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June 17, 2021

Members of the Tillamook County Planning Commission
C/O Sarah Absher, Director
Tillamook County
Department of Community Development
1510 B Third St.
Tillamook, OR. 97141

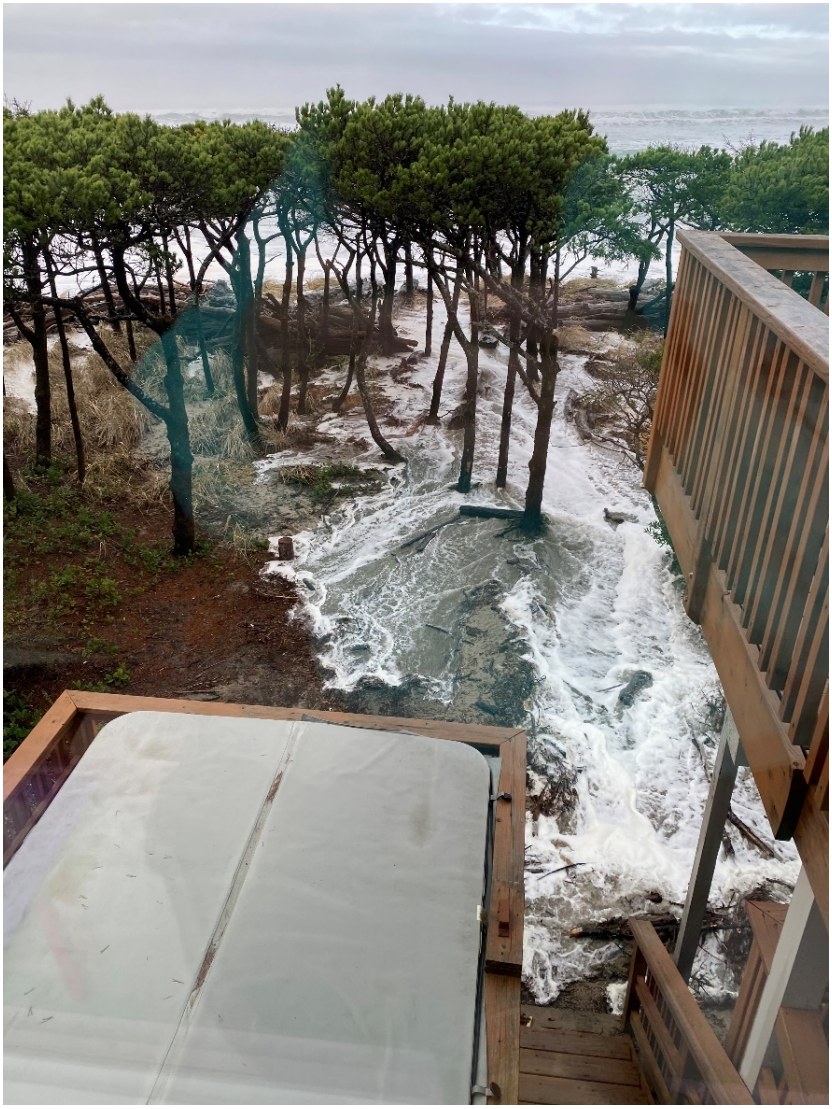
RE: 851-21-000086-PLNG-01; Applicants' Final Written Argument

Dear Chair Heckeroth and Members of the Planning Commission,

As you know, 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 is the Applicants' final written argument to the Planning Commission. The Applicants respectfully request that the Planning Commission recommend that the County Commissioners approve the Applications for each of the grounds explained below.

1. Introduction

The fifteen (15) subject properties are the ten (10) oceanfront lots of the Pine Beach Subdivision (Pine Beach Properties) and the five (5) oceanfront lots from the George Sand Tracts subdivision (Ocean Blvd. Properties). Despite being several hundred feet away from the shoreline at the time of subdivision approval, which approved development of residential uses on younger stabilized dunes, there has been an unexpected and dramatic reversal of the area's historic beach sand accumulation. Now, instead of ocean tides causing prograding – the depositing of sand to add land as had been going on for more than 70 years after the first jetty went in – these properties have been subjected to aggressive ocean erosion, so much so that they are now located on the foredune and, during King Tides, persistent wave overtopping, runup and flooding threatens them. The below is an image from the Applicants' June 10, 2021 submittal showing wave overtopping of the foredune, runup and flooding of an applicant's home and property (lot 122 on the above map) during a King Tide event in January of 2021:



All of the other Subject Properties have experienced similar flooding as documented in the Applicants' May 27, 2021 PowerPoint presentation to the Planning Commission in the record.

This situation means that more than ten million dollars ($10 million) in property value is at risk of being lost in addition to public infrastructure to include public water and sewer, utilities and roads. The lives of these properties' occupants – many of whom are older Tillamook County citizens who call these properties their home – are also at risk. The proposed beachfront protective structure will address this significant threat in a manner that is consistent with the County's development standards.

The Applicants have submitted a consolidated application to allow development of a beachfront protective structure (BPS) to protect these properties. The primary application is for a development permit for the BPS. As a part of their application materials, the Applicants request approval of a precautionary exception to Statewide Planning Goal 18. Some opponents ask that you delay a decision on the Applications. We do not understand why anyone would ask for that. The threat to the Applicants' properties is present and very real and any delay in issuing the requested development permit for the BPS places lives and property in serious jeopardy.

This final written argument summarizes the main facts, arguments and issues in this case. As the Planning Commission is by now well aware, these are detailed and extensive. The Applicants will try to be as concise as possible, but given the Applicants carry the burden of proof, we must also be thorough in our responses. Also, please understand that Applicants do not waive any issue or argument that has been presented during the proceeding by not repeating it here. Being respectful of the Planning Commission's time means some arguments will not be repeated, but that does not mean omitted facts or arguments have been waived.

Applicants have presented several different bases for approval of the proposed BPS and request that the Planning Commission recommend to the Commissioners that each be approved as alternatives to one another. A thorough approval maximizes the likelihood that if an opponent chooses to appeal further, that the County's decision is affirmed and there will not be delays associated with protracted litigation. Approving each of the alternatives is sound because this situation is unique, the legal envelope is complex, and key legal principles flow from standards that have not yet been applied or interpreted. The requested approval bases are summarized below:

- The proposed BPS is an allowed use under Goal 18, Implementation Measure (IM) 5 because on January 1, 1977, the Subject Properties were "developed" as that term is now defined by Goal 18 because they were subdivided on that date as a matter of law[1], had the "provision of utilities" to the lots and streets had been constructed to serve them. As a result, per the express terms of Goal 18, IM 5, the proposal does not require an exception to Goal 18.
- The proposed BPS is an allowed use under Goal 18, IM 5 because the Subject Properties were subdivided on January 1, 1977 as a matter of law, which is all that was required by the Goal 18, IM 5 definition of "development" that existed until 1984. The Subject Properties have a vested right to the proposed BPS as "developed" properties under that pre-1984 definition of the term "developed."

[1] The George Shand Tracts subdivision was recorded in 1950 and the first Pine Beach subdivision was recorded in 1932.

- The Subject Properties have existing Goal 3, 4, 11, 14 and 17 exceptions that have been acknowledged by LCDC/DLCD to comply with all Statewide Planning Goals. Each property, each home, and all infrastructure exists as "appropriate" residential development of the Subject Properties under Goal 18. Those exceptions continue to allow that approved residential development on the Subject Properties notwithstanding that they are now on a dune subject to wave overtopping, which Goal 18, IM 2 otherwise prohibits. That means that they have an existing exception that allows residential development that is prohibited by Goal 18, IM 2. And, that also necessarily means that under Goal 18, IM 5, the Subject Properties are expressly allowed to have the requested BPS. That is because Goal 18, IM 5 expressly says that if property has an exception that allows residential development on a dune subject to wave overtopping, then that approved residential development is eligible for approval of a BPS.
- The County has decided, and DLCD/LCDC has acknowledged, that the entire area around and including the Subject Properties are committed to urban levels of use within the urban unincorporated community of Twin Rocks-Watseco-Barview. Under Goal 7 (Natural Hazards), the County is required to protect the people of that urban community including the Subject Properties from the natural hazard that now uniquely and significantly threatens them. Because the area and Subject Properties are committed to urban residential development under an approved and state "acknowledged" planning program, they either already have or are entitled to, a committed exception to Goal 18, IM 5 for the requested BPS.
- Similar to the bullet immediately above, the County has approved the construction of homes and/or public infrastructure on the Subject Properties under not only "committed" exceptions, but also under "built" exceptions. DLCD/LCDC has acknowledged the built environment under those exceptions is appropriate and as complying with all Statewide Planning Goals, including Goal 18. Under Goal 7 (Natural Hazards), the County is required to protect the people who own and/or occupy the "built" Subject Properties from the significant natural hazard that now uniquely threatens them. The "built" exceptions for the Subject Properties entitle the Subject Properties to be maintained by the proposed BPS. In other words, once the County and DLCD/LCDC decided that the Subject Properties were "built" with homes and/or public infrastructure under "built" exceptions, those homes and infrastructure are entitled to be maintained and so protected from natural hazards.
- Because reasons justify why the state policy embodied in Goal 18 should not apply, the Subject Properties are eligible for a reasons exception to Goal 18. The County cannot comply with its obligations under Goal 7 to protect people and property from natural hazards and refuse to approve the requested BPS which is undeniably necessary to protect said people and property from a significant natural hazard. The situation here is unique because when the subdivisions in which the Subject Properties exist were approved, the ocean had been in a long period of prograding – adding sand to the beach, not taking it away – as the result of the construction of a jetty. But now for reasons that are not well-understood (and not a part of a natural ocean cycle but the jetties), has caused the ocean's

behavior to dramatically change to now take sand away at an alarming rate that is unique to this subregion of the Rockaway littoral cell.

- The evidence in the record demonstrates that the proposed BPS is consistent with all applicable Statewide Planning Goals. That means that the Applications are consistent with the state goals and cannot be denied for inconsistency with the goals.
- Because evidence in the record demonstrates that the proposed BPS satisfies all of the requirements in the County's adopted and acknowledged land use regulations, the proposal is eligible for the requested development permit.

2. Background

The subdivisions.

The Subject Properties were created via two separate subdivision processes.

The Pine Beach Properties are part of the original 1932 Pine Beach Plat, which was attached as Exhibit B to the application. That subdivision was approved in 1994 and the replat recorded in 1996, to its present configuration. DLCD asserted with no support that the 1932 Pine Beach Plat was vacated in 1941. Applicants' representatives actually looked, and found no support for that assertion in the recorded property records. Further, just as a subdivision cannot be created until the subdivision plat is recorded, a subdivision cannot be vacated until a plat vacation approval is recorded and the county surveyor is required to note such plat vacation on the recorded plat. ORS 271.230(1). Neither happened. Moreover, the evidence in the record plainly indicates that no plat vacation occurred in 1941. The present Pine Beach subdivision plat is a "replat" under the ORS 92.101(13) definition of that term, and you cannot "replat" a subdivision that does not exist. The truth is that the only "vacation" on the 1932 Pine Beach Subdivision plat is dated "7/18/96" when the Pine Beach plat was recorded. As a matter of law, the 1932 Pine Beach Subdivision Plat was not vacated in 1941; rather its "replat" was approved by the County in 1994 and the recorded 1996 replat is what resulted in the Pine Beach subdivision's present configuration.

The George Shand Tracts, which includes the Ocean Blvd. Properties and was attached as Exhibit C to the application, has a much simpler history, but nevertheless one that DLCD irresponsibly challenges. DLCD asserts that subdivision is not a subdivision (as so cannot have been "developed" under Goal 18, IM 5) for no reason other than it is called the "George Shand Tracts" rather than the George Shand Subdivision. DLCD's position that the name of a subdivision decides whether it is a subdivision or not has never been the law. The 1950 plat divided the property into 22 smaller units of land, which under any definition of subdivision ever used by in Oregon, constitutes a subdivision. Furthermore, the 1947 version of the Oregon Revised Statutes, which was the version in effect at the time, the term "subdivide land" included partitioning a tract or registered plat of land into four or more units of land. *See*, Applicants' June 3, 2021 submittal, p. 2-4. The George Shand Tracts subdivision is and has always been a subdivision under state law. Why DLCD would ever argue otherwise is beyond comprehension.

The urban unincorporated community.

The Subject Properties are part of the Twin Rocks-Watseco-Barview urban unincorporated community. *See*, Tillamook County Comprehensive Plan, Goal 14 Urbanization Element, p. 14-44 to 45; Barview/Watseco/Twin Rocks Community Plan (Application, Exhibit T). As the Comprehensive Plan explains, the Twin Rocks-Watseco-Barview urban unincorporated community is needed by the County to meet the County's long range urban population growth requirements for needed housing under Goal 10. The County has a well-known housing crisis and must protect is needed housing stock that is acknowledged as "appropriate development," not turn its back on it when natural hazards strike.

In fact, with DLCD/LCDC's blessing, the County has committed the entire area, to include these Subject Properties, to a planning program that supports, celebrates and authorizes urban levels of development, primarily residential development. As part of this acknowledged planning program, these properties have received exceptions to Goals 11, 14 and 17 which allow the urban levels of development to be exactly where it is, in addition to exceptions to the resource Goals 3 and 4. The Subject Properties are "acknowledged" as "appropriate development" under Goal 18, not as a beach or dune "resource" use or area. That acknowledged "appropriate development" under the approved planning program has the right to be protected in the face of natural hazards.

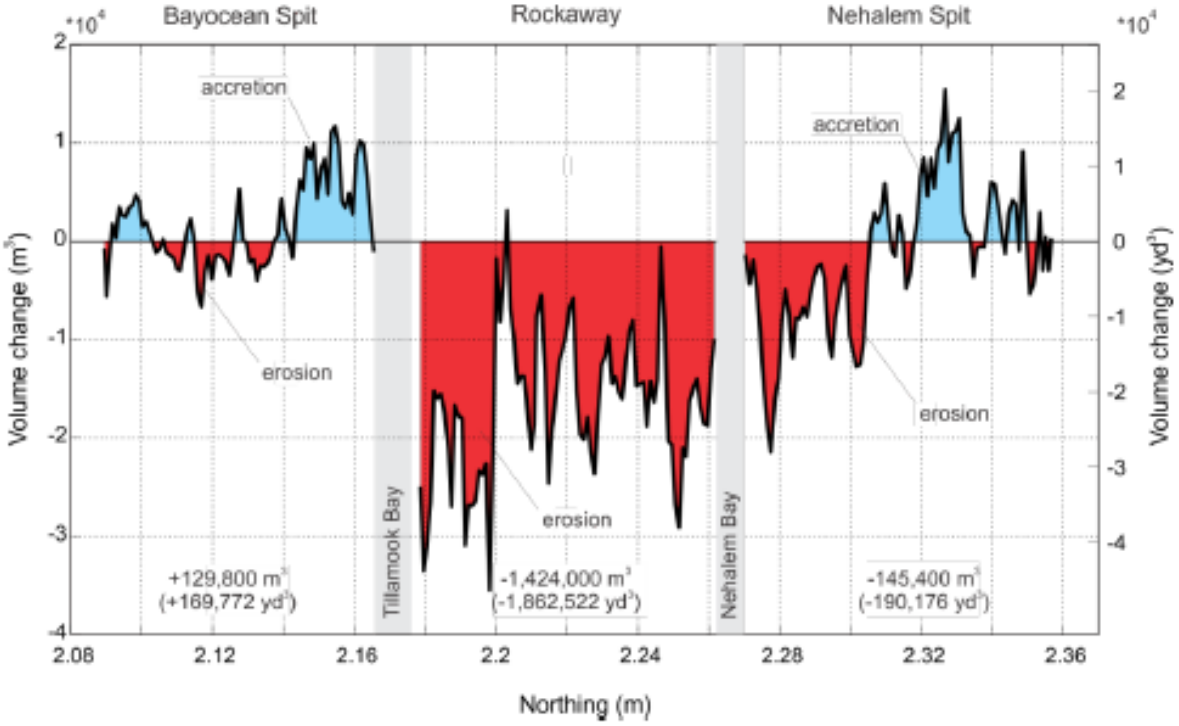
No one could seriously argue that firefighters were wrong to try to save the Oregon cities of Talent and Phoenix from the 2020 Alameda wildfire that enveloped them, because they lacked Goal 4 exceptions and so should have been allowed to return to forestland.

Historic beach conditions.

The historic beach conditions make the Subject Properties unique among sites along the Oregon Coast and provide a reason why the proposed BPS should be approved. The historic beach conditions are irrelevant to anything but the requested precautionary Goal 18 specific "reasons" exception and the Goal 18 "catch all" reasons exception.

Proper review of the beach conditions begins in 1917 with the construction of the Barview Jetty. As the exhibits to the application demonstrate, between 1917 and 1994 the shoreline had accreted (grew) westerly at least 1,000 feet. *See*, Application, Exhibit H, p. 11 (Paul D. See and Associates, Inc., Dune Hazard Report for Pine Beach Development, dated June 1, 1994). This history is confirmed by the County's adopted and acknowledged Goal 18 Shoreline Changes, Hazards and Damages Map, (attached to the application as Exhibit I), which shows the entire area between Nehalem Bay and the Barview Jetty as an area of "prograding" beaches. By the time of the Pine Beach Replat and the construction of the first dwellings, the area had seen over 70 years of prograding beaches and every expert who had examined the forming beaches in the preceding decades concluded that there was no evidence to support a conclusion that the trend of beach accretion would reverse. All evidence demonstrated otherwise, and nothing hinted at the unanticipated and extensive retrograding that has occurred in recent years.

As the evidence in the record explains, the Subject Properties have seen a loss of 142 feet of beachfront property since 1994, with the Pine Beach "common area" that was densely vegetated when the Pine Beach replat was approved and recorded, now dry sand beach. A graphic representation of the unexpected and unexplainable loss of beachfront at this location is presented with Figure 5 to West Consultants' May 27, 2021 Technical Memorandum in the record. That figure shows that while the other subregions of the Rockaway littoral cell grew between 1997 and 2002, only the Rockaway subregion (the area between Nehalem Bay and Tillamook Bay) in which the Subject Properties are located, saw erosion and it is unusual and it is significant:



Nothing explains why this portion of the littoral cell is now losing sand while other areas are gaining sand. The only evidence in the record is that it is the result of ocean behavior influenced by the man-made jetties. It is not, as some opponents claim, simply a natural ocean cycle at work.

DLCD has appropriately supported a Goal 18 exception to install a 1,280 linear foot BPS to protect beachfront properties subject to serious erosion in Lincoln County. DLCD's support in that case was given because the area is already significantly affected by rip rap ("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."). Here, similarly, the jetties have uniquely disrupted the littoral cell processes and movement of sand in this subregion of the littoral cell in which the Subject Properties are located. Of itself, the proposed BPS adds little "rip rap" to the Rockaway Beach littoral cell – it increases it by 0.8% (not counting the jetties) and increases rip rap in the Rockaway subregion of that littoral cell by just 2.8% (again the jetties are not counted as existing rip rap). But it is the only response that these

properties can provide to protect them from the littoral cell disruption caused by the jetties. If support is due because man-made features have irretrievably altered the behavior of the ocean, then that is a reason to support the requested exception here as well.

The proposed beachfront protective structure.

Applicants have submitted detailed designs of the beachfront protective structure. *See*, Application Exhibit F, Attachment 2 (Construction Plans); Comments and testimony received by June 3rd at 4 pm (Construction Plans, sent via e-mail). Specific issues raised about the BPS are discussed below under the FAQ section of this letter. In summary, the BPS is located on private property, entirely within the foredune area. The BPS maintains and in fact enhances the existing access points to the beach.

The design of the BPS provides for the placement of sand from the site on top of the BPS and for it to be revegetated (except it will not be revegetated where vegetation does not now exist on the access).

The revegetated area and the BPS structure will be maintained entirely by the property owners; the County will see no costs for installation or maintenance of the structure.

As the construction plans show, and the narrative and West Consultants' Technical Memoranda explain, the BPS is designed to mitigate the potential hazard to the Subject Properties from King Tide and storm wave overtopping and runup, as well as to minimize potential off-site impacts. The structure itself is a well-balanced structure designed for placement within the VE zone. The majority of the structure is sub-surface, with a toe that extends towards the ocean. *See*, Application, Exhibit F, p. 6; Construction Plans, p. 5. The BPS has been designed by a registered professional engineer, Chris Bahner, P.E., and designed so that it does not direct additional water to the surrounding properties, does not increase wave heights or wave runup, and does not adversely impact the natural littoral drift of sediment along the coast. The plans plainly show the angling of the revetment and the strategic placement of rocks at the ends, which the engineer explains will reduce the potential increases in wave velocities around the structure's ends. Chris Bahner's stamp is on the construction drawings and each of his written submittals. In contrast, opponents have submitted no engineering analysis at all, rather they simply make unsupported assertions that certainly do not undermine Mr. Bahner's analyses.

With this background in mind, we move next to key issues and the multiple reasons why the County can and should approve the Applications.

3. FAQs

This section directly addresses, in a question-and-answer format, specific issues raised and assertions presented by opponents during the proceeding. Each issue is addressed under separate heading.

Are the Subject Properties "appropriate development" under Goal 18 or Goal 18 "resource lands"? The properties are acknowledged under the "appropriate development" prong of Goal 18, not the resource preservation prong.

Goal 18 has two fundamental purposes. They are:

"To conserve, protect, where appropriate develop, and where appropriate restore the resource and benefits of coastal beach and dunes areas; and

"To reduce the hazard to human life and property from natural or man-induced actions associated with these areas."

The first stated purpose acts to protect beaches and dunes by prohibiting development in the most sensitive beach and dune areas and allowing only "appropriate development," which is determined by the type of dune structure, the nature of the development and its location well away from the dynamic beach and dune activity. The second operates to reduce hazards to human life and property, and guides where appropriate development can be located and how.

The Subject Properties represent "appropriate development" as defined by Goal 18. The Pine Beach Subdivision Replat was reviewed for consistency with Goal 18. As the detailed historical analysis provided with the application narrative explains, the subdivision replat did not require an exception to Goal 18 because the replat proposal was consistent with each of its stringent locational requirements. Furthermore, the subdivision included the type of natural vegetated shoreline protective barriers, in the form of the 180-foot wide common area, that Goal 18 envisions. At the time of subdivision replat approval and the issuance of most of the development permits, the permitted oceanfront homes were setback more than 220 feet from the ocean shore and located on stabilized dunes. They were exactly where Goal 18 said they should be.

Regarding the George Shand Tract subdivision/"Ocean Boulevard properties" – the George Shand subdivision was not initially reviewed for consistency with Goal 18 by virtue of being approved in 1950, 40 years before Goal 18. But the properties in that subdivision and the layout and development on the Subject Properties in that subdivision is also consistent with the "appropriate development" prong of Goal 18. As the first image in this letter shows, the elongated George Shand Tract/Ocean Blvd. properties are the length of the Pine Beach Subdivision Replat oceanfront lots plus the common area buffer zone. Likewise, homes on the Ocean Blvd. Properties are located on the eastern-most portions of the lots, as far away from the ocean as possible, just like the Pine Beach properties, on land that was formerly a stabilized dune. There can be no question that at the time of subdivision approval and most development, the George Shand Tracts/Ocean Blvd. properties met Goal 18's definition of appropriate development.

The two vacant lots in the George Shand Tracts and the two vacant lots in the Pine Beach Replat have been acknowledged to be appropriately developed with medium density urban residential development under Goal 18 and to deliver a medium density housing type to the County's needed housing stock. They too have a vested right to be protected as "appropriate

development" under the acknowledged planning program that covers the urban unincorporated community.

Opponents categorically ignore this background, choosing instead to argue that there is only one purpose for Goal 18 and that is to protect beaches and dunes from all development. However, the plain language of Goal 18 rejects that position. Goal 18 expressly contemplates and allows appropriate development and imposes a requirement to reduce the hazard to human life and property in these areas.

The fundamental issue in this proceeding is: After having fully complied with Goal 18's limitations on development during the subdivision approval and initial development stages by locating all development well away from the shoreline on stabilized dunes and establishing an extensive natural buffer between the appropriately located development and the ocean (i.e. "appropriate development"), such that the Subject Properties and surrounding areas are subsequently committed to urban levels of development in an acknowledged planning program that is designed to deliver housing stock to the County, should that appropriate development that is now threatened by the ocean be afforded Goal 18's protections? The answer is "yes" and the Tillamook County Plan and Code as well as state statutes and implementing regulations provide several pathways to approval of this application.

Goal 18 is not offended by protecting "appropriate development", even if it requires an exception to one of its specific implementing measures.

Can the County apply unadopted standards, criteria or policies to the applications? NO.

The County can only apply adopted and acknowledged standards, criteria and policies that were in effect at the time of application to these applications. *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). Parties have called for the County to implement recently published state global climate change guidelines that are themselves not written as applicable requirements and do not by their terms apply here. This the County cannot do. Those documents provide no standards for any development proposal and only recommend future steps for local governments to take to develop programs that implement new guidance about dealing with climate change. While not directly applicable to this Application, granting approval here is consistent with the overarching policy reflected in those documents:

> Oregon is already experiencing the effects of the changing climate and ocean. Statewide, air temperatures are rising, winter snow packs are decreasing, and ocean chemistry is shifting – these drivers have cascading effects, impacting both our communities and the environment on which we depend. Climate impacts are not expected to affect all regions and communities equally with underserved populations, rural communities, and fragile ecosystems disproportionally affected. Oregon must act now to reduce future impacts and address social and financial inequities.
>
> State government has a duty to our communities, businesses, and future generations not only to reduce emission of Green House Gases (GHGs), the primary cause of climate and ocean change, but to take action to address the impacts of change across all sectors. The 2021 Oregon Climate Adaption Framework (Framework) urges the state to plan for and respond to these impacts in a transformative, coordinated, and efficient manner amplifying our impact and minimizing redundant effort. Doing so will allow Oregon to take advantage of emerging opportunities and harness existing state resources to protect people and the environment.

Oregon Shores, in its June 10, 2021 letter, encourages the Planning Commission to "re-examine the standards currently governing issuance of ocean shore permits." There are two responses.

First, that has nothing to do with the proposal here. ORS 215.427(3) provides that approval or denial of an application shall be based on the standards and criteria that were applicable at the time an application was first submitted. The County cannot reexamine and change the rules during the pendency of an application as opponents request.

Second, the Applicants agree that at a global level, both the County and state should reexamine Goal 18 and Goal 18 implementing regulations in view of climate change. Land use should never be the engine of property destruction and loss of lives, as opponents envision results from the current regulatory program. There is nothing magic about making it easy for property that was "developed" on January 1, 1977 to obtain BPS and making it hard for everyone else; there is nothing visionary, laudable or progressive about a planning program that protects only "development" that existed on January 1, 1977, and demands the destruction of life and property in areas subject to a modern urban planning program, legislatively determined and state agency approved, simply because the area becomes subject to climate change driven hazards.

Is the proposed BPS located on the beach? NO.

Oregon Shores' June 10, 2021 letter asserts that there is uncertainty in the location of the BPS and hints that it is, in fact, located on dry beach. As the West Consultants' March 25, 2021 Technical Memorandum explains, the BPS is proposed approximately 185 feet landward of the surveyed Oregon Ocean Shore Line and approximately 10 feet landward of the line of established vegetation. *See*, Application, Exhibit F, p. 8. The Construction Plans submitted with the application plainly show the elevation changes that distinguish the beach from the vegetated foredune, and plainly show the entire BPS located on private property within the foredune. Application, Exhibit F, Figure 4, p. 7 (showing proposed BPS landward of shoreline based on vegetation (pink dashed line)); Construction Plans, p. 3 (showing project area well landward of "State Zone Line") and 4; *see also* Applicants' June 10, 2021 submittal, Exhibit F (showing location of proposed BPS landward of westernmost extent of existing vegetation). The BPS is located in the Applicants' backyards, in some instances mere feet from their residences and does

not even extend beyond the property lines into the land that is the Pine Beach common area. As other parties who apparently can read construction plans acknowledge, the BPS does not require approval from the Oregon Parks and Recreation Department (OPRD) because it is not located on the beach at all; but rather east of both the Oregon Ocean Shore Line/"State Zone Line" and the line of established vegetation.

Does the BPS adversely affect beach access? NO.

Some opponents allege that the BPS hinders neighbors' easement rights to the ocean. Those statements are patently false. The ten-foot (10') combined access easement (northern access) that the Subject and some neighboring properties have to the beach is preserved by the graveled path and ramp over the BPS plainly shown on the construction drawings. *See* Construction Plans, submitted under separate cover, June 3, 2021. The result of the ramp will be improved access to the beach. The BPS does not interfere with and will not affect the southern five-foot (5') beach access that belongs to the occupants of the Pine Beach subdivision.

Surfrider Foundations' June 10, 2021 letter attempts to make more of its argument, raising the specter of people who have limited mobility wishing to access the beach from this location, specifically citing "a young girl with spina bifida" who may use a wheelchair to get herself around. June 10, 2021 letter, p. 3. First, the existing sand path is not accessible to a wheelchair. Second, Surfrider misrepresents the detailed construction drawings; the ramp will be leveled and graveled. Surfrider's hypothetical girl will not have to transverse rip rap boulders. The fact is the construction drawings demonstrate it should be easier and safer for the girl to access the beach than it is now. Third, Surfrider misrepresents the law on access easements. Under such an easement, named persons have a right of access, but there is no obligation on property owners to ensure anything other than persons have an ability to utilize the easement. So, for example, if following a particularly high storm surge huge logs are deposited on the easement way, the property owners have no obligation to clear the path for easement holders. Easement holders will have to climb over the logs to access the beach, just as the property owners will. Similarly, there is no requirement for the property owner to ensure that the easement way is ADA compliant. It is not now. Surfrider Foundation's arguments are a red herring.

One final point is worth noting. While Applicants have no intention of restricting use of either of the two beach access points, use of the northern access point, (the 5' Watseco blocks easement and 5' Pine Beach common area walkway) is, by the express terms of the easement and the Pine Beach Replat narrative, for the benefit of certain property owners and their families, not the general public. Likewise, the southern access, by the express terms of the Pine Beach Replat narrative, is to property owners within that subdivision. Claims that the BPS interferes with the general public's access to the beach are wrong because the public has no right of access anywhere on the Subject Properties including the two existing access points.

Is the design of the BPS in the record and is there evidence that it will not harm other properties? YES, the design of the BPS is in the record. YES, the evidence in the record establishes that the proposed BPS will not harm other properties.

Oregon Shores alleges that there is no "meaningful supporting evidence or analysis" about the BPS's design, impacts on adjacent properties, and the effects of other revetments in the littoral cell. Again, Oregon Shores ignores the evidence and professional analyses and conclusions that contradict its position.

As noted above, Chris Bahner, PE, in his several submittals, has conducted the calculations, analyses and design of the BPS as well as its potential impacts on adjacent properties and the littoral cell. By any stretch of the imagination, a reasonable decision maker would rely upon the expert analysis and conclusions, as demonstrated by a professional engineer's stamp, to reach the same conclusions reached by the engineer. This is particularly so when there is no competing or contrary expert opinion on the issue. Mr. Bahner's analysis explains:

> "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. * * * [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 increases in velocities around the structure ends." May 27, 2021 Technical Memorandum.

As for other revetments in the Rockaway subregion, the photographic evidence in the record plainly shows that erosion of the subregion began well before the Shorewood RV Resort installed its revetment and continued in a consistent progressive pattern both north and south of the revetment over the subsequent years. As Mr. Bahner states, there is not the pronounced erosion at both ends of the Shorewood RV Resort that Oregon Shores and Surfrider Foundation have claimed will inevitably occur with every instance of a hardened revetment on a beach. Simply put, their generalities are wrong for this site-specific littoral subregion. The evidence in the record refutes their assertions and supports Chris Bahner's conclusions that the proposed BPS will have no adverse impacts to adjacent properties or the littoral cell.

Is the design of the BPS adequate to protect the properties? YES.

Some parties have argued that because the proposed BPS will not protect the properties from the worst-imaginable sea level rise or tsunamis, the proposal should be denied. That is no basis for denial. No standard requires that a BPS prevent any possible imaginable situation that may arise. At most, a reasons exception requires a demonstrated need for the BPS in order for the County to comply with its Goal obligations. Here, Chris Bahner explained that the design of

the BPS addresses the present need, which is the threat of wave overtopping of the dune, runup and related ocean flooding during periods of particularly high tides and storms. West Consultants' Technical Memorandum, May 27, 2021. The design of the structure used reference materials that consider estimated sea level rise and total water levels. *Id.*, p. 6. Mr. Bahner's June 10, 2021 Second Supplemental Technical Memorandum further explains that even 20 years from now, taking into account estimated highest sea level rise, the BPS will provide the necessary level of protection for the Subject Properties. That meets all required standards and then some.

To be sure, improperly designed revetment structures themselves can become hazards during unexpectedly large storm events, but that is where the balanced design of this structure comes in. Chris Bahner has certified that the BPS design will prevent flotation and/or lateral movement, as is required by the development permit standards. There is no contrary evidence regarding in the record. The below-and-above ground revetment is properly designed for the VE zone and will mitigate the potential harm for which it is designed.

Is the Coastal Atlas determinative of whether development occurred by January 1, 1977? NO.

As Applicants explained in their June 3, 2021 submittal, the Oregon Coastal Atlas Ocean Shores Viewer (Coastal Atlas) has no regulatory significance. It has not been adopted by the County and has not even been adopted by the state (DLCD). The Coastal Atlas purports only to show areas where developed structures can be seen in aerial images from 1977, which is not now and never has been, the test for Goal 18 eligibility.

The County's own code requires the County to make its own independent determination of the Subject Properties' eligibility for shoreline protection based on the evidence in the record. DLCD's May 19, 2021 letter in the record even states that the shown inventory is for "informational purposes only" and is "not legally binding" and that it is up to the County to make its own determination of Goal 18 eligibility. As discussed below in the arguments sections, the evidence in the record supports a conclusion that the Subject Properties were "developed" subdivision lots with the "provision of utilities" (water) and roads and subject to goal exceptions that allow the exact residential development to be on the exact dune that it is now on, eroding or otherwise. That means that under even the current Goal 18 definitions, they were "developed" on January 1, 1977.

Does a reasons exception require an alternative *methods* analysis? NO.

Some have argued that the Applicants are required to submit an alternative *methods* analysis as part of a reasons exception. To reiterate the main point from the very first FAQ cited above, only adopted standards can be applied to this application. The express language used in the administrative rule requires an alternative locations analysis, not an alternative methods analysis. *See* OAR 660-004-0020(2)(c). An alternative methods analysis cannot be required simply because someone wants one. Requiring an alternative methods analysis inserts a requirement into the administrative rules that DLCD has omitted and is contrary to ORS

174.010, which mandates that one shall not insert what has been omitted or omit what has been included in a regulation.

That said, Chris Bahner's May 27, 2021 Technical Memorandum, Table 1, discusses the numerous alternative methods considered for mitigating the proposed harm and the reasons why those alternative methods are inferior to the submitted proposal and were eliminated from consideration. Likewise, Applicants' Second Open Record Submittal, p. 10, addresses the argument that the homes on the Subject Properties could be relocated. There is nowhere on the Subject Properties to relocate the dwellings; they were all approved and located on the easternmost portions of the properties. Nothing about Goal 18 or any other applicable regulation requires a property owner to move a dwelling to an off-site location and to abandon their property to the sea, and no reasonable person would consider that a reasonable option. In fact, to require that is contrary to Goal 18's requirement to protect life and property and Goal 7 which requires the same.

We move next into specific legal analyses that establish the Subject Properties' entitlement to the propose BPS.

4. The proposed beachfront protective structure is allowed because the Subject Properties were "developed," as that term is defined by current Goal 18, on January 1, 1977.

Current Goal 18 provides that if development existed in a beach or dune area on January 1, 1977, then an exception to Goal 18 is not required for a beachfront protective structure. In this regard, Goal 18, Implementing Measure 5 provides, in relevant part:

> *"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."*

As the record demonstrates, the Subject Properties were "developed" on January 1, 1977 under the Goal 18, IM 5 definition of development because they were platted subdivision lots with the provision of utilities (water was available from the Watseco Water District and in fact one of the George Shand Tracts Lots, TL 2900, was connected to it in 1974) and the subdivisions were served by roads.

To elaborate further, on January 1, 1977, all of the Subject Properties were in platted subdivisions which were served by streets and had "provision of utilities". Specifically, the properties within the Pine Beach Replat were within the Pine Beach Subdivision platted in 1932. Application, Exhibit B. The Ocean Boulevard properties were within the "George Shand Tracts" platted in October 1950. Application, Exhibit C. The George Shand Tracts abutted the town of

Watseco and were served by Ocean Boulevard and, by January 1, 1977, water was provided via the predecessor to the Watseco-Barview Water District, with sewer provided by individual septic systems. Similarly, the Pine Beach subdivision was served by Old Pacific Highway. Also, the predecessor to Watseco-Barview Water District's infrastructure in Watseco abutted and was certainly available to serve all of the lots in the Pine Beach subdivision as were individual septic systems. An example of this is Application Exhibit D, which is the building permit approval for the house just north of the Subject Properties on TL 2900, the building permit for which was approved in 1974 and indicated "Watseco Water" would be used and a "septic tank."

As defined by Goal 18 Implementing Measure 5, the subject properties were "developed" and therefore should be entitled to shoreline protection as of right.

5. The proposed beachfront protective structure is allowed because the Subject Properties were "developed" as that term was defined until 1984 and the property owners have a vested right to that definition of development and eligibility for BPS.

In addition, the subject properties have a vested right to the proposed BPS because they were "developed" as that term was defined by statute until 1984. By the time 1984 rolled around, all of the Subject Properties were in platted subdivisions that had a vested right to be protected from natural hazards under the rules in effect at the time. This is both a common law vested right and an ORS 215.47(3) statutory vested right.

The version of Goal 18 in effect on January 1, 1977 did not require subdivision lots to be have the provision of roads or utilities. Rather, until 1984, Goal 18 simply required that land be "developed" and provided the following definition of "development" and "developed":

"Develop" - To bring about growth or availability to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access. (State Planning Goals and Guidelines)

"Development" - The act, process, or result of developing. (State Planning Goals and Guidelines)

Under the standards that applied to the two subdivisions in 1977, both the Pine Beach and Ocean Boulevard properties were "developed." The properties had been divided to bring about growth or availability to construct a structure prior to January 1, 1977. Under the definition of "development" in 1977, both the Pine Beach and Ocean Boulevard properties were entitled to shoreline protection under that original Goal 18 standard because they because they had been divided into platted lots, which the evidence in this record plainly demonstrates. It was only in 1984 that Goal 18 was amended to define development to mean subdivision lots with roads and the "provision of utilities."

However, by then, the two subdivisions had established, and continue to have, a vested right to be protected under the original "development" standards under the common law of vested rights as well as ORS 215.427(3).

Prior to January 1, 1977, the Subject Properties existed as subdivision lots and reasonably should be entitled to shoreline protection. The George Shand Tracts have never changed since being platted in 1950. The fact that the 1932 Pine Beach subdivision was subsequently replatted does not rob the subdivision of its vested right to the standards in effect on January 1, 1977 that allowed the oceanfront properties to be protected by a BPS.

Because the Subject Properties have a vested Goal 18 right to shoreline protection, to include the proposed BPS, an exception to Goal 18 is not required for the County to approve the proposed development.

6. The Subject Properties are entitled to a built/developed exception to Goal 18.

The Applicants' materials also demonstrate that the proposal is consistent with the requirements for exceptions to Statewide Planning Goal 18. As background, there are three types of exceptions to the statewide planning goals. There are "built/developed" exceptions, "irrevocably committed" exceptions and "reasons" exceptions. Often, the built/developed and committed exceptions are lumped together because, like this situation, lands that are already developed are intermixed with vacant lands that are committed to the same level and types of development that are inconsistent with one or more aspects of the goal at issue. However, the exceptions should not be conflated because each has specific approval criteria that must be met that are distinct from the other types of exceptions.

The Applicants provide an explanation why their properties are entitled to a built/developed exception on pages 31-33 of their May 25, 2021 submittal. That explanation is incorporated and summarized herein.

The purpose of a built/developed exception is "to recognize and allow continuation of existing types of development in the exception area." OAR 660-004-0018(1). OAR 660-004-0025 provides the standards for a built/developed exception and allows the County to adopt an exception to a goal when 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." Whether land has been physically developed with uses not allowed by the applicable goal depends on the situation at the exception site. OAR 660-004-0025(2). Goal 18, IM 2 expressly prohibits "residential development" on active foredunes or other foredunes that are conditionally stable but subject to ocean undercutting or wave overtopping. When development on the Subject Properties was approved and built, the development was located on a conditionally stable foredune consistent with Goal 18. Since then, the dune has become subject to ocean undercutting and wave overtopping. In other words, the development now exists in a location where Goal 18, IM 2 prohibits it to be. Therefore, the Subject Properties are each physically developed with uses not allowed by Goal 18, IM 2 (*i.e.,* residential development located on an active foredune or other foredune that is conditionally stable but subject to ocean undercutting or wave overtopping).

Because the Subject Properties are on a dune that is subject to ocean undercutting and wave overtopping, they are no longer available for "appropriate development" allowed by Goal 18.

The Applicants note that under OAR 660-004-0025(2), uses allowed by Goal 18 cannot be used to justify a built/developed exception. Applicants are not justifying a built/developed exception to Goal 18, IM 2 on the basis that the Subject Properties are developed with uses allowed by Goal 18. As explained immediately above, residential development on an active foredune like that on the Subject Properties is prohibited by Goal 18, IM 2.

Accordingly, the Subject Properties are entitled to a built/developed exception to Goal 18, IM 2. Because the Subject Properties are entitled to such an exception, this means they are also allowed a beachfront protective structure under the express language of Goal 18, IM 5, which states that beachfront protective structures are allowed in "areas where an exception to (2) above [meaning Goal 18, IM 2] has been approved."

Oregon Shores argues that the Subject Properties are not entitled to a built/developed exception. Oregon Shores' primary argument is that uses that are allowed by a goal cannot be used to justify an exception to the goal, and that Goal 18 allows residential uses.

There are two responses and both result in approval of the requested BPS.

First, if the residential development is *allowed under existing exceptions*, then that necessarily means that it is residential development that is allowed on the dune on which it exists that is subject to wave overtopping. As such, that means that residential development is allowed on such a dune contrary to Goal 18, IM 2 because of an existing exception. Goal 18, IM 5 expressly says that if an exception allows residential development on a dune subject to wave overtopping, then that residential development is eligible for BPS. That requires approval of the proposal.

Second, if the Subject Properties *do not have an exception to Goal 18, IM 2* and so are not allowed residential development on a dune subject to wave overtopping, then they are entitled to take an exception now. It has never been the law, and hopefully never becomes the law, that complying with every applicable land use rule can become a reason why one's property and life must be sacrificed when natural disaster strikes. The fact that residential development is lawfully established under an acknowledged urban planning program, and are within an acknowledged urban unincorporated community with an acknowledged medium density residential zone and plan designation, does not take away from the fact that Goal 18 now prohibits residential development at this location and that the Subject Properties are entitled to an exception to the goal that would prohibit that development.

Oregon Shores notes that an exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. The Applicants are not justifying a built/developed exception on any of the Subject Properties' existing exceptions to Goals 3, 4, 11, 14 and 17. Rather, the justification is based on the fact that Subject Properties are in an acknowledged urban unincorporated community, with an acknowledged medium density residential zone and plan designation. It is

the existing and acknowledged urban planning program that puts urban residential development on the foredune that has become subject to ocean undercutting and wave overtopping.

Oregon Shores then seems to suggest that a built/developed exception may only be limited to the footprint of the existing buildings, without pointing to any standard that imposes that limitation. There is none. At least in the context of an urban subdivision as here, an exception to a goal applies to the entire lot or parcel. Here, we have lots in urban unincorporated community subdivisions, committed to medium density residential uses and built with residential uses. And as for the vacant lots, they are built/developed with urban infrastructure of water, sewer, electricity and gas. The built/developed exception applies to each of the Subject Properties' lots.

Last, Oregon Shores argues that alternatives must be explored, such as moving the homes to upland properties. Again, Oregon Shores fails to cite a standard that requires such consideration of alternatives or that requires moving existing structures. Again, there is none. Oregon Shores conflates the different exceptions standards and seeks to impose an alternatives analysis that is not part of the built/developed exception requirements. The County should reject such an approach.

The Applicants have demonstrated that the proposal complies with the requirements for a built/developed exception to Goal 18.

7. The Subject Properties are entitled to a committed exception to Goal 18.

The record also demonstrates that the subject properties are entitled to a committed exception to Goal 18 to allow the BPS.

The Applicants provide explanations of why their properties are entitled to a committed exception in Section VIII.B.2 of their application and on pages 33-36 of their May 25, 2021 submittal. Those explanations are incorporated and summarized herein.

OAR 660-004-0028 provides the standards for a committed exception and allows the County to adopt an exception to a goal when 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[.]" Whether land is irrevocably committed "depends on the relationship between the exception area and the lands adjacent to it", considering the characteristics of the exception area, adjacent lands, the relationship between the two, and other relevant factors. OAR 660-004-0028(2), (3) and (6). The County need not demonstrate that every use allowed by the goal is "impossible", but must demonstrate that uses allowed, here, by Goal 18, are impracticable. A committed exception is "based on facts illustrating how past development has cast a mold for future uses." *1000 Friends of Oregon v. LCDC*, 301 Or 447, 501 (1986) (quoting *Halverson v. Lincoln County*, 14 Or LUBA 26, 31 (1985)).

The facts here are that the Subject Properties are within a planned and acknowledged urban unincorporated community, are planned and zoned for medium density residential

development, have acknowledged exceptions to Goals 3, 4, 11, 14 and 17 and are acknowledged to comply with Goal 18 under the County's acknowledged, existing planning program for this unincorporated urban community. It is the existing and acknowledged urban planning program that commits the Subject Properties, both the developed and the vacant lots, to urban residential development on the foredune that has become subject to ocean undercutting and wave overtopping. The ultimate conclusion to be drawn from the facts here is that the mold has already been cast – the existing and acknowledged planning program has committed the Subject Properties to urban residential development that is inconsistent with leaving the dune to erode under the jetty-driven forces that affect it. With the state and County having cast that mold in a thoughtful urban planning program, the Subject Properties are committed to that acknowledged planning program which includes a commitment to protect the people and properties under a committed exception. The properties are irrevocably committed to that planning program and so the BPS should be approved on that basis.

8. The Subject Properties are entitled to a reasons exception to Goal 18.

The Applicants have also demonstrated that the proposal is entitled to a reasons exception to Goal 18, Implementation Measure 2, which prohibits residential development on foredunes subject to ocean undercutting and wave overtopping, and Implementation Measure 5, which concerns beachfront protective structures.

The Applicants provide explanations of why their properties are entitled to a reasons exception under the applicable goal-specific reasons necessary standard under OAR 660-003-0022(11) in Section VIII.B.3 of their application and on pages 10-13 of their May 25, 2021 submittal, and, as a precaution, under the "catch-all" reasons necessary standard under OAR 660-004-0022(1) in their May 25, 2021 submission at pages 17-30. Those explanations are incorporated and summarized herein.

The proposal complies with OAR 660-004-0022(11), the goal-specific "reasons necessary" standard for an exception to Goal 18 – Foredune Development.

OAR 660-004-0022(11) is the applicable Goal 18-specific "reasons necessary" standard for an exception that applies to this application, despite DLCD's claim that this goal-specific standard is irrelevant. Neither DLCD nor any other party has challenged the Applicants' demonstration that the proposal complies with the requirements set forth under OAR 660-004-0022(11). DLCD and other parties that cite the agency only argue that a reasons exception under the "catch-all" provisions is required. Applicants disagree.

DLCD fails to explain why its argument that "because the houses that exist in this area were lawfully developed under the County's regulations at the time of development", OAR 660-004-0022(11) does not apply. It is precisely because the houses that exist on the Subject Properties were lawfully developed under the County's regulations at the time of development, but are now subject to ocean undercutting and wave overtopping, thus making that development inconsistent with Goal 18, that an exception to Goal 18's prohibition on foredune development is sought here. DLCD has it backwards. The issue now is that, given the changed circumstances, residential development is located where Goal 18, IM 2 prohibits it – on a foredune subject to

ocean undercutting and wave overtopping. The development is now inconsistent with Goal 18, not consistent with it as it was when the subdivisions received approval. That is the reason that the Subject Properties either have existing exceptions that allow residential development, which means they are entitled to BPS, or why it is necessary that they now take an exception to Goal 18, IM 2 under the OAR 660-004-0022(11) Goal 18, IM 2-specific "reasons necessary" standard.

DLCD's "well, you have your houses and that's all you're entitled to" position is shockingly inconsistent with its obligations as a state agency to protect life and property that is exactly where it was approved and DLCD blessed it to be. It is also inconsistent with the express language of Goal 18, IM 2 which prohibits "residential developments" and "commercial and industrial buildings" on active foredunes. Residential "development" encompasses more than just residential "buildings," a fact that DLCD's position ignores. The Applicants are entitled to a reasons exception to Goal 18, IM 2 to make the existing and future residential development consistent with/excepted from IM 2's prohibition of residential development on active foredunes.

One consequence that will flow from a Goal 18, IM 2 exception approval is that the proposed beachfront protective structure can also be approved without a separate exception needing to be taken. Goal 18, IM 5 expressly allows beachfront protective structures in the foredune where an exception to the foredune development prohibition in Goal 18, IM 2 has been taken.

The other criteria for the reasons exception that uses the OAR 660-004-0022(11) "reasons necessary" justification for the OAR 660-004-0020(1) requirement are the same and are discussed in the application materials noted above and are summarized below.

The proposal complies with OAR 660-004-0022(1), the "catch-all" reasons necessary standard for an exception to Goal 18.

OAR 660-004-0022(1) provides that if a goal-specific exception standard is not provided in subsequent provisions (e.g., (11) addressed above), then the (1) standards shall apply. Relevant to this application, OAR 660-004-0022(1) imposes two requirements. The first is a "demonstrated need" requirement and the second is a locational requirement.

Demonstrated Need Requirement

OAR 660-004-0022(1) provides, in relevant part:

> "For uses not specifically provided for in this division, * * *, 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: 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) and (B) follow]."

Oregon caselaw has set out the framework for analysis for reasons exceptions. Key points from those cases are summarized below and the subsequent analysis follows the framework LUBA has recently applied to reasons exceptions.

In *VinCEP v. Yamhill County*, 55 Or LUBA 433 (2007) LUBA interpreted the "demonstrated need" standard at OAR 660-004-0022(1) to require a county to demonstrate that it is at risk of failing to satisfy one or more obligations imposed by Goals 3-19 and that the proposed exception is a necessary step toward maintaining compliance with its goal obligations. 55 Or LUBA at 449. A county's goal obligations are found not only in the statewide planning goals, but also in the county's acknowledged comprehensive plan provisions enacted to implement the goals. *Middleton v. Josephine County*, 31 Or LUBA 423, 429 (1996); *see also Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323, 338 (1993) (demonstrated need based on requirements of Goals 3-19 includes requirements of acknowledged plan). Both types of obligations – direct compliance with goal requirements and comprehensive provisions that implement the goals – are germane to the need requirement analysis below.

LUBA unpacked the requirements of the standard in two recent LUBA cases where it explained that "the county must (1) identify one or more obligations under Goals 3 to 19 [or under its comprehensive plan implementing Goals 3-19], (2) explain why the county is at risk of failing to meet those obligations, and (3) explain why the proposed exception to the requirements of one goal * * * will help the county maintain compliance with its other goal obligations." *Oregon Shores Conservation Coalition v. Coos County*, __ Or LUBA __, *31 (LUBA No. 2020-002, May 4, 2021); *Confederated Tribes of Coos v. City of Coos Bay*, __ Or LUBA __, *25 (LUBA No. 2020-012, May 4, 2021).

In *VinCEP*, LUBA also explained that the demonstrated need requirement is not to be read or applied in a draconian manner: the County need not be "between the devil and the deep blue sea" in order to identify a demonstrated need, meaning it does not have to be in the position of choosing between violating one goal requirement or another. 55 Or LUBA at 448; *see also Oregon Shores*, *supra*, at *35 (demonstrated need must be "based on" requirements of Goals 3-19, which is a "much less onerous standard" than requiring that the need arise from noncompliance with a goal requirement). All the County must show is that it is in danger of violating one or more of its obligations found in the goals or in its comprehensive plan.

Below is a summary of the main points justifying the reasons exception, framed in the manner LUBA recently outlined in the two decisions noted above.

(1) Identify obligations:

The Applicants have identified several statewide planning goals and Tillamook County Comprehensive Plan sections that implement those goals that impose obligations on the County that are put at risk should the exception not be granted. These include: Goal 7 Natural Hazards; Goal 10 Housing; Goal 11 Public Facilities and Services; Goal 14 Urbanization; and Goal 18 Beaches and Dunes. Each is summarized below.

Goal 7's purpose is to protect people and property from natural hazards. It requires local governments to adopt comprehensive plan provisions, to include policies and implementing measures to reduce the risk to people and property from natural hazards. Those hazards include coastal floods and coastal erosion. The proposal includes a requested plan amendment

(exception) so the County can protect the threatened life and property at issue here and so meet the County's Goal 7 obligations.

The proposal is also consistent with and required by the County Comprehensive Plan's Goal 7 Element that implements Goal 7 in a number of respects relevant here. With respect to erosion, the plan policy 2.4(a) provides that prevention or remedial action shall include any or all of a number of mitigation measures to include:

> "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;
>
> "* * * *
>
> "7. Set-back requirements for construction or structures near slope edge, stream banks, etc.[.]". Comprehensive Plan, Goal 7, p. 7-19 to 7-20 (Emphasis supplied).

Note that numbers 1, 2, 4 and 7 above were imposed on the original subdivision approvals and subsequent development. The issue here is whether Applicants are allowed to take remedial action using mitigation measure number 3 above, given the failure of the other methods to prevent erosion.

With respect to flooding, plan policy 2.5(e) provides: "where development within floodplains is allowed, the developer shall provide appropriate safeguards to insure public safety and protect individuals residing in the flood zone."

Goal 10's policy is "To provide for the housing needs of the citizens of the state." It requires local governments to evaluate their housing needs and to ensure those needs are able to be met, to include housing at all price ranges and rent levels.

The County has implemented Goal 10 and determined that it is required to determine the housing needs in unincorporated areas of the County and to meet that need. Comprehensive Plan, Goal 10 Element, p. 30; p. 39. Housing policy 3.2 provides that, "Tillamook County will plan to meet housing needs by encouraging the availability of adequate numbers of housing units[.]" Goal 10 Element, p. 43. The County's analysis of housing needs included addressing expected population growth and projected additional housing units by type for specific market areas, to include the Twin Rocks/Barview unincorporated community. *See*, Goal 10 Element, Table 36 and Table 43. The County also adopted Policy 3.6, which provides: "Tillamook County encourages the use of planned developments in urban and rural areas in order to efficiently use land, provide public services efficiently, and to reduce the impact of residential development on natural resources."

Goal 11's purpose is, "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Relevant here, the County adopted Goal 11 Element Policy 3.1, which states the County "will

further the development of a timely, orderly and efficient arrangement of public facilities and services" through a number of actions. Goal 11 Element, p. 11-40.

Goal 14's purpose is "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." Its provisions discuss land needs and how, among other things, unincorporated communities help meet those needs. To implement Goal 14, the County adopted Goal 14 Element Policy 3.8, which mandated establishing community growth boundaries around unincorporated communities and expressly named Twin Rocks/Barview as one of those communities. Looking at the Twin Rocks/Barview community directly, the plan states there is a "[d]emonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals", to identify a need to accommodate 130 additional housing units by the year 2000, and that the community will accommodate a total of 320 dwellings. Goal 10 Element, p. 14-44. Other provisions concerning the Twin Rocks/Barview urban unincorporated community include the orderly and economic provision of public facilities and services and committing the lands within the community growth boundary to development. Goal 10 Element, p. 14-45.

Goal 18's policy, quoted above in the FAQ section, has two competing components. The first states that beaches and dunes shall allow appropriate development as well as conserving, protecting and, if appropriate, restoring coastal beach and dune areas. It directs comprehensive plans to "provide for diverse and appropriate use of beach and dune areas consistent with their * * * recreational and * * * economic values." The second purpose is to reduce the hazard to human life and property from natural or man-induced actions.

Each of the above goals provides a reason for why the exception should be approved.

(2) Why not granting an exception would put the county at risk of failing to meet identified obligations:

The second step in the process set forth by LUBA is to explain why not granting an exception would put the county at risk of failing to meet each of the above identified goal and comprehensive plan obligations. As a reminder, the proposed BPS is necessary to protect life and property in an acknowledged urban community of Tillamook County. That means that without the proposed BPS, the 15 Subject Properties will see periodic wave runup and ocean flooding and the existing residential development, to include related infrastructure and public facilities, will be subject to natural hazard risks to life and to property and, eventually, the properties will become uninhabitable.

Not granting the requested plan amendment (exception) will put the county at risk of failing to meet its obligation under Goal 7 to protect people and property from known natural hazards. Goal 7 requires the County to adopt comprehensive plan provisions to reduce the risk to people and property from such hazards. Not approving the exception means that the County will not comply with Goal 7 and will also fail to comply with its adopted and acknowledged Goal 7 remedial action measures which includes utilizing shoreline stabilization measures such as the one proposed here in implementation of Goal 7's requirements. The requirements of Goal

7 are not met by allowing existing development to be wiped out by known hazards that can be prevented by the proposed BPS. It would be as if a city were to decide not to send firetrucks to stop fires at existing development, even though the firetrucks are available for use.

Failure to approve the exception will also mean that the County will fail to meet its Goal 10 obligations. As discussed above and in the County's Comprehensive Plan Goal 10 and Goal 14 elements, it is known that the County has a housing crisis and the County has planned to meet its identified needed housing in large measure in its urban unincorporated communities, to include Twin Rocks/Watseco/Barview. The comprehensive plan provides that the community growth boundary will accommodate approximately 320 dwellings and that there is a need for an additional 130 housing units by the year 2000. The loss of 15 dwelling units would represent losing almost 5% of the needed housing the County has identified as necessary for the land within the Twin Rocks/Watseco/Barview urban community growth boundary. The County has demonstrated that the Subject Properties are necessary for the County to meet its needed housing requirements; the destruction of those houses and available vacant residential sites means the County will fail to meet its Goal 10 obligations.

Goal 11 and the County's Plan require that the County provide for an "orderly and efficient arrangement of public facilities and services" to support urban levels of development in this area. There is nothing orderly or efficient about allowing public facilities and services to be destroyed when that infrastructure can be readily protected from a known natural hazard, the effects of which can be readily prevented, and at no cost to the taxpayer. In response to opponents who argue that one can simply turn a few switches or levers to halt the flow of water and sewer services to the area and protect the greater system, those persons fail to explain how the unnecessary sacrifice of public investment is "efficient" or how the provision of public facilities to an area and then abandoning it is "orderly."

Failing to approve the requested exception will also mean that the County fails in its Goal 14 obligation to accommodate its urban population. This argument duplicates the Goal 10 housing argument above, but LUBA has explained that nothing precludes the same reason from being used with multiple goals. As explained above, the County's Goal 14 element has committed the Twin Rocks/Watseco/Barview area to urban levels of development as an urban unincorporated community and the County has decided that community is necessary to enable the County to meet its identified and acknowledged housing needs. The area, to include the Subject Properties, are committed to urban residential development, demands the orderly and efficient provision of public facilities and services required by the Comprehensive Plan. Failure to approve the proposed BPS means that the County will fail in its Goal 14 obligations.

Last, Goal 18 puts a mandatory obligation on the County to reduce hazards to human life and property from natural or man-induced actions. Approval of the proposed BPS is necessary to enable the County to comply with this Goal 18 obligation. Here, the County has adopted and implemented all of the locational and development restrictions provided by Goal 18, which are intended to not only protect the resource, but also to protect appropriate development from hazards that arise from being located in the coastal shoreland area. However, due to events not of the County's or the property owners' making, that Goal 18 appropriate development is now at

risk and the County is at risk of failing to implement Goal 18's mandate to reduce the hazard to human life and property from the identified natural hazard.

Failure to approve the requested exception places the County at risk of failing to meet its identified obligations under the Goals and implementing Comprehensive Plan provisions discussed above. Under the state's rules, this compels approval.

(3) Why an exception will help the County maintain compliance with other goal obligations:

Approval of the exception will allow development of the proposed beachfront protective structure. That structure will protect the residents, development and Subject Properties from the threat posed by dune overtopping, wave runup and ocean flooding over the next 20 years, even taking into account anticipated sea level rise due to global warming, and will do so without causing harm to adjacent properties as a result of erosion, increased wave velocities or higher flood water levels, and with minimal (less than 1%) effects to the natural processes within the littoral cell.

On its face, the proposal will help the County maintain compliance with its Goal 7 and Comprehensive Plan Goal 7 Element obligations to adopt appropriate plan provisions and to take remedial actions to reduce the risk to people and property from natural hazards.

The approved and constructed BPS will protect the housing and provided public services and facilities located on the Subject Properties. The protection of that development will ensure that the County meets its identified Goal 10 needed housing needs for the Twin Rocks/Barview unincorporated community, its Goal 11 Element policy to develop an orderly and efficient arrangement of public services and facilities, and its Goal 14 obligation to establish and maintain community growth boundaries that help the county accommodate its projected long range urban population.

Last, approval of the exception will help the County maintain compliance with the second of Goal 18's purposes – to reduce the hazard to human life or property – to properties that were established and developed consistent with Goal 18's locational and development restrictions.

The above demonstrates that the proposal is consistent with the requirements of OAR 660-004-0022(1) under the methodology set forth by the two recent LUBA cases.

One final point is worth noting. The language used by OAR 660-004-0022(1) immediately preceding the demonstrating need requirement states: "Such reasons include but are not limited to the following * * *." In other words, by the rule's express terms, the reasons that justify a reasons exception are not limited solely to those based on requirements imposed by Goals 3 to 19. Other reasons may be used to justify such an exception. Here, aside of any express goal requirements, the fact that the subdivisions were approved in a manner consistent with Goal 18's locational requirements for appropriate development, to include the incorporation of naturally vegetated buffers, and that events have taken such an unexpected and dramatic turn-around from 70 years of beach progration (1,000 feet from 1917 to 1994) to rapid retrograding in

recent times, are reasons sufficient to justify why the Goal 18 policy for prohibiting beachfront protective structures should not apply in this instance. Property owners who comply with the limitations imposed by land use processes have every right to receive the protections offered by those same processes and the goals that impose not only restrictions, but also offer protections.

The BPS must be at this location.

The second catch-all reasons exception requirement, provided at OAR 660-004-0022(1)(a)(B), requires the applicant to demonstrate that it is necessary for the proposed use's location to be on or near the proposed exception site because of special features or qualities of the proposed use.

Despite the obviousness of Applicants' explanation that the only location where a beachfront protective structure would in fact protect the Subject Properties is between the ocean and the structures to be protected, some opponents have claimed otherwise and that other locations should be explored and that Applicants should then explain why those locations will not satisfy the need.

Fortunately, DLCD's determination in the Lincoln County matter, included with Applicants' June 10, 2021 Second Open Record Submittal, exposes the nonsense of opponents' arguments. In the Lincoln County proceeding, DLCD properly recognized and accepted the applicant's argument that beachfront protective structures must be located to prevent the hazard and that, on the ocean shore, that means between the shoreline and the structure to be protected.

The proposal plainly meets this locational requirement and the Planning Commission should reject arguments that other locations must be explored.

The circumstances of the Subject Properties are unique and an exception granted here will not be readily applicable to other properties.

Recent LUBA cases have developed the notion that there must be something "unique" or "exceptional" about the circumstances warranting an exception such that approval of an exception would not establish a rule of general applicability that could be applied broadly throughout the state.

As an initial matter, and to preserve the issue on appeal, Applicants note that the "unique" or "exceptional" requirement is not contained in the plain language text or context of the statute, goals or implementing regulations. As such, it represents an incorrect interpretation of the exceptions standards (adding standards that are not there contrary to ORS 174.010) and cannot be applied to deny an application for a reasons or any other exception.

Regardless, the situation here is unique and does not establish a rule of general applicability and so meets this "LUBA-Law" requirement. The unique facts here are that: (1) an at least 70-year history of beach prograding prior to subdivision approval, was followed by the unanticipated and extreme reversal to beach retrograding that now significantly threatens such property; (2) the littoral cell and especially the Rockaway subregion is uniquely affected by

manmade jetties that cabin it in a manner that is not common to the entire coast; (3) the severe and remarkable retrograding in the littoral cell is limited to the Rockaway subregion where the Subject Properties are located and is unusual because the rest of the littoral cell is still depositing sand; (4) the Subject Properties were approved for residential development at a time and place in compliance with Goal 18 and where Goal 18 expressly states is safe and "appropriate" for residential development and with a large vegetated buffer that separated the approved residential development from the ocean and areas of ocean undercutting/wave overtopping; (5) the Subject Properties are located in an unincorporated urban community that is acknowledged by DLCD as an appropriate place for urban level development and the governing body has so decided the Subject Properties and their urban community are appropriate to meet the County's urban residential development needs.

There is **no case** in all of Oregon like this one here – where residential development (or any development) is acknowledged to comply with all goals, including Goal 18, based upon other exceptions (to Goals 3, 4, 11, 14 and 17), and then the fully allowed development later becomes unlawful under Goal 18 with which it is acknowledged to comply, due to natural disaster, natural hazards or other events that very Goal is intended to protect development from. It cannot be the law that urban residential development that is acknowledged to fully comply with Goal 18 is suddenly deemed inconsistent with Goal 18 and must be denied Goal 18 protections, simply because disaster strikes.

This is not the result of the normal ocean cycles of erosion (which the Chris Bahner, May 27, 2017 Technical Memorandum makes clear), or the result of sea level rise that will affect all properties on the coast as some argue. This is a unique set of circumstances where the residential development was approved during nearly 100 years of prograding consistent with all conceivable planning rules and then suddenly reverses course due to the unique interplay of man-made jetties and ocean forces. The Applicants are unaware of any similarly situated properties along Oregon's coast and nobody has identified any other properties that make the same case as is presented here.

The situation is truly unique and is not a basis upon which other locations can argue for a Goal 18 exception. The proposal satisfies LUBA's interpreted "unique" / "exceptional" requirement.

OAR 660-004-0020(2) Issues

OAR 660-004-0020(2) provides several standards ((a) through (d)), that reflect the four standards in Goal 2 Part II(c), which are required to be addressed when taking a reasons exception. Those four standards are:

> (a) "Reasons justify why the state policy embodied in the applicable goals should not apply."

(b) "Areas that 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 at 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."

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

The application narrative and subsequent materials have addressed each of these standards and demonstrate that those standards are satisfied and the analysis from pages 20 to 33 from the Applicants' March 25, 2021 submittal is hereby incorporated.

Applicants note that OAR 660-004-0020(2)(c) above uses the language "located in areas requiring a goal exception other than the proposed site" and does not require an alternative "methods" analysis. This point is discussed under its own heading in the FAQ section above. That discussion is hereby incorporated.

Also, the facts and evidence relied upon to demonstrate that the proposed BPS is compatible with adjacent uses and will not adversely impact adjacent properties and uses is discussed throughout this document. That discussion is hereby incorporated.

The Applicants have demonstrated through extensive evidence and analysis contained in the record that the proposal satisfies all of the requirements for a reasons exception to Goal 18.

9. The proposal is consistent with the Statewide Planning Goals.

A goal exception is a post-acknowledgement plan amendment ("PAPA") which requires a demonstration of consistency with the remaining statewide planning goals. The application narrative addresses the proposal's consistency with each of the goals, and subsequent submittal materials addressed specific goals identified by parties. Those discussions are incorporated herein.

Generally, comments concerning the other goals represented categorical statements asserting without support that the Applicants had not addressed the goals (despite each goal being identified and discussed under separate headings in the Application Narrative) or that such analysis was "insufficient" with absolutely no argument about how the application narrative was deficient or how the proposal fails to comply with a particular goal. A good example is an opponent claiming that the proposal is inconsistent with Goal 5, but then failing to identify any Goal 5 resource the proposal theoretically is inconsistent with. Goal 5 requires the County to identify specific types of resources, identify the levels of protection for each resource, and then to map and adopt development regulations to protect the resource. Simply put, there are no Goal

5 resources on the Subject Properties. If there are no Goal 5 resources on the Subject Properties, the proposal cannot be inconsistent with Goal 5.

The proposal is also consistent with the two goals cited by Oregon Shores – Goals 8 and 17. Goal 8, like many of the statewide planning goals, is focused on a county's obligation to plan for the recreational needs of its residents and visitors and imposes few real requirements outside of those sites the county's planning department determines are necessary to meet recreational needs. The County has not determined and could not determine that the Subject Properties where the BPS will be situated, is a necessary public recreational site or facility. Goal 8 does not require, and could not require as Oregon Shores suggests, that the County fail to protect private property from natural hazards in the hope that homes, property and public infrastructure might be destroyed so surfers might have a more pleasurable environment in which to recreate. The proposed BPS is located in the vegetated private property foredune, zoned and planned for residential development and is not proposed on any part of the beach, and as Chris Bahner's May 27, 2021 Technical Memorandum explains, the BPS will not interfere with the beach processes in the littoral subregion.

Oregon Shores also claims that the proposed BPS will interfere with recreational uses of the beach in violation of Goal 17. The response to that allegation is three-fold. First, the BPS is located on private vegetated property, not on the beach. There is no way that the BPS will interfere with persons walking along the beach. The location of the BPS cannot interfere with recreational use of the beach.

Second, Oregon Shores wants the County to support the recent trend of erosion hoping it will continue without change, and asks the County to preemptively "take" the backyards of the Subject Properties by preventing these property owners from protecting their homes, lives and properties, so that at some point in the future their private property can possibly become beach for the enjoyment of the organization's members. Nothing in Goal 17 or any part of Oregon's land use program sanctions such behavior and, in fact, the Oregon and Federal Constitutions and probably criminal law, prohibits it.

The third and final point is that the Subject Properties have received an exception to Statewide Planning Goal 17. That means Goal 17 does not apply to development of the Subject Properties and uses on the property cannot be found to violate Goal 17.

However, regardless of that fact, the proposal does not interfere with beach access or use and is consistent with Goal 17.

The County should conclude that the evidence in the record demonstrates the proposal is consistent with the statewide planning goals. There is no evidence to the contrary.

10. The proposal is entitled to a development permit.

This final argument ends where the consolidated application begins – with the need for a development application to construct a beachfront protective structure. This is what the Application is for and requires a development permit. As noted above, the Applicants have

requested and filed a consolidated application consistent with the Tillamook County LUO and ORS 215.416(2), which allows an applicant to apply, at one time, for all permits needed for a development project.

The Applicants addressed each of the approval criteria for a development permit under section VIII.D of the application narrative. That narrative and the supporting evidence in the record demonstrates that the proposal satisfies each of the applicable approval criteria and includes standards under the County's Flood Hazard Overlay Zone (FH) and the Beach and Dune Overlay (BD) code provisions. The details of the BPS's design are significant in demonstrating compliance with those sections' rigid standards. The fact that the proposed BPS is a balanced cut and fill design that will not result in an increase in flood elevation or flood velocities and will not direct energy to or adversely affect adjacent properties demonstrates that those standards are met.

No party has made any effort to demonstrate that the proposal does not meet those criteria. Most clearly have not read the Application materials and many simply present conclusory statements saying that the proposal does not comply with standards, relying upon generalized statements or articles that discuss how improperly designed revetments can cause erosion on adjacent properties. Such statements and evidence say little about this proposal at this location and do not refute or rebut the site-specific engineering materials prepared by an expert demonstrating those statements or articles do not apply here. Indeed, it is this type of engineering and analysis that is necessary to ensure that the problems the generalized arguments warn about will not occur.

Opponents' arguments cannot outweigh the extensive evidence in the record that demonstrates that the proposal complies with each of the County's development permit standards.

11. Conclusion

As the staff report and the Application make clear, the historical facts and legal context surrounding the Applicants' proposed beachfront protective structure are complex.

The Applicants have submitted the Applications due to circumstances not of the County's or Applicants' making. At the time the County's acknowledged development program assigned medium residential development as the appropriate use of the Subject Properties, they were located several hundred feet from the shoreline with a well-vegetated protective barrier in-between. The Pine Beach/George Shand Tracts areas had seen nearly a century (at least 70 years) of prograding beach, pushing the shoreline farther and farther from the subject properties and vegetation on the foredune was increasing. Now the Subject Properties, their dwellings and supporting infrastructure are threatened by ocean undercutting, wave overtopping, runup and flooding that is unique to the subregion of the littoral cell in which they are located.

The application narrative and the supporting evidence in the record demonstrate that, under any legal approach, the County can and should approve the proposed BPS. The application narrative has carefully analyzed and addressed each of the approval standards, providing evidence that supports each approach. The proposed BPS has been carefully designed

to ensure that there are no adverse off-site impacts, that existing beach access points are maintained, and that a natural foredune environment, albeit hardened, will be restored and maintained.

Nothing in the statewide planning goals requires the County to abandon its acknowledged planning efforts. Nothing requires the County to abandon Goal 7 which requires the County to protect people and property. Nothing requires the County to abandon its acknowledged Comprehensive Plan Goal 7 planning program that expressly relies upon shoreline protection (rip rap) to protect oceanfront development when natural hazards present themselves. Nothing requires the County to abandon prior approvals or to sacrifice significant public and private investments in public facilities and services because an area is befallen by a natural hazard. Nothing in the statewide planning goals or the County's regulations prohibit property owners from seeking protections from hazards that no one, to include the County and DLCD in acknowledging the County's regulations, ever expected the property owners to face. Now that the owners face dauting and imminent hazards, they are entitled to the requested BPS to protect their wholly "appropriate residential development." The Applicants' request is not outlandish, improper, or bad in some inherent way as DLCD suggests. Rather, in a published report DLCD explained, in dismissing any need to fundamentally change Goal 18, Implementation Measure 5 (Exhibit E to the application narrative), that the exception process "works" to allow protective structures where needed. It should work here.

Accordingly, the County should make all of the following findings and conclusions to protect the Subject Properties and their public infrastructure, as well as the beach and ocean from the looming disaster, and by such thorough findings avoid time consuming appeals and remands if opponents choose to appeal anyway:

1. The Subject Properties were "developed" on January 1, 1977 under the definition of "developed" in effect when the subdivisions were platted until 1984 when the definition of "developed" changed to be what it is now. That pre-1984 definition required only that the property consist of platted lots, which the only evidence in the record establishes was the case. The subdivisions have a vested right to be protected under those standards under the common law of vested rights as well as ORS 215.427(3). The George Shand Tracts have never changed since being platted. The fact that the Pine Beach subdivision was replatted, does not rob the subdivision of its right to the standards in effect on January 1, 1977 that allowed the property to be protected by a BPS. Therefore, the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

2. The Subject Properties were also "developed" on January 1, 1977 under the definition of "development" that now applies, because they were platted subdivision lots with the provision of utilities (water was available from the Watseco Water District and in fact one of the George Shand Lots, TL 2900, connected to it in 1974) and was served by roads.

3. The acknowledged residential development/urban unincorporated community planning program that covers the Subject Properties is based upon existing exceptions to Goals 3, 4, 11, 14 and 17 and is acknowledged to comply with Goal 18 as "appropriate development." As a result, those exceptions that allow residential development of the Subject Properties are also an exception to Goal 18, Implementation Measure 2, to allow that residential development now

that the foredune is subject to ocean undercutting and wave overtopping. That means there is an existing exception to "(2) above" and that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

4. In the alternative, the Subject Properties qualify for a new committed exception to Goal 18, Implementation Measure 2 that prohibits residential development on a foredune subject to ocean undercutting and wave overtopping, because the existing acknowledged planning program as a matter of law, establishes that commitment. That means the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

5. In the alternative, the Subject Properties qualify for a "built" exception because like the "committed" exception for which they also qualify, they are "built" with lawful homes with public infrastructure, or as to the vacant lots, they are "built" with public water and sewer infrastructure and streets that serve them. They are "built" under an acknowledged planning program that commits them to residential development, not to protect beaches and dunes. This means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure.

6. In the alternative, the Subject Properties qualify for a reasons exception under OAR 660-004-0022(11) specific to Goal 18's prohibition on foredune development because both Goal 18, Implementation Measures 2 and 5 prohibit foredune development and the proposed BPS meets all OAR 660-004-0022(11) standards. This also means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

7. In the alternative, the Subject Properties qualify for a "catch all" reasons exception under OAR 660-004-0022(1) because they easily meet all criteria. Without the requested shoreline protection, it is impossible for the County to comply with Goal 7's requirement to protect life and property from the natural hazards that befall them. The circumstances here are unique because the Subject Properties are acknowledged to comply with Goal 18 and it is only the fact that the ocean's behavior changed from decades of prograding to serious retrograding, that triggers Goal 18, Implementation Measure 2. This also means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

8. The Subject Properties meet all other state and County standards for the proposed BPS. As a result, it should be approved.

Thank you for your time and consideration.

Very truly yours,

Wendie L. Kellington

CC: Clients