for remedial measures, the suggestion that it is needed is contrary to sound management of natural hazards on the shoreline. The Applicant asserts, absent any meaningful evidence and analysis, that “critical public infrastructure is at risk.” Even assuming this is true, again, there is no obligation identified by the Applicants that requires the County to use riprap as a preventative or remedial measure in this case.

The Applicants assert that “[t]he proposed plan amendments (exception) seek an implementation measure identified in the Comprehensive Plan to reduce the risk to people and lawfully developed and developable property from the natural hazards threatening them, because the dune has now become subject to ocean overtopping and undercutting.”⁵³ That the proposed amendments seek a new implementation measure within TCCP is irrelevant to the analysis required under OAR 660-004-0022(1)(a), which requires that an applicant show that there are specific obligations in a stated goal or local provision implementing the goal requiring the proposed exception.

Third, the Applicants advance a demonstrated need under Goal 10. The purpose of Goal 10 is “to provide for the housing needs of the citizens of the state.” As with Goal 7, Goal 10 is among the statewide goals that generally provide planning guidance.⁵⁴ Goal 10 imposes an affirmative duty on local governments to ensure opportunities for the provision of adequate numbers of needed housing units at prices and rents that are affordable to Oregonians. *See* OAR 660-008-0000(1) (describing the purpose of Goal 10).

The TCCP Goal 10 element satisfies the County’s planning obligation under Goal 10. The Applicants assert, absent meaningful supportive evidence or analysis, that the “County’s acknowledged Goal 10 Buildable Lands Inventory relies greatly upon its urban unincorporated communities, to include the Twin Rocks-Watseco-Barview urban unincorporated community that includes the subject properties, to provide medium density residential uses to the County.” However, even assuming this to be true, the Applicants’ materials themselves acknowledge that this “need has largely been met, with a few more vacant lots available in the identified area.” The Applicants’ assertion that Goal 10 establishes a demonstrated need consistent with OAR 660-004-0022(1)(a) sufficient to justify an exception to Goal 18 is unsupported for the following reasons:

- The Applicants fail to demonstrate that the existing structures are needed housing within the meaning of Goal 10, or that said existing upland structures and vacant lots are somehow necessary to meet the County’s identified need under Goal 10. The Applicants’ materials fail to establish that there are *any* requirements or obligations on the County under Goal 10 that would necessitate the proposed exception to Goal 18 to allow the Applicants’ preferred shoreline erosion mitigation use (i.e., hardened SPS).

⁵³ *Pub. Hrg. Comment*, 20.

⁵⁴ *See* OAR 660-004-0010(2)(c)-(f).

- The Applicant asserts that “[p]rotecting the existing lots planned, zoned and mostly developed with residences complies with the County’s buildable lands inventory and meets the County’s demonstrated housing needs under Goal 10.” Even assuming this is true, this does not constitute an express obligation under Goal 10 that would in turn require the County to take the proposed exception to Goal 18 to allow development of hardened SPS for otherwise ineligible properties.
- There is no evidence to suggest that the eroding foredune for which the SPS is proposed is within the buildable lands inventory. As discussed above, incentivizing further development in these areas (particularly for needed housing, as opposed to vacation homes), arguably goes against the definition of “buildable lands” as contemplated by Goal 10. Namely, an eroding foredune is not suitable for development of any kind, and needed housing should be set well far back from coastal hazards.

Because the Applicants’ materials fail to establish that there are requirements or obligations on the County related to Goal 10, the County cannot conclude that the proposal is consistent with the demonstrated need rule on the basis of Goal 10 itself sufficient to justify an exception to Goal 18.

Fourth, the Applicants advance demonstrated need on the basis of Goal 11. Goal 11, requires local governments “[t]o plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”⁵⁵ Goal 11’s primary objective is to guide and support urban and rural development with public facilities and services appropriate for, but limited to, the needs and requirements of the area to be served.⁵⁶ Consistent with Oregon’s objective of limiting sprawl and preserving resource lands, the goal seeks to generally limit urban-level public services to areas within urban growth boundaries.

The Goal 11 element of the TCCP fulfills the County’s planning obligations with respect to and directs development in accordance with Goal 11 (including the Watesco-Barview Water District and the Twin Rocks Water District). The Applicants assert, absent meaningful supporting evidence or analysis, that Goal 11 establishes a demonstrated need consistent with OAR 660-004-0022(1)(a) sufficient to justify an exception to Goal 18. As with Goals 7, 10, and 18, the Applicants’ materials do not establish that there are requirements or obligations on the County related to Goal 11 that necessitate either the proposed SPS or the proposed exception to Goal 18 to allow the SPS at the Pine Beach or Ocean Shore Boulevard properties. The Applicants assert, absent meaningful supporting evidence or analysis, that “[w]ithout the proposed [SPS], [the Watesco-Barview Water District and the Twin Rocks Water District] will be under threat not just for the subject properties, but for the greater system.” Even assuming that the two water districts and/or the greater water system will be threatened by erosion on the subject foredune,⁵⁷ the Applicants fail to offer any express criteria requiring the proposed SPS structure as an appropriate and adequate shoreline mitigation measure to alleviate that threat. Further, the proposed SPS will arguably go against the Goal 11 element of the TCCP with respect to Goal 11’s relationship to the other resource goals, which states that the Goal 11

⁵⁵ Goal 11; OAR 660-015-0000(11).

⁵⁶ OAR 660-011-0000.

⁵⁷ Note that these Goal 11 facilities serve the subject upland structures, not any development currently within the proposed exception areas.

requirement for consideration of the “needs and requirements of urban, urbanizable and rural areas...includes the consideration of resource values,” which include coastal shorelands under Goal 17 and beaches and dunes under Goal 18.⁵⁸ The Goal 11 element itself recognizes the need to prevent maladaptive development by limiting availability of public facilities serves to unsuitable resource lands.

OAR 660-004-0022 also requires that Applicants demonstrate that either (A) a resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource, or (B) “[t]he proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.” The Applicants conclude, absent meaningful support, that “[t]he second of the two options is met” by the proposal (namely, OAR 660-004-0022(1)(a)(B)). The Applicants assert this this criterion is satisfied because the proposed SPS is “designed to prevent the catastrophic erosion that is seriously threatening people and property,” and to be effective, the proposed SPS is only effective if it is established on the subject properties as proposed.⁵⁹ Following the Applicants’ line of reasoning, *any* protective SPS on a coastline would show a “demonstrated need” under OAR 660-004-0022(B) based on the uniqueness of a location and the threat of erosion— regardless of whether the properties qualify. Thus, the Applicants’ reasoning is overly conclusive and fails to adequately explain how this locational provision, which requires a showing that “[t]he proposed use or activity has special features or qualities,” is satisfied.

As a whole, the Applicants fail to explicitly identify policy criteria in these goals applicable to its proposed development, and fail to provide sufficient information to evaluate the proposed project’s consistency with the primary objective of each Goal. There is insufficient evidence on the basis of this record to assess the Applicants’ compliance with Goals 7, 10, 11, and 18. For these reasons, the Applicants fail to establish a “demonstrated need” sufficient to justify a reasons exception to Goal 18 under OAR 660-004-0022(1)(a).

Further, to the extent asserted, the Applicants’ materials fail to demonstrate a demonstrated need based upon Goals 8 (Economy) and Goal 9 (Recreation) or the TCCP elements implementing those goals. Specifically:

- Goal 8: The Applicants fail to show a demonstrated need under Goal 8.⁶⁰ The purpose of Goal 8 is “[t]o satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.” The Applicants assert, absent any meaningful supporting evidence, that the proposed structure will improve the northern beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach and the proposal does not interfere with the southern beach access. The contrary is likely to be true, namely that the addition of shoreline hardening to these sites—particularly the addition of riprap—would destroy recreational opportunities in the area, compromise public safety, and harm beach access points may offer at these points as well as greatly disturb the public’s access. Riprap not only reduces the walkability of a beach by making

⁵⁸ TCCP Goal 11, Sec. 2.3.

⁵⁹ *Public Hearing Comment*, 22.

⁶⁰ *Applications Narrative*, 54.

public walking and recreation spaces narrower and less safe but also continues beach erosion and causes beaches to disappear entirely over time.⁶¹ Even with the proposed shoreline hardening structures, the Properties will be negatively impacted through continued bluff erosion. The Applicants provide no meaningful discussion of how the purpose of Goal 8 will be fulfilled. Absent such analysis, the Planning Commission cannot on the basis of the current record conclude that the proposed plan amendment is consistent with Goal 8.

- Goal 9: To the extent asserted, the Applicants also fail to show a demonstrated need under Goal 9. The purpose of Goal 9 is “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.” Any of the economic arguments, as put forth in the Applicants’ materials, are not reason enough to justify an exception decision, as similar economic arguments could be made for other locations along the Oregon coast that are similarly not eligible for SPS. Further, the Applicants fail to set forth any express Goal 9 obligations that would necessitate the exception to Goal 18.

As noted previously, the proposal fails to comply with Goal 17 and the Goal 17 element of the TCCP. Similarly, the Applicants fail to put forth express criteria in Goal 17 or the TCCP Goal 17 element—and none in fact do exist—sufficient to establish a demonstrated need.

B. OAR 660-004-0022(11)

As discussed previously, the proposal fails to qualify for the specific circumstance set forth in OAR 660-004-0022(11). The Public Hearing and ORP1 comments similarly fail to establish that the proposal qualifies for the exception contemplated within this provision. OAR 660-004-0022(11) provides:

Goal 18 - Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall [demonstrate consistency with subsections (a) through (c) of the provision.

The Applicants fail to meaningfully establish that the proposed use (i.e., shoreline erosion mitigation) will be “adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves” or that “the use is of minimal value,” inconsistent with subsection (a) of this rule. As discussed previously and below, the Applicants’ fail to establish that the proposed use is designed to minimize adverse environmental effects, inconsistent with subsection (b). In fact, the preferred shoreline mitigation proposed will serve to increase short-term and long-term environmental effects on the coastal ecosystem, adjacent properties, public safety, beach access, and the public’s use of the beach. The Applicants’ materials fail to meaningfully address these impacts, let alone establish that they are minimized. Finally, as discussed previously and below, inconsistent with subsection (c) of this rule, the Applicants fail to demonstrate that the exceptions requirements of OAR 660-004-0020 are met.

⁶¹ *The True Cost of Armoring the Beach*, SURFRIDER (July 6, 2020) <https://sandiego.surfrider.org/the-true-cost-of-armoring-the-beach/> (last visited June 7, 2020).

C. Other Reasons Exception Criteria

As discussed previously and below, the Applicants fail to demonstrate that the exceptions requirements of OAR 660-004-0020(b)-(d) are met.

1. Second Goal Exception Requirement: Areas that do Not Require a New Exception Cannot Reasonably Accommodate the Use.

OAR 660-002-0020(2)(b) requires a showing that areas that do not require an exception cannot reasonably accommodate the use. As discussed in detail above, the Applicants have not demonstrated a need for the proposed shoreline hardening. Because the Properties are ineligible for shoreline hardening under Goal 18 and approval of shoreline hardening is not warranted, the Applicants cannot meet the requirements of subsection 2(b). The use for the purposes of this proposal is shoreline erosion mitigation, and the Applicants correctly note that “only alternatives that do not require a new exception need be considered.” Neither the West Memo or the West Supplement consider the alternative of moving the upland structures so as to avoid any hazard caused by erosion. Further, neither present a meaningful alternatives analysis consistent with this rule. For the above reasons, the Applicants’ material fail to provide OAR 660-004-0020(2)(b)(A)–(C)’s required analysis, and are this inconsistent with this criterion.

2. Third Goal Exception Requirement: The Long-Term Environmental, Economic, Social and Energy Consequences Resulting from the Use at the Proposed Site are Not Significantly More Adverse than Would typically Result from the Same Proposal Located in Other Areas that Would Require a Goal Exception.

OAR 660-002-0020(2)(c) requires the Applicants to demonstrate “the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts.” Further,

The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base.

The Applicants’ materials fail to provide the analysis required by this criterion, particularly with respect to potential adverse impacts to resource values in the vicinity of the proposed exception area. Absent more detailed information the Planning Commission cannot complete an analysis of the comparative adverse impacts and the ESEE consequences consistent with this rule.

3. Fourth Goal Exception Requirement: The Proposed Uses are Compatible with Other Adjacent Uses or Will Be So Rendered through Measures Designed to Reduce Adverse Impacts.

As discussed above, the Applicants materials' continuously assert, absent meaningful supportive evidence, that impacts on surrounding properties will be minimal. They fail to meaningfully address public comments raising the concern that the proposal will interfere with public beach access and damage adjacent properties. Contrary to the Applicants' assertion of "no adverse impacts," hardened SPS will always impact the beaches and dunes upon which they are built. The Applicants' materials provide no meaningful identification of adjacent lands and uses; potential adverse impacts to the same; and what meaningful measures would be designed to effectively reduce those impacts. Absent this information, the County cannot conclude this criterion is met. The Applicants fail to meet this criterion and fail to discuss actual, viable solutions that prevent long-term adverse impacts on the proposed exception area and demonstrate compatibility consistent with this rule.

For the reasons stated above, the Applicants fail to demonstrate that a Goal 18 exception is justified for the proposed uses and activities.

V. General Comment

Oregon Shores provides the following general comments for the purposes of clarity and preservation.

A. The Applicants fail to provide sufficient information and analysis to support any assertion that denial of these applications and Goal 18 prohibitions would constitute a constitutional violation and a taking impacting private property rights.

The Applicants fail to provide sufficient analysis in these applications to evaluate this claim. Should this issue become germane to the present application process, Oregon Shores will provide specific comments as allowed and appropriate. To the extent that any takings is likely, it will be a taking public property and of the public's right to and use of the beach and dune areas within the subject littoral cell.

B. The Applicants misstate the intent and authority of DLCD's Goal 18 Focus Group.

The Goal 18: Pre-1977 Development Focus Group provided input and feedback to DLCD on each of four specific topics identified by DLCD, and that feedback was summarized in the report enclosed at Applicant's Exhibit E. The purpose of the group was not to set forth DLCD policy, nor was it to reconsider the date certain limitation in Goal 18, IR 5. DLCD stated that it would consider this input in reaching decisions on whether and how to move forward with any proposed changes to Goal 18. If DLCD decides to move forward with rulemaking or goal amendments, the public will have the opportunity to be fully involved in those processes.

VI. Conclusion

On the basis of the present record, the Planning Commission should recommend that the County deny these applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Johnson", with a long horizontal line extending to the right.

Phillip Johnson
Executive Director
Oregon Shores Conservation Coalition
P.O. Box 33
Seal Rock, OR 97376
(503) 754-9303
phillip@oregonshores.org

Allison Hinderer

From: Sarah Mitchell <sm@klgpc.com>
Sent: Thursday, June 10, 2021 3:49 PM
To: Sarah Absher; Allison Hinderer
Cc: Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com)
Subject: EXTERNAL: RE: 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: Exh E - FINAL_PineBeach_Memo_Supplement_06102021.pdf; Exh F - 2021-06-10 Pine Beach Shoreline Protection.pdf; Exh G - Photos of Subject Properties North to South.pdf
Importance: High

[NOTICE: This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe.]

Part 3.

Thank you,
Sarah M.



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From: Sarah Mitchell
Sent: Thursday, June 10, 2021 3:46 PM
To: sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>
Cc: Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and

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Subject: RE: 851-21-000086-PLNG Applicants' Second Open Record Submittal

Importance: High

Part 2. Please replace previously sent Exhibits A-D with the attached. Thank you.

Best,
Sarah M.



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From: Sarah Mitchell

Sent: Thursday, June 10, 2021 3:38 PM

To: sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>

Cc: Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>

Subject: 851-21-000086-PLNG Applicants' Second Open Record Submittal

Importance: High

Hi Sarah and Allison,

Please find the attached for submittal in the above matter. Please also confirm receipt. Additional submittals will follow. Thank you.

Best,
Sarah



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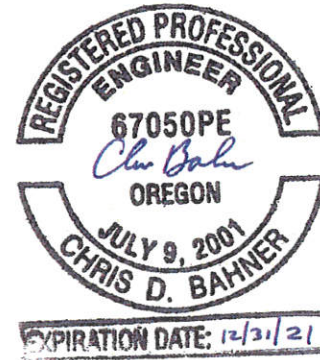
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Technical Memorandum

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To: Wendie Kellington, Kellington Law Group
From: Chris Bahner, P.E., D. WRE
Date: June 10, 2021
Subject: Second Supplemental Memorandum



1. Introduction

This responds to objections filed concerning a proposed shoreline protection revetment for the oceanfront properties of the Pine Beach subdivision and all but one of the oceanfront lots in the George Shand Tracts (Ocean Boulevard Properties), together referred to as the “Subject Properties.” The Subject Properties are located on the Oregon coast about 2 miles south of Rockaway Beach along the northwest coast of Oregon (Figure 1). These oceanfront landowners have been losing portions of their property due to coastal erosion and are experiencing coastal flooding as a result of high tides and wave run-up. Most recently, coastal flooding occurred during the King Tides in January of 2021, as well as in February of 2020. During these events, the maximum stillwater level reached the oceanfront homes, and went past the southernmost home for a distance of about 45 feet. There is a high level of risk for future damage to the Subject Properties’ land, structures, and infrastructure without the proposed revetment. It is not accurate to state, as some commentors have, that the Subject Properties are not subject to wave overtopping or undercutting. They are subject to both.

WEST Consultants, Inc. (WEST) was contracted by Kellington Law Group to study and if appropriate to develop a rock riprap revetment design, which if constructed, is expected to prevent further erosion of the landowners’ properties and to reduce the risk of coastal flooding. The revetment structure design and information required by Tillamook County was documented in a technical memorandum completed by WEST in March 2021 (WEST, 2021a). WEST also completed a supplemental technical memorandum in May 2021 (WEST, 2021b) in response to comments made by the Department of Land Conservation and Development (DLCD) sent in a letter to Tillamook County about the proposed protective structure (May 2021). Recently, public comments have been received related to concerns regarding the performance of the structure over a 20-year period, considering climate change effects on sea-level rise (SLR) and shoreline retreat, allegations that the erosion that the Subject Properties are experiencing is merely the result of natural cyclical ocean processes, and that the Subject Properties are not on a dune subject to wave overtopping and undercutting.



Figure 1. Location map

This technical memorandum responds to all of these comments. Specifically, this supplement documents the expected performance of the proposed structure over the subject 20-year period, presents the unique coastal morphology within the Rockaway littoral cell subset of the overall Rockaway littoral cell, demonstrating the subregion is experiencing unique erosion that is not common to the rest of the littoral cell and that its unique problems are not the result of natural ocean cycles, but of the man-made changes following the construction of two jetties constructed on either end of the Rockaway subregion littoral cell.

2. Sea-Level Rise (SLR)

Future SLR will have an influence on future coastal erosion and potential erosion of the dunes. Expected SLR was estimated from two sources: (1) *Procedures to Evaluate Sea Level Change: Impacts, Responses, and Adaption* (USACE, 2014) and obtained using the USACE's sea level curve calculator (USACE, 2021), and (2) *Sea Level Rise for the Coasts of California, Oregon, and Washington: Past Present, and Future* (National Research Council, NRC, 2012). Both sources have three future sea level scenarios: (1) Low, (2) Intermediate, and (3) High. Table 1 summarizes the SLR estimates derived from the two sources. The SLR estimates are similar from the two sources except for the low scenario where the USACE value is 0.14 feet higher. For comparison, Komar et al. (2011) found rates of relative SLR of about 1.3 mm/year, which would equate to 0.08 feet for a 20-year period.

As presented in the March 2021 technical memorandum, the coastal flood risk is characterized by the total water level (tide plus wave runoff) for the 10-, 2-, 1-, and 0.2-percent Annual Chance of Exceedance (ACE) events available from Flood Insurance Study (FIS) of Tillamook County (FEMA, 2018). The FIS indicates that for present day, the total water levels are 23.4 feet for the 10-percent ACE event and 25.0 feet for the 2-percent ACE event. The proposed revetment will have a top elevation of 23.8 feet, which is between the 10- and 50-percent ACE event. The level of protection, or percent chance the total water level would be equal to or greater than the top elevation of the revetment, provided by the proposed structure was determined to be about 8-percent by linearly interpolating between the 10-percent and 50-percent ACE values. The 8-percent ACE corresponds to a recurrence interval (or return period) of 12.5-years, which is calculated as 100 times the inverse of the percent ACE ($100 \times 1/8 = 12.5$). The average dune elevation at the Subject Property is 20.8 feet, which is below the FIS 10-percent ACE for the present day. The total water level for the 20-percent ACE of 21.9 feet was obtained from *The Rational Analysis of Setback Distance: Applications to the Oregon Coast* (Komar et al., 1999). This water level is also above the average dune elevation, so the annual present chance the existing dune would experience wave overtopping without the project would be significant. Similar calculations were performed to estimate the level of protection at the end of a 20-year period. This was also accomplished by linear interpolation of the FIS total water level versus frequency relationship adjusted by the expected SRL at the end of the 20-year period. Table 2 summarizes the level of protection that the proposed structure will provide at present and at the end of the 20-year period due to expected SLR. Table 2 shows that the proposed revetment will reduce risk from coastal flooding at present from a 20-50% chance every 2 to 5 years to just 8% every 12.5 years, and will still provide the necessary protection at the end of 2041.

Table 1. Summary of Sea Level Rise

Source	Sea Level Rise (feet)		
	Low	Intermediate	High
USACE, 2014	0.19	0.32	0.76
NRC, 2012	0.05	0.34	0.83

Table 2. Level of Protection Provided by Proposed Structure Due to SLR Over 20-Years

Condition	Timeframe	Sea Level Rise Scenario	Annual Chance of Wave Overtopping	
			Percent	Recurrence Interval ⁽¹⁾
Without Project	Present Day	-	20% - 50%	2 – 5 years
With Project	Present Day	-	8.0%	12.5 years
		USACE Low	8.6%	11.6 years
	20 years in future (2041)	USACE Intermediate	9.3%	10.7 years
		USACE High	12.1%	8.3 years

Notes:

- (1) The recurrent interval (also referred to as the return period) is calculated as 100 times the inverse of percent ACE.

3. Revetment Performance

The proposed revetment will be buried within the existing dune and maintained to be covered with sand material. The structure would not be undermined during the 20-year evaluation period and is expected to be effective for its purpose to avoid wave overtopping as well. Even in situations where wave overtopping does occur, the revetment will help to prevent damage to the Subject Properties by reducing the velocity of the wave and the overtopping flow to the area. It should be noted that the proposed structure has a launchable toe that provides an additional level of protection against undermining of the structure.

The proposed rock structure would be comprised of rock sizes typical along the Oregon Coast. The proposed structure is expected to experience wave conditions slightly less severe than those for the Shorewood RV Resort revetment, because it will be installed significantly further from the ocean and at a higher elevation than Shorewood's revetment. It is noted that the Shoreline RV rock structure is stable and has provided adequate protection for over a 20-year period.

It is my professional opinion that the proposed structure should provide the necessary level of protection against future dune erosion over the next 20 years.

4. Unique Coastal Morphology

In natural conditions, coastal shorelines are dynamic systems that experience seasonal and decadal changes with a high level of variability that are sometimes cyclical. The sublittoral cell on which the Subject Properties are situated are not experiencing natural shoreline conditions and so natural ocean cycles are not occurring. As discussed previously, the littoral cell, but specifically and most profoundly the subject subregional Rockaway littoral cell, has been greatly affected by two man-made structures – two jetties on either end of the subregion. Also, as previously discussed in the March 2021 technical memorandum, significant accretion of the Subject Properties' site occurred between 1917 and 1927 after the construction of the north jetty at Tillamook Bay (north Barview Jetty). This was not the result of a natural process, but was driven by the construction and function of the jetties. Since then, slower rates of accretion have occurred and the site, and indeed the entire littoral cell and sub cell, was relatively stable until 1997. Pronounced erosion occurred during the winter 1997-98 (El Niño event) and winter 1998-99 (La Niña event), with sections of erosion occurring within the entire Rockaway subregion, the southern end of the Nehalem Split subregion, and portions of the Bayocean Spit subregion (Figure 2). An evaluation of the data used to develop Figure 2 for the period from the winter of 1997 to 2021 indicates that the only portion of the Rockaway littoral cell now experiencing erosion is the southern reach of the Rockaway subregion from the north Barview Jetty to about 3 miles north of the jetty, where the Subject Properties are located. The analysis documented in *Evaluation of Erosion Hazard Zones for the Dune-Backed Beaches of Tillamook County, Oregon* (DOGAMI, 2014) and the study conducted by Mills et al. (2018) indicate there is a high potential that erosion within this area – the Subject Properties' Rockaway subregion littoral cell – will continue in the future.

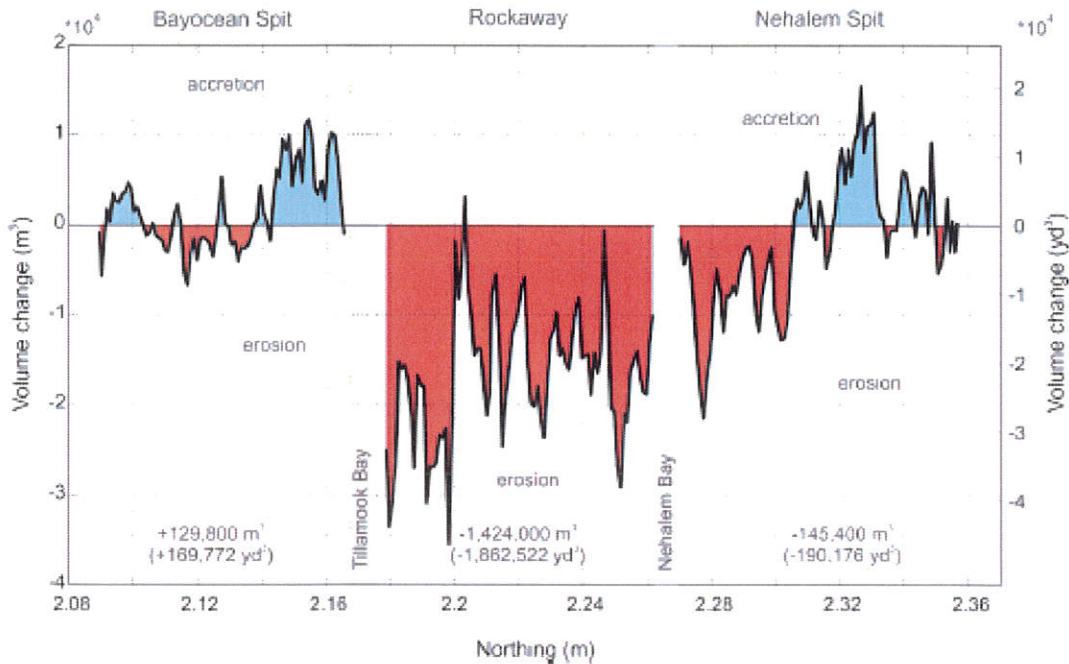


Figure 2. Net beach sediment volume changes along Rockaway littoral cell between 1997-2002 (DOGAMI, 2015)

The key take-aways are: (1) the extreme erosive events and conditions being experienced by the Subject Properties is unique within the littoral cell in which they exist and are unique to their subregion of the littoral cell; (2) they are predominately the result of man-made jetties, and not natural ocean cycles; (3) without the proposed shoreline protection, because of the unique erosive conditions affecting the subregion and specifically the Subject Properties, the Subject Properties would be expected to be overcome by wave overtopping in the 20-year period for which there is predictive information available.

5. Summary

The beach front landowners of the Subject Properties (Figure 1) have been losing portions of their property from coastal erosion and have experienced coastal flooding of their homes. The Subject Properties are subject to wave overtopping and coastal erosion. As a result, WEST designed a rock revetment structure to prevent future erosion of their property and to reduce the risk of coastal flooding. The design was documented in a technical memorandum completed in March 2021.

Additional public comments express concerns regarding the performance of the structure over the next 20-year period in view of climate change induced shoreline retreat. The proposed revetment will provide protection of the Subject Properties under current conditions and significant and effective protection over the 20-year period.

Coastal shorelines are dynamic systems that are constantly changing. While there are natural ocean cycles, the effects of natural ocean cycles here have been disrupted and changed by the two jetties in the subject subregion of the littoral cell. The proposed revetment is located within the portion

of the Rockaway Beach littoral cell that has been influenced by the jetty systems at Tillamook and Nehalem Bays. Accretion at the site occurred after the construction of the north Barview Jetty. The propagation at the site reversed in the mid to late 1990s due to the influences of the jetties during the El Niño and La Niña events. Based on measured data from 1997 to 2021, the reach from the north Barview jetty to about 3 miles north is the only reach within the Rockaway littoral cell experiencing erosion. The Subject Properties are experiencing wave overtopping and erosion that is unique to the Rockaway subregion of the Rockaway littoral cell for reasons that are not well-understood, but are influenced in large part by the two jetties that bound the subregion of the cell.

6. References

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State of Oregon Department of Geology and Mineral Industries, 2015. *Coastal Flood Hazard Study, Tillamook County, Oregon, Technical Report to the Oregon Department of Land Conservation and Development*, prepared by Laura L Stimely and Jonathan C. Allan

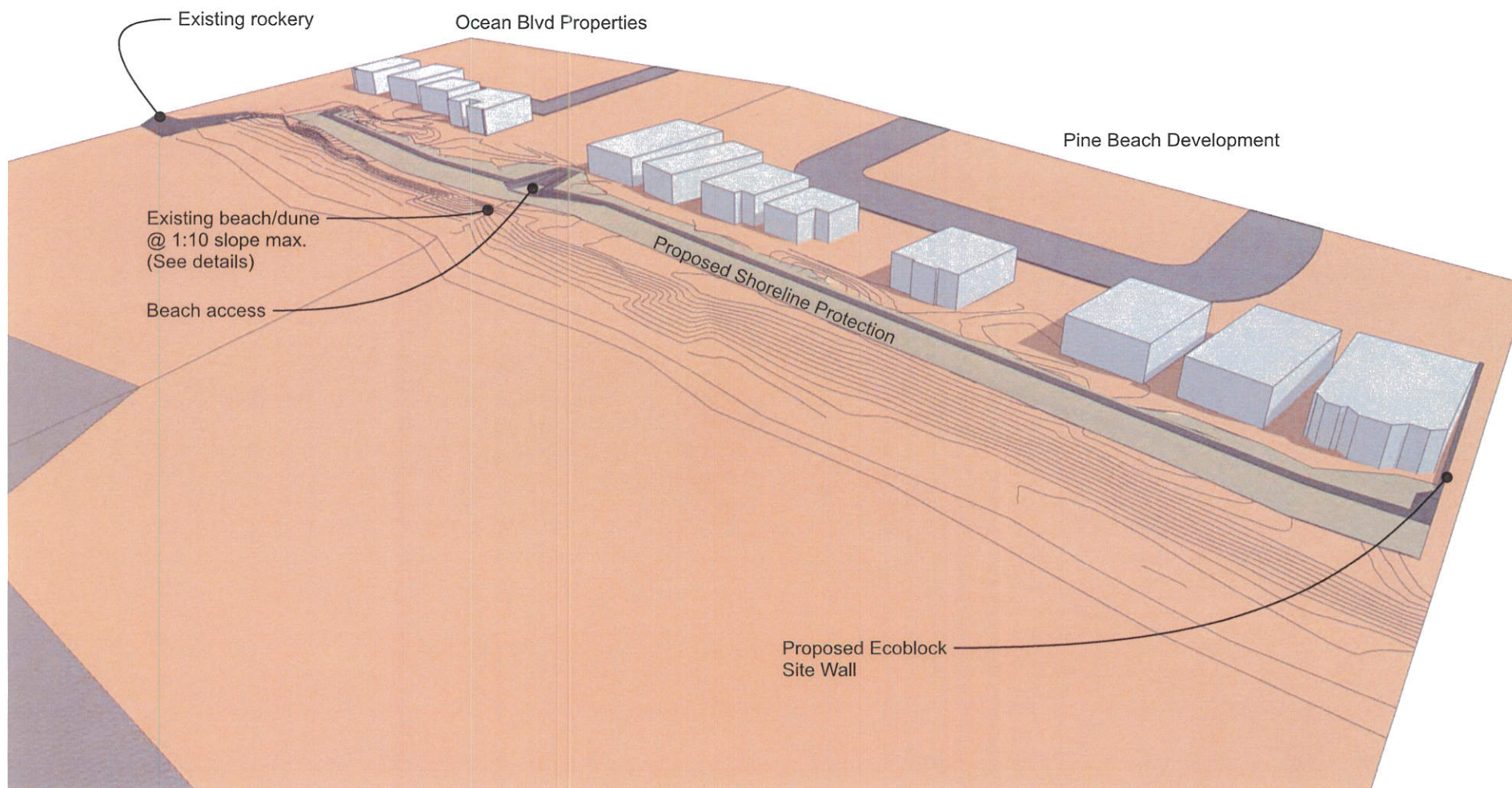
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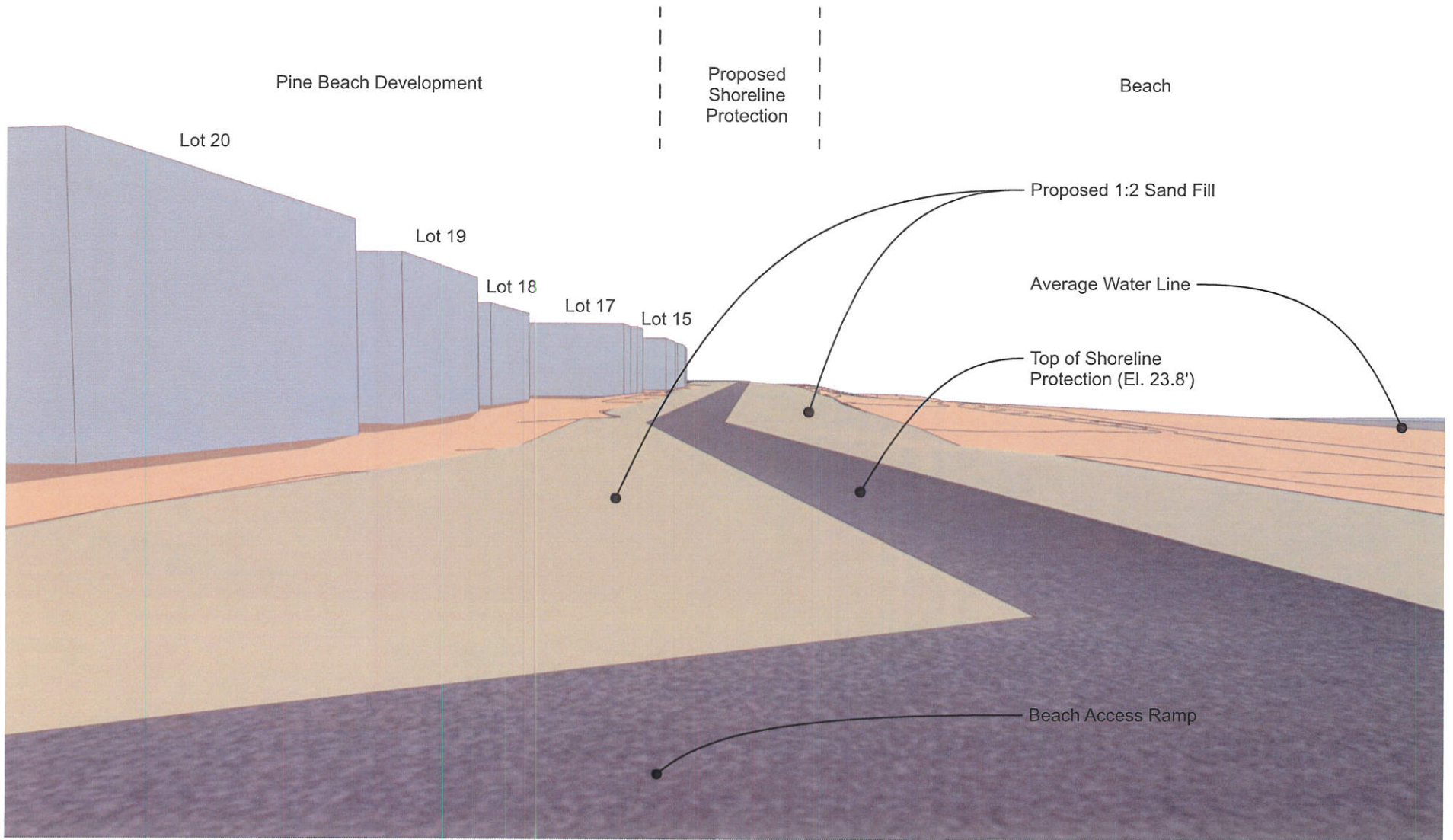
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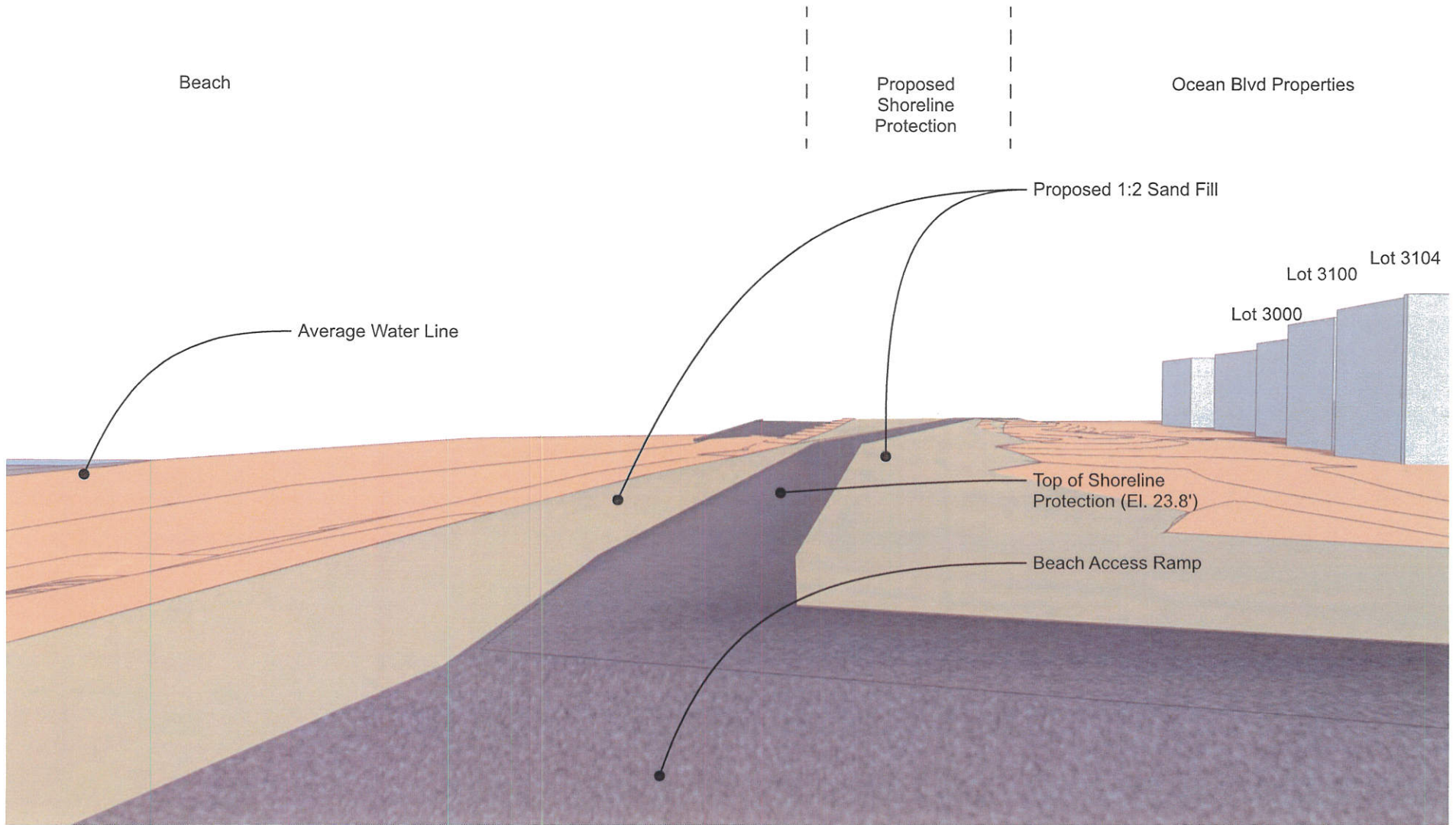
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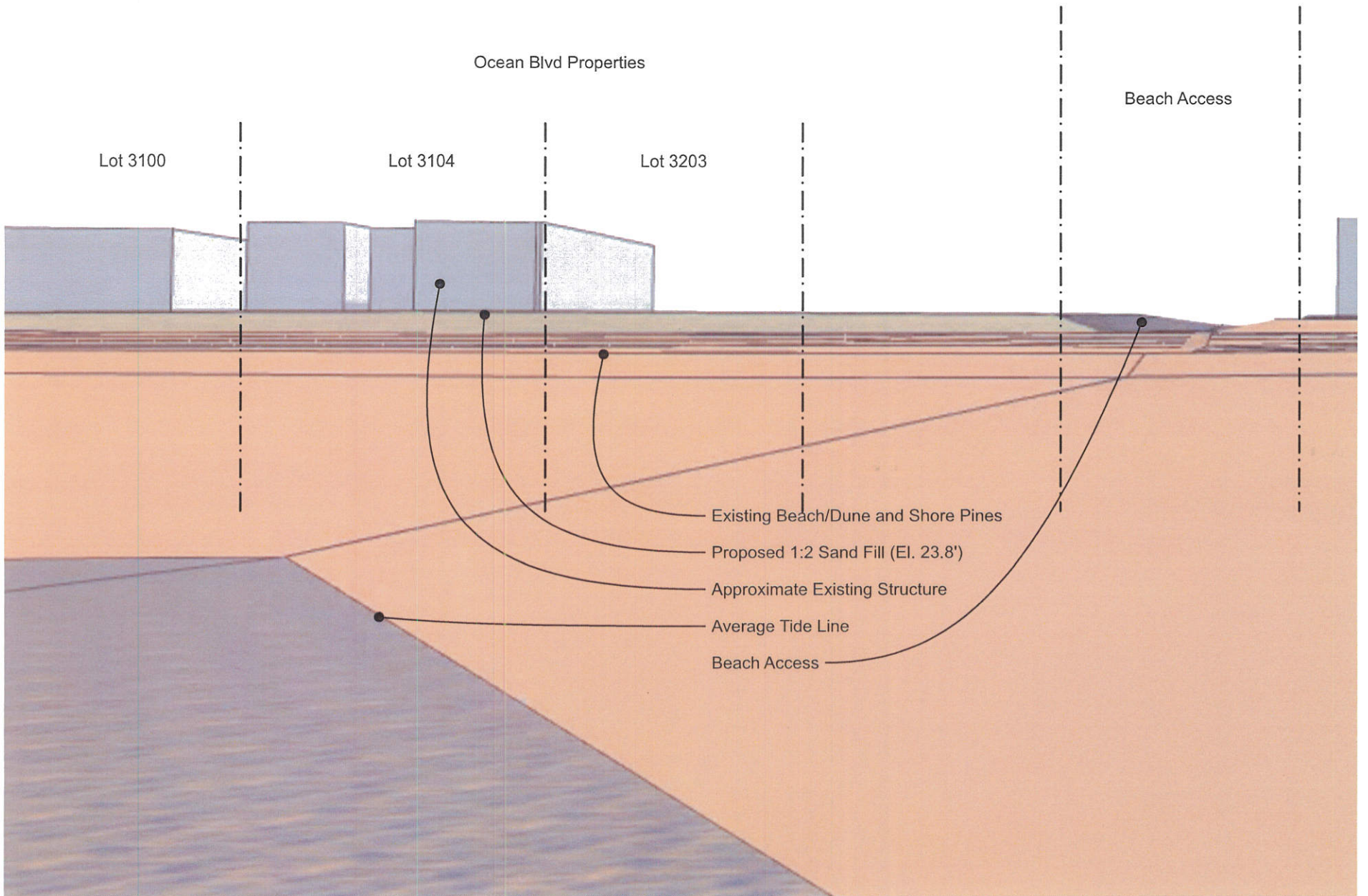
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WEST, 2021b (May). *Technical Memorandum, Subject: Supplement to the March 2021 Pine Beach Revetment Technical Memorandum*

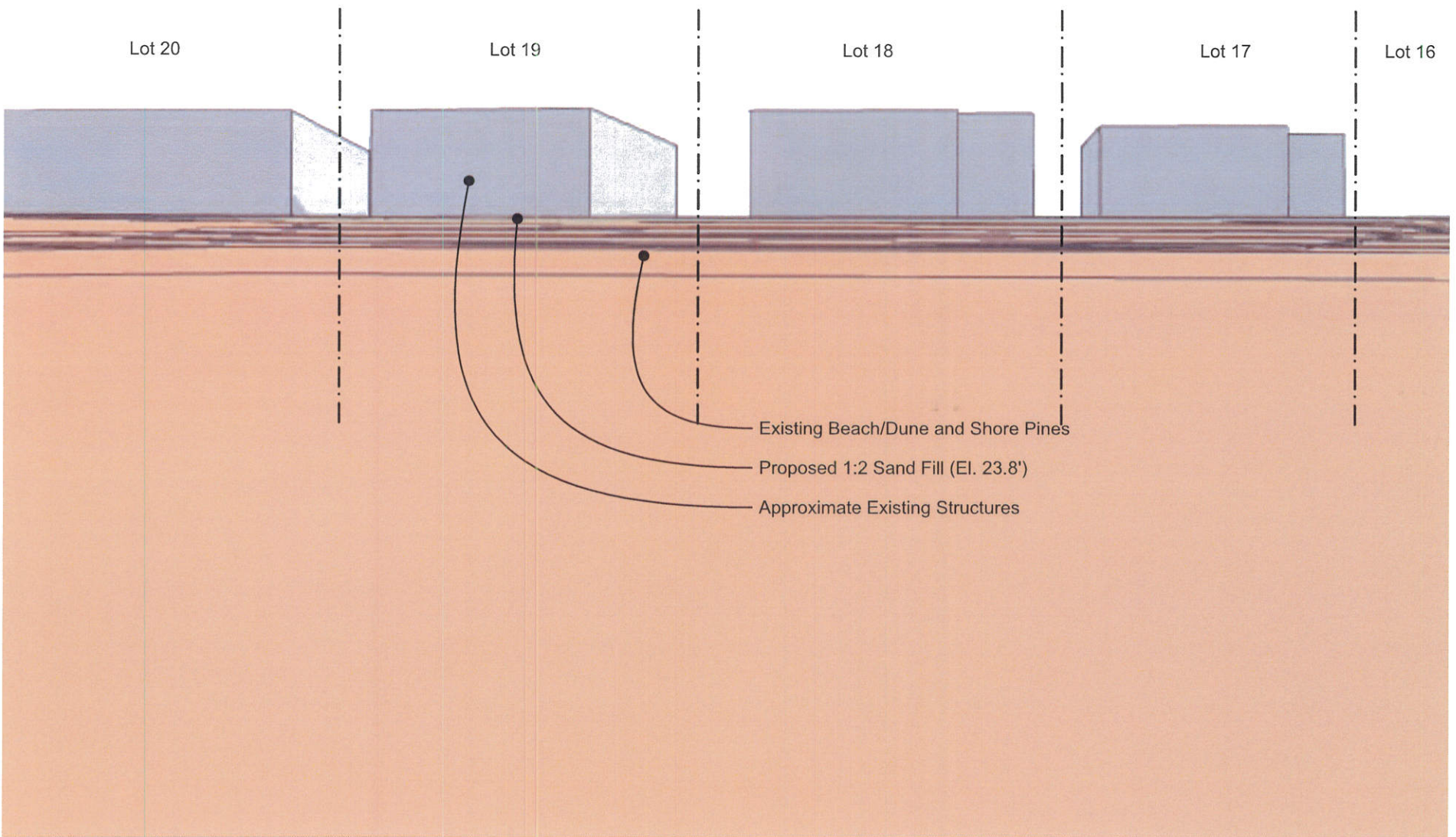








Pine Beach Development



Lot 20

Lot 19

Lot 18

Lot 17

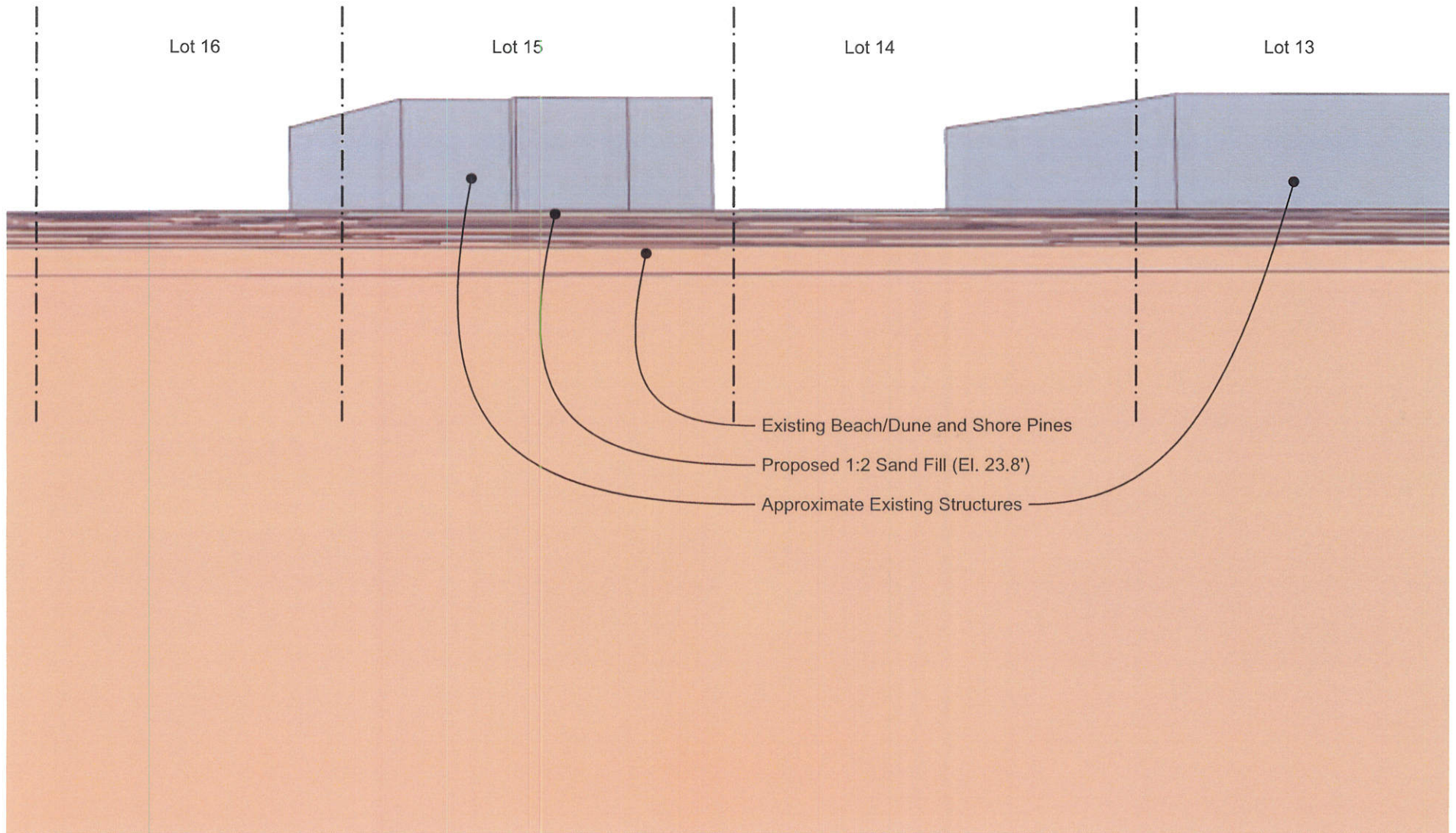
Lot 16

Existing Beach/Dune and Shore Pines

Proposed 1:2 Sand Fill (El. 23.8')

Approximate Existing Structures

Pine Beach Development





Ocean Blvd Properties

Lot 3100

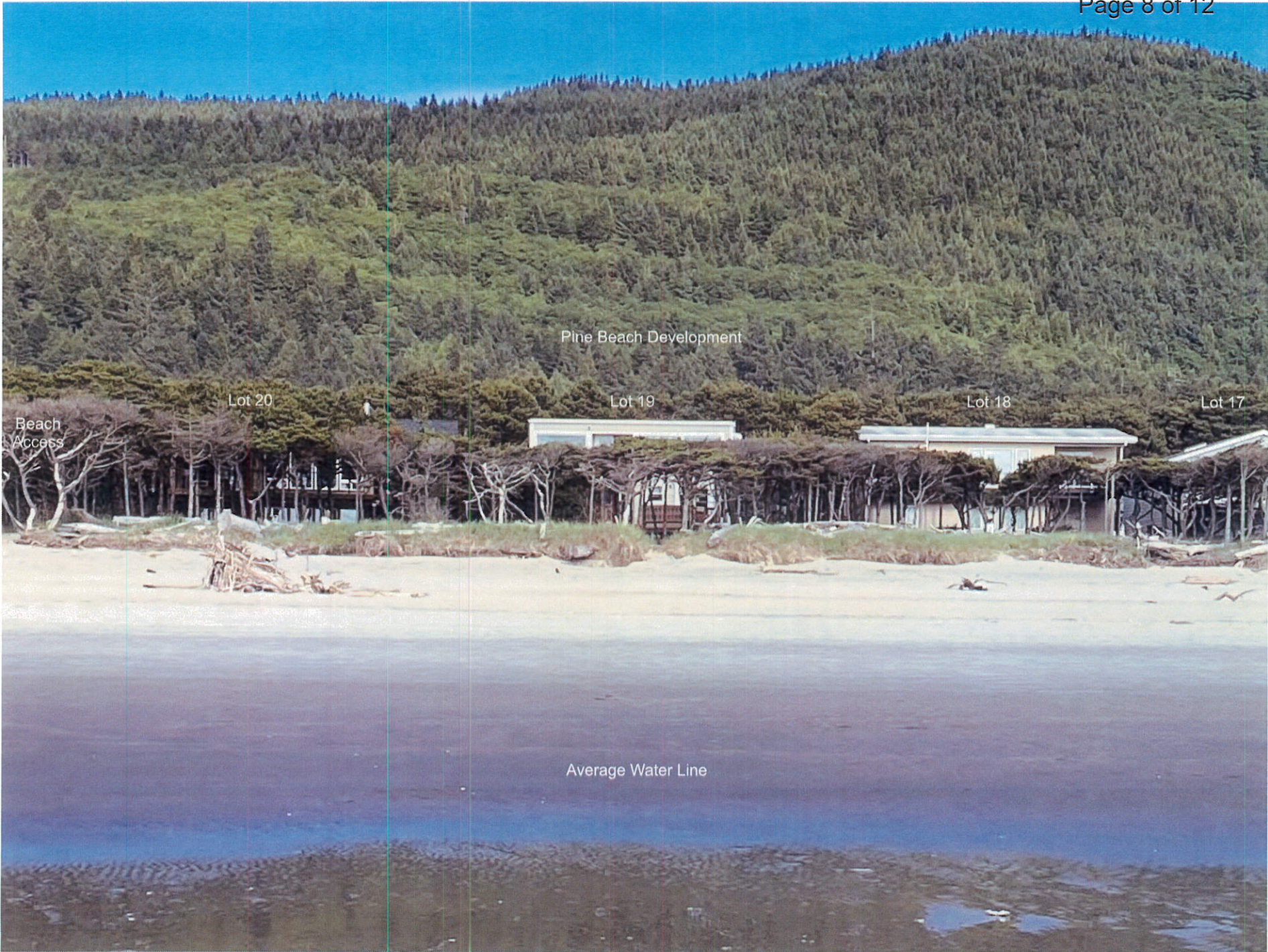
Lot 3104

Lot 3203

Lot 3204

Beach
Access

Average Water Line



Pine Beach Development

Lot 20

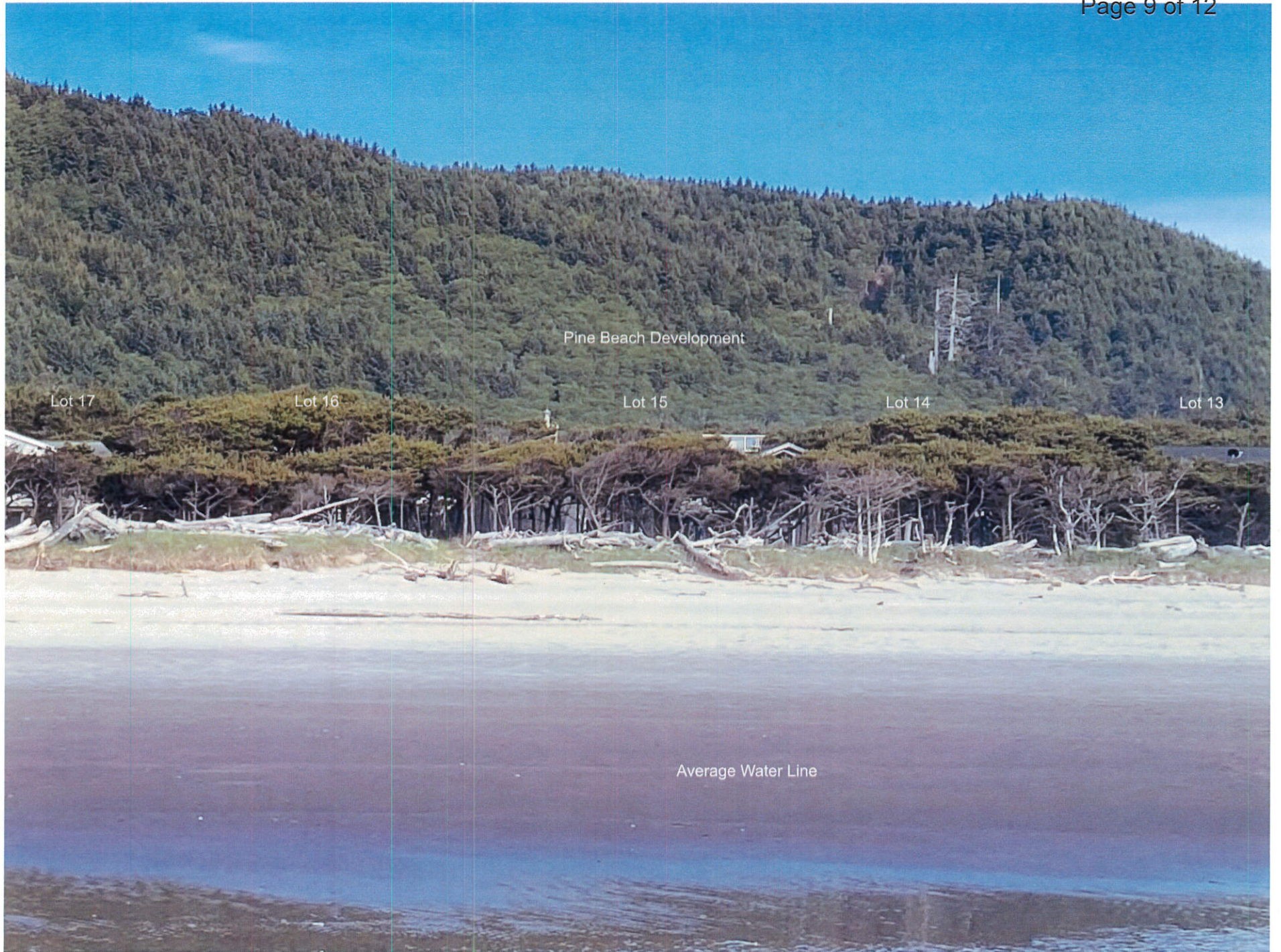
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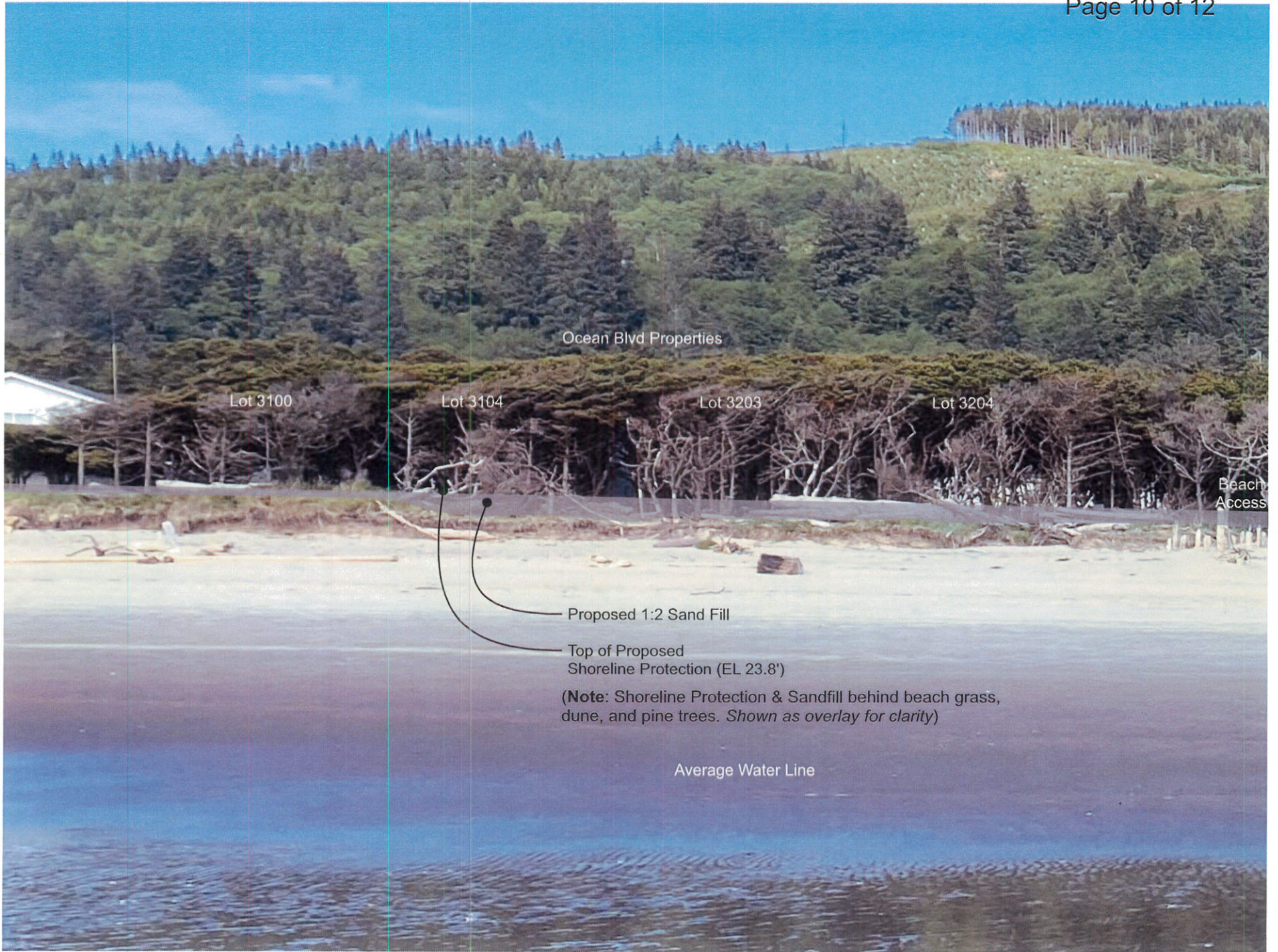
Lot 18

Lot 17

Beach
Access

Average Water Line





Ocean Blvd Properties

Lot 3100

Lot 3104

Lot 3203

Lot 3204

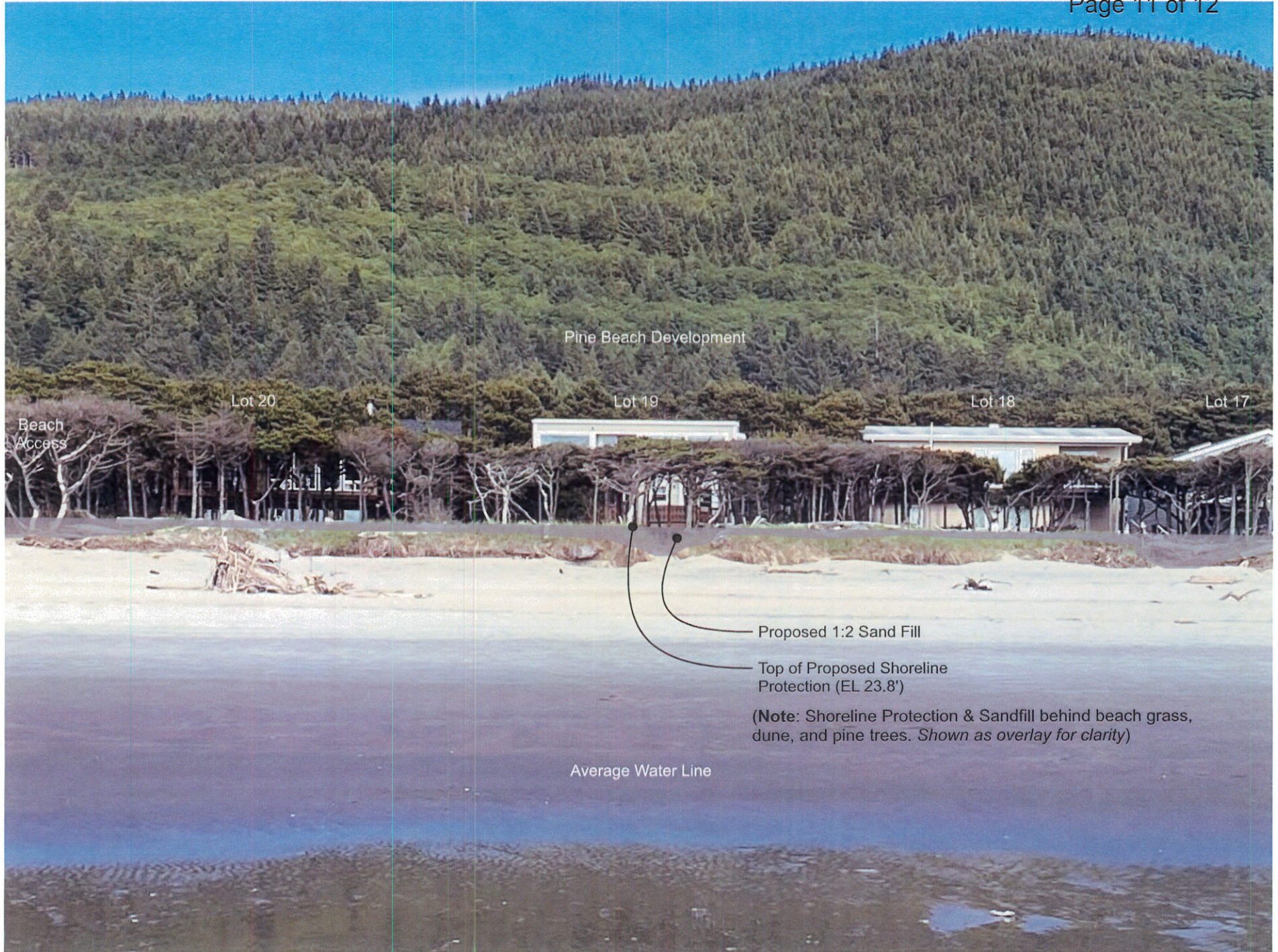
Beach
Access

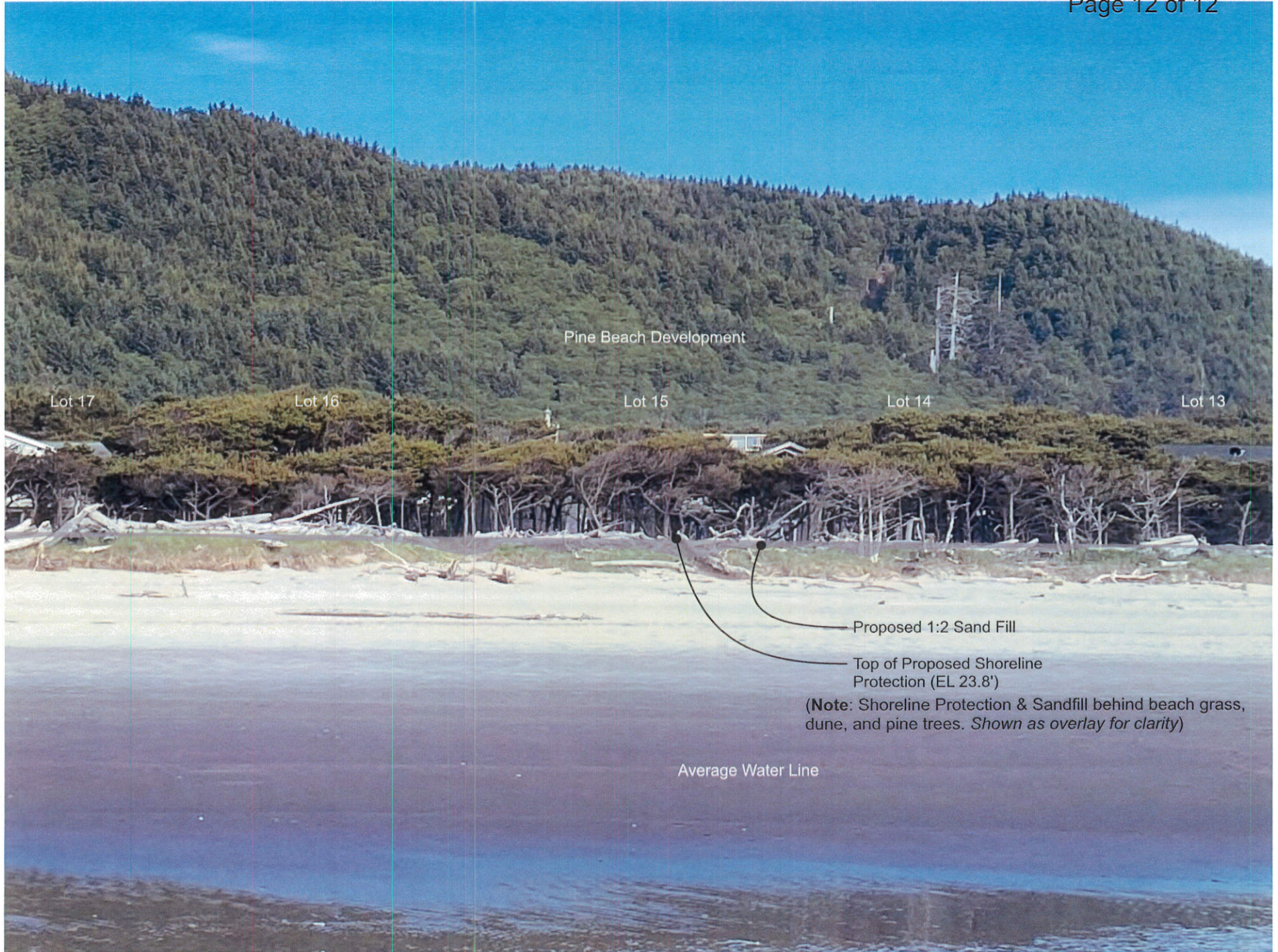
Proposed 1:2 Sand Fill

Top of Proposed
Shoreline Protection (EL 23.8')

(Note: Shoreline Protection & Sandfill behind beach grass,
dune, and pine trees. *Shown as overlay for clarity*)

Average Water Line





Pine Beach Development

Lot 17

Lot 16

Lot 15

Lot 14

Lot 13

Proposed 1:2 Sand Fill

Top of Proposed Shoreline Protection (EL 23.8')

(Note: Shoreline Protection & Sandfill behind beach grass, dune, and pine trees. Shown as overlay for clarity)

Average Water Line

































Allison Hinderer

From: Briana Goodwin <bgoodwin@surfrider.org>
Sent: Thursday, June 10, 2021 3:51 PM
To: Sarah Absher; Allison Hinderer
Cc: Charlie Plybon; Three Capes Vice Chair; Three Capes Chair
Subject: EXTERNAL: File No. 851-21-000086-PLNG-01/851-21-000086-PLNG: Opposing the Application for Goal Exception
Attachments: Rebuttal_Surfrider_File No. 851-21-000086-PLNG-01_851-21-000086-PLNG.pdf

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Hi, Sarah:

Please enter the attached comments to the record for File No. 851-21-000086-PLNG-01/851-21-000086-PLNG and confirm receipt of this email and attachment.

Thank you,
Bri

--
Bri Goodwin | Oregon Field Manager | [Surfrider Foundation](#)
541-655-0236 | bgoodwin@surfrider.org | fb: [oregonsurfrider](#)
Pronouns: she/her/hers ([What's this?](#))



June 10, 2021

To: Sarah Absher, CMF, Director
Tillamook County
Department of Community Development
1510- B Third St.
Tillamook, OR 97141

Submitted electronically via email to sabsher@co.tillamook.or.us and ahindere@co.tillamook.or.us

Re: File No. 851-21-000086-PLNG-01/851-21-000086-PLNG: Opposing the Application for Goal Exception, Additional Comments and Rebuttals of the Surfrider Foundation

Dear Ms. Absher,

Thank you for the opportunity to provide rebuttals to the Goal 18 exception request (#851- 21-000086-PLNG-01), and public hearing comment letters for the Applicants seeking riprap revetment in the Pine Beach Subdivision, and the five oceanfront lots to the north, located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary (hereafter, "subject properties"). For the reasons provided below, the exception application should be denied. Please include these comments on the record for the Board of Commissioners to review.

The Surfrider Foundation is an environmental nonprofit organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. We have chapters in Portland, the North Coast, South Tillamook County (Three Capes Chapter), Newport, Florence (Siuslaw Chapter), and Coos Bay. Our members live, work, visit, and recreate on Oregon's coastal beaches and value these special places for exploration, research and enjoyment. We recognize that beaches are unique coastal environments with ecological, recreational, and economic value. We recognize that beaches are unique coastal environments with ecological, recreational and economic value. As human activities and development in coastal areas increase, the need for preservation of beaches becomes ever more apparent.

"Hazards" occur when naturally dynamic coastal processes encounter static human development, and when humans interfere with marine and littoral systems. We work proactively to promote conservation and responsible coastal management that avoids creation of coastal hazards or erosion problems. Furthermore, we support coastal research and science-based management of coastal resources to promote sustainable, long term planning and preservation of beach environments.

Beaches are dynamic in nature and change on multiple temporal and spatial scales. These changes are therefore difficult to predict with certainty. Therefore, we advocate actions to promote long term beach preservation for the benefit of the public.

In areas where erosion threatens existing coastal development, the Surfrider Foundation advocates appropriate long-term solutions that maximize public benefit. These include landward retreat of structures from dynamic shorelines. Beach nourishment projects may be considered where landward retreat is not feasible on a case-by-case basis as viable alternatives for short-term beach preservation. Under no circumstances does the Surfrider Foundation support the installation of stabilization or sand retention structures along the coastline. Such structures can protect existing coastline development but have no place in beach preservation.

We submit the following rebuttals to information on the record for File No. 851-21-000086-PLNG-01/851-21-000086-PLNG:

(1) Applicants have not met their burden for a “reasons” exception established by Statewide Planning Goal 2. Additionally, public comments supporting the rip rap assert that the deeded easement would be unaffected. This is not the case, however, because (2) the commenters fail to consider the full range of beach accessors, such as a person with a disability, who would be unable to climb the proposed access point built into the revetment. Moreover, Applicant’s comments, including a technical memorandum supporting their request, (3) fail to consider the negative effects of the structure to adjacent properties in the future. They only consider immediate consequences of the proposed rip rap. The applicant further neglects consideration of the negative effects the structure will have on both the public shoreline/ocean shore and public safety. Hardened shoreline structures can create a significant alteration to the profile of the ocean shore and beach, thus resulting in public safety concerns both on and accessing the beach. As the tow end of these structures further erode, so do the deeded access opportunities.

1. Applicants Fail to Meet the Requirements for a “Reasons” Exception

Under Statewide Planning Goal 2 and ORS 2 197. 732(2)(c), a county may approve a "reasons" exception to a goal requirement if four standards are met:

1. “Reasons justify why the state policy embodied in the applicable goals should not apply;
2. Areas which do not require a new exception cannot reasonably accommodate the use;
3. The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
4. The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” Goal 2, Part II(c).

The Applicants fail to meet the criteria for the “reasons” exception. They have failed to establish justifiable reasons why the state policy should not apply. Goal 18’s purpose is to, “[t]o conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.” OAR 660-015-0010(3). Oregon recognizes coastal beaches and dunes as a vital resource, a place we recreate and call home. So vital in fact, that we have indoctrinated law to protect the beach and keep it from deteriorating from its natural state. The sentiment from which that policy was made is not inconsistent with our policy and our values.

Our network, made up of many dedicated Oregonians, recognize a potential for property loss and sympathize heavily with the Applicants; but If the County should allow a “reasons” exception to Goal 18, it should do so only when the reasons justify making an exception to a long-standing policy that Oregonians have valued for generations. For the subject properties, this is simply not the case.

There must be an inherent level of uniqueness present to constitute a justifiable reason. When an applicant’s reasons can transcend applications, when they can be used to support an exception to a request other than the application being presently reviewed, the county should examine the application with extreme criticism--if not skepticism. This is what you have here. The subject properties do not make a unique situation that justify an exception. So, allowing this exception would allow for similar exceptions and Goal 18 would not present the conservational prowess the legislators intended.

2. Comments For the Applicants Fail to Consider the Limitations Presented to Easement Holders, Including People Who Have Limited Mobility

The neighboring property owners with easement interests need to have their interest protected. One public comment makes it clear that easement holders are fearful they will lose access to the beach because of the rip rap. By allowing an exception, the County would be depriving them of their interests. The easement needs to be considered and the application denied.

Moreover, comments in support of the rip rap revetment assert that the structure will not inhibit beach access by easement holders. They suggest that access would become easier to the property owners entitled to the easement because the structure will be equipped with an access point to make traversing the structure easy. However, the gentleness of the existing beach-floor makes ingress and egress possible for people who are atypically mobile. For example, a young girl with spina bifida--who uses a wheelchair to get herself around--would find it physically impossible to transverse the rip rap. Without the rip rap, of course, she can access the Barview Jetty beach area and enjoy all that it has to offer.

3. The Comments Fail to Consider Future Sea Level Rise

The impact of sea level rise is a devastating reality for beaches worldwide. Today, we see the depletion of our beaches and the very real confrontation that exists when dynamic ocean processes meet static human development. As the ocean moves inland and public space is affected, the changing makeup of the shore creates competing interests. We need to think about the consequences of this inevitability and plan and execute better ways of managing the

competing interests involved. The applicant failed to provide a strong alternatives analysis, in particular for relocating, raising otherwise altering the existing structures. Unlike eroding cliffs and shorelines where elevated homes are commonly rip rapped (with Goal 18 eligibility) for protection some 60-100 ft above sea level, these homes are situated further from the ocean shore and are just barely above sea level. No amount of hardened structure will provide for longterm protection of this low-lying area, particularly given its geographic location to the Barview Jetty and Smith Lake.

The result of the rip rap would be significantly adverse to the ecosystem present in the area north of the Barview Jetty. Though comments have tried to establish that the adjacent properties and public beaches would be unaffected. This is not the case. Even if construction of the rip did not immediately interfere with the adjacent properties, sea level rise will inevitably cause the type of peripheral and tangential erosion that the applicants claim will not exist. This is a very real problem for neighboring properties and the beach. The public is entitled to use the beach through the public trust doctrine. We are all witness to the destructive nature of rip rap revetment and other permanent structures on beaches.

Conclusion

This letter was intended to rebut comments that are already on the record. The Applicants should be rejected from receiving a Goal 18 exception. They fail to meet the criteria for a "reasons" exception or any other exception listed in Statewide Land Use Planning Goal 2. Additionally, they have failed to adequately address the problems being faced by the easement holder and the long term effects of the rip rap on neighboring properties and the beach.

Thank you for the opportunity to comment on the issue. Please enter this letter into the record of these proceedings.

Sincerely,

Charlie Plybon
Oregon Policy Manager
Surfrider Foundation

Ben Moon
Vice Chair
Three Capes Chapter of Surfrider Foundation

Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 10, 2021 3:56 PM
To: Sarah Absher; Allison Hinderer
Cc: Sarah Mitchell
Subject: EXTERNAL: Pine Beach Back yards and path images - 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: 9. Geo Shand Lots S to North.jpg

[NOTICE: This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe.]

Hi Sarah and Allison,

Attached for the record of the above matter are additional images of the path and backyards of the George Shand Lots – there will be several emails. All the best, Wendie



Wendie L. Kellington | Attorney at Law.
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Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 10, 2021 3:57 PM
To: Sarah Absher; Allison Hinderer
Cc: Sarah Mitchell
Subject: EXTERNAL: Geo Shand Lots S to North.jpg
Attachments: 10. Geo Shand Lots S to North.jpg

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Next photo for the record. Backyard George Shand Lots



Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 10, 2021 3:59 PM
To: Sarah Absher; Allison Hinderer
Cc: Sarah Mitchell
Subject: EXTERNAL: Geo Shand Tracts backyard photos 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: 20210608_180826.jpg

[NOTICE: This message originated outside of Tillamook County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Hi Sarah and Allison,

Attached for the record of the above matter are additional images of the path and backyards of the Pine Beach lot. All the best, Wendie



Allison Hinderer

From: Sarah Mitchell <sm@klgpc.com>
Sent: Thursday, June 10, 2021 4:01 PM
To: Sarah Absher; Allison Hinderer
Cc: Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com)
Subject: EXTERNAL: RE: 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: Backyards George Shand Tracts.pdf
Importance: High

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Part 4. Additional images of the backyards of the George Shand Tracts.

Best,
Sarah M.



Sarah C. Mitchell | Associate Attorney
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From: Sarah Mitchell
Sent: Thursday, June 10, 2021 3:49 PM
To: sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>
Cc: Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Dave and Frieda Farr (dfarrwestproperties@gmail.com)

<dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>

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Part 3.

Thank you,
Sarah M.



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Part 2. Please replace previously sent Exhibits A-D with the attached. Thank you.

Best,
Sarah M.



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Hi Sarah and Allison,

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Best,
Sarah



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Backyards of George Shand Tracts South to North



Backyards of George Shand Tracts South to North



Backyards of George Shand Tracts South to North



Backyards of George Shand Tracts South to North



Backyards of George Shand Tracts South to North



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Backyards of George Shand Tracts South to North



Backyards of George Shand Tracts South to North



Allison Hinderer

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Sent: Thursday, June 10, 2021 3:46 PM
To: Sarah Absher; Allison Hinderer
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Subject: EXTERNAL: RE: 851-21-000086-PLNG Applicants' Second Open Record Submittal
Attachments: Exh A - NWI Map Subject Properties.pdf; Exh B - DLCD_LincCo_commentletter_01-02-03-LUPC-21.pdf; Exh C - Survey of Beach Accesses.pdf; Exh D - Photos of January 2021 Flooding.pdf
Importance: High

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June 9, 2021

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.



Oregon
Kate Brown, Governor

Department of Land Conservation and Development
Oregon Coastal Management Program
810 SW Alder Street, Suite B
Newport, OR 97365
www.oregon.gov/LCD



June 7, 2021

Onno Husing, Director
Lincoln County
Department of Planning & Development
210 SW 2nd St
Newport, OR 97365

Re: Goal exception applications for three locations in Gleneden Beach

Dear Mr. Husing,

Thank you for the opportunity to provide written testimony regarding three applications to Lincoln County to adopt exceptions to Statewide Planning Goal 18 ("Goal 18"), Implementation Requirement 5, that would allow for the construction of beachfront protective structures on three sites in Gleneden/Lincoln Beach. The properties at issue in the applications are the WorldMark Gleneden Resort, the SeaRidge Condominiums, and four adjacent single-family homes at 4755, 4805, 4815, and 4825 Lincoln Avenue. Please enter this letter into the record of the hearing for each of these applications.

The Department of Land Conservation and Development (department) has based this testimony on its review of the Narrative Statement dated March 18, 2021, the Supplemental Analysis for the Lincoln Avenue Projects, the Narrative Supplement for the SeaRidge Condominium Association, the Supplemental Narrative Statement dated June 3, 2021, and the Lincoln County Planning Department Staff Report.

Eligibility for Beachfront Protective Structures

It is our understanding that the above referenced properties are seeking a pathway to place beachfront protective structures along the oceanfront to mitigate ongoing ocean erosion. The County has not identified these areas as developed as of January 1, 1977 in the Lincoln County Comprehensive Plan. Goal 18, implementation requirement #5 provides:

Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 'development' means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.

The Staff Report correctly determines that the three locations subject to the request do not meet the definition of development because they were developed after 1977. (Staff Report at pp. 3-4.) This determination is consistent with the following information:

Lincoln County Planning Department
June 7, 2021
Page 2 of 7

- Utilizing the 1977 aerial imagery from the Army Corps of Engineers, no qualifying development (residential, commercial, or industrial buildings) was present on any of these tax lots.
- The locations of the WorldMark Gleneden Resort and SeaRidge Condominiums were not part of a statutory subdivision in 1977. Therefore, these sites are not eligible under the definition of development.
- For the Lincoln Avenue Homes: although Lincoln County approved the original plat “Cummins Addition” in July 1948, the county officially vacated that subdivision on December 11, 1951. The vacation order, which is on file in Lincoln County, references that there were no improvements to the site at the time of vacation (*e.g.*, no roads and no utilities). Therefore, on January 1, 1977, there was no eligible development on this site, and it was not part of a statutory subdivision. The lots are now part of another subdivision, known as Pacific Panorama, which the county approved in December 1978. Thus, on January 1, 1977, there was no eligible development on the oceanfront parcels at this site and it was not part of a statutory subdivision.

Therefore, the department agrees with the Staff Report that each of the applicants needs an exception to the prohibition on beachfront protective structures for post-1977 development provided in Statewide Planning Goal 18: Beaches and Dunes, in addition to any local criteria.

OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

The department agrees with the applicants that a “reasons” exception to Goal 18 is necessary in this case. The provisions of OAR 660-004-0022 specify the pathway for the applicants.

Specifically, OAR 660-004-0022(1) provides:

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

The Staff Report refers the Planning Commission to the Narrative Statement for analysis of this rule; however, the Applicants have provided a more thorough OAR 660-004-0022 analysis in their Supplemental Narrative Statement. The department testimony is based on that latter submittal because it describes and addresses relevant cases interpreting the administrative rule.

Lincoln County Planning Department
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Page 3 of 7

The applicants state that there is a demonstrated need for an exception to place beachfront protective structures in order to avoid the loss of these properties from erosion based on the unique circumstances of this littoral cell (beach system) and in order to be consistent with requirements or guidelines of several Statewide Planning Goals (7, 8, 9, 10, and 18). They also state that the proposed exception use (mitigation of ongoing shoreline erosion) can only be placed on the beachfront of the identified properties because of the locational need of the erosion mitigation protection.

The department agrees that there are reasons to justify why the state policy embodied in Goal 18, Implementation Requirement 5 should not apply based primarily on the specific conditions of the sites in this beach system that are unique compared to other oceanfront areas in Lincoln County and the Oregon coast. While the general effects of climate change, sea level rise, and El Niños are occurring coastwide, those phenomena occurring in a littoral cell that has extensive beachfront protective structures that cut off sand supply to an already depleted system is unique. The Staff Report and Supplemental Narrative Statement both describe the circumstances in this stretch of the Siletz littoral cell. This is further addressed below. However, the arguments that there is a demonstrated need for housing, recreation, and economic activities are not any more compelling than can be argued elsewhere on the Oregon coast in other areas that are also ineligible for beachfront protection.

As seen in the recent LUBA decision regarding general reasons exceptions under OAR 660-004-0022(1)(a), Goal 9 does not place any specific *requirements* on a County to serve as the basis for a reasons exception under OAR 660-004-0022(1)(a). Goal 9 planning requirements apply to urban areas. *See* OAR 660-009-000 and 660-009-0010(1) (Division 9 implements requirements of Goal 9 and applies to areas within urban growth boundaries). Economic arguments, as put forth in this application, are not reason enough to justify an exception decision, as similar economic arguments could be made for other locations along the Oregon coast that are similarly not eligible for beachfront protection. Likewise, the application does not establish that there are *requirements* or obligations on the County related to Goal 8 or 10. Goals 7, 8, 9, and 10 are among the statewide goals that generally provide planning guidance. *See* OAR 660-004-0010(2)(c)-(f).

OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements

If the provisions of OAR 660-004-0022(1) are found to be satisfied, the review may then turn to the provisions of OAR 660-004-0020. In addition to the above, there are four tests to be addressed when taking an exception, which are set forth in Statewide Planning Goal 2, Part II and more specifically in OAR 660-004-0020(2)(a) – (d). Those criteria are:

1) Reasons that justify why the state policy embodied in the applicable goal should not apply;

The applicants state that to save their homes and resort buildings by placing riprap on a beach that has been documented to have diminished natural resources and is already lined with such protective structures accomplishes both a balancing of economic and natural resources in the use

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of coastal land, and the reduction of a major hazard to human life and property. According to the experts consulted by the applicants, the proliferation of beachfront protective structures on Gleneden Beach is causing and will continue to cause significant harm to the few properties left unprotected. The beachfront protective structures along this stretch of beach have resulted in a disruption to littoral cell processes and movement of sand, increasing erosion at unprotected sites. In addition to the harm caused by the general proliferation of protective structures, specific protective structures adjacent to the ineligible properties may also be causing direct, local erosion to their bluffs, further aggravating the problem.

The Staff Report identifies that the core purpose of Goal 18, Implementation Requirement 5 is to stop the proliferation of beachfront protective structures in order to preserve beaches and littoral cell functionality. The department agrees with staff that, in this instance, the case can be made that the state policy cannot be achieved in the Gleneden-Lincoln Beach area.

2) Areas which do not require a new exception cannot reasonably accommodate the use;

The applicants contend that because beachfront protective structures need to be placed in a specific location in order to be effective that the only place they can exist is in the specified exception area (ocean-fronting). The sites are some of the only lots in this stretch of beach that are not already protected by riprap. In supplemental documentation, the applicants do explain that they have tried nonstructural solutions (such as sand nourishment) previously, which have only provided temporary protection. A geotechnical analysis of the properties asserts that the current wave height and energy (which is expected to increase) and other contributing forces of erosion (tide elevations, beach variability, littoral drift, bluff composition, etc.) eliminate the possibility of alternative, nonstructural protective measures. It is the opinion of the experts consulted by the applicants that an exception to Goal 18 to construct beachfront protective structures are necessary and warranted for the properties.

3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site;

The applicants contend that preservation of the existing development and the economic benefits of those places outweigh the preservation of a natural shoreline along the small gaps in the existing beachfront protective structures lining Gleneden Beach. Installation of beachfront protective structures in these three locations would create a minimal increase in the percentage of the littoral cell that is already armored or eligible to become armored.

An assessment provided by the applicants finds that “the surrounding habitat is low-quality due to the highly developed nature of Gleneden Beach with high recreational use and approximately 90-percent of the shoreline currently riprapped. A field survey of the Resort area found that there

Lincoln County Planning Department
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are no rare plants or wildlife in the terrace habitat, bluff, or swash zone on the subject property; the site is not located within, nor is it connected to, any estuarine resources; there are no nearby historic properties or cultural/archeological resources; there is no suitable nesting or foraging habitat for endangered or threatened wildlife on or adjacent to the subject property; there is no sign of geologic interests or fossil beds at the site; and the proposed revetments are not expected to impact air or water quality.” Therefore, the applicants state that construction of a revetment on the sites is not expected to be more significantly adverse than if it were constructed in an area of similar circumstance.

4) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

The addition of three beachfront protective structures on this stretch of beach will be compatible with other adjacent uses because this littoral cell is already almost entirely armored. As submitted in the application materials, Gleneden Beach “has the longest stretch and highest density of shorefront protective structures along the Oregon coast.” Approximately 75 percent of the coastline is already armored in this littoral cell.

Key Concerns

While the department agrees that this area has unique challenges from both human-induced and naturally occurring coastal hazards, the department does not agree with all the applicants’ arguments and does not recommend that the county adopt each of the arguments presented in the Narrative Statement.

- The applicants repeatedly claim that the placement of beachfront protective structures along the shoreline of each of the three proposed locations will solve all threats to the properties from coastal hazards and not incur further harm to the beach or surrounding properties. It is important to note that erosion will continue to occur in these locations and the impacts of climate change will continue to exacerbate those conditions. Beachfront protective structures can provide a level of protection for development but will need to be continually maintained and may fail over time. Additionally, the structures themselves will continue to impact the beach in this area by withholding sediment and fixing the shoreline in place, as the other structures have already done. This will impact north/south beach access over time as sea levels continue to rise. Beachfront protective structures do not conserve nor protect the beach and dune environment, they protect development from the impacts of coastal erosion. The County should evaluate beach access impacts as a result of these requests.
- The applicants state, but do not establish, that the proposed beachfront protective structures, if approved, would also mitigate against seismic hazards. That is not consistent with general understanding of beachfront protective structures. Conventional riprap and seawall designs intended to mitigate for coastal erosion in front of private property will likely not survive an earthquake event or subsequent tsunami. Instead,

riprap rocks have the potential to become hazardous during a tsunami event, where they could act as ballistics. As seen in Japan in 2011, many of the coastal defenses there failed due to the tremendous hydraulic forces exerted by the tsunami, leading to fatalities. All references made to seismic hazards should not be a basis for granting the exception. (pp. 17, 28, 35, 41, 46, 59 of 3/18/21 Narrative Statement)

- While the applicants acknowledge they will need an ocean shore alteration permit from Oregon Parks and Recreation Department (OPRD) for the ultimate design and construction of a beachfront protective structure, they are presumptive in asserting that OPRD will approve a permit and the design as currently presented. (p. 47 of 3/18/21 Narrative Statement)
- The applicants do not acknowledge that the soil modifications and landscaping features that they installed in their yards and bluffs that have now become exposed due to the ongoing erosion have contributed to the extreme erosion of the properties and the dangerous conditions on the beach at this time. (p. 36 of 3/18/21 Narrative Statement)
- It does not appear that the applicants consulted the Lincoln County Plan Inventory for significant wildlife habitat in beach and dune areas. A commissioned report by the applicants did find that there are no rare plants or wildlife or other significant natural resources; however, this should be checked against the County's own adopted inventories to confirm. (p. 49 of 3/18/21 Narrative Statement)
- Beachfront protective structures do not protect ocean resources. The Ocean Resources Goal only applies to activities in the Territorial Sea and does not apply in this case. (p. 51 of 3/18/21 Narrative Statement)
- The applicants argue that protecting the properties in question is important to protecting housing supply and affordability within Lincoln County. Most of these properties are not primary residences nor would they be considered "affordable." This argument is not particularly strong as there is evidence that second homes and vacation units also diminish housing supplies and increase housing costs. (p. 53 of 3/18/21 Narrative Statement)
- The applicants do not need any permits from DLCDD. (p. 58 of 3/18/21 Narrative Statement)
- This application request is a foundation for a series of future applications from OPRD and Lincoln County for the permitting of a BPS, none of which are guaranteed at this stage of the process.

Conclusion

The Staff Report, Narrative Statement, and Supplemental Narrative Statement provide detailed information about the unique circumstances of the Lincoln-Gleneden Beach area of the Siletz littoral cell and provide several compelling reasons to justify a reasons exception for Goal 18, Implementation Requirement 5 and consistency with the Lincoln County Comprehensive Plan,

Lincoln County Planning Department
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Zoning Code, and Statewide Planning Goals. However, the applications also contain some arguments and assertions that are not a valid basis for a reasons exception under state law. We recommend that the County carefully consider all the relevant facts and findings in making a final decision.

Thank you for this opportunity to comment. Please enter this letter into the record of these proceedings. If you have any questions, please contact Meg Reed, Coastal Shores Specialist, at (541) 514-0091 or meg.reed@state.or.us.

Sincerely,



Patty Snow, Coastal Program Manager
Oregon Coastal Management Program
Department of Land Conservation and Development

cc: Meg Reed, Oregon Department of Land Conservation and Development
Lisa Phipps, Oregon Department of Land Conservation and Development
Steven Shipsey, Oregon Department of Justice
Jay Sennewald, Oregon Parks and Recreation Department

C. WAYNE COOK LAND SERVICES
3180 ALDERCREST
TILLAMOOK, OREGON
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Survey of Beach Accesses



Photos of January 2021 Flooding



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Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

810 SW Alder Street, Suite B

Newport, OR 97365

www.oregon.gov/LCD

June 10, 2021

Sarah Absher, Director
Tillamook County
Department of Community Development
1510 – B Third St
Tillamook, OR 97141



Re: 851-21-000086-PLNG-01: Goal exception request

Dear Ms. Absher,

This letter is in response to additional arguments that were provided by the applicants for the goal exception request, #851-21-000086-PLNG-01, for approval of an exception to Statewide Planning Goal 18, Implementation Requirement 5, to place a beachfront protective structure along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary. Please enter this letter into the record of the hearing on the subject request.

The applicants are seeking a pathway to place a beachfront protective structure along the oceanfront to mitigate ongoing ocean flooding and erosion. The County has determined that this area does not meet the definition of a developed area as of January 1, 1977. Goal 18, Implementation Requirement 5 provides:

Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 'development' means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.

Therefore, the applicants need an exception to the 1977 development date limitation of Statewide Planning Goal 18: Beaches and Dunes, in addition to any local criteria.

The purpose of this letter is to further expand upon the department's position that only a general "reasons" exception is applicable in this situation.

Part II of Statewide Planning Goal 2 provides a process a local government can follow when taking an "exception" to one of the land use goals, when unique circumstances warrant a local override. The rules governing exceptions are provided in OAR chapter 660, division 4. There are several goals and goal provisions to which a specific pathway is outlined, but for those where no other specific pathway exists or fits, a general "reasons" exception applies.

It is the department's position that a general "reasons" exception to Goal 18 is necessary in this case and that the proper administrative rule provisions are those of OAR 660-004-0022(1) and OAR 660-004-0020.

To reiterate our original position, the homes that exist in the application area were built in conformance with the provisions of Goal 18, Implementation Requirement (IR) 2. The houses were not built in an active foredune or in a dune area subject to ocean flooding, which means they did not need an exception to Goal 18, IR2. The other goal exceptions (to Goals 3, 4, 11, and 14) that allow for the Barview/Twin Rocks/Watseco community to be residentially developed, do not specify the exact location of development on each parcel in this unincorporated community. Additional zoning requirements dictate those limits, and in the case of these ocean-fronting parcels, Tillamook County applied the Beach & Dune Overlay Zone of their Land Use Ordinance. The houses were built in the eastern portions of their respective parcels to comply with the prohibition areas of Goal 18 for residential development. The department understands the applicants to argue that the other goal exceptions allowed the development to be placed in a foredune and therefore, they have an exception to Goal 18, IR2. That is not reflected in the Tillamook County Comprehensive Plan. To reiterate, a goal exception is an affirmative act that is required to be incorporated into a comprehensive plan.

Further, although these homes are now subject to ocean flooding, that circumstance does not require them to have an exception to continue to exist in their current location. The applicants are seeking an exception to the date-based limitation of January 1, 1977 (Goal 18, IR5) for the placement of a beachfront protective structure (BPS) and that is the focus of our comments. As stated above, the applicant is not required to take an exception to Goal 18, IR2 in order to get an exception to Goal 18, IR5.

Additionally, the department does not agree with the applicants' statement that beachfront protective structures are prohibited in the foredune under the provisions of Goal 18. The goal specifically accounts for this in Implementation Requirements 1 and 2.

*2. Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. **Other development** in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development: (a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and (b) Is designed to minimize adverse environmental effects. [emphasis added]*

BPS are such "other development," which a local government may permit on beaches, active foredunes, and other foredunes subject to ocean flooding, if they meet the other requirements of the goal, namely that the development that the structures will be protecting was built as of January 1, 1977, as described in IR5.

The department also does not agree that the specific Goal 18 reasons exception as described in OAR-660-004-0022(11) applies in this specific instance. That provisions states, in relevant part:

(11) Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", Implementation Requirement.

Implementation Requirement 2 of Goal 18 provides the prohibition of residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stables and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Thus, in order to allow residential developments, commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stables and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding, OAR 660-004-0022(11) provides a specific means of taking a reasons exception. As stated above, BPS are not included in the development types that are prohibited in these dune landforms. By their very nature, BPS are typically located in these active dune landforms because that is where they need to be placed to offer protection to the eligible development behind them. IR5 does not prohibit the placement of BPS in the foredune. Again, the houses that are already developed do **not** need an exception to continue to be located where they are. It is the ability to protect ineligible development with a BPS in this circumstance that requires a reasons exception to Goal 18, IR5.

Since there is not a specific section in OAR 660-004-0022 pertaining to reasons for an exception to allow BPS for an ineligible development, a general "reasons" exception is the appropriate pathway for the applicants.

Further, the application does not warrant either a "built" exception or a "committed" exception. There is no argument that the houses in the application and the surrounding area are lawful and committed to residential development. The application is seeking to allow the placement of a BPS in an area that otherwise does not allow it under Goal 18, IR5. There is no BPS at the proposed location yet, so it is not "built." Likewise, there is only one BPS in the immediate area (the Shorewood RV Resort) which the applicants argue has not impacted the properties. Therefore, other BPS in the adjacent area have not "committed" this beach and dunes resource area to a non-resource use necessitating BPS here as well.

Therefore, a general reasons exception is needed.

OAR 660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

As mentioned above, the provisions of OAR 660-004-0022 specify the pathway for the applicants in this case. Specifically, OAR 660-004-0022(1) provides:

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

- (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either*
- (A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or*
- (B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*

An application that does not satisfy these provisions fails and may not be approved.

OAR 660-004-0020 Goal 2, Part II(c), Exception Requirements

If the provisions of OAR 660-004-0022(1) are found to be satisfied, the review may then turn to the provisions of OAR 660-004-0020. In addition to the above, there are four tests to be addressed when taking an exception, which are set forth in Statewide Planning Goal 2, Part II and more specifically in OAR 660-004-0020(2)(a) – (d). Those criteria are:

- 1) Reasons that justify why the state policy embodied in the applicable goal should not apply;*
- 2) Areas which do not require a new exception cannot reasonably accommodate the use;*
- 3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and*
- 4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

It is imperative that the County focus on these standards when evaluating the exception application for the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary.

Thank you for this opportunity to provide this testimony in response to additional arguments provided by the applicants. Please enter this letter into the record of these proceedings in addition to the other testimony the department has already provided. If you have any questions, please contact Meg Reed, Coastal Shores Specialist, at (541) 514-0091 or meg.reed@dlcd.oregon.gov.

Sincerely,



Patty Snow, Coastal Program Manager
Oregon Coastal Management Program
Department of Land Conservation and Development

Tillamook County Planning Department
June 10, 2021
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cc: Meg Reed, Oregon Department of Land Conservation and Development
Lisa Phipps, Oregon Department of Land Conservation and Development
Steven Shipsey, Oregon Department of Justice
Jay Sennewald, Oregon Parks and Recreation Department