

**Tillamook County**



**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
*BUILDING, PLANNING & ON-SITE SANITATION SECTIONS*

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*Land of Cheese, Trees and Ocean Breeze*

# **MEMO**

**Date:** March 7, 2023  
**To:** Tillamook County Board of Commissioners  
**From:** Sarah Absher, CFM, Director   
**Subject:** March 14, 2023, LUBA Remand Hearing Re: #851-21-000086-PLNG-01 & #851-21-000086-PLNG: Goal 18 Exception Request and Development Permit Request for Construction of a Beachfront Protective Structure.

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Included with this memorandum are the remand hearing materials in preparation for the March 14, 2023, public hearing. The hearing will take place at the Port of Tillamook Bay Conference Center Conference Room, located at 4000 Blimp Boulevard, Tillamook, OR 97141 and will begin at 5:30pm.

The remand hearing will be limited to argument and new evidence on the issues set forth in LUBA's Final Order and Opinion. The subject matter of the remand hearing is related to the Findings, Conclusions and Order of the Board of Commissioners (on remand from the Land Use Board of Appeals) and can be accessed on the Department of Community Development's Land Use Applications page: <https://www.co.tillamook.or.us/commdev/project/851-21-000086-plng-01>. The record can also be reviewed in the Department and a copy of the record may be purchased from the Department of Community Development at a cost of 25 cents per page.

For instructions on how to provide oral testimony at the March 14, 2023, hearing, please visit the Tillamook County Department of Community Development homepage at <https://www.co.tillamook.or.us/commdev>. A virtual meeting link will be provided on the Department of Community Development homepage: <https://www.co.tillamook.or.us/commdev> the day of the hearing as well as a dial in number for those who wish to participate via teleconference.

If you have any questions regarding the remand hearing process including how to make arrangements to testify or review the record, please email Lynn Tone, Office Specialist 2, at [ltone@co.tillamook.or.us](mailto:ltone@co.tillamook.or.us). Department staff can also be contacted by calling 503-842-3408 x3412 should additional assistance be needed.

Sincerely,  
Sarah Absher, CFM, Director



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*Land of Cheese, Trees and Ocean Breeze*

**ON REMAND FROM THE OREGON LAND USE BOARD OF APPEALS**

**FINAL ORDER & OPINION: LUBA No. 2021-101**

**Staff Report Date: March 7, 2023**  
**Board of County Commissioners Hearing Date: March 14, 2023**

**REPORT PREPARED BY:** Sarah Absher, CFM, Director 

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**I. GENERAL INFORMATION:**

**Request:** Reconsideration of a Goal Exception request #851-21-000086-PLNG-01 for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a “committed” exception and/or a “reasons” exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary together with Floodplain Development Permit Request #851-21-000086-PLNG for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone. Applicants and property owners are Michael Rogers, et al (Exhibit A).

**Location:** The subject properties are Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123, of Section 7DD, and Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. There are multiple property owners and applicants.

**Description:** The subject properties are oceanfront properties located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary, specifically within the Watseco region of the unincorporated community (Exhibit D). The unincorporated community is bordered by the urban growth boundaries of the City of Garibaldi to the south and the City of Rockaway Beach to the north. Uses in the area are predominantly residential with recreational facilities located to the north (Shorewood RV Park), to the south (Camp Magrueder) and further to the east across Oregon State Highway 101 (Twin Rocks Friends Camp). Natural features identified in the area include Smith Lake, a coastal lake (Exhibit A).

The subject properties are zoned Community Medium Density Urban Residential (CR-2) and are located within the Beach and Dune Overlay Zone and the Flood Hazard Overlay Zone (Exhibit D). Most of the residential properties within this area have been developed, including the subject properties.

The area is served by urban levels of existing public services including the Twin Rocks Sanitary District, Watseco Water District, Tillamook PUD, Garibaldi Volunteer Fire Department, and the Tillamook County Sheriff's Office.

## **II. APPLICABLE PROVISIONS:**

- A. Oregon Statewide Planning Goals
- B. Oregon Revised Statutes
  - a. ORS 197.732
- C. Oregon Administrative Rules, Exception Requirements
  - a. OAR 660-004-0020-0022 Goal 2, Part II(c), Exception Requirements, (11) Goal 18 Fore-dune Development Reasons Exception Requirements
- D. Tillamook County Comprehensive Plan
- E. TCLUO Section 3.510: Flood Hazard Overlay Zone
- F. TCLUO Section 3.530: Beach & Dune Overlay Zone
- G. TCLUO Section 9.030: Text Amendment Procedure and Criteria
- H. TCLUO Article 10: Administrative Provisions

## **III. SUMMARY OF PROCEEDINGS:**

Public hearings were held before the Tillamook County Planning Commission on May 27<sup>th</sup>, June 24<sup>th</sup> and July 15, 2021, where two actions were taken by the Planning Commission at the July 15, 2021, hearing following discussion and consideration of Goal Exception request #851-21-00086-PLNG-01 and Development Permit request #851-21-000086-PLNG. After consideration of the findings of fact, testimony received, evidence in the record and the May 20, 2021, staff report, the Planning Commission voted 4 in favor and 2 against recommending approval of Goal Exception request #851-21-00086-PLNG-01 to the Board of County Commissioners. After consideration of the findings of fact, testimony received, evidence in the record and the May 20, 2021, staff report, a motion passed 5 in favor and 1 against recommending approval of Development Permit request #851-21-000086-PLNG to the Board of County Commissioners.

The Tillamook County Board of Commissioners opened a de novo public hearing on July 28, 2021, and continued the hearing to August 16, 2021. The Board, by a vote of 3-to-0, approved the Goal 18 Implementation Measure 5 (IM 5) Exception request #851-21-000086-PLNG-01 together with Floodplain Development Permit request #851-21-000086-PLNG for the installation of a beachfront protective structure (rip rap revetment) on the subject properties.

The Board of Commissioner's decision was appealed to the State of Oregon Land Use Board of Appeals (LUBA).

Petitioners in this appeal were Oregon Coast Alliance, Oregon Shores Coalition and Surfrider Foundation, and the State of Oregon Department of Land Conservation and Development (DLCD), (Intervenor-Petitioner).

The appeals filed by the petitioners and subsequent assignments of error were consolidated for the LUBA appeal hearing proceedings. LUBA issued the Final Opinion and Order (LUBA No. 2021-101) on September 30, 2022. Petitioners are identified throughout the final order and opinion as “OS/SF”, “OCA” and “DLCD” (Exhibit A).

Intervenors-Respondents are the applicants and property owners for approved Goal Exception request #851-21-000086-PLNG-01 and approved Floodplain Development Permit #851-21-000086-PLNG. A copy of the Final Order and Opinion is included as “Exhibit A” of this report.

Intervenors-Respondents (applicants and property owners) submitted a request in writing to Tillamook County for initiation of LUBA remand proceedings in accordance with ORS 215.435 and TCLUO Article 10.130(2)(c) on February 8, 2023 (Exhibit B). The remand hearing has been properly noticed in accordance with the provisions outlined in Article 10 of the TCLUO.

#### IV. SUMMARY OF OPINION AND ORDER:

Seven (7) assignments of error were collectively raised by the petitioners. The summary of each assignment of error and LUBA’s determination is contained in LUBA’s Final Order and Opinion included as “Exhibit A” of this report.

First Assignments of Error: The first assignment of error argued that the County erred in finding that the George Shand Tract properties do not require an exception and that the County erred in adopting alternative findings approving an exception for these tracts after determining that an exception is not required. Petitioners argued that the County misconstrued the law (Implementation Requirement 5) and adopted findings unsupported by substantial evidence that the George Shand Tract properties were *developed* on January 1, 1977. Implementation Requirement 5 describes development as being evidenced by physical improvements to vacant subdivision lots “through construction of streets and *provision* of utilities to the lot” (Exhibit A). LUBA did not agree with the County’s determination that because utilities existed in the general area, the George Shand Tracts were developed on January 1, 1977. LUBA concluded that the County’s determination is not supported by substantial evidence, and that the County misconstrued Implementation Requirement 5 in finding that this requirement can be met if utilities could have been *accessed* but had not actually been *provided* to the George Shand Tract properties. Absent substantial evidence in the record that utilities were *provided* to the George Shand Tract properties on January 1, 1977, an exception to Goal 18 is required for construction of a beachfront protective structure (BPS). This assignment of error was sustained (Exhibit A).

Alternative findings were made and adopted by the County in the event it was determined that the George Shand Tract properties were not “developed” on January 1, 1977. DLCD argued that the County erred in adopting alternative findings. LUBA determined the County did not error in adoption of alternative findings approving an exception for the George Shand Tracts and this assignment of error was denied (Exhibit A).

#### Second and Third Assignments of Error:

In their second and third assignments of error, petitioners argued that the County erred in approving a “catch-all” exception to Goal 18, IR5 and that the County also erred in approving a “demonstrated need” exception to Goal 18, IR5. Relatedly, OCA argues in their seventh assignment of error that the County failed to adequately address the four vacant properties in the analysis of reasons justifying the exception (Exhibit A).

OAR-660-004-0022(1) is a generic, “catch-all” provision that provides standards for a reasons exception in the absence of other, goal-specific rules. The rule recognizes a “demonstrated need” as one reason that may be used to justify an exception, but reasons that are not identified in OAR 660-004-0022(1) may also be used to justify an exception. Petitioners alleged the County erred in approving a general, “catch-all” reasons exception to Goal 18, IR 5 for those properties not developed on January 1, 1977, based upon what the County found to be unique

circumstances, and that the County's determination is not supported by sufficient reasons (Exhibit A).

*The "unique circumstances" are described in the record and later in this report. Discussion of unique circumstances largely attributed to the location of the subject properties in relation to two jetty structures: the Tillamook Bay jetty system located in Barview and the Nehalem Bay jetty system located north of Rockaway Beach.*

LUBA agreed that the County adopted sufficient findings that a "catch-all" reasons exception is appropriate for the residentially developed properties included in the George Shand Tract properties and the Pine Beach Subdivision, and those findings are supported by evidence in the reports provided by the intervenors. LUBA also agreed with petitioners that the County's evaluation was inadequate with respect to the vacant lots as the findings lacked an explanation of the role of the vacant lots and the relative location of any infrastructure in its analysis (Exhibit A).

In relation to the seventh assignment of error and the opinions outlined above, LUBA also concurred that the County failed to evaluate the relationship between the unique circumstances identified, the vacant parcels and any related infrastructure, and the proposed beachfront protective structure (BPS). Specifically, the County's findings failed to adequately explain why the conservation goal of Implementation Requirement 5 cannot be met on the vacant lots and/or why the conservation goal should yield to development of a beachfront protective structure on the vacant lots (Exhibit A).

The second, third and seventh assignments of error were sustained in part.

As mentioned previously in this section, petitioners also argued in second and third assignments of error that the County erred in approving a "demonstrated need" exception to Goal 18, IR5. The County adopted findings supporting a "demonstrated need" based upon the requirements of Statewide Planning Goals 7 (Hazards), 10 (Housing), 11 (Public Facilities), 14 (Urbanization) and 18 (Beaches and Dunes). Petitioners argued the County misconstrued the law and adopted findings not supported by substantial evidence. LUBA addressed each of these goals in the final order and opinion. In their analysis, LUBA referenced *VinCEP v. Yamhill County*, 55 Or LUBA 433, 449 (2008), stating that the "demonstrated need" standard requires that the County demonstrate 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 goal obligations (Exhibit A). For reasons outlined in the final order and opinion, LUBA concluded that the goals and comprehensive plan provisions relied upon by the County do not support a finding of "demonstrated need" for a reasons exception (Exhibit A).

These assignments of error were sustained.

The fourth assignment of error is related to the exception criteria contained in Oregon Administrative Rule OAR-660-004-0022(2)(c) and (d). Petitioners argued the County's decision failed to comply with the exception criteria, specifically that the County's ESEE analysis and determination of compliance with OAR 660-004-0020(2)(c) are not supported by substantial evidence and that the County misconstrued OAR-660-004-0020(2)(d) supported by inadequate findings (Exhibit A).

Based upon LUBA's determination that the County's reasons for adopting the exception for the vacant properties are deficient and require additional analysis and evidence, these assignments of error were not addressed as they relate to the vacant properties. LUBA determined that the County would have to address the vacant properties on remand with better findings and more evidence and it would be premature to address the assignments of error as they relate to the developed properties (Exhibit A).

In the fifth assignment of error, DLCD and OCA argued that the County erred in approving the Floodplain Development Permit due to inadequate findings supporting approval of the permit. Petitioners argued the County misconstrued the law and adopted findings not supported by substantial evidence when concluding that certain flood hazard area standards were met (TCLUO Section 3.510(10)(h)), and restated arguments that the findings and ESEE analysis do not respond to well-known and publicly available information about the impacts of beachfront

protective structures (Exhibit A).

LUBA found these assignments of error premature given the Floodplain Development Permit for construction of the beachfront protective structure included the vacant properties where the exception approval has been remanded back to the County. Additionally, LUBA recognized that the design of the beachfront protective structure may change as a result of the County's decision to approve an exception for the vacant properties and upon further consideration of the ESEE and alternatives analysis (Exhibit A).

The sixth assignment of error raised by OCA argued that the post acknowledgement plan amendment (PAPA) does not comply with Statewide Planning Goal 6: Air, Water and Land Resources Quality and Goal 7: Hazards. Petitioners argued the County failed to adequately address the impacts of the beachfront protective structure (BPS), specifically that the County's findings are inadequate because the findings allege that there will be no impacts resulting from the BPS. Petitioners also argue that the County's findings of compliance with Goal 7 are inadequate because they do not address long-term hazard impacts to the beach and public safety. Petitioners argued there is overwhelming information confirming adverse impacts historically occur with the placement of beachfront protective structures (Exhibit A).

Petitioners did not develop an argument identifying what is required to show consistency with Goals 6 and 7 and did not explain why that showing is not made in this case. The sixth assignment of error was denied (Exhibit A).

## **V. REMAND TO TILLAMOOK COUNTY:**

LUBA concluded that the County identified sufficient reason for approval of an exception to Goal 18 Implementation Requirement 5 for the developed lots under the "catch-all" provision but has not done so for the vacant lots. LUBA also concluded that because the vacant lots were included in the County's ESEE and alternatives analysis, it was premature for LUBA to address the assignments of error challenging the County's findings related to the standards of OAR-660-004-0022(c) and (d). Similarly, LUBA determined it was premature to consider the assignment of error regarding the County's issuance of a Floodplain Development Permit for the beachfront protective structure given further consideration and findings are needed to first support the goal exception approval for the vacant lots (Exhibit A).

As summarized in the Applicant's submittal, the issues on remand are divided into three primary areas of focus. Applicant's submittal provides further explanation of each area of focus in their submittal included as "Exhibit B" of this report:

- Goal 18, Implementation Requirement 5 Reasons Exception for the vacant lots.
- OAR 660-004-0020(2)(c) and (d): Reasons exception ESEE and compatibility analysis to support construction of the beachfront protective structure (BPS) on the vacant and developed lots.
- TCLUO Section 3.510(10)(h): Compliance with the County's floodplain development standards that prohibit made-made alterations of sand dunes, including vegetation removal, which would increase potential flood damage.

## **VI. DISCUSSION OF THREE AREAS OF FOCUS:**

### **A. Goal 18, Implementation Requirement 5 Reasons Exception for the vacant lots.**

Implementation Requirement 5 of Statewide Planning Goal 18 only allows beachfront protective structures where development existed on January 1, 1977. A goal exception is required for construction of a beachfront protective structure where development on lots did not exist on January 1, 1977. At the time of local review, the project area consisted of four vacant properties- two lots in the Pine Beach Subdivision and the two most southerly properties of the George Shand Tract properties. LUBA determined that the County did not produce adequate findings to justify a reasons exception for construction of a beachfront protective structure on the vacant, undeveloped properties. As reflected in LUBA's Final Order and Opinion, the four vacant properties cannot be considered to be "developed" on January 1, 1977, because there is no evidence that

physical improvements were provided to the properties. Findings must be adopted by the County to support why the vacant properties need to be protected with the revetment (Exhibits A & B).

The vacant properties are bordered by developed properties to the north and south as depicted on aerial imagery included as “Exhibit C” of this report. Applicants argue that the conservation goals of Goal 18, IR 5 cannot be met by leaving gaps in the beachfront protective structure and that the evidence in the record establishes justification to prove why an exception for construction of the beachfront protective structure on the vacant properties is needed (Exhibit B).

Applicants state that if the vacant properties are not protected, flank erosion from wave run-up on the vacant properties will result in failure of the beachfront protective structure, harming developed properties that LUBA determined were entitled to the revetment (Exhibit B). Included with the Applicants’ submittal is a written supplemental technical memorandum dated February 27, 2023, prepared by Chris Bahner, PE, D.WRE, of West Consulting (Exhibit B). The supplemental report includes an explanation as to why the revetment needs to be continuous in order to protect the developed lots and protect public infrastructure such as water, sewer, and electricity also installed on the eastern outer perimeter of the vacant properties (Exhibit B).

Mr. Bahner’s report provides 3 reasons that justify the need for a continuous beachfront protective structure (BPS) as approved and constructed rather than a structure that contains gaps at the vacant properties (Exhibit B). The report explains why a BPS with gaps significantly reduces the protection against risk of coastal flooding that a continuous beachfront protective structure provides. Mr. Bahner’s technical memorandum explains why a BPS with gaps is unacceptable and argues that a “gap” design places developed properties at risk of ocean flooding (Exhibit B).

Mr. Bahner’s report also argues that developed properties will remain at risk for future coastal “passive” erosion because passive erosion will continue at and around the gaps in the beachfront protective structure (BPS), resulting in damage to the BPS near the gaps, posing public safety threats due to increases in water flow velocity through the gaps where the vacant properties are located (Exhibit B).

Mr. Bahner also argues that it is not physically possible to construct end protection measures along the borders of the gaps in the BPS due to lack of area available for this type of construction on the developed properties (Exhibit B).

**B. OAR 660-004-0020(2)(c) and (d): Reasons exception discussion regarding the ESEE and compatibility analysis to support construction of the beachfront protective structure (BPS) on the vacant and developed lots.**

As captured in LUBA’s Final Order and Opinion, LUBA found petitioner’s assignments of error related to the reasons exception ESEE analysis and compatibility rules to be premature given lack of findings to support approval of a reasons exception for the vacant properties (Exhibit A). Applicants state a remand approval decision will largely rely on the findings already adopted by the Board of County Commissioners (Board) that confirm the revetment is constructed within the property backyards, not on the dry sand beach where the public recreates. Applicants also refer to findings adopted by the Board that acknowledge that a Goal 17: Coastal Shorelands Exception has been taken Unincorporated Community of Barview/Twin Rocks/Watseco where the subject properties are located. Applicants also assert that the revetment harms nothing and changes nothing except to protect the Applicants’ properties as it has been designed to do (Exhibit B).

In response to petitioners’ arguments related to the ESEE analysis and compatibility rules, included in the Applicants’ submittal are reports prepared by economic damages expert Eric Fruits, Ph.D. and ecologists and wetland specialist Dr. Martin Schott, Schott & Associates (Exhibit B). Dr. Schott’s analysis concluded that the environmental consequences of the beachfront protective structure are either neutral or positive (Exhibit B). The analysis completed by Dr. Fruits also concluded the impacts of the revetment are either positive or neutral (Exhibit B). Should the Board continue to approve construction of the beachfront protective structure,

Applicants propose to prepare findings addressing OAR 660-004-0022(2)(c) and (d) in light of all evidence to demonstrate standards are met (Exhibit B).

**C. TCLUO Section 3.510(10)(h): Compliance with the County's floodplain development standards that prohibit made-made alterations of sand dunes, including vegetation removal, which would increase potential flood damage.**

As explained previously in this report, petitioners argued that the construction process for the beachfront protective structure included vegetation removal and alteration of sand dunes- activities in violation of TCLUO Section 3.510(10)(h) of the County Flood Hazard Overlay Zone (Exhibit A). Petitioners argued that allowing any temporary vegetation removal and sand dune alteration for the construction of the beachfront protective structure increases potential for flood risk and is prohibited under this standard (Exhibit A).

The Flood Hazard Overlay Zone does not prohibit use of property but rather establishes standards for development of property to *promote the public health, safety and general welfare and to minimize public and private losses or damages due to flood conditions*. TCLUO Section 3.510(10) outlines specific standards for development of properties subject to ocean flooding (mapped coastal high hazard areas). These standards apply to residential and non-residential construction, manufactured dwellings and other types of development. Staff finds that most development activities permitted in beach and dune areas by the underlying zone or overlay zone occur in mapped coastal high hazard areas and result in alteration of sand dunes and vegetation removal. This finding is evidenced by review of TCLUO Section 3.530: Beach and Dune Overlay Zone and several other zoning code provisions contained within the Tillamook County Land Use Ordinance.

Applicants note that LUBA is required to defer to any plausible Board interpretation of its own code, and request that the Board expressly interpret whether TCLUO Section 3.510(10)(h) also applies to temporary construction impacts for the installation of facilities designed to decrease flood damage (Exhibit B).

Staff finds that the important distinction between the claim made by petitioners in their assignment of error and the County's longstanding application of TCLUO Section 3.510(10)(h). The County has applied this prohibition in review of development activities where permanent dune sand alteration and vegetation removal activities do not include dune restoration and re-planting efforts. Alterations and removal activities that are temporary in nature and occur during the construction phase for which use has been permitted as permissible. If this prohibition standard was interpreted to include temporary construction activities during development of a property for which a use has been permitted, the use would not be able to occur as any alteration (temporary or permanent) would be prohibited.

For example, foredune and remedial grading activities would be prohibited. Installation of piers for construction of a single-family dwelling (a use permitted outright in several residential zones) would also be prohibited as these construction activities result in alteration of the sand dune and vegetation removal. Boardwalks, habitat restoration projects and other types of permitted development such as beach manholes for fiber cable installation would be prohibited under the petitioners' interpretation of Section 3.510(10)(h) as these activities also require alteration of the sand dune and vegetation removal activities.

Staff also finds that interpretation suggested by petitioners would also prohibit temporary alterations and vegetation removal for any approved revetment or similar beachfront protective structure irrespective of Goal 18, IR 5 eligibility and would also prohibit passive stabilization or dune restoration activities.

The significance of this standard is to ensure that development of a property does not increase potential flood risk. Coastal high hazard areas are those areas mapped by FEMA that are subject to ocean flooding, and as such are generally located in areas of beaches and dunes. Together with the standards outlined in TCLUO Section 3.510(10), the provisions of the Beach and Dune Overlay Zone contained in TCLUO Section 3.530 require dune restoration and revegetation activities for development of a property. In mapped coastal high hazard areas subject to ocean flooding, these two overlay zones work together to ensure development occurs in a manner consistent with the County's policies contained in the Goal 18: Beaches and Dune element of the



Tillamook County Comprehensive Plan and the Goal 7: Hazards element of the Tillamook County Comprehensive Plan, thus also consistent with Statewide Planning Goals 7 and 18. The Conditions of Approval for construction of the beachfront protective structure contained in the approvals for Goal Exception request #851-21-000086-PLNG-01 and approved Floodplain Development Permit #851-21-000086-PLNG demonstrate how dune restoration efforts and flood risk reduction requirements are folded into project development to minimize risk of hazard.

Staff finds petitioners' interpretation conflicts with goals and policies contained within the County's comprehensive plan and implementing ordinances based upon the examples of permitted development shared in this report.

Applicants reiterate that the beachfront protective structure is located landward of the foredune, and that excavation activities occurred behind the foredune. Applicants state that findings should further explain that upon excavation, the sand from the trench was placed in front of the trench creating a barrier between any ocean flood risk and the subject properties (Exhibit B). Applicants also request the Board make findings that as constructed, the beachfront protective structure decreases the potential for flood risk and that arguments by the petitioners are moot as the revetment has been installed and there were no increases in flood risks.

## **VII. ADDITIONAL STAFF COMMENTS:**

The LUBA record for Goal Exception request #851-21-000086-PLNG-01 for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5 and Floodplain Development Permit Request #851-21-000086-PLNG for the installation of a beachfront protective structure is available for public inspection at the Tillamook County Department of Community Development (1510-B Third Street, Tillamook, Oregon) and is also available for review on the Community Development website on the Land Use Applications Page: <https://www.co.tillamook.or.us/commdev/project/851-21-000086-plng-01>. The exhibits listed below are those submitted for the remand hearing proceedings. All exhibits made part of the original staff report can also be found at the link provided above.

## **VIII. EXHIBITS:**

- A. LUBA Final Order & Opinion LUBA No. 2021-101
- B. Applicant's submittal for remand hearing
- C. Maps
- D. Public Comment

# EXHIBIT A

1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                   OREGON COAST ALLIANCE,  
5                                   *Petitioner,*

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7                                   and

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9                   OREGON DEPARTMENT OF LAND CONSERVATION  
10                                   AND DEVELOPMENT,  
11                                   *Intervenor-Petitioner,*

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13                                   vs.

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15                   TILLAMOOK COUNTY,  
16                                   *Respondent,*

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18                                   and

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20                   MICHAEL ROGERS, CHRISTINE ROGERS, BILL COGDALL,  
21                   LYNDA COGDALL, JON CREEDON, DAVID FARR, FRIEDA FARR,  
22                   DON ROBERTS, BARBARA ROBERTS, RACHEL HOLLAND,  
23                   JEFFREY KLEIN, TERRY KLEIN, DAVID HAYES, MICHAEL ELLIS,  
24                   MICHAEL MUNCH, ANGELA DOWLING, DAVID DOWLING,  
25                   MEGAN STECK BERG, EVAN DANNO, MARK KEMBALL,  
26                   ALICE KEMBALL, MARY ANN LOCKWOOD FAMILY TRUST,  
27                   and HEATHER STECK VON SEGGERN,  
28                                   *Intervenors-Respondents.*

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30                                   LUBA No. 2021-101

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32                   OREGON SHORES CONSERVATION COALITION  
33                                   and SURFRIDER FOUNDATION,  
34                                   *Petitioners,*

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36                                   and

1 OREGON DEPARTMENT OF LAND CONSERVATION  
2 AND DEVELOPMENT,  
3 *Intervenor-Petitioner,*

4  
5 vs.

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7 TILLAMOOK COUNTY,  
8 *Respondent,*

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10 and

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12 MICHAEL ROGERS, CHRISTINE ROGERS, BILL COGDALL,  
13 LYNDA COGDALL, JON CREEDON, DAVID FARR, FREIDA FARR,  
14 DON ROBERTS, BARBARA ROBERTS, RACHAEL HOLLAND,  
15 JEFFREY KLEIN, TERRY KLEIN, DAVID HAYES, MICHAEL ELLIS,  
16 MICHAEL MUNCH, ANGELA DOWLING, DAVID DOWLING,  
17 MEGAN STECK BERG, EVAN DANNO, MARK KEMBALL,  
18 ALICE KEMBALL, MARY ANN LOCKWOOD FAMILY TRUST,  
19 and HEATHER STECK VON SEGGERN,  
20 *Intervenors-Respondents.*

21  
22 LUBA No. 2021-104

23  
24 FINAL OPINION  
25 AND ORDER

26  
27 Appeal from Tillamook County.

28  
29 Sean T. Malone filed a petition for review and reply brief and argued on  
30 behalf of petitioner Oregon Coast Alliance.

31  
32 Anuradha Sawkar filed a petition for review and reply brief and argued on  
33 behalf of petitioners Oregon Shores Conservation Coalition and Surfrider  
34 Foundation.

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36 Steven E. Shipsey filed a petition for review and reply brief and argued on  
37 behalf of intervenor-petitioner Oregon Department of Land Conservation and  
38 Development.

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No appearance by Tillamook County.

Wendie L. Kellington filed a response brief and argued on behalf of intervenors-respondents Michael Rogers, Christine Rogers, Bill Cogdall, Lynda Cogdall, Jon Creedon, David Farr, Frieda Farr, Don Roberts, Barbara Roberts, Rachel Holland, Jeffrey Klein, Terry Klein, David Hayes, Michael Ellis, and Michael Munch.

Andrew H. Stamp filed a response brief and argued on behalf of intervenors-respondents Angela Dowling, David Dowling, Megan Steck Berg, Evan Danno, Mark Kemball, Alice Kemball, Mary Ann Lockwood Family Trust, and Heather Steck Von Seggern.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 09/30/2022

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Rudd.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county board of commissioners decision adopting a  
4 post-acknowledgment plan amendment (PAPA) that approves an exception to  
5 Statewide Planning Goal 18 (Beaches and Dunes), Implementation Requirement  
6 (IR) 5, and a related Floodplain Development Permit (FDP) for beachfront  
7 protective structures (BPS).

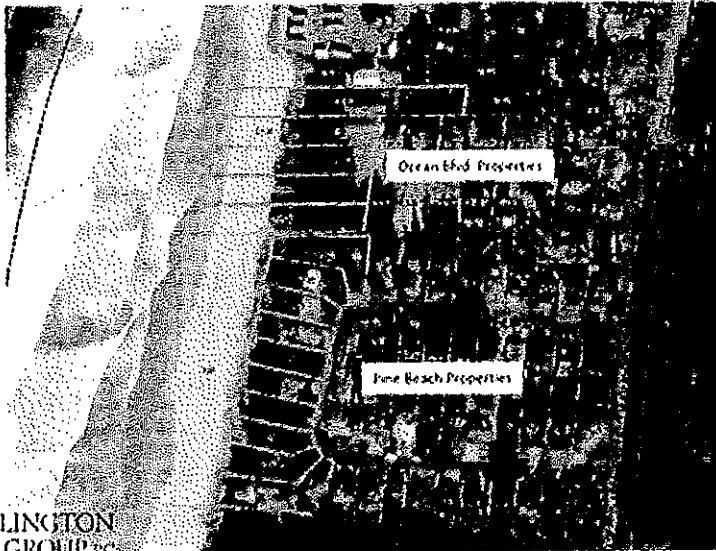
8 **BACKGROUND**

9 **A. The Subject Properties**

10 The subject properties include 15 oceanfront lots, 11 of which are  
11 developed with houses and four of which are vacant. Two of the vacant lots are  
12 at the southern end of the properties marked “Ocean Blvd. Properties” in the  
13 photo below. The Ocean Blvd. Properties are also referred to as the George Shand  
14 Tract properties. The other two vacant lots are located within the Pine Beach  
15 Subdivision, with each vacant lot bordered on both sides by developed property.<sup>1</sup>

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<sup>1</sup> Intervenors-respondents Angela Dowling, David Dowling, Megan Steck Berg, Evan Danno, Mark Kemball, Alice Kemball, Mary Ann Lockwood Family Trust, and Heather Steck Von Seggern are owners of the George Shand Tract properties. The remaining intervenors-respondents own properties within the Pine Beach Subdivision.



1 ILLINGTON  
& GROUP, INC.

2 Record 1951. The subject properties are

3 “located within the acknowledged Barview/Twin Rocks/Watseco  
4 Urban Unincorporated Community Boundary, specifically within  
5 the Watesco region of the unincorporated community. The urban  
6 unincorporated community is nearby to the urban growth boundaries  
7 of the City of Garibaldi to the south and the City of Rockaway Beach  
8 to the north. Uses in the area are predominately residential with  
9 recreational facilities located to the north (Shorewood RV Park), to  
10 the south (Camp Magruder) and further to the east across Oregon  
11 State Highway 101 (Twin Rocks Friends Camp). The only  
12 inventoried Goal 5 resource identified in the area is Smith Lake, a  
13 coastal lake, which is approximately 625 feet east and south from  
14 the subject properties. The only other natural resource in the area is  
15 the beach and ocean.” Record 18-19 (citations omitted).

16 **B. Planning Context**

17 The subject properties are zoned Community Medium Density Urban  
18 Residential and located within the county’s Beach and Dune (BD) and Flood  
19 Hazard (FH) overlay zones. Tillamook County Land Use Ordinance (TCLUO)  
20 3.530(1) provides that the purpose of the county’s BD overlay zone

1 “is to establish criteria and performance standards to direct and  
2 manage development and other activities in beach and dune areas in  
3 a manner that:

4 “(a) Conserves, protects and, where appropriate, restores the  
5 resources and benefits of coastal beach and dune areas;

6 “(b) Reduces the risks to life and property from natural and man-  
7 induced actions on these inherently dynamic landforms; and

8 “(c) *Ensures that the siting and design of development in beach*  
9 *and dune areas is consistent with Statewide Planning Goals*  
10 *7 and 18, and the Hazards Element and Beaches and Dunes*  
11 *Element of the Tillamook County Comprehensive Plan.”*  
12 (Emphasis added.)

13 Statewide Planning Goal 7 (Areas Subject to Natural Hazards) is “[t]o  
14 protect people and property from natural hazards.” Goal 7 identifies a variety of  
15 implementation requirements. For example, Goal 7, IR 4, provides, “Local  
16 governments will be deemed to comply with Goal 7 for coastal and riverine flood  
17 hazards by adopting and implementing local flood plain regulations that meet the  
18 minimum National Flood Insurance Program (NFIP) requirements.”<sup>2</sup>

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<sup>2</sup> Goal 7 also identifies implementation guidelines, including but not limited to the following:

“3. Local governments should consider nonregulatory approaches to help implement this goal, including but not limited to:

“a. providing financial incentives and disincentives;

“b. providing public information and education materials;



- 1           Goal 18 is:
- 2           “To conserve, protect, where appropriate develop, and where  
3 appropriate restore the resources and benefits of coastal beach and  
4 dune areas; and
- 5           “To reduce the hazard to human life and property from natural or  
6 man-induced actions associated with these areas.”

---

“c.   establishing or making use of existing programs to retrofit, relocate, or acquire existing dwellings and structures at risk from natural disasters.

“4.   When reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties.

“5.   Local governments should consider measures that exceed the National Flood Insurance Program (NFIP) such as:

“a.   limiting placement of fill in floodplains;

“b.   prohibiting the storage of hazardous materials in floodplains or providing for safe storage of such materials; and

“c.   elevating structures to a level higher than that required by the NFIP and the state building code.

“Flood insurance policy holders may be eligible for reduced insurance rates through the NFIP’s Community Rating System Program when local governments adopt these and other flood protection measures.”

1 Goal 18 sets out several implementation requirements, including IR 1, which  
2 provides:

3 “Local governments and state and federal agencies shall base  
4 decisions on plans, ordinances and land use actions in beach and  
5 dune areas, other than older stabilized dunes, on specific findings  
6 that shall include at least:

7 “(a) The type of use proposed and the adverse effects it might have  
8 on the site and adjacent areas;

9 “(b) Temporary and permanent stabilization programs and the  
10 planned maintenance of new and existing vegetation;

11 “(c) Methods for protecting the surrounding area from any adverse  
12 effects of the development; and

13 “(d) Hazards to life, public and private property, and the natural  
14 environment which may be caused by the proposed use.”

15 IR 2 limits development on Goal 18 lands, providing:

16 “Local governments and state and federal agencies shall prohibit  
17 residential developments and commercial and industrial buildings  
18 on beaches, active foredunes, on other foredunes which are  
19 conditionally stable and that are subject to ocean undercutting or  
20 wave overtopping, and on interdune areas (deflation plains) that are  
21 subject to ocean flooding. Other development in these areas shall be  
22 permitted only if the findings required in (1) above are presented  
23 and it is demonstrated that the proposed development:

24 “(a) Is adequately protected from any geologic hazards, wind  
25 erosion, undercutting, ocean flooding and storm waves; or is  
26 of minimal value; and

27 “(b) Is designed to minimize adverse environmental effects.”

1 Development of BPS is allowed on Goal 18 lands consistent with IR 5, which  
2 provides:

3 "Permits for [BPS] shall be issued only where development existed  
4 on January 1, 1977. Local comprehensive plans shall identify areas  
5 where development existed on January 1, 1977. For the purposes of  
6 this requirement and [IR] 7 'development' means houses,  
7 commercial and industrial buildings, and vacant subdivision lots  
8 which are physically improved through construction of streets and  
9 provision of utilities to the lot and includes areas where an exception  
10 to (2) above has been approved. The criteria for review of all [BPS]  
11 shall provide that:

12 "(a) visual impacts are minimized;

13 "(b) necessary access to the beach is maintained;

14 "(c) negative impacts on adjacent property are minimized; and

15 "(d) long-term or recurring costs to the public are avoided."<sup>3</sup>

16 **C. Application for County Approval of BPS on the Subject**  
17 **Properties**

18 The subject properties are within FEMA Flood Hazard Zone VE, a Coastal  
19 High Hazard Area for purposes of the county's FH overlay zone.<sup>4</sup> TCLUO

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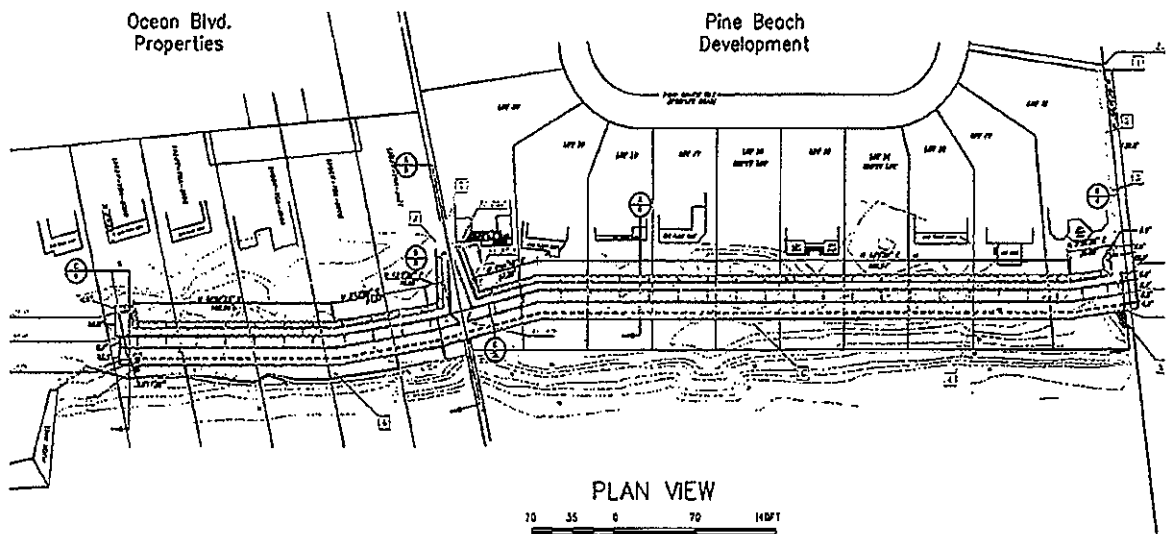
<sup>3</sup> The county did not adopt an exception to Goal 18, IR 2, for the subject properties because residential development was not prohibited on the subject properties. Record 110.

<sup>4</sup> "The Subject Properties are partially located within FEMA Flood Hazard Zone VE, which is assigned to coastal areas with a 1% or greater chance of flooding, and areas with an additional hazard associated with storm waves." Record 85.

1 3.510(4). Intervenors-respondents (intervenors) sought to construct BPS in the  
2 oceanside yards of their properties.

3 “The size of the requested BPS is approximately 840’ long x 30’  
4 wide, so the total amount of land to be used for the BPS is  
5 approximately 25,300 sq. ft. or 0.58 acres. However, the majority of  
6 the BPS will be buried within the foredune and replanted with native  
7 beach grasses, trees and shrubs that will reestablish natural shoreline  
8 vegetation.”<sup>5</sup> Record 35.

9 The subject properties and the proposed BPS locations are show below.



10

11 Record 2012. The revetment is shown located within solid black lines in the  
12 oceanside yards of the properties, cutting inland with a V-shape access ramp  
13 between the George Shand Tract and the Pine Beach Subdivision.

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<sup>5</sup> BPS are also referred to as revetment. “The revetment design includes the rock size, cross section configuration, and plan view layout. The rock size is based on typical rock size for rock revetment structures along the Oregon Coast. They are comprised rocks ranging in diameter from 1 to 5 feet (well-graded gradation).” Record 1992-93.

1           Intervenors applied to the county for a PAPA and an FDP for the proposed  
2 BPS. The PAPA sought an exception to the Goal 18, IR 5, restriction on BPS on  
3 properties that were not developed on January 1, 1977.<sup>6</sup>

4           Intervenors submitted materials in support of their assertions that the  
5 George Shand Tract properties all meet the “development existed on January 1,  
6 1977,” standard set out in IR 5 and do not require an exception but that the Pine  
7 Beach Subdivision properties require and qualify for an exception to IR 5.  
8 Intervenors argued that the George Shand Tract properties were developed on  
9 January 1, 1977, for three reasons: (1) they were part of a subdivision on January  
10 1, 1977, (2) Ocean Boulevard was constructed to serve the property on January  
11 1, 1977, and (3) a property to the north and outside of the George Shand Tract  
12 (tax lot 2900) had been approved for a septic system and obtained water from a  
13 nearby water district on January 1, 1977. Record 26, 1954. Intervenors did not

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<sup>6</sup> OAR 660-004-0005(1) provides:

“An ‘Exception’ is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan that:

- “(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
- “(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
- “(c) Complies with ORS 197.732(2), the provisions of this division and, if applicable, the provisions of OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040.”

1 argue that any of the Pine Beach Subdivision properties were developed on  
2 January 1, 1977.

3 As explained further below, the board of commissioners agreed with  
4 intervenors that the George Shand Tract properties do not require a Goal 18  
5 exception. In the alternative, the board found that those properties all qualify for  
6 an exception. The board approved intervenors' requests for a Goal 18 reasons  
7 exception for those properties that were not developed on January 1, 1977, and  
8 an FDP for all of the properties. These appeals followed.

9 **MOTION TO STRIKE AND MOTION TO TAKE OFFICIAL NOTICE**

10 Intervenor-petitioner Oregon Department of Land Conservation and  
11 Development's (DLCD's) petition for review includes a quotation from a source  
12 not included in the record, DLCD's Guidebook on Erosion Control Practices of  
13 the Oregon Coast. Intervenors filed a motion to strike the quotation from DLCD's  
14 petition for review.<sup>7</sup>

15 DLCD attached a copy of the guidebook to its response to the motion to  
16 strike and requests that we take official notice of the guidebook. DLCD explains  
17 that the guidebook originated from a suggestion in the September 2019 final  
18 report of DLCD's Goal 18: Pre-1977 Development Focus Group and observes

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<sup>7</sup> A hyperlink to the guidebook is provided at page 24, note 10, of DLCD's petition for review. As intervenors note, we will not click on a hyperlink in a footnote to obtain a document. *See Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534, 540-41 (2017).

1 that intervenors submitted that report into the record. Record 1955-88. We  
2 resolve both motions below.

3 Our review is generally limited to the record. ORS 197.835(2)(a). We may,  
4 however, take official notice of documents that (1) constitute officially  
5 cognizable law under ORS 40.090 and (2) have some relevance to the issues on  
6 appeal. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007). We may  
7 not “take official notice of facts within documents that are subject to notice under  
8 [ORS 40.090], if notice of those facts is requested for an adjudicative purpose  
9 (*i.e.*, to provide evidentiary support or countervailing evidence with respect to an  
10 applicable approval criterion that is at issue in the challenged decision).” *Id.*

11 ORS 40.090(2) provides that items subject to judicial notice include the  
12 public official acts of the executive department of the state. We understand  
13 intervenors to argue that the guidebook is not a “public official act” because there  
14 is no evidence that the guidebook has been adopted by the Land Conservation  
15 and Development Commission (LCDC). Motion to Strike 3-4. We have  
16 previously taken official notice of DLCD publications. In *Foland v. Jackson*  
17 *County*, 18 Or LUBA 731, 739-40, *aff’d*, 101 Or App 632, 792 P2d 1228 (1990),  
18 *aff’d*, 311 Or 167, 807 P2d 801 (1991), we took official notice of a DLCD  
19 destination resort handbook under ORS 40.090(2). We explained that there is a  
20 distinction between whether we may take official notice of a DLCD publication  
21 and whether we may rely on that publication in resolving the assignments of  
22 error. *Foland*, 18 Or LUBA at 740 n 5; *see also Shaff v. City of Medford*, 79 Or

1 LUBA 317, 321 (2019) (noting that LUBA may take official notice of an Oregon  
2 Department of Transportation (ODOT) manual as an official act of a state agency  
3 but that the manual may not be relied upon to establish any fact). It is undisputed  
4 that the guidebook is a DLCD publication. Thus, the guidebook may be subject  
5 to official notice.

6 DLCD contends that the guidebook “provides a recent articulation of the  
7 Goal 18 policy at issue in this appeal.” Response to Motion to Strike and Motion  
8 to Take Official Notice 4. Intervenors argue, and we agree, that any statewide  
9 land use policy is required to be adopted by LCDC as an administrative rule or a  
10 goal. ORS 197.040(1)(c)(A); *Foland*, 18 Or LUBA at 757 n 25 (noting that a  
11 DLCD handbook does not represent official policy positions, which must be  
12 adopted as administrative rules or goals). Accordingly, the guidebook may not  
13 be used for the purpose for which DLCD requests official notice.

14 The motion to take official notice is denied.

15 The motion to strike is granted.

## 16 **OVERVIEW OF ASSIGNMENTS OF ERROR**

17 Petitioners Oregon Shores Conservation Coalition and Surfrider  
18 Foundation (together, OS/SF) and Oregon Coast Alliance (OCA) argue in their  
19 first assignments of error that the county erred in finding that the George Shand  
20 Tract properties do not require an exception. DLCD and OCA argue in their first  
21 assignments of error that the county erred in adopting alternative findings



1 approving an exception for the George Shand Tract properties after determining  
2 that they do not require an exception.<sup>8</sup>

3 DLCD argues in its second assignment of error and OS/SF and OCA argue  
4 in their third assignments of error that the county erred in approving a “catch-all”  
5 exception to Goal 18, IR 5. Relatedly, OCA argues in its seventh assignment of  
6 error that the county failed to adequately address the four vacant lots in its  
7 analysis of reasons justifying the exception.

8 OS/SF and OCA argue in their second assignments of error and DLCD  
9 argues in its third assignment of error that the county erred in approving a  
10 “demonstrated need” exception to Goal 18, IR 5.

11 DLCD and OCA argue in their fourth assignments of error that the  
12 county’s decision failed to comply with the exception criteria in OAR 660-004-  
13 0022(2)(c).

14 OS/SF argues in its fourth assignment of error that the county’s decision  
15 failed to comply with the exception criteria in OAR 660-004-0022(2)(d).

16 DLCD and OCA argue in their fifth assignments of error that the county  
17 committed error in approving the FDP.

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<sup>8</sup> These consolidated appeals involve substantial briefing. In our order consolidating these appeals, we encouraged the parties to coordinate their briefing to the extent possible. We appreciate their efforts to do so and address related assignments of error together.

1 OCA argues in its sixth assignment of error that the PAPA does not comply  
2 with Statewide Planning Goal 6 (Air, Water and Land Resources Quality) and  
3 Goal 7.

4 Intervenors have coordinated their briefing and adopt each other's  
5 responses to the assignments of error.

#### 6 **STANDARD OF REVIEW**

7 We will reverse or remand a comprehensive plan amendment that is not  
8 consistent with the goals. ORS 197.835(6). We will reverse or remand a decision  
9 that misconstrues the applicable law or is not supported by substantial evidence.  
10 ORS 197.835(9)(a)(C), (D).

11 Adequate findings identify the applicable criteria, identify the evidence  
12 relied upon, and explain why the evidence leads to the conclusion that the criteria  
13 are or are not met.

14 "It is well-established that findings must be in the local  
15 government's decision, and that they must do more than merely state  
16 a conclusion of compliance. The Supreme Court first articulated the  
17 standard for evaluating the adequacy of local findings in *Sunnyside*  
18 *Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d  
19 1063 (1977):

20 "No particular form is required, and no magic words need be  
21 employed. What is needed for adequate judicial review is a  
22 clear statement of what, specifically, the decision-making  
23 body believes, after hearing and considering all the evidence,  
24 to be the relevant and important facts upon which its decision  
25 is based. Conclusions are not sufficient."

26 "In *Le Roux v. Malheur County*, 30 Or LUBA 268 (1995) we

1 explained the requirement for adequate findings as follows:

2 “The county’s \* \* \* findings must (1) identify the relevant  
3 approval standards, (2) set out the facts relied upon, and (3)  
4 explain how the facts lead to the conclusion that the request  
5 satisfies the approval standards. *Sunnyside*[, 280 Or at 20-21].  
6 *See also Penland v. Josephine County*, 29 Or LUBA 213  
7 (1995); *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994);  
8 *Hart v. Jefferson County*, 27 Or LUBA 612 (1994). In  
9 addition, when, as here, a party raises issues regarding  
10 compliance with any particular approval criteria, it is  
11 incumbent upon the local government to address those issues.  
12 *Hillcrest Vineyard v. Bd. of Comm. Douglas Co.*, 45 Or App  
13 283, 293, 608 P2d 201 (1980); *Collier v. Marion County*, 29  
14 Or LUBA 462 (1995). Moreover, when the evidence is  
15 conflicting, the local government may choose which evidence  
16 to accept, but must state the facts it relies on and explain why  
17 those facts lead to the conclusion that the applicable standard  
18 is satisfied. *Moore v. Clackamas County*, 29 Or LUBA 372  
19 (1995).’ *Le Roux*, 30 Or LUBA at 271.” *Larvik v. City of La*  
20 *Grande*, 39 Or LUBA 467, 470-71 (1998).

21 “[A] passing reference to the general subject matter of the goals is insufficient to  
22 establish compliance with them.” *Id.* at 472-73. The findings must substantively  
23 address how the proposed comprehensive plan amendment assures continued  
24 compliance with the goals. *Id.* at 473. Findings must respond to specific issues  
25 relevant to compliance with applicable approval standards that were raised in the  
26 proceedings below. *Norvell v. Portland Area LGBC*, 43 Or App 849, 853, 604  
27 P2d 896 (1979).

## 28 OS/SF’S AND OCA’S FIRST ASSIGNMENTS OF ERROR

29 Goal 18, IR 5, provides, in part, that permits for BPS “shall be issued only  
30 where development existed on January 1, 1977. \* \* \* For the purposes of this

1 requirement \* \* \* 'development' means \* \* \* vacant subdivision lots which are  
2 physically improved through construction of streets and provision of utilities to  
3 the lot \* \* \*." The county found:

4 **"The oceanfront George Shand Tracts were 'developed' on**  
5 **January 1, 1977 and so are eligible for [BPS] under Goal 18, [IR]**  
6 **5 without the need to take an exception.**

7 "Goal 18, [IR] 5 provides that permits for [BPS] may only be issued  
8 where 'development' existed on January 1, 1977. 'Development' is  
9 defined by Goal 18, [IR] 5 to mean 'houses, commercial and  
10 industrial buildings, and vacant subdivision lots which are  
11 physically improved through construction of streets and provision  
12 of utilities to the lot[.]' The Board finds that 'development' existed  
13 on January 1, 1977, within the meaning of Goal 18, [IR] 5, for Tax  
14 Lots 3000, 3100, 3104, 3203 and 3204 of map 01N10W07DA (the  
15 oceanfront 'George Shand Tracts'). The evidence in the record  
16 demonstrates that [o]n January 1, 1977, the George Shand Tracts  
17 were lots in the George Shand Tracts Subdivision, platted in 1950,  
18 Ocean Boulevard had been constructed to serve them, and water was  
19 provided by Watseco Water District and individual septic systems.  
20 An example of this is Application, Exhibit D in the record, which is  
21 the building permit for tax lot 2900, directly north of the George  
22 Shand Tracts, approved in 1974 and indicating that 'Witseco Water'  
23 would be used and a 'septic tank.' Clearly, the predecessor to the  
24 Watseco-Barview Water District's infrastructure in Watseco was  
25 available to serve the George Shand Tracts as early as 1974.  
26 Moreover, DLCD has confirmed that it is that agency's position that  
27 these lots were developed on January 1, 1977 under Goal 18, [IR] 5.  
28 Accordingly, the Board finds that the George Shand tracts may be  
29 issued a permit for BPS without the need to take an exception to  
30 Goal 18, [IR] 5." Record 26 (boldface in original).

31 OS/SF argues that the county misconstrued the law and adopted findings  
32 unsupported by substantial evidence that the George Shand Tract properties were

1 developed on January 1, 1977, and do not require an exception. OCA joins in this  
2 assignment of error.

3 **A. Interpretation**

4 When interpreting a law, the first level of analysis requires consideration  
5 of the text, context, and, if useful, the legislative history. *State v. Gaines*, 346 Or  
6 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317  
7 Or 606, 610-12, 859 P2d 1143 (1993). “[W]ords of common usage typically  
8 should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611.

9 IR 5 describes development as being evidenced by physical improvements  
10 to vacant subdivision lots “through construction of streets and *provision of*  
11 *utilities to the lot*” on January 1, 1977. (Emphasis added.) The county construed  
12 IR 5 to mean that a vacant subdivision lot is developed on January 1, 1977, if it  
13 is served by a road and if it is possible for the land to obtain water and treat waste  
14 with an on-site septic system. The dictionary defines “provision” as “the act or  
15 process of providing” and “provide” as “to supply what is needed for sustenance  
16 or support.” *Webster’s Third New Int’l Dictionary* 1827 (unabridged ed 2002).  
17 The county’s interpretation of “provision of utilities to the lot” requires not that  
18 water be supplied to the lot but, rather, that water be available if requested.  
19 Intervenors argue that that interpretation is correct because the requirement refers  
20 to “construction of streets” and “provision of utilities,” and “provision” of  
21 utilities must mean something different than “construction” of utilities.

1           We disagree. “As a general rule, we construe a statute in a manner that  
2 gives effect, if possible, to all its provisions.” *Crystal Communications, Inc. v.*  
3 *Dept. of Rev.*, 353 Or 300, 311, 297 P3d 1256 (2013). IR 5 provides that  
4 considering a vacant subdivision lot to be developed requires *physical*  
5 *improvements* to the lot. These physical improvements to the lot are to be  
6 reflected through both the construction of streets and the provision of utilities to  
7 the lot. The board of commissioners’ interpretation requires that we insert  
8 language into the requirement, changing the requirement from “physical  
9 improvements to subdivision lots through construction of streets and provision  
10 of utilities to the lot” to “physical improvements to subdivision lots through  
11 construction of streets and **feasibility of utility service** to the lot.” We will not  
12 insert what has been omitted. ORS 174.010.

13           We agree with OS/SF and OCA that Goal 18, IR 5, protects development  
14 that existed on January 1, 1977.<sup>9</sup> The county misconstrued IR 5 in finding that it  
15 can be met if utilities could have been accessed but had not actually been  
16 provided to the lot.

---

<sup>9</sup> “The purpose of a [provision protecting historic uses] is to prevent hardship to individuals who have existing uses. [Such a clause] is enacted to preserve rights, not to grant additional rights.” *Spaght v. Dept. of Transportation*, 29 Or App 681, 686, 564 P2d 1092 (1977).

1           **B. Substantial Evidence**

2           Substantial evidence is evidence that a reasonable person would rely upon  
3 to make a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608  
4 (1993). As evidence that, on January 1, 1977, the George Shand Tract properties  
5 were vacant subdivision lots physically improved through construction of streets  
6 and provision of utilities to the lot, the county relied upon “the building permit  
7 for tax lot 2900, directly north of the George Shand Tracts, approved in 1974 and  
8 indicating that ‘Watseco Water’ would be used and a ‘septic tank.’” Record 26.  
9 The county concluded, “Clearly, the predecessor to the Watseco-Barview Water  
10 District’s infrastructure in Watseco was available to serve the George Shand  
11 Tracts as early as 1974.” *Id.*

12           The county’s finding that the George Shand Tract properties were  
13 developed on January 1, 1977, is not supported by substantial evidence. The  
14 county’s finding does not reference physical improvement to the George Shand  
15 Tract properties by provision of utilities but, rather, concludes that utilities  
16 existed in the general area and, we assume, would have been feasible if pursued.<sup>10</sup>

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<sup>10</sup> The county’s findings state, “Moreover, DLCD has confirmed that it is that agency’s position that these lots were developed on January 1, 1977 under Goal 18, [IR] 5.” Record 26. DLCD disputes that statement, explaining that it did not confirm to the county that it considered the lots developed but, rather, that it observed, in a letter to the county, that county staff had reached that conclusion. DLCD’s Petition for Review 16 n 7. It is not clear from the findings what weight the county placed on its perception that DLCD concluded that the properties were developed, but we understand that these properties are not identified as having been developed on January 1, 1977, in DLCD’s Coastal Atlas. Record 41 n 4

1 Absent substantial evidence in the record that utilities were provided to the  
2 George Shand Tract properties on January 1, 1977, the George Shand Tract  
3 properties require an exception to Goal 18 in order to construct BPS. The  
4 county's conclusion to the contrary is not supported by substantial evidence.

5 This assignment of error is sustained.

6 **DLCD'S AND OCA'S FIRST ASSIGNMENTS OF ERROR**

7 OAR 660-004-0000(2) provides that exceptions may be possible for (1) a  
8 use not allowed by the applicable goal or (2) a use authorized by a goal that  
9 cannot comply with the standards for the use. DLCD's first assignment of error  
10 is that the county erred in adopting alternative findings approving an exception  
11 for the George Shand Tract properties because BPS are a use allowed by the goal  
12 and because the county found that the properties meet the applicable standards.  
13 OCA joins in this assignment of error.

14 The county found that the George Shand Tract properties meet the  
15 standards for BPS (developed on January 1, 1977) and do not require an  
16 exception. However, for the reasons set out in our resolution of OS/SF's and  
17 OCA's first assignments of error, the county's determination that these properties  
18 were developed on January 1, 1977, misconstrued the law and is not supported  
19 by substantial evidence. Accordingly, DLCD's argument that the county may not

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(stating that the number of oceanfront ownerships in the littoral cell subregion that are entitled to be armored with BPS "includes the five (5) George Shand Tracts that the County and DLCD agree are entitled to the proposed BPS, contrary to DLCD's online 'atlas'").



1 approve the exception because it is for a use allowed by the goal does not provide  
2 a basis for remand or reversal.

3 Anticipating that a reviewing body might find fault with its determination  
4 that the George Shand Tract properties do not require an exception, the county  
5 adopted alternative findings approving an exception. DLCD makes a variety of  
6 arguments that the county erred in adopting those alternative findings.

7 The county's alternative findings include:

8 **"In the alternative only, if a reviewing authority decides that the**  
9 **George Shand Tracts were not 'developed' on January 1, 1977**  
10 **and so are ineligible for [BPS], then as a precaution only and**  
11 **only if such an appellate finding of ineligibility under Goal 18,**  
12 **[IR] 5 unless an exception is taken, is made then the Board also**  
13 **approves an exception to Goal 18, [IR] 5 for the specified George**  
14 **Shand tracts.**

15 "Accordingly, it is only in the alternative and in the event that an  
16 appellate authority reverses or remands our determination that the  
17 George Shand Tracts were 'developed' on January 1, 1977, that the  
18 Board approves, in the alternative, a Goal 18, [IR] 5 exception to the  
19 date of eligibility for the George Shand Tracts." Record 26 (boldface  
20 and underscoring in original).

21 The alternative nature of these findings is reiterated in a footnote that provides,  
22 in part, "If the Board's findings that the George Shand Tracts were developed on  
23 January 1, 1977 become final without appeal or are sustained on appeal, there is  
24 no justification to take a Goal 18, [IR] 5 exception for those properties and none  
25 is taken in that case, as explained herein." Record 29 n 1.

1 We agree with intervenors that alternative findings are a common  
2 occurrence in land use decisions. *See, e.g., 1000 Friends of Oregon v. Jackson*  
3 *County*, 76 Or LUBA 270, 277 (2017), *rev'd on other grounds*, 292 Or App 173,  
4 423 P3d 793 (2018), *rev dismissed*, 365 Or 557 (2019) (“[T]he county did not  
5 commit reversible error in adopting alternative reasons exceptions under both  
6 OAR 660-004-0022(1)(a) and 660-004-0022(3).”); *id.* at 278 (“Errors made  
7 under one set of reasons standards may be harmless if the county adequately  
8 justifies an exception under a different set of reason standards.”). The county did  
9 not err in adopting alternative findings approving an exception.

10 This assignment of error is denied.

11 **DLCD, OS/SF, AND OCA’S SECOND AND THIRD ASSIGNMENTS OF**  
12 **ERROR AND OCA’S SEVENTH ASSIGNMENT OF ERROR**

13 **A. Introduction**

14 ORS 197.732(2)(c) provides that a local government may approve an  
15 exception to a statewide planning goal where the following standards are met:

16 “(A) Reasons justify why the state policy embodied in the  
17 applicable goals should not apply;

18 “(B) Areas that do not require a new exception cannot reasonably  
19 accommodate the use;

20 “(C) The long term environmental, economic, social and energy  
21 [(ESEE)] consequences resulting from the use at the proposed  
22 site with measures designed to reduce adverse impacts are not  
23 significantly more adverse than would typically result from  
24 the same proposal being located in areas requiring a goal  
25 exception other than the proposed site; and

1           “(D) The proposed uses are compatible with other adjacent uses or  
2           will be so rendered through measures designed to reduce  
3           adverse impacts.”

4           OAR 660-004-0022 sets out criteria applicable to reasons exceptions.

5           OAR 660-004-0022(1) provides:

6           “For uses not specifically provided for in this division, or in OAR  
7           660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040,  
8           reasons include but are not limited to the following: There is a  
9           demonstrated need for the proposed use or activity, based on one or  
10          more of the requirements of Goals 3 to 19; and either:

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

19          “(b) The proposed use or activity has special features or qualities  
20          that necessitate its location on or near the proposed exception  
21          site.”

22          “OAR 660-004-0022(1) is a generic, ‘catch-all’ provision that provides standards  
23          for reasons exceptions in the absence of other, goal-specific rules.” *Oregon*  
24          *Shores Conservation Coalition v. Coos County*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA  
25          No 2020-002, May 4, 2021) (slip op at 23). The rule recognizes a “demonstrated  
26          need” as one reason that may be used to justify an exception, but reasons that are  
27          not identified in OAR 660-004-0022(1) may also be used to justify an exception.  
28          *Morgan v. Douglas County*, 42 Or LUBA 46, 52 (2002). OS/SF, OCA, and  
29          DLCD (collectively, petitioners) allege that the county erred in finding that

1 adequate reasons justify a Goal 18, IR 5, exception under both the “catch-all” and  
2 “demonstrated need” reasons.

3 **B. DLCD’s Second Assignment of Error, OS/SF’s and OCA’s**  
4 **Third Assignments of Error, and OCA’s Seventh Assignment of**  
5 **Error**

6 The county approved a general, “catch-all” reasons exception to Goal 18,  
7 IR 5, for those properties that were not developed on January 1, 1977, based upon  
8 what the county determined were unique circumstances. Record 22. OS/SF  
9 argues in its third assignment of error and DLCD argues in its second assignment  
10 of error that the county’s “catch-all” exception is not supported by sufficient  
11 reasons. OCA joins in these assignments of error.

12 **1. Interpretation**

13 First, OS/SF argues that the county misconstrued the law in identifying the  
14 reasons that it concluded supported the “catch-all” exception. OS/SF argues that  
15 interpreting OAR 660-004-0021 requires use of the canon of construction  
16 referred to as “*noscitur a sociis*.” OS/SF explains:

17 “The Oregon Supreme Court recently explained that *noscitur a*  
18 *sociis* is the ‘relevant rule for interpreting a word or phrase’ when a  
19 statute provides ‘a nonexclusive list of examples.’ *Capital One Auto*  
20 *Fin. Inc. v. Dep’t of Revenue*, 363 Or 441, 453, 423 P3d 80 (2018).  
21 *Noscitur a sociis* is ‘[a] canon of construction holding that the  
22 meaning of an unclear word or phrase should be determined by the  
23 words immediately surrounding it.’ *Black’s Law Dictionary* 1160-  
24 61 (9th ed 2009). Under this interpretative rule, the court asked  
25 whether any of the specifically enumerated examples in a non-  
26 exclusive list provided by a statute shared ‘a common  
27 characteristic.’ *Capital One*, 363 Or at 453. This common

1 characteristic is then used as context for understanding the meaning  
2 of the unclear phrase. *Id.*” OS/SF’s Petition for Review 40.

3 The statute at issue in *Capital One* stated that “[i]ncome from sources within this  
4 state” included (1) “income from tangible or intangible property located \* \* \* in  
5 this state,” (2) “income from tangible or intangible property \* \* \* having a situs  
6 in this state,” and (3) “income from any activities carried on in this state,  
7 regardless of whether carried on in intrastate, interstate or foreign commerce.”  
8 363 Or at 451. The court concluded that the common characteristic was income  
9 from sources within the state. *Id.* at 453.

10 OS/SF contends that the characteristics of the “demonstrated need” reason  
11 necessarily cabin the permissible reasons for a “catch-all” exception:

12 “The ‘requirements of Goals 3 to 19’ share the common  
13 characteristic of being legal obligations (i.e., goals, regulations, or  
14 statutes) that a local government would be unable to meet absent the  
15 proposed exception to allow the proposed use, whereas subsections  
16 (1)(a)-(b) share the common characteristic of being locational  
17 factors. Therefore, \* \* \* any other unenumerated reasons that could  
18 justify a Goal 18, IR 5 exception should be similarly grounded in a  
19 legal obligation in conjunction with a locational factor that the local  
20 government would be unable to meet absent an exception for the  
21 proposed use.” OS/SF’s Petition for Review 41.

22 Nothing in the rule suggests to us that LCDC intended to so limit  
23 permissible reasons for an exception. OAR 660-004-0020(1) provides, in part,  
24 that, “[if] a jurisdiction determines that there are reasons consistent with OAR  
25 660-004-0022 to use resource lands for uses not allowed by the applicable Goal

1   \*\*\*, the justification shall be set forth in the comprehensive plan as an  
2   exception.”

3           “The exception shall set forth the facts and assumptions used as the  
4           basis for determining that a state policy embodied in a goal should  
5           not apply to specific properties or situations, including the amount  
6           of land for the use being planned and why the use requires a location  
7           on resource land[.]” OAR 660-004-0020(2)(a).

8   We have previously said that “LCDC probably intended that \*\*\* reasons  
9   sufficient to justify an exception [other than a ‘demonstrated need’] cross some  
10   minimal threshold to ensure that the reasons are not makeweights that render the  
11   goal requirement meaningless.” *Todd v. City of Florence*, 52 Or LUBA 445, 463  
12   (2006). We conclude that the unique circumstances here, explained below, rise  
13   to a level that is not “makeweight” and provide sufficient reasons for why Goal  
14   18 should yield to the use of a set amount of resource land for a particular use.  
15   We reject OS/SF’s interpretation of the rule and proceed to the findings.

## 16                   2.    Adequacy of Findings

17           Stated again, Goal 18 is:

18           “To conserve, protect, where appropriate develop and where  
19           appropriate restore the resources and benefits of coastal beach and  
20           dune areas; and

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

23   The state policy embodied in IR 5 is one of balancing conservation and protection  
24   of beach and dune areas by limiting permits for BPS to those properties where  
25   development existed on January 1, 1977, and ensuring that all BPS are reviewed

1 to minimize visual impacts, maintain necessary access to the beach, minimize  
2 negative impacts on adjacent property, and avoid long-term or recurring costs to  
3 the public.

4 The county concluded that the “development existed on January 1, 1977,”  
5 limitation on construction of BPS should not apply to the subject properties  
6 because the properties were approved for residential development consistent with  
7 the applicable land use provisions and are subject to unique coastal conditions.  
8 The county incorporated intervenors’ expert’s reports as findings. Record 14. The  
9 reports explain:

10 “The proposed revetment will be located within the Rockaway  
11 Beach littoral cell. This littoral cell extends from Cape Falcon on the  
12 north to Cape Madreas on the south, a distance of about 20 miles.  
13 This littoral cell has three subregions: (1) Nehalem, which is the area  
14 north of the Nehalem Bay jetties; (2) Rockaway, which is the area  
15 between Nehalem Bay and Tillamook Bay; and (3) Bayocean, which  
16 is the area south of the Tillamook Bay jetties. The proposed project  
17 would be located in the Rockaway subregion (between Nehalem  
18 Bay and Tillamook Bay).

19 “\* \* \* \* \*

20 “There are two inlets with coastal jetties that have had a significant  
21 influence on the sediment longshore transport and beach  
22 geomorphology (DOGAMI, 2014) within the Rockaway Beach  
23 littoral cell: (1) Tillamook Bay, which is about 5 miles north of Cape  
24 Madreas (north jetty was constructed in 1914 while the south jetty  
25 was constructed in 1974); and (2) Nehalem Bay, which is about 6  
26 miles north of Tillamook Bay (south jetty was constructed in 1916  
27 while the north jetty was constructed in 1918).” Record 1253.

28 The county found:

1           “The record supports the conclusion that the Subject Properties are  
2           faced with unique and exceptional circumstances. The Subject  
3           Properties represent ‘appropriate development’ as defined by Goal  
4           18—the residential subdivisions and most of the development was  
5           approved to be limited to the areas Goal 18, [IR] 2 allows; was  
6           setback more than 200 feet from the statutory vegetation line, more  
7           than 200 yards from the ocean and were separated from the ocean  
8           by a coastal forest—all of which was appropriate under Goal 18 and  
9           was designed to protect the properties from coastal hazards. *In spite*  
10          *of these protective measures and contrary to the expert analyses at*  
11          *the time, the Subject Properties are now threatened with destruction*  
12          *by unanticipated coastal erosion and flooding. Analysis from the*  
13          *[intervenors’] expert in the record demonstrates that the natural*  
14          *processes in the littoral subregion in which the Subject Properties*  
15          *are located have been uniquely disrupted by the combined effects of*  
16          *the two manmade jetties, which are unusually close in proximity and*  
17          *cabin the littoral subregion like nowhere else on the Oregon Coast,*  
18          *and the lasting effects of the El Niño/La Niña events of the late*  
19          *1990s. Accordingly, the requested exception is supported by unique*  
20          *and exceptional circumstances and is consistent with the*  
21          *overarching purpose and intent of Goal 18 and the exceptions*  
22          *process.”*<sup>11</sup> Record 23 (emphasis added).

23          The county concluded:

24               “[N]o legitimate purpose is served by punishing [intervenors] with  
25               large losses of their property and perhaps lives, by refusing to allow  
26               them to protect their residential properties in an acknowledged  
27               residential zone, in an acknowledged urban unincorporated  
28               community, under a planning program approved in complete  
29               conformity with Goal 18, because an unanticipated natural disaster  
30               has stricken.” Record 33.

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<sup>11</sup> Five expert reports are listed in the decision as being “adopted and incorporated by reference as additional findings of fact.” Record 27.



1                                   **a.     Appropriate Development**

2           OAR 660-004-0000(2) provides, in part, that “[t]he exceptions process is  
3 not to be used to indicate that a jurisdiction disagrees with a goal.” DLCD argues  
4 that the county’s approval of the exception improperly reflects a policy  
5 disagreement with Goal 18. DLCD’s Petition for Review 25. The county found  
6 that the subject properties were zoned and platted as residential lots because, at  
7 the time, the dunes were not subject to wave overtopping. DLCD contends that  
8 the county misconstrued Goal 18 when it found that the subject properties were  
9 identified as appropriate for residential development:

10           “[F]or [BPS], Goal 18 requires a county to conduct an inventory  
11 utilizing criteria provided in Goal 18, with the sole purpose of  
12 identifying which properties on the oceanfront in their jurisdiction  
13 are eligible for such structures. This includes the provision limiting  
14 permits for [BPS] to development that existed on January 1, 1977,  
15 in [IR] 5. One would expect that all post-1977 residential  
16 development in areas identified and inventoried as beach and dune  
17 areas by a local government would be authorized in conformance  
18 with Goal 18. The county erred when they assert that any such  
19 ‘appropriate’ development should then, categorically be eligible for  
20 beachfront protection.” *Id.* at 26.

21           OS/SF also argues that the county failed to recognize that the text of IR 5  
22 served as public notice that BPS would not be allowed, consistent with Goal 18,  
23 on properties developed after January 1, 1977. OS/SF further argues that  
24 “[e]conomic arguments (e.g., property value at risk) as put forth in the findings,  
25 are not reason enough to justify an exception decision, as similar economic

1 arguments could be made for other locations along the Oregon coast that are  
2 ineligible for beachfront protection.” OS/SF’s Petition for Review 42-43.

3 We agree with petitioners that zoning that allows the development of a  
4 residence on property and the risk of property loss are not unique circumstances  
5 sufficient to justify an exception to Goal 18, IR 5. IR 5 includes a provision such  
6 that people who acquired property that was not developed on January 1, 1977,  
7 were on notice that the goal did not allow BPS. The county found that the  
8 development on the subject properties is in a location that “Goal 18 expressly  
9 states is \* \* \* safe and ‘appropriate’ for residential development.” Record 35. We  
10 agree with petitioners that Goal 18 does not identify specific locations as safe and  
11 appropriate for development such that the use is thereafter entitled to protection.  
12 Standing alone, the risk to development in an area developed with residential uses  
13 in compliance with then-applicable law does not justify an exception and must  
14 be considered in connection with the unique erosion patterns identified by the  
15 county. First, however, we address the county’s conclusions concerning the  
16 potential for future hardening and its implications for whether the IR 5  
17 conservation goal is unachievable in this location.

18 **b. Potential Future Extent of Coastal Hardening**

19 The county also based its decision on the potential for additional hardening  
20 in the area. In evaluating the impact of the BPS on the broader area, the county  
21 found:

22 “Approximately 5.6% (5,930 ft of 106,200 ft) of the entire

1 Rockaway Beach littoral cell has some riprap or concrete wall  
2 revetment. \* \* \* This does not count the four jetties in the cell. The  
3 proposed 880-foot-long riprap revetment for the Subject Properties  
4 will increase the total revetment length in the entire Rockaway  
5 Beach littoral cell to 6,810 feet, an increase of 0.8%. When  
6 considering the Rockaway subregion, the proposed revetment will  
7 increase the percentage already comprised of rock/wall revetments  
8 from 18.6% to 21.4% (a 2.8% increase), again not counting the  
9 jetties.” Record 1253.

10 The county concluded that

11 “nearly 90% of the ownerships within the Rockaway subregion are  
12 already protected by BPS *or are entitled to be protected by BPS*  
13 *when the time comes*. Thus, when necessary, the already unhealthy  
14 ocean/beach interface will be further hardened. There is no ‘natural’  
15 beach/ocean process that can be saved on this beach/ocean by  
16 refusing to allow the BPS/rip rap requested here in this unique  
17 Rockaway subregion.” Record 25 (emphasis added).

18 We agree with petitioners that the county erred in concluding that the  
19 impact on the coast was acceptable based on potential additional hardening. The  
20 county concluded that, although many of the properties that are eligible for BPS  
21 without an exception have not yet installed BPS, an exception is appropriate. The  
22 county relied, in part, on DLCD’s position in a 2021 Goal 18, IR 5, exception  
23 case in Lincoln County, where the county concluded that the ESEE impacts of  
24 additional hardening would not be significant due to the amount of existing and  
25 potential BPS.

1 Both OS/SF and DLCD dispute the county's reliance on DLCD's position  
2 on the Lincoln County Goal 18 exception.<sup>12</sup> OS/SF broadly argues:

3 "Less than 6% of the entire littoral cell, and particularly the area of  
4 the subject properties, is currently armored. Rec. 452, 1253. DLCD  
5 raised the concern that an increase of 2.8% 'is committing to a high  
6 level of shoreline armoring in this sublittoral cell.' Rec. 452.  
7 Further, even properties that were developed prior to January 1,

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<sup>12</sup> DLCD's testimony in the Lincoln County case was:

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

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

"\* \* \* \* \*

"The addition of three [BPS] on this stretch of beach will be compatible with other adjacent uses because this littoral cell is already almost entirely armored. As submitted in the application materials, Gleneden Beach 'has the longest stretch and highest density of [BPS] along the Oregon coast.' Approximately 75 percent of the coastline is already armored in this littoral cell." Record 1348-49, 1415-16.

1           1977 are not simply ‘entitled’ to BPS, but required to comply with  
2           permitting processes meant to support Goal 18’s purpose.” OS/SF’s  
3           Petition for Review 44.

4    In these proceedings, DLCD commented:

5           “[Intervenors] have identified that nearly 90% of the Rockaway  
6           Subregion of the Rockaway littoral cell is eligible for BPS. While  
7           many of those homeowners may choose to armor their properties  
8           over the coming years and decades, many of those lots are not yet  
9           armored and those permitting decisions have not yet been made.  
10          Much of this sublittoral cell, and particularly the area of the subject  
11          properties, is not currently armored. If the County decides to  
12          approve this exception request and application for a BPS, the  
13          County is committing to a high level of shoreline armoring in this  
14          sublittoral cell. As has been observed in other beach systems,  
15          particularly in Lincoln Beach in Lincoln County, the proliferation of  
16          shoreline armoring has been detrimental to the natural functioning  
17          of the beach system. By approving additional armoring, the County  
18          is committing to a preference for private development protection  
19          over protection of the beach and dune resource.” Record 451.

20       The focus in the Lincoln County case appears to have been on the extent of BPS  
21       already in place that “ha[d] resulted” in disruption. Here, differently, the county  
22       reasoned that the mere potential for additional hardening was important.

23       Moreover, Lincoln County’s decision and DLCD’s position in the Lincoln  
24       County case is not controlling or even particularly relevant here. We agree with  
25       petitioners that the county’s conclusion that additional armoring is inevitable is  
26       speculative and not a basis for an exception. IR 5 provides that all BPS are to be  
27       reviewed to minimize visual impacts, maintain necessary access to the beach,  
28       minimize negative impacts on adjacent property, and avoid long-term or  
29       recurring costs to the public. The findings do not provide a basis to assume that,

1 because properties may be eligible to apply for BPS, those BPS will be sought  
2 and approved.

3 **c. Change in Erosion Patterns**

4 According to intervenors' expert, the subject properties are exposed to  
5 new, unanticipated conditions due the lasting effects of the El Niño and La Niña  
6 events of the late 1990s combined with long-existing, closely located jetties. The  
7 county concluded that this is a unique and exceptional circumstance and that  
8 approving the exception is consistent with what the county identified as the  
9 overarching purpose and intent of Goal 18, *which includes reducing the hazard*  
10 *to human life and property*. Record 22-23. The findings include:

11 "The record demonstrates that the Subject Properties have seen a  
12 loss of 142 feet of beachfront property since 1994, with the Pine  
13 Beach 'common area' that was densely vegetated when the Pine  
14 Beach Replat was approved and recorded, now dry sand beach.

15 "Evidence in the record demonstrates that more than \$10 million in  
16 property value is at risk of being lost, in addition to public  
17 infrastructure to include public water and sewer, utilities and roads.  
18 The lives of the Subject Properties' occupants are also at risk from  
19 unpredictable and dangerous wave runup. The proposed [BPS] will  
20 responsibly mitigate this significant threat in a manner that is  
21 consistent with the County's development standards. The threat to  
22 [intervenors'] properties is present and very real. Any avoidable  
23 delay in issuing the requested development permit for the BPS,  
24 unjustifiably places lives and property in serious jeopardy." Record  
25 24.

26 The county found that "nothing hinted at the unanticipated and extensive  
27 retrograding that occurred in recent years, triggered by two successive El Niño/La

1 Nifia events in the area of the subject properties and their influence on the  
2 Rockaway littoral cell subregion due to the presence of two unusually closely  
3 placed jetties.” Record 25.

4 OS/SF argues that “[r]easons pertaining to wave runup, ocean flooding,  
5 and erosion (i.e., ongoing coastal hazards) that are experienced at the Subject  
6 Properties are not any different than can be argued elsewhere on the Oregon coast  
7 in other areas that are also ineligible for beachfront protection.” OS/SF’s Petition  
8 for Review 42. Petitioners cite and refer to general, non-site-specific evidence  
9 regarding coastal hazards. This is not evidence that undermines the site-specific  
10 evidence relied upon by the county to conclude that the situation at the subject  
11 properties is unique because of the presence of two close jetties that increase  
12 wave undercutting. We agree with intervenors that the county adopted sufficient  
13 findings that a “catch-all” reasons exception is appropriate for the residentially  
14 developed properties in both the George Shand Tract and the Pine Beach  
15 Subdivision, and those findings are supported by the evidence in intervenors’  
16 expert’s reports.

17 We do, however, agree with petitioners that the county’s evaluation is  
18 inadequate with respect to the vacant lots in both areas. The county did not  
19 explain the role of the vacant lots and the relative location of any infrastructure  
20 in its analysis. Furthermore, OCA argues in its seventh assignment of error that  
21 the county did not adopt findings relating its rationale to the four vacant lots.  
22 OCA argues:

1           “The findings do not explain how ‘appropriate development,’ under  
2           Goal 18, includes vacant lots that have not been developed. Merely  
3           because some public infrastructure is available does not mean that  
4           those vacant lots have been developed to any degree that warrants a  
5           goal exception. \* \* \* The findings repeat that ‘the proposed  
6           exception is necessary for the protection of the structures and  
7           associated infrastructure,’ but that analysis does not apply to the  
8           vacant lots.” OCA’s Petition for Review 32-33.

9           OCA observes that the vacant lots do not contain the people and property that the  
10          county states the exception serves to protect. We agree with OCA that the county  
11          failed to address why a reasons exception is appropriate to allow BPS on  
12          properties that have not been developed with residential uses.<sup>13</sup>

13           The county failed to evaluate the relationship between the unique  
14          circumstances it identified, the vacant parcels and any related infrastructure, and  
15          the proposed BPS. The findings fail to adequately explain why the conservation  
16          goal of IR 5 cannot be met on the vacant lots and/or why the conservation goal  
17          (no BPS) should yield to development of the BPS, as proposed, on the vacant  
18          lots.

19           These assignments of error are sustained, in part.

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<sup>13</sup> We observe that the TCLUO 3.530(4)(A)(4)(c)(2) and (3) standards for BPS require showings that “[n]on-structural solutions cannot provide adequate protection” and “[t]he [BPS are] placed as far landward as possible.” The findings state that the proposed BPS placement “is as close to the *existing* residential dwellings as is possible.” Record 93 (emphasis added). The vacant lots do not contain residential dwellings.



1           **C. OS/SF's and OCA's Second Assignments of Error and DLCD's**  
2           **Third Assignment of Error**

3           As discussed above, OAR 660-004-0022(1) provides that an exception  
4 may be justified for the following reason:

5           *"There is a demonstrated need for the proposed use or activity,*  
6           *based on one or more of the requirements of Goals 3 to 19; and*  
7           *either:*

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

16           “(b) *The proposed use or activity has special features or qualities*  
17           *that necessitate its location on or near the proposed exception*  
18           *site.” (Emphases added.)*

19           The county adopted findings that a “demonstrated need” was shown based  
20 upon the requirements of Goals 7 and 18 as well as Statewide Planning Goals 10  
21 (Housing), 11 (Public Facilities and Services), and 14 (Urbanization). The county  
22 concluded:

23           “[T]he proposed BPS is necessary to protect life and property in an  
24 acknowledged urban community of Tillamook County. That means  
25 without the proposed BPS, the 15 Subject Properties will be exposed  
26 to periodic wave runup and ocean flooding and the existing  
27 residential development to include related infrastructure and public  
28 facilities, will be subject to natural hazard risks to life and to  
29 property and, eventually, the properties will become uninhabitable  
30 or will be destroyed.” Record 51.

1 OS/SF argues in its second assignment of error and DLCD argues in its third  
2 assignment of error that the county misconstrued the law and adopted findings  
3 not supported by substantial evidence. OCA joins in these assignments of error.

4 We explained in *VinCEP v. Yamhill County*, 55 Or LUBA 433, 449 (2008),  
5 that the “demonstrated need” standard requires that the county demonstrate that  
6 it is at risk of failing to satisfy one or more obligations imposed by Goals 3 to 19  
7 and that the proposed exception is a necessary step toward maintaining  
8 compliance with goal obligations.

9 “[T]he county must (1) identify one or more obligations under Goals  
10 3 to 19, (2) explain why the county is at risk of failing to meet those  
11 obligations, and (3) explain why the proposed exception to the  
12 requirements of one goal \* \* \* will help the county maintain  
13 compliance with its other goal obligations.” *Oregon Shores*, \_\_\_ Or  
14 LUBA at \_\_\_ (slip op at 31).

15 With respect to OAR 660-004-0022(1) and “demonstrated need,” the  
16 county found that a “demonstrated need” was established based on the  
17 requirements of Goals 7, 10, 11, 14, and 18, and related provisions in the county’s  
18 comprehensive plan. We address each goal below.

### 19 1. Overview of the Goals

20 In *1000 Friends of Oregon v. Jackson County*, the court placed the 19  
21 statewide planning goals into four categories:

22 “[Statewide Planning Goals 9 (Economic Development) and 12  
23 (Transportation) and Goals 10, 11, and 14] require the designation  
24 and development of land for various uses. [Statewide Planning  
25 Goals 3 (Agricultural Lands), 4 (Forest Lands), 5 (Natural  
26 Resources, Scenic and Historic Areas, and Open Spaces), 8

1 (Recreational Needs), 15 (Willamette River Greenway), 16  
2 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and  
3 Dunes), and 19 (Ocean Resources)] pertain to the conservation of  
4 land for resource, scenic, historical, and recreational uses.  
5 [Statewide Planning Goals 1 (Citizen Involvement) and 2 (Land Use  
6 Planning)] pertain to the process for adopting plans and  
7 implementing measures.

8 “The remaining goals regulate the manner by which land is  
9 developed. [Goal 6] requires planning entities ‘to maintain and  
10 improve the quality of the air, water and land resources of the state.’  
11 [Goal 7] require[s] localities to ‘protect people and property from  
12 natural hazards’ by regulating, among other things, ‘the types and  
13 intensities of uses to be allowed in the hazard area.’

14 “[Statewide Planning Goal 13 (Energy Conservation)] falls within  
15 this category of policies affecting the manner by which property is  
16 developed. The goal expressly states that it regulates the way land  
17 uses are ‘managed and controlled.’ The planning and  
18 implementation guidelines for the goal pertain to ‘land use planning’  
19 and ‘techniques and implementation devices’ in a comprehensive  
20 plan and map and its implementing development code and zoning  
21 map. Neither the text of the goal nor its guidelines ‘require’ the  
22 county to develop or facilitate the development of any particular  
23 land use, much less large solar power generation facilities. Instead,  
24 Goal 13 requires that *all* development on land be ‘managed and  
25 controlled’ to conserve energy. The text of the goal and its  
26 guidelines do not directly or indirectly require the development of  
27 energy facilities.” 292 Or App 173, 192-93, 423 P3d 793 (2018), *rev*  
28 *dismissed*, 365 Or 557 (2019) (emphasis in original; footnotes  
29 omitted).

## 30 2. Goal 7

31 As the court explained in *1000 Friends*, Goal 7’s “protect people and  
32 property from natural hazards” language relates to the manner in which land is  
33 developed. Here, the county found, “The proposal [is consistent with Goal 7 and]

1 is also consistent with and required by the County Comprehensive Plan's Goal 7  
2 Element that implements Goal 7 \* \* \*." Record 49. The county found that,  
3 because it imposed mitigation measures at the time the property was developed,  
4 the property owners reasonably developed the property and the current property  
5 owners should be granted an exception and allowed to protect their property and  
6 lives using BPS. Record 21.

7 We have concluded that, "[w]hile development of renewable energy is  
8 certainly consistent with the Goal 13 requirement to 'conserve' energy, the goal  
9 includes no express mandates regarding the development of renewable energy  
10 sources" and, therefore, did not establish a demonstrated need for an exception  
11 to Goal 3 to site a solar power facility on 80 acres of high-value farmland. *1000*  
12 *Friends*, 76 Or LUBA at 279. We have also concluded that a county's findings  
13 that a proposal to develop a racetrack was consistent with Goals 8 and 9 did not  
14 demonstrate that the county was incapable of satisfying its obligations under the  
15 goals without an exception. *Middleton v. Josephine County*, 31 Or LUBA 423,  
16 430 (1996). Similarly, here, consistency with Goal 7 or comprehensive plan  
17 provisions implementing Goal 7 does not establish that an exception is needed.  
18 We agree with petitioners that Goal 7 does not *require* the installation of hazard  
19 mitigation measures after development has occurred. DLCD's Petition for  
20 Review 35-36. Similarly, the comprehensive plan does not require the county to  
21 allow BPS where development has occurred. The county's interpretation of its  
22 comprehensive plan as authorizing BPS under the unique circumstances here is

1 not a finding that a comprehensive plan provision implementing the goals  
2 requires BPS.

3 **3. Goals 10, 11, and 14**

4 Goals 10, 11, and 14 require the designation and development of land for  
5 certain uses. *1000 Friends*, 292 Or App at 192.

6 **a. Goals 10 and 14**

7 Goal 10 is “[t]o provide for the housing needs of the citizens of the state.”  
8 Goal 10 requires that local governments inventory buildable lands for residential  
9 use, and the county found that it relies on the subject properties to meet its  
10 housing obligations. The county found that it “would be at risk of failing to meet  
11 its Goal 10 obligations expressed in its Goal 10 implementing regulations to  
12 refuse to protect the very residential lands it is required to protect to deliver  
13 housing in the County.” Record 50. The county found that “[t]he loss of 15  
14 dwelling units would represent losing almost 5% of the needed housing the  
15 County has identified as necessary” for the land within the unincorporated  
16 community. Record 52.

17 Goal 14 is “[t]o provide for an orderly and efficient transition from rural  
18 to urban land use, to accommodate urban population and urban employment  
19 inside urban growth boundaries, to ensure efficient use of land, and to provide  
20 for livable communities.” The county found that it

21 “would be at risk of not meeting its Goal 14 obligations reflected in  
22 the County plan, if it refused to protect this acknowledged  
23 ‘demonstrated need’; but rather to demand instead that the

1 community for which there is a demonstrated need be wiped out by  
2 a natural hazard with a BPS that the evidence in the record  
3 demonstrates harms no one.” Record 51.

4 In *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993),  
5 the county adopted an exception to Goals 4 and 5 to construct a new road. We  
6 concluded that the county’s findings were

7 “essentially conclusory statements that, due to the dimensional and  
8 weight restrictions of the existing Goodpasture Bridge, there is a  
9 demand by the timber industry for a new river crossing to transport  
10 logs and equipment in and out of the affected area south of the river.  
11 The findings do not set forth facts establishing the nature and  
12 magnitude of the impediment to forest operations posed by the  
13 current situation, as required OAR 660-04-020(2)(a). The findings  
14 do not explain why the county cannot satisfy its obligations under  
15 one or more of Goals 3-19, or the requirements of its acknowledged  
16 comprehensive plan, without providing the proposed use, as  
17 required by OAR 660-04-022(1)(a).” *Pacific Rivers*, 26 Or LUBA  
18 at 337.

19 We concluded that the county “must show the magnitude of the present  
20 impediment to forest management is such that without the proposed use the  
21 county cannot satisfy its obligations under one or more of Goals 3-19 or the  
22 requirements of its acknowledged comprehensive plan.” *Id.* at 337-38. Similarly,  
23 here, the county’s findings that providing housing and accommodating the  
24 population rely on planning choices the county has made that are *consistent* with  
25 Goals 10 and 14 are conclusory and do not establish that loss of the subject  
26 properties for residential use will result in failure to comply with Goals 10 or 14.  
27 Provisions in the comprehensive plan stating that the unincorporated community  
28 will accommodate a given number of dwellings and a finding that there is a

1 “demonstrated need” for a given amount of housing in the community do not  
2 establish that there is a “demonstrated need” to provide it on the subject  
3 properties. Record 52.

4 **b. Goal 11**

5 Goal 11 is “[t]o plan and develop a timely, orderly and efficient  
6 arrangement of public facilities and services to serve as a framework for urban  
7 and rural development.” The county found that it “would be at risk of failing to  
8 meet its Goal 11 obligation for orderly and efficient arrangement of public  
9 facilities and services if it refused to approve BPS to protect such public facilities  
10 and services and insisting that they be destroyed by wave action.” Record 50-51.  
11 The county found that, if public facilities are harmed by coastal erosion, the  
12 county’s existing services may be compromised, which would be inefficient.  
13 Record 52. Neither Goal 11 nor the county’s comprehensive plan require any  
14 action with respect to providing BPS for existing facilities in hazardous areas.

15 **c. Goal 18**

16 Goal 18 relates to the conservation of land for resource uses. *1000 Friends*,  
17 292 Or App at 192. The county found that Goal 18 has two competing  
18 components:

19 “The first states that beaches and dunes shall allow appropriate  
20 development as well as conserving, protecting and, if appropriate,  
21 restoring coastal beach and dune areas. It directs comprehensive  
22 plans to ‘provide for diverse and appropriate use of beach and dune  
23 areas consistent with their \* \* \* recreational and \* \* \* economic  
24 values.’ The second purpose is to reduce the hazard to human life

1 and property from natural or man-induced actions.” Record 51.

2 The county found that “Goal 18 puts a mandatory obligation on the County  
3 to reduce hazards to human life and property from natural or man-induced  
4 actions. Approval of the proposed BPS is necessary to enable the County to  
5 comply with this Goal 18 obligation.” Record 53. Goal 18 does not require that  
6 property be protected, and, indeed, IR 5 illustrates the balancing between the  
7 protection of property and the protection of the resource that is the subject of the  
8 goal.

9 The goals and comprehensive plan provisions relied upon by the county  
10 do not support a finding of “demonstrated need” for a reasons exception.

11 These assignments of error are sustained.

12 **OCA’S, OS/SF’S, AND DLCD’S FOURTH ASSIGNMENTS OF ERROR**

13 OAR 660-004-0020(2)(c) provides that the county’s reasons exception  
14 must include an analysis of

15 “[t]he long-term [ESEE] consequences resulting from the use at the  
16 proposed site with measures designed to reduce, adverse impacts are  
17 not significantly more adverse than would typically result from the  
18 same proposal being located in areas requiring a goal exception  
19 other than the proposed site.’ The exception shall describe: the  
20 characteristics of each alternative area considered by the jurisdiction  
21 in which an exception might be taken, the typical positive and  
22 negative consequences resulting from the use at the proposed site  
23 with measures designed to reduce adverse impacts. A detailed  
24 evaluation of specific alternative sites is not required unless such  
25 sites are specifically described with facts to support the assertion  
26 that the sites have significantly fewer adverse impacts during the  
27 local exceptions proceeding. The exception shall include the reasons  
28 why the consequences of the use at the chosen site are not



1 significantly more adverse than would typically result from the same  
2 proposal being located in areas requiring a goal exception other than  
3 the proposed site. Such reasons shall include but are not limited to a  
4 description of the facts used to determine which resource land is  
5 least productive, the ability to sustain resource uses near the  
6 proposed use, and the long-term economic impact on the general  
7 area caused by irreversible removal of the land from the resource  
8 base. Other possible impacts to be addressed include the effects of  
9 the proposed use on the water table, on the costs of improving roads  
10 and on the cost to special service districts[.]”

11 DLCD’s and OCA’s fourth assignments of error are that the county’s findings of  
12 compliance with OAR 660-004-0020(2)(c) are not supported by substantial  
13 evidence.

14 OAR 660-004-0020(2)(d) provides that the county’s reasons exception  
15 must include an analysis of whether

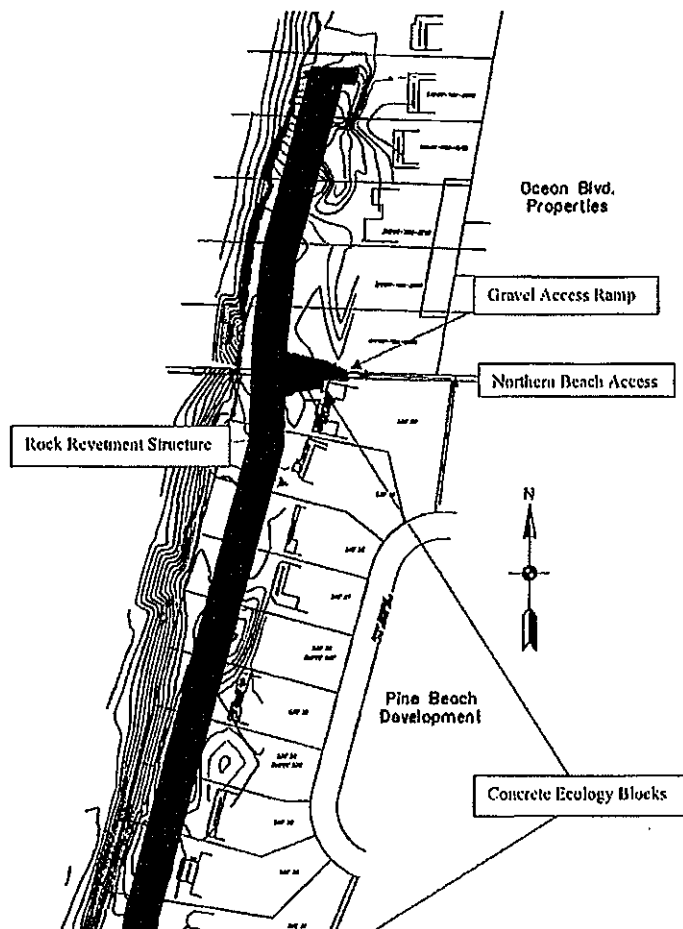
16 “[t]he proposed uses are compatible with other adjacent uses or will  
17 be so rendered through measures designed to reduce adverse  
18 impacts.’ The exception shall describe how the proposed use will be  
19 rendered compatible with adjacent land uses. The exception shall  
20 demonstrate that the proposed use is situated in such a manner as to  
21 be compatible with surrounding natural resources and resource  
22 management or production practices. ‘Compatible’ is not intended  
23 as an absolute term meaning no interference or adverse impacts of  
24 any type with adjacent uses.”

25 OS/SF argues in its fourth assignment of error that the county misconstrued OAR  
26 660-004-0020(2)(d) and made inadequate findings.

27 For the vacant lots, as we explained above, the county’s reasons for  
28 adopting the exception are deficient and require additional analysis and evidence.  
29 Given that additional analysis of whether reasons support the exception for the

1 vacant lots is required, we will not address the assignments of error as they relate  
2 to the vacant lots.

3 As shown in the picture below, intervenors' BPS design assumes the  
4 presence of BPS on both the vacant lots and the developed properties.



5  
6 Record 1995. Because intervenors requested approval of an integrated design, we  
7 understand the evidence in the record and the county's findings concerning the  
8 long-term ESEE consequences and compatibility with adjacent uses to reflect the  
9 inclusion of the vacant lots. For example, the county found, with respect to  
10 environmental impacts, that

1            “[t]he evidence in the record demonstrates that the impacts resulting  
2            from *the proposed BPS* on the Subject Properties will be neutral or  
3            positive. *The BPS’s design* is a measure designed to reduce adverse  
4            impacts of *the proposed BPS* on other properties and on the  
5            environment in general, namely additional erosion of the shoreline  
6            and loss of shoreland vegetation.” Record 41 (emphases added).

7            We are unable to ascertain how much of a role the vacant lots play in the county’s  
8            analysis, and, because the county will have to address the vacant lots on remand  
9            with better findings and more evidence, it would be premature to address these  
10           assignments of error as they relate to the developed properties.

11           **OCA’S SIXTH ASSIGNMENT OF ERROR**

12           ORS 197.175(2)(a) requires that PAPAs comply with the statewide  
13           planning goals. OCA’s sixth assignment of error is that the county misconstrued  
14           the law and made findings of consistency with Goals 6 and 7 that are unsupported  
15           by substantial evidence.

16           Goals 6 and 7 concern how land is developed. *1000 Friends*, 292 Or App  
17           at 192. Goal 6 is “[t]o maintain and improve the quality of the air, water and land  
18           resources of the state” and, as discussed above, Goal 7 is “[t]o protect people and  
19           property from natural hazards.”

20           With respect to Goal 6, OCA argues that the findings fail to adequately  
21           address the impacts of BPS:

22           “In the absence of such findings, the findings cannot demonstrate  
23           compliance with Goal 6 and the findings are inadequate because the  
24           findings conclusorily [*sic*] allege that there will be no impacts,  
25           despite overwhelming information that adverse impacts historically  
26           occur with the placement of such shoreline structures, including the

1           ‘most detrimental effect of seawalls’: ‘passive erosion.’” OCA’s  
2           Petition for Review 29.

3           OCA argues that the findings of compliance with Goal 7 are inadequate because  
4           they do not address long-term hazard impacts to the beach and public safety. Like  
5           the findings of compliance with Goal 6, OCA maintains that the findings of  
6           compliance with Goal 7 are inadequate “because the[y] conclusorily [*sic*] allege  
7           that there will be no impacts, despite overwhelming information that adverse  
8           impacts historically occur with the placement of such structures.” *Id.* at 30.

9           OCA does not develop an argument identifying what is required to show  
10          consistency with Goals 6 and 7 or explaining why that showing is not made in  
11          this case.<sup>14</sup> *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220  
12          (1982).

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<sup>14</sup> We explained in *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995), that, where a comprehensive plan is amended to allow a particular use, Goal 6 requires that the local government adopt findings explaining why it is reasonable to expect that applicable state and federal environmental quality standards can be met by the use. *See also Nicita v. City of Oregon City*, \_\_\_ Or LUBA \_\_\_ (LUBA Nos 2020-037/039, Sept 21, 2021), *aff’d*, 317 Or App 709, 507 P3d 804 (2022). Here, the county found that “[t]he proposed use will be developed consistent with the adopted and acknowledged land use regulations and will comply with any development requirements intended to protect air, water and land resource qualities. The proposal is consistent with Goal 6.” Record 59. Petitioners do not develop an argument that that finding is inadequate.

In *Smith v. Douglas County*, 37 Or LUBA 801 (2000), the petitioners argued that a comprehensive plan amendment to allow development of an RV park on property that was split-zoned Exclusive Farm Use and Community Commercial and located within the 100-year floodplain did not comply with Goal 7 and was not supported by adequate findings and substantial evidence. We explained:

1 This assignment of error is denied.

2 **DLCD'S AND OCA'S FIFTH ASSIGNMENTS OF ERROR**

3 DLCD's fifth assignment of error is that the county's findings approving  
4 the FDP are inadequate. OCA's fifth assignment of error is that the county  
5 misconstrued the law and adopted findings not supported by substantial evidence  
6 when it concluded that certain flood hazard area criteria were met. OCA also  
7 restates its prior assignment of error that "the findings and ESEE analysis do not  
8 respond to the well-known and publicly-available information about the impacts  
9 of BPS o[n] shoreline structures, including passive erosion." OCA's Petition for  
10 Review 27. This element of the assignment of error is derivative of the prior  
11 assignment of error, and we do not address it again.

12 We do not reach the assignments of error challenging the adequacy of the  
13 FDP findings and supporting evidence because they are premature. The county

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"Goal 7 prohibits development in natural hazard areas 'without appropriate safeguards.' Petitioners' arguments under this assignment of error boil down to an assertion that the safeguards the county imposed here are insufficient. \* \* \*

"The county considered and rejected petitioners' arguments regarding the consequences of changes to the floodplain/floodway and the fill that was placed on the subject property. Petitioners do not challenge or identify any error in those findings, and we do not consider petitioners' arguments on those matters further." *Smith*, 37 Or LUBA at 806 (citations omitted).

Petitioners do not develop an argument that the county failed to identify appropriate flooding safeguards or otherwise explain what is required by Goal 7.

1 approved a unitary BPS design protecting both developed and vacant lots. We  
2 have concluded that the county has identified a sufficient reason for an exception  
3 for the developed lots under the catch all provision, but has not done so for the  
4 vacant lots. We have also concluded that because the vacant lots were included  
5 in the county's ESEE and alternatives analysis, it is premature for us to address  
6 the assignments of error challenging the county's related findings. Similarly, it is  
7 premature for us to consider the FDP assignment of error. First, the FDP requires  
8 an approved exception and we are remanding the decision approving the  
9 exception. Second, the BPS design may change as a result of the county's  
10 decision as to whether reasons justify an exception on the vacant properties and  
11 the county's ESEE and alternatives analysis.

12           The county's decision is remanded.

# EXHIBIT B



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February 8, 2023

Tillamook County Board of Commissioners  
c/o Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third St.  
Tillamook, OR 97141

**RE: Request to Initiate Remand Proceedings for Local File #851-21-000086-PLNG and PLNG-01.**

Dear Chairman Yamamoto and Members of the Board:

As you know, this firm represents the Applicants for the above-referenced matters. The Applicants own a total of 15 beachfront lots in the Pine Beach and George Shand Tracts subdivisions, situated in Tillamook County's acknowledged, urban unincorporated community of Twin Rocks/Barview/Watseco (hereinafter "Subject Properties"). A variety of opponents challenged your approval at LUBA. On September 30, 2022, LUBA ruled against those opponents on key issues, but remanded the Board's approvals for the County to adopt findings revolving around four then-vacant lots (now only 3 are vacant) and to potentially write additional findings on two exceptions standards related to those vacant lots and on one floodplain development permit standard, TCLUO 3.510(10)(h). *Oregon Coast Alliance v. Tillamook County*, \_\_ Or LUBA \_\_ (LUBA Nos. 2021-101/104, September 30, 2022). A copy of LUBA's decision is attached as Exhibit 1.

The Applicants hereby respectfully request that the County begin the LUBA remand proceedings. ORS 215.435; TCLUO Section 10.130(2)(c).

### **I. Executive Summary**

On the recommendation of your staff and planning commission, the Board of Commissioners approved the request for a Goal 18 exception and floodplain development permit (also called an "FDP" in this letter) to construct a continuous beachfront protective structure (BPS or revetment) on their own property (not on the dry sand beach). The approved BPS was required to be maintained by the property owners and they have been doing that. The BPS has been installed and looks like a dune. It has held up remarkably well even in the face of unprecedented King Tides. This is what the revetment looks like:





Note in the image below, you can see in the background the more traditional BPS that was installed over 20 years ago at the Shorewood RV Park. However, the BPS you approved in this case, looks like a dune and is several feet east (landward) of the Shorewood BPS (on the owners' backyards, not the dry sand beach).



On appeal, LUBA affirmed the County's findings that adequate reasons justified the Goal 18 exception for the lots that were developed with homes. On that critical issue, LUBA agreed with your decision and disagreed with the opponents. LUBA decided that the peril these Applicants' lots face is caused by highly unique circumstances that are not present elsewhere in Oregon.

However, for the (then) four vacant lots, LUBA remanded instructing the County to adopt additional findings. Specifically, LUBA wanted more findings about why it is necessary to protect the vacant lots, including whether protecting the vacant lots was necessary to protect the developed lots or public infrastructure.

Because LUBA wanted more findings regarding the four (then) vacant lots, LUBA decided that it was premature for them to deal with other opponent arguments. Accordingly, LUBA punted on resolving opponent objections on two reasons exception standards and on the County's floodplain development permit requirements. LUBA justified punting on those topics, by saying that it was possible that the findings about the vacant lots might result in corresponding changes to the findings about those standards. Consequently, the County's findings on the two exception standards and County floodplain standards remain unresolved

and can be beefed up on remand to address the variety of issues that opponents raised in their LUBA briefing.

On remand, the Board of Commissioners should accept new evidence and argument limited the issues that LUBA remanded on and the issues that LUBA punted. These issues are: (1) the Goal 18, Implementation Requirement 5 reasons exception for the vacant lots (OAR 660-004-0020(2)(a)); (2) the reasons exception ESEE and compatibility analysis required by OAR 660-004-0020(2)(c) and (d) for the BPS (both vacant and developed lots); and (3) compliance with the County's floodplain development standards for the temporary construction impacts of the revetment – TCLUO 3.510(10)(h) – which is the only FDP standard that opponents raised in their LUBA appeal. The Board should make its final decision within 90 days following submission of this letter unless the Applicants request an extension, which is not expected. After the record closes and the Board deliberates to make an oral decision, the Board should then instruct the Applicants to provide re-approval findings to provide to the Board (if re-approval is the Board's decision), for consideration and adoption.

The evidence submitted in this remand request demonstrates that the application warrants approval:

- Not having the revetment cover all the Subject Properties – ones with dwellings and ones without – will cause the revetment to fail to adequately protect the properties that are developed with dwellings. The undeveloped properties' location interspersed among the properties developed with dwellings means that if they are not protected, that there will then be gaps in the BPS that will allow high velocity floodwaters to flow through the gaps and behind the BPS, which will cause damage to not only the vacant lots, but also nearby developed lots, causing “flank erosion” that deprives the revetment of its efficacy.
- There are no natural resources that will be harmed in any way by the revetment.
- The revetment either increases or has no impact on property values of the homes it protects and those around it.
- The revetment is already installed so opponents' arguments about temporary construction impacts are moot. Regardless, during installation of the revetment, no properties were exposed to a greater risk of flooding because of the construction techniques that were used. Rather, flood risks were at all times, including during construction, reduced.
- There is simply no reason not to approve the revetment – it harms no one, helps many and meets all relevant standards. There can be no credible evidence otherwise.

## **II. Detailed Analysis**

### **A. The Matter, Subject Properties, and Initial Approval**

#### **1. The Proposal**

To refresh the Board on the matter before it, Applicants sought and obtained land use approval to develop a beachfront protective structure (BPS or “revetment”) on their own property, to be maintained by the property owners. It is important to recall that the revetment was not on the dry sand beach. Rather, it was built entirely on privately owned property. Accordingly, no Oregon Parks and Recreation Department (OPRD) approval was necessary. Per the County Board approval, the landowners promptly installed the BPS.

The BPS helps to prevent wave run-up and overtopping that otherwise threatens the Subject Properties during king tides and extreme storm events such as the recent events over the Christmas holidays and in January 2023. The extreme ocean hazards these properties faced was triggered by two things. One, there were two successive El Niño/La Niña events in the late 1990s. Second, these events had a uniquely adverse influence on the Rockaway littoral cell subregion due to those two unusually closely placed jetties cabining the subregion in which the Subject Properties exist. That unhealthy and unusual interaction led to a reversal from the decades-old historic pattern of beach prograding (growth) to the steady erosion of the Rockaway beachfront caused by forces that affect no other location on the Oregon coast. The result of that unexpected reversal of the littoral patterns was that homes and public infrastructure that were built hundreds of feet from the shoreline and that had an extensive, vegetated natural buffer from ocean impacts, are now threatened during major storm events. Attached as Exhibit 2 are photos taken from the 1990s showing how extensive the natural buffer was prior to this sudden reversal. Exhibit 3 shows the approved revetment – which visually looks like a beach dune - following December 2022 storm events. LUBA held that the unexpected reversal of natural littoral processes, due to the interaction of the two late-1990’s El Niño/La Niña events and the two unusually closely placed jetties, is sufficient reason to justify the reasons exception for the BPS. That is a settled issue that may not be relitigated now.

#### **2. The Subject Properties**

The Subject Properties include the 15 oceanfront lots of the Pine Beach Subdivision and the George Shand Tracts (also referred to as the “Ocean Blvd. Properties”). Eleven of the properties were developed with houses at the time of application. The four “vacant” lots included the two adjacent southernmost properties of the George Shand Tracts and two separate lots in the Pine Beach

Subdivision, where on one, a house was in the final planning stages for construction, which the BPS design accounted for (Exhibit 4). That house is now nearly completed. Two George Shand and one Pine Beach Subdivision lots remain undeveloped with homes (vacant), but they have been, at all times material, developed with public infrastructure to serve them.

All of the Subject Properties are in an acknowledged plan designation of "Residential" and all are in the County's acknowledged Community Medium Density Urban Residential zone. They are all in the acknowledged urban unincorporated community of Twin Rocks/Barview/Watseco, where the County's acknowledged plans say the County will accommodate urban, medium density housing development.

The Subject Properties are also located within the County's Beach and Dune (BD) and Flood Hazard (FH) overlay zones. Portions of the Subject Properties are within the FEMA Flood Hazard Zone VE, a Coastal High Hazard area under the FH overlay zone.

The Applicants applied for a post acknowledgement plan amendment (PAPA) for an exception to Goal 18, Implementation Requirement 5<sup>1</sup> and a floodplain development permit to establish the revetment. Goal 18, IR 5 generally prohibits development of beachfront protective structures to protect development that did not exist on January 1, 1977 and says that for those properties, an exception is necessary for revetments to be approved.

The Tillamook County Board of Commissioners approved the requested Goal 18 exception and Flood Plain Development Permit applications, adopting alternative Goal 18 findings of approval for the George Shand Tract properties, and imposed 9 conditions of approval. See, Local Files #851-21-000086-PLNG-01; #851-21-000086.

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<sup>1</sup> Goal 18 Implementation Requirement 5 provides, in relevant part:

"Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. \* \* \*. For the purposes of this requirement \* \* \* "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved. The criteria for review of all shore and beachfront protective structures shall provide that:

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

### 3. Factual Changes Since the Board's Approval

Changes in factual circumstances have occurred since the Board approved the revetment and FDP in 2021. First, as noted above, a residence that was in planning stages at the time of approval, is now nearly finished on a lot that was previously "vacant" in the Pine Beach Subdivision.

Second, Applicants received authorization to construct the BPS and have constructed it consistent with the Board of Commissioners' approval. The BPS is in place and is currently doing a good job of protecting lives and property. In this regard, during recent storm events the BPS performed as designed, protecting the properties. Contrary to opponent claims that storms would simply wash away the overlying, revegetated beach sand that covers and hides the BPS structure, the revegetated beach sand stayed intact, and the revetment has an appearance that is virtually indistinguishable from a natural dune. *See Exhibit 3* (photos of BPS following storm event).

Third, the property to the immediate north of the Subject Properties, the single property between the Subject Properties and the Shorewood RV Resort that originally elected not to be part of these applications, has since constructed a BPS that connects to the revetments for the Subject Properties and also connects to the Shorewood RV Resort revetment. *Exhibit 5*. That property was developed prior to 1977 and did not require an exception to Goal 18, IR 5 to develop the BPS and, importantly, for whatever reason the opponents did not raise a fuss. The County approved that revetment.

### **LUBA's Opinion and Remand**

LUBA described its decision and remand guidance:

"We have concluded that the county has identified a sufficient reason for an exception for the developed lots under the catchall provision, but has not done so for the vacant lots. We have also concluded that because the vacant lots were included in the county's ESEE and alternatives analysis, it is premature for us to address the assignments of error challenging the county's related findings. Similarly, it is premature for us to consider the [Floodplain Development Permit] assignment of error." Slip op at 52.

Thus, LUBA agreed with your decision that the application satisfies the OAR 660-004-0020(2)(a) reasons exception requirement. Specifically, LUBA agreed that the Applicants had adequately demonstrated why the Goal 18, IR 5 policy against revetments on property that was not "developed" on January 1, 1977, should not

apply to the Subject Properties with houses on them. That is an important holding. It decides, contrary to the opponents' protestations, that an exception based on highly unusual circumstances *is* appropriate under the facts here for the properties that are developed with homes.

The unique "reason" that LUBA agreed justifies the exception for the lots developed with houses is the unique and lasting man-made disruption to the natural littoral processes in the Rockaway littoral subregion. This disruption was caused by the effects of two manmade jetties in unusually close proximity and El Niño/La Niña events of the late 1990s. Slip op at 36-37; *see also*, slip op at 29-30 (quoting relevant findings). LUBA's conclusion is now "law of the case."<sup>2</sup> That means that LUBA has conclusively decided that there are unique facts facing the lots with houses adequate to justify a reasons exception so they can be protected with a revetment.

However, LUBA said there was more work to do for the vacant lots. For the vacant lots, LUBA held that the "reasons" analysis for the "vacant" lots (ones without houses on them) in both the Pine Beach Subdivision and George Shand Tracts needed to be beefed up. Slip op at 37-38. Simply put, LUBA made a distinction between the developed lots and the four "vacant" ones. LUBA explained:

"[T]he county failed to address why a reasons exception is appropriate to allow BPS on properties that have not been developed with residential uses.

"The county failed to evaluate the relationship between the unique circumstances it identified, the vacant parcels and any related infrastructure, and the proposed BPS. The findings fail to adequately explain why the conservation goal of IR 5 cannot be met on the vacant lots and/or why the conservation goal (no BPS) should yield to development of the BPS, as proposed, on the vacant lots." Slip op at 38.

LUBA told the County to adopt findings explaining why the "vacant" lots need to be protected with the revetment. The short answer is that if they are not protected, then flank erosion from wave run-up on the "vacant" lots will cause the

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<sup>2</sup> The "law of the case" doctrine says that on review of post-remand proceedings, petitioners are foreclosed from raising issues at LUBA that were "conclusively decided against them by the first final and reviewable LUBA decision." Moreover, issues that could have been but were not raised in the first LUBA proceedings, may not be raised on remand. *Beck v. City of Tillamook*, 313 Or 148, 150, 831 P2d 678 (1992). *See Green v. Douglas County*, 63 Or LUBA 200, 206, *rev'd and rem'd on other grounds*, 245 Or App 430, 263 P3d 355 (2011) (under *Beck*, a party at LUBA fails to preserve an issue for review if, in a prior stage of a single proceeding, that issue is decided adversely to the party or that issue could have been raised and was not raised).

revetment to fail – harming the properties with houses on them that LUBA said were entitled to the revetment. And will also eventually tear out the then exposed urban infrastructure (water, sewer, gas, electricity, cable etc.), that is installed on the eastern outer perimeter of those “vacant” lots.

LUBA decided to punt on other of the opponents’ challenges. Specifically, LUBA decided that it was “premature” to address the opponents’ challenges to the Board’s ESEE analysis and Floodplain Development Permit (FDP). LUBA said the Board’s “vacant” lots analysis might affect how the Board looked at the ESEE analysis and FDP analysis. Slip op at 47-48 (Goal 18); slip op at 51 (Floodplain Development Permit discussion). Because LUBA punted on the issues about the ESEE analysis and Flood Plain Development Permit, they remain “live” issues on remand. Given LUBA distinguished between the developed and “vacant” lots, it would be wise for the findings to expressly address the “vacant” lots under those standards.

The sole Floodplain Development Permit issue raised on appeal concerns the meaning and application of TCLUO 3.510(10)(h).<sup>3</sup> Opponents claimed that the construction process for the BPS would remove vegetation and so necessarily violated that standard. Their claims about the County’s FDP standards were limited to these claims speculating about the temporary effects of constructing the flood protection (BPS). On remand, the County should explain that the BPS has been constructed and did so without increasing potential flood damage, even during the period of construction. Supplemental findings should explain that the contractor was careful to construct the BPS in segments of three-lots at a time, digging a trench for the placement of the basalt rock for the revetment about 10-feet into the lots toward the houses and placing the excavated sand on the oceanward side of the lots, creating a berm, to prevent flooding. Moreover, the Board should interpret this standard to make clear it does not prohibit the temporary removal of vegetation during construction of a structure such as the BPS at issue here, that is designed to *decrease* flood damage. Under state statutes and caselaw, LUBA is required to afford deference to any express interpretation of the County’s Floodplain Development Permit provisions. Thus, a granular interpretation by the Board of Commissioners of TCLUO 3.510(10)(h) is wise.

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<sup>3</sup> TCLUO 3.510(10)(h) “[p]rohibit[s] man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage.”



To summarize, on remand the County must adopt findings that:

- Justify a reasons exception for the “vacant” lots.
- Bolster the previous Goal 18 ESEE and compatibility findings and the Flood Plain Development Permit findings to better reflect the distinctions LUBA found significant and to respond to the issues raised by opponents in their LUBA briefing.

### **Remand Process**

The County’s procedures on remand are governed by TCLUO 10.130 REMANDS, state statutes and relevant case law. TCLUO 10.130(1) provides that when a decision is remanded by LUBA, the Review Authority, the Board of Commissioners in this instance, may decide whether the matter shall proceed under the Review Authority or a subordinate review authority. Given the time constraints for decision-making on remand discussed below and the fact that the remand involves a goal exception for which the Board of Commissioners must make the final decision anyway, the Board of Commissioners should conduct and decide the remand.

TCLUO 10.130(2) says that final action must be taken on the application within 90 days of the effective date of the remand order. TCLUO 10.130(2)(c) further provides, “The 90-day period shall not begin until the applicant requests in writing that the County proceed with the application on remand.”<sup>4</sup> This letter is the written request from the applicant referred to in TCLUO 10.130(2)(c) and triggers the 90-day clock.

TCLUO 10.130(2)(d) allows the 90-day period to be extended for a reasonable period at the request of the applicant.

The TCLUO provides no other further relevant procedural requirements for the remand proceeding.

New evidence and testimony is warranted given the significance LUBA gave to distinguishing between the developed lots and the “vacant” lots, a distinction not drawn in the first Board processes. Old and new evidence and testimony regarding the “vacant” lots not only supports findings justifying the “reasons” requirement of

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<sup>4</sup> Note that ORS 215.435(1) requires that the county make a decision within 120 days after the remand proceeding is triggered by an applicant. However, the County code is more restrictive than the state statute and, while it is uncertain, it is wise to assume that the TCLUO’s 90-day period is the applicable period.

OAR 660-004-0020(2)(a) for the “vacant” lots but also supports findings for the ESEE and compatibility analysis under OAR 660-004-0020(2)(c) and (d).

Regarding the FDP findings, at LUBA the Oregon Coast Alliance challenged the Board’s decision finding compliance with TCLUO 3.510(10)(h). They argued that allowing any temporary vegetation removal to construct the revetment is prohibited under that standard. The Board should respond to their claim in the remand decision, which is unlikely to be particularly burdensome. TCLUO 3.510(10)(h) simply says the County will “Prohibit man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage.” Opponents argued that County standard forecloses *any* vegetation removal – even if it is for a revetment that will *decrease* potential flood damage. On remand, the Board should explain that the temporary removal of vegetation to construct the approved revetment did not *increase* the potential for flood damage in fact, but rather *decreased* that potential. The Board should explain that the experienced contractor installed the revetment in segments of three houses each. Findings should further explain that the contractor left the foredune facing the ocean completely intact and excavated *behind it*, to the tune of excavating the revetment trench about 10-feet from the vegetated dune toward the houses. In other words, there was never a time during the revetment’s construction, when the foredune vegetation in front of the excavated trench was removed. The findings should further explain that upon excavation, the sand from the trench was placed in *front of the trench* creating a barrier between any ocean flood risk and the Subject Properties; a barrier that did not previously exist, that provided more flood protection than before.

Further, the Board will have the opportunity to expressly interpret whether TCLUO 3.510(10)(h) even applies to temporary construction impacts for the installation of facilities designed to decrease flood damage. Please note in that regard that LUBA is required to defer to any plausible Board interpretation of its own code. Finally, the Board should note that in any event, opponents’ arguments are moot as the revetment has been installed and there were no increases in potential flood risks in fact. Rather, the converse was the case here.

### **Remand Issues and Evidence**

Applicants present evidence, which is attached as Exhibits 6,<sup>5</sup> 7<sup>6</sup> and 8<sup>7</sup> to support reapproval of the revetment. Applicants request that the Board instruct them to draft approval findings for your and your staff’s review if, after the Board’s remand processes, the Board agrees that reapproval is appropriate.

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<sup>5</sup> West Consultants remand supplement.

<sup>6</sup> Schott and Associates Natural Resources Assessment.

<sup>7</sup> Real Estate Economics Report by Economics International Corp.

Exhibits 6, 7 and 8 are the type of site-specific expert witness evidence that LUBA concluded is superior to generalized statements from publications and appropriate to support approval of a reasons exception.

Concerning the reasons justifying an exception to Goal 18, IR 5 for the “vacant” lots sandwiched between properties that are developed with homes, Applicants’ expert Chris Bahner, West Consulting, has written a supplemental report. Mr. Bahner is the engineer whose other reports are also in the record and who designed the BPS. His supplement explains that the revetment is necessary to be continuous, as it is designed and installed, in order to protect the developed lots and public infrastructure. He explains why leaving revetment “gaps” at the vacant lots deprives the revetment of its utility to protect the developed lots and risks harm to the developed lots. His analysis identifies at least three reasons that a continuous BPS as approved and constructed is superior and necessary, rather than one that contains gaps at the vacant lots.

The first reason essentially states the obvious; a BPS with holes in it effectively defeats the purpose of the BPS. BPS with gaps significantly reduces the protection against coastal flood risk that a continuous BPS provides. This is because the ocean will flow through the gaps and will flood the areas behind and around the revetment. The continuous BPS significantly reduces flood risk on the Subject Properties from the unprotected risk of 20 to 50% annual chance of ocean flooding to an 8% annual chance of ocean flooding with the revetment installed. A BPS with holes in it returns the developed properties to a significant chance of ocean flooding.

Second, leaving gaps in the BPS at the vacant lots would not protect against future coastal “passive” erosion on the developed lots, which could eventually reach and undermine the homes near the gaps and the public infrastructure exposed to ocean erosion at and around such gaps. Passive erosion will continue at and around the gaps in the BPS just as passive erosion will continue along the beach to the south of the BPS. The littoral processes now present along this stretch of the coast would be disrupted through the creation of shoreline cusps, which are crescentic seaward projections, as passive erosion continues in the BPS gaps at the “vacant” lots. These cusps are not the type of natural beach process that the conservation goal of Goal 18, IR 5 seeks to preserve. Furthermore, these “cusps” could ultimately damage the BPS structure near the gaps and pose public safety threats due to increases in water flow velocity through the narrow gaps where the vacant lots are situated.

Third, it is physically not possible to construct end protection measures (like the ecology block wall along the south end of the structure) along the borders of gaps on the developed properties to connect to the BPS to provide the necessary flooding and erosion protection to them. There is simply not enough room on the

developed properties to do so and still provide them with the protection they require. An image of the referenced ecology block wall is below:



There can be no doubt that the evidence establishes that reasons justify why an exception is appropriate for the vacant lots and that the conservation goals of Goal 18, IR 5 cannot be met by leaving gaps in the BPS on the vacant lots.

As noted, LUBA decided not to deal with the opponents' arguments against the reasons exception ESEE analysis and compatibility rules. A remand approval decision will largely rely upon the findings that the Board has already adopted (*i.e.* that the revetment is in the Applicants' backyards, not the dry sand beach where the public recreates; the entire unincorporated community including where the revetment is, and the beach all the way to the ocean, is subject to a Goal 17 "Coastal Shorelands" exception; and that the revetment harms nothing and changes nothing except to protect the Applicants' properties; the ocean and beach will continue to do what they do and the revetment will not change that except to protect the properties it is supposed to protect).

Nonetheless, in light of the opponents' LUBA briefing, the Applicants have had an expert evaluate the opponents' natural resource claims. In this regard, the Applicants submit the report by recognized expert Dr. Martin Schott, Schott & Associates, demonstrating that the environmental consequences of the revetment are either neutral or positive.

Further, in light of other opponent claims at LUBA that the revetment will have adverse economic impacts on other properties, the Applicants submit the report of a recognized expert in real estate economics who explains similarly that the impacts of the revetment are either positive or neutral. If the Board decides to continue to approve the proposal, the Applicants will prepare findings addressing OAR 660-004-0020(2)(c) and (d) in light of all of the evidence, including that submitted on remand addressing opponents' LUBA claims, demonstrating all required standards are met.

Regarding the County findings of compliance with its own floodplain standards, as explained above, the opponents submitted one substantive challenge at LUBA. That challenge concerned TCLUO 3.510(10)(h), which "[p]rohibit[s] man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage." As noted above, opponents claimed that the construction process for the BPS would remove vegetation and so necessarily violated TCLUO 3.510(10)(h). Their assertions regarding the County's Floodplain Development Permit standards were limited to this argument against temporary vegetation removal during construction of flood protection (the approved BPS). OCA instead posited their own interpretation of the County FDP standards – that basically no revetment or other flood protection measure could ever be approved because constructing a revetment or other flood protection measures requires temporarily

removing vegetation, which the opponents claimed necessarily violated County's FDP rules.

The opponents' legal and factual premises are wrong and the findings on remand should so explain. On the facts, the Bahner report demonstrates that the construction of the BPS never increased the potential for flood damage. Excavation was behind the vegetated dune toward the houses. The vegetated dune continued to exist during construction. Moreover, excavated sand was placed in *front of the trench* (on Applicants' properties), creating a barrier to ocean flooding that was greater than before. Further the revetment has performed exactly as it was designed to – it has mitigated against flood damage that would otherwise have occurred and has maintained a vegetative cover in the process. TCLUO 3.510(10)(h) was never violated – if it even applies to temporary construction of a facility designed to reduce flood risks.

The Board of Commissioners should simply adopt its own interpretation of how its own code applies in these circumstances. The County might point out that it has not been violating its code for decades by approving revetments and other flood reducing improvements – such as the one at issue here, as well as the one not at issue here that the County approved between the Subject Properties and the Shorewood RV Park, and others. The County should also explain in its findings that regardless, the BPS has been constructed and the issue is moot.

Under state statutes and caselaw, LUBA is required to afford great deference to any such express interpretation of the County's Floodplain Development Permit provisions. Specifically, the Board's express interpretation of its own code will be afforded *Siporen* deference<sup>8</sup> by LUBA and the courts.

### **Conclusion**

The Applicants respectfully request that the County proceed with the LUBA remand. ORS 215.435; TCLUO Section 10.130(2)(c). The Applicants respectfully request that the Board of Commissioners make an oral decision to approve the applications on remand and direct the Applicants to write supplemental findings for

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<sup>8</sup> *Siporen* deference refers to the holding in *Siporen v. City of Medford*, 349 Or 247, 262, 243 P3d 776 (2010), which establishes the highly deferential standard that LUBA and the courts are to afford a local government's choice among plausible interpretations of the local code.

the Board's consideration at a subsequent public meeting.

Thank you for your consideration.

Very truly yours,

Wendie L. Kellington

WLK:wlk

CC: Clients

1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                   OF THE STATE OF OREGON

3  
4                   OREGON COAST ALLIANCE,  
5                   *Petitioner,*

6  
7                   and

8  
9                   OREGON DEPARTMENT OF LAND CONSERVATION  
10                  AND DEVELOPMENT,  
11                  *Intervenor-Petitioner,*

12  
13                  vs.

14  
15                  TILLAMOOK COUNTY,  
16                  *Respondent,*

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18                  and

19  
20                  MICHAEL ROGERS, CHRISTINE ROGERS, BILL COGDALL,  
21                  LYNDA COGDALL, JON CREEDON, DAVID FARR, FRIEDA FARR,  
22                  DON ROBERTS, BARBARA ROBERTS, RACHEL HOLLAND,  
23                  JEFFREY KLEIN, TERRY KLEIN, DAVID HAYES, MICHAEL ELLIS,  
24                  MICHAEL MUNCH, ANGELA DOWLING, DAVID DOWLING,  
25                  MEGAN STECK BERG, EVAN DANNO, MARK KEMBALL,  
26                  ALICE KEMBALL, MARY ANN LOCKWOOD FAMILY TRUST,  
27                  and HEATHER STECK VON SEGGERN,  
28                  *Intervenors-Respondents.*

29  
30                  LUBA No: 2021-101

31  
32                  OREGON SHORES CONSERVATION COALITION  
33                  and SURFRIDER FOUNDATION,  
34                  *Petitioners,*

35  
36                  and



1 OREGON DEPARTMENT OF LAND CONSERVATION  
2 AND DEVELOPMENT,  
3 *Intervenor-Petitioner,*  
4

5 vs.  
6

7 TILLAMOOK COUNTY,  
8 *Respondent,*  
9

10 and  
11

12 MICHAEL ROGERS, CHRISTINE ROGERS, BILL COGDALL,  
13 LYNDA COGDALL, JON CREEDON, DAVID FARR, FREIDA FARR,  
14 DON ROBERTS, BARBARA ROBERTS, RACHAEL HOLLAND,  
15 JEFFREY KLEIN, TERRY KLEIN, DAVID HAYES, MICHAEL ELLIS,  
16 MICHAEL MUNCH, ANGELA DOWLING, DAVID DOWLING,  
17 MEGAN STECK BERG, EVAN DANNO, MARK KEMBALL,  
18 ALICE KEMBALL, MARY ANN LOCKWOOD FAMILY TRUST,  
19 and HEATHER STECK VON SEGGERN,  
20 *Intervenors-Respondents.*  
21

22 LUBA No. 2021-104  
23

24 FINAL OPINION  
25 AND ORDER  
26

27 Appeal from Tillamook County.  
28

29 Sean T. Malone filed a petition for review and reply brief and argued on  
30 behalf of petitioner Oregon Coast Alliance.  
31

32 Anuradha Sawkar filed a petition for review and reply brief and argued on  
33 behalf of petitioners Oregon Shores Conservation Coalition and Surfrider  
34 Foundation.  
35

36 Steven E. Shipsey filed a petition for review and reply brief and argued on  
37 behalf of intervenor-petitioner Oregon Department of Land Conservation and  
38 Development.

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No appearance by Tillamook County.

Wendie L. Kellington filed a response brief and argued on behalf of intervenors-respondents Michael Rogers, Christine Rogers, Bill Cogdall, Lynda Cogdall, Jon Creedon, David Farr, Frieda Farr, Don Roberts, Barbara Roberts, Rachel Holland, Jeffrey Klein, Terry Klein, David Hayes, Michael Ellis, and Michael Munch.

Andrew H. Stamp filed a response brief and argued on behalf of intervenors-respondents Angela Dowling, David Dowling, Megan Steck Berg, Evan Danno, Mark Kemball, Alice Kemball, Mary Ann Lockwood Family Trust, and Heather Steck Von Seggern.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 09/30/2022

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Rudd.

**NATURE OF THE DECISION**

Petitioners appeal a county board of commissioners decision adopting a post-acknowledgment plan amendment (PAPA) that approves an exception to Statewide Planning Goal 18 (Beaches and Dunes), Implementation Requirement (IR) 5, and a related Floodplain Development Permit (FDP) for beachfront protective structures (BPS).

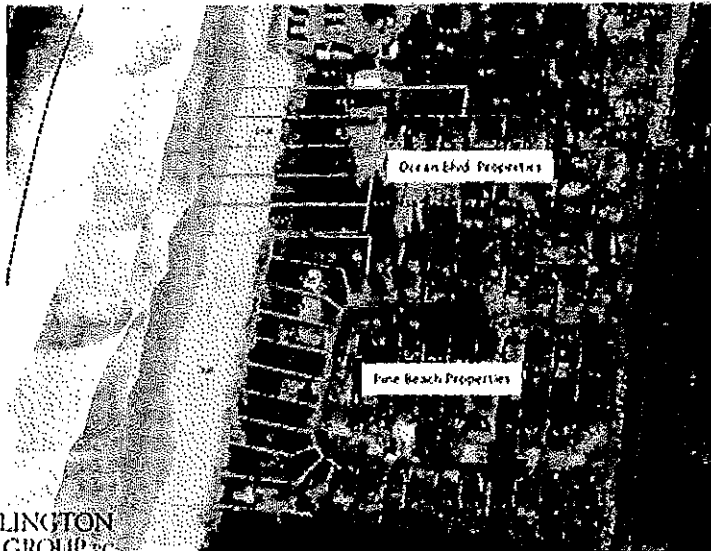
**BACKGROUND**

**A. The Subject Properties**

The subject properties include 15 oceanfront lots, 11 of which are developed with houses and four of which are vacant. Two of the vacant lots are at the southern end of the properties marked “Ocean Blvd. Properties” in the photo below. The Ocean Blvd. Properties are also referred to as the George Shand Tract properties. The other two vacant lots are located within the Pine Beach Subdivision, with each vacant lot bordered on both sides by developed property.<sup>1</sup>

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<sup>1</sup> Intervenors-respondents Angela Dowling, David Dowling, Megan Steck Berg, Evan Danno, Mark Kemball, Alice Kemball, Mary Ann Lockwood Family Trust, and Heather Steck Von Seggern are owners of the George Shand Tract properties. The remaining intervenors-respondents own properties within the Pine Beach Subdivision.



1 ILLINGTON  
2 & GROUP, PC

2 Record 1951. The subject properties are

3 "located within the acknowledged Barview/Twin Rocks/Watseco  
4 Urban Unincorporated Community Boundary, specifically within  
5 the Watesco region of the unincorporated community. The urban  
6 unincorporated community is nearby to the urban growth boundaries  
7 of the City of Garibaldi to the south and the City of Rockaway Beach  
8 to the north. Uses in the area are predominately residential with  
9 recreational facilities located to the north (Shorewood RV Park), to  
10 the south (Camp Magruder) and further to the east across Oregon  
11 State Highway 101 (Twin Rocks Friends Camp). The only  
12 inventoried Goal 5 resource identified in the area is Smith Lake, a  
13 coastal lake, which is approximately 625 feet east and south from  
14 the subject properties. The only other natural resource in the area is  
15 the beach and ocean." Record 18-19 (citations omitted).

16 **B. Planning Context**

17 The subject properties are zoned Community Medium Density Urban  
18 Residential and located within the county's Beach and Dune (BD) and Flood  
19 Hazard (FH) overlay zones. Tillamook County Land Use Ordinance (TCLUO)  
20 3.530(1) provides that the purpose of the county's BD overlay zone

1 “is to establish criteria and performance standards to direct and  
2 manage development and other activities in beach and dune areas in  
3 a manner that:

4 “(a) Conserves, protects and, where appropriate, restores the  
5 resources and benefits of coastal beach and dune areas;

6 “(b) Reduces the risks to life and property from natural and man-  
7 induced actions on these inherently dynamic landforms; and

8 “(c) *Ensures that the siting and design of development in beach*  
9 *and dune areas is consistent with Statewide Planning Goals*  
10 *7 and 18, and the Hazards Element and Beaches and Dunes*  
11 *Element of the Tillamook County Comprehensive Plan.”*  
12 *(Emphasis added.)*

13 Statewide Planning Goal 7 (Areas Subject to Natural Hazards) is “[t]o  
14 protect people and property from natural hazards.” Goal 7 identifies a variety of  
15 implementation requirements. For example, Goal 7, IR 4, provides, “Local  
16 governments will be deemed to comply with Goal 7 for coastal and riverine flood  
17 hazards by adopting and implementing local flood plain regulations that meet the  
18 minimum National Flood Insurance Program (NFIP) requirements.”<sup>2</sup>

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<sup>2</sup> Goal 7 also identifies implementation guidelines, including but not limited to the following:

“3. Local governments should consider nonregulatory approaches to help implement this goal, including but not limited to:

“a. providing financial incentives and disincentives;

“b. providing public information and education materials;

1 Goal 18 is:

2 "To conserve, protect, where appropriate develop, and where  
3 appropriate restore the resources and benefits of coastal beach and  
4 dune areas; and

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

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"c. establishing or making use of existing programs to retrofit, relocate, or acquire existing dwellings and structures at risk from natural disasters.

"4. When reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk the proposed development may pose to other properties.

"5. Local governments should consider measures that exceed the National Flood Insurance Program (NFIP) such as:

"a. limiting placement of fill in floodplains;

"b. prohibiting the storage of hazardous materials in floodplains or providing for safe storage of such materials; and

"c. elevating structures to a level higher than that required by the NFIP and the state building code.

"Flood insurance policy holders may be eligible for reduced insurance rates through the NFIP's Community Rating System Program when local governments adopt these and other flood protection measures."

1 Goal 18 sets out several implementation requirements, including IR 1, which  
2 provides:

3 “Local governments and state and federal agencies shall base  
4 decisions on plans, ordinances and land use actions in beach and  
5 dune areas, other than older stabilized dunes, on specific findings  
6 that shall include at least:

7 “(a) The type of use proposed and the adverse effects it might have  
8 on the site and adjacent areas;

9 “(b) Temporary and permanent stabilization programs and the  
10 planned maintenance of new and existing vegetation;

11 “(c) Methods for protecting the surrounding area from any adverse  
12 effects of the development; and

13 “(d) Hazards to life, public and private property, and the natural  
14 environment which may be caused by the proposed use.”

15 IR 2 limits development on Goal 18 lands, providing:

16 “Local governments and state and federal agencies shall prohibit  
17 residential developments and commercial and industrial buildings  
18 on beaches, active foredunes, on other foredunes which are  
19 conditionally stable and that are subject to ocean undercutting or  
20 wave overtopping, and on interdune areas (deflation plains) that are  
21 subject to ocean flooding. Other development in these areas shall be  
22 permitted only if the findings required in (1) above are presented  
23 and it is demonstrated that the proposed development:

24 “(a) Is adequately protected from any geologic hazards, wind  
25 erosion, undercutting, ocean flooding and storm waves; or is  
26 of minimal value; and

27 “(b) Is designed to minimize adverse environmental effects.”

1 Development of BPS is allowed on Goal 18 lands consistent with IR 5, which  
2 provides:

3 "Permits for [BPS] shall be issued only where development existed  
4 on January 1, 1977. Local comprehensive plans shall identify areas  
5 where development existed on January 1, 1977. For the purposes of  
6 this requirement and [IR] 7 'development' means houses,  
7 commercial and industrial buildings, and vacant subdivision lots  
8 which are physically improved through construction of streets and  
9 provision of utilities to the lot and includes areas where an exception  
10 to (2) above has been approved. The criteria for review of all [BPS]  
11 shall provide that:

12 "(a) visual impacts are minimized;

13 "(b) necessary access to the beach is maintained;

14 "(c) negative impacts on adjacent property are minimized; and

15 "(d) long-term or recurring costs to the public are avoided."<sup>3</sup>

16 **C. Application for County Approval of BPS on the Subject**  
17 **Properties**

18 The subject properties are within FEMA Flood Hazard Zone VE, a Coastal  
19 High Hazard Area for purposes of the county's FH overlay zone.<sup>4</sup> TCLUO

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<sup>3</sup> The county did not adopt an exception to Goal 18, IR 2, for the subject properties because residential development was not prohibited on the subject properties. Record 110.

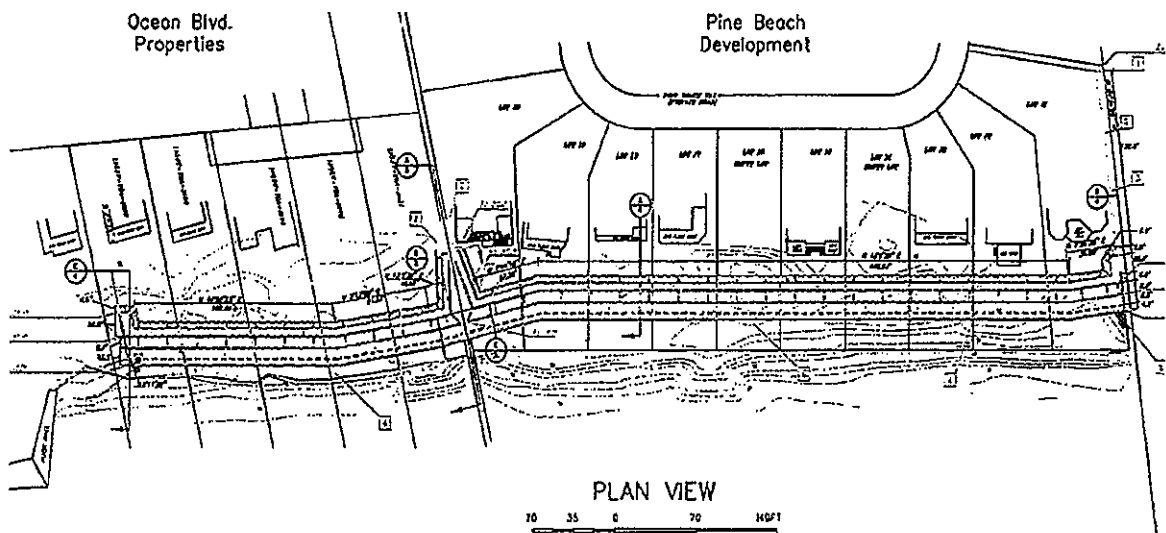
<sup>4</sup> "The Subject Properties are partially located within FEMA Flood Hazard Zone VE, which is assigned to coastal areas with a 1% or greater chance of flooding, and areas with an additional hazard associated with storm waves." Record 85.



1 3.510(4). Intervenors-respondents (intervenors) sought to construct BPS in the  
2 oceanside yards of their properties.

3 “The size of the requested BPS is approximately 840’ long x 30’  
4 wide, so the total amount of land to be used for the BPS is  
5 approximately 25,300 sq. ft. or 0.58 acres. However, the majority of  
6 the BPS will be buried within the foredune and replanted with native  
7 beach grasses, trees and shrubs that will reestablish natural shoreline  
8 vegetation.”<sup>5</sup> Record 35.

9 The subject properties and the proposed BPS locations are show below.



10

11 Record 2012. The revetment is shown located within solid black lines in the  
12 oceanside yards of the properties, cutting inland with a V-shape access ramp  
13 between the George Shand Tract and the Pine Beach Subdivision.

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<sup>5</sup> BPS are also referred to as revetment. “The revetment design includes the rock size, cross section configuration, and plan view layout. The rock size is based on typical rock size for rock revetment structures along the Oregon Coast. They are comprised rocks ranging in diameter from 1 to 5 feet (well-graded gradation).” Record 1992-93.

1           Intervenors applied to the county for a PAPA and an FDP for the proposed  
2 BPS. The PAPA sought an exception to the Goal 18, IR 5, restriction on BPS on  
3 properties that were not developed on January 1, 1977.<sup>6</sup>

4           Intervenors submitted materials in support of their assertions that the  
5 George Shand Tract properties all meet the “development existed on January 1,  
6 1977,” standard set out in IR 5 and do not require an exception but that the Pine  
7 Beach Subdivision properties require and qualify for an exception to IR 5.  
8 Intervenors argued that the George Shand Tract properties were developed on  
9 January 1, 1977, for three reasons: (1) they were part of a subdivision on January  
10 1, 1977, (2) Ocean Boulevard was constructed to serve the property on January  
11 1, 1977, and (3) a property to the north and outside of the George Shand Tract  
12 (tax lot 2900) had been approved for a septic system and obtained water from a  
13 nearby water district on January 1, 1977. Record 26, 1954. Intervenors did not

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<sup>6</sup> OAR 660-004-0005(1) provides:

“An ‘Exception’ is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan that:

“(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

“(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

“(c) Complies with ORS 197.732(2), the provisions of this division and, if applicable, the provisions of OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040.”

1 argue that any of the Pine Beach Subdivision properties were developed on  
2 January 1, 1977.

3 As explained further below, the board of commissioners agreed with  
4 intervenors that the George Shand Tract properties do not require a Goal 18  
5 exception. In the alternative, the board found that those properties all qualify for  
6 an exception. The board approved intervenors' requests for a Goal 18 reasons  
7 exception for those properties that were not developed on January 1, 1977, and  
8 an FDP for all of the properties. These appeals followed.

9 **MOTION TO STRIKE AND MOTION TO TAKE OFFICIAL NOTICE**

10 Intervenor-petitioner Oregon Department of Land Conservation and  
11 Development's (DLCD's) petition for review includes a quotation from a source  
12 not included in the record, DLCD's Guidebook on Erosion Control Practices of  
13 the Oregon Coast. Intervenors filed a motion to strike the quotation from DLCD's  
14 petition for review.<sup>7</sup>

15 DLCD attached a copy of the guidebook to its response to the motion to  
16 strike and requests that we take official notice of the guidebook. DLCD explains  
17 that the guidebook originated from a suggestion in the September 2019 final  
18 report of DLCD's Goal 18: Pre-1977 Development Focus Group and observes

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<sup>7</sup> A hyperlink to the guidebook is provided at page 24, note 10, of DLCD's petition for review. As intervenors note, we will not click on a hyperlink in a footnote to obtain a document. *See Oregon Shores Conservation Coalition v. Coos County*, 75 Or LUBA 534, 540-41 (2017).

1 that intervenors submitted that report into the record. Record 1955-88. We  
2 resolve both motions below.

3 Our review is generally limited to the record. ORS 197.835(2)(a). We may,  
4 however, take official notice of documents that (1) constitute officially  
5 cognizable law under ORS 40.090 and (2) have some relevance to the issues on  
6 appeal. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007). We may  
7 not “take official notice of facts within documents that are subject to notice under  
8 [ORS 40.090], if notice of those facts is requested for an adjudicative purpose  
9 (*i.e.*, to provide evidentiary support or countervailing evidence with respect to an  
10 applicable approval criterion that is at issue in the challenged decision).” *Id.*

11 ORS 40.090(2) provides that items subject to judicial notice include the  
12 public official acts of the executive department of the state. We understand  
13 intervenors to argue that the guidebook is not a “public official act” because there  
14 is no evidence that the guidebook has been adopted by the Land Conservation  
15 and Development Commission (LCDC). Motion to Strike 3-4. We have  
16 previously taken official notice of DLCD publications. In *Foland v. Jackson*  
17 *County*, 18 Or LUBA 731, 739-40, *aff’d*, 101 Or App 632, 792 P2d 1228 (1990),  
18 *aff’d*, 311 Or 167, 807 P2d 801 (1991), we took official notice of a DLCD  
19 destination resort handbook under ORS 40.090(2). We explained that there is a  
20 distinction between whether we may take official notice of a DLCD publication  
21 and whether we may rely on that publication in resolving the assignments of  
22 error. *Foland*, 18 Or LUBA at 740 n 5; *see also Shaff v. City of Medford*, 79 Or

1 LUBA 317, 321 (2019) (noting that LUBA may take official notice of an Oregon  
2 Department of Transportation (ODOT) manual as an official act of a state agency  
3 but that the manual may not be relied upon to establish any fact). It is undisputed  
4 that the guidebook is a DLCD publication. Thus, the guidebook may be subject  
5 to official notice.

6 DLCD contends that the guidebook “provides a recent articulation of the  
7 Goal 18 policy at issue in this appeal.” Response to Motion to Strike and Motion  
8 to Take Official Notice 4. Intervenors argue, and we agree, that any statewide  
9 land use policy is required to be adopted by LCDC as an administrative rule or a  
10 goal. ORS 197.040(1)(c)(A); *Foland*, 18 Or LUBA at 757 n 25 (noting that a  
11 DLCD handbook does not represent official policy positions, which must be  
12 adopted as administrative rules or goals). Accordingly, the guidebook may not  
13 be used for the purpose for which DLCD requests official notice.

14 The motion to take official notice is denied.

15 The motion to strike is granted.

## 16 **OVERVIEW OF ASSIGNMENTS OF ERROR**

17 Petitioners Oregon Shores Conservation Coalition and Surfrider  
18 Foundation (together, OS/SF) and Oregon Coast Alliance (OCA) argue in their  
19 first assignments of error that the county erred in finding that the George Shand  
20 Tract properties do not require an exception. DLCD and OCA argue in their first  
21 assignments of error that the county erred in adopting alternative findings

1 approving an exception for the George Shand Tract properties after determining  
2 that they do not require an exception.<sup>8</sup>

3 DLCD argues in its second assignment of error and OS/SF and OCA argue  
4 in their third assignments of error that the county erred in approving a “catch-all”  
5 exception to Goal 18, IR 5. Relatedly, OCA argues in its seventh assignment of  
6 error that the county failed to adequately address the four vacant lots in its  
7 analysis of reasons justifying the exception.

8 OS/SF and OCA argue in their second assignments of error and DLCD  
9 argues in its third assignment of error that the county erred in approving a  
10 “demonstrated need” exception to Goal 18, IR 5.

11 DLCD and OCA argue in their fourth assignments of error that the  
12 county’s decision failed to comply with the exception criteria in OAR 660-004-  
13 0022(2)(c).

14 OS/SF argues in its fourth assignment of error that the county’s decision  
15 failed to comply with the exception criteria in OAR 660-004-0022(2)(d).

16 DLCD and OCA argue in their fifth assignments of error that the county  
17 committed error in approving the FDP.

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<sup>8</sup> These consolidated appeals involve substantial briefing. In our order consolidating these appeals, we encouraged the parties to coordinate their briefing to the extent possible. We appreciate their efforts to do so and address related assignments of error together.

1 OCA argues in its sixth assignment of error that the PAPA does not comply  
2 with Statewide Planning Goal 6 (Air, Water and Land Resources Quality) and  
3 Goal 7.

4 Intervenor's have coordinated their briefing and adopt each other's  
5 responses to the assignments of error.

#### 6 **STANDARD OF REVIEW**

7 We will reverse or remand a comprehensive plan amendment that is not  
8 consistent with the goals. ORS 197.835(6). We will reverse or remand a decision  
9 that misconstrues the applicable law or is not supported by substantial evidence.  
10 ORS 197.835(9)(a)(C), (D).

11 Adequate findings identify the applicable criteria, identify the evidence  
12 relied upon, and explain why the evidence leads to the conclusion that the criteria  
13 are or are not met.

14 "It is well-established that findings must be in the local  
15 government's decision, and that they must do more than merely state  
16 a conclusion of compliance. The Supreme Court first articulated the  
17 standard for evaluating the adequacy of local findings in *Sunnyside*  
18 *Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d  
19 1063 (1977):

20 "No particular form is required, and no magic words need be  
21 employed. What is needed for adequate judicial review is a  
22 clear statement of what, specifically, the decision-making  
23 body believes, after hearing and considering all the evidence,  
24 to be the relevant and important facts upon which its decision  
25 is based. Conclusions are not sufficient."

26 "In *Le Roux v. Malheur County*, 30 Or LUBA 268 (1995) we

1 explained the requirement for adequate findings as follows:

2 “The county’s \* \* \* findings must (1) identify the relevant  
3 approval standards, (2) set out the facts relied upon, and (3)  
4 explain how the facts lead to the conclusion that the request  
5 satisfies the approval standards. *Sunnyside*[, 280 Or at 20-21].  
6 See also *Penland v. Josephine County*, 29 Or LUBA 213  
7 (1995); *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994);  
8 *Hart v. Jefferson County*, 27 Or LUBA 612 (1994). In  
9 addition, when, as here, a party raises issues regarding  
10 compliance with any particular approval criteria, it is  
11 incumbent upon the local government to address those issues.  
12 *Hillcrest Vineyard v. Bd. of Comm. Douglas Co.*, 45 Or App  
13 283, 293, 608 P2d 201 (1980); *Collier v. Marion County*, 29  
14 Or LUBA 462 (1995). Moreover, when the evidence is  
15 conflicting, the local government may choose which evidence  
16 to accept, but must state the facts it relies on and explain why  
17 those facts lead to the conclusion that the applicable standard  
18 is satisfied. *Moore v. Clackamas County*, 29 Or LUBA 372  
19 (1995).’ *Le Roux*, 30 Or LUBA at 271.” *Larvik v. City of La*  
20 *Grande*, 39 Or LUBA 467, 470-71 (1998).

21 “[A] passing reference to the general subject matter of the goals is insufficient to  
22 establish compliance with them.” *Id.* at 472-73. The findings must substantively  
23 address how the proposed comprehensive plan amendment assures continued  
24 compliance with the goals. *Id.* at 473. Findings must respond to specific issues  
25 relevant to compliance with applicable approval standards that were raised in the  
26 proceedings below. *Norvell v. Portland Area LGBC*, 43 Or App 849, 853, 604  
27 P2d 896 (1979).

## 28 OS/SF’S AND OCA’S FIRST ASSIGNMENTS OF ERROR

29 Goal 18, IR 5, provides, in part, that permits for BPS “shall be issued only  
30 where development existed on January 1, 1977. \* \* \* For the purposes of this



1 requirement \* \* \* 'development' means \* \* \* vacant subdivision lots which are  
2 physically improved through construction of streets and provision of utilities to  
3 the lot \* \* \*." The county found:

4 **"The oceanfront George Shand Tracts were 'developed' on**  
5 **January 1, 1977 and so are eligible for [BPS] under Goal 18, [IR]**  
6 **5 without the need to take an exception.**

7 "Goal 18, [IR] 5 provides that permits for [BPS] may only be issued  
8 where 'development' existed on January 1, 1977. 'Development' is  
9 defined by Goal 18, [IR] 5 to mean 'houses, commercial and  
10 industrial buildings, and vacant subdivision lots which are  
11 physically improved through construction of streets and provision  
12 of utilities to the lot[.]' The Board finds that 'development' existed  
13 on January 1, 1977, within the meaning of Goal 18, [IR] 5, for Tax  
14 Lots 3000, 3100, 3104, 3203 and 3204 of map 01N10W07DA (the  
15 oceanfront 'George Shand Tracts'). The evidence in the record  
16 demonstrates that [o]n January 1, 1977, the George Shand Tracts  
17 were lots in the George Shand Tracts Subdivision, platted in 1950,  
18 Ocean Boulevard had been constructed to serve them, and water was  
19 provided by Watseco Water District and individual septic systems.  
20 An example of this is Application, Exhibit D in the record, which is  
21 the building permit for tax lot 2900, directly north of the George  
22 Shand Tracts, approved in 1974 and indicating that 'Witseco Water'  
23 would be used and a 'septic tank.' Clearly, the predecessor to the  
24 Watseco-Barview Water District's infrastructure in Watseco was  
25 available to serve the George Shand Tracts as early as 1974.  
26 Moreover, DLCD has confirmed that it is that agency's position that  
27 these lots were developed on January 1, 1977 under Goal 18, [IR] 5.  
28 Accordingly, the Board finds that the George Shand tracts may be  
29 issued a permit for BPS without the need to take an exception to  
30 Goal 18, [IR] 5." Record 26 (boldface in original).

31 OS/SF argues that the county misconstrued the law and adopted findings  
32 unsupported by substantial evidence that the George Shand Tract properties were

1 developed on January 1, 1977, and do not require an exception. OCA joins in this  
2 assignment of error.

3 **A. Interpretation**

4 When interpreting a law, the first level of analysis requires consideration  
5 of the text, context, and, if useful, the legislative history. *State v. Gaines*, 346 Or  
6 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317  
7 Or 606, 610-12, 859 P2d 1143 (1993). “[W]ords of common usage typically  
8 should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611.

9 IR 5 describes development as being evidenced by physical improvements  
10 to vacant subdivision lots “through construction of streets and *provision of*  
11 *utilities to the lot*” on January 1, 1977. (Emphasis added.) The county construed  
12 IR 5 to mean that a vacant subdivision lot is developed on January 1, 1977, if it  
13 is served by a road and if it is possible for the land to obtain water and treat waste  
14 with an on-site septic system. The dictionary defines “provision” as “the act or  
15 process of providing” and “provide” as “to supply what is needed for sustenance  
16 or support.” *Webster’s Third New Int’l Dictionary 1827* (unabridged ed 2002).  
17 The county’s interpretation of “provision of utilities to the lot” requires not that  
18 water be supplied to the lot but, rather, that water be available if requested.  
19 Intervenors argue that that interpretation is correct because the requirement refers  
20 to “construction of streets” and “provision of utilities,” and “provision” of  
21 utilities must mean something different than “construction” of utilities.

1           We disagree. “As a general rule, we construe a statute in a manner that  
2 gives effect, if possible, to all its provisions.” *Crystal Communications, Inc. v.*  
3 *Dept. of Rev.*, 353 Or 300, 311, 297 P3d 1256 (2013). IR 5 provides that  
4 considering a vacant subdivision lot to be developed requires *physical*  
5 *improvements* to the lot. These physical improvements to the lot are to be  
6 reflected through both the construction of streets and the provision of utilities to  
7 the lot. The board of commissioners’ interpretation requires that we insert  
8 language into the requirement, changing the requirement from “physical  
9 improvements to subdivision lots through construction of streets and provision  
10 of utilities to the lot” to “physical improvements to subdivision lots through  
11 construction of streets and **feasibility of utility service** to the lot.” We will not  
12 insert what has been omitted. ORS 174.010.

13           We agree with OS/SF and OCA that Goal 18, IR 5, protects development  
14 that existed on January 1, 1977.<sup>9</sup> The county misconstrued IR 5 in finding that it  
15 can be met if utilities could have been accessed but had not actually been  
16 provided to the lot.

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<sup>9</sup> “The purpose of a [provision protecting historic uses] is to prevent hardship to individuals who have existing uses. [Such a clause] is enacted to preserve rights, not to grant additional rights.” *Spaght v. Dept. of Transportation*, 29 Or App 681, 686, 564 P2d 1092 (1977).

1           **B. Substantial Evidence**

2           Substantial evidence is evidence that a reasonable person would rely upon  
3 to make a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608  
4 (1993). As evidence that, on January 1, 1977, the George Shand Tract properties  
5 were vacant subdivision lots physically improved through construction of streets  
6 and provision of utilities to the lot, the county relied upon “the building permit  
7 for tax lot 2900, directly north of the George Shand Tracts, approved in 1974 and  
8 indicating that ‘Watseco Water’ would be used and a ‘septic tank.’” Record 26.  
9 The county concluded, “Clearly, the predecessor to the Watseco-Barview Water  
10 District’s infrastructure in Watseco was available to serve the George Shand  
11 Tracts as early as 1974.” *Id.*

12           The county’s finding that the George Shand Tract properties were  
13 developed on January 1, 1977, is not supported by substantial evidence. The  
14 county’s finding does not reference physical improvement to the George Shand  
15 Tract properties by provision of utilities but, rather, concludes that utilities  
16 existed in the general area and, we assume, would have been feasible if pursued.<sup>10</sup>

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<sup>10</sup> The county’s findings state, “Moreover, DLCD has confirmed that it is that agency’s position that these lots were developed on January 1, 1977 under Goal 18, [IR] 5.” Record 26. DLCD disputes that statement, explaining that it did not confirm to the county that it considered the lots developed but, rather, that it observed, in a letter to the county, that county staff had reached that conclusion. DLCD’s Petition for Review 16 n 7. It is not clear from the findings what weight the county placed on its perception that DLCD concluded that the properties were developed, but we understand that these properties are not identified as having been developed on January 1, 1977, in DLCD’s Coastal Atlas. Record 41 n 4

1 Absent substantial evidence in the record that utilities were provided to the  
2 George Shand Tract properties on January 1, 1977, the George Shand Tract  
3 properties require an exception to Goal 18 in order to construct BPS. The  
4 county's conclusion to the contrary is not supported by substantial evidence.

5 This assignment of error is sustained.

6 **DLCD'S AND OCA'S FIRST ASSIGNMENTS OF ERROR**

7 OAR 660-004-0000(2) provides that exceptions may be possible for (1) a  
8 use not allowed by the applicable goal or (2) a use authorized by a goal that  
9 cannot comply with the standards for the use. DLCD's first assignment of error  
10 is that the county erred in adopting alternative findings approving an exception  
11 for the George Shand Tract properties because BPS are a use allowed by the goal  
12 and because the county found that the properties meet the applicable standards.  
13 OCA joins in this assignment of error.

14 The county found that the George Shand Tract properties meet the  
15 standards for BPS (developed on January 1, 1977) and do not require an  
16 exception. However, for the reasons set out in our resolution of OS/SF's and  
17 OCA's first assignments of error, the county's determination that these properties  
18 were developed on January 1, 1977, misconstrued the law and is not supported  
19 by substantial evidence. Accordingly, DLCD's argument that the county may not

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(stating that the number of oceanfront ownerships in the littoral cell subregion that are entitled to be armored with BPS "includes the five (5) George Shand Tracts that the County and DLCD agree are entitled to the proposed BPS, contrary to DLCD's online 'atlas'").

1 approve the exception because it is for a use allowed by the goal does not provide  
2 a basis for remand or reversal.

3 Anticipating that a reviewing body might find fault with its determination  
4 that the George Shand Tract properties do not require an exception, the county  
5 adopted alternative findings approving an exception. DLCD makes a variety of  
6 arguments that the county erred in adopting those alternative findings.

7 The county's alternative findings include:

8 **"In the alternative only, if a reviewing authority decides that the**  
9 **George Shand Tracts were not 'developed' on January 1, 1977**  
10 **and so are ineligible for [BPS], then as a precaution only and**  
11 **only if such an appellate finding of ineligibility under Goal 18,**  
12 **[IR] 5 unless an exception is taken, is made then the Board also**  
13 **approves an exception to Goal 18, [IR] 5 for the specified George**  
14 **Shand tracts.**

15 "Accordingly, it is only in the alternative and in the event that an  
16 appellate authority reverses or remands our determination that the  
17 George Shand Tracts were 'developed' on January 1, 1977, that the  
18 Board approves, in the alternative, a Goal 18, [IR] 5 exception to the  
19 date of eligibility for the George Shand Tracts." Record 26 (boldface  
20 and underscoring in original).

21 The alternative nature of these findings is reiterated in a footnote that provides,  
22 in part, "If the Board's findings that the George Shand Tracts were developed on  
23 January 1, 1977 become final without appeal or are sustained on appeal, there is  
24 no justification to take a Goal 18, [IR] 5 exception for those properties and none  
25 is taken in that case, as explained herein." Record 29 n 1.

1           We agree with intervenors that alternative findings are a common  
2 occurrence in land use decisions. *See, e.g., 1000 Friends of Oregon v. Jackson*  
3 *County*, 76 Or LUBA 270, 277 (2017), *rev'd on other grounds*, 292 Or App 173,  
4 423 P3d 793 (2018), *rev dismissed*, 365 Or 557 (2019) (“[T]he county did not  
5 commit reversible error in adopting alternative reasons exceptions under both  
6 OAR 660-004-0022(1)(a) and 660-004-0022(3).”); *id.* at 278 (“Errors made  
7 under one set of reasons standards may be harmless if the county adequately  
8 justifies an exception under a different set of reason standards.”). The county did  
9 not err in adopting alternative findings approving an exception.

10           This assignment of error is denied.

11       **DLCD, OS/SF, AND OCA’S SECOND AND THIRD ASSIGNMENTS OF**  
12       **ERROR AND OCA’S SEVENTH ASSIGNMENT OF ERROR**

13           **A. Introduction**

14           ORS 197.732(2)(c) provides that a local government may approve an  
15 exception to a statewide planning goal where the following standards are met:

16           “(A) Reasons justify why the state policy embodied in the  
17 applicable goals should not apply;

18           “(B) Areas that do not require a new exception cannot reasonably  
19 accommodate the use;

20           “(C) The long term environmental, economic, social and energy  
21 [(ESEE)] consequences resulting from the use at the proposed  
22 site with measures designed to reduce adverse impacts are not  
23 significantly more adverse than would typically result from  
24 the same proposal being located in areas requiring a goal  
25 exception other than the proposed site; and

1           “(D) The proposed uses are compatible with other adjacent uses or  
2           will be so rendered through measures designed to reduce  
3           adverse impacts.”

4           OAR 660-004-0022 sets out criteria applicable to reasons exceptions.

5           OAR 660-004-0022(1) provides:

6           “For uses not specifically provided for in this division, or in OAR  
7           660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040,  
8           reasons include but are not limited to the following: There is a  
9           demonstrated need for the proposed use or activity, based on one or  
10          more of the requirements of Goals 3 to 19; and either:

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

19          “(b) The proposed use or activity has special features or qualities  
20          that necessitate its location on or near the proposed exception  
21          site.”

22          “OAR 660-004-0022(1) is a generic, ‘catch-all’ provision that provides standards  
23          for reasons exceptions in the absence of other, goal-specific rules.” *Oregon*  
24          *Shores Conservation Coalition v. Coos County*, \_\_\_ Or LUBA \_\_\_, \_\_\_ (LUBA  
25          No 2020-002, May 4, 2021) (slip op at 23). The rule recognizes a “demonstrated  
26          need” as one reason that may be used to justify an exception, but reasons that are  
27          not identified in OAR 660-004-0022(1) may also be used to justify an exception.  
28          *Morgan v. Douglas County*, 42 Or LUBA 46, 52 (2002). OS/SF, OCA, and  
29          DLCD (collectively, petitioners) allege that the county erred in finding that



1 adequate reasons justify a Goal 18, IR 5, exception under both the “catch-all” and  
2 “demonstrated need” reasons.

3 **B. DLCD’s Second Assignment of Error, OS/SF’s and OCA’s**  
4 **Third Assignments of Error, and OCA’s Seventh Assignment of**  
5 **Error**

6 The county approved a general, “catch-all” reasons exception to Goal 18,  
7 IR 5, for those properties that were not developed on January 1, 1977, based upon  
8 what the county determined were unique circumstances. Record 22. OS/SF  
9 argues in its third assignment of error and DLCD argues in its second assignment  
10 of error that the county’s “catch-all” exception is not supported by sufficient  
11 reasons. OCA joins in these assignments of error.

12 **1. Interpretation**

13 First, OS/SF argues that the county misconstrued the law in identifying the  
14 reasons that it concluded supported the “catch-all” exception. OS/SF argues that  
15 interpreting OAR 660-004-0022(1) requires use of the canon of construction  
16 referred to as “*noscitur a sociis*.” OS/SF explains:

17 “The Oregon Supreme Court recently explained that *noscitur a*  
18 *sociis* is the ‘relevant rule for interpreting a word or phrase’ when a  
19 statute provides ‘a nonexclusive list of examples.’ *Capital One Auto*  
20 *Fin. Inc. v. Dep’t of Revenue*, 363 Or 441, 453, 423 P3d 80 (2018).  
21 *Noscitur a sociis* is ‘[a] canon of construction holding that the  
22 meaning of an unclear word or phrase should be determined by the  
23 words immediately surrounding it.’ *Black’s Law Dictionary* 1160-  
24 61 (9th ed 2009). Under this interpretative rule, the court asked  
25 whether any of the specifically enumerated examples in a non-  
26 exclusive list provided by a statute shared ‘a common  
27 characteristic.’ *Capital One*, 363 Or at 453. This common

1 characteristic is then used as context for understanding the meaning  
2 of the unclear phrase. *Id.*” OS/SF’s Petition for Review 40.

3 The statute at issue in *Capital One* stated that “[i]ncome from sources within this  
4 state” included (1) “income from tangible or intangible property located \* \* \* in  
5 this state,” (2) “income from tangible or intangible property \* \* \* having a situs  
6 in this state,” and (3) “income from any activities carried on in this state,  
7 regardless of whether carried on in intrastate, interstate or foreign commerce.”  
8 363 Or at 451. The court concluded that the common characteristic was income  
9 from sources within the state. *Id.* at 453.

10 OS/SF contends that the characteristics of the “demonstrated need” reason  
11 necessarily cabin the permissible reasons for a “catch-all” exception:

12 “The ‘requirements of Goals 3 to 19’ share the common  
13 characteristic of being legal obligations (i.e., goals, regulations, or  
14 statutes) that a local government would be unable to meet absent the  
15 proposed exception to allow the proposed use, whereas subsections  
16 (1)(a)-(b) share the common characteristic of being locational  
17 factors. Therefore, \* \* \* any other unenumerated reasons that could  
18 justify a Goal 18, IR 5 exception should be similarly grounded in a  
19 legal obligation in conjunction with a locational factor that the local  
20 government would be unable to meet absent an exception for the  
21 proposed use.” OS/SF’s Petition for Review 41.

22 Nothing in the rule suggests to us that LCDC intended to so limit  
23 permissible reasons for an exception. OAR 660-004-0020(1) provides, in part,  
24 that, “[if] a jurisdiction determines that there are reasons consistent with OAR  
25 660-004-0022 to use resource lands for uses not allowed by the applicable Goal

1   \*\*\*, the justification shall be set forth in the comprehensive plan as an  
2   exception.”

3           “The exception shall set forth the facts and assumptions used as the  
4           basis for determining that a state policy embodied in a goal should  
5           not apply to specific properties or situations, including the amount  
6           of land for the use being planned and why the use requires a location  
7           on resource land[.]” OAR 660-004-0020(2)(a).

8   We have previously said that “LCDC probably intended that \*\*\* reasons  
9   sufficient to justify an exception [other than a ‘demonstrated need’] cross some  
10   minimal threshold to ensure that the reasons are not makeweights that render the  
11   goal requirement meaningless.” *Todd v. City of Florence*, 52 Or LUBA 445, 463  
12   (2006). We conclude that the unique circumstances here, explained below, rise  
13   to a level that is not “makeweight” and provide sufficient reasons for why Goal  
14   18 should yield to the use of a set amount of resource land for a particular use.  
15   We reject OS/SF’s interpretation of the rule and proceed to the findings.

16                   **2.   Adequacy of Findings**

17           Stated again, Goal 18 is:

18           “To conserve, protect, where appropriate develop and where  
19           appropriate restore the resources and benefits of coastal beach and  
20           dune areas; and

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

23   The state policy embodied in IR 5 is one of balancing conservation and protection  
24   of beach and dune areas by limiting permits for BPS to those properties where  
25   development existed on January 1, 1977, and ensuring that all BPS are reviewed

1 to minimize visual impacts, maintain necessary access to the beach, minimize  
2 negative impacts on adjacent property, and avoid long-term or recurring costs to  
3 the public.

4 The county concluded that the “development existed on January 1, 1977,”  
5 limitation on construction of BPS should not apply to the subject properties  
6 because the properties were approved for residential development consistent with  
7 the applicable land use provisions and are subject to unique coastal conditions.  
8 The county incorporated intervenors’ expert’s reports as findings. Record 14. The  
9 reports explain:

10 “The proposed revetment will be located within the Rockaway  
11 Beach littoral cell. This littoral cell extends from Cape Falcon on the  
12 north to Cape Madreas on the south, a distance of about 20 miles.  
13 This littoral cell has three subregions: (1) Nehalem, which is the area  
14 north of the Nehalem Bay jetties; (2) Rockaway, which is the area  
15 between Nehalem Bay and Tillamook Bay; and (3) Bayocean, which  
16 is the area south of the Tillamook Bay jetties. The proposed project  
17 would be located in the Rockaway subregion (between Nehalem  
18 Bay and Tillamook Bay).

19 “\* \* \* \* \*

20 “There are two inlets with coastal jetties that have had a significant  
21 influence on the sediment longshore transport and beach  
22 geomorphology (DOGAMI, 2014) within the Rockaway Beach  
23 littoral cell: (1) Tillamook Bay, which is about 5 miles north of Cape  
24 Madreas (north jetty was constructed in 1914 while the south jetty  
25 was constructed in 1974); and (2) Nehalem Bay, which is about 6  
26 miles north of Tillamook Bay (south jetty was constructed in 1916  
27 while the north jetty was constructed in 1918).” Record 1253.

28 The county found:

1           “The record supports the conclusion that the Subject Properties are  
2           faced with unique and exceptional circumstances. The Subject  
3           Properties represent ‘appropriate development’ as defined by Goal  
4           18—the residential subdivisions and most of the development was  
5           approved to be limited to the areas Goal 18, [IR] 2 allows; was  
6           setback more than 200 feet from the statutory vegetation line, more  
7           than 200 yards from the ocean and were separated from the ocean  
8           by a coastal forest—all of which was appropriate under Goal 18 and  
9           was designed to protect the properties from coastal hazards. *In spite*  
10          *of these protective measures and contrary to the expert analyses at*  
11          *the time, the Subject Properties are now threatened with destruction*  
12          *by unanticipated coastal erosion and flooding. Analysis from the*  
13          *[intervenors’] expert in the record demonstrates that the natural*  
14          *processes in the littoral subregion in which the Subject Properties*  
15          *are located have been uniquely disrupted by the combined effects of*  
16          *the two manmade jetties, which are unusually close in proximity and*  
17          *cabin the littoral subregion like nowhere else on the Oregon Coast,*  
18          *and the lasting effects of the El Niño/La Niña events of the late*  
19          *1990s. Accordingly, the requested exception is supported by unique*  
20          *and exceptional circumstances and is consistent with the*  
21          *overarching purpose and intent of Goal 18 and the exceptions*  
22          *process.”*<sup>11</sup> Record 23 (emphasis added).

23          The county concluded:

24               “[N]o legitimate purpose is served by punishing [intervenors] with  
25               large losses of their property and perhaps lives, by refusing to allow  
26               them to protect their residential properties in an acknowledged  
27               residential zone, in an acknowledged urban unincorporated  
28               community, under a planning program approved in complete  
29               conformity with Goal 18, because an unanticipated natural disaster  
30               has stricken.” Record 33.

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<sup>11</sup> Five expert reports are listed in the decision as being “adopted and incorporated by reference as additional findings of fact.” Record 27.

1                   **a.     Appropriate Development**

2           OAR 660-004-0000(2) provides, in part, that “[t]he exceptions process is  
3 not to be used to indicate that a jurisdiction disagrees with a goal.” DLCD argues  
4 that the county’s approval of the exception improperly reflects a policy  
5 disagreement with Goal 18. DLCD’s Petition for Review 25. The county found  
6 that the subject properties were zoned and platted as residential lots because, at  
7 the time, the dunes were not subject to wave overtopping. DLCD contends that  
8 the county misconstrued Goal 18 when it found that the subject properties were  
9 identified as appropriate for residential development:

10           “[F]or [BPS], Goal 18 requires a county to conduct an inventory  
11 utilizing criteria provided in Goal 18, with the sole purpose of  
12 identifying which properties on the oceanfront in their jurisdiction  
13 are eligible for such structures. This includes the provision limiting  
14 permits for [BPS] to development that existed on January 1, 1977,  
15 in [IR] 5. One would expect that all post-1977 residential  
16 development in areas identified and inventoried as beach and dune  
17 areas by a local government would be authorized in conformance  
18 with Goal 18. The county erred when they assert that any such  
19 ‘appropriate’ development should then, categorically be eligible for  
20 beachfront protection.” *Id.* at 26.

21           OS/SF also argues that the county failed to recognize that the text of IR 5  
22 served as public notice that BPS would not be allowed, consistent with Goal 18,  
23 on properties developed after January 1, 1977. OS/SF further argues that  
24 “[e]conomic arguments (e.g., property value at risk) as put forth in the findings,  
25 are not reason enough to justify an exception decision, as similar economic

1 arguments could be made for other locations along the Oregon coast that are  
2 ineligible for beachfront protection.” OS/SF’s Petition for Review 42-43.

3 We agree with petitioners that zoning that allows the development of a  
4 residence on property and the risk of property loss are not unique circumstances  
5 sufficient to justify an exception to Goal 18, IR 5. IR 5 includes a provision such  
6 that people who acquired property that was not developed on January 1, 1977,  
7 were on notice that the goal did not allow BPS. The county found that the  
8 development on the subject properties is in a location that “Goal 18 expressly  
9 states is \* \* \* safe and ‘appropriate’ for residential development.” Record 35. We  
10 agree with petitioners that Goal 18 does not identify specific locations as safe and  
11 appropriate for development such that the use is thereafter entitled to protection.  
12 Standing alone, the risk to development in an area developed with residential uses  
13 in compliance with then-applicable law does not justify an exception and must  
14 be considered in connection with the unique erosion patterns identified by the  
15 county. First, however, we address the county’s conclusions concerning the  
16 potential for future hardening and its implications for whether the IR 5  
17 conservation goal is unachievable in this location.

18 **b. Potential Future Extent of Coastal Hardening**

19 The county also based its decision on the potential for additional hardening  
20 in the area. In evaluating the impact of the BPS on the broader area, the county  
21 found:

22 “Approximately 5.6% (5,930 ft of 106,200 ft) of the entire

1 Rockaway Beach littoral cell has some riprap or concrete wall  
2 revetment. \* \* \* This does not count the four jetties in the cell. The  
3 proposed 880-foot-long riprap revetment for the Subject Properties  
4 will increase the total revetment length in the entire Rockaway  
5 Beach littoral cell to 6,810 feet, an increase of 0.8%. When  
6 considering the Rockaway subregion, the proposed revetment will  
7 increase the percentage already comprised of rock/wall revetments  
8 from 18.6% to 21.4% (a 2.8% increase), again not counting the  
9 jetties.” Record 1253.

10 The county concluded that

11 “nearly 90% of the ownerships within the Rockaway subregion are  
12 already protected by BPS *or are entitled to be protected by BPS*  
13 *when the time comes*. Thus, when necessary, the already unhealthy  
14 ocean/beach interface will be further hardened. There is no ‘natural’  
15 beach/ocean process that can be saved on this beach/ocean by  
16 refusing to allow the BPS/rip rap requested here in this unique  
17 Rockaway subregion.” Record 25 (emphasis added).

18 We agree with petitioners that the county erred in concluding that the  
19 impact on the coast was acceptable based on potential additional hardening. The  
20 county concluded that, although many of the properties that are eligible for BPS  
21 without an exception have not yet installed BPS, an exception is appropriate. The  
22 county relied, in part, on DLCD’s position in a 2021 Goal 18, IR 5, exception  
23 case in Lincoln County, where the county concluded that the ESEE impacts of  
24 additional hardening would not be significant due to the amount of existing and  
25 potential BPS.



1 Both OS/SF and DLCD dispute the county's reliance on DLCD's position  
2 on the Lincoln County Goal 18 exception.<sup>12</sup> OS/SF broadly argues:

3 "Less than 6% of the entire littoral cell, and particularly the area of  
4 the subject properties, is currently armored. Rec. 452, 1253. DLCD  
5 raised the concern that an increase of 2.8% 'is committing to a high  
6 level of shoreline armoring in this sublittoral cell.' Rec. 452.  
7 Further, even properties that were developed prior to January 1,

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<sup>12</sup> DLCD's testimony in the Lincoln County case was:

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

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

"\* \* \* \* \*

"The addition of three [BPS] on this stretch of beach will be compatible with other adjacent uses because this littoral cell is already almost entirely armored. As submitted in the application materials, Gleneden Beach 'has the longest stretch and highest density of [BPS] along the Oregon coast.' Approximately 75 percent of the coastline is already armored in this littoral cell." Record 1348-49, 1415-16.

1 1977 are not simply ‘entitled’ to BPS, but required to comply with  
2 permitting processes meant to support Goal 18’s purpose.” OS/SF’s  
3 Petition for Review 44.

4 In these proceedings, DLCD commented:

5 “[Intervenors] have identified that nearly 90% of the Rockaway  
6 Subregion of the Rockaway littoral cell is eligible for BPS. While  
7 many of those homeowners may choose to armor their properties  
8 over the coming years and decades, many of those lots are not yet  
9 armored and those permitting decisions have not yet been made.  
10 Much of this sublittoral cell, and particularly the area of the subject  
11 properties, is not currently armored. If the County decides to  
12 approve this exception request and application for a BPS, the  
13 County is committing to a high level of shoreline armoring in this  
14 sublittoral cell. As has been observed in other beach systems,  
15 particularly in Lincoln Beach in Lincoln County, the proliferation of  
16 shoreline armoring has been detrimental to the natural functioning  
17 of the beach system. By approving additional armoring, the County  
18 is committing to a preference for private development protection  
19 over protection of the beach and dune resource.” Record 451.

20 The focus in the Lincoln County case appears to have been on the extent of BPS  
21 already in place that “ha[d] resulted” in disruption. Here, differently, the county  
22 reasoned that the mere potential for additional hardening was important.

23 Moreover, Lincoln County’s decision and DLCD’s position in the Lincoln  
24 County case is not controlling or even particularly relevant here. We agree with  
25 petitioners that the county’s conclusion that additional armoring is inevitable is  
26 speculative and not a basis for an exception. IR 5 provides that all BPS are to be  
27 reviewed to minimize visual impacts, maintain necessary access to the beach,  
28 minimize negative impacts on adjacent property, and avoid long-term or  
29 recurring costs to the public. The findings do not provide a basis to assume that,

1 because properties may be eligible to apply for BPS, those BPS will be sought  
2 and approved.

3 **c. Change in Erosion Patterns**

4 According to intervenors' expert, the subject properties are exposed to  
5 new, unanticipated conditions due the lasting effects of the El Niño and La Niña  
6 events of the late 1990s combined with long-existing, closely located jetties. The  
7 county concluded that this is a unique and exceptional circumstance and that  
8 approving the exception is consistent with what the county identified as the  
9 overarching purpose and intent of Goal 18, *which includes reducing the hazard*  
10 *to human life and property*. Record 22-23. The findings include:

11 "The record demonstrates that the Subject Properties have seen a  
12 loss of 142 feet of beachfront property since 1994, with the Pine  
13 Beach 'common area' that was densely vegetated when the Pine  
14 Beach Replat was approved and recorded, now dry sand beach.

15 "Evidence in the record demonstrates that more than \$10 million in  
16 property value is at risk of being lost, in addition to public  
17 infrastructure to include public water and sewer, utilities and roads.  
18 The lives of the Subject Properties' occupants are also at risk from  
19 unpredictable and dangerous wave runup. The proposed [BPS] will  
20 responsibly mitigate this significant threat in a manner that is  
21 consistent with the County's development standards. The threat to  
22 [intervenors'] properties is present and very real. Any avoidable  
23 delay in issuing the requested development permit for the BPS,  
24 unjustifiably places lives and property in serious jeopardy." Record  
25 24.

26 The county found that "nothing hinted at the unanticipated and extensive  
27 retrograding that occurred in recent years, triggered by two successive El Niño/La

1 Nifña events in the area of the subject properties and their influence on the  
2 Rockaway littoral cell subregion due to the presence of two unusually closely  
3 placed jetties.” Record 25.

4 OS/SF argues that “[r]easons pertaining to wave runup, ocean flooding,  
5 and erosion (i.e., ongoing coastal hazards) that are experienced at the Subject  
6 Properties are not any different than can be argued elsewhere on the Oregon coast  
7 in other areas that are also ineligible for beachfront protection.” OS/SF’s Petition  
8 for Review 42. Petitioners cite and refer to general, non-site-specific evidence  
9 regarding coastal hazards. This is not evidence that undermines the site-specific  
10 evidence relied upon by the county to conclude that the situation at the subject  
11 properties is unique because of the presence of two close jetties that increase  
12 wave undercutting. We agree with intervenors that the county adopted sufficient  
13 findings that a “catch-all” reasons exception is appropriate for the residentially  
14 developed properties in both the George Shand Tract and the Pine Beach  
15 Subdivision, and those findings are supported by the evidence in intervenors’  
16 expert’s reports.

17 We do, however, agree with petitioners that the county’s evaluation is  
18 inadequate with respect to the vacant lots in both areas. The county did not  
19 explain the role of the vacant lots and the relative location of any infrastructure  
20 in its analysis. Furthermore, OCA argues in its seventh assignment of error that  
21 the county did not adopt findings relating its rationale to the four vacant lots.  
22 OCA argues:

1           “The findings do not explain how ‘appropriate development,’ under  
2           Goal 18, includes vacant lots that have not been developed. Merely  
3           because some public infrastructure is available does not mean that  
4           those vacant lots have been developed to any degree that warrants a  
5           goal exception. \* \* \* The findings repeat that ‘the proposed  
6           exception is necessary for the protection of the structures and  
7           associated infrastructure,’ but that analysis does not apply to the  
8           vacant lots.” OCA’s Petition for Review 32-33.

9           OCA observes that the vacant lots do not contain the people and property that the  
10          county states the exception serves to protect. We agree with OCA that the county  
11          failed to address why a reasons exception is appropriate to allow BPS on  
12          properties that have not been developed with residential uses.<sup>13</sup>

13          The county failed to evaluate the relationship between the unique  
14          circumstances it identified, the vacant parcels and any related infrastructure, and  
15          the proposed BPS. The findings fail to adequately explain why the conservation  
16          goal of IR 5 cannot be met on the vacant lots and/or why the conservation goal  
17          (no BPS) should yield to development of the BPS, as proposed, on the vacant  
18          lots.

19          These assignments of error are sustained, in part.

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<sup>13</sup> We observe that the TCLUO 3.530(4)(A)(4)(c)(2) and (3) standards for BPS require showings that “[n]on-structural solutions cannot provide adequate protection” and “[t]he [BPS are] placed as far landward as possible.” The findings state that the proposed BPS placement “is as close to the *existing* residential dwellings as is possible.” Record 93 (emphasis added). The vacant lots do not contain residential dwellings.

1           **C. OS/SF's and OCA's Second Assignments of Error and DLCD's**  
2           **Third Assignment of Error**

3           As discussed above, OAR 660-004-0022(1) provides that an exception  
4 may be justified for the following reason:

5           *"There is a demonstrated need for the proposed use or activity,*  
6           *based on one or more of the requirements of Goals 3 to 19; and*  
7           *either:*

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

16           “(b) *The proposed use or activity has special features or qualities*  
17           *that necessitate its location on or near the proposed exception*  
18           *site.”* (Emphases added.)

19           The county adopted findings that a “demonstrated need” was shown based  
20 upon the requirements of Goals 7 and 18 as well as Statewide Planning Goals 10  
21 (Housing), 11 (Public Facilities and Services), and 14 (Urbanization). The county  
22 concluded:

23           “[T]he proposed BPS is necessary to protect life and property in an  
24 acknowledged urban community of Tillamook County. That means  
25 without the proposed BPS, the 15 Subject Properties will be exposed  
26 to periodic wave runup and ocean flooding and the existing  
27 residential development to include related infrastructure and public  
28 facilities, will be subject to natural hazard risks to life and to  
29 property and, eventually, the properties will become uninhabitable  
30 or will be destroyed.” Record 51.

1 OS/SF argues in its second assignment of error and DLCD argues in its third  
2 assignment of error that the county misconstrued the law and adopted findings  
3 not supported by substantial evidence. OCA joins in these assignments of error.

4 We explained in *VinCEP v. Yamhill County*, 55 Or LUBA 433, 449 (2008),  
5 that the “demonstrated need” standard requires that the county demonstrate that  
6 it is at risk of failing to satisfy one or more obligations imposed by Goals 3 to 19  
7 and that the proposed exception is a necessary step toward maintaining  
8 compliance with goal obligations.

9 “[T]he county must (1) identify one or more obligations under Goals  
10 3 to 19, (2) explain why the county is at risk of failing to meet those  
11 obligations, and (3) explain why the proposed exception to the  
12 requirements of one goal \* \* \* will help the county maintain  
13 compliance with its other goal obligations.” *Oregon Shores*, \_\_\_ Or  
14 LUBA at \_\_\_ (slip op at 31).

15 With respect to OAR 660-004-0022(1) and “demonstrated need,” the  
16 county found that a “demonstrated need” was established based on the  
17 requirements of Goals 7, 10, 11, 14, and 18, and related provisions in the county’s  
18 comprehensive plan. We address each goal below.

19 **1. Overview of the Goals**

20 In *1000 Friends of Oregon v. Jackson County*, the court placed the 19  
21 statewide planning goals into four categories:

22 “[Statewide Planning Goals 9 (Economic Development) and 12  
23 (Transportation) and Goals 10, 11, and 14] require the designation  
24 and development of land for various uses. [Statewide Planning  
25 Goals 3 (Agricultural Lands), 4 (Forest Lands), 5 (Natural  
26 Resources, Scenic and Historic Areas, and Open Spaces), 8

1 (Recreational Needs), 15 (Willamette River Greenway), 16  
2 (Estuarine Resources), 17 (Coastal Shorelands), 18 (Beaches and  
3 Dunes), and 19 (Ocean Resources)] pertain to the conservation of  
4 land for resource, scenic, historical, and recreational uses.  
5 [Statewide Planning Goals 1 (Citizen Involvement) and 2 (Land Use  
6 Planning)] pertain to the process for adopting plans and  
7 implementing measures.

8 “The remaining goals regulate the manner by which land is  
9 developed. [Goal 6] requires planning entities ‘to maintain and  
10 improve the quality of the air, water and land resources of the state.’  
11 [Goal 7] require[s] localities to ‘protect people and property from  
12 natural hazards’ by regulating, among other things, ‘the types and  
13 intensities of uses to be allowed in the hazard area.’

14 “[Statewide Planning Goal 13 (Energy Conservation)] falls within  
15 this category of policies affecting the manner by which property is  
16 developed. The goal expressly states that it regulates the way land  
17 uses are ‘managed and controlled.’ The planning and  
18 implementation guidelines for the goal pertain to ‘land use planning’  
19 and ‘techniques and implementation devices’ in a comprehensive  
20 plan and map and its implementing development code and zoning  
21 map. Neither the text of the goal nor its guidelines ‘require’ the  
22 county to develop or facilitate the development of any particular  
23 land use, much less large solar power generation facilities. Instead,  
24 Goal 13 requires that *all* development on land be ‘managed and  
25 controlled’ to conserve energy. The text of the goal and its  
26 guidelines do not directly or indirectly require the development of  
27 energy facilities.” 292 Or App 173, 192-93, 423 P3d 793 (2018), *rev*  
28 *dismissed*, 365 Or 557 (2019) (emphasis in original; footnotes  
29 omitted).

## 30 2. Goal 7

31 As the court explained in *1000 Friends*, Goal 7’s “protect people and  
32 property from natural hazards” language relates to the manner in which land is  
33 developed. Here, the county found, “The proposal [is consistent with Goal 7 and]



1 is also consistent with and required by the County Comprehensive Plan's Goal 7  
2 Element that implements Goal 7 \* \* \*." Record 49. The county found that,  
3 because it imposed mitigation measures at the time the property was developed,  
4 the property owners reasonably developed the property and the current property  
5 owners should be granted an exception and allowed to protect their property and  
6 lives using BPS. Record 21.

7 We have concluded that, "[w]hile development of renewable energy is  
8 certainly consistent with the Goal 13 requirement to 'conserve' energy, the goal  
9 includes no express mandates regarding the development of renewable energy  
10 sources" and, therefore, did not establish a demonstrated need for an exception  
11 to Goal 3 to site a solar power facility on 80 acres of high-value farmland. *1000*  
12 *Friends*, 76 Or LUBA at 279. We have also concluded that a county's findings  
13 that a proposal to develop a racetrack was consistent with Goals 8 and 9 did not  
14 demonstrate that the county was incapable of satisfying its obligations under the  
15 goals without an exception. *Middleton v. Josephine County*, 31 Or LUBA 423,  
16 430 (1996). Similarly, here, consistency with Goal 7 or comprehensive plan  
17 provisions implementing Goal 7 does not establish that an exception is needed.  
18 We agree with petitioners that Goal 7 does not *require* the installation of hazard  
19 mitigation measures after development has occurred. DLCD's Petition for  
20 Review 35-36. Similarly, the comprehensive plan does not require the county to  
21 allow BPS where development has occurred. The county's interpretation of its  
22 comprehensive plan as authorizing BPS under the unique circumstances here is

1 not a finding that a comprehensive plan provision implementing the goals  
2 requires BPS.

3 **3. Goals 10, 11, and 14**

4 Goals 10, 11, and 14 require the designation and development of land for  
5 certain uses. *1000 Friends*, 292 Or App at 192.

6 **a. Goals 10 and 14**

7 Goal 10 is “[t]o provide for the housing needs of the citizens of the state.”  
8 Goal 10 requires that local governments inventory buildable lands for residential  
9 use, and the county found that it relies on the subject properties to meet its  
10 housing obligations. The county found that it “would be at risk of failing to meet  
11 its Goal 10 obligations expressed in its Goal 10 implementing regulations to  
12 refuse to protect the very residential lands it is required to protect to deliver  
13 housing in the County.” Record 50. The county found that “[t]he loss of 15  
14 dwelling units would represent losing almost 5% of the needed housing the  
15 County has identified as necessary” for the land within the unincorporated  
16 community. Record 52.

17 Goal 14 is “[t]o provide for an orderly and efficient transition from rural  
18 to urban land use, to accommodate urban population and urban employment  
19 inside urban growth boundaries, to ensure efficient use of land, and to provide  
20 for livable communities.” The county found that it

21 “would be at risk of not meeting its Goal 14 obligations reflected in  
22 the County plan, if it refused to protect this acknowledged  
23 ‘demonstrated need’; but rather to demand instead that the

1 community for which there is a demonstrated need be wiped out by  
2 a natural hazard with a BPS that the evidence in the record  
3 demonstrates harms no one.” Record 51.

4 In *Pacific Rivers Council, Inc. v. Lane County*, 26 Or LUBA 323 (1993),  
5 the county adopted an exception to Goals 4 and 5 to construct a new road. We  
6 concluded that the county’s findings were

7 “essentially conclusory statements that, due to the dimensional and  
8 weight restrictions of the existing Goodpasture Bridge, there is a  
9 demand by the timber industry for a new river crossing to transport  
10 logs and equipment in and out of the affected area south of the river.  
11 The findings do not set forth facts establishing the nature and  
12 magnitude of the impediment to forest operations posed by the  
13 current situation, as required OAR 660-04-020(2)(a). The findings  
14 do not explain why the county cannot satisfy its obligations under  
15 one or more of Goals 3-19, or the requirements of its acknowledged  
16 comprehensive plan, without providing the proposed use, as  
17 required by OAR 660-04-022(1)(a).” *Pacific Rivers*, 26 Or LUBA  
18 at 337.

19 We concluded that the county “must show the magnitude of the present  
20 impediment to forest management is such that without the proposed use the  
21 county cannot satisfy its obligations under one or more of Goals 3-19 or the  
22 requirements of its acknowledged comprehensive plan.” *Id.* at 337-38. Similarly,  
23 here, the county’s findings that providing housing and accommodating the  
24 population rely on planning choices the county has made that are *consistent* with  
25 Goals 10 and 14 are conclusory and do not establish that loss of the subject  
26 properties for residential use will result in failure to comply with Goals 10 or 14.  
27 Provisions in the comprehensive plan stating that the unincorporated community  
28 will accommodate a given number of dwellings and a finding that there is a

1 "demonstrated need" for a given amount of housing in the community do not  
2 establish that there is a "demonstrated need" to provide it on the subject  
3 properties. Record 52.

4 **b. Goal 11**

5 Goal 11 is "[t]o plan and develop a timely, orderly and efficient  
6 arrangement of public facilities and services to serve as a framework for urban  
7 and rural development." The county found that it "would be at risk of failing to  
8 meet its Goal 11 obligation for orderly and efficient arrangement of public  
9 facilities and services if it refused to approve BPS to protect such public facilities  
10 and services and insisting that they be destroyed by wave action." Record 50-51.  
11 The county found that, if public facilities are harmed by coastal erosion, the  
12 county's existing services may be compromised, which would be inefficient.  
13 Record 52. Neither Goal 11 nor the county's comprehensive plan require any  
14 action with respect to providing BPS for existing facilities in hazardous areas.

15 **c. Goal 18**

16 Goal 18 relates to the conservation of land for resource uses. *1000 Friends*,  
17 292 Or App at 192. The county found that Goal 18 has two competing  
18 components:

19 "The first states that beaches and dunes shall allow appropriate  
20 development as well as conserving, protecting and, if appropriate,  
21 restoring coastal beach and dune areas. It directs comprehensive  
22 plans to 'provide for diverse and appropriate use of beach and dune  
23 areas consistent with their \* \* \* recreational and \* \* \* economic  
24 values.' The second purpose is to reduce the hazard to human life

1 and property from natural or man-induced actions.” Record 51.

2 The county found that “Goal 18 puts a mandatory obligation on the County  
3 to reduce hazards to human life and property from natural or man-induced  
4 actions. Approval of the proposed BPS is necessary to enable the County to  
5 comply with this Goal 18 obligation.” Record 53. Goal 18 does not require that  
6 property be protected, and, indeed, IR 5 illustrates the balancing between the  
7 protection of property and the protection of the resource that is the subject of the  
8 goal.

9 The goals and comprehensive plan provisions relied upon by the county  
10 do not support a finding of “demonstrated need” for a reasons exception.

11 These assignments of error are sustained.

12 **OCA’S, OS/SF’S, AND DLCD’S FOURTH ASSIGNMENTS OF ERROR**

13 OAR 660-004-0020(2)(c) provides that the county’s reasons exception  
14 must include an analysis of

15 “[t]he long-term [ESEE] consequences resulting from the use at the  
16 proposed site with measures designed to reduce, adverse impacts are  
17 not significantly more adverse than would typically result from the  
18 same proposal being located in areas requiring a goal exception  
19 other than the proposed site.’ The exception shall describe: the  
20 characteristics of each alternative area considered by the jurisdiction  
21 in which an exception might be taken, the typical positive and  
22 negative consequences resulting from the use at the proposed site  
23 with measures designed to reduce adverse impacts. A detailed  
24 evaluation of specific alternative sites is not required unless such  
25 sites are specifically described with facts to support the assertion  
26 that the sites have significantly fewer adverse impacts during the  
27 local exceptions proceeding. The exception shall include the reasons  
28 why the consequences of the use at the chosen site are not

1 significantly more adverse than would typically result from the same  
2 proposal being located in areas requiring a goal exception other than  
3 the proposed site. Such reasons shall include but are not limited to a  
4 description of the facts used to determine which resource land is  
5 least productive, the ability to sustain resource uses near the  
6 proposed use, and the long-term economic impact on the general  
7 area caused by irreversible removal of the land from the resource  
8 base. Other possible impacts to be addressed include the effects of  
9 the proposed use on the water table, on the costs of improving roads  
10 and on the cost to special service districts[.]”

11 DLCD’s and OCA’s fourth assignments of error are that the county’s findings of  
12 compliance with OAR 660-004-0020(2)(c) are not supported by substantial  
13 evidence.

14 OAR 660-004-0020(2)(d) provides that the county’s reasons exception  
15 must include an analysis of whether

16 “[t]he proposed uses are compatible with other adjacent uses or will  
17 be so rendered through measures designed to reduce adverse  
18 impacts.’ The exception shall describe how the proposed use will be  
19 rendered compatible with adjacent land uses. The exception shall  
20 demonstrate that the proposed use is situated in such a manner as to  
21 be compatible with surrounding natural resources and resource  
22 management or production practices. ‘Compatible’ is not intended  
23 as an absolute term meaning no interference or adverse impacts of  
24 any type with adjacent uses.”

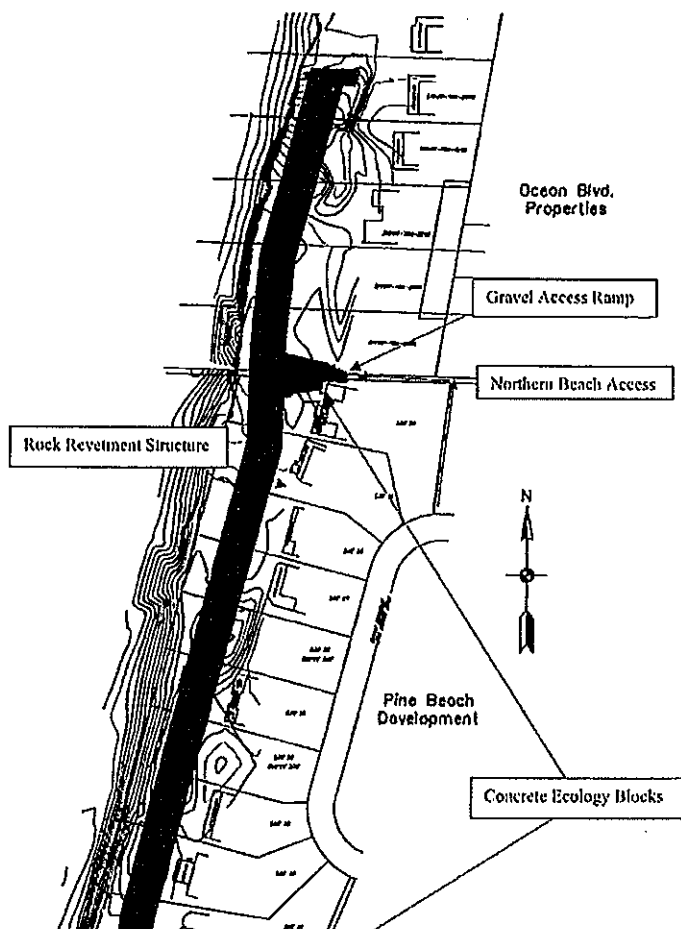
25 OS/SF argues in its fourth assignment of error that the county misconstrued OAR  
26 660-004-0020(2)(d) and made inadequate findings.

27 For the vacant lots, as we explained above, the county’s reasons for  
28 adopting the exception are deficient and require additional analysis and evidence.

29 Given that additional analysis of whether reasons support the exception for the

1 vacant lots is required, we will not address the assignments of error as they relate  
2 to the vacant lots.

3 As shown in the picture below, intervenors' BPS design assumes the  
4 presence of BPS on both the vacant lots and the developed properties.



5  
6 Record 1995. Because intervenors requested approval of an integrated design, we  
7 understand the evidence in the record and the county's findings concerning the  
8 long-term ESEE consequences and compatibility with adjacent uses to reflect the  
9 inclusion of the vacant lots. For example, the county found, with respect to  
10 environmental impacts, that

1            “[t]he evidence in the record demonstrates that the impacts resulting  
2            from *the proposed BPS* on the Subject Properties will be neutral or  
3            positive. *The BPS’s design* is a measure designed to reduce adverse  
4            impacts of *the proposed BPS* on other properties and on the  
5            environment in general, namely additional erosion of the shoreline  
6            and loss of shoreland vegetation.” Record 41 (emphases added).

7            We are unable to ascertain how much of a role the vacant lots play in the county’s  
8            analysis, and, because the county will have to address the vacant lots on remand  
9            with better findings and more evidence, it would be premature to address these  
10           assignments of error as they relate to the developed properties.

11           **OCA’S SIXTH ASSIGNMENT OF ERROR**

12           ORS 197.175(2)(a) requires that PAPAs comply with the statewide  
13           planning goals. OCA’s sixth assignment of error is that the county misconstrued  
14           the law and made findings of consistency with Goals 6 and 7 that are unsupported  
15           by substantial evidence.

16           Goals 6 and 7 concern how land is developed. *1000 Friends*, 292 Or App  
17           at 192. Goal 6 is “[t]o maintain and improve the quality of the air, water and land  
18           resources of the state” and, as discussed above, Goal 7 is “[t]o protect people and  
19           property from natural hazards.”

20           With respect to Goal 6, OCA argues that the findings fail to adequately  
21           address the impacts of BPS:

22           “In the absence of such findings, the findings cannot demonstrate  
23           compliance with Goal 6 and the findings are inadequate because the  
24           findings conclusorily [*sic*] allege that there will be no impacts,  
25           despite overwhelming information that adverse impacts historically  
26           occur with the placement of such shoreline structures, including the



1 'most detrimental effect of seawalls': 'passive erosion.'" OCA's  
2 Petition for Review 29.

3 OCA argues that the findings of compliance with Goal 7 are inadequate because  
4 they do not address long-term hazard impacts to the beach and public safety. Like  
5 the findings of compliance with Goal 6, OCA maintains that the findings of  
6 compliance with Goal 7 are inadequate "because the[y] conclusorily [*sic*] allege  
7 that there will be no impacts, despite overwhelming information that adverse  
8 impacts historically occur with the placement of such structures." *Id.* at 30.

9 OCA does not develop an argument identifying what is required to show  
10 consistency with Goals 6 and 7 or explaining why that showing is not made in  
11 this case.<sup>14</sup> *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220  
12 (1982).

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<sup>14</sup> We explained in *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995), that, where a comprehensive plan is amended to allow a particular use, Goal 6 requires that the local government adopt findings explaining why it is reasonable to expect that applicable state and federal environmental quality standards can be met by the use. *See also Nicita v. City of Oregon City*, \_\_\_ Or LUBA \_\_\_ (LUBA Nos 2020-037/039, Sept 21, 2021), *aff'd*, 317 Or App 709, 507 P3d 804 (2022). Here, the county found that "[t]he proposed use will be developed consistent with the adopted and acknowledged land use regulations and will comply with any development requirements intended to protect air, water and land resource qualities. The proposal is consistent with Goal 6." Record 59. Petitioners do not develop an argument that that finding is inadequate.

In *Smith v. Douglas County*, 37 Or LUBA 801 (2000), the petitioners argued that a comprehensive plan amendment to allow development of an RV park on property that was split-zoned Exclusive Farm Use and Community Commercial and located within the 100-year floodplain did not comply with Goal 7 and was not supported by adequate findings and substantial evidence. We explained:

1 This assignment of error is denied.

2 **DLCD'S AND OCA'S FIFTH ASSIGNMENTS OF ERROR**

3 DLCD's fifth assignment of error is that the county's findings approving  
4 the FDP are inadequate. OCA's fifth assignment of error is that the county  
5 misconstrued the law and adopted findings not supported by substantial evidence  
6 when it concluded that certain flood hazard area criteria were met. OCA also  
7 restates its prior assignment of error that "the findings and ESEE analysis do not  
8 respond to the well-known and publicly-available information about the impacts  
9 of BPS o[n] shoreline structures, including passive erosion." OCA's Petition for  
10 Review 27. This element of the assignment of error is derivative of the prior  
11 assignment of error, and we do not address it again.

12 We do not reach the assignments of error challenging the adequacy of the  
13 FDP findings and supporting evidence because they are premature. The county

---

"Goal 7 prohibits development in natural hazard areas 'without appropriate safeguards.' Petitioners' arguments under this assignment of error boil down to an assertion that the safeguards the county imposed here are insufficient. \* \* \*

"The county considered and rejected petitioners' arguments regarding the consequences of changes to the floodplain/floodway and the fill that was placed on the subject property. Petitioners do not challenge or identify any error in those findings, and we do not consider petitioners' arguments on those matters further." *Smith*, 37 Or LUBA at 806 (citations omitted).

Petitioners do not develop an argument that the county failed to identify appropriate flooding safeguards or otherwise explain what is required by Goal 7.

1 approved a unitary BPS design protecting both developed and vacant lots. We  
2 have concluded that the county has identified a sufficient reason for an exception  
3 for the developed lots under the catch all provision, but has not done so for the  
4 vacant lots. We have also concluded that because the vacant lots were included  
5 in the county's ESEE and alternatives analysis, it is premature for us to address  
6 the assignments of error challenging the county's related findings. Similarly, it is  
7 premature for us to consider the FDP assignment of error. First, the FDP requires  
8 an approved exception and we are remanding the decision approving the  
9 exception. Second, the BPS design may change as a result of the county's  
10 decision as to whether reasons justify an exception on the vacant properties and  
11 the county's ESEE and alternatives analysis.

12 The county's decision is remanded.

**Photographs – 1996 through 1999**

September 1996





October 1997









December 1997





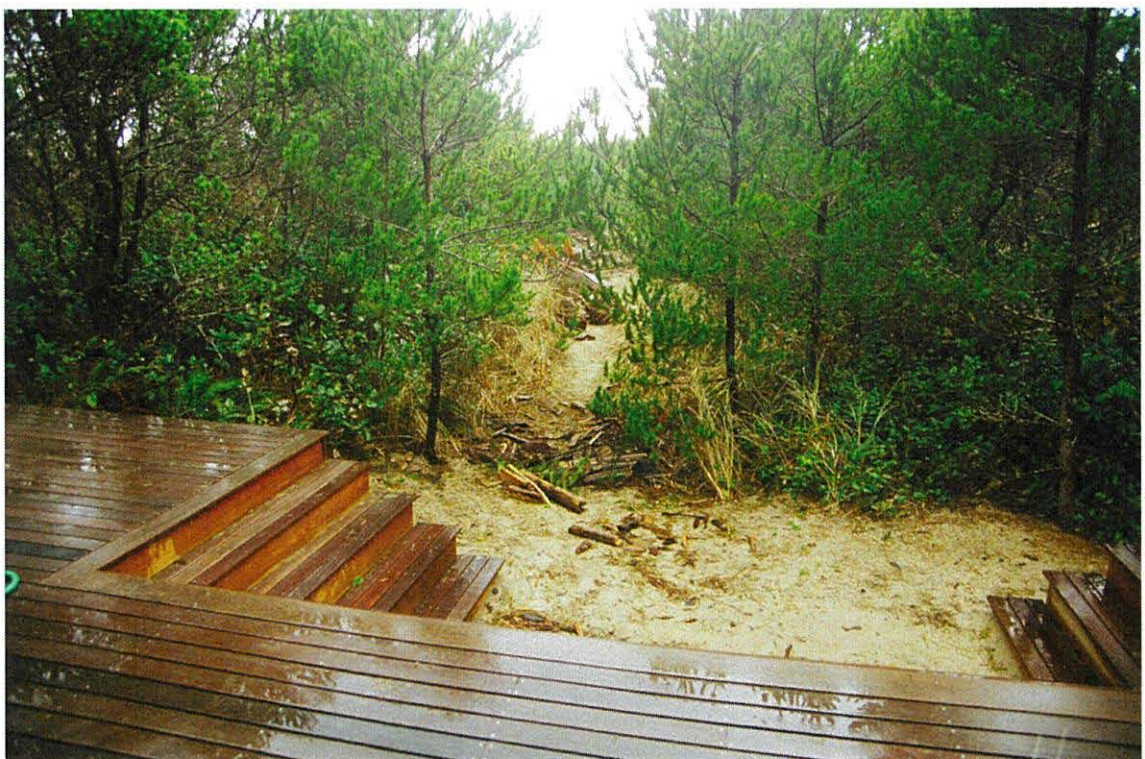
February 1998







March 1999





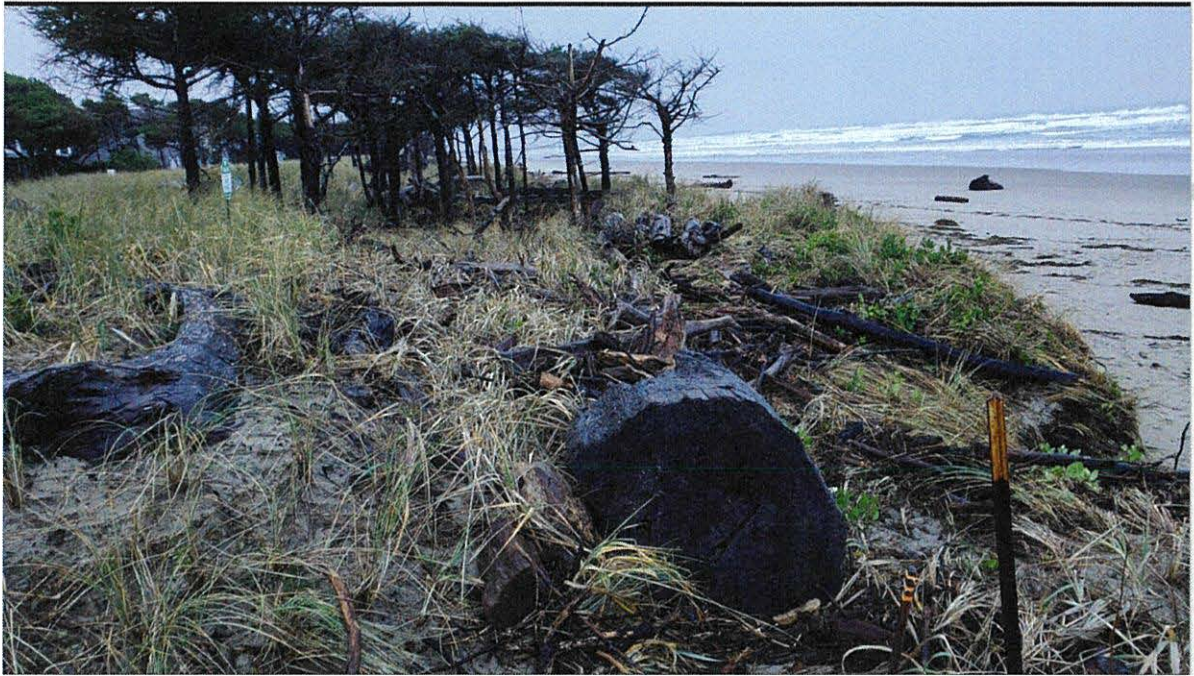




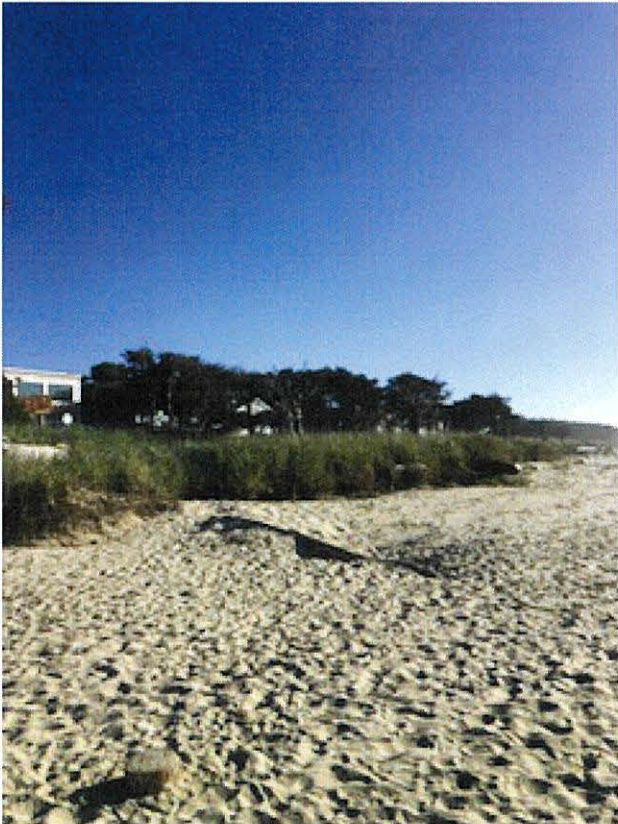
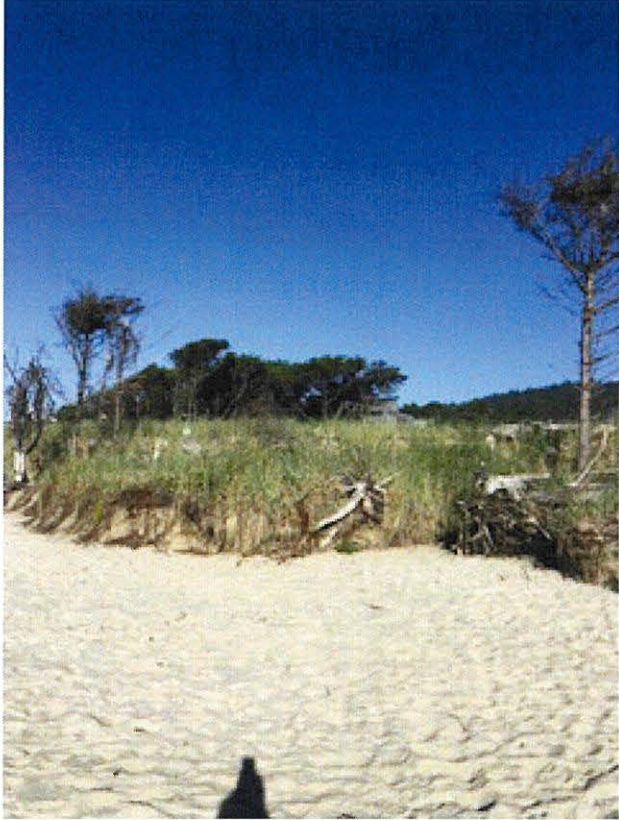
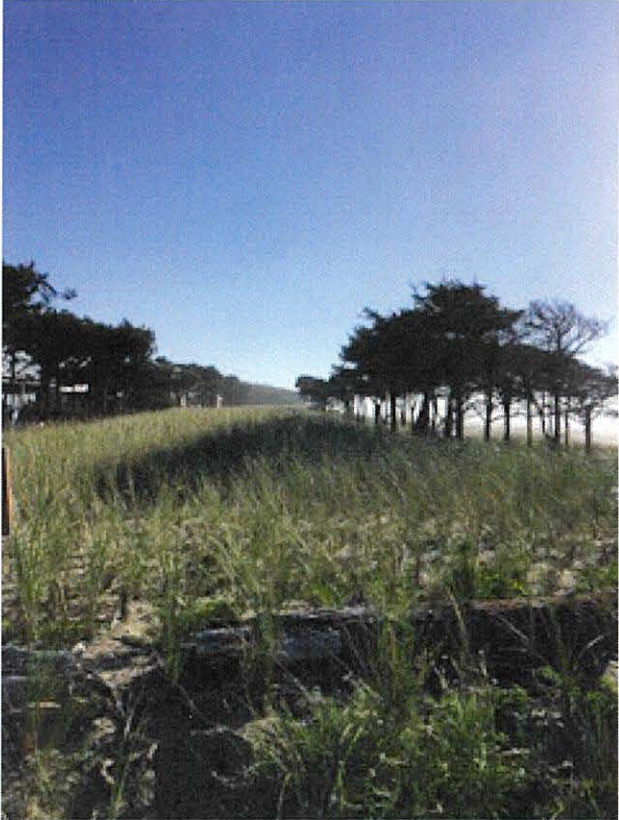








**Photographs Before Dec 2022 Storms  
(October)**



DEPARTMENT OF COMMUNITY DEVELOPMENT  
BUILDING, PLANNING & ON-SITE SANITATION SECTIONS



*Land of Cheese, Trees and Ocean Breeze*

1510-B Third Street  
Tillamook, Oregon 97141

From: David R Leifheit  
Subject: Condition of Approval  
May 3, 2022

Building (503)842-3407  
Planning (503)842-3408  
On-Site Sanitation (503)842-3409  
FAX (503)842-1819  
Toll Free 1 (800)488-8280

**PROJECT: New Single Family Dwelling .**

**Address:** Pine Beach Way, Rockaway  
**Permit No:** 851-21-002910-DWL  
**Occupancy:** R-3  
**Construction Type:** V-B



The plans for the above project have been reviewed for compliance to the code references below:  
2021 Oregon Residential Specialty Code (ORSC)

This **condition of approval** letter becomes part of the approved plans and should remain with the approved plans on site all times during construction. The permit applications for the project have been reviewed for compliance with the Oregon Specialty Codes adopted statewide under ORS 455:

**Conditions of approval:**

1. The issuance or granting of a permit should not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other laws or ordinances of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other laws or ordinances of the jurisdiction shall not be valid.
2. The issuance of this permit is based on construction documents and other data and will not prevent the building official from requiring the correction of any errors in the construction documents and other data.
3. Approved plans are to be on site at the time of inspection.

If there is any disagreement with the code interpretation provided by plans examiner, an appeal can be made to the building official. Appeals of the building official's decisions may be made pursuant to ORS 455.475

  
David R Leifheit / Senior Plan Reviewer / DavidL@NWCodePros.com

  
Sarah Absher, CFM, Director



1510 - B Third St  
Tillamook, OR 97141  
503-842-3408  
Fax: 503-842-1819

## Building Permit

### Residential 1 & 2 Fam Dwelling (New Only)

Permit Number: 851-21-002910-DWL

IVR Number: 851004371863



Email Address: buildingpermits@co.tillamook.or.us

Web Address: www.co.tillamook.or.us

Permit Issued: May 03, 2022  
Project: BUTCHER

Application Date: December 29, 2021

#### TYPE OF WORK

Residential Specialty Code Edition: 2021

Category of Construction: Single Family Dwelling

Type of Work: New

Submitted Job Value: \$434,000.00

Description of Work: NEW SFD

#### JOB SITE INFORMATION

<b>Worksite Address</b>	<b>Parcel</b>	<b>Owner:</b>	BUTCHER, BRETT FREDRICK
17360 PINE BEACH LOOP	1N10 07DD 00117	<b>Address:</b>	6452 SUNNYSIDE RD
TILLAMOOK COUNTY, OR 97136			SALEM, OR 97306
		<b>Owner:</b>	BUTCHER, BRETT FREDRICK
		<b>Address:</b>	6452 SUNNYSIDE RD
			SALEM, OR 97306

#### LICENSED PROFESSIONAL INFORMATION

Business Name	License	License Number	Phone
PARK PLACE INVESTMENTS LLC - Primary	CCB	110507	503-574-3111

#### PENDING INSPECTIONS

Permits expire if work is not started within 180 Days of issuance or if work is suspended for 180 Days or longer depending on the issuing agency's policy.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center at (503) 232-1987.

All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010 (Structural/Mechanical), ORS 479.540 (Electrical), and ORS 693.010-020 (Plumbing).

Permit Number: 851-21-002910-DWL

Inspection	Inspection Group	Inspection Status
1110 Footing	1_2 Famdwell	Pending
1120 Foundation	1_2 Famdwell	Pending
1220 Underfloor Framing/Post and Beam	1_2 Famdwell	Pending
1260 Framing	1_2 Famdwell	Pending
1430 Insulation Wall	1_2 Famdwell	Pending
1530 Exterior Shearwall	1_2 Famdwell	Pending
1999 Final Building	1_2 Famdwell	Pending
2300 Rough Mechanical	1_2 Famdwell	Pending
2999 Final Mechanical	1_2 Famdwell	Pending
3200 Sanitary Sewer	1_2 Famdwell	Pending
3300 Water Service	1_2 Famdwell	Pending
3500 Rough Plumbing	1_2 Famdwell	Pending
3999 Final Plumbing	1_2 Famdwell	Pending
4220 Electrical Service	1_2 Famdwell	Pending
4500 Rough Electrical	1_2 Famdwell	Pending
4999 Final Electrical	1_2 Famdwell	Pending

**SCHEDULING INSPECTIONS**

Various inspections are minimally required on each project and often dependent on the scope of work. Contact the issuing jurisdiction indicated on the permit to determine required inspections for this project.

Schedule or track inspections at [www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov)

Call or text the word "schedule" to 1-888-299-2821 use IVR number: 851004371863

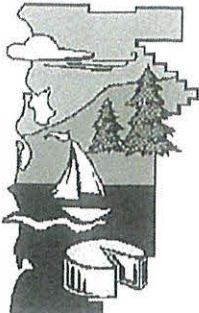
Schedule using the Oregon ePermitting Inspection App, search "epermitting" in the app store

**PERMIT FEES**

Fee Description	Quantity	Fee Amount
Address Fee	1	\$33.00
Copies 8 1/2 x 11		\$10.50
Structural building permit fee		\$2,086.81
Structural plan review fee		\$1,356.43
State of Oregon Surcharge - Bldg (12% of applicable fees)		\$250.42
Zoning Permit- Res new primary residential structures	1	\$246.00
<b>Total Fees:</b>		<b>\$3,983.16</b>

Note: This may not include all the fees required for this project.

Tillamook County



DEPARTMENT OF COMMUNITY DEVELOPMENT  
BUILDING, PLANNING & ON-SITE SANITATION SECTIONS

Land of Cheese, Trees and Ocean Breeze

GHZ

1510-B Third Street  
Tillamook Oregon 97141  
503-842-3408

Building (503) 842-3407  
Planning (503) 842-3408  
On-Site Sanitation (503) 842-3409  
FAX (503) 842-1819  
Toll Free 1 (800) 488-8280

<b>CONSOLIDATED BUILDING/ZONING PERMIT APPLICATION</b>		<b>Permit #: 851-21-002910-DW</b>	
		<b>Received By:</b> [Signature]	<b>Date:</b> 12/29/21
<b>JOB INFORMATION</b>			
<b>Applicant/Contractor</b> <input checked="" type="checkbox"/> (Check Box if Same as Property Owner)		<b>Property Owner</b>	
Applicant/Contractor:		Owner: <b>BRETT BUTCHER</b>	
Address:		Address: <b>6452 SUNNYSIDE RD SE; SALEM 9730</b>	
Phone #:		Phone #: <b>503-580-4554</b>	
Applicant/Contractor Email:		Owner Email: <b>BRETT@PASSION4PEOPLE.ORG</b>	

<b>CONTRACTOR / INSTALLER</b>	E-Mail
Building Contractor <b>PARK PLACE INVESTMENTS</b>	CB No. <b>110507</b> Phone <b>503-310-8880</b>
Mobile Home Installer	MDI. No. Phone

Site Address: **17360 PINE BEACH WAY; ROCKAWAY**  
 Map Number: Township **1 NORTH** Range **10** Section **7DD** Tax Lot(s) **117**

(Please supply all the information requested – missing information will delay review/approval process)

**CATEGORY OF CONSTRUCTION**

Single Family Dwelling     Multi-Family  
 Accessory Structure     Manufactured  
 Commercial / Industrial     Public

**TYPE OF WORK (each type requires a separate permit)**

New / Replacement     Addition (adding sq. ft.)  
 Accessory Structure (garage, carport, shed, etc.)  
 Alteration (no change to sq. ft.)  
 Demolition  
 Other (deck, pool, retaining wall, solar, driveway, etc.)

**DESCRIPTION OF THE STRUCTURE**

**40 x 53'6"** Dimensions  
**23'6"** Height  
**2** Stories  
**1** # of Dwelling Units  
**4** BdRms **5** Bathrooms  
**3119** Living Area (sq. ft.) **203,000**  
**204** Deck (sq. ft.) **6,000**  
**60** Covered Patio (sq. ft.) **2,000**  
**449** Garage / Utility / Storage **23,000**

**PROJECT DESCRIPTION:**

\_\_\_\_\_

\_\_\_\_\_

**PROPOSED ZONING**

~~30'~~ **30'** Front Yard  
**22'** Rear Yard  
**7.5'** Right Side  
**7.5'** Left Side  
**N/A** River / Estuary / Creek  
 Slope (%)

**ROAD ACCESS**

State Highway     City Street  
 County Road/Public Way  
 Private Road

**WATER SUPPLY**

Public District **Wakeco-Barview**  
 Private (Creek / Spring / Well) (circle one)

**MOBILE HOME/RECREATION VEHICLE**

License No. or ID No. \_\_\_\_\_  
 Make/Model \_\_\_\_\_  
 Year \_\_\_\_\_

**WASTE DISPOSAL**

Sewer District **Twin Rocks**  
 Septic Tank / Drain Field

**WIND EXPOSURE:** B C D (circle one)

**VALUATION \$** 434,000

Separate State of Oregon permits are required for electrical, plumbing, and mechanical work. **The Property Owner is responsible** for seeing that these additional permits are obtained prior to work being done.

This application, if approved, includes only the work described above and/or plans and specifications bearing the same permit number. The applicant agrees to comply with all applicable codes and ordinances governing planning, sanitation and construction and agrees to meet any, and, all of the conditions listed below.

The granting of this permit does not presume to give authority to violate or cancel the provisions of any Federal, State or Local law regulating construction or the performance of construction.

**THIS PERMIT APPLICATION DOES NOT ASSURE PERMIT APPROVAL.** Such approval can be given only after staff review determines compliance with all applicable legal requirements.

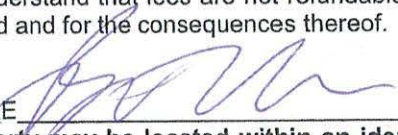
This application, if approved, becomes null and void if placement of mobile home or recreation vehicle is not completed within six (6) months from the date of approval.

**I further understand that it is my responsibility as permit applicant to request and receive all required inspections pertaining to this permit, if approved, as outlined in Oregon Administrative Rule (OAR) chapter 918. I further understand that permits issued by an inspection jurisdiction under provisions of these rules shall expire and become null & void if the work authorized by the permit is: (A) not started within 180 days from the date of the issuance; or (B) suspended for a period of 180 days after the work is started.**

In order to avoid a permit expiration, or additional fees, one of following is required: **(A)** Request an inspection showing construction progress at intervals of not to exceed 180 days, or **(B)** Request in writing, an extension within 180 days of issuance of previous inspection. The written request must show justifiable cause and will be granted depending on circumstances. If the permit expires prior to completion and requires further inspections, I understand I will be required to purchase a new permit and begin process again.

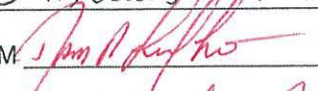
Prior to construction or placement, it is advisable that you check your deed for other restrictions that may apply.

I, the applicant, verify that I have read and understand the above information. I further certify that the information that I have provided is complete and accurate and may be relied upon by the Department of Community Development in the processing of my application. I understand that fees are not refundable. I accept responsibility for any inaccuracies in the information that I have provided and for the consequences thereof.

LEGALLY AUTHORIZED REPRESENTATIVE'S SIGNATURE  DATE 12/29/21

**\*\*\*\*All or a portion of this property may be located within an identified wetland. If the site is a jurisdictional wetland you must obtain any necessary State or Federal permits before beginning your project.**

\*\*\*\*\* FOR OFFICE USE ONLY \*\*\*\*\*

SANITATION	<u>N/A</u>	Building Fee	<u>2,086.81</u>
PUBLIC WORKS	<u>N/A</u>	Plan Check Fee	<u>1,350.43</u>
HOUSE NO.	<u>17360 PINE BEACH WAY</u>	12% Surcharge	<u>250.42</u>
ZONING	<u>Chris Laws 7/18/22</u>	Planning Review Fee	_____
PLANS EXAM.	<u></u>	A-level Plan Review	_____
BUILDING OFFICIAL	<u>del for Joe</u>	Fire & Life Safety	_____
		House Number (\$33.00)	<u>33.00</u>
		State M.D. Fee (\$30.00)	_____
		B&D/GHZ/Flood Fee	_____
		Water Letter Fee	_____
		Special Inspection(s)	_____
		Copies	_____
		Zoning Review Fee:	<u>246.00</u>
		<b>TOTAL DUE:</b>	<u>3,972.66</u>



PAGE 2 TO BE COMPLETED BY PLANNING STAFF

Proposed Land Use

Zoning: CR-2	Overlays: B&D
Size (Acres): 0.21	Parking Spaces: 2
Lot Coverage: NA	Small Lot: <input type="checkbox"/> Section 4.100 <input type="checkbox"/> Section 4.110
GHZ: NA	Flood Zone: 41057C0379 Zone X
Other:	

		(R) – Required	(A) – Allowed	(P) - Proposed
Setbacks:	<input checked="" type="checkbox"/> Standard	<input type="checkbox"/> Corner	<input type="checkbox"/> Through	<input type="checkbox"/> Irregular
Front Yard	(R): 20 (P): >20	Rear Yard (R): 20 (P): >20	Left Side Yard (R): 5 (P): 7.5	Right Side Yard (R): 5 (P): 7.5
Riparian Setback (R):	NA	Riparian Setback (P):	NA	
OSL Setback	NA	Building Height (A):	35'	(P): 23.5'
<small>Per section 3.085: OSL setback may vary</small>		<small>Neskowin zoning measures height differently</small>		

Access:	<input checked="" type="checkbox"/> Public/Private: Ocean Blvd - County Road
Water Supply:	<input checked="" type="checkbox"/> Public/Private: WASECO <input type="checkbox"/> Well <input type="checkbox"/> Creek/Spring
Wastewater Disposal:	<input checked="" type="checkbox"/> Sewer: Twin Rocks Sanitary District <input type="checkbox"/> Approved On-Site Disposal

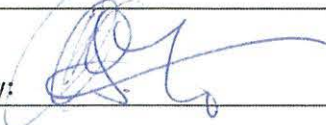
Land Use Approvals:

851-21-000448-PLNG BDR

Conditions of Approval

Shall comply with all Federal, State and local permits. Shall adhere to the development standards of the Community Medium Density (CR-2) Zone, Section 3.014 & Section 3.530. Shall site structures as shown on the approved site plan and maintain minimum required setbacks. Height of structure shall not exceed 35 feet per section 3.014(4)(h).

851-21-002910-DWL

Approved By:  Date: 2/8/22 Expiration Date: 2/8/24

Fee Schedule

Residential		Manufactured Dwelling/RV Placement		Commercial	
Regular	\$246.00	MD Planning Review (not included if placement is in park or city)	\$311.00	New commercial, apartments & multi-family dwellings	\$409.00
Additions/Accessory Structures	\$99.00	RV Review	\$205.00	Additions/Accessory Structures	\$409.00
Interior Remodel (no increase to footprint or height)	\$42.00			Interior Remodel (no increase in footprint or height)	\$100.00





## Development Permit

### Floodplain Development Permit Review

Type I

Record Number: 851-21-000409-PLNG

IVR Tracking Number: 851011138667

Application Date: 11/08/2021

Expiration Date: 11/08/2022

Issued Date: 12/28/2021

Project Name: GOSSART-DP

Description: Installation of beach front protective structure within active ending foredune, east of vegetation line in VE zone-to tie in with Pine Beach et al approved riprap.

#### Owner and Site Address

<b>Owner:</b>	GOSSART, TOM J & MARY G	<b>Parcel:</b>	1N10 07DA 02900	<b>Worksite Address:</b>	17570 OCEAN BLVD TILLAMOOK COUNTY, OR
<b>Address:</b>	593 NW 94TH TERR PORTLAND, OR 97229-6368				

#### Contact Information

Type	Name	Address	Phone
Applicant	GOSSART, TOM J & MARY G	593 NW 94TH TERR, PORTLAND, OR 97229-6368	503-355-2115

#### Fees

Fee	Qty	Qty type	Fee status	Fee amount	Amount paid
Development permit - Type I(New Construction or substantial improvements)	1	Ea	INVOICED	\$615.00	\$615.00

#### INSPECTIONS

Inspections may be required by Tillamook County for the indicated Application/Permit Type. Please contact the agency to determine if inspections are required.

#### Record History

Staff Member	Status	Date
Allison Chase	Application Intake - Application Submitted	11/08/2021
Sarah Absher	Application Intake - Issue Permit/Decision	12/28/2021
Sheila Shoemaker	Close Out - Decision/Permit Issued	02/05/2022

**Compliance/Agency Requirements**

NONE

## TECHNICAL MEMORANDUM

### WEST CONSULTANTS, INC.

2601 25<sup>th</sup> St. SE  
Suite 450  
Salem, OR 97302-1286  
(503) 485-5490  
(503) 485-5491 Fax  
www.westconsultants.com



**Company:** Kellington Law Group  
**Date:** 27 February 2023  
**From:** Chris Bahner, PE, D.WRE  
**Subject:** LUBA Comments on Pine Beach and Ocean Boulevard Properties Revetment Design

## INTRODUCTION

This memorandum provides additional information related to four items discussed in the Final Opinion and Order issued by the Oregon Land Use Board of Appeals (LUBA) in cases 2021-101 and 2021-104. The application approved by Tillamook County proposed to add shoreline protection for the oceanfront properties of the Pine Beach subdivision and all but one of the oceanfront lots in the George Shand Tracts (Ocean Boulevard Properties), together referred to as the "Subject Properties."

Since the time of the County's approval of the original application, the one "holdout" property located immediately north of the Subject Properties hired WEST to extend the design of the revetment along their property, so that it ties into the Shorewood RV Park revetment. Tillamook County approved the revetment for the holdout lot in an unrelated land use case. The construction work associated with that lot is now completed, which is to say that a revetment now exists on the west side of hold-out lot, and ties into the revetment on the Subject Properties and Shorewood RV Park.

The Subject Properties are located on the Oregon coast about 2 miles south of Rockaway Beach along the northwest coast of Oregon (Figure 1). Before the installation of the revetment, these oceanfront landowners were losing portions of their property due to coastal erosion and experienced coastal flooding as a result of high tides and wave run-up. The Subject Properties experienced coastal flooding during the King Tides in January of 2021, as well as in February of 2020. During these events, the maximum stillwater level reached the then unprotected oceanfront homes and went past the southernmost home for a distance of about 45 feet. Without the proposed revetment, there existed a high level of risk for future damage to the Subject Properties' land, structures, and associated infrastructure. The Subject Properties were subject to potential future damage from coastal erosion and flooding without the approved revetment.



Figure 1. Location map

Due to the emergency nature of the problem, the Pine Beach / George Shand landowners exercised the rights set forth in the land use entitlement and installed the revetment in November and December of 2021. The installed revetment or shoreline protection structure design and information required by Tillamook County was documented in a technical memorandum completed by WEST in March 2021 (WEST, 2021a). WEST also completed five supplemental technical memoranda: (1) in May 2021 (WEST, 2021b); (2) in June 2021 (WEST, 2021c); (3) on July 21, 2021 (WEST, 2021d); (4) on July 27, 2021 (WEST, 2021e); and (5) in August 2021 (WEST, 2021f).

## VACANT LOTS

One of the main objections presented in the LUBA opinion is that the County did not explain why the vacant lots are “appropriate development” under Goal 18 which must be protected by the structure. LUBA faulted the county for not explaining “the role of the vacant lots and the relative location of any infrastructure in its analysis.” The LUBA decision implicated suggested that the County needed to evaluate whether the vacant lots could be left unprotected, which is to say that BPS design with gaps needed to be evaluated.

To summarize, two of these vacant lots at issue are located in the George Shand tracts, and two were located in the Pine Beach Subdivision. At the time the revetment was being designed, the owner of one of the vacant lots in the Pine Beach Subdivision was planning construction of a home on the lot, and the

design of the revetment took this fact into consideration. That home is now nearly completed. Figure 2 shows the location of the three vacant lots and one lot with the newly constructed home.

Leaving the vacant lots unprotected by the revetment or shoreline protective structure and, instead, proposing a shoreline protective structure that has “gaps” is unacceptable for the following reasons:

- There would be no reduction in coastal flood risk to the developed properties since coastal waters would flow through the gaps on the vacant lots and flood the areas east of the revetment, including the developed properties adjacent to the vacant lots. The current design of the proposed structure would reduce the present-day annual chance of coastal flooding of the area from between 20 and 50% to 8%. The gaps would eliminate the project goal/benefit of reducing the coastal flooding risk, and the chance that the area would experience coastal flooding on annual basis would go back to being between 20 and 50%.
- In addition to not protecting against ocean flooding, the gaps would not protect against future coastal “passive” erosion on the developed lots. The passive erosion and the returning of water through the gaps will create eroded shoreline cusps, which are crescentic seaward projections, that would result in damage to the homes and structure that are situated near the gaps. Figure 3 shows example cusps formed near breakwaters, which in this context function similarly to the approved and constructed revetment has gaps. Smaller scale cusps will form because of ocean water flow concentrating through the gaps that result in erosion from increases in the flow velocity. Structural integrity is a concern with these gaps because floodwaters will flow through and around them and undermine the revetment from behind and erode the developed properties as well.
- It is physically not possible to construct end protection measures (like the ecology block wall along the south end of the structure) along the end borders of vacant lot gaps to provide the necessary coastal flood and erosion protection to the developed lots since: (1) the distance between the homes and their property lines is about 5 feet, which is not enough room to construct required protective end measures; and (2) the end measures could not be located on the vacant lots, unless the vacant lot owners gave their permission (easements) or sell their properties to the non-vacant lot owners, which they are unwilling to do. There was sufficient room along the southern boundary of the southernmost home to provide end protection measures to prevent undermining of the revetment structure from future erosion, but that is not the case for the developed lots that are adjacent to vacant lots. The developed lots would once again be in significant peril if the vacant lots were not protected by the revetment.
- Future “passive” erosion could adversely impact both the homes near the gaps as well as the public infrastructure not protected by these gaps.
- An undulating BPS design – i.e., placing the BPS further landward east of the vacant lots – would make such a BPS less effective and have greater impacts than the proposed linear design. It would require deeper toe depths, require more trees to be removed, larger area of disturbance, and potentially cause damage to structures and public utilities. In particular, any east-to-west oriented BPS that is subjected to wave energy running parallel to the rock structure would be a point of vulnerability.



Figure 2. Map of vacant lots





Figure 3. Example of shoreline cusps

- Simply shutting off public facilities and services (i.e., water, sewer, electricity, gas, etc.) in anticipation of a storm surge or directly after a storm surge is not a practical solution. First, public facility lines are interconnected, and a shut off point will not necessarily be limited to the specific infrastructure in peril. Shutting down utilities to infrastructure in peril, will almost certainly result in utility shut offs for people whose properties are not in peril. Second, not all dangerous storms are forecasted with sufficient certainty for a public utility to justify service shut-downs to otherwise paying customers. Third, as a related problem, the impacts of major storms on imperiled utilities are variable. Particularly strong storms attended by large logs and other debris are capable of disrupting public utility infrastructure beyond discrete water, sewer, electrical, gas, television, telephone or other utility lines at the boundaries of unprotected property. Which storm will have such characteristics, and which will not, may not be possible to forecast with certainty. Fourth, during major storms, it simply may not be possible to safely get utility workers and equipment into imperiled areas before disaster strikes to cut off utility service before environmental and other harm occurs. There could also be other logistics issues in getting to the property in a timely manner or shutting down the service impacting other the people in the area.
- There is a high level of uncertainty in predicting the magnitude, timing, and location of any natural disaster. For coastal environment, NOAA tide gage predictions provide estimates of when King Tides will occur, and NOAA's national data buoy centers provide real-time wave data. Forecasts rely on coastal models drawing from these and other data to predict a storm's path and intensity and provide accurate information about the likely impacts of a storm. However, in all but the most extreme cases, such forecasts are unable to identify when a predicted natural event will imperil or destroy public infrastructure to justify a utility shut-down. There is a balance between the adverse impacts of depriving households of heat, lights, internet, gas, water, sewer and other services and shutting down utility infrastructure in anticipation of a forecasted storm that may damage utility infrastructure. Decisions to deprive households of vital public services have significant consequences and do not occur in the absence of the most extreme storm predictions.
- Once infrastructure is damaged, it can take significant periods of time and significant public investment, to repair and restore damaged infrastructure. Moreover, if sewer or other pathogens/toxins are released due to storm inspired infrastructure damage, it can take considerable time to complete required clean-up, during which time public access and enjoyment is foreclosed for damaged areas.

In summary, gaps in the structure would adversely impact the function and purpose of the structure, and it would not reduce the high level of risk for future damage to structures on the Subject Properties that are near these gaps from coastal flooding and erosion. Moreover, not protecting the vacant properties with the approved revetment would expose the public utility infrastructure that is on, under and around the vacant properties to significant damage. That damage risks environmental damage and resultant loss of access to the public beach and ocean recreation, loss of power and other utility outages for developed and occupied properties, exposing occupants of the developed Subject Properties and other area developed properties to wholly avoidable harms.

## FLOOD RISK DURING CONSTRUCTION

As mentioned above, the applicants installed the approved revetment between November 13, 2021 and December 4, 2021. The installation process was completed without increasing the potential for flood damage. The Subject Property owners selected a contractor who had experience building the same type of shoreline protection structure that was constructed at the Subject Property. The contractor implemented a construction risk management plan that included procedures and methods to reduce the impact of risk to the contractor and the public during construction. The proposed structure took less than a month to construct.

The contractor built the structure in segments of three properties at a time to reduce the potential for coastal erosion and flooding during the construction. For each segment, the contractor dug the designed trench to put the revetment's rock into at a point that was 10 feet +/- east toward the houses. He left the vegetated dune in front of these lots intact with the vegetation that had previously existed. As the contractors dug the trench, they deposited the excavated sand on top of the westerly dune. That made the westerly dune temporarily much taller than its normal size, thereby preventing potential flood damage during construction. The trench was backfilled with the sand from the excavation, and excess sand was hauled away. That process increased the flood protection of the sites that had previously existed because the deposited sand provided a barrier that had not previously existed. That excavated sand was then distributed into a berm on the ocean side of the revetment. The berm provided a higher level of protection against coastal flooding than had previously existed even had a storm event occurred when the structure was being built, which it did not. No unusual storms occurred during construction. Images of the temporary construction of the revetment are provided at Figure 4 below.



Figure 4. Photos of construction of shoreline protection revetment

## FUTURE BEACH CONDITIONS

In the LUBA appeal, project opponents expressed concerns that the revetment might adversely impact the beach in front of the structure. They expressed the concern that the revetment might reduce north-south accessibility, and adversely impact the beach profile that could result in no beach in front of the structure.

The north-south accessibility issue was discussed in great detail in the July 21 WEST technical memorandum (WEST, 2021d). To recap, the revetment has no impact on the north-south beach access in front of the revetment. The beach will continue to be accessible when it is now accessible and will be inaccessible due to extreme high tides and storms. In this regard, the prior WEST analyses indicated that when considering the entire year, the north-south access will be impassable at the Subject Property approximately 1.1-percent of the time. This is associated with extreme combinations of high tides and high waves during winter season where several portions of the beach would be impassable or when less people are walking along the beach due to dangerous or high risk conditions. During the non-winter seasons, the north-south access will be impassable at the Subject Property only 0.1-percent of the time. But again, this is not a result of the installation of the revetment, which is located in the Applicants' vegetated backyards. Rather, the 0.1% figure represents periods of time when the beach is otherwise impassable during non-winter storms or extreme wave runup conditions. The revetment on the Subject Properties is nothing like the Shorewood RV Park revetment which is located 75 feet west of the proposed Subject Property revetment and is at a lower elevation. There is a beach in front of this structure, and it resembles the similar profile shape to the surrounding beach except it has a slightly steeper slope near the structure. The width of beach ranges from about 80 feet for the Mean Higher High Water (MHHW) tidal level to about 500 feet for the Mean Lower Low Water (MLLW) tide level.

Concerns related to the beach profile are addressed by reviewing the beach profile changes reflected in the ongoing beach monitoring data available from the Northwest Association of Networked Ocean Observing Systems (NANOOS) website (NANOOS, 2021) for the period from 1997 to the present. Figure 5 shows the monitoring locations within the Rockaway Beach littoral cell. Rockaway2 is the closest monitoring location to the project site, and it is located about 1,400 feet south of the Pine Beach Development. Figure 6 shows the beach profiles for selected days,  $\pm 1$  standard deviation ( $\sigma$ ) profiles to capture the 68% of natural variability, and maximum/minimum based on all available survey data. The top figure shows the conditions in early 2021 and the bottom figure shows the conditions in late 2022. Figure 7 shows the contour change plots (heights of 3, 4, 5, and 6 meters). A review of these plots for Rockaway2 indicate: (1) the beach profile has a high level of natural variability, (2) variability is most pronounced at elevation 10 feet and decreases up to elevation 16 feet with no variability existing at elevation 20 feet; (3) the 10 feet contour shoreline has high variability around the mean that has remain relatively constant since 2008; (4) the beach profile has a general parabolic shape with steeper slopes near the beach/dune intersection; and (5) the March profile is to the west of Nov/Dec profile. For references, the MHHW tide level is about 8.3 feet and average water level for the period from 1/2018 to 12/2020 has an average elevation of about 6.1 feet.

The 2014 erosion hazard study (DOGAMI, 2014) is the best study that estimates future projections of shoreline considering sea level rise and a detailed total water level analysis. This study indicates that the high hazard area is not significantly beyond the proposed revetment structure. Based on this information and the NANOOS data, there is a high probability that the beach will remain in front of the Subject Property shoreline revetment in the future.



Figure 5. NANOOS monitoring locations in Rockaway littoral cell

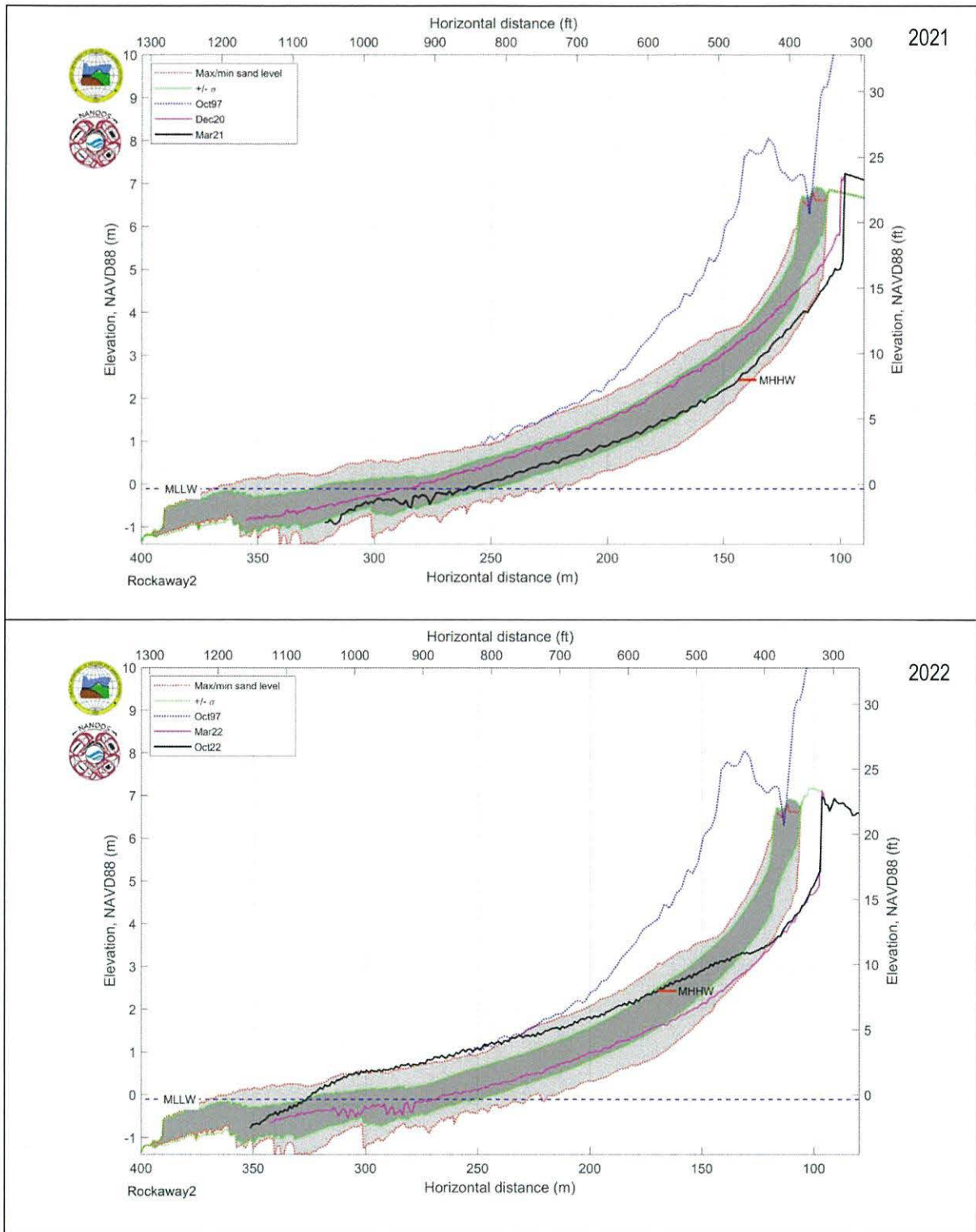


Figure 6. Beach profile along NANOOS Rockaway2 location

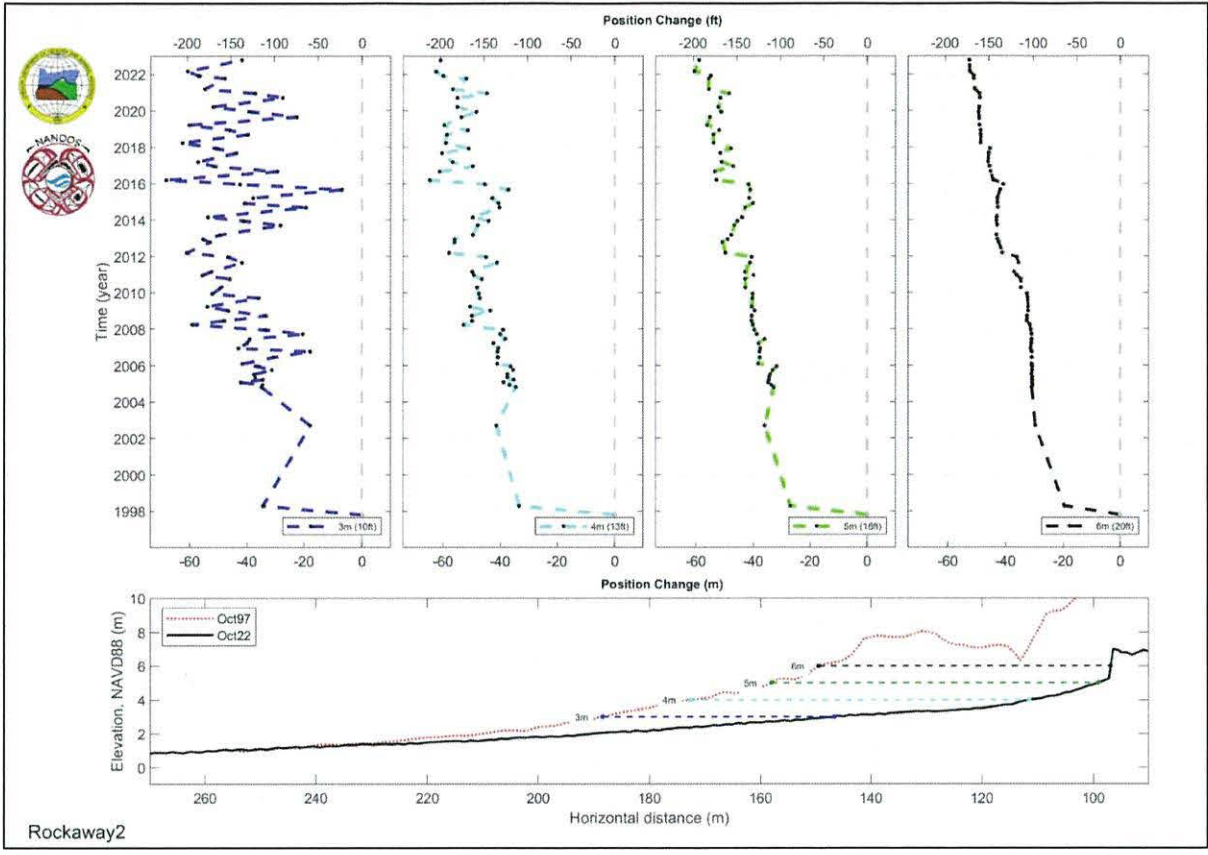


Figure 7. NANOOS Rockaway2 contour (3, 4, 5, and 6 meters) changes plots

**IMPACTS ON SURROUNDING PROPERTIES**

Before LUBA, the Oregon Coastal Alliance argued that there is information that shows adverse impacts historically have occurred with the placement of such shoreline structures, including the most detrimental effect being associated with passive erosion. To properly address this issue, it is important to distinguish the different concepts of coastal erosion related to a shoreline protection measure.

Passive erosion is associated with the shoreline migrating landward on either side of the structure, and it will take place regardless of the structure constructed. It is associated with the fact that the revetment structure is intended to fix the shoreline in place. Active erosion is the assertion that the proposed structure induces or accelerates beach erosion.

By design, shoreline protection measures do have an influence on passive erosion. Indeed, the main purpose of these measures is to protect against future passive erosion. Land not protected by the shoreline protection structure will continue to erode in the same manner as it has in the past. This includes the forested land located south of the Pine Beach lots. Barring any unforeseen changes to the littoral cell, the area to the south will continue to erode at either historical rates or a slightly reduced rate, accounting for the



fact that the lands to the east feature more deeply rooted and established forests which should erode more slowly than the younger dunes that eroded over the past 20 years.

As mentioned in the previous section, the beach located west of the approved and constructed revetment structure will not disappear entirely. Due to the physics of wave action, some sand will remain in front of the structure, although it is expected that the beach directly in front of the structure may increase in slope to a certain degree and will take on more of a parabolic shape from a cross-section view.

The more important question is related to active erosion. In relation to active erosion, a detailed literature review (Kraus and McDougal, 1996) and long-term field studies in Virginia (Basco and Ozger, 2001) and California (Griggs etc., 1997) indicate that the shoreline rock revetment structures do not have any long-term adverse impacts with regard to active erosion on the shoreline near the structures. A good summary is provided in *The Impacts of Coastal Protection Structures in California's Monterey Bay National Marine Sanctuary* (Stamski, 2005):

#### *Active Erosion*

*Localized, accelerated erosion that might occur because of interactions between armoring structures and waves is referred to as active erosion. This type of erosion includes scour at the base of a protection structure or on adjacent segments of shoreline, and changes in overall beach morphology. Many people feel that seawalls initiate active erosion and are therefore detrimental to coastal environments, yet recent investigations suggest otherwise.*

*A summary of over 40 scientific studies on the interactions between beaches and coastal armoring structures (including seawalls and riprap) found that active erosion may not be as prolific a problem as was once thought (Kraus and McDougal 1996). The review determined that reflection of wave energy off of coastal armor (waves bouncing off perpendicular to a structure) generally does not cause changes in beach profiles or scour in front of the armor. In addition, they ascertained that beach profiles in front of armoring retained the same amount of sand as non-armored beaches during storm events. In an eight-year study by Griggs et al. (1994; 1997), over 2000 beach profiles were collected and analyzed across armored and non-armored beaches around northern Monterey Bay. In this exhaustive investigation, scour was documented in front of an armoring structure only during extreme storm events and the imprint of that scour was ephemeral. The study did find that, as winter approached, the summertime beach berm migrated landward slightly faster in front of coastal protection structures when compared to beaches without armoring. However, once typical, narrow winter beaches were established, there was no significant alongshore difference in the shape of armored and non-armored beaches. In winter months, Griggs et al. (1994) did document some scour on the downcoast end of the structure, extending in an arc-shaped zone for as much as 50 to 150 m. Yet, as summer advanced, the beach width widened and there was no trace of scour or berm erosion caused by the armor.*

Another good explanation related to the Oregon Coast is found in *Impacts of Shoreline Armoring on Sediment Dynamics* (Ruggerio, 2010) and provided as follows:

*“... three long-term field studies have documented seawall-backed beaches experiencing no significant negative impacts. These studies, in California (Griggs and others, 1994), Oregon (Hearon and others, 1996), and Virginia (Jones and Basco, 1996), each extend over time scales on*

*the order of a decade. No measurable or significant differences between profiles for seawall-backed and non-armored beaches were found in these studies, suggesting little long-term effect of seawalls on the beaches. Because these studies spanned periods of only about a decade, however, sea-level rise, and therefore passive erosion, was relatively unimportant. These studies were assessing the impacts of seawalls on beaches that intermittently were experiencing active erosion.*

*... Weggel (1988) suggested a classification of seawall types based on the seawall's position on the beach and the water depth at the toe of the structure (table 1). The beaches in the Oregon and California field studies would be classified as Type I to Type III, depending on the season and storm condition, whereas the seawalls studied in Virginia can be classified as Type III to Type IV, depending on season and location. In this context, the Weggel (1988) classification helps to explain why the Oregon and California study sites experienced few decadal scale impacts as a result of armoring but sheds little light on the minor impacts experienced in the Virginia study."*

In summary, the above citations support the conclusion that the proposed revetment structure, which is considered to be Type II structures under the Weggel Classification system, will not have an adverse impact on the surrounding southern property, which is to say that the structures will cause active erosion. There are no concerns with the northern end of the structure since it ties into the existing Shorewood RV Park revetment.

## REFERENCES

- State of Oregon Department of Geology and Mineral Industries, 2014. *Evaluation of Erosion Hazard Zones for the Dune-Backed Beaches of Tillamook County, Oregon, Technical Report to the Oregon Department of Land Conservation and Development*, prepared by Laura L Stimely and Jonathan C. Allan
- Basco, D.R., 2000. *Beach Monitoring Results and Management Plan FCTCLANT, Dam neck, Virginia Beach, VA*, Beach Consultants, Inc. Norfolk, VA.
- Basco, D.R., and Ozger, S.S. 2001. *Toward Quantification of the Active Sand Volume in the Surf Zone, VA*, Beach Consultants, Inc. Norfolk, VA.
- Gardner, Meg, DLCD, 2015. *Analysis of Shoreline Armoring & Erosion Policies Along the Oregon Coast*.
- Griggs G.B., Tait, J.F., and Corona, W. 1994. *Seven years of monitoring, Monterey Bay, California, Shore and Beaches*, v. 62, p. 21-28.
- Griggs, G.B., Tait, J.F., Moore, L.J., Scott, K., Corona, W., and Pembroke D. 1997. *Interaction of seawalls and beaches – Eight years of field monitoring, Monterey Bay, California*, Washington, D.C., U.S. Army Corps of Engineers Waterways Experiment Station Contract R. CHL-97-1.
- Kraus N.C., and McDougal, W.G., 1996. *The effects of seawalls on the beach – Extended literature review*, Journal of Coastal Research, Special Issue No. 4, Autumn 1988, p. 1-28.

Northwest Associate of Networked Ocean Observing Systems (NANOOS), 2021. [NVS : Beach and Shoreline Changes \(nanoos.org\)](#), accessed May 2021

Oregon Land Use Board of Appeal (LUBA), 2022 (September). *LUBA No. 2021-101, 2021-104. Before the Land Use Board of Appeals of the State of Oregon, Oregon Coast Alliance, Petitioner, and Oregon Department of Land Conservation and Development, Intervenor-Petitioner vs. Tillamook County, Respondent, and Michael Rogers, Christine Rogers, Bill Cogdall, Lynda Cogdall, Jon Creedon, David Farr, Frieda Farr, Don Roberts, Barbara Roberts, Rachel Holland, Jeffrey Klein, Terry Klein, Dave Hayes, Michael Ellis, Michael Munch, Angela Dowling, David Dowling, Megan Steck Berg, Evan Danno, Mark Kemball, Alice Kemball, Mary Ann Lockwood Family Trust and Heather Steck Von Seggern, Intervenor-Respondents.*

Ruggiero, Peter 2010 (January). *Impacts of Shoreline Armoring on Sediment Dynamics.*

Stamski, Rebecca, 2005. *The impacts of coastal protection structures in California's Monterey Bay National Marine Sanctuary. Marine Sanctuaries Conservation Series MSD-05-3.* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Marine Sanctuaries Division, Silver Spring, MD. 18 pp.

State of Oregon Department of Geology and Mineral Industries, 2012. *LiDAR Data for Oregon Central Coast*

USACE, 2014. *USACE NCMP Topobathy Lidar: Oregon.* Data accessed from NOAA Digital Coast website, <https://coast.noaa.gov/dataviewer/#/lidar/search/where:ID=4906>

WEST, 2021a (March). *Technical Memorandum, Subject: Pine Beach Revetment Design*

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

WEST, 2021c (June). *Technical Memorandum, Subject: Second Supplement Memorandum*

WEST, 2021d (July 21a). *Technical Memorandum, Subject: Third Supplement Memorandum*

WEST, 2021e (July 21b). *Technical Memorandum, Subject: Fourth Supplement Memorandum*

WEST, 2021f (August 2). *Technical Memorandum, Subject: Fifth Supplement Memorandum*

Weggel, J.R., 1988. *Seawalls: The Need for Research, Dimensional Consideration and a Suggested Classification*, Special Issue No. 4, Journal of Coastal Research, pp 29-40.

**CHRIS D. BAHNER, PE, D.WRE**  
SENIOR PROJECT MANAGER



Mr. Bahner is a hydraulic engineer with WEST Consultants. He has experience and a strong educational background in hydraulic engineering and numerical modeling. His experience

includes performing hydraulic and sedimentation analyses for flood control studies, hydraulic modeling, sediment erosion and deposition modeling, and design of hydraulic structures. Mr. Bahner is familiar with a number of hydraulic and hydrologic computer modeling programs.

Mr. Bahner was the lead engineering in a shoreline erosion study along the southern coast of Oregon; a shoreline erosion protection study near Nome, Alaska; evaluating the hydraulics and scour, and designing bank protection measures from hydrodynamic and wave force for 13 Oregon coast tidally influenced bridges; design revetment structures against waves for three sites in Coos Bay; design revetment structures against wind and ship waves for several sites on the Columbia River; and designing rock revetment against wave action for about 30 reservoirs.

Mr. Bahner has also assessed the hydraulics and potential scour for proposed bridge modifications in Idaho, Oregon, Hawaii, California, and Mexico; defined flood inundation boundaries for various flood insurance studies and Letters of Map Revisions; and evaluated the hydraulics of the lower Las Vegas Wash for existing conditions and for several proposed grade control structures and a bypass channel. Using HEC-RAS (Unsteady), he has evaluated impacts from upstream improvements on the lower Truckee River floodplain boundaries; analyzed the hydraulics

through several quarry ponds along Mill Creek in Salem, OR; assessed the risk associated with the releases from the proposed Systems Conveyance and Operations Program project; evaluated potential impacts of Early Implementation Projects on the Sacramento River; assessed dam and levee breaches and corresponding inundation boundaries; and analyzed spillway alternatives for McMullen Dam.

Additional notable projects include evaluating impacts of a proposed LNG terminal on the lower Columbia River; defining the flood inundation boundaries of several urbanized areas; analyzing the hydraulic characteristics of various waterbodies; and evaluating the Wappapello Dam spillway, bank erosion for several sites along the Columbia River, the hydraulics at McMullen Dam, and the hydraulics of Prickett Creek near NW Stringtown Road.

Notable sediment transport efforts include assessing the sedimentation of slag deposits on the upper Columbia River, deposition within Cochiti Reservoir, and sediment transport potential of Big River and Salt River; designing a bypass channel for the Plattsmouth Bend Project; estimating the long-term degradation depth at Stuart Mesa Bridge over Santa Margarita River; evaluating degradation and aggradation of the lower Las Vegas Wash; and assessing the sedimentation potential for a proposed intake structure on the Missouri River.

Prior to WEST, Mr. Bahner worked at the USACE, Los Angeles District, where he was the lead hydraulic engineer for several flood control projects, performed hydraulic and sedimentation analyses for feasibility studies and design memoranda, and completed final hydraulic designs of flood control structures

---

**Years of Experience: 30      Years with WEST: 21**

**Education**

- MS (Water Resources Engineering) Long Beach State University, 1998
- BS (Civil Engineering) Long Beach State University, 1992

**Registrations**

- Professional Civil Engineer: California 53911; Oregon 067050; Nevada 18560; Utah 11097545-2202; Montana 59852; North Dakota 27211; Washington 20106726
- Diplomate, American Academy of Water Resources Engineers; AASRE 00097

**Professional Affiliations**

- American Society of Civil Engineers

## TRAINING

- HYDROLOGIC SIMULATION PROGRAM – FORTRAN (HSPF), Aqua Terra
- Unsteady Flow Analysis (HEC-RAS Version 3.0), U.S. Army Corps of Engineers Hydrologic Engineering Center
- HEC-HMS, WEST Consultants, Inc.
- HEC-6, WEST Consultants, Inc.
- HEC-2, U.S. Army Corps of Engineers Hydrologic Engineering Center
- SRH-2D, Bureau of Reclamation
- Corps Water Management System (CWMS), U.S. Army Corps of Engineers Hydrologic Engineering Center
- Sedimentation Investigation of Rivers and Reservoirs, U.S. Army Corps of Engineers Engineering Research Development Center (formerly known as Waterways Experiment Station)
- Hydraulic Design of Flood Control Channels, U.S. Army Corps of Engineers Engineering Research Development Center (formerly known as Waterways Experiment Station)
- Hydraulic Design of Spillway and Outlet Works, U.S. Army Corps of Engineers Engineering Research Development Center (formerly known as Waterways Experiment Station)

## BIBLIOGRAPHY

- Bahner, Chris D., *Flood Risk Reduction Structure for Morgan Lake Dam*, prepared for SedHyd Conference, December 2022.
- Bahner, Chris D., *Columbia River Carbonate Proposed Columbia River Barge Facility Hydraulic and Scour Analyses and Revetment Design*, 2022.
- Bahner, Chris D., *Lower Columbia River Stage-Frequency Study Mandatory Task 0008: Lower Columbia HEC-WAT Model*, prepared for U.S. Army Corps of Engineers, Portland District, November 2020.
- Bahner, Chris D., *Sediment Transport Analysis of Missouri River for Red River Valley Water Supply Project McLean County, North Dakota*, prepared for SedHyd Conference, January 2019.
- Bahner, Chris D., and Duren, Angela, *Hydrologic Risk Analyses for Willamette River Basin Dams*, prepared for SedHyd Conference, January 2019.
- Bahner, Chris D., *Newmark Avenue Bank Protection Analysis and Design, Coos County*, 2019.
- Bahner, Chris D., *Hollering Place Bank Protection Analysis and Design, Coos County*, 2018.
- Bahner, Chris D., *Coos Bay Boardwalk Dike Emergency Bank Protection Design, Coos County*, 2017.
- Bahner, Chris D., *Hazard Studies for the Bear River Hydroelectric Project, Development of the Probable Maximum Flood Report*, prepared for PacifiCorp, November 2017.
- Bahner, Chris D., *Probable Maximum Flood Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, September 2017.

- Bahner, Chris D., *Probable Maximum Precipitation Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, December 2016.
- Bahner, Chris D., *Hydrologic Model Calibration and Validation Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, December 2016.
- Bahner, Chris D., *Extreme Storms Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, July 2016.
- Bahner, Chris D., *Comparison of 2-Dimensional Hydraulic Models for Assessing Levee Breach Inundations*, Association of State Dam Safety Official (ASDSO) 2013 Dam Safety Conference, Providence, RI, September 2013.
- Bahner, Chris D., *Life Loss Estimates to Support Levee Safety Risk Assessment Using LifeSim*, Association of State Dam Safety Official (ASDSO) 2012 Dam Safety Conference, Denver, CO, September 2012.
- Bahner, Chris D., Goodell, Chris, and Needham, Jason, *Life Loss Estimates to Support Levee Safety Risk Assessment Using LifeSim*, 32<sup>nd</sup> United States Society of Dams (USSD) Annual Meeting and Conference, New Orleans, LA, April 2012.
- Bahner, Chris D., *Dry Bypass Pump Station Feasibility and Alternatives Analysis of the Napa River/Napa Creek Flood Protection Project, Napa County, California*, abstract and presentation for 2011 USACE Infrastructure System Conference, Atlanta, GA, June 2011.
- Bahner, Chris D., *Comparison of Estimated Scour Depths for Tidally Influenced Bridges Using One and Two Dimensional Hydraulics Models*, abstract and presentation for Oregon Department of Transportation 2009 Geo/Hydro/HazMat Conference, Sustaining Oregon's Aging Highways, Lincoln City, OR, September 2009.
- Bahner, Chris D., Grindeland, Thomas R. and Deering, Michael K., *Documentation and Demonstration of a Process for Conducting Risk Analysis for Hydraulic Impacts of the Proposed Modification to the Sacramento River Flood Control Project*, abstract and presentation for 2009 USACE Infrastructure System Conference, Cleveland, OH, 2009.
- Bahner, Chris D., and Grindeland, Thomas R., *Documentation and Demonstration of a Process for Conducting Risk Analysis for Hydraulic Impacts of the Proposed Modification to the Sacramento River Flood Control Project*, abstract and presentation for 2009 Northwest Regional Floodplain Management Association (NORFMA), Yakima, WA, 2009.
- Bahner, Chris D., Grindeland, Thomas R., Goodell, Chris, and Bradley Jeffrey B., *Documentation and Demonstration of a Process for Risk Analysis of Proposed Modifications to the Sacramento River Flood Control Project (SRFCP) Levees*, which became PR-71 published by the U.S. Army Corp of Engineers, Hydrologic Engineering Center, 2009.
- Bahner, Chris D., *Outlet Tunnel Slab Damage at Seven Oaks Dam*, abstract and presentation for 29<sup>th</sup> United States Society of Dams (USSD) Annual Meeting and Conference, Nashville, TN, April 2008.

**CHRIS D. BAHNER, PE, D.WRE**

- Bahner, Chris D., *Inadequate Evaluation of the "No-Rise" Condition Using a Steady State Hydraulic Model for Unsteady Flow Conditions*, abstract and presentation for the 2007 Annual Floodplain Management Association Conference, Lake Tahoe, CA, 2007.
- Bahner, Chris D., *Moses Point to Elim, AK Road Repair, ERFO Design Report*, prepared for Federal Highway Administration, Western Federal Lands Highway Division, 2007.
- Bahner, Chris D., *Restoration of Lower Las Vegas Wash – Upper Diversion Weir*, abstract and presentation for the Joint 8<sup>th</sup> Federal Interagency Sedimentation and 3<sup>rd</sup> Hydrologic Conferences, Reno, NV, April 2006.
- Bradley, Jeffrey B., Richards, Dennis L. and Bahner, Chris D., *Debris Control Structures – Evaluation and Countermeasures, Hydraulic Engineering Circular 9, Third Edition*, published by the U.S. Department of Transportation, Federal Highway Administration, 2005.
- Willamette River Basin Winter, Regulated Volume Flow Frequency Curves Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, August 2019.
- Willamette River Basin Dams, PMF Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, March 2018.
- Willamette River Basin Dams, PMP Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, July 2017.
- Willamette River Basin Dams, Hydrologic Model Calibration and Validation Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, December 2016.
- Willamette River Basin Dams, Extreme Storms Report, Willamette River Basin (Oregon)*, prepared for U.S. Army Corps of Engineers, Portland District, July 2016.
- Dam Breach Study and Flood Inundation Mapping for Silver Creek Dam Marion County, Oregon, NID# OR00622*, prepared for City of Silverton, 2020.
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 07949A-D, Astoria Megler Bridge, Pacific Coast Highway, Mile Point 0.00, Clatsop County, Oregon Department of Transportation, 2012.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 08306, New Youngs bay Bridge, Pacific Coast Highway, Mile Point 4.91, Clatsop County, Oregon Department of Transportation, 2012.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01820, Yaquina Bay Bridge, Pacific Coast Highway, Mile Point 141.68, Lincoln County, Oregon Department of Transportation, 2012.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01820, Alsea Bay Bridge, Pacific Coast Highway, Mile Point 155.54, Lincoln County, Oregon Department of Transportation, 2012.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01391A, Beaver Creek Bridge, Pacific Coast Highway, Mile Point 149.02, Lincoln County, Oregon Department of Transportation, 2012.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01113, Cape Creek Bridge, Pacific Coast Highway, Mile Point 178.35, Lane County, Oregon Department of Transportation, 2010.*

- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01823, McCullough Coos Bay Bridge, Pacific Coast Highway, Mile Point 233.99, Coos County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 07020, Coquille (Bullards) River Bridge, Pacific Coast Highway, Mile Point 259.69, Coos County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01143D, Chetco River Bridge, Pacific Coast Highway, Mile Point 358.0, Curry County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 03339A, Hubbard Creek Bridge, Pacific Coast Highway, Mile Point 302.28, Curry County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 08290, Hunter Creek Bridge, Pacific Coast Highway, Mile Point 330.5, Curry County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 09091A, Winchuck River Bridge, Pacific Coast Highway, Mile Point 362.6, Curry County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01822, Umpqua River & McIntosh Slough Bridge, Pacific Coast Highway, Mile Point 211.11, Douglas County, Oregon Department of Transportation, 2010.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01173D, Yachats River Bridge, Pacific Coast Highway, Mile Point 164.73, Lincoln County, Oregon Department of Transportation, 2009.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 08719, Pistol River Bridge, Pacific Coast Highway, Mile Point 339.1, Curry County, Oregon Department of Transportation, 2009.*
- Bridge Hydraulic and Scour Assessment Detailed Report for Bridge No. 01430A, Big Creek Bridge, Pacific Coast Highway, Mile Point 160.15, Lincoln County, Oregon Department of Transportation, 2009.*
- Rock Creek Section 103, Shoreline Erosion Study, U.S. Army Corps of Engineers, Portland District, 2002.*
- Decision Document for Operation and Maintenance, San Luis Rey Flood Control Project, U.S. Army Corps of Engineers, Los Angeles District, 2001.*
- Hydraulic Appendix, Decision Document for Operation and Maintenance, San Luis Rey Flood Control Project, U.S. Army Corps of Engineers, Los Angeles District, 2001.*
- Hydraulic Appendix, Feature Design Memorandum, Prado Dam Spillway, U.S. Army Corps of Engineers, Los Angeles District, 2001.*
- Hydraulic Appendix, Murrieta Creek Flood Control Study, U.S. Army Corps of Engineers, Los Angeles District, 2000.*
- Hydraulic Appendix, Prado Dam Water Supply Study, U.S. Army Corps of Engineers, Los Angeles District, 2000.*



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Hydraulic Appendix, *Decision Documentation Report for Lower Norco Bluffs*, U.S. Army Corps of Engineers, Los Angeles District, 1999.

*Floodplain Evaluation Report, Naval Air Weapons, Point Mugu, California*, U.S. Army Corps of Engineers, Los Angeles District, 1998.

Bahner, Chris D., *Physical Model Study of Prado Dam Spillway*, published for the ASCE Water Resources Planning and Management Conference, Anaheim, CA, 1998.

Hydraulic Appendix, *Murrieta Creek Floodplain Maintenance Study*, U.S. Army Corps of Engineers, Los Angeles District, 1998.

Hydraulic Appendix, *Feature Design Memorandum, Prado Dam Outlet Works*, U.S. Army Corps of Engineers, Los Angeles District, 1998.

Hydraulic Appendix, *Decision Documentation Report for Environmental Restoration of Gunnerson Pond*, U.S. Army Corps of Engineers, Los Angeles District, 1997.



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**NATURAL RESOURCE ASSESSMENT REPORT  
FOR**

**Pine Beach and Ocean Boulevard Properties**

T1N R10W Sec.7DD TL 114-123  
T1N R10E Sec.7DA TL 3000, 3100, 3104, 3203, & 3204  
Tillamook County, Oregon

**Prepared for**

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**Prepared by**

Juniper Tagliabue  
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of  
Schott & Associates, Inc.

**Date:**

January 2023

Project #: 3045

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## **Introduction**

Schott & Associates (S&A) was contracted to prepare a natural resource assessment report for Pine Beach Subdivision (T1N R10W Sec.7DD, Tax Lots 114-123) and Ocean Beach Boulevard Properties (T1N R10E Sec.7DA Tax Lots 3000, 3100, 3104, 3203, and 3204; Rockaway Beach, Tillamook County, Oregon; Figures 1 & 2). In 2021, riprap revetment was constructed along the ocean side of the subject properties to protect the properties from erosion and reduce the risk of coastal flooding. As stated in the Land Use Board of Appeals (LUBA) Final Opinion, Tillamook County's approval of the structure must "*demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices.*" This report is provided to meet that requirement.

## **Site Description and Background**

The study site includes 15 beach front lots, 12 of which feature single-family residential dwellings, and three of which are undeveloped. The lots are zoned for urban-density residential uses, and as of December 2021, feature a rock rip-rap revetment which was constructed along the western (ocean) side of the properties.

In the early 1990s, the coastal pine forest extended approximately 330 feet to the west from where Pine Beach Loop was constructed, and sand was actively being deposited on the beach. In the mid to late 1990s, this trend suddenly reversed, resulting in rapid erosion of the beach. By the year 2011, nearly 100 feet of the pine forest had been eroded up and down the coastline in this area. Around 2005, a protective wall of exposed rip-rap was constructed to protect the trailer park north of the subject properties. This rip-rap has stopped the erosion along its frontage, but the erosion has continued adjacent to the subject properties and to the south. The trailer park now juts out approximately 100 feet west of the existing forest edge.

The beach erosion is due to several factors. The initial erosion probably occurred during King tides and one or more major storm events associated with the El Niño climate phenomenon. Climate change and the rise in ocean levels are probably contributing factors. Loss of approximately 134 feet of coastal forest since 1994 is evident from review of recent and historical aerial photographs (Fig. 3a-b). The riprap was designed in accordance with Tillamook County codes to protect the properties from rapid erosion which was occurring along the beach and putting homes, lives, and infrastructure at risk. The revetment was constructed in 2021 and was completed by covering with sand and planting with vegetation for further stabilization.

## **Methods**

Schott & Associates visited the site on January 23, 2023, to assess the condition and impact of the onsite revetment with respect to any onsite or adjacent natural resources and collect site photographs (Appendix B).

Offsite mapping including aerial photographs, National Wetland Inventory (NWI), and other available natural resource mapping was reviewed along with previous permitting documents (WEST Consultants Technical Memorandum; 2021, LUBA Final Opinion; 2022).

## **Results**

### **Natural Resources**

Maps and aerial photographs were reviewed, and nearby natural resources were identified for any potential effects from the revetment. Identified significant resources consist of the Pacific Ocean and adjacent beach to the west and Smith Lake to the east. The forested area between Pine Beach Loop and the Ocean was not identified by the County as a significant natural resource.

The Pacific Ocean is located directly adjacent to the west of the subject property boundaries. The ocean is actively eroding the beach as documented in WEST Consultant's technical memorandum, historical aerial photographs, and photographs provided by property owners. The revetment was constructed to protect property including homes and infrastructure from further beach erosion. Construction of the revetment does not result in any changes to functions of either the ocean or the beach, apart from protecting life and property. Fauna and flora inhabiting the shallow waters of the ocean directly west of the BPS shall not experience any different conditions as a result of its installation. Vegetation is unable to root within the sandy intertidal zone of the beach. Animal species present on the sandy beach include a variety of small species which are generally unseen. Larger invertebrates, including crustaceans and mollusks may also be present. These species burrow in the sand during periods of exposure for protection and emerge to forage when the tides allow. These species are generally dependent on detritus provided by the incoming tides and deposited at the high tide line. Once in the intertidal zone, the organic detritus is broken down and made available by the mechanical force of waves pounding against the shore and the activity of the many different organisms that live and forage there. These ecological systems will be unaffected by the presence of the BPS.

Smith Lake is a 35-acre lake located approximately ¼ mile east of the site, along the west side of Highway 101. The lake is primarily surrounded by private property including a recreational camp. It is stocked with rainbow trout and cutthroat trout for fishing and large-mouth bass are also known to be present. The lake is separated from the revetment by existing residential development and roadways including Pine Beach Street and the old Pacific Highway. The impacts from the revetment are limited to protection of the adjacent properties and no impacts to Smith Lake from its construction were identified or anticipated.

### **Site Visit**

S&A accessed and viewed the site from the top of the revetment on the lot line between lots 116 and 117. The revetment was composed of riprap covered with sand. After

construction it was replanted with a variety of native species. At the time of the site visit it was approximately 30% vegetated, the predominant cover being beach grass (*Ammophila sp.*) with approximately 1% each of shore pine (*Pinus contorta*), Sitka spruce (*Picea sitchensis*), salal (*Gaultheria shallon*), evergreen huckleberry (*Vaccinium ovatum*), Pacific wax myrtle (*Myrica californica*), volunteer bentgrass (*Agrostis sp.*) and lupine (*Lupinus sp.*). The beach grass is a stabilizing species which forms stiff, hardy, clusters of grass that can reach nearly four feet in height. The rhizome mat formed by the plant facilitates fast colonization over the immediate area. One small clump can produce 100 new shoots annually. It is known for its ability to trap sand and thereby increase the height and stability of the dunes it inhabits.

The erosion that has occurred since the mid 1990 resulted in a loss of what is typically thought of as foredunes, which are the dunes forming closest to the ocean. Foredunes generally have unstable sand and sparse to moderate vegetative cover. As more plants establish and succession occurs, dunes convert over time to shrublands dominated by salal and evergreen huckleberry followed by forests dominated by shore pine and eventually Sitka spruce and western hemlock. No foredunes remain in front of the subject property and the revetment was installed to protect what remains of the backdunes and associated coast forest community as well as the homes.

The forested area to the south appeared to be relatively flat and before loss of the foredunes would have been considered an interdunal area or secondary (back) dunes. The foredunes are essentially gone, with these more established dunes now directly exposed to ocean erosion. These are conditionally stable dunes that have become wind stabilized by diverse vegetation and soil development. They are now acting as foredunes. A mature forest of pine trees has established on these stabilized dunes.

The forested dunes have not been affected by the BPS installed at Pine Beach. One season after installation, any change in erosion pattern would have already revealed itself. Having said that, we do expect the ocean to continue to erode these forested dunes, albeit at a somewhat slower rate than the younger foredunes that were eroded from between the mid-to-late 1990s to the 2020 time period. Assuming that current erosion patterns continue, the only feasible way to preserve these forested dunes over the long term is to provide sand renourishment and/or PBS similar to the structure installed at Pine Beach.

### **Summary**

In response to the LUBA Final Opinion and OAR 660-004-0020(2)(d) the site and revetment have been assessed by Martin Schott, PhD to identify any natural resources affected or potentially affected by the activity. The Pacific Ocean, adjacent beach, and Smith Lake were identified as the only nearby natural resources. The revetment is located entirely on private property and was constructed to protect life and property associated with those lots as well as potential for coastal flooding of additional properties further inland. The beach has a Goal 17 "Coastal Shorelands" exception. Construction was found to be compatible with surrounding natural resources with no impacts to said resources.

**FIGURE 1: PROJECT VICINITY MAP**



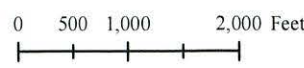
Date: 1/25/2023

Data Source: ESRI, 2023; Tillamook  
County GIS, Dept., 2023

Figure 1. Location Map

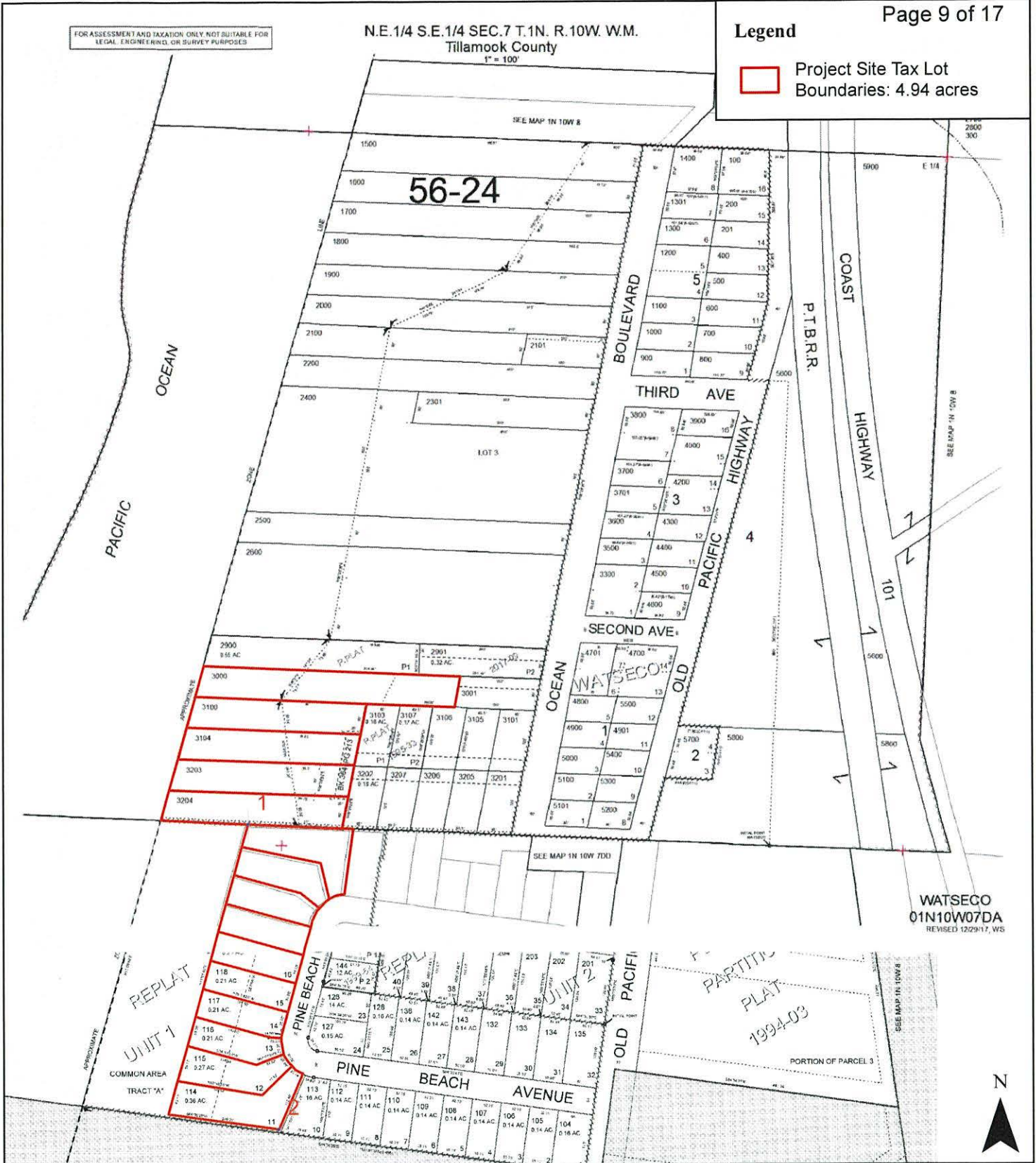


Pine Beach Subdivision Project Site: S&A # 3045





**FIGURE 2: TAX MAP**



Date: 1/25/2023

**Figure 2. Tax Map - 01N10W07DA & 01N10W07DD**

Data Source: ESRI, 2023; Tillamook County GIS, Dept., 2023

**Pine Beach Subdivision Project Site: S&A # 3045**



**FIGURE 3A-B:**  
**RECENT AND HISTORICAL AERIAL PHOTOGRAPHS**

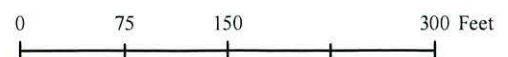


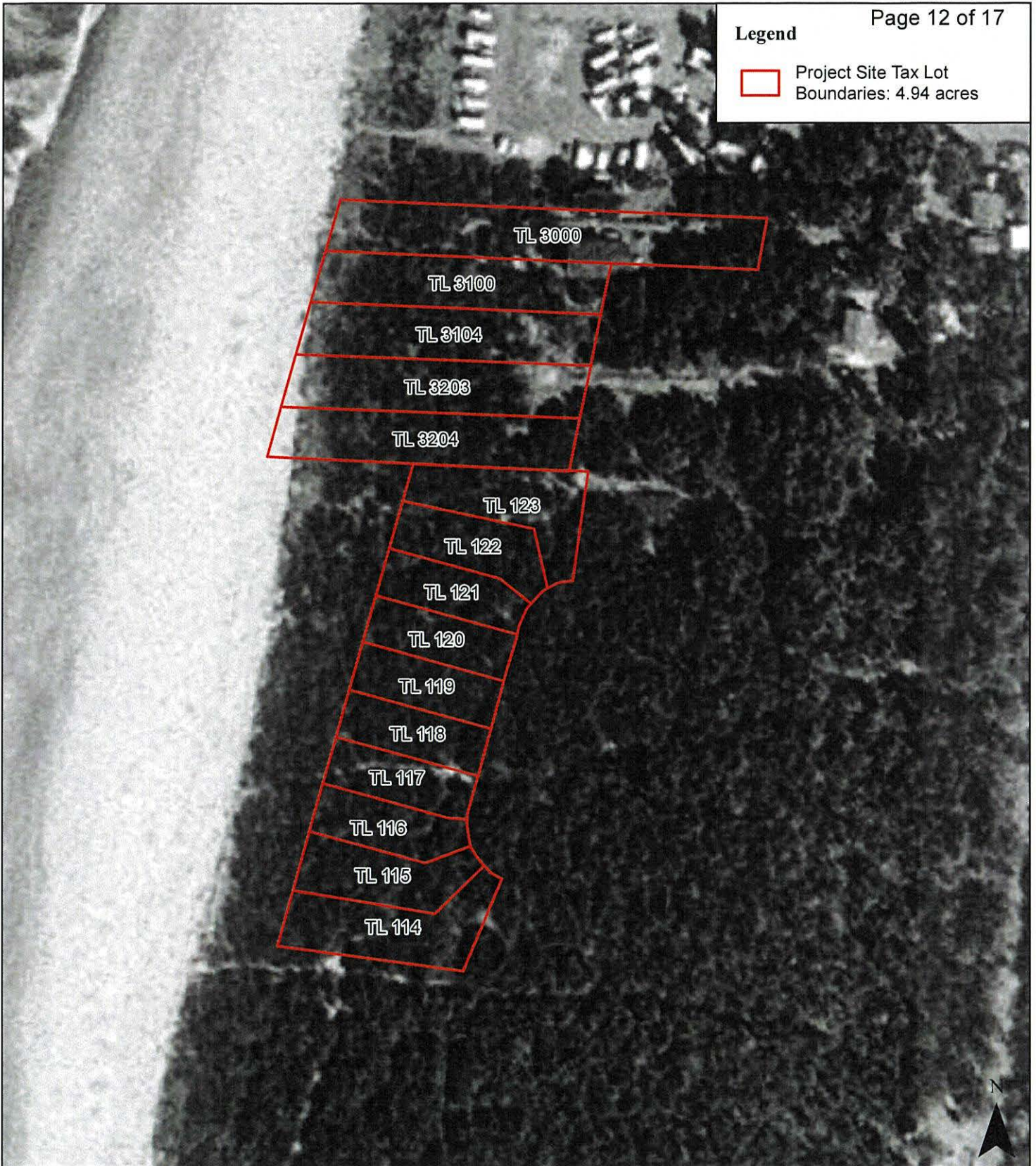
Date: 1/25/2023

Figure 3a. Recent Aerial Imagery -  
April 15, 2021

Data Source: ESRI, 2023; Tillamook  
County GIS, Dept., 2023

Pine Beach Subdivision Project Site: S&A # 3045



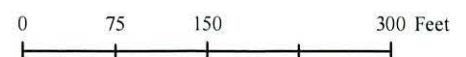


Date: 1/25/2023

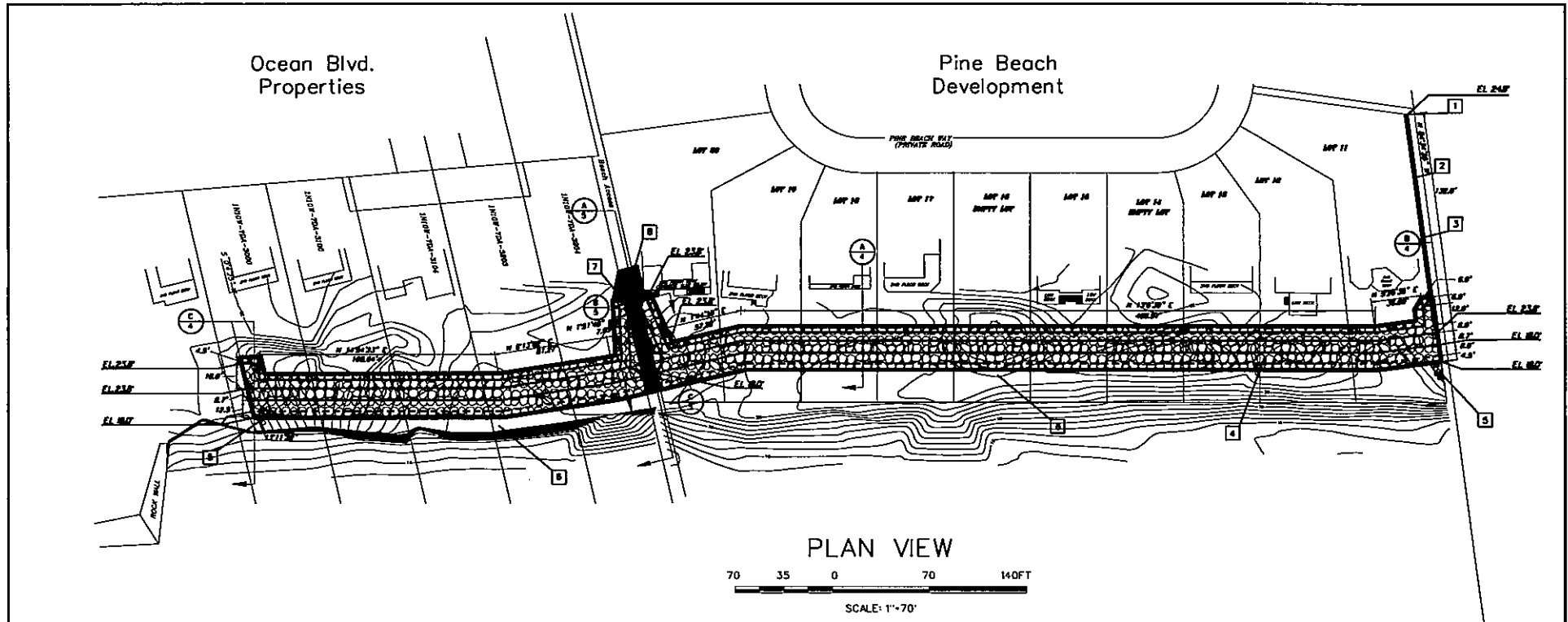
Data Source: ESRI, 2023; Tillamook  
County GIS, Dept., 2023

Figure 3b. Historical Aerial Imagery -  
Spetember 3, 1994

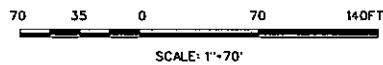
Pine Beach Subdivision Project Site: S&A # 3045



**APPENDIX A: SITE PLAN**

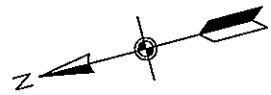


PLAN VIEW



**NOTES**

1. CONTROL POINT AT CORNER OF WOOD FENCE ALONG THE SOUTHERN BOUNDARY OF PINE BEACH DEVELOPMENT LOT 11. X-COORDINATE OF 7,320,174.35 FT AND Y-COORDINATE OF 717,513.41 FT (HORIZONTAL DATUM OF NORTH AMERICAN DATUM OF 1983, STATE PLANE OREGON NORTH, FEET).
2. CONSTRUCT ECOLOGY BLOCK STRUCTURE. SEE DETAIL D ON SHEET 4.
3. REMOVE AND REPLACE EXISTING FENCE.
4. CONSTRUCT ROCK REVETMENT OVER GRANULAR FILTER. ROCKS SHOULD BE UNIFORM GRADATION RANGING IN SIZE FROM 3 TO 4 FT IN DIAMETER WITH THE ROCK HAVING A MINIMUM SPECIFIC GRAVITY OF 2.65. THE ROCK SHOULD CONSIST OF DENSE, NATURAL ROCK FRAGMENTS. ROCKS SHOULD BE RESISTANT TO WEATHERING AND TO WATER ACTION; AND FREE FROM OVERBURDEN SPOIL, SHALE AND ORGANIC MATERIAL. SHALE AND ROCKS WITH SHALE SEAMS ARE NOT ACCEPTABLE. THE DURABILITY INDEX AND PERCENT ABSORPTION SHALL BE DETERMINED BY AASHTO T 210 AND AASHTO T 85, RESPECTIVELY. COVER ROCK REVETMENT WITH SAND MATERIAL. SEE DETAIL A ON SHEET 4.
5. PLACE 7 3-FIT-DIAMETER ROCKS AT AN ELEVATION OF 20.8 FT AND RANDOMLY SPACED NEAR THE NORTHERN AND SOUTHERN END OF PROPOSED STRUCTURE.
6. SAVE EXISTING LARGE LOGS, AND PLACE THROUGHOUT BENCH AREA. REPLANT DISTURBED AREA WITH NATIVE GRASS AND TREES. PLANTING COMPLETED BY OWNERS.
7. CONSTRUCT RAMP. SEE DETAIL ON SHEET 5.
8. CONSTRUCT ECOLOGY BLOCK STRUCTURE AND PLACE SAND FILL ON THE SOUTH AND EAST SIDE. SEE DETAIL ON SHEET 5.
9. ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NORTH AMERICAN VERTICAL DATUM OF 1983.



**PINE BEACH DEVELOPMENT  
AND OCEAN BLVD. PROPERTIES  
ROCK REVETMENT**  
 TILLAMOOK COUNTY

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**REVETMENT LAYOUT**

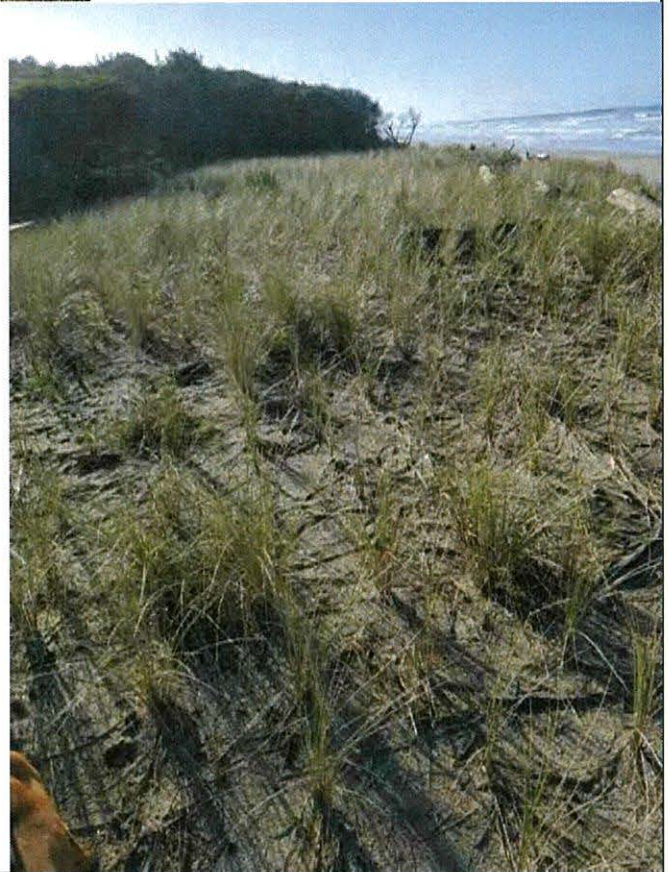
SHEET NO.  
**3**

**APPENDIX B: SITE PHOTOGRAPHS**

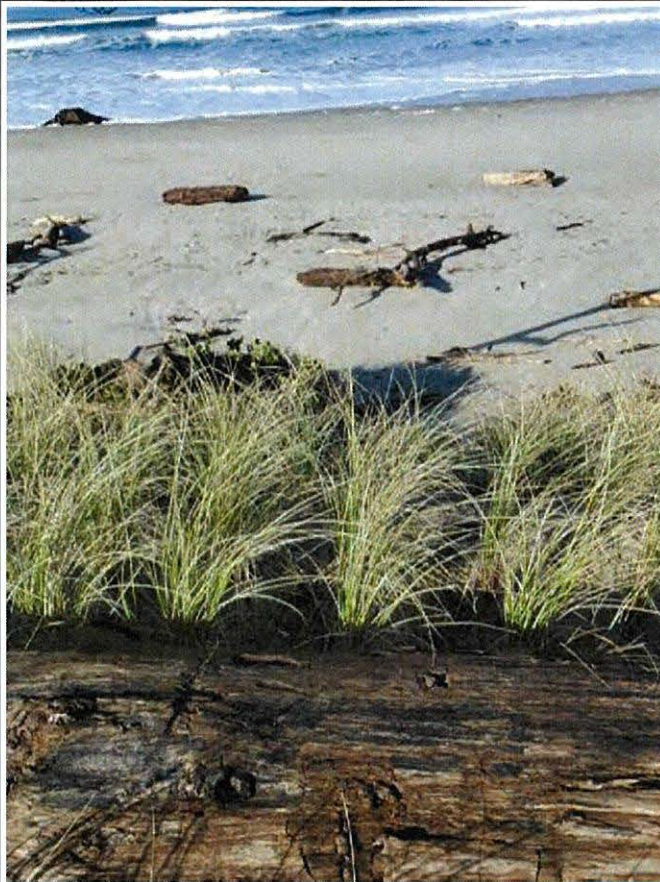




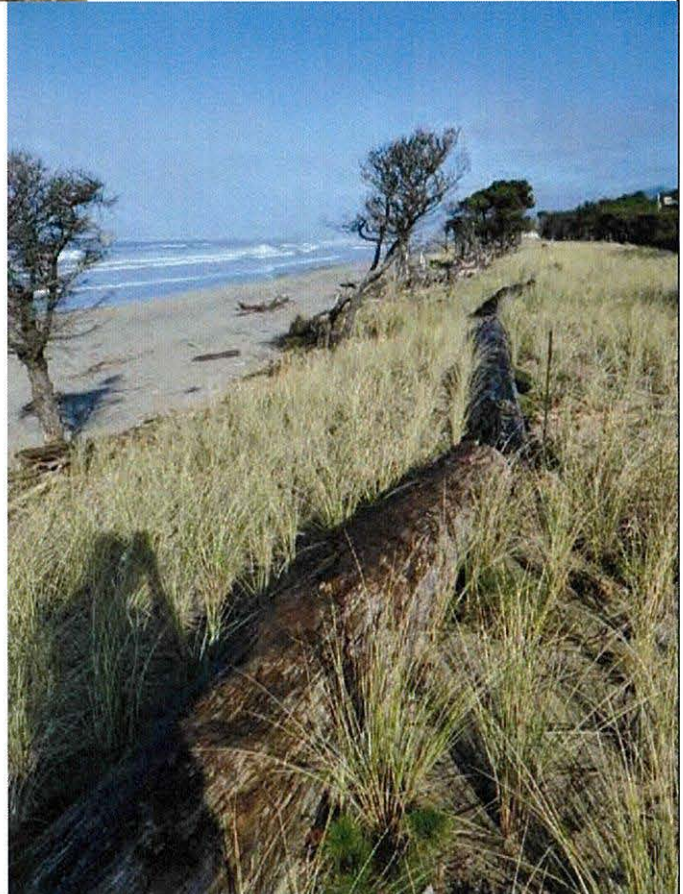
Facing North along revetment.



Facing South along revetment.



Facing West to beach.



Facing Northwest showing revetment slope

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# TILLAMOOK COUNTY LAND USE DECISION APPROVING AN EXCEPTION TO STATEWIDE PLANNING GOAL 18, IMPLEMENTATION MEASURE 5 & FLOODPLAIN DEVELOPMENT PERMIT

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ERIC FRUITS, PH.D.

## 1 Executive summary

In this matter, I have been asked to address a straightforward question: *Would the installed riprap revetments affect surrounding property values?*

**The short answer is the installed riprap revetment would likely increase the property values of both the subject properties and surrounding properties.**

This conclusion is based on a review of peer-reviewed academic research on this particular question, specifically:

- Walsh, Patrick, Charles Griffiths, Dennis Guignet & Heather Klemick, "Adaptation, Sea Level Rise, and Property Prices in the Chesapeake Bay Watershed," *Land Economics* 95(1):19-34 (Feb. 2019), hereafter "Walsh, et al."
- Dundas, Steven J. & David J. Lewis, "Estimating Option Values and Spillover Damages for Coastal Protection: Evidence from Oregon's Planning Goal 18," *Journal of the Association of Environmental and Resource Economists* 7(3):519-554 (May 2020), hereafter, "Dundas & Lewis."

## 2 Qualifications

I am president and chief economist at Economics International Corp., a consulting firm that specializes in providing economics services to private and public sector clients. I am also an adjunct professor at Portland State University, where I have taught courses in economics and real estate finance. I have been the editor of a quarterly real estate journal published by PSU and served as a peer reviewer for *Land Economics*, a top-tier specialty academic journal. My research on the effects of natural gas pipelines and residential property values was published in the *Journal of Real Estate Research*. I have been engaged in many projects involving valuation of real estate and my expert testimony has been accepted by state and federal courts.

My graduate-level training included the study of statistics and econometrics (the application of statistical methods to economics issues). I have taught graduate-level courses in economics, econometrics, real estate finance, and the economics of regulation and antitrust. I have published several peer-reviewed papers, each of which has included statistical and econometric analysis.

## 3 Research on shoreline protection structures and residential property values

I understand the record in this matter includes information speculating that installing a riprap revetment on the subject properties might reduce surrounding property values. My task is not to debate hypotheticals, but to examine the available empirical research evaluating whether *actual existing* shoreline protection structure investments affect subject and surrounding property values.

This is a somewhat niche question and available peer-reviewed published research is sparse. Indeed, I could find only two publications. One found that riprap revetments are associated with increased property values for both subject properties and surrounding properties (Walsh, et al.). Another found that both the presence of a structure and a property's proximity to a structure have no effect on property values (Dundas & Lewis).

**Peer-reviewed research by Patrick Walsh and his co-authors published in *Land Economics* is especially relevant to this matter.** Walsh, et al. examine the effect of structures to help protect against sea level rising on coastal residential

EXCEPTION TO PLANNING GOAL 18 AND PROPERTY VALUES

property values. Structures examined include riprap, bulkheads, and groin fields. Their statistical analysis calculates property value effects on properties with structures as well as neighboring properties without structures. Their findings indicate that the riprap structures on this matter's subject properties would likely *increase* the property values of their own properties as well as neighboring properties. In particular, Walsh et al. find the existence of riprap structures are associated with the following effects on property values, as shown in the table below from their article:

- An approximately 20% *increase* in the subject property's value; and
- An 8% *increase* in neighboring properties' values.

Neighbor Interactions

	Tract	Block
SLR zone 0-2	-0.1923*** (0.0663)	-0.1227* (0.0711)
SLR zone 2-5	-0.0335 (0.0412)	-0.0101 (0.0444)
Bulkhead	0.2000*** (0.0284)	0.1699*** (0.0277)
Riprap	0.2121*** (0.0290)	0.2123*** (0.0294)
Groin field	0.0112 (0.0570)	0.0781 (0.0695)
Bulkhead × Groin field	0.0392 (0.0777)	-0.0150 (0.0766)
Riprap × Groin field	0.1394 (0.1562)	0.0043 (0.1299)
Bulkhead × Neighbor	0.1446*** (0.0291)	0.1116*** (0.0282)
Riprap × Neighbor	0.0754*** (0.0207)	0.0830*** (0.0205)
SLR zone 0-2 × Bulkhead	0.2322** (0.1088)	0.2424** (0.1064)
SLR zone 2-5 × Bulkhead	0.0918* (0.0522)	0.0770 (0.0534)
SLR zone 0-2 × Riprap	0.2509** (0.1190)	0.1575 (0.1049)
SLR Zone 2-5 × Riprap	-0.0296 (0.0519)	-0.0077 (0.0539)
Flood zone	-0.0027 (0.0231)	0.0059 (0.0236)
Observations	2,841	2,841
Number of fixed effects	49	126
R-squared	0.785	0.806

Note: Standard errors are in parentheses. Coefficients in the table are transformed using the Halvorsen and Palmquist (1980) correction ( $e^{\beta_i} - 1$ ).

\*  $p < 0.1$ ; \*\*  $p < 0.05$ ; \*\*\*  $p < 0.01$ .

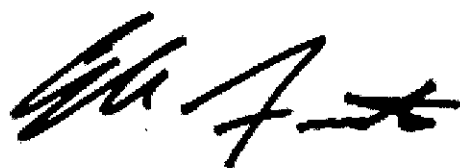
**While the research of Steven Dundas and David Lewis relates to Oregon coastal property values, it is of little relevance to the matter at hand.** Dundas & Lewis attempt to evaluate the *option* to place structures mitigating the risk of rising sea levels. They note the option to privately install a shoreline protection structure on a coastal property is determined by a statewide land-use policy known as Planning Goal 18. This policy prohibits shoreline armoring but allows for exceptions based on a parcel's eligibility. Dundas & Lewis's paper focuses on the property value associated with the *possibility* of obtaining an *exception* rather than the value of a *structure itself*.

Nevertheless, Dundas & Lewis's statistical analysis includes two variables relevant to the matter at hand: (1) whether a parcel has shoreline protection structure and (2) a parcel's distance from the nearest shoreline protection structure. None of the study's seven regression models find any statistically significant effect of these variables on a parcel's property value.

#### 4 Conclusion

In summary, (1) Dundas & Lewis find the presence of a shoreline protection structure has *no effect* on surrounding properties while (2) Walsh et al. find that a riprap structure is associated with a *positive* effect on both subject properties and surrounding properties. Thus, based on available empirical evidence, it would be reasonable to conclude the riprap revetments in this matter would not reduce surrounding property values and would likely be associated with increased property values for surrounding properties.

Respectfully submitted by



Dated: February 19, 2023

Eric Fruits, Ph.D.

## Eric Fruits, Ph.D.

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Tel: 503-928-6635

www.econinternational.com

fruits@econinternational.com

**Dr. Eric Fruits** is an economics expert, finance expert, and statistics expert. He has produced numerous research studies involving economic analysis, financial modeling, and statistical analysis. As an expert witness, he has provided expert testimony in state courts, federal courts, and an international court.



As an economic damages expert, Dr. Fruits has provided expert testimony regarding business valuation, lost profits, and foregone income. He has been a testifying expert in cases involving real estate valuation, health care services, and transportation and shipping services. His research on the formation of cartels was published in the top-tier *Journal of Law & Economics*. His study of the impact of natural gas pipeline on residential property values has been published in the *Journal of Real Estate Research*, one of the premier academic journals in the field. He has provided expert testimony to state courts and federal courts.

Dr. Fruits is an antitrust expert who has written articles on price fixing and cartels for the top-tier *Journal of Law and Economics*. He has assisted in the review of several mergers including Sysco-US Foods, Exxon-Mobil, BP-Arco, and Nestlé-Ralston. He has worked on many antitrust lawsuits, including *Ross-Simmons v. Weyerhaeuser*, a predatory bidding case that was ultimately decided by the United States Supreme Court.

As a finance expert, Dr. Fruits has been a testifying expert and provided expert consulting services in cases alleging insider trading and market manipulation. He is a securities expert who has conducted numerous research studies on financial issues, including initial public offerings and municipal bonds.

As a statistical expert, Dr. Fruits has provided expert testimony regarding real estate transactions, profit projections, agricultural commodities, and war crimes allegations. His expert testimony has been submitted to state courts, federal courts, and an international court.

He has written peer-reviewed articles on real estate markets, initial public offerings (IPOs), the municipal bond market, and the formation and operation of cartels.

Dr. Fruits has been affiliated with Portland State University, Pacific Northwest College of Art, University of Southern California, Indiana University, and the Claremont Colleges. He has been an economic consultant with Nathan Associates, LECCG, ECONorthwest, and Econ One Research.

### Present Positions & Affiliations

Economics International Corp. President and Chief Economist	2006–present
Cascade Policy Institute Vice President of Research	2019–present
International Center for Law & Economics Senior Competition Scholar	2017–present
Portland State University Adjunct Professor in Economics, Business Administration, and Urban Studies & Planning	2002–present

## Previous Professional Experience

Portland State University Oregon Association of Realtors Faculty Fellow <i>Center for Real Estate Quarterly Report</i> , Editor	2010–2019
Nathan Associates Inc. Principal Consultant	2012–2018
Info Tech, Inc. Expert Consultant	2015–2018
Pacific Northwest College of Art Adjunct Professor	2009–2010
ECONorthwest Senior Economist	2002–2008
LECG, LLC Senior Economist	1999–2002
Claremont Graduate University Adjunct Professor of Economics and Visiting Scholar	1996–2002
Econ One Research, Inc. Economist	1998–1999
University of Southern California, Marshall School of Business Visiting Assistant Professor of Finance & Business Economics	1997–1998
Indiana University, Kelley School of Business Visiting Assistant Professor of Business Economics & Public Policy	1997
Scripps College Adjunct Professor of Economics	1996
Pomona College Lecturer in Economics	1994
Andersen Consulting Staff Consultant	1990–1991

## Education

Ph.D., Economics, Claremont Graduate University	1997
M.A., Economics, Claremont Graduate University	1993
B.S. with Distinction, Business Economics & Public Policy, Indiana University	1990



## Publications

- The fatal economic flaws of the contemporary campaign against vertical integration. *Kansas Law Review*, with G. A. Manne and K. Stout. 68:923–973. 2020.
- Static and Dynamic Effects of Mergers: A Review of the Empirical Evidence in the Wireless Telecommunications Industry*. OECD Directorate for Financial and Enterprise Affairs Competition Committee, Global Forum on Competition. DAF/COMP/GF(2019)13, with J. Hurwitz, G. A. Manne, J. Morris, and A. Stapp. January 31, 2020.
- Perceived environmental risk, media, and residential sales prices. *Journal of Real Estate Research*, with J. Freybote. 37(2):217–243. 2015.
- Compact development and greenhouse gas emissions: A review of recent research. *Center for Real Estate Quarterly Journal*, 5(1):2–7. Winter 2011.
- Test bank for W. B. Brueggeman and J. D. Fisher. *Real Estate Finance and Investments*, 14th ed. McGraw-Hill/Irwin. 2010.
- A comprehensive evaluation of the comparative cost of negotiated and competitive methods of municipal bond issuance. *Municipal Finance Journal*, with R. J. Pozdena, J. Booth, and R. Smith. 28(4):15–41. Winter 2008.
- Market power and cartel formation: Theory and an empirical test. *Journal of Law and Economics*, with D. Filson, E. Keen, and T. Borchering. 44:465–480. 2001.
- The Determinants of Managerial Ownership: Theory and Evidence From Initial Public Offerings*. Claremont Graduate University. 1997.
- Managerial ownership, compensation, and initial public offerings. In Marr, M. and Hirschey, M., editors, *Advances in Financial Economics*, volume 2. JAI Press. 1996.

## Testimony in Legal Proceedings

- Gabriel Bryce Owens vs. Mt. Hood Ski Bowl, LLC, H. Ski Corp, Mt. Hood Ski Company, LLC*. Circuit Court for the State of Oregon for the County of Multnomah. Case No. 18CV22336. Trial testimony March 18, 2022.
- Renee Booth and Bradley Converse v. United States of America*. United States District Court for the Eastern District of California. Case No. 2:19-at-00754. Deposition testimony December 14, 2021.
- Paul Mathew Kirby v. Oregon Health & Science University School of Nursing*. Circuit Court for the State of Oregon for the County of Multnomah. Case No. 18CV22336. Trial testimony November 17, 2021.
- In Re: Packaged Seafoods Antitrust Litigation*. United States District Court for the Southern District of California. Case No. 3:15-MD-02670-JLS-MDD. Deposition testimony October 28, 2021.
- Beatbox Music, Pty, Ltd. v. Labrador Entertainment, Inc., et al.* United States District Court for the Central District of California, Western Division. Case No. 2:17-CV-6108-MWF (JPRX). Deposition testimony August 11, 2021.

- Kimberly Taylor Blair and Kelly Blair v. United States of America.* United States District Court for the Western District of Washington Case No. 3:20-cv-05172. Deposition testimony May 26, 2021.
- Bean v. Bean.* Circuit Court for the State of Oregon for the County of Coos. Case No. 20DR11385. Trial testimony April 15, 2021.
- Faun Patzer vs. Adventist Health Medical Group, Portland Adventist Medical Center.* Circuit Court for the State of Oregon for the County of Multnomah. Case No. 17CV04441. Trial testimony June 18, 2019.
- Julie Veysey v. Israel Cervante Meraz and Henry Nicholas Veysey.* Circuit Court for the State of Oregon for the County of Marion. Case No. 17CV52030. Trial testimony October 3, 2018.
- Katrina L. Pinkerton v. Wells Fargo Bank, N.A.* United States Bankruptcy Court for the District of Oregon. Case No. 17-33794-tmb13. Adv. Proc. No. 18-03016-tmb. Prove-up hearing testimony June 20, 2018.
- Estate of Jamey Charlotte Haines v. State of Oregon Department of Transportation.* Circuit Court for the State of Oregon for the County of Washington. Case No. 17CV17952. Trial testimony February 6, 2018.
- Rosebank Road Medical Services Ltd. dba Rosebank Road Medical Centre, and Geeta Murali Ganesh v. Ramji Govindarajan and John Does 2–20.* Superior Court of California, County of San Francisco, Unlimited Civil. Case No. CGC-16-549755. Deposition testimony September 27, 2017. Trial testimony December 13–14, 2017.
- United States of America ex rel. Duke Tran v. Wells Fargo Bank, N.A.* United States District Court for the District of Oregon, Portland Division. Case No. 3:15-cv-979. Deposition testimony October 3, 2017.
- Nubia Rodriguez v. The State of Oregon, Department of Human Services and Antoinette Hughes.* Circuit Court for the State of Oregon for the County of Multnomah. Case No. 16CV09393. Trial testimony September 13, 2017.
- Madison-Rae Jordan v. United States of America.* United States District Court for the Southern District of California. Case No. 3:15-cv-01199-BEN-NLS. Deposition testimony January 25, 2017.
- Marie M. Pearson v. Waste Management of Oregon, Inc. and James Walker.* Circuit Court for the State of Oregon for the County of Multnomah. Case No. 15CV18258. Trial testimony August 23, 2016.
- Investors Asset Acquisition, et al. v. Angelo S. Scardina, et al.* Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida. Case No. 502014CA004618XXXXMB AD. Deposition testimony August 5, 2016.
- James Busey vs. Richland School District, Richard Jansons, Heather Cleary, Mary Guay, Rick Donahoe, and Phyllis Strickler.* United States District Court for the Eastern District of Washington. Case No. CV-12-5022-EFS. Deposition testimony February 25, 2016.
- Kivin Varghese v. Amazon.com, Inc. and Amazon Technologies, Inc.* Superior Court for the State of Washington in and for the County of King. No. 12-2-39303-6 SEA. Deposition testimony September 22, 2014.

- LMG Concerts, LLC v. Salem Communications Corporation, Salem Media of Oregon, Inc., Caron Broadcasting, Inc., Does 1 through 5.* U.S. District Court for the District of Oregon. Case No. 3:12-CV-1117. Deposition testimony September 18, 2013.
- Claude Hadley v. Extreme Technologies, Inc.* Circuit Court for the State of Oregon for Lane County. Case No. 16-11-03225. Trial testimony March 14, 2012.
- David Hill Development, LLC, v. City of Forest Grove, Steve A. Wood, and Robert A. Foster.* U.S. District Court for the District of Oregon. Civ. No. 08-266-AC. Deposition testimony December 10, 2010. Trial testimony September 20, 2011.
- Gordon Ogawa v. Malheur Home Telephone Company dba Malheur Bell and Qwest Corporation.* U.S. District Court for the District of Oregon. No. CV 08-694-MO. Trial testimony September 9, 2010.
- Dave Molony and Gold Leaf Investments, Inc. v. Crook County.* U.S. District Court for the District of Oregon. No. 3:05-CV-1467-MO. Trial testimony May 27, 2009.
- Starr-Wood Cardiac Group of Portland, P.C., Dr. H. Storm Floten, and Dr. Anthony Furnary v. Dr. Jeffrey S. Swanson, Dr. Hugh L. Gately, and Cardiothoracic Surgeons LLC.* Circuit Court for the State of Oregon for the County of Multnomah, No. 0706-06308. Trial testimony September 5, 2008.
- Milutinovic et al.* International Criminal Tribunal for the former Yugoslavia, No. IT-05-87 PT. Trial testimony April 23–24, 2008.
- In re: The Marriage of Virginia Salvadori and Gabriel Salvadori.* State of Washington Clark County Superior Court, No. 06-3-00692-2. Trial testimony April 14, 2008.
- Pamela L. Bond, Individually and as Personal Representative of the Estate of Craig R. Bond, Deceased v. United State of America.* U.S. District Court for the District of Oregon. No. 06-1652-JO. Trial testimony February 6, 2008.
- Erik E. Tolleshaug v. Shaver Transportation Co.* Circuit Court for the State of Oregon for the County of Multnomah, No. 060809122. Trial testimony December 14, 2007.
- In re: The Marriage of Denise M. Kunze and Gust F. Kunze.* State of Washington Clark County Superior Court, No. 05-3-00801-3. Trial testimony October 29, 2007.
- Securities and Exchange Commission v. Philip Evans and Paul Evans.* U.S. District Court for the District of Oregon. No. CV 05-1162-PK. Deposition testimony February 27, 2007. Trial testimony March 8, 2007.
- Randall D. Lam v. Kaiser Foundation Hospitals; Northwest Permanente, P.C.; Kaiser Foundation Health Plan of the Northwest; Robert James Shneidman, M.D.; and David Lee Brown, Jr., P.A.* Circuit Court for the State of Oregon for the County of Multnomah. No. 020706633. Trial testimony November 9, 2006.
- Vitascan Partners I and Vitascan Partners II v. G.E. Healthcare Financial Services and GE/Imatron.* Superior Court for the State of California. No. 01129909. Trial testimony July 24, 2006.
- Squaxin Island Tribe, Island Enterprises, Inc., Swinomish Indian Tribal Community, and Swinomish Development Authority v. Fred Stephens, Director, Washington State Department of Licensing.* U.S. District Court for Western District of Washington. No. C033951Z. Deposition testimony June 15, 2005.

*Androutsakos v. M/V PSARA, PSARA Shipping Corporation, and Chevron U.S.A., Inc.* United States District Court for the District of Oregon. No. 02CV1173KI. Trial testimony May 21, 2004.

*In re: Consolidated PERS Litigation.* Supreme Court for the State of Oregon. Nos. S50593, S50532, S50656, S50657, S50645, S50685, S50687, and S50686. Trial testimony February 27, 2004.

*CollegeNET, Inc., v. ApplyYourself, Inc.* United States District Court for the District of Oregon. Nos. 02CV484HU and 02CV1359HU. Daubert hearing May 9, 2003.

## Committee and Other Service

Peer reviewer and academic adviser for textbooks and academic journals:

A. O'Sullivan. *Urban Economics*, 9th ed. McGraw-Hill/Irwin. 2018.

*Taking Sides: Clashing Views in Urban Studies.* M. A. Levine, editor. McGraw Hill. 2012.

W. B. Brueggeman and J. D. Fisher. *Real Estate Finance and Investments*, 14th ed. McGraw-Hill/Irwin. 2011.

*Municipal Finance Journal*

*Land Economics*

Citizens for Accountability, Trust and Reform. Board Member, 2020–present.

Taxpayer Association of Oregon. Board Member, 2014–present.

City Club of Portland. Research Board Member, 2015–2017.

State of Oregon. Explanatory Statement Committee member. Ballot Title 86: Amends Constitution: Requires creation of fund for Oregonians pursuing post-secondary education, authorizes state indebtedness to finance fund. 2014.

Laurelhurst Neighborhood Association. City of Portland, Oregon. Past President and Board Member, 2014–2015. President, 2009–2014.

City of Portland. Mayor's Economic Cabinet. 2008–2012.

State of Oregon Department of Environmental Quality. Fiscal Advisory Committee for the Proposed Adoption of Air Quality Improvements at the PGE Boardman Power Plant. 2008.

State of Oregon Department of Environmental Quality. Fiscal Advisory Committee for the Proposed Adoption of the Utility Mercury Rule and Other Federal Air Quality Regulations. 2006.

City of Portland. Mayor's Ad Hoc Work Group on Regulatory Reform. 2002.

## Grants and Awards

City of Portland Spirit of Portland Award, nominee	2010
City of Portland Livability Volunteer Award	2010
Institute for Humane Studies Research Grant	1996

John Randolph Haynes and Dora Haynes Foundation Grant	1995
Lynde and Harry Bradley Foundation Grant	1992–1995
Lionel Edie Award	1990

## **Courses Taught**

Microeconomics

Industrial Organization

Economics of Regulation and Antitrust

Urban Economics

Managerial Economics

Econometrics

Real Estate Finance and Investment

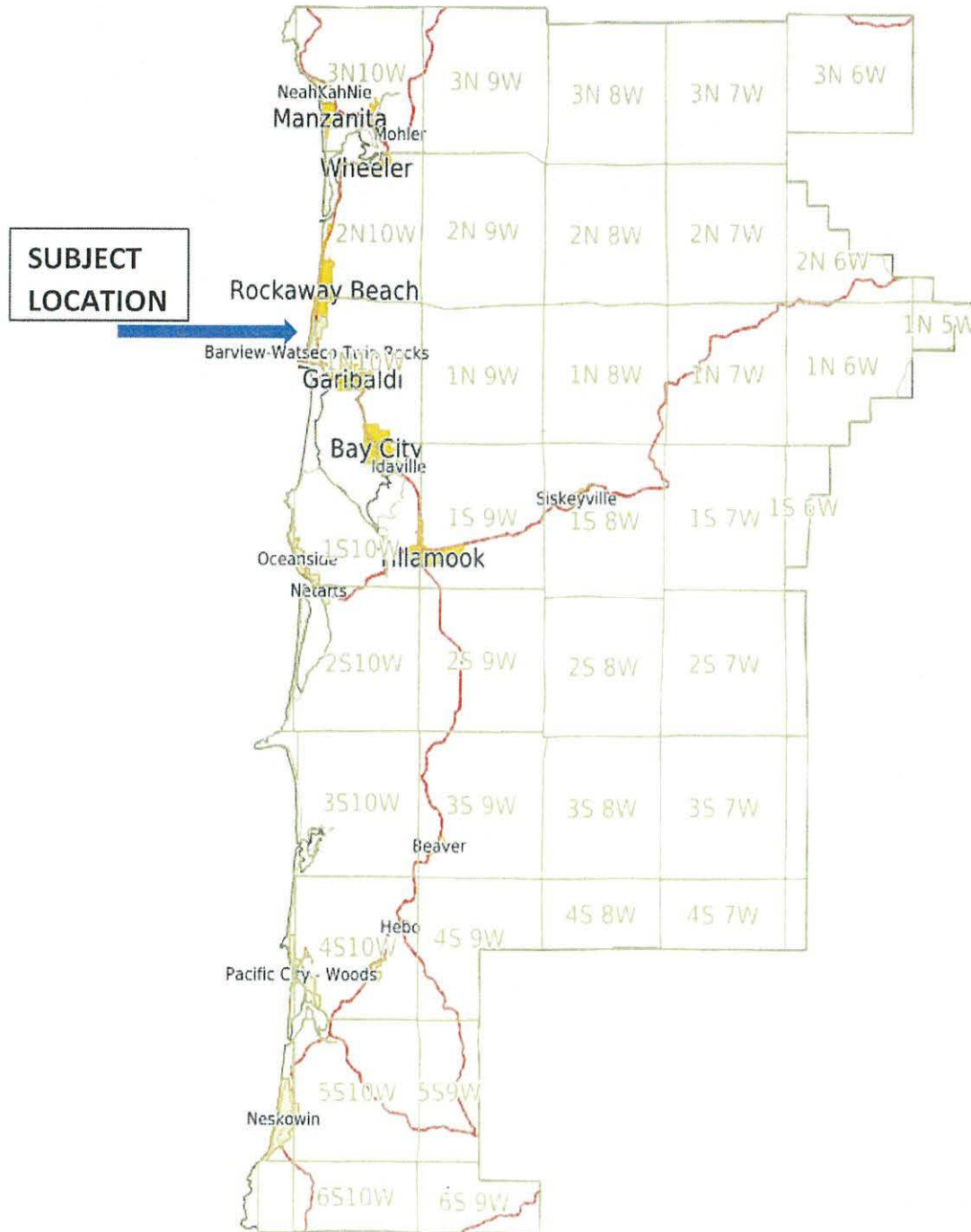
State and Local Public Finance

Economics and the Creative Industries

War Crimes

# EXHIBIT C

# VICINITY MAP



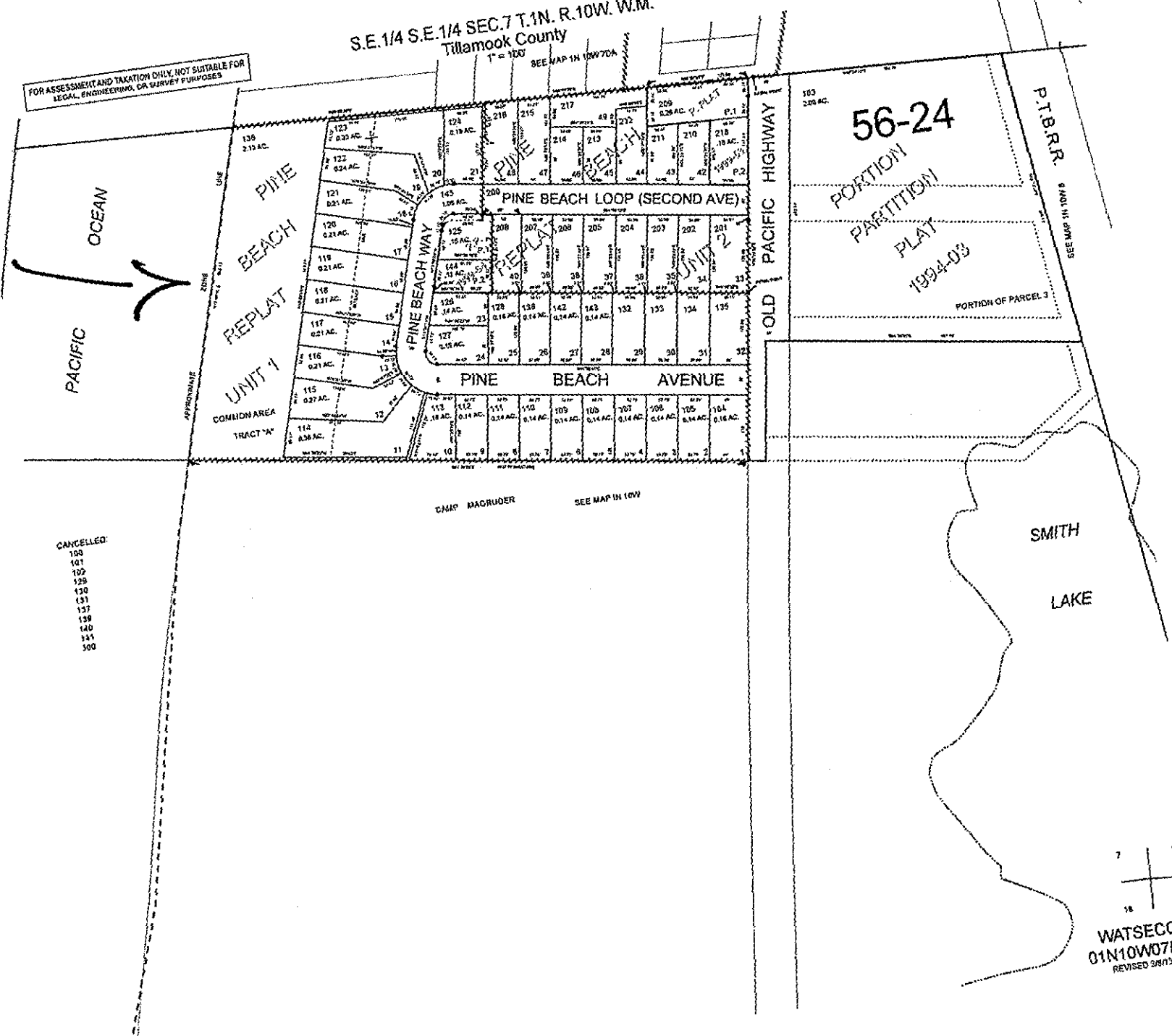
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GOAL EXCEPTION & DEVELOPMENT PERMIT REQUEST

Subject Area

FOR ASSESSMENT AND TAKATION ONLY, NOT SUITABLE FOR LEGAL, ENGINEERING, OR SURVEY PURPOSES

S.E. 1/4 S.E. 1/4 SEC. 7 T.1N. R.10W. W.M.  
Tillamook County  
1" = 100'

01N10W07DD  
WATSECO



56-24

PORTION  
PARTITION  
PLAT  
1994-09

PORTION OF PARCEL 3

- CANCELLED:
- 103
  - 101
  - 102
  - 128
  - 130
  - 131
  - 132
  - 139
  - 140
  - 141
  - 300

SMITH  
LAKE

7 6  
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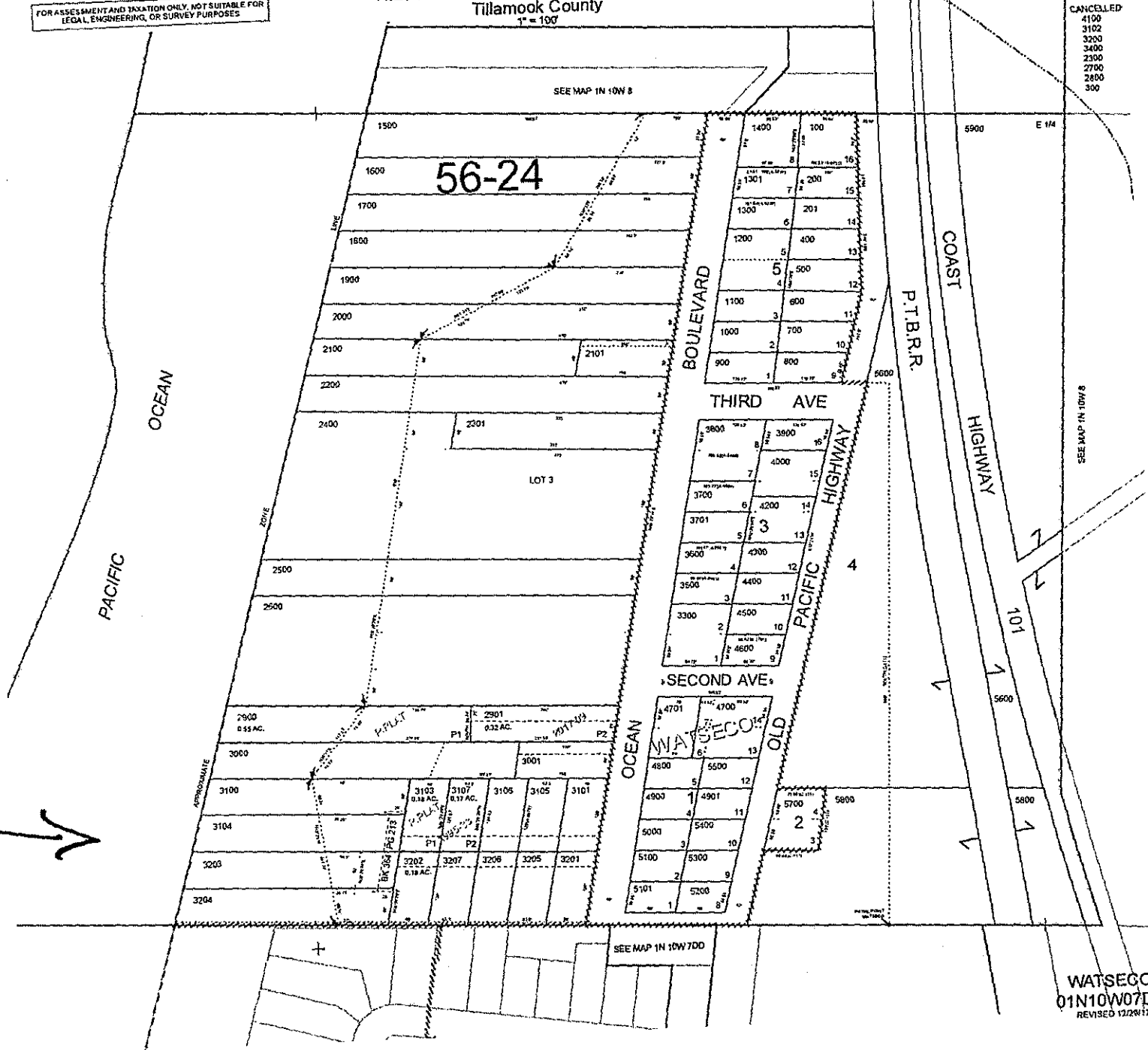


FOR ASSESSMENT AND TAXATION ONLY. NOT SUITABLE FOR LEGAL, ENGINEERING, OR SURVEY PURPOSES

N.E. 1/4 S.E. 1/4 SEC. 7 T.1N. R.10W. W.M.  
Tillamook County  
1" = 100'

01N10W07DA  
WATSECO

CANCELLED  
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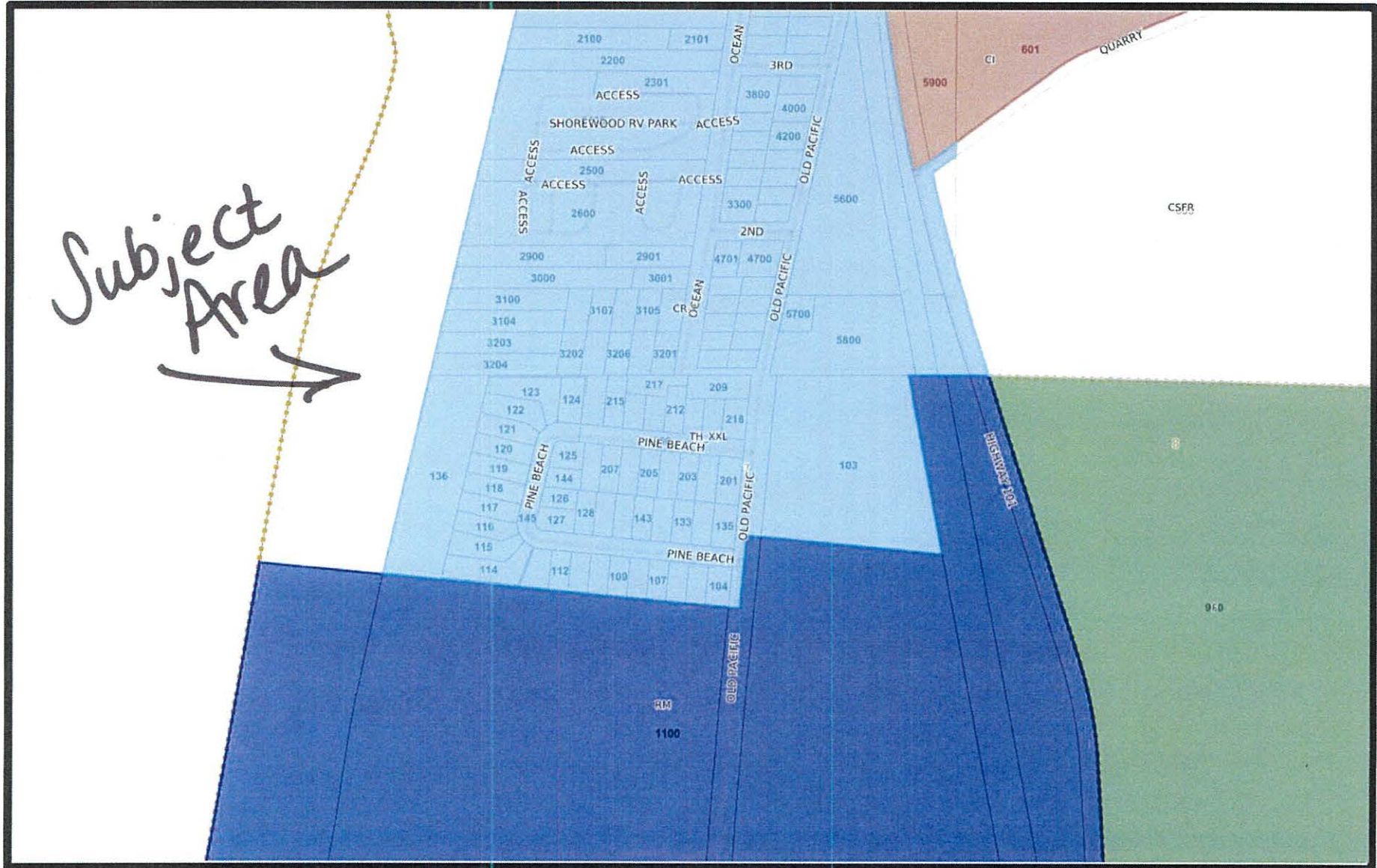


Subject Area



WATSECO  
01N10W07DA  
REVISED 11/29/17, V15

# Map





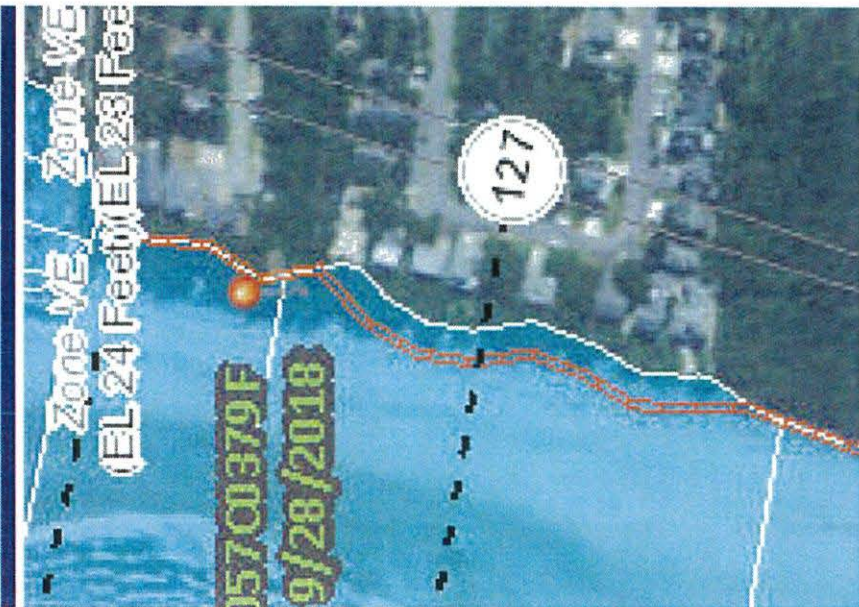
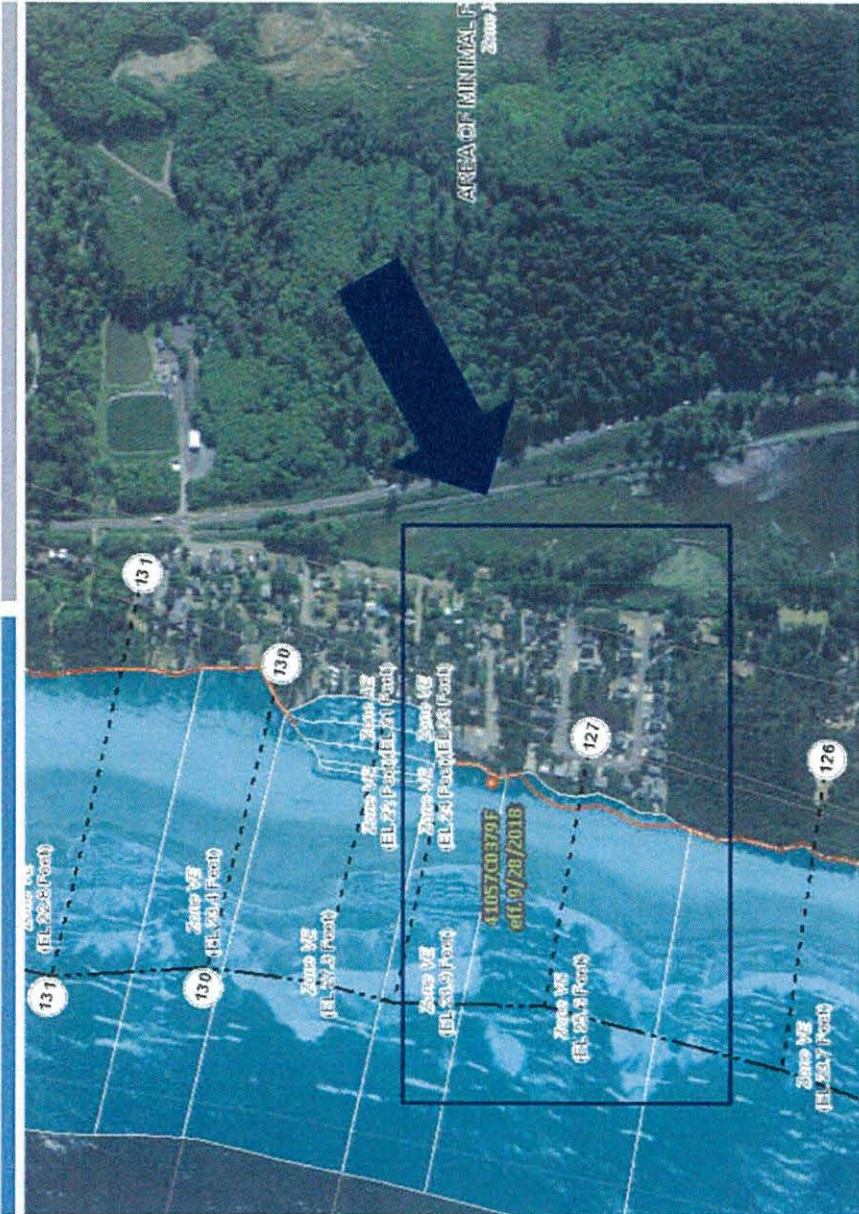
SUBJECT  
AREA

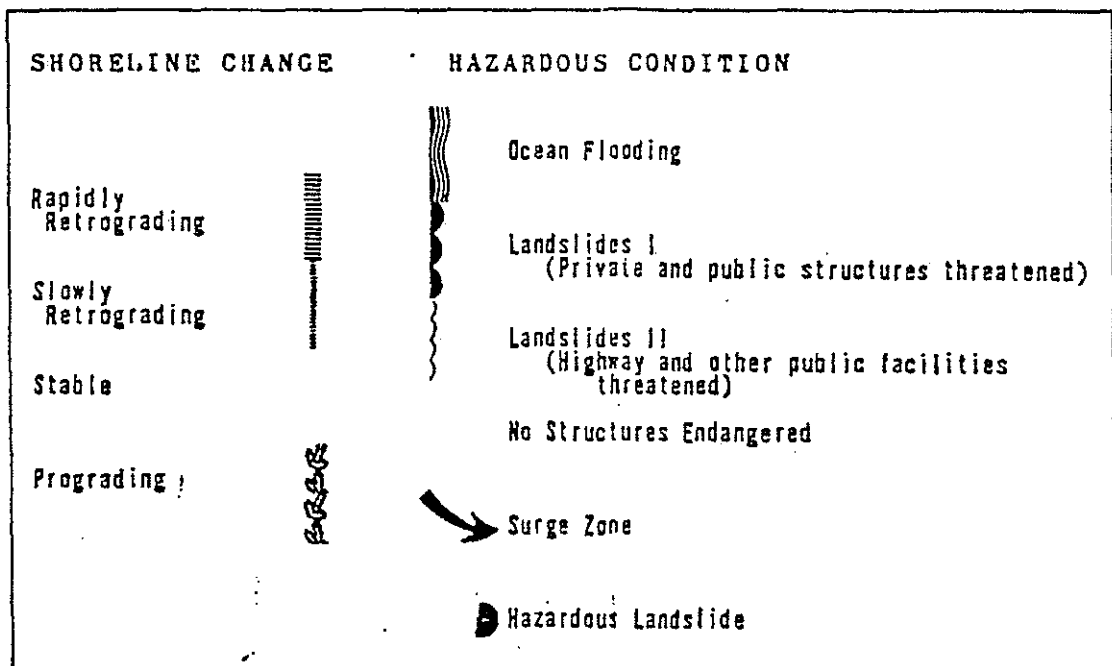


Barview

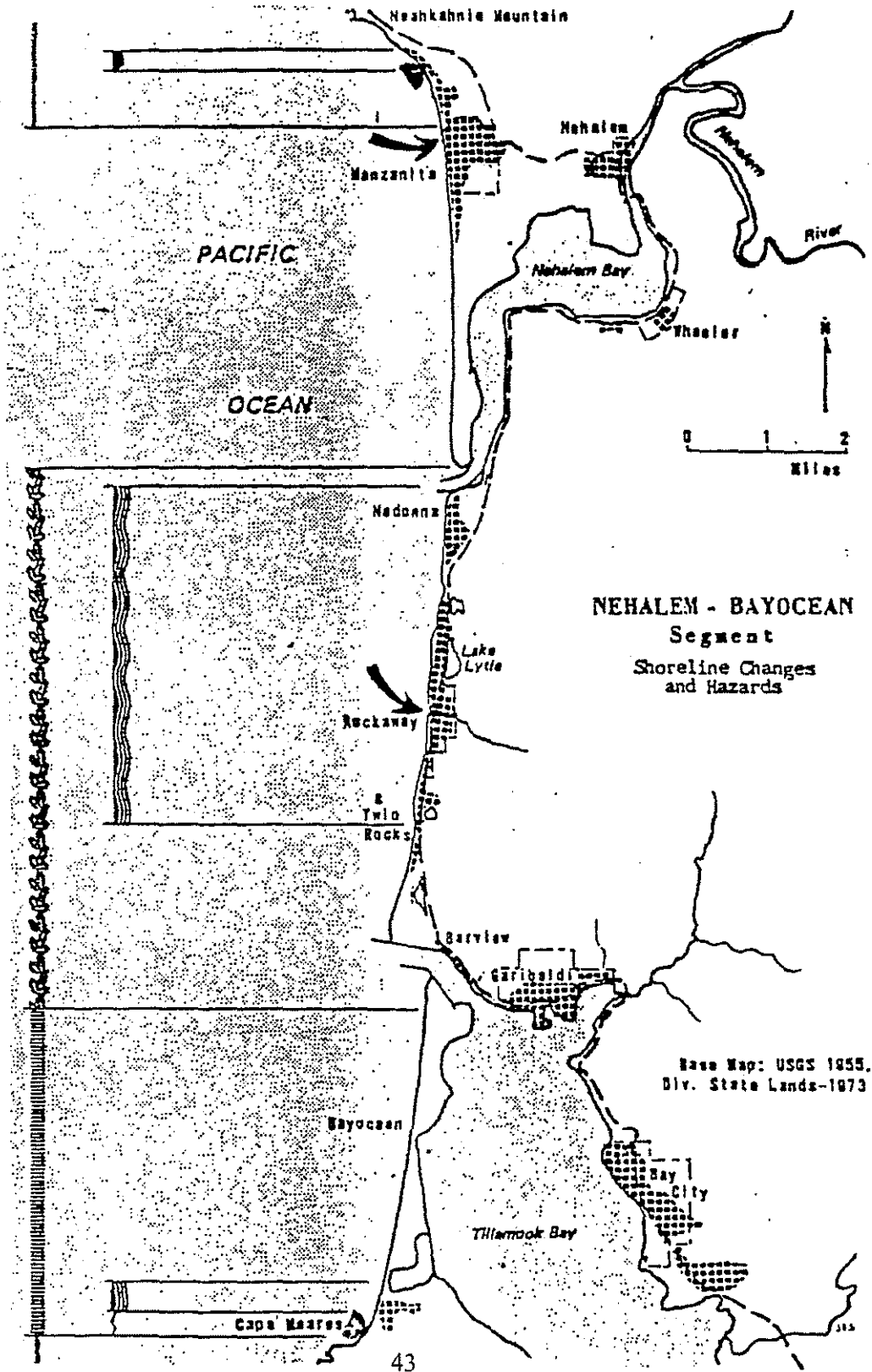
# VICINITY MAP & SUBJECT AREA







MAP 8



source: Stembridge

# EXHIBIT D



## Sarah Absher

---

**From:** Lynn Tone  
**Sent:** Thursday, March 2, 2023 2:11 PM  
**To:** Sarah Absher  
**Subject:** FW: EXTERNAL: Please include this testimony with the Goal 18 Remand to be held on March 14, 2023 by the Tillamook Commissioners.

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**From:** Carol Doty <carol.doty@charter.net>  
**Sent:** Thursday, March 2, 2023 1:43 PM  
**To:** Lynn Tone <ltone@co.tillamook.or.us>  
**Subject:** EXTERNAL: Please include this testimony with the Goal 18 Remand to be held on March 14, 2023 by the Tillamook Commissioners.

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

Dear Tillamook County Commissioners:

In 1977, Oregon created and adopted the Land Use Planning Goals including Goal 18. I was an Oregon resident then and I participated in many discussion before the Goals and land use legislation was adopted by the Legislature beginning in 1974-75.

I'm sorry Governors Tom McCall and Bob Straub are no longer with us, but they fought for protecting the Oregon Coastal Beaches for All Residents of Oregon. Building armor and rip rap along the coast to protect individual homes is not what Goal 18 is about, even if the owners of those Pine Beach properties may believe that they own that part of the Oregon Beach near their homes. They do not and they should be required to remove the massively ugly rip-rap and pay for the damage that they have created far beyond what shows in the photo.

How unfortunate you do not remember the Governors' efforts along with thousands of Oregonians to protect the Coastal Beaches many years ago. Armoring is not acceptable on the our coast because it is destructive to the coast, the beaches, and the development around the armoring. Your hearing may be a remand that permits an exception, but I believe you will find it difficult to justify the damage done by 15 Pine Beach owners to my Pine Beach and that beach belonging to every other Oregon resident. You have been shamed by this photo and at least 15 Oregon residents! It's time to get it right! Sending via email on March 2, 2023



Thanks Randy Stevenson for taking this historic photo!

Carol Doty, former resident of Bandon, camper, hiker, crabber, and owner of every mile of beach on the Oregon Coast.  
1040 W 13th Street  
Medford, OR 97501

## Sarah Absher

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**From:** Lynn Tone  
**Sent:** Thursday, March 2, 2023 11:23 AM  
**To:** Sarah Absher  
**Subject:** FW: EXTERNAL: Pine Beach subdivision riprap hearing

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**From:** Margaret Stephens <mlstep@msn.com>  
**Sent:** Thursday, March 2, 2023 11:20 AM  
**To:** Lynn Tone <ltone@co.tillamook.or.us>  
**Subject:** EXTERNAL: Pine Beach subdivision riprap hearing

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

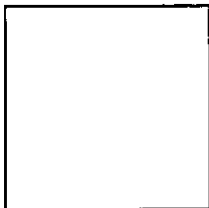
I am writing to inquire about the reason for the remand hearing on above mentioned subdivision's placement of riprap which has been ruled against by LUBA, after Tillamook County (unfortunately) granted approval of this placement prior to the decision by LUBA. Is the County going to require the removal of the illegally placed rip rap? I am disappointed that an Oregon County would disregard our land use rules. Please see the following from DLCD:

<https://www.oregon.gov/lcd/OP/Pages/Goal-18.aspx>

## Shoreline Armoring

The goal limits the placement of beachfront protective structures (i.e. shoreline armoring such as riprap and seawalls) to those areas where development existed prior to 1977. This policy effectively places a cap on the amount of ocean shore that may be hardened, and thus limits the cumulative impacts of such hardening.

Shoreline armoring can cause scouring and lowering of the beach profile, which can result over time in the loss of access to Oregon's public beaches. New development must account for shoreline erosion through non-structural approaches (e.g. increased setbacks). In the face of increased ocean erosion occurring in conjunction with climate change and sea level rise, limiting hard structures and allowing natural shoreline migration is a critical policy tool for conserving and maintaining Oregon's ocean beaches.



[Guidebook on Erosion Control Practices of the Oregon Coast](#)