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*Land of Cheese, Trees and Ocean Breeze*

# MEMO

**Date:** July 21, 2021  
**To:** Tillamook County Board of Commissioners  
**From:** Sarah Absher, CFM, Director *SA*  
**Subject:** #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 is the record for the Goal 18 Exception and Development Permit requests as identified above.

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, 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.

Findings made by the Tillamook County Planning Commission to recommend approval of these requests included the following:

- Unique and exceptional circumstances apply to these properties. The subdivision and subsequent development of the lots was done through appropriate land use and permitting processes and were done in good faith.
- Zoning allows for residential development of these properties within the Unincorporated Community of Barview/Twin Rocks/Watseco, an urbanized area committed to urban development through previously taken Goal Exceptions (3,4, 11 and 14).
- Because this area has historically been categorized as a stabilized dune, no Goal 18 Exceptions were needed to be considered or taken for this area at the time of adoption of the Tillamook County Comprehensive Plan.
- Request for Goal 18 Exception is not a self-created issue. At the time of permitting and land use review, development was sited on a stabilized dune. Site conditions that exist today did not exist at the time of

development- specifically erosion and ocean flooding.

- In relation to adjacent lots not part of this exception request, granting a Goal 18 Exception does not prevent those who already have a right to rip rap or develop from pursuing same option in the future. It is not right to deny a property owner the same opportunities to protect their property that others are afforded due to grandfathered rights that allow them to take action for protection of their property. (Properties where “development” existed on January 1, 1977.)
- The development standards and criteria of the Flood Hazard Overlay Zone have been met through design and location of the proposed BPS.
- The development standards and criteria of the Beach and Dune Overlay Zone have been met through design and location of the proposed BPS.

The following findings and comments were also made as part of the deliberations and are reflected in the dissenting votes:

- Site conditions and environmental factors that impact development are beyond the County’s control. At what point does the County’s responsibility to protect private properties developed in coastal high hazard areas end?
- Is it the County’s responsibility to protect private property?
- Goal 18 recognizes importance of natural function of the beach. Actions should not contribute to loss of a natural resource.
- Goal 18 protects public access to the beach and citizen rights to enjoy the beach. Construction of a BPS will ultimately restrict access to the beach.
- The beach is the natural resource and protecting the resource is greater than the right to protect private property from erosion and ocean flooding.
- Concern of negative impacts to neighboring properties if BPS is constructed. Shorewood RV Park and other properties in the County were identified to support these concerns.
- Lack of demonstration and justification to grant exception through Reasons criteria.
- Blanket exceptions should not be granted. The taking of one exception does not alone constitute or satisfy criteria for granting additional exceptions.
- This decision is precedent setting, as DOGAMI projections indicate conditions are going to get worse, what obligation will the County be under in the future should this exception request be approved?

The Tillamook County Planning Commission also made a recommendation to the Board of County Commissioners to work with staff on development of Conditions of Approval for construction of the BPS with required inspections during the construction phase to ensure the BPS is constructed as proposed and in accordance with the development standards outlined in the Beach and Dune Overlay Zone. The Commission requests that these Conditions of Approval be incorporated into Development Permit #851-21-000086-PLNG should the Board of County Commissioners move to approve this permit request.

The action of recommendation to approve the Goal 18 Exception were on the basis of the Reasons Exception criteria being met. There are four types of Goal Exceptions, and the Applications are ultimately requesting that all four exceptions be taken for the construction of a Beachfront Protective Structure (BPS) on the subject properties. The Applicants will be prepared to speak to the reasons why all four exceptions should be considered and granted by the Board of County Commissioners. All four exceptions are discussed in the Staff Report dated May 20, 2021, which is included in this hearing packet.

If you have any questions regarding the information received, please do not hesitate to contact me at 503-842-3408x3317, email: [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us) or email Allison Hinderer, Office Specialist 2, at [ahindere@co.tillamook.or.us](mailto:ahindere@co.tillamook.or.us).

Sincerely,  
Sarah Absher, CFM, Director

## Allison Hinderer

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**From:** Wendie Kellington <wk@klgpc.com>  
**Sent:** Monday, July 19, 2021 12:49 PM  
**To:** Nicholas Ellis; Sarah Absher  
**Cc:** Dad; Sarah Mitchell; Allison Hinderer  
**Subject:** EXTERNAL: RE: Saving Pine Beach Loop - Please Consider

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

Thank you, Nic. Sarah, please include this email below in the record of the Goal Exception and Development Permit request 851-21-000086-PLNG-01 and #851-21-000086-PLNG for Pine Beach/George Shand Tracts. Thank you. Best, Wendie



Wendie L. Kellington | Attorney at Law.  
P.O. Box 159  
Lake Oswego Or  
97034  
(503) 636-0069 office  
(503) 636-0102 fax  
[wk@wkellington.com](mailto:wk@wkellington.com)  
[www.wkellington.com](http://www.wkellington.com)

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**From:** Nicholas Ellis <nicellisidx@gmail.com>  
**Sent:** Monday, July 19, 2021 11:28 AM  
**To:** sabsher@co.tillamook.or.us  
**Cc:** Wendie Kellington <wk@klgpc.com>; Dad <mikeellisidx@gmail.com>  
**Subject:** Saving Pine Beach Loop - Please Consider

I fondly remember hundreds of beach trips as a young boy to Rockaway Beach during the 90's. Spending the entire day in the sand, digging and building anything my imagination/teenage body could dream up. My family built our 1<sup>st</sup> beach house in Rockaway in 1995 and now being 36 years old, we have always considered the area a second home, at one point even living here full time. My little sister moved to San Diego a few years ago and every time she comes back to visit me in Portland, her first words are always, "can we please go to the beach?!". She prefers the Oregon Coast over the California coast and I totally agree. Just a few years ago my father was able to find an ocean front lot and complete his dream home. The house has taken elements from all the previous homes as owning a home at the Oregon Coast is completely different from owning a home anywhere else. The rain, wind, sun and proximity to the surf all greatly affect home design and architecture. I remember as a kid having to walk 100's of yards and over so much driftwood to get to the ocean, there were times I didn't think I would ever make it. A few years later, the driftwood wasn't an issue but the drop off from the path to the beach could at times be an 8' drop and less than 100 yards. Fast forward to Fall of 2020 and I had to use sheets of plywood to board the house up to prevent debris from going through the windows. The surf now wraps around the entire house, even hitting our garage in the back. The progressive erosion of the beach and the

changing tides were nothing that could have been predicted but after listening to calls with engineers and experts, it sounds like it is something that can be prevented from continuing any further without disrupting the natural shoreline. The natural shoreline is part of what I love and keeping the beach natural is something I know the whole neighborhood is behind because that's why we come here. I hope that a solution is approved that will preserve the property, utilities and people on Pine Beach Loop as I hope to continue to call this area my home for the rest of my life. This isn't just the beach to a lot of people in this area, it's their home. It's everything to a lot of people including my family and I hope you'll take all of this into consideration while reviewing this challenging situation is greatly appreciated.

Nic Ellis –Oldest Son of the Ellis Family  
17480 Pine Beach Loop  
Rockaway Beach, OR

## Allison Hinderer

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**From:** Wendie Kellington <wk@klgpc.com>  
**Sent:** Monday, July 19, 2021 1:11 PM  
**To:** Sarah Absher  
**Cc:** Bill Cogdall; Sarah Mitchell; Allison Hinderer  
**Subject:** EXTERNAL: FW: Pine Beach HOA Approval

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

Hi Sarah,

Please place this email (below is the letter of support of the HOA), in the record of the proposed Pine Beach/George Shand Goal Exception File # 851-21-000086 and Development Permit File #851-21-000086-PLNG. Please confirm receipt and that this will go into the BOC packet for the July 28, 2021 hearing. Thank you. Best, Wendie



Wendie L. Kellington | Attorney at Law.  
P.O. Box 159  
Lake Oswego Or  
97034  
(503) 636-0069 office  
(503) 636-0102 fax  
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[www.wkellington.com](http://www.wkellington.com)

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**From:** Bill Cogdall <jwcogdall@gmail.com>  
**Sent:** Monday, July 19, 2021 12:34 PM  
**To:** sabsher@tillamook.or.us  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** Pine Beach HOA Approval

Tillamook County Board of Directors  
Department of Community Development

C/O SARAH ABSHER, DIRECTOR  
1510 B Third St  
Tillamook, OR 97141

RE: Goal Exception Request 851-21-000086 DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

Dear Members of the Tillamook County Board of Commissioners

My name is Bill Cogdall, president of Pine Beach Loop homeowners association. Our board met and unanimously approved the proposal that Wendie Kellington and Associates has proposed to the Tillamook County Board of Planners and Commissioners. All our board members view this landscaped and replanted shore protection as a necessity to save our wonderful neighborhood.

Our concern is not just about the ocean front homes but protecting all fifty homes and their families that live in the neighborhood.

We ask nothing more than to throw us a life line and let us pay and build a landscaped protective structure which will be on constructed on our personal properties.

Thanks for your time and service to our community,  
Sincerely,  
Bill Cogdall

## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:02 AM  
**To:** Allison Hinderer  
**Subject:** GE 18 Letter in support of approving Pineview Revetment project.  
**Attachments:** 7.18.21 letter to T. county Commrs EF D.pdf

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**From:** Evan Danno <evandanno@hotmail.com>  
**Sent:** Sunday, July 18, 2021 6:42 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: Letter in support of approving Pineview Revetment project.

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Goal Exception Request 851- 21-000086-PLNG-01 & Development Permit Request #851-21-000086-PLNG

Sent from Mail for Windows 10

Dear Sarah, please provide my letter attached hereto to the Tillamook Board of Commissioners. Thank you. Evan F. Danno.

Evan F. Danno  
17490 Ocean Blvd.  
Rockaway Beach, Oregon

July 18, 2021

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
15 B Third Street  
Tillamook, OR 97141

RE: Goal Exception Request 851- 21-000086-PLNG-01 & Development Permit Request #851-21-000086-PLNG

Sent via email to Sarah Absher, [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)

Dear members of the Tillamook County Board of Commissioners,

I own the house and oceanfront lot at 17490 Ocean Blvd., Rockaway Beach, Oregon. My wife, Deborah, and I, greatly appreciate the work that you do for the County. We, of course, want you to approve the permit that we and the other homeowners have applied for, to protect our property from destruction by the ocean.

I can't stress enough how much we need to protect our beach home. My wife, Debbie, and I, have six children and 12 grandchildren. We are from Kalispell, Montana, and had a beautiful place on MacGregor Lake there. We always took vacations to the beach in Oregon, because the beach in Oregon is one of our favorite places. Especially Rockaway Beach. My wife and kids love Rockaway Beach. We always wanted a beach house, so last year we sold our lake place in Montana and bought the house at 17490 Ocean Blvd., in Rockaway Beach. We worked hard to get our lake place, and worked hard over the last 20 years on our lake place. We put the whole lake place plus over \$200,000 into our new beach house. After we bought the house at 17490 Ocean Blvd., we also put a lot of work and money into that place. We redecorated and remodeled a lot of the house, inside, and did a lot of work to the house on the outside as well. We have trees and grass down to the edge of the beach. There was a nice path to the beach right from our house. We were delighted.

About three months after we bought the house, a neighbor asked me if I was interested in joining the revetment project that they had been planning, because the shore was eroding, and our homes were all in danger. I couldn't believe it. I was completely dumbfounded. I was initially in denial. I thought there was no way the ocean was working its way in and could destroy our house and property. The house was built in 1997. It had been there for 23 years. How could the ocean be eroding the shoreline? Until I saw the data, and the proof, I could not believe it. But I believe it now. I've walked the shoreline and seen the logs approaching the houses. When we first bought the



Tillamook County Board of Commissioners

July 18, 2021

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place I thought the logs on our lot toward the beach were just firewood. Last January, however, our path washed out and there was a straight drop off full of roots, so you could not walk to the beach. Debbie is handicapped and now she can't get down to the beach.

We paid all our fees and property taxes, and set the house up to be very comfortable. We pay all the utility services, and have hired carpenters, plumbers, electricians, propane people, had the gutters replaced, etc., etc. I found out the weather on the coast creates a lot of maintenance on a house. But we like to keep our house in good condition, inside and out. Now I understand it will cost everyone along the beach tens of thousands of dollars in erosion control measures to save their homes. That's going to be hard enough for us in and of itself, much less having to spend tens of thousands of dollars on a permit so we can even do the work.

After reviewing the proof, and seeing water logs, and debris going through some of the people's yards already, there is no question that this is an urgent situation and needs to be done as soon as possible. Houses could already be lost this coming winter if we don't protect the shoreline.

We are asking for our revetment permit to be approved. I can't believe anyone would oppose our request to stop the erosion from destroying our homes. The plans provide that all the work will be done on our own properties, and we will maintain it with sand, natural beach grasses and vegetation. We are committed to the entire plan, including our part in keeping it aesthetic. The revetment work will not even be on any of the dry sand beach. We will be putting the stabilization materials on our own property above the beach. That way, when the next 10 foot tide and storm surge comes in this winter, the ocean won't damage or wipe out our houses.

The county cannot let this infrastructure be destroyed. We pay our taxes, and other fees and costs which benefit the county greatly. I understand the property values at issue are collectively worth more than \$10 million. That generates a lot of tax for the county. If we can't protect our properties, our property values will crash, and the county will lose a lot of money. Further, if the houses get wiped out, the properties will be worthless. Paying taxes to the county is not a problem for us, as we are glad to be members of the community. It also appears the community and Tillamook County are good neighbors. The people are really friendly and we really like it out there. Plus, it's not 30 below zero in the winter like we get here in Montana.

Further, our proposed beachfront protection will not harm anyone. We've spent a lot of money on engineering studies, and our consulting engineer has established that the BPS does no harm to adjoining properties and cited his design with several respected studies. The proposal does not harm any beach access, as the access to the beach will be preserved and even improved so it is better than it is now. The proposal is entirely on our vegetated backyards, not on the beach. It's all on private property, where no one has any access other than the owners of the properties. It will be covered with sand and vegetation and won't even be visible from the beach. The county and DLCD has also established this area as an urban residential area. Thus, this area is entitled to be safe. One

Tillamook County Board of Commissioners

July 18, 2021

Page 3

reason we pay our taxes is for the safety of ourselves and our properties. We pay for county government, state government, law enforcement, fire protection, schools, garbage collection, electricity, Watseco Water Company, etc. Everybody works hard to make a living. In exchange, all we ask is for the county to let us protect our own properties with the most minimally invasive plan possible.

We trust that you will allow us to protect our property in the manner requested, and Rockaway Beach will continue to be one of our favorite places for many years to come, especially after my wife and I retire in the next few years. I can imagine it any other way. We are both 66 and working full time, as we have for our entire lives. We ask you to not allow the ocean to destroy our house and retirement plans, which we worked so hard for our entire lives. We are looking forward to spending a lot of time out there with our family. We love the beach, and the forest, and there's lots of things to do like go rock hounding and fishing. There's also some really nice restaurants nearby, and the grandkids like to ride the train.

Thank you so much for your consideration. We look forward to seeing you in the community.

Yours very truly,

/s/ Evan F. Danno

Electronically signed by Evan F. Danno

## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:02 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851- 21-000086-PLNG-01 & Development Permit Request # 851-21-000086-PLNG  
**Attachments:** 7.18.21 letter to T. county Commrs Debbie.pdf

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**From:** Evan Danno <evandanno@hotmail.com>  
**Sent:** Sunday, July 18, 2021 7:04 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: Goal Exception Request 851- 21-000086-PLNG-01 & Development Permit Request #851-21-000086-PLNG

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Letter in support of approving the permit. Please provide to the BOC. Thank you.

Deborah D. Danno

Sent from Mail for Windows 10

Deborah D. Danno  
17490 Ocean Blvd.  
Rockaway Beach, Oregon

July 18, 2021

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
15 B Third Street  
Tillamook, OR 97141

RE: Goal Exception Request 851- 21-000086-PLNG-01 & Development Permit Request #851-21-000086-PLNG

Sent via email to Sarah Absher, [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)

Dear members of the Tillamook County Board of Commissioners,

My husband and I own the house and oceanfront lot at 17490 Ocean Blvd., Rockaway Beach, Oregon. We appreciate the work that you do for the County, and want you to approve the permit that we and the other homeowners have applied for, to protect our property from destruction by the ocean.

I am from Kalispell, Montana. I've been working since I was 12 years old. I am now 66 and am still working here in Kalispell for the hospital. We have six children and 12 grandchildren. My family and my grandchildren are really the joy of my life now.

Every year I plan a grandchildren's trip to the beach in Oregon. I have been doing this for at least 15 years. That's how I found out about Rockaway Beach in the first place. The kids and I love it, so we sold our lake place here in Montana, and bought a house at 17 490 Ocean Blvd., in Rockaway Beach. Everyone in the family is so excited. Everyone is planning vacations and get-togethers at our new beach house. Our kids and grandkids are trying to settle which of the five bedrooms they will get in the house. My husband, Evan, and I, of course get the master bedroom.

We bought our house in August, 2020. We redecorated and remodeled a lot of the house, inside, and did a lot of work to the house on the outside as well. We have trees and grass down to the edge of the beach. There was a nice path to the beach right from our house. We were delighted. Three months later we found out the ocean is eroding the shoreline, and this has been going on for at least 20 years. Therefore, if nothing is done to protect the house, it will get flooded and destroyed. Fortunately, our neighbors started a plan to protect the whole neighborhood, and we joined in it. It's going to cost us a lot of money, but we want our property protected from being washed out by the ocean.

We are asking for our revetment permit to be approved. All the work will be done on our own properties, and we will maintain it with sand, natural beach grasses and vegetation. We are committed to the entire plan, including our part in keeping it aesthetic. The revetment work will not even be on any of the dry sand beach. We will be putting the stabilization materials on our own property above the beach.

Please approve our permit. Do not let this infrastructure be destroyed. We pay our taxes, and other fees and costs which benefit the county greatly. I understand the property values at issue are collectively worth more than \$10 million. That generates a lot of tax for the county. If we can't protect our properties, our property values will crash, and the county will lose a lot of money. Further, if the houses get wiped out, the properties will be worthless. Paying taxes to the county is not a problem for us, as we are glad to be members of the community. It also appears the community and Tillamook County are good neighbors. The people are really friendly and we like it out there.

Further, our proposed beachfront protection will not harm anyone. We spent a lot of money on engineering studies, and our consulting engineer has established that the BPS does no harm to adjoining properties and cited his design with several respected studies. The proposal does not harm any beach access, as the access to the beach will be preserved and even improved so it is better than it is now. The proposal is entirely on our vegetated backyards, not on the beach. It's all on private property, where no one has any access other than the owners of the properties. It will be covered with sand and vegetation and won't even be visible from the beach. The county and DLCD has established this area as an urban residential area. Thus, this area is entitled to be safe. One reason we pay our taxes is for the safety of ourselves and our properties. In exchange, all we ask is for the county to let us protect our own properties with the most minimally invasive plan possible.

We trust that you will allow us to protect our property in the manner requested, and Rockaway Beach will continue to be one of our favorite places for many years to come, especially after I retire in the next couple years. We are both 66 and working full time, as we have for our entire lives. We ask you to not allow the ocean to destroy our house and retirement plans, which we worked so hard for our entire lives. I am looking forward to spending a lot of time out there with my family, and my grandchildren. We love the beach, and the forest, and there's lots of things to do.

Thank you so much for your consideration.

Yours very truly,

/s/ Deborah D. Danno

Electronically signed by Deborah D. Danno

## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:02 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST # 851-21-000086-PLNG  
**Attachments:** Dear Members of the Tillamook County Board of Commissioners.docx

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**From:** Don Roberts <donrobertsemail@gmail.com>  
**Sent:** Sunday, July 18, 2021 8:26 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: RE: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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July 18, 2021

Tillamook County Board of Commissioners

C/O Sarah Absher, Director

Tillamook County

Department of Community Development

1510 B Third Street

Tillamook, OR 97141

Dear Members of the Tillamook County Board of Commissioners,

We have owned a house in the Pine Beach development since 1992. When we built our house, the ocean was distant from the property line and the water had been moving progressively westward. That soon changed and because of local

changes in the seashore combined with some sea level rise our house is now threatened. We have had logs washing up to our house and water under our deck. Our house is now at risk of serious damage.

We have spent the last two years working with our neighbors to develop a plan to protect our houses and property. We are doing this at our expense and the protection will be on our property. It will not be on the beach. The planned structure will not rise more than 3 feet above the ground, will be covered with vegetation and will allow and protect the beachfront access.

We appreciate that the planning commission has approved our plan and we sincerely hope that you will approve our efforts to protect our property and save our residential community from loss of our houses.

When our property was approved by the county for development, no one envisioned this threat. Now that it is on our doorstep we ask that you allow us to mitigate this risk. While others may make theoretical statements and philosophies of why you should not approve our protection, if it were their house at risk, they would likely have a different opinion.

Thank you for your consideration.

Don Roberts

17380 Pine Beach Loop

Rockaway Beach, OR 97136

July 18, 2021

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third Street  
Tillamook, OR 97141

Dear Members of the Tillamook County Board of Commissioners,

We have owned a house in the Pine Beach development since 1992. When we built our house, the ocean was distant from the property line and the water had been moving progressively westward. That soon changed and because of local changes in the seashore combined with some sea level rise our house is now threatened. We have had logs washing up to our house and water under our deck. Our house is now at risk of serious damage.

We have spent the last two years working with our neighbors to develop a plan to protect our houses and property. We are doing this at our expense and the protection will be on our property. It will not be on the beach. The planned structure will not rise more than 3 feet above the ground, will be covered with vegetation and will allow and protect the beachfront access.

We appreciate that the planning commission has approved our plan and we sincerely hope that you will approve our efforts to protect our property and save our residential community from loss of our houses.

When our property was approved by the county for development, no one envisioned this threat. Now that it is on our doorstep we ask that you allow us to mitigate this risk. While others may make theoretical statements and philosophies of why you should not approve our protection, if it were their house at risk, they would likely have a different opinion.

Thank you for your consideration.

Don Roberts

17380 Pine Beach Loop  
Rockaway Beach, OR 97136



## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:02 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST # 851-21-000086-PLNG  
**Attachments:** King tide 1.pdf; King tide 2.pdf; Save our home.pdf; Please help save our home.pdf

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**From:** Rachael Holland <rachael@pacificopportunities.com>  
**Sent:** Sunday, July 18, 2021 10:48 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>; Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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July 18th, 2021

RE: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

Dear Members of the Tillamook County Board of Commissioners,

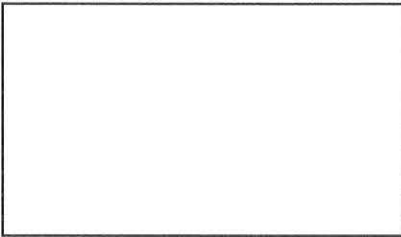
We greatly appreciate the planning commission's thoughtful consideration and agree with their recommendation of approval. We are also asking for the BOC to approve. I am the first person in my family to go to college and start a business. We grew up on a single income, often eating from food banks. My wife grew up in the projects in Boston with little more than a hope and a dream. She was the first person in her family to graduate college and eventually, get her Master's Degree. We were both determined to change the future for us and for our children. We've worked extremely hard over the last 12 years, running two separate businesses, to be able to afford a beachfront home. In the last two years since we've owned our home, our backyard has eroded over 5-feet. We have 4 children under the age of 7. This is not only an issue of our life savings washing away into the Pacific Ocean, but a safety issue as well. Last winter, we had waves crash into our backyard almost washing away our small dog and our two-year-old son. It was extremely scary. We were *not* on the public beach but in our very own backyard. Our backyard is no longer safe for my children to play in during the winter. The waves are so strong they could easily take our backyard deck which would compromise the structure of our home with the next storm, if the proposed beachfront protection is not approved. Please see the pictures attached from last winter of the king tides in our backyard. Please also see the drawings from our 7-year old twin daughters, Audrey and Olive, who are also very concerned and worried about our home washing away.

The evidence shows that the proposed beachfront protection will not only save more than \$10 million in property value and lives, it will **do no harm** to anyone around. The two opposing members of the PC insisted


that BPS always does harm but that is simply not the case, and our consulting engineer has emphatically established that the BPS will do no harm to adjoining properties and cited his design and several respected studies; the law allows BPS and it should be allowed here as the PC recommended. Our proposal does not harm any beach access. Our proposal is entirely on our vegetated backyards, not on the public beach. The proposed beachfront protection will be on private property where no one now has any access other than the owners. We will cover the proposed beachfront protection with sand and native grasses and it will not be visible from the beach. The County and DLCD have established this area as an urban residential area and as such it should be entitled to be safe. We greatly appreciate your time and consideration and hope that they will approve.

All our best,

The Holland family  
Pine Beach Loop, Rockaway Beach



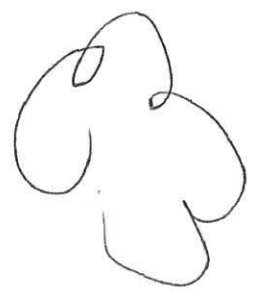
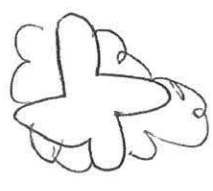
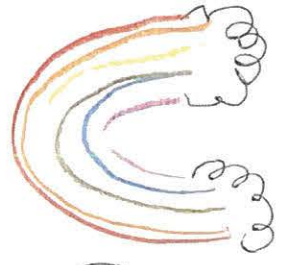
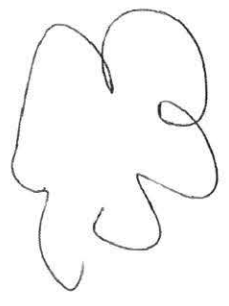
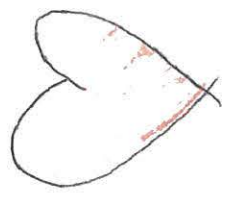
Rachael Holland  
Owner/Director  
Pacific Opportunities, Inc.  
[www.pacificopportunities.com](http://www.pacificopportunities.com)  
Phone 503-750-1543  
Fax 503-477-5027

 Please print only if necessary and recycle





Please help save our home!



Audrey 7 YEARS OLD

Please help save our home!!!!!!  
Olive-yeats-old



## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:02 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851-21-000086-PLNG & DEVELOPMENT PERMIT REQUEST # 851-21-000086-PLNG  
**Attachments:** Beach letter.docx

-----Original Message-----

**From:** David Hayes <tdavidh12@gmail.com>  
**Sent:** Monday, July 19, 2021 4:40 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; David Hayes <tdavidh12@icloud.com>  
**Subject:** EXTERNAL: Goal Exception Request 851-21-000086-PLNG & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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Thanks for your help, David

July 19 , 2021

Tillamook County Board of Commissioners

C/O Sarah Absher, Director

Department of Community Development

1510 B Third Street

Tillamook, Oregon 97141

Dear Members of the Tillamook County Board of Commissioners

This letter is to request your approval of our request for beach front protection of our homes on Pine Beach Loop at Twin Rocks.

We have been through a very expensive legal consultation to confirm that we meet all the legal requirements for a Goal 18 exception allowing this property protection. When we built our homes we followed all the land use and building code laws. We also took the prudent steps of obtaining engineering and geologic investigations to insure our homes would be safe and secure. Our homes were built on the eastern edge of our lots leaving a full 150 yards of coastal pines between between our homes and the ocean vegetation line.

Our plan design will build the protection on our property inside the current tree line and cover the rock with sand, beach grass and trees. When completed the 3 foot high revetment will be practically invisible from view on the beach. The design will also improve beach access beyond the current unpredictable situation, The Planning Commission voted 5-1 to approve our design.

Two members of the Commission and some public comments have contended that beach protection always does harm by increasing erosion around the ends of the revetment. That is not correct; the engineering studies we've submitted confirm that there is no risk conferred to the adjacent properties,

We have invested heavily in our homes. Well over \$10,000,000 would be lost to the ocean in addition to the environmental hazard of their remains. The environmental and financial risks to the sewer, water and electrical systems is unknown.

Tillamook County and The State of Oregon have designated this as an urban residential area and should not forbid us from protecting our homes.



We appreciate the effort and consideration of the Planning Commission in recommending approval, 4-2, of our protection plan. We sincerely believe our proposal is valid and that your approval is justified.

Sincere thanks for your consideration.,

David Hayes

## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:11 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST # 851-21-000086-PLNG  
**Attachments:** Tillamook Letter.docx

---

**From:** Barbara Roberts <robertsfm6@gmail.com>  
**Sent:** Monday, July 19, 2021 10:42 AM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: RE: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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

July 19, 2021

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third St  
Tillamook, OR 97141

Dear Members of the Tillamook County Board of Commissioners,

After we bought the land where our house now stands, I'll never forget taking a large ladder to our property, our four young children in tow, walking through the forest, and putting it where our house was to be built. We climbed up and looked out over all the trees and finally saw the beach. I remember wondering why we had to build so far from the sand, but that was the setback and we followed the rules.

We finally built our house in 1997-1998, several years after buying the property. It's been agonizing watching the sand start to erode away just a few years after we built. Now, instead of the long path through the woods to the sand dune to the beach, we help our grandchildren climb over the logs jamming the short path from our house to the sand. We worry about the water that regularly comes under our deck at highest tides and storms.

We have spent a lot of time, thought, and expense in trying to save our house for us, our children, and our grandchildren. Our plan does not hurt anyone, it would be built entirely on our property which is currently inaccessible to others, it enhances beach access for all, and will save property values and infrastructure for the entire community.

We really appreciate that the planning commission has approved our plan to slow the erosion of our home, and fervently hope that you will do the same. And we hope you will think about this decision as if it were your house which you, your children, and your grandchildren love.

Thank you for your consideration,

Barbara Roberts

Dear Members of the Tillamook County Board of Commissioners,

After we bought the land where our house now stands, I'll never forget taking a large ladder to our property, our four young children in tow, walking through the forest, and putting it where our house was to be built. We climbed up and looked out over all the trees and finally saw the beach. I remember wondering why we had to build so far from the sand, but that was the setback and we followed the rules.

We finally built our house in 1997-1998, several years after buying the property. It's been agonizing watching the sand start to erode away just a few years after we built. Now, instead of the long path through the woods to the sand dune to the beach, we help our grandchildren climb over the logs jamming the short path from our house to the sand. We worry about the water that regularly comes under our deck at highest tides and storms.

We have spent a lot of time, thought, and expense in trying to save our house for us, our children, and our grandchildren. Our plan does not hurt anyone, it would be built entirely on our property which is currently inaccessible to others, it enhances beach access for all, and will save property values and infrastructure for the entire community.

We really appreciate that the planning commission has approved our plan to slow the erosion of our home, and fervently hope that you will do the same. And we hope you will think about this decision as if it were your house which you, your children, and your grandchildren love.

Thank you for your consideration,  
Barbara Roberts

## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:12 AM  
**To:** Allison Hinderer  
**Subject:** I support the pine beach loop revetment project...  
**Attachments:** Support for Revetment Project.pdf

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**From:** Conrad Buckles <cbuckthree@outlook.com>  
**Sent:** Monday, July 19, 2021 3:37 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Rachael Holland <rachael@pacificopportunities.com>; Bill Cogdall <jwcogdall@gmail.com>; wk@wkellington.com  
**Subject:** EXTERNAL: I support the pine beach loop revetment project...

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

Hi Sarah,

Please see attached letter voicing my support for "Goal Exception Request 851-21-000086-PLNG-01" and "Development Permit Request #851-21-000086-PLNG".

If you have any questions, feel free to contact me anytime.

Best regards,  
Conrad Buckles III  
503-312-8513

To whom it may concern,

As a home owner of two homes in Rockaway Beach, tax payer and permanent resident voter in Tillamook county I support the revetment project proposal protecting the homes on Pine Beach Loop and Ocean Blvd. in Twin Rocks; also known as "Goal Exception Request 851-21-000086-PLNG-01" and "Development Permit Request #851-21-000086-PLNG".

I want to recognize the homeowners involved in the project as going above and beyond and spending considerable time and money to propose a workable solution that in my research, when complete, will be nearly indistinguishable to beach goers and yet provide considerable protection to the homes, neighboring homes and city-owned utilities.

I have seen first-hand these homes threatened by the rising tides and increasing storm surges that all of Rockaway has experienced. I do believe the result of inaction or rejection on the part of the county will eventually lead to derelict housing as they succumb to the rising waters that we are now experiencing and would have never been imagined when most of these homes were built.

Please support the homeowners as they protect their investments.

Best regards,

A handwritten signature in black ink, appearing to read 'CB III', with a stylized flourish at the end.

Conrad Buckles III

17425 Pine Beach Way,  
Rockaway Beach, OR 97136

346 N. Dolphin Street  
Rockaway Beach, OR 97136

## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:12 AM  
**To:** Allison Hinderer  
**Subject:** For Tillamook County BOC Re Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

---

**From:** Mark Kemball <kemballm@gmail.com>  
**Sent:** Monday, July 19, 2021 10:21 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>  
**Subject:** EXTERNAL: For Tillamook County BOC Re Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

[**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 members of the Tillamook County Board of Commissioners:

I am writing as the Successor Trustee of the property held in the name of the Mary Ann Lockwood Family Trust, at 17488 Ocean Boulevard, Rockaway Beach, OR 97136.

The house, which was the fulfillment of Mary Ann's long-term dream, was envisioned, designed and built in the early to mid '90s in compliance with all applicable contemporary regulations, employing Tillamook-area professionals and craftspeople. At completion it was possible to glimpse the ocean only from a top floor window due to the protection of the extensive dunes behind which she was required to build. I clearly recall trying to force a path to the beach over these dunes, and having to turn back, so significant were the gradients and the density of the trees and undergrowth.

Mary Ann's home at the beach has now become a home on the beach, due to the erosion of the protective dune and vegetation in what I can only describe as a stunning reversal of decades of accretion. The ocean and its large and destructive debris is now at - and, during King tides and storms, beyond our doorsteps. The continued viability of the house, along with that of numerous neighboring ocean-front properties and the entire public water, electrical and sewer infrastructure of the Pine Beach subdivision and the George Sands tracts, is currently reliant on a revetment which, if approved, will be constructed entirely on private property and at our personal cost. The project engineer has determined that the proposed structure will cause no direct or collateral harm to adjacent properties, nor to the public beach area. In drawing this conclusion he cites not only his own modeling but the experience of communities on both coasts of the United States. The proposed revetment will be maintained so as to be invisible to those using the beach. Existing beach access will not only remain, but will be improved due to its construction on a more solid foundation than is currently in place.

We were grateful to receive an affirmative vote for the project from the Tillamook County Planning Commission on July 15, and respectfully ask the same of you in your upcoming deliberations. The County and the Department of Land Conservation and Development designated this area as "urban residential" many decades ago. The proposed revetment will re-establish the safe conditions under which that designation was made, and ensure the continued existence of the thriving community envisioned by the planners when they did so.

Thank you for your thoughtful consideration of the Planning Commission's recommendation.

Respectfully,  
Mark Kemball  
(503) 853-4367

Sent via email to Sarah Absher [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)  
Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third St  
Tillamook, OR 97141



## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:13 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST # 851-21-000086-PLNG  
**Attachments:** Letter to Tillamook County Board of Commissioners, 7-20-2021.docx; Thank you from our kids.pdf; image\_72192707.JPG

---

**From:** Shannon Butcher <shannon@innocencefound.org>  
**Sent:** Tuesday, July 20, 2021 10:30 AM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** wk@klgpc.com; Brett Butcher <brett@passion4people.org>  
**Subject:** EXTERNAL: RE: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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

Hello Sarah,

Thank you for your time and careful consideration of our request for an approval of our proposed beach protective structure. I have attached information for all members of the board of commissioners to review.

Attachments:

1. Letter
2. Thank you note from our children (Sarina, Owen, and Noelle)
3. Picture of our family at Rockaway Beach

Sincerely,  
Shannon Butcher  
Cell: 503-580-4594

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third St; Tillamook, OR 97141

RE: Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

Dear Members of the Tillamook County Board of Commissioners,

Thank you for taking the time to read this email and to consider our request to approve a beach protective structure on our private property on Pine Loop.

Our family recently purchased a beachfront lot on Pine Loop. Our plan is to begin construction of a home this year, Lord willing. This home is truly a dream come true for us. We have lived in Oregon for two decades (my husband, Brett, has lived in Oregon his entire life), and the Oregon Coast has always held a special place in our hearts. I met my husband at Cannon Beach in 1999, and our extended family gathers there every summer for a reunion. Our kids have grown up with cherished memories of summers at the beach with their cousins. And now the Lord has opened a door for us to build our very own beach house where we can create even more life-long memories and invest in a legacy for our children.

The property, as you are aware, along with the neighboring properties, is at high risk for erosion and flooding. The property owners have gone to great lengths and expense to diligently research the problem and solutions; they've also hired an engineer to develop a plan that will reduce this risk, protect the properties, improve beach access within the neighborhood, and do no harm to the greater community. Public beach access will be unaffected by the proposed BPS. The BPS will simply allow us property owners to protect our homes (or future homes, in our case) from further erosion and potential flooding.

Thank you for your careful consideration regarding our request. If you have any questions, please feel free to call or email me.

Sincerely,

***Shannon Butcher***

Cell: 503-580-4594, Email: shannon@innocencefound.org

Attachments: Thank you note from our children (Sarina, Owen, and Noelle) and photo of our family at Rockaway Beach

NOELLE

Sam  
men

THANK YOU FOR

KEEPING

US

SAFE





## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:13 AM  
**To:** Allison Hinderer  
**Subject:** Letter in support of Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

---

**From:** Brett Butcher <brett@passion4people.org>  
**Sent:** Tuesday, July 20, 2021 12:11 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <>wk@klgpc.com>  
**Subject:** EXTERNAL: Letter in support of Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

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Tillamook County Board of Commissioners

C/O Sarah Absher, Director

Tillamook County  
Department of Community Development  
1510 B Third St

Tillamook, OR 97141

Dear Members of the Tillamook County Board of Commissioners,

I am writing to you in support of the Pine Beach Revetment proposal. I am grateful for the careful and thorough review the planning commission gave the proposal before approving it. It is the solution to a very serious issue.

My family recently purchased property in Pine Beach. My wife and I were both able to find jobs that allow us to work remotely. There is no place we would rather spend our time than on the Oregon coast. We looked at quite a few areas in Tillamook County but after stumbling upon Pine Beach we knew where we wanted to be. After months of searching, we finally found a property available to purchase. We were thrilled! It didn't take long before we began hearing about the problems with the dune receding and the need for some type of protective structure. It is on the minds of everyone in the area, not just the beachfront owners, for good reason. Every year, during king tides the ocean creeps closer and closer to the homes in our neighborhood. Last year, water advanced down the beach access trail, past the beachfront homes and towards the neighborhood behind. One homeowner told me he saw the ocean quickly approaching his home. He felt completely helpless in stopping the tides. Fortunately it did not advance far enough to cause any flood damage.

The good news is there is still some dune remaining which keeps most of the tidal flooding from reaching homes, but it may not last for long. Everyone knows it is only a matter of time until homes are damaged or lost and their life-savings gone...that is without a revetment being installed. Even if the homes several houses back are not reached by a tidal surge, breach in the receding dune would devastate the infrastructure. Flooding would cause irreparable damage to the water and sewer systems. The people in these neighborhoods simply do not have the financial means to replace infrastructure or their homes.

I know Tillamook County has a housing shortage. Recently I was stunned while reading a letter written by the Oregon State Division of Conservation and Development. My assumption was the government would support this project since it is being paid for by private citizens and they are here to protect us, instead this letter was in opposition to the project. They began quoting a series of laws written 40 years ago when the dunes were hundreds of feet further west. In one section they wrote *"the applicants argue that protecting the properties in question is important to protecting housing supply and affordability within Lincoln County. Most of these properties are not primary residences nor would they be considered "affordable."* This argument may represent some areas along the Oregon coast but does not represent the Pine Beach area. It is true, some homes are second homes and vacation units but many of these homes belong to fixed income seniors and young families like ours. The property values for the majority of the homes in both the George Shand Tracts and Pine beach have an assessed value similar to homes in both Portland and Salem. People with fixed incomes often sell their homes in larger cities and move here to retire. We love our beach. We all have so much invested in this area. Our community strives to keep the beach clean, keep the beach access trails clear, and hopefully build a revetment that is buried with sand so no one will notice it, especially those visitors from out of town. But we will know it's there. It is an invisible barrier that will allow us to sleep at night, knowing our children and our dreams are protected.

Thank you for taking the time to read this letter,

Sincerely,

Brett Butcher  
503-580-4554

## Allison Hinderer

---

**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:13 AM  
**To:** Allison Hinderer  
**Subject:** For Tillamook County BOC Re Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

---

**From:** Mark Kemball <kemball@easystreet.net>  
**Sent:** Tuesday, July 20, 2021 10:33 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <>wk@klgpc.com>  
**Subject:** EXTERNAL: For Tillamook County BOC Re Goal Exception Request 851-21-000086-PLNG-01 & DEVELOPMENT PERMIT REQUEST #851-21-000086-PLNG

[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 members of the Tillamook County Board of Commissioners:

I am writing today to seek your affirmative votes for a project to construct a revetment which is urgently needed to protect homes and infrastructure in the Pine Beach subdivision and the George Sands tracts south of Rockaway Beach. We are grateful to have received an affirmative vote for the project from the Tillamook County Planning Commission on July 15, and respectfully request the same of you in your upcoming deliberations.

My husband, Mark Kemball, is Successor Trustee of the property held in the name of the Mary Ann Lockwood Family Trust, which is located at 17488 Ocean Boulevard, Rockaway Beach, OR 97136. Mary Ann, who died last year, was our close family friend. Her house at the beach was constructed in the mid-1990s, in fulfillment of her long-term dreams, meticulous planning, and careful saving. She employed Tillamook-area professionals and craftspeople to construct the home. Her contractor, a respected Tillamook homebuilder, acquired materials locally where possible.

When the house was built, the area had been accreting sand for decades. Regulations stipulated that the house be located behind the second dune. Those two extensive dunes were hilly, and were thickly vegetated with shore pines and other vigorous native plants. It was a long, challenging walk, through a dense thicket, from the vacant lot to the sandy beach. This was deemed a safe area in which to build, and so the house was constructed.

Now, however, due to the shockingly fast, unforeseen intervening erosion of the dunes, the ocean is encroaching on the house, and on the houses of our ocean-front neighbors. During King tides and storms, large debris washes up close to the houses, and in some cases, water rushes well past the fronts of people's homes. The continued viability of our houses, as well as the entire public water, electrical and sewer infrastructure of the Pine Beach subdivision and the George Sands tracts, now depends on construction of a revetment.

The structure, if approved, will be constructed entirely on private property, and at the property owners' personal cost. The project engineer has determined that the proposed structure will cause no direct or collateral harm to adjacent properties, nor to the public beach area. In drawing this conclusion, he cites not only his own modeling, but the experiences of communities on both coasts of the United States. The proposed revetment will be vegetated, and

will be maintained so as to be invisible to those using the beach. As a nice by-product of the project, existing beach access will be improved at the time of the construction.

We would be very grateful for your approval to proceed with this project, so that our homes and the other homes in our community can be protected, and the safe conditions of this "urban residential" area can be restored.

I am very thankful for your time, and for your thoughtful consideration of the Planning Commission's recommendation.

Thank you, thank you.

Sincerely,  
Alice Kemball  
503.810.7332

Sent via email to Sarah Absher [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)  
Tillamook County Board of Commissions  
C/O Sarah Absher, Director  
Tillamook County  
Department of Community Development  
1510 B Third Street  
Tillamook, OR 97141

Sent from Mail for Windows 10



## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 9:14 AM  
**To:** Allison Hinderer  
**Subject:** Goal Exception Request- Support  
**Attachments:** HOA.pdf

---

**From:** Katie Buckles <katie@katieandconrad.com>  
**Sent:** Monday, July 19, 2021 9:23 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>; rachael@pacificopportunities.com; wk@wkellington.com  
**Subject:** EXTERNAL: Goal Exception Request- Support

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See my attached letter in support of the Goal Exception Request.

Katie Buckles

Dear Tillamook County Board,

I am a homeowner at 17425 Pine Beach Way, located in the Pine Beach HOA of Twin Rocks, Oregon. I recently built my house that resides in this HOA, in 2020. I have been fortunate enough to call Oregon my home my entire life. More recently I have been blessed to live where I am the happiest for the past 4 years, and that is close to the SEA.


I chose this location for my home because I fell in love with the surrounding community, the people in it and the proximity to the beach. In 2018 we purchased the lot knowing that it would take time and money before we could call the lot a home. Although we officially did not live in the community, we were quickly invited to join our future neighbors at the local Bar for Taco Tuesday and their homes for BBQs. I had never felt so loved before in a community I did not even live in!

When my home was finally finished, I became an official community member in October of 2020. Unbeknownst to me, just before all the crazy King Tides were to hit. Either way, I knew that we had chosen the right place. We had some very amazing storms our first fall/winter, which was exactly why we wanted to be so close to the beach, just 1 row of houses than the sea... we were so in love! However, we previously lived on the East side of 101 North of town for over 3 years and in that time had never experienced the King Tides in such a manner. We had heard of sad stories related to the force of the ocean while joining the Rockaway Beach City Hall, but really did not comprehend how serious this was till all sudden these stories were just feet from our home. As much as we love a good storm, we had no idea how devastating it could be to our neighbors facing the sea. It was amazing to see how high the waves came and the size of logs that were drug up our community paths and into our friends' yards. Suddenly the idea of "building a wall" was close to home.

2020 was a crazy year and has shown that the ocean can be very unpredictable and had no mercy. I am involved in my community as a "Lions Clubs International" member and would like to remain a part of this community. As much as I love to suddenly own ocean front property, it would not be ideal to gain a view due to my neighbors and friends losing their homes. Eventually this to me, means I would be in their shoes wondering when I am next.

I hope that this letter reaches your hearts to help you understand that I would like this to remain as community that is there for each other and treats our neighbors like family and friends no matter what. I support this project for all these reasons. I believe we all deserve the right to protect what is ours and should not be denied the right and would hate this to become another sad story I hear about in the local paper.

Thank you for your time and patience in reading my letter,



Katie Buckles

## Allison Hinderer

---

**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Wednesday, July 21, 2021 11:40 AM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** FINAL Letter BOC 7-21-2021.pdf; Exhibit 2 - Oregon Coastal Atlas - Rockaway Subregion Eligibility and BPS.pdf; Exhibit 4 - PineBeach\_Memo\_Supplement\_07212021.pdf  
**Importance:** High

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

Hi Sarah and Allison,

Please find attached the Applicants' submittal for inclusion in the Board of Commissioners' packet for the upcoming hearing on 851-21-000086-PLNG-01. There will be several parts that follow. Would you please confirm your receipt? Thank you.

Best,  
Sarah



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July 21, 2021

Via Email

[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)

Tillamook County Board of Commissioners  
c/o Sarah Absher  
Community Development Director  
1510-B Third Street  
Tillamook, OR 97141

RE: 851-21-000086-PLNG & 851-21-000086-PLNG-01; Applicants' Submittal to the Board of Commissioners

Dear Chair Bell and Members of the Board:

This firm represents the Applicants who are 22 owners of beachfront properties in the Pine Beach and George Shand Tracts subdivisions. The Applicants are a combination of retired seniors and young Tillamook County families. Many of the Applicants and their families are full time residents of the Subject Properties. Please include this letter in the record of the above matter.

## **I. INTRODUCTION**

### **A. Arrangement of this Letter**

This letter is arranged by topic heading, with each topic appearing in the Table of Contents. The goal is that, should you wish as you are considering this matter and during your deliberations, if you need to find a particular state or local standard, type of exception or exception standard, you can refer to the Table of Contents and easily find the legal standard you are interested in.

This letter could also form the basis for an approval decision, should the Board decide to follow the recommendation of the County Planning Commission for approval. The Applicants stand ready and desire to support your staff in writing such a final decision, as they understand would be customary if this Board chooses to approve the proposal.

We apologize that this letter is long. That is so because it must be: the state and local standards at issue are numerous and each must be thoroughly addressed.

## **B. The Planning Commission Decision Recommending Approval**

On July 15, 2021, after careful consideration, the Planning Commission recommended approval to this Board. The Applicants respectfully request that this Board accept the recommendation of the Planning Commission and approve the applications on each of the grounds explained below.

## **C. Summary of the Applicants' Request**

The Applicants seek approval of goal exceptions and a Development Permit for a Beachfront Protection System (BPS) to protect their properties (Subject Properties) from certain destruction.

The Subject Properties are medium density, residentially planned and zoned, residential subdivision lots in the urban unincorporated community of Twin Rocks/Barview/Watseco. Twin Rocks/Barview/Watseco was identified by the County decades ago to deliver residential development and DLCD has acknowledged that this area is appropriate for residential development. In other words, all authorities directed and direct residential development to the area of the Subject Properties and it is expected to deliver residential development. When the Twin Rocks/Barview/Watseco urban community was planned and approved, the ocean was hundreds of feet and a coastal forest away from any residential area on any lot. And all expert reports concluded the area was safe for residential development. This is not an Application from scoundrels, as some have suggested. The Application is from Tillamook County citizens who themselves or their predecessors did everything right under Oregon's land use planning program, but now face an unforeseen and extreme natural disaster.

Please think of it this way – if someone wants approval for a house, or a business or a road in Tillamook County, and is trying to figure out the responsible and appropriate place to obtain approval for said house, business or road, what is more responsible than to seek approval for an area that is a coastal forest and hundreds of feet from the beach, on land in an area that all the experts opine is where the ocean is constantly adding sand because of the influence of jetties installed decades before and is safe, and where both the County and DLCD have published is appropriate for the house, or business or road? That location is the location of the Subject Properties when approved for residential development.

Please also understand this important point: when the properties were approved for residential development, the ocean had been in a 70+ year period of prograding – depositing sand. That is not true of other areas of the County or indeed the state. Rather, it is uniquely due to the unusually close proximity of the two jetties that cabin the Rockaway Subregion of the Rockaway littoral cell. Approval here does not set a precedent for approval elsewhere. Moreover, according to DLCD's "Atlas", nearly 90% the rest of the Rockaway Subregion ownerships are entitled to BPS. It is respectfully submitted no useful purpose is served by denying the Applicants the same right to be protected from harm, that nearly 90% of other property owners affected by this unique and dangerous phenomenon enjoy.

There can be no doubt that the Applicants' properties are at severe risk of ocean flooding and are on unstable dunes that are now subject to wave overtopping and undercutting. As noted, it is the unique cocktail of two jetties in unusually close proximity to one another (Barview and Nehalem) and El Niño events at the end of the 1990s, that have resulted in a severe change in the ocean's behavior in the Rockaway subregion of the Rockaway littoral cell. While other parts of the littoral cell continue then and now to see sand being deposited, the Rockaway subregion has seen steady, extreme, and unusual sand losses.

This is the case to the point that the coastal forest that once separated the Subject Properties and the ocean is gone and the Applicants are now in severe danger of losses of property and human life. The evidence is that the only thing that can save them, is the proposed beachfront protection system (BPS). To gain approval of the proposed BPS, the Applicants request approval of an exception to Statewide Planning Goal 18, Implementation Measures 2 and 5, and a Floodplain Development Permit. Approval of a goal exception requires a text amendment to the County Comprehensive Plan. It is respectfully submitted that the Applicants meet all relevant standards and the applications should be approved, as your Planning Commission decided.

Please also understand that the BPS will be located entirely on the Applicants' properties, at a location that is east of the Statutory Vegetation Line and east of the line of established vegetation. Therefore, the Applicants ask nothing of the public dry sand beach or of the Oregon Parks and Recreation Department (OPRD). The proposed BPS will be entirely in the Applicants' own backyards, which are still vegetated. That said, the trees are dying because of the recent ocean flooding over salinating the soils. *See, e.g.* Exhibit 1<sup>1</sup>, p 3-4. The situation here, is dire.

The proposal maintains and improves existing beach access and has no impact to persons walking on the beach, either. It will be entirely situated on private property (backyards) and there is no dispute that the public does not now use the area where the BPS will be located, and that the public has no right to use the area where the BPS will be located. The evidence in the record is also that the proposed BPS will not harm adjacent properties, cause ocean flanking, or change the way the ocean behaves in this area. The proposed BPS will be beneficial for the properties and the human lives it will protect, no more and no less. One member of the Planning Commission asserted that BPS is always harmful no matter what the experts say and denied on that basis, but he is mistaken, and his point of view is unsupported by the record; the Applicants' consulting engineer and many published reports demonstrate that BPS can be designed, and is designed here, in a manner that does not harm anything.

Regarding the goal exceptions, the Applicants ask you for two different types of findings for approval.

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<sup>1</sup> Exhibit 1 to this letter is photos of the Subject Properties that were submitted to the County on June 10, 2021. They are resubmitted to the Board with this letter to ensure their placement in the record of these proceedings.

First, the Applicants ask that you approve exceptions to Goal 18, Implementation Measure 2 and to Goal 18, Implementation Measure 5.<sup>2</sup>

On this it is important to keep in mind that in Lincoln County, DLCD recently and appropriately supported approval of a much larger BPS that was proposed on the public dry sand beach. There, DLCD said approval was proper because the littoral cell (Gleneden Beach area) is already either largely riprapped or is entitled to be riprapped, according to DLCD's "Atlas." Keeping this position in mind, it is important to understand that that sentiment applies here too – as we mentioned earlier, according to DLCD's own Atlas of properties eligible for riprap, in the Rockaway Beach subregion of the littoral cell, nearly 90% of the properties either are or are eligible for rip rap. Exhibit 2. And that "hardening" does not count the jetties. If you count the jetties, it is much more. Accordingly, using DLCD's own approval analysis, approval here is warranted. However, that is not the only reason that approval is compelled here. There are many others – as is discussed below.

Second, we ask that you please find in the *alternative only*, that the Applicants already have an exception to Goal 18, Implementation 2, and so are entitled to BPS as of right, because their existing Goal exceptions allow residential development on the dune the Subject Properties are on that is now subject to wave overtopping/undercutting. We will explain why the alternative is requested in a moment.

#### The Exception Request

The exceptions are requested because County planning staff, deem the Applicants' properties to be otherwise ineligible for a beachfront protective structure under Goal 18, without a goal exception. Under Goal 18, property is only eligible for BPS in the following circumstances:

1. The property was "developed" on January 1, 1977, or
2. The property has an existing or a new exception that allows residential development on a dune subject to wave overtopping or undercutting. In the words of Goal 18, Implementation Measure 5 has an exception to "2 above" which is Goal 18, Implementation Measure 2, which is a prohibition on residential development on such a dune.

The Applicants seek exceptions to both Goal 18, Implementation Measures 2 and 5. The Goal 18, Implementation Measure 2 exception is to allow the approved residential development to be on the dune it is approved to be on, now that the dune has become subject to wave

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<sup>2</sup> The Applicants ask you to approve two reasons exceptions (one specific to Goal 18 and the other a "catch-all" reasons exception), a "committed" exception and a land "physically developed" exception, to these two Goal 18 provisions. We talk about those in greater detail below.

overtopping and undercutting. Otherwise, Goal 18, Implementation Measure 2 prohibits residential development on such a dune.

As a precaution, the Applicants also seek an exception to the requirement in Goal 18, Implementation 5 that they have an exception to Goal 18, Implementation Measure 2 and to the January 1, 1977 date requirements. We hope you will approve both to maximize the defensibility of an approval decision.

We digress a moment to clarify the Applicants' position on the "developed on January 1, 1977, business. When the Applicants submitted their application, they pointed out they met the definition of development in effect when the subdivisions were first platted, until that definition was changed in 1984 and so had a vested right to BPS based upon the pre-1984 definition.<sup>3</sup> Exhibit 3. Before 1984, any land in a subdivision or partition was deemed to be "developed" and was eligible for riprap as of right under Goal 18. On January 1, 1977, the Subject Properties were in platted subdivisions.

DLCD asserted that the Applicants could not take advantage of the pre-1984 definition of "developed" claiming the Pine Beach subdivision was vacated before 1977 and the George Shand Tracts subdivision was not a subdivision merely because it was called "Tracts." Regarding the latter, it is well-understood that a subdivision is no less a subdivision because it is called a "tract," or any other name and the Applicants have placed into the record the definition of subdivision from the time, and it included "tracts." DLCD's position that a small lot subdivision called a tract is not a subdivision merely because of its name, is not believed to be sincere.

But, as to the former, regarding the original Pine Beach subdivision, despite public records requests and a search of deed records, no plat vacation to support DLCD's assertion could be found, and state law requires any plat vacations be shown on the plat. ORS 271.230(1). The plat does not show what DLCD asserts. The only evidence in the record is that no plat vacation occurred until "7/18/96" when the record establishes Pine Beach *replat* was recorded. However, at the last Planning Commission hearing, County planning staff asserted that the Pine Beach subdivision was vacated before the subdivision was replatted. That made no sense because the deed records and plat reveal no such thing and you can't "replat" a subdivision that does not exist. And there is no dispute that the current Pine Beach subdivision is an approved replat. Yesterday, staff provided us with a copy of the document they rely upon for their position. Respectfully, the document does not show the original Pine Beach subdivision was vacated, but rather a few lots were vacated.

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<sup>3</sup> Exhibit 3 is the old pre-1984 rule, definition, and legislative history for the reason why the rule was changed in 1984, because it allowed most properties to be rip-rapped and that policy shifted in 1984, as reflected by the rule change in the definition of "develop."



Regardless, the issue is a distraction and for purposes of this application the Applicants **withdraw their request for a finding that their properties were “developed” on January 1, 1977.**

#### Alternative Basis for Approval

The Applicants ask you to approve the proposed BPS, **in the alternative only**, on the basis that the Applicants already have goal exceptions that allow residential development on the dune that is now subject to wave overtopping and undercutting. No one disputes that this is the case. As such, as a practical matter the Applicants already have an exception to Goal 18, Implementation Measure 2 that prohibits residential development on such a dune. And Goal 18, Implementation Measure 5 says that if you have an exception to Goal 18, Implementation Measure 2, you are entitled to BPS as of right.

Opponents, lead by DLCD, claim that because the existing exceptions do not say “this is an exception to Goal 18, Implementation Measure 2,” the existing exceptions are not such an exception. They also inconsistently say that the Applicants can’t get an exception because DLCD and the County have authorized the residential development where it is. It cannot be both ways – the Applicants either have an existing exception or they do not, or they are entitled to new goal exceptions, or they are not. But it is not the case that there is no possible scenario in all of Oregon land use in which the Applicants can protect their lives and property with BPS merely because they own land that both the County and DLCD has designated as entirely appropriate for residential development. To state the proposition the opponents posit, is to demonstrate it is erroneous.

That said, exceptions are complicated land use approvals with scores of sometimes inconsistent standards. Also, one cannot get a goal exception if the use requested is already allowed by the applicable goal. Hence, the Applicants ask that you approve the requested exceptions first and then to please make the **finding in the alternative only** that the Applicants already have goal exceptions they need to make them eligible as of right for the requested BPS.

#### **D. Applicants & Property Owners**

The Applicants are 22 owners of the Subject Properties.

#### **E. Location**

The fifteen (15) Subject Properties are ten (10) oceanfront lots in the Pine Beach Subdivision, Lots 11 through 20 of Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123 of Section 7DD (“Pine Beach Properties”), and five (5) oceanfront lots in the George Shand Tracts subdivision, Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA (“Ocean Blvd. Properties”), all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.



Application, Exhibit A.

## F. Zoning

The Subject Properties are planned and zoned Community Medium Density Urban Residential (CR-2) by the Tillamook County Board of Commissioners and are situated in the urban unincorporated community of Twin Rocks/Barview/Watseco (“Watseco Community” for short). The Subject Properties are also within the Beach and Dune Overlay Zone (BD) and the Flood Hazard Overlay Zone (FH).

The Subject Properties **have existing Goal 3, 4, 11, 14 and 17 exceptions**, reflecting that they have long been committed to urban development and not to natural resource preservation. Even though they are not in a traditional urban growth boundary, the Subject Properties are in an acknowledged urban area approved under LCDC rules for unincorporated communities at OAR 660-022-0000 to 660-022-0070. The Watseco Community has urban services and dense urban development that is both expected and allowed to be there under Oregon’s land use planning program. In this regard, the Applicants’ properties and their Watseco Community have been “acknowledged” by the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC), as complying with all statewide planning goals. Having approved and encouraged the dense urban planning program in the

Watseco Community, there is a corresponding obligation to protect it from harm when natural disaster strikes.

### **G. The Threat**

As noted, when the George Shand Tracts subdivision and original Pine Beach subdivision and its replat were approved, they were several hundred feet away from the shoreline which was in a period of progradation – the land was accreting because of the installation of two jetties at the turn of the 20th century – the Barview Jetty and the Nehalem Jetty. A widening coastal forest (due to progradation) separated the Subject Properties from the beach and the ocean beyond. However, at some point about 20 years ago, the ocean began overtopping and undercutting the dune on which the Subject Properties are situated, a problem that has become much worse over time. Such has now progressed to the point that the Subject Properties are exposed to significant danger due to the wave overtopping and undercutting that now reaches them.

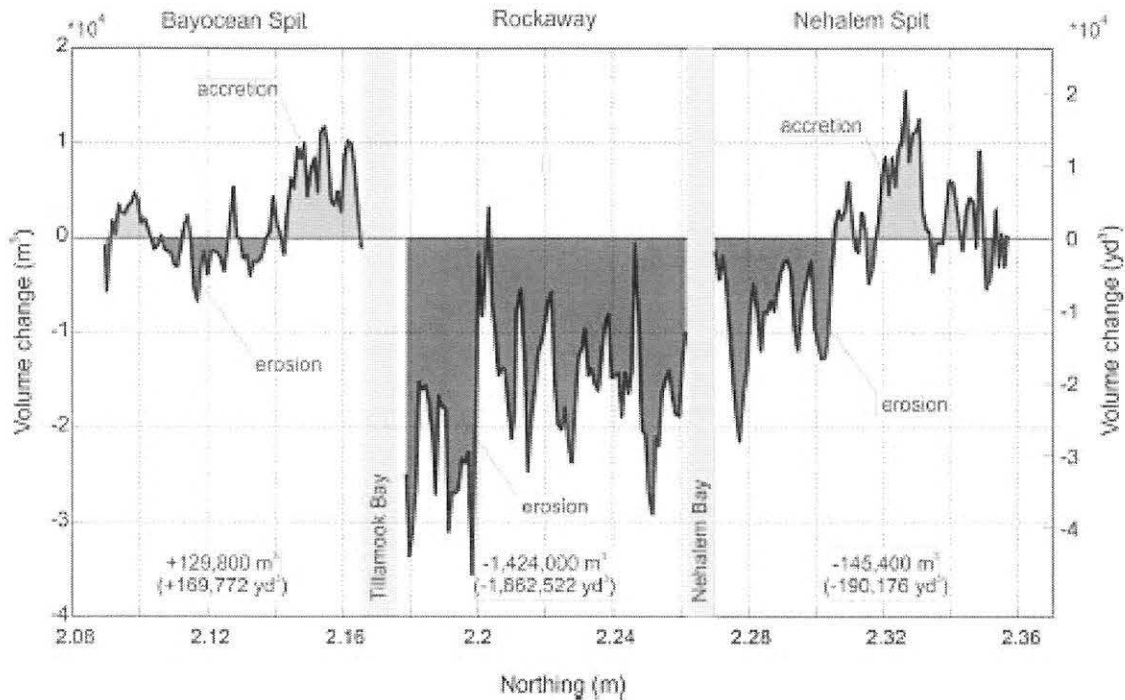
This threat is unique to the Rockaway subregion of the much larger Rockaway Littoral Cell. While the rest of the littoral cell continues to mostly prograde, the Rockaway subregional cell in which the Subject Properties are located, has uniformly and uniquely begun to aggressively recede. Now, instead of ocean tides causing prograding – the depositing of sand to add land as had been going on in the entire littoral cell, for more than 70 years after the first jetty went in; these properties are now subjected to aggressive ocean erosion, so much so that they are now, during high tides, subjected to persistent wave overtopping, runup and flooding. The below is an image from the Applicants' June 10, 2021, submittal showing wave overtopping of the foredune, runup and flooding of an applicant's home and property (lot 122 on the above map) during a King Tide event in January of 2021:



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

The record demonstrates that the Subject Properties have seen a loss of 142 feet of beachfront property since 1994, with much of the Pine Beach "common area", an area that was intentionally preserved in which no development would occur and that was densely vegetated when the Pine Beach replat was approved and recorded, now dry sand beach. Similar losses of beachfront property have occurred on the oceanfront George Shand Tracts immediately to the north of Pine Beach. A graphic representation of the unexpected and unexplainable loss of beachfront at this location is presented with Figure 5 to West Consultants' May 27, 2021, Technical Memorandum in the record. That figure shows that while the other subregions of the Rockaway littoral cell grew between 1997 and 2002, only the Rockaway subregion (the area

between Nehalem Bay and Tillamook Bay) in which the Subject Properties are located, uniquely and uniformly saw unusual and significant erosion:



The only evidence in the record is that this unusual activity in the Rockaway subregion is the result of ocean behavior influenced by the man-made jetties that are unusually close together in the Rockaway subregion of the littoral cell, in combination with El Niño events. It is not, as some opponents claim, simply a natural ocean cycle at work.

The threat now posed by ocean erosion means that more than ten million dollars (\$10 million) in property value is at risk of being lost, in addition to public infrastructure to include public water and sewer, utilities and roads. The lives of these properties' occupants – many of whom are older Tillamook County citizens who call these properties their home – are also at risk. The proposed beachfront protective structure will responsibly mitigate this significant threat in a manner that is consistent with the County's development standards. The threat to the Applicants' properties is present and very real. Any avoidable delay in issuing the requested development permit for the BPS places lives and property in serious jeopardy.

## H. Applicable Criteria

### Goal Exception

- Oregon Statewide Planning Goal 18 (OAR 660-015-0010(3))
- OAR 660-004-0020: Goal 2, Part II(c), Exception Requirements
- OAR 660-004-0022: Reasons Necessary to Justify an Exception Under Goal II, Part II(c)
- OAR 660-004-0025: Exception Requirements for Land Physically Developed to Other Uses
- OAR 660-004-0028: Exception Requirements for Land Irrevocably Committed to Other Uses

### Comprehensive Plan Amendment

- Tillamook County Land Use Ordinance (TCLUO) Section 9.030: Text Amendment Procedure
- TCLUO Section 9.040: Transportation Planning Rule Compliance
- Applicable Comprehensive Plan Provisions
- Applicable Statewide Planning Goals and Oregon Administrative Rules

### Floodplain Development Permit

- TCLUO Section 3.014: Community Medium Density Urban Residential Zone (CR-2)
- TCLUO Section 3.510: Flood Hazard Overlay Zone (FH)
- TCLUO Section 3.530: Beach and Dune Overlay Zone (BD)

## II. Goal 18 Exceptions

### A. Overview of the Requested Exceptions and the Applicable Goal Exception Standards

Statewide Planning Goal 18: Beaches and Dunes has two overarching goals. They are:

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

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

Accordingly, the aim of Goal 18 is not only to conserve beaches and dunes, but also to allow development where appropriate and to reduce the hazard to human life and property from both natural and man-induced actions in beach and dune areas. To implement these goals, Goal 18 employs several implementation measures, two of which are relevant here.

Goal 18, Implementation Measure (IM) 5 provides:

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

As explained above, the Applicants withdraw the portion of their application demonstrating that the properties were “developed” on January 1, 1977. The issue is not worth the distraction to the main issues here.

Goal 18, IM 2, referenced in IM 5 as “(2) above”, provides:

**“Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.”**

Because residential development is not allowed under Goal 18, Implementation Measure 2 on a dune subject to wave overtopping and undercutting, the proposal seeks a Goal 18, Implementation Measure 2 exception to allow residential development on such dune. Approval of that exception makes the Subject Properties eligible for BPS as of right under Goal 18, Implementation Measure 5. The proposed BPS is also not allowed by Goal 18 Implementation Measure (IM) 5 without the Goal 18, IM 2 exception or without a finding that the property was “developed” on January 1, 1977. The proposal is also to obtain an exception to those two requirements in Goal 18, IM 5.

The Board should find that the Applicants have justified four different types of Goal 18 IM 2 and 5 exceptions to support the proposed BPS. They are (1) a Goal 18 specific “reasons” exception, (2) a “catch all” Goal 18 reasons exception, (3) an “irrevocably committed” exception (hereinafter referred to as a “committed” exception), and (4) a “land physically developed to other uses” exception (hereinafter referred to as “built/developed” exception). The Applicants’ materials demonstrate that the proposal meets the requirements for each type of goal exception.

As background, there are three types of exceptions to the statewide planning goals. So, while confusing, it works like this here – the Applicants seek exceptions to Goal 18 IM 2 and to Goal 18 IM 5 and those exceptions are justified based on three different types of goal exception “silos”. Each of the three types of goal exception silos has their own, independent standards and analysis. *1000 Friends v. LCDC*, 301 Or 447 (1986). There are “committed” exceptions,

“built/developed” exceptions and “reasons” exceptions. The Applicants seek approval of all three types to obtain exceptions to Goal 18, IM 2 and 5.

“Committed” exceptions are approved under OAR 660-004-0028 for lands that are irrevocably committed to uses not allowed by the applicable goal, because of existing adjacent uses and other factors such that uses allowed by the applicable goal are impractical. A committed exception focuses on a commitment of land to uses not allowed by the applicable goal.

“Built/developed” exceptions are for situations where the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. *1000 Friends of Oregon v. LCD, 301 Or 447 (1986)*. “Built/developed” exceptions are approved under OAR 660-004-0025 and allow further development of land that is already built up to the extent that it is no longer available for the uses the applicable goal allows. Impracticality is not a relevant consideration for a built/developed exception.

The two “reasons” exceptions herein approved are approved under OAR 660-004-0022(11) and OAR 660-004-0022(1), which respectively allow a “reasons” exception specific to Goal 18 and one called the “catch all” that applies to any goal exception.

Each is addressed separately below.

#### **B. The Subject Properties are Entitled to Reasons Exceptions to Goal 18, IM 2 and 5.**

OAR 660-004-0022 provides that a reasons exception may be taken for any use not allowed by the applicable goal. Here, the Applicants seek a reasons exception to Goal 18, Implementation Measure 2, which prohibits residential development on foredunes subject to ocean undercutting and wave overtopping, and Implementation Measure 5, which concerns beachfront protective structures. OAR 660-004-0022(1) provides: “For uses not specifically provided for in this division \* \* \* the reasons shall justify why the state policy embodied in the applicable goals should not apply.” OAR 660-004-0022(11) is the goal-specific “reasons necessary” standard for an exception to Goal 18 – Fore-dune Development to Goal 18, IM 2 and IM 5.

OAR 660-004-0022(11) is the applicable Goal 18-specific “reasons necessary” standard for an exception to Goal 18, IM 2 and IM 5 that applies to this application. **We note that no party, including DLCD, challenges the Applicants’ demonstration that the proposal complies with the requirements set forth under OAR 660-004-0022(11).** The Applicants’ analysis follows:



**OAR 660-004-0022(11) – Goal 18-Specific “Reasons Necessary” Standard**

The Goal 18-specific standard of OAR 660-004-0022(11) provides:

**“(11) Goal 18 – Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:**

**“(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;**

**“(b) The use is designed to minimize adverse environmental effects;  
and**

**“(c) The exceptions requirements of OAR 660-004-0020 are met.”**

The expert evidence in the record demonstrates that all of these standards are met.

With regard to (a), West Consultants, in their Technical Memorandum (Application, Exhibit F) and the accompanying construction plans, (Exhibit F, Attachment 2), establish that the proposed BPS has been designed in such a way as to protect it “from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves”. Exhibit F, p. 8. On page 5, Figure 3 of the West Consultants Technical Memo is a cross-section of the proposed BPS. The accompanying text on page 5-6 states that “A side slope of 1V [vertical] to 1.5H [horizontal] was used because of the site constraints.” One of those site constraints is the state “Beach Zone Line” or the line of established vegetation whichever is farther inland, and seaward of which line is considered the dry sand beach. Because the entire proposed BPS will be constructed landward of both the Beach Zone Line and the line of established vegetation, it complexly avoids placement on the dry sand beach.

The technical memorandum goes on to say that “A launchable toe is provided to ensure the rock revetment is not undermined by scour at the structure”. Wests’ Third Supplemental Technical Memo (Exhibit 4 to this letter), further explains that in the uncertain event that erosion occurs at the base of the structure, the launchable toe performs by launching rock into the area eroded in front of the structure without any changes to the revetment above. See Figure 2. Wests’ Technical Memo (Application, Exhibit F) also explains that “An ecology block wall will be placed along the northern and southern boundaries. Ecology blocks are concrete blocks that are used for building retaining walls. Typical blocks have a height of 2 feet, a width of 2 feet, and a length of 6 feet (or 3 feet). These walls are required to ensure that the future wave run up does not flow around the main rock revetment structure and potentially flood the beachfront homes.”

In short, the BPS was designed with a “launchable toe” that will ensure the rock revetment is not undermined by scouring (i.e., undercutting) as well as with ecology block side walls to address ocean flooding and storm wave concerns, as discussed in the FEMA “VE” hazard zone analysis. *See* Application, Exhibit F, p. 5.

The proposed BPS is also designed to minimize wind erosion given the proposed revetment will be sand-covered and replanted with native beach grasses and shrubs and will be monitored over time to ensure that the sand overlay is not eroded by wind.

Last, because the BPS is not a structure that allows for occupancy of any sort or that has standing walls, the structure does not require protection from any geologic hazards such as earthquakes.

With regard to (b), the expert evidence in the record demonstrates that the BPS is designed to minimize any adverse environmental effects. Its design is such as to minimize any off-site environmental impacts. Much like the revetment at the Shorewood RV Resort, which has not increased scouring or erosion of adjacent properties, the proposed design is not expected to have impacts on adjacent shorelines. Moreover, the proposed BPS will be located further inland and will be at a higher elevation than the Shorewood RV Resort’s BPS, so the wave energy and erosion potential will be even less. Unlike the Shorewood RV Resort, the proposed revetment will be located partially underground and topped with sand and natural vegetation to include beach grasses and shrubs to afford a natural appearance. Plus, the proposal requires the proposed BPS to be monitored and replanted with native vegetation, as necessary.

Ultimately, the proposal will be a net benefit to the shoreline environment. As stated throughout this letter, the location is seeing a rapidly eroding vegetation line caused by rapidly advancing coastal erosion. That is an adverse environmental effect that the proposal will mitigate against. Granting the requested exception will allow the Subject Properties to construct and install the proposed BPS within an active eroding foredune, which will minimize and abate future landward shoreline erosion. As stated by West Consultants’ Chris Bahner, PE, in his Technical Memorandum, there is a high level of risk for future wave overtopping and undercutting that will not only damage the existing oceanfront structures and threaten the established homes, water and sewer public facilities and services, but will also threaten the foredune.

With regard to (c), OAR 660-004-0020(1) provides:

**“(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.”**

The Board should find that there are reasons consistent with OAR 660-004-0022 to take exceptions to Goal 18, IM 2 and IM 5. The justification for these exceptions, if ultimately adopted by this Board, will be set forth in the County's Comprehensive Plan.

OAR 660-004-0020(2) provides the four standards for a reasons exception. Each is addressed in turn.

**“(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:”**

**OAR 660-004-0020(2)(a) – Reasons justify why the state policy embodied in the applicable goals should not apply:**

**“(a) ‘Reasons justify why the state policy embodied in the applicable goals should not apply.’ The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;”**

There are compelling reasons that justify why the state policy embodied in Goal 18, IM 2 which prohibits residential development on dunes subject to wave overtopping and undercutting) and Goal 18, IM 5 (prohibiting BPS to protect development that did not exist on January 1, 1977, or that does not have an exception to Goal 18, IM 2), should not apply to the Subject Properties. The facts and assumptions used as the basis for this determination are summarized as follows:

- (1) An at least 70-year history of beach prograding prior to subdivision and subdivision replat approval, was followed by the unanticipated and extreme reversal to beach retrograding that now significantly threatens the Subject Properties.
- (2) The littoral cell and especially the Rockaway subregion is uniquely affected by two manmade jetties that are in close proximity to one another (by jetty standards), that cabin the subregion in a manner that is not common to the entire coast.
- (3) The severe and remarkable retrograding in the Rockaway subregion where the Subject Properties are located, is unusual because the rest of the littoral cell is largely depositing sand. The Rockaway subregion has no part that is depositing sand. It is entirely receding. No other part of the littoral cell is only receding.

- (4) Except for a handful of properties in non-residential use that are zoned for recreation management and open space, nearly 90% of all residential properties in the Rockaway subregion are identified as eligible for protection as shown on DLCDC's Oregon Coastal Atlas, Ocean Shores Data Viewer (Exhibit 2).<sup>4</sup> West Consultants has determined that approximately 5.6% (5,930 feet of 106,200 feet) of the littoral cell already has BPS, not including the four jetties within the cell. *See* West Consultants' May 27, 2021 Supplemental Technical Memorandum in the record. The proposed BPS (880 feet) will increase the amount of BPS within the littoral cell by only 0.8%. As for the Rockaway subregion, the proposed BPS will increase the amount of BPS within that subregion by only 2.8%.

If the purpose of Goal 18, IM 5 is to stop the proliferation of BPS in order to preserve beaches and littoral cell functionality, then that policy can no longer be achieved in the Rockaway subregion where nearly 90% of the oceanfront properties within the subregion are already entitled to and will inevitably install BPS to mitigate the ongoing and pronounced erosion unique to the Rockaway subregion.

- (5) The Subject Properties were approved for residential development at a time and place in compliance with Goal 18 and where Goal 18 expressly states is safe and "appropriate" for residential development and with a large, vegetated buffer that separated the approved residential development from the ocean and areas of ocean undercutting/wave overtopping.
- (6) The Subject Properties are in an unincorporated urban community that is acknowledged by DLCDC as an appropriate place for urban level development and the governing body has so decided the Subject Properties and their urban community are appropriate to meet the County's urban residential development needs.

The erosion of the dune on which the Subject Properties are located is not the result of the normal ocean cycles of erosion (which the Chris Bahner, May 27, 2017, Technical Memorandum establishes), or the result of sea level rise that will affect all properties on the coast in the same way, as some argue. This is a unique set of circumstances where the residential development was approved during more than 70 years of prograding consistent with all conceivable planning rules and then suddenly the ocean pattern reverses course due to the unique interplay of closely placed man-made jetties and ocean forces. The Applicants are unaware of

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<sup>4</sup> The Applicants note that although the Oregon Coastal Atlas, Ocean Shores Data Viewer has no regulatory significance – it has not been adopted by the County or the state and purports only to show areas where developed structures can be seen in aerial images from 1977, which is not the only test for Goal 18 eligibility – it shows the properties that DLCDC believes without any question, to be eligible for shoreline protection. Therefore, **there can be no dispute that nearly 90%** of the properties in the Rockaway subregion that is experiencing severe ocean flooding risk, **are eligible for rip rap to protect themselves.**

any similarly situated properties along Oregon's coast and no party to these proceedings has identified any other properties affected by the unique circumstances here.

The situation presented in this case, is unique and is not a basis upon which others can argue for a Goal 18 exception. In this regard, LUBA has recently opined, the reasons for an exception must be self-limiting "and not so broadly framed that it can be applied to establish other exceptions across a broad range of circumstances." *Oregon Shores Conservation Coalition v. Coos County*, \_\_ Or LUBA \_\_, \*32 (LUBA No. 2020-002, May 4, 2021) (citing *VinCEP v. Yamhill County*, 55 Or LUBA 433, 449 (2007)). The reasons that justify this requested exception are consistent with LUBA's opinion. No other known situation involves property (1) on a littoral cell subregion that for decades saw prograding that abruptly reversed due to jetties in unusually close proximity to one another, (2) that was approved for residential development at a time the ocean was prograding the land, and all the technical reports said that pattern was likely to continue, and (3) that is in an acknowledged urban unincorporated planning area designed to deliver urban residential uses to the County's housing stock.

Reasons justify the exceptions requested here.

**OAR 660-004-0020(2)(b) – Areas that do not require a new exception cannot reasonably accommodate the use:**

**“(b) ‘Areas that do not require a new exception cannot reasonably accommodate the use’. The exception must meet the following requirements:**

**“(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;”**

Because the proposed exception is necessary for the protection of the structures and associated infrastructure on the Subject Properties, the BPS can only be placed in its proposed location in the rear yards of the Subject Properties between the structures and the ocean. Beachfront protective structures are, by design and function, site-specific. They cannot serve the purpose of abating shoreline erosion and wave overtopping unless they are located, constructed, and installed in the proper location for the properties they are intended to protect. For the Subject Properties, that is at the location shown on Application, Exhibit F, Attachment 2. Locating the BPS elsewhere, for example, at any properties eligible for protection, will not protect the Subject Properties. Accordingly, there are no areas that do not require a new exception that can reasonably accommodate the use.

Based on the above-cited evidence, there is no practical, reasonable, factual, or evidentiary reason to evaluate additional alternative sites for the protective structure or to otherwise address “the location of possible alternative areas considered for the use that do not require a new exception” standard. The requirement to evaluate areas that can “reasonably

accommodate” the proposed use, necessarily means that the alternative locations must be capable of reasonably providing the requested protection. *See Columbia Riverkeeper v. Columbia County*, 297 Or App 628, 645 (2019). There is no such property. The only nearby areas for which an exception would not be required for a BPS is the Shorewood RV Park to the north of the Subject Properties which already has shoreline protection that does and can only protect it, and tax lot 2900 directly to its south. Locating protective structures there or anywhere else will not afford any protective benefit to the Subject Properties.

The Board *should reject* claims that this standard demands an analysis of alternative *methods* for protection. The standard does not ask for an analysis of alternative methods. Rather, it asks for an analysis of alternative areas – “areas that do not require a new exception.” Nevertheless, the Applicants’ expert prepared a BPS alternative methods analysis, and those findings are discussed in the section that addresses TCLUO 3.530(4)(a)(4)(c)(2) and are herein incorporated.

Suffice to say there are neither alternative areas that do not require new exception, nor alternative methods that can provide the requested protection that is to be supplied by the proposed BPS.

The area for which the exception is taken is identified in Application, Exhibit Q, and is hereby incorporated herein.

OAR 660-004-0020(2)(b)(B) provides:

**“(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:**

**“(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?**

**“(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?**

**“(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?**

**“(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?”**

As discussed above, the purpose of the BPS is to protect the Subject Properties, the associated streets, and the public water and sewer infrastructure that serves these residential lots.

As noted above, there is one other lot within the immediate vicinity that is “eligible for protection” (i.e., tax lot 2900, mentioned above, for which a BPS would be permitted without an exception to Goal 18, IM 5) and the Shorewood RV Park is already protected. However, no land otherwise “eligible for protection” could establish protection on the Subject Properties.

The standard says that alternative sites need only be considered that can “reasonably accommodate the proposed use.” The only property that can reasonably accommodate the proposed use are the Subject Properties, the lots seeking protection. This is because a BPS is, by design and function, site-specific and it cannot serve the purpose of abating shoreline erosion and wave overtopping/undercutting unless it is located, constructed, and maintained on the site where it is needed. The Board should reject the claim by some that this standard demands an analysis of alternative methods for protection. The standard too does not ask for an analysis of alternative methods. Rather, it asks for an analysis of alternative areas – “areas that do not require a new exception.” Regardless, the Applicants’ expert prepared a BPS alternatives analysis, and those findings are discussed in the section that addresses TCLUO 3.530(4)(a)(4)(c)(2) and are herein incorporated.

“Relevant factors” to consider in this reasons exception, are the specific exception area as defined, and the above-cited specific characteristics of a BPS that require its shoreline location on the Subject Properties.

It cannot be placed on the dry-sand beach without OPRD’s approval, which is an arduous and uncertain process. And a goal exception would be required to do that in any event. The protections afforded by a BPS are location-specific and, therefore, the needed use of that protection cannot be reasonably accommodated at another location other than where proposed, regardless of design or cost thereof.

The “economic” factor of the looming loss of more than \$10 million in property value and the property taxes to the county and special districts that would be lost to be considered here further justify this reasons exception to protect the Subject Properties from otherwise certain destruction. It is also a relevant factor that the Subject Properties were approved as a part of an acknowledged urban planning program designed to deliver residential development. The Subject Properties have been developed doing everything right. Having done so, they are entitled to be protected with the proposed BPS.

With regard to (i), no resource land is being used for the proposed shoreline protection. The Subject Properties are already committed to an urban residential development planning program with a full panoply of public facilities and services. There is no adjacent resource land

in the unincorporated urban community in which the Subject Properties are located either, other than the beach and ocean to the west. The proposal studiously avoids both areas. In fact, the proposed BPS will not even be visible from the beach or ocean, as the modeling in the record demonstrates. (Applicants' June 10, 2021 Submittal, Exhibit F). It will not interfere with north south or east west beach access. It will not change the way the beach would otherwise interact with the ocean in this area either.

Regardless, the proposed BPS cannot "be reasonably accommodated on non-resource land that would not require an exception." The property to be protected by the exception is the subject exception property. Designating the oceanfront lots as the sole exception area subject to this request is justified because the proposed location is the only one that can provide beachfront protection to them.

As with several of the other inquiries, (ii) presumes the exception requests development on resource lands. As explained above, the subject exception area, and for that matter adjacent lots north of the subject exception area, are single-family residentially zoned land, (CR-2), which, by definition, is not resource zoned land; rather it is land that is already planned and zoned for non-resource use. Nor is the Recreation Management (RM) zoned Camp Magruder considered resource land. The site of the proposed BPS is contained within the County-designated Barview/Watseco/Twin Rocks Community Plan area, which is a Tillamook County urban unincorporated community and is situated entirely on the Applicants' vegetated properties. The BPS is proposed to be located within an urban unincorporated community boundary to protect the residential development that the boundary is acknowledged and tasked to deliver.

By comparison, the closest resource zoned land to the proposed exception area is the Forest Zone which is approximately 1,000 feet east of the Subject Properties, and Smith Lake and Highway 101 physically separate that resource zone from the Subject Properties as well as the shoreline.

With regard to (iii), the exception area is contained within the County-designated Twin Rocks/Barview/Watseco Community Plan, which is a Tillamook County urban unincorporated community. An urban unincorporated community boundary functions like a UGB that surrounds incorporated cities. The closest traditional urban growth boundary surrounds the City of Rockaway Beach, approximately 2 miles north of the Subject Properties. Again, the proposed BPS is specifically required to abate shoreline erosion and wave overtopping only for the Subject Properties. Therefore the "proposed use [cannot] be reasonably accommodated inside an urban growth boundary". But it is being accommodated inside of an urban unincorporated community boundary, which functions in the same way as a UGB, only for urban unincorporated areas.

With regard to (iv), the proposed BPS's location, construction and maintenance will all occur without the "provision of a proposed public facility or service" because it does not require, nor rely upon, any public services, (e.g., sewer, water, electric) for the efficient design and function for its intended use. It is a static structure, designed to protect the subject oceanfront



properties' shoreline from further coastal erosion and flooding. The Applicants and their successors have pledged to maintain it and will be bound to maintain it.

OAR 660-004-0020(2)(b)(C) provides:

**“(C) The ‘alternative areas’ standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.”**

The “alternative analysis” standard to demonstrate that there are not alternative locations for the proposed BPS by undertaking “a broad review of similar types of areas rather than a review of specific alternative sites” is not functionally possible for this specific reasons exception to Goal 18, IM 2 and IM 5 given the site-specific protections that are necessary and that are only afforded by a BPS.

Moreover, no party to this proceeding has described “specific sites that can more reasonably accommodate the proposed use.” There are no other “specific sites that can reasonably accommodate the proposed use.” Therefore, site-specific comparisons of alternative sites and the Subject Properties are not required. Again, the Applicants note that the inquiry is alternative sites, not alternative methods of protection. And even if it were alternative “methods” the Applicant has thoroughly evaluated all alternatives and none would provide adequate protection.

Some opponents argue that residences on the Subject Properties should be elevated. That is not a “reasonable alternative. As explained in West Consultants’ Third Supplemental Technical Memorandum (Exhibit 4), raising the homes on pilings is not reasonable because during flood events, the structures will be inaccessible and dangerous because water will flood all around them and would also potentially destroy their infrastructure. Elevating the homes would also not protect the foredune on which the homes are situated because it would not curb the ongoing erosion to the dune and could result in the homes eventually being located on the beach.

**OAR 660-004-0020(2)(c) – Long-term environmental, economic, social and energy consequences:**

**“(c) ‘The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.’ The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;”**

Despite the fact that the location of a BPS at some other location would do nothing to protect the Subject Properties, this standard requires a comparison of the environmental, economic, social and energy (EASE) impacts between location of the BPS at the Subject Properties and at other properties that would also require an exception to Goal 18. In an abundance of caution, the Applicants conduct an EASE analysis.

In the first place, the Subject Properties are already an exception area, and no use of resource land is proposed in this requested goal exception. Rather, the entire Watseco Community including whether the BPS is proposed is committed to urban residential development. Presumably, the comparison here should be between the Subject Properties and the other sites that are eligible for shoreline protection. Potential impacts to beaches and dunes are discussed below.

**Environmental:**

The placement of a BPS along the Subject Properties’ existing shoreline is intended to “reduce the adverse impact” of the on-going eastward march of shoreline erosion and ever more

frequent wave overtopping of the Subject Properties. The evidence in the record demonstrates that all impacts resulting from the proposed BPS on the Subject Properties will be positive. The BPS's design is a measure designed to reduce adverse impacts of the proposed BPS on other properties and on the environment in general, namely additional erosion of the shoreline and the loss of shoreland vegetation.

The environment will be disturbed to construct the BPS. However, it is temporary, and the mitigation plan requires covering the revetment with sand and immediately replanting that area with beach grasses and shrubs. The proposal also requires monitoring of the environmental (as well as structural) condition of the BPS and replanting, as necessary.

The long-term environmental impact of the proposal is positive because it will protect native shoreline trees, shrubs, vegetation, from further losses due to the change from a prograding beach to a retrograding beach since the approval of the Subject Properties. There is no inventoried or other known wildlife habitat in the backyards where the proposed BPS will be situated. Nonetheless, abating the Subject Properties' constant and yearly habitat loss due to erosion reduces the overall amount of vegetation that could be used as food or cover by wildlife on the Subject Properties. The proposed BPS has no adverse effect on areas not protected by it.. The Applicants' expert engineer's analysis concludes that the proposed BPS does not increase wave runup, cause flanking or otherwise accelerate erosion on neighboring properties.

It is possible that other properties not eligible for BPS without a Goal 18 exception could also design a revetment. But such would only protect those properties and would be in the same legal position as here – seeking a Goal 18 exception. Here, multiple owners have joined together to obtain approval to afford the broad-area environmental benefits the proposal provides.

Because all of the potential properties that would require a Goal 18 exception, or that do not require an exception in order to construct a BPS are all in the same urban unincorporated community boundary (including Camp Magruder) and are all connected to public water and sewer services, the positive and negative effects are the same. For all the properties, a BPS by its nature would protect only the properties and public facilities and services immediately adjacent. On the other hand, if the exception is not granted for the Subject Properties, continued coastal erosion and wave overtopping could destroy these properties, the homes and a significant swath of public facilities and services. A break in the public sewer system and the public water system caused by the beach erosion and coastal flooding the proposal seeks to avoid, would pose catastrophic environmental contamination damage. Moreover, if the proposed BPS is not approved, then the ocean will claim 11 homes, 4 otherwise vacant residential properties developed with public infrastructure and the detritus from homes and destroyed public infrastructure would fall into the ocean and be strewn across the beaches in the area and further, as carried by ocean currents. Homes are composed of building materials that are deleterious to the environment and are never intended to become ocean fodder. Garages are full of cars, also never intended to float around in the ocean or be tossed onto beaches. If the ocean destroys the homes, the beaches in the area would be unusable for some period. That is a significant adverse environmental harm that is only mitigated by approving the proposal.

In summary, the environmental consequences of locating the requested BPS would be the same whether located on the Subject Properties or located in another area that would or would not require an exception. Moreover, the environmental consequences of approving the proposal are overwhelmingly positive. The environmental consequences of denying the proposal are overwhelmingly negative.

Economic:

The long-term economic consequences of a BPS would be similar for the Subject Properties as it would be for any other property that might be considered. Here, the construction and installation of the BPS will prevent further loss of land and the loss of homes, garages and vehicles. It prevents catastrophic damage to water and sewer infrastructure. The loss of land and dwelling value of the subject 15 beachfront lots and potentially other structures within the subdivisions would be significant. Evidence in the record shows that the tax value alone of all 15 properties is \$10,284,990. Application, Exhibit U (Subject Properties County Assessor Reports). The damage that would occur to the public water and sewer infrastructure if these homes were ripped out by the ocean is catastrophic and a significant strain on or perhaps beyond the means of, the water and sewer districts to repair.

Approval of the proposal avoids these harms and provides protection for homes immediately landward of the Subject Properties and Pine Beach Way and Ocean Boulevard, which would be exposed to ocean erosion if the proposal were not approved.

The record demonstrates that stopping the loss of land and dwelling value of the Subject Properties also has a broader impact on the land and dwelling value of the landward properties, because all land and dwelling sale prices, in part, are established by comparing comparable and recent land and dwelling sale transactions to determine the value of a subject lot and/or dwelling. The evidence shows that in turn, the lowering of property values for the oceanfront lots, as would happen if a revetment is not constructed, would impact, and potentially lower, the asking price of the land and dwelling value of lots within the immediate vicinity, beyond the subdivision. For other developed lots that include adjacent or nearby developed inland lots, that adverse economic impact would be avoided by approval of the proposed BPS.

Approval of the proposed BPS will also prevent not only the public economic costs from breach of the water and sewer facilities serving the subject properties but the environmental fallout from such a breach and closing off those facilities for other properties while a repair is undertaken.

Likewise, retaining the value of the fifteen subject properties will result in maintenance of their property tax income to the County that would be lost if the subject properties are not protected.

Furthermore, if the Subject Properties are claimed by the ocean, it will be an emergency of significant proportion. It will require the activation of several emergency services and

agencies, to include local, state and potentially federal: fire, medical, environmental responses, FEMA, EMS, which will put a wholly avoidable and significant economic and other strain on responsible agencies.

The direct economic costs, arise primarily from the cost of building the BPS itself. In this case, that cost will be borne entirely by the property owners, none of it will be a public cost. Likewise, any annual cost to maintain the BPS will be borne by the owners of the Subject Properties. Again, that cost would be the same whether the BPS is developed on the Subject Properties or developed at a different location that also would require an exception.

Social:

The social benefits, whether at the Subject Properties or at other properties that would or would not require an exception to Goal 18, would be positive.

Granting the requested exception would respect Goal 18's policy to reduce natural hazards to human life as well as respect local land use decisions made consistent with Goal 18's mandates and recognize that nature does not always proceed as expected. Here, there can be little doubt that the Subject Properties were approved for residential development consistent with Goal 18's mandates and was supported by the best evidence possible at the time, which showed a prograding beach for the area, as shown on the Comprehensive Plan Map. Application, Exhibit I.

The proposal does not directly affect the public beach. However, approving the proposed BPS will protect the beach for public enjoyment. There will be no catastrophic residential detritus to mar the beach or ocean or broken sewer or water infrastructure to potentially contaminate the beach and ocean.

The fact that the proposed BPS will be covered with sand and beach grasses ensures it is either out of view or is pleasing to view either from the beach or the Subject Properties. There are no public beach accesses that are affected by the proposal. The two beach accesses in the area are private ones. Nonetheless, the northern access to the beach between Tax Lots 123 and 3204 will be maintained and improved and the southern access to the beach between Tax Lots 113 and 114 is not affected whatsoever.

Some opponents claim it is not possible to plant inundated areas with beach grasses and point out that the areas are now subject to inundation. It is true that the area where the BPS is proposed is subject to severe inundation during storm events. But beach grasses and other native vegetation is not always swept away. West Consultants explains in its Third Supplemental Technical Memo (Exhibit 4) that beaches and coastal vegetation can reestablish themselves in front of a protective structure after the sand covering it is washed away. Here the properties owners are going to make the effort. The BPS will be covered in sand, about that there is no dispute. The owners will make best efforts to maintain native plantings as well and there is a reasonable chance that they will succeed.

On the other hand, the social harm from not approving the proposed BPS is significant. The owners of the Subject Properties have legitimately invested in their properties in reliance upon the thoughtful County and state approved urban planning program that governs the area, that encourages and supports their urban residential development of the Subject Properties. It would be depressing, anxiety creating and distressing in the extreme, if the government that encouraged and planned for the residential development at issue, were to refuse to allow it to be protected when natural disaster strikes. The proper role of government is to protect its people when they are going about their lives in a manner that is wholly consistent with the law, as here and suddenly find themselves stricken by natural disaster.

The social benefits are positive from approval of the proposal.

Energy:

The energy consequences – positive or negative – of constructing the beachfront protective structure on the Subject Properties or at another location that would and would not require a Goal 18 exception are the same and minor in nature. If a BPS is constructed, there will be the energy expended in its actual construction and periodic maintenance and monitoring. If the use is not approved, there may be energy costs in the cleanup of damaged residences and public facilities and services. The costs are no different whether the BPS is located along the subject property lots or along other similarly situated lots to the north.

EESE Conclusions:

As the analysis above demonstrates, the consequences that would result from the use at the proposed, appropriate site to provide protective benefits, are not significantly more adverse than would typically result from the same proposal being located in a different area that would or would not require a Goal 18, IM 2 or 5 exception. There are really only three differences between the proposed exception area and the other sites.

First, the proposed exception area is for a larger area than any individual property elsewhere. To afford the same area of protection, multiple property owners would need to join an application, as has been done here. The consequences of that are two-fold. While the environmental impact of building the beachfront protective structure at the Subject Properties is greater than for a single lot, that impact will be only temporary given the proposed BPS will be re-covered in sand, replanted and monitored. Ultimately, the long-term advantage is that an even greater area of foredune, beach grasses and shrubs and trees will be protected with the present application over potential other properties individually establishing individual BPS on a case by case basis. That is an environmental benefit that favors the proposal.

Second, is the fact that locating the beachfront protective structure at any other location would not protect the fifteen properties and the related public infrastructure thereon, which is the reason for the exception request.

Third, the only other potential location for the proposal would be west of the proposed location on the public beach. That too would require a goal exception and would have greater environmental impacts because it would affect beachgoers use of the beach. The proposed location is significantly better from all points of view including environmental ones.

The EESE analysis weighs in favor of locating the beachfront protective structure at the proposed location because the chosen site is not significantly more adverse than would result from locating it in another area that would also requires an exception.

**OAR 660-004-0020(2)(d) – Compatibility:**

**“(d) ‘The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.’ The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall 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. ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”**

The adjacent uses consist of similarly situated and zoned beachfront residential uses that are all in the urban unincorporated community boundary - residential uses eastward of those beachfront lots, the Shorewood RV Resort, Camp Magruder and the Barview Jetty County Park. The proposed BPS is designed to include an underground portion of the BPS that will be covered with sand, with the easterly portion rising out of the sand at a 1:1.5 slope creating a revetment no more than 3 feet above the existing ground level. All of the proposed revetment will be covered with sand and re-planted with native plantings that will reestablish natural shoreline vegetation. Based on the above, the proposed BPS will “be compatible with surrounding natural resources and resource management or production practices.” This is because once established, the BPS will ultimately blend into the shoreline of the Subject Properties, such that its appearance will be compatible with other existing shoreline vegetated areas of those uses north and south of the Subject Properties. The BPS will visually appear as a dune formation. Modeling of the proposed BPS in Applicants’ June 10, 2021 Submittal, Exhibit F shows that the proposed BPS will be nearly invisible from the beach/ocean.

Furthermore, the expert evidence in the record establishes that the BPS is designed not to have any adverse physical impacts on adjacent uses. It will not deflect wave energy to adjacent properties, nor will it cause an increase to the FEMA total water levels in the area.

The proposal is consistent with the reasons exception requirements set forth under OAR 660-004-0020.

The Subject Properties are entitled to a reasons exception under OAR 660-004-0020 and OAR 660-004-0022(11), the Goal 18-specific “reasons necessary” standards.

The other criteria for the reasons exception that uses the OAR 660-004-0022(11) “reasons necessary” justification for the OAR 660-004-0020(1) requirement are the same and are discussed below in the justification for the “catch-call” exception.

### C. “Catch All” Reasons Exception.

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

#### **Demonstrated Need Requirement:**

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

**“For uses not specifically provided for in this division, \* \* \*, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following: There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either [(A) and (B) follow].”**

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

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

LUBA unpacked the requirements of the standard in two recent LUBA cases where it explained that “the county must (1) identify one or more obligations under Goals 3 to 19 [or under its comprehensive plan implementing Goals 3-19], (2) explain why the county is at risk of failing to meet those obligations, and (3) explain why the proposed exception to the requirements of one goal \* \* \* will help the county maintain compliance with its other goal obligations.”



*Oregon Shores Conservation Coalition v. Coos County*, \_\_ Or LUBA \_\_, \*31 (LUBA No. 2020-002, May 4, 2021); *Confederated Tribes of Coos v. City of Coos Bay*, \_\_ Or LUBA \_\_, \*25 (LUBA No. 2020-012, May 4, 2021).

In *VinCEP*, LUBA also explained that the demonstrated need requirement is not to be read or applied in a draconian manner: the County need not be “between the devil and the deep blue sea” in order to identify a demonstrated need, meaning it does not have to be in the position of choosing between violating one goal requirement or another. 55 Or LUBA at 448; see also *Oregon Shores*, supra, at \*35 (demonstrated need must be “based on” requirements of Goals 3-19, which is a “much less onerous standard” than requiring that the need arise from noncompliance with a goal requirement). All the County must show is that it is in danger of violating one or more of its obligations found in the goals or in its comprehensive plan. The County cannot comply with its Goal 7 obligation that its Comprehensive Plan provide for protection of persons and property from natural hazards unless it approves the proposed BPS. The proposed Goal exception is a Comprehensive Plan amendment that is necessary to protect persons and property from natural hazards. Accordingly, it is necessary to adopt the proposed Plan amendment for the County to comply with Goal 7.

Below is a summary of the main points justifying the reasons exception, framed in the manner LUBA recently outlined in the two decisions (*Coos County* and *City of Coos Bay*) noted above.

(1) Identify obligations:

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

Goal 7’s purpose is to protect people and property from natural hazards. It requires local governments to adopt comprehensive plan provisions, to include policies and implementing measures to reduce the risk to people and property from natural hazards. Those hazards include coastal floods and coastal erosion. The proposal includes a requested Plan amendment (exception) so the County can protect the threatened life and property at issue here and so meet the County’s Goal 7 obligations.

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

- “1. Maintenance of existing vegetation in critical areas;
- “2. Rapid revegetation of exposed areas following construction;
- “3. The stabilization of shorelines and stream banks with vegetation and/or riprap;
- “4. Maintenance of riparian buffer strips;
- “\* \* \*
- “7. Set-back requirements for construction or structures near slope edge, stream banks, etc.[.]”. Comprehensive Plan, Goal 7, p. 7-19 to 7-20 (Emphasis supplied).

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

With respect to flooding, plan policy 2.5(e) provides: “where development within floodplains is allowed, the developer shall provide appropriate safeguards to insure public safety and protect individuals residing in the flood zone.” Those appropriate safeguards were imposed and performed. But despite best efforts, the behavior of the ocean changed and now the safeguards are gone or with respect to setting the houses at the eastward part of the Subject Properties ineffective to mitigate the hazard.

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

The County has implemented Goal 10 and determined that it is required to determine the housing needs in unincorporated areas of the County and to meet that need. Comprehensive Plan, Goal 10 Element, p. 30; p. 39. Housing policy 3.2 provides that, “Tillamook County will plan to meet housing needs by encouraging the availability of adequate numbers of housing units[.]” Goal 10 Element, p. 43. The County’s analysis of housing needs included addressing expected population growth and projected additional housing units by type for specific market areas, to include the Twin Rocks/Barview/Watseco unincorporated community. See, Goal 10 Element, Table 36 and Table 43. The County also adopted Policy 3.6, which provides: “Tillamook County encourages the use of planned developments in urban and rural areas in order to efficiently use land, provide public services efficiently, and to reduce the impact of residential development on natural resources.” It would be contrary to Goal 10’s command for the County to sit idly by and let land relied upon to deliver housing stock, to be washed away and into the ocean when mitigation is available and requested, as here.

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

further the development of a timely, orderly and efficient arrangement of public facilities and services” through a number of actions. Goal 11 Element, p. 11-40. The County would not meet its Goal 11 obligation for orderly and efficient arrangement of public facilities and services if it were to refuse to allow such public facilities and services to be destroyed by wave action, when a nonharmful mitigation measure is available as here and proposed.

Goal 14’s purpose is “To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” Its provisions discuss land needs and how, among other things, unincorporated communities help meet those needs. To implement Goal 14, the County adopted Goal 14 Element Policy 3.8, which mandated establishing community growth boundaries around unincorporated communities and expressly named Twin Rocks/Barview/Watseco as one of those communities. Looking at the Twin Rocks/Barview community directly, the plan states there is a “[d]emonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals”, to identify a need to accommodate 130 additional housing units by the year 2000, and that the community will accommodate a total of 320 dwellings. Goal 10 Element, p. 14-44. Other provisions concerning the Twin Rocks/Barview/Watseco urban unincorporated community include the orderly and economic provision of public facilities and services and committing the lands within the community growth boundary to development. Goal 10 Element, p. 14-45. It is contrary to Goal 14 to allow an acknowledged urban community to be wiped out by a natural hazard when, as here, there is mitigation available to protect it, that harms no one.

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

Each of the above goals provides a reason for why the Board should approve the requested goal exception.

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

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

Not granting the requested plan amendment (exception) will put the County at risk of failing to meet its obligation under Goal 7 to protect people and property from known natural hazards. Goal 7 requires the County to adopt comprehensive plan provisions to reduce the risk to people and property from such hazards. Not approving the exception means that the County will not comply with Goal 7 and will also fail to comply with its adopted and acknowledged Goal 7 remedial action measures which includes utilizing shoreline stabilization measures such as the one proposed here in implementation of Goal 7's requirements. The requirements of Goal 7 are not met by allowing existing residentially designated and developed land to be wiped out by known hazards that can be prevented by the proposed BPS. The Applicants analogize the situation to be as if a city were to decide not to send firetrucks to put out fires at existing development that was appropriately approved under all standards at the time, even though the firetrucks are available for use.

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

Goal 11 and the County's Plan require that the County provide for an "orderly and efficient arrangement of public facilities and services" to support urban levels of development in this area. There is nothing orderly or efficient about allowing public facilities and services to be destroyed when that infrastructure can be readily protected from a known natural hazard, the effects of which can be readily prevented, and at no cost to the taxpayer. In response to opponents who argue that one can simply turn a few switches or levers to halt the flow of water and sewer services to the area and protect the greater system, those persons fail to explain how the unnecessary sacrifice of public investment is "efficient" or how the provision of public facilities to an area and then abandoning it is "orderly." It is not and failing to approve the proposed BPS causes the County to be at risk of failing to meet Goal 11.

Goal 14 requires the County to "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." The acknowledged urban unincorporated community boundary functions as a UGB and must be protected as any urban area is required to be protected under Goal 14. Failing to approve the requested exception will mean that the County risks failing to comply with its Goal 14 obligation

to accommodate its urban population and provide for a “livable community” in the urban unincorporated Watseco Community.

In some ways, this argument duplicates the Goal 10 housing argument above, but LUBA has explained that nothing precludes the same reason from being used with multiple goals. As explained above, the County’s Goal 14 element has committed the Twin Rocks/Barview/Watseco area to urban levels of development as an urban unincorporated community under state rules that allow the same and the County has decided that community is necessary to enable the County to meet its identified and acknowledged housing needs. The area, to include the Subject Properties, are committed to urban residential development, demands that the County protect the urban development allowed there so that the area stays “livable” and safe. Failure to approve the proposed BPS means that the County is at risk of failing to perform its Goal 14 obligations.

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

Not approving the requested exception places the County at risk of failing to meet its identified obligations under the Goals and implementing Comprehensive Plan provisions discussed above. Under the state’s rules, this compels approval.

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

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

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

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

Last, approval of the exception will help the County maintain compliance with the second of Goal 18's purposes – to reduce the hazard to human life or property – to properties that were established and developed consistent with Goal 18's locational and development restrictions; but where physical changes driven by the interface of the unique positioning of the jetties and other factors have conspired to cause significant erosion.

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

One final point is worth noting. The language used by OAR 660-004-0022(1) immediately preceding the demonstrating need requirement states: "Such reasons include but are not limited to the following \* \* \*." In other words, by the rule's express terms, the reasons that justify a reasons exception are not limited solely to those based on requirements imposed by Goals 3 to 19. Other reasons may be used to justify such an exception. Here, aside of any express goal requirements, the fact that the subdivisions were approved in a manner consistent with Goal 18's locational requirements for appropriate development, to include the incorporation of naturally vegetated buffers, and that events have taken such an unexpected and dramatic turn-around from 70 years of beach progradation (1,000 feet from 1917 to 1994) to rapid retrograding in recent times, are reasons sufficient to justify why the Goal 18 policy for prohibiting beachfront protective structures should not apply in this instance. Property owners who comply with the limitations imposed by land use processes have every right to receive the protections offered by those same processes and the goals that impose not only restrictions, but also offer protections.

**Locational Requirement:**

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

Despite the truism that the only location where a BPS would in fact protect the Subject Properties is between the ocean and the structures to be protected, some opponents have claimed otherwise and that other locations should be explored, and that Applicants should then explain why those locations will not satisfy the need. DLCDC's determination in the Lincoln County matter, included with Applicants' June 10, 2021 Second Open Record Submittal, properly recognized and accepted that Applicants' argument that beachfront protective structures must be

located to prevent the hazard and that, on the ocean shore, that means between the shoreline and the structure to be protected.

The proposal meets this locational requirement, and the Board should reject arguments that other locations must be explored or even if they were explored, could provide the necessary protection.

“Unique” or “Exceptional” Circumstances:

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

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

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

Regardless, the Board should find that the situation here is unique and does not establish a rule of general applicability and so meets this “LUBA-Law” requirement.

The unique facts here are that: (1) an at least 70-year history of beach prograding prior to subdivision and urban community recognition and approval, was followed by the unanticipated and extreme reversal to beach retrograding that now significantly threatens the Subject Properties; (2) the Rockaway subregion of the littoral cell is uniquely affected by manmade jetties that cabin it in a manner that is not common to the entire coast or indeed the rest of the littoral cell; (3) the severe and remarkable retrograding in the littoral cell is primarily in the Rockaway subregion where the Subject Properties are located and is unusual because the rest of the littoral cell is still in the main depositing sand; (4) the Subject Properties were approved for residential development at a time and place in compliance with Goal 18 and where Goal 18 expressly states is safe and “appropriate” for residential development and with a large vegetated buffer that separated the approved residential development from the ocean and areas of ocean undercutting/wave overtopping; (5) the Subject Properties are located in an unincorporated urban community that is acknowledged by DLCD as an appropriate place for urban level development and the governing body has so decided the Subject Properties and their urban community are appropriate to meet the County’s urban residential development needs.

This is not the result of the normal ocean cycles of erosion (which the Chris Bahner, May 27, 2017, Technical Memorandum makes clear), or the result of sea level rise that will affect all

properties on the coast as some argue. This is a unique set of circumstances where the residential development was approved during nearly 70 years of prograding consistent with all conceivable planning rules and then suddenly the ocean reverses course due to the unique interplay of man-made jetties placed in close proximity to one another and ocean forces. The Applicants are unaware of any similarly situated properties along Oregon's coast and nobody has identified any other properties that make the same case as is presented here.

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

#### The Subject Properties are not Like Neskowin

As explained above, the Subject Properties are located within a littoral cell subregion that is unique to the Oregon Coast. The Rockaway subregion is the only littoral subregion on the Oregon Coast that is bounded by close jetty structures that have a unique influence on changes to the shoreline within the subregion. West Consultants' Memo, Exhibit 4, Figure 5 shows all of the littoral cells on the Oregon Coast and how the Rockaway subregion is the only littoral cell subregion bounded by two jetties that are close in proximity.

During the July 15, 2021 Planning Commission meeting, comments were made that the erosion the Subject Properties are experiencing is not unique to the Oregon Coast with specific reference to the erosion occurring at Neskowin. Respectfully, the situation here is not like the situation at Neskowin. There are no jetty structures within the Neskowin littoral subregion. As West Consultants explains in Exhibit 4, the erosion rate of the shoreline at Neskowin is actually less than the erosion rate of the Subject Properties.

Moreover, unlike the Subject Properties, the entire community of Neskowin already has an existing exception to Goal 18. The situation here is not like Neskowin.

The proposal meets the standards for a "catch-all" reasons exception under OAR 660-004-0022(1).

#### **D. The Subject Properties are Entitled to a Committed Exception to Goal 18.**

OAR 660-004-0028 and ORS 197.732(2)(b), Goal 2, Part II(b), provide the standards for a committed exception and as noted above, allows the County to adopt a committed exception when land "is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]"

Whether land is irrevocably committed "depends on the relationship between the exception area and the lands adjacent to it", considering the characteristics of the exception area, adjacent lands, the relationship between the two, and other relevant factors. OAR 660-004-



0028(2), (3) and (6). The Oregon Supreme Court has explained that under the OAR 660-004-0028(6) factors, all that is required is a demonstration that “one or more” of them (but not all) are met for deciding if uses allowed by the applicable goal are impracticable on the subject land and that among the factors “parcel size and ownership patterns seem the most important.” *1000 Friends, supra*, at 483. In other words, not every OAR 660-004-0028(6) factor need be met. Moreover, the County need not demonstrate that every use allowed by the goal is “impossible,” but must demonstrate that the uses allowed by Goal 18, is “impracticable”. OAR 660-004-0028(3). A committed exception is “based on facts illustrating how past development has cast a mold for future uses.” *1000 Friends of Oregon v. LCDC*, 301 Or 447, 501 (1986) (quoting *Halverson v. Lincoln County*, 14 Or LUBA 26, 31 (1985)).

1. The uses to which the Subject Properties are irrevocably committed that are not allowed by the applicable goal.

The use that the applicable goal (Goal 18, IM 2) does not allow without an exception is residential development on a dune subject to wave overtopping or undercutting. In fact, there is no dispute that residential development on a dune subject to wave overtopping/undercutting is prohibited under Goal 18, IM 2. Residential development is only approved on the subject properties on a dune that is not eroding.

The other use that the applicable goal does not allow is that the use of shoreline protection is prohibited under Goal 18, IM 5 without a goal exception to IM 2 or without a Goal 18, IM 5 exception standing alone.

This Application seeks an exception to Goal 18, IM 2, so that Goal 18, IM 5 allows BPS for the committed residential development.

This is also an exception just to Goal 18, IM 5 to allow the proposed BPS regardless of the approval of the Goal 18, IM 2 exception.

There are two committed exceptions herein that the Board should approve (to Goal 18, IM 2 and Goal 18 IM 5), in order to maximize the defensibility of the approval of the proposed BPS.

2. Required findings.

OAR 660-004-0028(6) specifies the findings for a committed exception must address the following factors, although as the Oregon Supreme Court explained, not all of the factors need be complied with:

“(a) Existing adjacent uses;

“(b) Existing public facilities and services (water and sewer lines, etc.);

“(c) Parcel size and ownership patterns of the exception area and adjacent lands:

“(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

“(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

“(d) Neighborhood and regional characteristics;

“(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

“(f) Physical development according to OAR 660-004-0025; and

“(g) Other relevant factors.

“(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.”

Each of these factors is discussed separately below.

At the outset, the Applicants observe that the Oregon Supreme Court has made clear that each type of exception must be considered on its own merits – giving the example that a Goal 3 exception does not commit property to Goal 14 urban uses. *1000 Friends of Oregon, supra*, at 487. Similarly, here the only relevant consideration is the proposal for an exception to allow residential development on a dune subject to wave overtopping/undercutting and an exception to allow BPS on the Subject Properties. Therefore, the fact that the Subject Properties are acknowledged as appropriate development under Goal 18 for urban residential use on the idea the properties are not on an eroding dune, does not foreclose the County from granting an exception to Goal 18, IM 2 for the committed residential development that is now on a dune subject to erosion - wave overtopping and undercutting – which is a type of residential use that Goal 18 IM 2 prohibits. It also does not foreclose an exception to Goal 18, IM 5 that prohibits BPS on property not “developed” on January 1, 1977, and that does not have a Goal 18, IM 2 exception.

(a) **Existing adjacent uses**

Existing adjacent uses are small lot residential development (homes and garages, decks and other typical residential features). There are no resource lands on any lot that surrounds the Subject Properties, and none are zoned for resource uses. The abutting beach is a resource, but it is wholly unaffected by the proposal.

Rather, other than the beach, all adjacent properties are zoned for urban residential use. The Shorewood RV Park has BPS and the most northern lot in the George Shand Tract that adjoins the Shorewood RV Park is entitled to BPS without a goal exception – which is a fact no one disputes. This is because there was a dwelling on that George Shand lot served by Watseco Water District on January 1, 1977, and the RV Parks was similarly developed on that date. Goal 18 IM 5 allows BPS on residentially developed lots, even if subject to wave overtopping and undercutting, if they were developed on January 1, 1977.

To the south of the Pine Beach Subdivision is the northern limit of Camp Magruder, a United Methodist camp with scattered lodges and cabins, a camp store and other camp features. All of Camp Magruder is zoned Recreation Management, which is likewise not zoned for

resource uses. Further south still is the Barview Jetty park. All of these areas are in the acknowledged urban unincorporated Watseco Community.

**(b) Existing public facilities and services (water and sewer lines, etc.).**

All of the Subject Properties are served by public water, sewer, electricity, gas, telephone and a network of roads.

**(c) Parcel size and ownership patterns of the exception area and adjacent lands.**

The rule breaks this analysis into several parts that are discussed below in the order presented in the rule.

**(c)(A) part 1: Analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision.**

The existing development patterns came about long ago when the towns of Barview, Twin Rocks and Watseco were established. *See* Application, Exhibit T, p. 8 (Barview/Watseco/Twin Rocks Community Plan). The subject George Shand Tracts were established by subdivision in 1950 and the tracts were served by the Watseco Water District. The George Shand Tracts were when recorded and are now a subdivision. The Board should reject DLCD's claim that merely calling a subdivision "tracts" changed or changes the nature of a land division that met and meets the definition of a subdivision.

The Pine Beach subdivision was first platted in 1932 and replatted in 1994 and is served by the successor to the Watseco Water District. Both are served by the Twin Rocks sewer district and a network of roads. Early in the County's planning program these areas were subjected to Goal 3 and 4 exceptions, reflecting that they are in small lot subdivisions with water and sewer service. Eventually, the County also took a Goal 17 exception for these areas. In 2001, The County established and DLCD/LCDC acknowledged the urban unincorporated community of Twin Rocks/Barview/Watseco. At the time that the Pine Beach subdivision replat was approved by Tillamook County, the dune on which it was situated was not subject to wave overtopping or undercutting and so the replat was approved under the "appropriate development" prong of Goal 18. The subject properties are necessarily approved under the appropriate development prong of Goal 18, given their extensive acknowledged urban planning program. Thus, there was no need for findings "against" Goal 18 at the time of subdivision approval.

**(c)(A) part 2: Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.**

The George Shand Tracts were approved as a subdivision without the application of the goals. Rather, that subdivision was approved long before the statewide planning program went into effect. However, the lots are all physically improved and the lots around those tracts on all sides (except the ocean side) are all physically developed with residential uses, with water and sewer and other underground public infrastructure. There is no possibility of any of these lots being suitable for resource use. They are planned, zoned and committed to residential use.

The Pine Beach Replat was approved under all goals including Goal 18. This factor is inapplicable to those lots.

(c)(A) part 3: Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

As noted elsewhere, the “applicable goal” here is Goal 18, IM 2 and 5 that does not allow BPS on lots on a dune subject to wave overtopping and undercutting. The Applicants do not rely upon the Shorewood RV Park’s approved BPS to justify this exception. That is the only other property that has the particular use not allowed by the applicable goal being sought here.

(c)(B) part 1: Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land’s actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment.

All the existing lots and contiguous ownerships are considered together.

(c)(B) part 2: Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.

(c)(B) part 3: Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

All of the existing residentially zoned lots in the Twin Rocks/Barview/Watseco Community are small lots are clustered in a large group – an acknowledged urban unincorporated community.

**(d) Neighborhood and regional characteristics.**

The Subject Properties are within the acknowledged urban unincorporated community of Twin Rocks/Barview/Watseco. The community is characterized by urban levels of development, primarily residential development. The community is acknowledged to be consistent with LCDC's definition of "urban unincorporated community" at OAR 660-022-0010(9) which is defined to include at least 150 permanent residential dwelling units, contain a mixture of land uses, including three or more public, commercial or industrial land uses, and is served by community water and sewer systems.

The neighborhood is a mix of single-family dwelling beachfront lots and the 105-space and two-condo Shorewood RV Park to the north, and Camp Magruder, United Methodist church camp with scattered lodges and cabins, a camp store and other camp features, to the south. The neighborhood's dwellings are served by a local street network that provides a loop road through smaller, platted subdivisions or short, public streets that all flow towards Old Pacific Highway, which acts as a collector street to funnel all traffic out to a single intersect with Highway 101.

Regionally, the area consists of a series of coastal towns north of the Subject Properties along Highway 101, (e.g. Rockaway Beach, Wheeler, Nehalem, Manzanita), and south, (Garibaldi, Tillamook, Pacific City). Highway 101 is the main access up and down the Oregon coast. Some of the larger coastal towns provide a range of services to the local and frequent visitor populations, (grocery stores, banks, County offices, motels, restaurants, gas stations, marinas), whereas smaller communities, such as Twin Rocks/Barview/Watseco, Bay City and Netarts, provide only limited local and visitor services. The region is also characterized by clusters of small subdivisions, like the Subject Properties, containing beachfront lots and lots eastward of the beachfront interspersed around and between the above-mentioned large and smaller coastal towns.

**(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area.**

There are no "adjacent resource lands." All of the land immediately north and east of the Subject Properties is zoned CR-2, (Community Medium Residential), which is a non-resource residential zone. Immediately south of the Subject Properties are Camp Magruder and the Barview Jetty State Park which are zoned RM, (Recreational Management), which is not a resource zone. The closest resource-zoned land to the exception area is forest-zoned land to the east. That resource zone acreage is approximately 800 feet east of the Subject Properties with Smith Lake and Highway 101 physically separating that resource zone from the Subject Properties.

If the ocean, beaches and dunes west of the Subject Properties are considered the "resource land", nothing separates the exception area from the adjacent beaches and dunes to

the north and south of the exception area. As discussed above, the purpose of the exception is to protect the Subject Properties, the associated public infrastructure to the east of the ocean, beach and dunes. The proposed exception to allow the proposed BPS will not adversely impact the ocean or the beaches and dunes on adjacent lands.

**(f) Physical development according to OAR 660-004-0025.**

OAR 660-004-0025 sets forth the requirements for a “physically developed exception” under ORS 197.732(2)(a), Goal 2, Part II(a). This reference in the requirements for a committed exception, cannot and does not mean a built/developed exception is required for a “committed” exception. Rather, this factor speaks to an analysis of whether there are relevant areas that are already physically developed so that the land is no longer available for the uses that are allowed by the applicable goal and how such relates to the committed exception. This requires an analysis of whether there are relevant properties that are physically developed with uses not allowed by the goal (here, residential development on an eroding dune). As explained by the Oregon Supreme Court in *1000 Friends*, not all factors need to be demonstrated for the County to approve a committed exception. The Board need not rely upon this factor to approve the requested committed exception. Alternatively, the Board should find that this factor leads to approval of the requested committed exception to Goal 18, IM 2 and IM 5, as explained next.

The referenced rule speaks to physical development with uses not allowed by the applicable goal in the area. There is significant residential development on the Subject Properties of the type that Goal 18 does not allow, on an eroding dune. The Board should approve a “built/developed” exception as explained in the next section of this letter. Eleven of the Subject Properties are fully physically developed with residential uses on a dune subject to wave overtopping and undercutting and four vacant lots in the Subject Properties are developed with public infrastructure and are served by a network of roads, under an acknowledged planning program that authorizes urban residential uses of those lots. The public infrastructure stubbed to and that serves the four vacant lots is physical development for residential use on a dune that is now subject to wave overtopping and undercutting. As a result, the entirety of the Subject Properties is physically developed with a type of residential use that is on a dune subject to wave overtopping and undercutting that is not allowed by Goal 18, IM 2 but that it is no longer possible to prohibit or extinguish residential uses on these lots. Rather, as explained above, the County has obligations under both Goal 7 (Natural Hazards) and Goal 18, to protect persons and this property from natural hazards. Similarly, the area’s commitment to residential development means it is now impractical as well as not possible for the County as a responsible governmental agent to refuse to approve BPS to protect those properties from the significant natural hazard that now threatens them. Thus, regardless of the exception to Goal 18, IM 2, it is appropriate for the County to approve an exception to Goal 18, IM 5 to allow the proposed BPS.

DLCD is mistaken that no committed exception is allowed for the reason that agency posits (*viz.*), that the Subject Properties’ residential uses are acknowledged to comply with Goal 18. It is true that the Subject Properties’ residential development is acknowledged to comply with Goal 18. As such, it was acknowledged under the “appropriate development” prong of

Goal 18. For its position, DLCD presumably relies upon OAR 660-004-0025(2) which states “Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.”

DLCD does not claim that any part of Goal 18 allows residential development on a dune subject to wave overtopping/undercutting. It does not.

DLCD does not claim that the Subject Properties are entitled to BPS without a goal exception. They are not.

DLCD simply asserts that having been approved as appropriate residential development under Goal 18 before the dune started to erode and subject those properties to natural hazards, somehow means Goal 18 IM 2 allows residential development on a dune subject to wave overtopping and undercutting. But that certainly is not what Goal 18 says; Goal 18 still says that residential development is prohibited on an eroding dune.

DLCD conflates the County’s obligation under principles of vested rights and unlawful collateral attack of previous final land use decisions with the requirements of Goal 18. There is simply nothing in Goal 18 that says residential development is allowed on a dune subject to overtopping and undercutting or that says that the Subject Properties are entitled to BPS. DLCD actually argues that the Subject Properties are not authorized to have BPS, which is a type of use, under Goal 18, IM 5. As such, there really can be no dispute that the proposed use is allowed by the applicable goal.

As relevant here, Goal 18, IM 5 only allows BPS for that type of residential development, without an exception.<sup>5</sup> That means that since Goal 18, IM 5 expressly refers to and contemplates the possibility of Goal 18, IM 2 exceptions and that in that instance Goal 18, IM 5 allows BPS, it must be possible to commit an area to a type of residential development that is not authorized by Goal 18, IM 2 (viz.) residential development on a dune subject to wave overtopping/undercutting.

There is no serious dispute in this record that the Subject Properties are committed to residential development of a type that the goal does not allow. With respect to Goal 18 (1) Goal 18, IM 2 only allows residential development on a dune not subject to wave overtopping/undercutting, (2) that is a type of residential development, (3) Goal 18, IM 5 only allows BPS to protect that type of residential development if it has a goal exception, (4) the Subject Properties are committed to different type of residential development that Goal 18, IM 2 prohibits and that Goal 18, IM 5 does not allow to be protected with BPS, and (5) the Subject Properties are committed to residential development on the dune they are on – now that it has started to erode and so they meet the standards for a committed exception to Goal 18 IM 2 to

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<sup>5</sup> It also allows BPS for properties that were developed on January 1, 1977. The Planning Commission previously determined that it agrees with planning staff that the properties were not “developed” on January 1, 1977.



allow the requested exception and to Goal 18, IM 5 to protect their committed type of residential development, with BPS. It is not possible to claim that BPS to protect residential development on an eroding dune is allowed under Goal 18 on the Subject Properties or anywhere else.

- (7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos.

The setting for the application of the applicable factors set forth in section (6) of this rule is depicted on the image below.

**Proposed Exception Area and Adjacent Lands Map**



Application, Exhibit R.

Applying these factors, the Subject Properties qualify for a committed exception to Goal 18, IM 2 and for a committed exception to Goal 18, IM 5.

In sum, the Subject Properties are situated within a planned and acknowledged urban unincorporated community, are planned and zoned for medium density residential development, have acknowledged exceptions to Goals 3, 4, 11, 14 and 17 and are acknowledged to comply with Goal 18 under the County's acknowledged, existing planning program for this unincorporated urban community as "appropriate development." Since then, the dune on which the Subject Properties are situated has become one subject to wave overtopping and undercutting. Goal 18, IM 2 prohibits that type of residential development – residential development on a dune subject to wave overtopping and undercutting. However, the existing and acknowledged urban planning program commits the Subject Properties, both the developed and the vacant lots, to urban residential development of that type that Goal 18 prohibits. This is truly undeniable.

That means that a Goal exception can and should be approved to allow that residential development, so that it can then qualify for BPS. Relatedly, Goal 18, IM 5 prohibits BPS on property that is on an eroding dune and that was not developed on January 1, 1977. An exception is also appropriate to that prohibition that would not otherwise allow the proposed BPS on the Subject Properties.

The conclusion to be drawn from the facts here is that the mold has been cast – the existing and acknowledged planning program has committed the Subject Properties to urban residential development that, because of physical changes to the type of dune on which they are located, is a type of residential development that Goal 18 does not allow and that the goal does not allow to be protected with BPS without this exception. Therefore, the standards for a Goal 18, IM 2 and IM 5 exception are met.

#### **E. The Subject Properties are Entitled to a Built/Developed Exception to Goal 18.**

OAR 660-004-0025 and ORS 197.732(2)(a), Goal 2, Part II(a), provides the standards for a built/developed exception when the land subject to the exception "is physically developed to the extent that it is no longer available for uses allowed by the applicable goal."

The purpose of a built/developed exception is "to recognize and allow continuation of existing types of development in the exception area." OAR 660-004-0018(1). The proposal to grant the requested built/developed exception, meets this purpose. OAR 660-004-0025 provides the standards for a built/developed exception and allows the County to adopt an exception to a goal when the land subject to the exception is "physically developed to the extent that it is no longer available for uses allowed by the applicable goal." Whether land has been physically developed with uses not allowed by the applicable goal depends on the situation at the exception site. OAR 660-004-0025(2).

1. Required findings.

OAR 660-004-0025 specifies the required findings for a built/developed exception requiring that it address the following:

**“(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).<sup>6</sup>”**

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

The Subject Properties are developed with urban residential uses served by urban public facilities and services. Eleven of the lots on the Subject Properties are fully developed with residential uses (houses and garages), served by public water, sewer, electricity, gas and telephone services, and a road network. Application, Exhibit A in the record shows these eleven lots. Four are vacant lots served by public water, sewer, electricity, gas and telephone services, and a road network. Application, Exhibit A in the record also shows these four vacant lots. The Subject Properties – both the fully developed lots and the vacant lots that are fully served by public water, sewer, electricity, gas and telephone services, and a road network – are physically developed to the extent that they are no longer available for uses allowed by Goal 18.

The Subject Properties are no longer available to be developed for the resource uses allowed by Goal 18 and are no longer available for residential development that is not on an eroding dune. The dune is now subject to overtopping and undercutting. Accordingly, the Subject Properties are physically developed either fully with a type of residential development (houses, garages, public facilities and services and a network of roads) that is on a dune that is now subject to wave overtopping/undercutting or as to the otherwise vacant lots, they are similarly developed with the entire suite of urban public facilities and services for a type of residential development that is not allowed by Goal 18 – they are on a dune that is now subject to wave overtopping/undercutting. The Subject Properties are not available for no development or

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<sup>6</sup> OAR 660-004-0000(1) provides that other rules that apply to specific exceptions, not proposed here, are provided in other chapters.

for residential development that is not on an eroding dune. There is no room on any of the Subject Properties to move houses back on any lot to be out of harm's way. The entirety of the Subject Properties are subject to wave overtopping and undercutting.

Accordingly, the eleven lots that are built with residential development of houses garages and infrastructure and the four vacant lots that are fully served by public water, sewer, electricity, gas and telephone services, and a road network, are entitled to a "built" exception to protect those residential uses with the proposed BPS.

As explained above, notwithstanding that the Subject Properties' residential development is acknowledged to comply with Goal 18, it is of a type of residential development that due to physical environmental changes, is now a type of residential development that Goal 18 does not allow and that Goal 18 does not allow to be protected with BPS. OAR 660-004-0025(2) states "Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception." However, as explained above, that rule does not prohibit the exceptions here. This is because, Goal 18 does not allow residential development of a type that is on an eroding dune. With respect to Goal 18 that (1) the Subject Properties are now committed to residential development in a location that Goal 18 IM 2 prohibits, and (2) now that the Subject Properties are threatened by natural hazards, BPS is prohibited without a Goal 18 exception that allows it.

The Applicants understand several opponents to argue that the Subject Properties are not entitled to a built/developed exception primarily because their residential use is allowed under a planning program that is acknowledged to comply with Goal 18. They then argue that the Subject Properties do not have an exception to Goal 18, IM 2 and so are not allowed residential development on the dune that is now subject to wave overtopping/undercutting. And they argue the Subject Properties can never get a built/developed exception either. The Board should reject the claim that lawful development can never take an exception to Goal 18, IM 2, when physical environmental changes change the approved residential development from being of a type that allowed by the applicable goal, to one that is not, as here.

Opponents also argue that an exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site.

First, the fact that an exception to a goal does not "ensure" compliance with other goals, is not the same as saying that an existing exception can never form the basis for another exception. As explained elsewhere the existing goal exceptions that formed the basis for the acknowledged urban planning program that governs development of the Subject Properties also establish the commitment of the Subject Properties to the same uses allowed by other goal exceptions notwithstanding that the dune has started eroding.

Here, we are talking about the same uses, on the same properties, and the same policy considerations that drove the previous exceptions that allowed the residential development and

urban facilities and services to serve them on the Subject Properties, in the first place. The only new factor was introduced by a natural hazard that makes the previously approved development unlawful under the applicable goal. In order to protect that property from such natural hazards they are entitled to take the requested goal exception. There is no policy reason that the existing goal exceptions for residential development do not also support the proposed exception for that residential development on the dune now that has become subject to wave overtopping and undercutting.

Second, regardless, the Applicants are not justifying a built/developed exception on any of the Subject Properties' the existing exceptions to Goals 3, 4, 11, 14 and 17. Rather, the justification is based in part on the fact that Subject Properties are in an acknowledged urban unincorporated community, with an acknowledged medium density residential zone and plan designation that has allowed the Subject Properties to be built/developed with uses that require BPS that is not allowed by Goal 18, IM 2. It is the existing and acknowledged urban planning program that commits the Subject Properties to urban residential development on the foredune that has become subject to ocean undercutting and wave overtopping.

Opponents suggest that a built/developed exception must be limited to the footprint of the existing buildings, without pointing to any standard that imposes that limitation. The Applicants are aware of no law that says a built/committed exception is limited to a particular footprint, opponents do not cite to one. The Board should reject that claim. No purpose would be served by a built/committed exception if it only authorized the particular physical development that demonstrates entitlement to a built exception. A built/developed exception says that property is physically developed to the extent that uses allowed by the applicable goal are no longer possible. Things like a fence or a garage or BPS, as here, can be authorized to be constructed to support development supporting a built/committed exception. A built/developed exception applies to each of the Subject Properties' lots and is not limited to the particular development that formed or forms the basis for the exception.

Last, opponents argue that alternatives must be explored, such as moving the homes to upland properties or putting them on stilts. Oregon Shores fails to cite a standard that requires consideration of alternatives of this type or that requires moving or putting on stilts existing structures for a built/developed exception. The Board should find that there is none. Oregon Shores conflates the built/developed exception standards with the standards that apply to particular "reasons exceptions" in OAR 660-004-0020 and seeks to impose the requirement in OAR 660-004-0020(2)(b)(B) for an alternative areas analysis to justify a reasons exception to a built/developed exception.<sup>7</sup> As was made clear by the Oregon Supreme Court in *1000 Friends*, this and other reasons exception standards are inapplicable to a built/developed exception. There

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<sup>7</sup> As explained above, the "alternatives" analysis required by OAR 660-004-0020(2)(b)(B) is an analysis of possible alternative *areas* considered for a use that do not require an exception and does not require an analysis of alternative *methods* for developing a specific use that requires an exception.

is no need for any alternative analyses for a built/developed (or committed) exception. In any event, the Applicants' expert prepared an alternative methods analysis and the findings for TCLUO 3.530(4)(a)(4)(c)(2) which discuss that analysis, are herein incorporated. And there is no dispute in this record that there is no part of the Subject Properties out of harms way so moving houses will make no difference. And putting residential development on stilts does not stop the hazard, it just ensures that residents at the time of natural disaster are stranded and still in danger. The only way to protect the people and property at issue is the proposed BPS.

The Applicants have demonstrated that the proposal complies with the requirements for a built/developed exception to Goal 18 to authorize the proposed BPS on the Subject Properties.

### **III. Findings in the Alternative Only**

In the alternative only and without waiving their position that an exception to Goal 18 is required to allow the proposed BPS, the Applicants urge the Board to make the following alternative findings as a precaution. The Board should find, in the alternative only, that the proposed beachfront protective structure is allowed because the Subject Properties have existing exceptions that allows residential development on a dune that is now subject to ocean undercutting and wave overtopping.

The proposed beachfront protective structure is allowed because the Subject Properties have an existing committed exception that allows residential development on a dune that is now subject to ocean undercutting and wave overtopping. In other words, the Subject Properties have an existing exception described by Goal 18, IM 5 to the prohibition in Goal 18, IM 2 on residential development on an eroding dune.

Again, Goal 18, IM 5 provides:

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

In turn, “(2) above”, which refers to Goal 18, IM 2, provides:

“Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.”

The Subject Properties, and the public infrastructure and road system that serves them, are all and long have been urban residential development on a dune. The Subject Properties are subject to several existing statewide planning goal exceptions that allow that residential development, on that dune.

At the time the Subject Properties were approved, those dunes were not subject to ocean undercutting or wave overtopping. Now they are.

The Subject Properties existing exceptions that allow the residential development to be exactly where it is, are also now then exceptions that allow them to still be there now that the erosive patterns in the subregion of the littoral cell in which they are located, have changed and the dune is now subject to overtopping/undercutting. This is because the existing goal exception allows residential development on dunes that are now subject to such ocean undercutting or wave overtopping.

Goal 18, IM 5 expressly allows shoreline protection to be established on property if a goal exception allows residential development on a dune with such characteristics. Therefore, it seems tautological that the existing exception that applies to the Subject Properties is an exception to the prohibition that otherwise applies (viz.) the prohibition on residential development on a dune subject to ocean undercutting or wave overtopping. Accordingly, since the Subject Properties already have a Goal 18 exception that allows their residential development on a dune subject to overtopping and undercutting, they have a right to shoreline protection. Although the Subject Properties' existing goal exception does not expressly reference Goal 18, it need not do so. Nothing says that an exception allowing residential development on a dune with overtopping and undercutting characteristics, as here, can only be deemed an exception to Goal 18's prohibition on such development if it uses magic words specifically identifying the goal to which it applies. What is legally significant is the substance, not the title, of the particular exception. *See South of Sunnyside Neigh. League v. Clackamas County*, 280 Or 3, 21 (1977) ("No particular form is required, and no magic words need be employed" for findings supporting plan amendments.). What is legally significant here is that the exception that applies to the Subject Properties allows residential development on the dune on which they are situated which is now subject to ocean undercutting and wave overtopping.

The Board should find, in the alternative, that the Subject Properties have an existing exception to Goal 18, IM 2, which means that they are eligible for the proposed BPS per the express terms of Goal 18, IM 5.

#### IV. Comprehensive Plan Amendment.

TCLUO 9.030 provides procedures and criteria for a comprehensive plan text amendment. TCLUO 9.030(2) provides:

“(2) The applicant or, if County initiated, the Department shall prepare an analysis of the proposed AMENDMENT, addressing such issues as the intent of the provisions being amended; the effect on land use patterns in the County; the effect on the productivity of resource lands in the County; administration and enforcement; and the benefits or costs to Departmental resources resulting from the proposed text.”

The purpose of the exception to Goal 18 Implementation Measures 2 and 5 is to allow the county to approve the requested beachfront protective structure at a location that all evidence at the time of development, thought would never be necessary, but is now necessary to protect nearly built-out subdivisions, established public water and sewer facilities, and street infrastructure. The proposal will not have any effect on land use patterns in the County and will only protect existing development and infrastructure in the identified location. As the evidence in the record demonstrates, the requested BPS location is not on, adjacent to or near any resource land. Consequently, approval of the proposal will not affect the productivity of such lands.

The monitoring and maintenance of the proposed beachfront protective structure will be borne by the residents of the subdivisions, who will be the ones who suffer the adverse impacts if such monitoring and maintenance is not carried out throughout the life of the structure. There will be no continuing costs to the County following the cost of reviewing and approving the application, for which the Applicants have paid application fees. Among others, benefits to the County generally from approval here is that the beachfront protective structure will also protect existing urban public facilities; will enable the continuation of tax revenues from the Subject Properties, and will avoid the need to expend significant funds to respond to the emergency of homes and potentially people and their domestic pets being washed out to sea.

TCLUO 9.030(3) provides criteria for Planning Commission review and recommendation, and Board approval, of an ordinance amending the Comprehensive Plan. Those criteria are as follows:

**“(a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;”**

ORS 197.175(2)(a) also requires comprehensive plan amendments to comply with the statewide planning goals. The proposed amendment adopting an exception to Goal 18, IM 2 and IM 5, for the Subject Properties complies with all applicable statewide planning goals and relevant OARs.



The following demonstrates state goal compliance.

#### Goal 1 – Citizen Involvement

*“To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.”*

Goal 1 calls for the opportunity for citizens to be involved in all phases of the planning process. The application has been and will continue to be processed in accordance with the County’s acknowledged land use regulations and procedures, which will provide an opportunity for public participation in this quasi-judicial proceeding. The proposal is consistent with Goal 1.

#### Goal 2 – Land Use Planning

*“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”*

The County has established an acknowledged land use planning process and policy framework under which the Applicants’ proposal is being reviewed. That process and framework will assure an adequate evidentiary foundation for the Board’s decision. The request for exceptions has properly followed the Goal 2 exception process. The proposal is consistent with Goal 2.

#### Goal 3 – Agricultural Lands

*“To preserve and maintain agricultural lands.”*

The subject property is not agricultural land or zoned for agricultural use. The proposal will have no impacts on agricultural land. The proposal does not implicate and is consistent with Goal 3.

#### Goal 4 – Forest Lands

*“To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growth and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”*

The Subject Properties are not forest land or zoned for forest use. The proposal will have no impacts on forest land. The proposal does not implicate and is consistent with Goal 4.

### Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

*“To protect natural resources and conserve scenic and historic areas and open spaces.”*

Goal 5 requires the County to identify, inventory and provide protective measures in its land use code, if appropriate, for specific resources. The evidence in the record demonstrates that there are no identified Goal 5 resources on the Subject Properties or on immediately surrounding properties. The proposal does not implicate and is consistent with Goal 5.

### Goal 6 – Air, Water and Land Resource Quality

*“To maintain and improve the quality of the air, water and land resources of the state.”*

Goal 6 is a directive to local governments and requires the comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater and air pollution. It is a directive to the county and the development of a proposal that is consistent with the adopted and acknowledged regulations demonstrates consistency with the goal. The Subject Properties are connected to public water and sewer systems. Approval of the proposal maintains ocean and sand resources so that they may be enjoyed by the public rather than risking the serious damage that would occur if the proposed BPS were not approved.

Furthermore, approval of the proposed BPS protects water delivery systems that the public relies upon that would suffer catastrophic damage, if the proposal is not approved and the ocean rips out the homes and the water infrastructure serving them.

The 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.

### Goal 7 – Areas Subject to Natural Hazards

*“To protect people and property from natural hazards.”*

Goal 7 is a directive to local governments and requires them to “protect people and property from natural hazards”, and is an obligation carried out by the County adopting comprehensive plan provisions “to reduce risk to people and property from natural hazards.” This requested plan amendment results in a request for a plan amendment that “reduces risk to people and property, “ from the natural hazard of ocean flooding. The proposed BPS will protect existing development from natural hazards and require the requested plan amendment (exception) to do so.

Approving the proposed BPS is the only way that the County can reasonably comply with Goal 7 at this location given the serious threat to people and property presented by significant ocean erosion that is now anticipated to continue, if it is not approved. The proposal is consistent

with Goal 7 and the County risks not complying with Goal 7 if it does not approve the proposed BPS.

#### Goal 8 – Recreational Needs

*“To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.”*

Goal 8 is focused on a county’s obligation to plan for the recreational needs of its residents and visitors and imposes few requirements outside of those sites the county’s planning department determines are necessary to meet recreational needs. The County has not determined and could not determine that the Subject Properties where the BPS will be situated, is a necessary public recreational site or facility. Goal 8 does not require, and could not require as some opponents suggest, that the County fail to protect private property from natural hazards in the hope that homes, property and public infrastructure might be destroyed so that beachgoers might have a more pleasurable environment in which to recreate. The proposed BPS is located in the vegetated private property foredune, zoned and planned for residential development and is not proposed on any part of the beach, and as Chris Bahner’s May 27, 2021, Technical Memorandum explains, the BPS will not interfere with the beach processes in the littoral subregion or anywhere else.

The Subject Properties have been planned and zoned, as well as developed, for residential uses. The County has identified other land as necessary for recreational facilities. The evidence in the record shows that there are two private beach accesses in the exception area. One beach access runs between Tax Lots 123 and 3204 to the beach. *See* Application, Exhibit Q, p. 2. The other access runs from Pine Beach Loop between Tax Lots 113 and 114, and then along the southern boundary of Tax Lot 114 to the beach. *See* Application, Exhibit Q, p. 2; Exhibit F, Attachment 1, field photos. The proposed structure will improve the northern beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach and the proposal does not do anything with let alone interfere with the southern beach access.

The proposal also does not interfere with access along the beach either. The proposal has been carefully designed to be only on private property that no member of the public has access to now. The proposed BPS has no impact on access along or to the beach.

Further, it goes without saying that the public has a significant interest in recreating on the beach and the ocean. Approval of the proposal protects those public recreation interests from the harm that would occur to the ocean and beaches if the ocean claimed the 11 homes, as well as their water and sewer infrastructure and potentially roads serving the 15 subject properties. The proposal is consistent with Goal 8.

### Goal 9 – Economic Development

*“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”*

The Subject Properties have been planned and zoned, as well as developed, for residential uses. The County has identified other land as necessary for economic development. The proposal does not implicate or is consistent with Goal 9.

### Goal 10 – Housing

*“To provide for the housing needs of citizens of the state.”*

The Subject Properties have been planned and zoned, as well as developed, for residential uses. The proposed BPS will protect the developed residential development from environmental hazards that did not exist and were not anticipated at the time the development was approved. The Subject Properties are the residentially designated properties and homes of the persons who own them and provide for their current and future housing needs. The proposal is consistent with Goal 10.

### Goal 11 – Public Facilities and Services

*“To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”*

Goal 11 is a directive to local governments to efficiently plan for and provide for public facilities and services. The County has planned for public facilities and services, and the Subject Properties have a full range of urban public facilities and services to include public water and sewer service. One purpose of the proposed BPS is to protect these public facility investments from potential future beachfront erosion and the potential of catastrophic damage and loss to those public facilities. The proposal is consistent with Goal 11.

### Goal 12 – Transportation

*“To provide and encourage a safe, convenient and economic transportation system.”*

Goal 12 is implemented by the Goal 12 rule (OAR 660 division 12). The Goal 12 rule is triggered when an amendment to a comprehensive plan would “significantly affect” an existing or planned transportation facility. OAR 660-012-0060(1). To “significantly affect” is defined to mean when a proposal will change the functional classification of a transportation facility, changes the standards that implement a functional classification system, or allows types of levels of traffic or access inconsistent with the functional classification of a transportation facility, or will degrade the performance of a transportation facility below the standards identified in the TSP or even further if the facility is projected to fall below TSP standards. OAR 660-012-

0060(1). Here, the proposed BPS will not generate any continuing traffic related to its use. The only traffic that will be generated will be temporary traffic required for construction of the structure, which will be similar (but will occur over a shorter period) to that of constructing the residential structures on the Subject Properties. Such traffic levels will not “significantly affect” any existing or planned transportation facility as that term is used by Goal 12, consequently the Goal 12 rule is not triggered by the proposal. The proposal is consistent with Goal 12.

#### Goal 13 – Energy Conservation

*“To conserve energy.”*

Goal 13 is a directive to local government to use methods of analysis and implementation measures to assure achievement of maximum efficiency in energy utilization. Goal 13 is not directly implicated by the proposed use. That said, the proposed BPS will only consume energy resources during its construction phase and will be returned to a natural environment following construction. Once the BPS is built, it will not use any energy. The proposal is consistent with Goal 13.

#### Goal 14 – Urbanization

*“To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”*

The Subject Properties are already in an area that is acknowledged to provide urban levels of residential use as a part of a vital urban unincorporated community, served with urban public facilities and services, outside of a city UGB. The proposed BPS is necessary to protect the livability of the Subject Properties and the urban Watseco Community. The proposal is consistent with Goal 14.

#### Goal 15 – Willamette River Greenway

*“To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”*

Goal 15 applies only to property along the Willamette River, which is not in the vicinity of the subject properties. Therefore, the proposal does not implicate Goal 15.

#### Goal 16 – Estuarine Resources

*“To recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands; and*

*“To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.”*

Goal 16 applies to properties in estuarine areas. The Subject Properties are not within an estuarine area. Therefore, the proposal does not implicate Goal 16.

#### Goal 17 – Coastal Shorelands

*“To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and*

*“To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon’s coastal shorelands.”*

Goal 17 directs local governments to identify coastal shorelands and to adopt comprehensive plan and zoning provisions consistent with the Goal. Tillamook County has done that. The Subject Properties are in a coastal shorelands area. The Subject Properties were appropriately planned for residential use and the evidence in the record shows that an exception to Goal 17 was taken for the area including the Subject Properties. Application, Exhibit G, p. 3. Therefore, as a technical matter, Goal 17 does not apply. Regardless, it is addressed below.

The design of the BPS will be located on shorelands above the ordinary high-water mark. As discussed throughout this letter, the evidence in the record demonstrates that the proposal has been designed to minimize adverse impacts on the existing environment and will minimize adverse impacts on water flow and erosion of other properties. The analysis of the Applicants’ expert consulting engineer concludes that the BPS will have no impact on accretion patterns should the shoreline change pattern return to an accretion/prograding pattern.

Some opponents claim that the proposed BPS will interfere with recreational uses of the beach in violation of Goal 17. This is incorrect. The BPS is located on private vegetated property, not on the beach. There is no way that the BPS will interfere with persons walking along the beach. The location of the BPS cannot interfere with recreational use of the beach because it will not be located on the beach and all of the evidence establishes that the proposed BPS will not harm the beach at all.

Second, some commenters wish the County to support the recent trend of erosion hoping it will continue without change and asks the County to preemptively “take” the backyards of the Subject Properties by preventing these property owners from protecting their homes, lives and properties, so that at some point in the future their private property can possibly become beach. Nothing in Goal 17 or any part of Oregon’s land use program sanctions such a conspiracy to

deprive Tillamook County citizens of their lives and property. As the Board is no doubt aware, the Oregon and Federal Constitutions and probably criminal law, prohibits the County from participating in such a conspiracy to make unlivable and to take private property as suggested.

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

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

#### Goal 18 – Beaches and Dunes

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

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

The proposal requests an exception to Goal 18, IM 2 and IM 5. Findings of consistency with the requirements for a reasons exception, a built/developed exception and a committed exception are discussed above.

In the alternative, the Board should adopt findings that the committed urban residential exception that applies to the Subject Properties authorizes residential construction on the dunes on which they are located. Therefore, because now that the dune on which the subject residential properties are situated is subject to ocean undercutting and wave overtopping, the existing exception applies to authorize that residential development under the existing exception. That means that the Subject Properties already have an exception to Goal 18, IM 2, which in turn means that, by its express terms, the Goal 18, IM 5 prohibition on shoreline protection, does not apply.

Regardless, the analysis below demonstrates that the proposal is consistent with the other Goal 18 Implementation Measures.

Goal 18 Implementation Measure 1 provides:

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

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

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

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

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

(a) The proposal is for a static BPS that should have only temporary adverse effects on the site and adjacent areas. The proposal calls for the preservation of sand excavated from the site during construction, and its placement on top of and on the seaward side of the structure following construction of the BPS. The adverse effects of excavation will be mitigated by subsequent replanting of native beach grasses and shrubs, which will be subject to periodic monitoring and replanting when necessary.

(b) As discussed above, the proposal is for a stabilization structure that will protect the foredune. The proposal includes specific instructions for the maintenance of new and existing vegetation by the owners of the Subject Properties.

(c) Expert evidence in the record demonstrates that the BPS design protects surrounding properties from the adverse impacts of development. For example, given the nature of the BPS design, there will be no off-site stormwater runoff during or after construction. The design of the structure is such that it will not direct additional water to surrounding properties, increase wave heights or wave runup, or impact the natural littoral drift of sediment along the coast. The collection of Google Earth photos of the shoreline within the vicinity of the existing Shorewood RV Resort’s BPS in the record shows no pronounced differences in the erosion of the shoreline south of the structure than what is now naturally occurring within the area. Given the location and higher elevation of the proposed BPS, the wave energy and erosion potential is anticipated to be even lower. On this matter, West Consultants Technical Memorandum concludes, “the proposed structure will not have an adverse impact to the surrounding properties. No additional measures are necessary to protect the surrounding area as a result of the proposed revetment structure.”

(d) The expert evidence in the record demonstrates that the proposed BPS will reduce the risk of damage to life, property and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides. The proposal as designed will not cause any of those hazards.

The proposal is consistent with the requirements of Goal 18, IM 1.



Goal 18, IM 2 states that development is allowed on foredunes that are conditionally stable but are subject to ocean undercutting or wave overtopping only under certain conditions. Goal 18, IM 2 provides:

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

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

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

As explained above, the proposal meets the standards for an exception to Goal 18, IM 2. In the alternative, as explained below, the Subject Properties are already subject to a Goal 18, IM 2 exception because their residential development on a dune now subject to ocean undercutting and wave overtopping is authorized by an exception. One possible legal significance of such an existing Goal exception that covers the Subject Properties is, among other things, that it is also a Goal 18, IM 2 exception. Regardless, the proposal is to take an exception that allows residential development to exist on the dune that is now subject to overtopping/undercutting and to protect it with the proposed BPS. To the extent that the proposal falls into the category of “other development” that is permitted subject to specific findings, arguments in support of those findings follow.

The response to Goal 18, IM 1 is provided above under the immediately previous heading.

(a) The expert evidence in the record addresses the factors identified in (a) above. That evidence demonstrates that the BPS was designed with a “launchable toe” that will ensure the rock revetment is not undermined by scouring (*i.e.* undercutting). The evidence also expressly discusses ocean flooding and storm waves in its analysis for the FEMA “VE” hazard zone. The BPS is designed to address ocean flooding and storm waves and that its design will also not cause an increase to FEMA total water levels near the structure. The BPS is also designed to minimize wind erosion given that the proposed revetment will be recovered with sand and replanted with native beach grasses and shrubs, as well as monitored to ensure the plants hold and serve their purposes. The only potential geologic hazard is from earthquakes. Given that the BPS is not a structure that allows occupancy of any sort or has standing walls, the structure does not require protection from the geologic hazard of an earthquake. Regardless, the proposed BPS is an engineered basalt rock structure and is expected to fare well in an earthquake.

(b) The expert evidence in the record also demonstrates how the BPS has been designed to minimize adverse environmental effects. All excavated sand will be placed over and seaward of the rock revetment structure and the entire area replanted with native grasses and bushes. The proposal also calls for annual inspections to include, among other things, evaluation of “vegetation conditions and identification if additional replanting is necessary.” Ultimately, the proposed BPS will protect the natural environment from beach erosion and adverse impacts from coastal flooding.

The proposal is consistent with Goal 18, IM 2’s two specific requirements.

Goal 18, IM 3 provides:

*“Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.”*

As discussed above, the purpose of the BPS and its revegetation maintenance program is to minimize erosion of the foredune area since natural protective measures have failed and to improve its aesthetics. It will not result in the destruction of desirable vegetation; it will protect it. Recall desirable vegetation is dying now because of ocean salination due to frequent flooding and if not stopped, the ocean will claim all of the vegetation that is left regardless.

Also discussed above and demonstrated by expert evidence in the record is how the proposed BPS will not adversely affect wave patterns that will lead to beach erosion elsewhere beyond what will normally and naturally occur, as it has functioned at the nearby Shorewood RV Resort.

The design of the proposed structure is consistent with Goal 18, IM 3.

Goal 18, IM 4 provides:

*“Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.”*

The proposed BPS does not use groundwater or affect it in any way. The BPS was designed by West Consultants to minimize adverse environmental impacts such as the ones identified in IM 4. The proposal calls for re-sanding, revegetation, and monitoring as part of the

BPS's design and maintenance. The BPS does not reach down to the water table and will not lead to loss of water quality or the intrusion of salt water into water supplies.

The proposal is consistent with Goal 18, IM 4.

Goal 18, IM 5

IM 5 allows BPS for property developed on January 1, 1977 or where an exception to Goal 18 IM 2 is approved.

This request is for the Board to approve an exception to Goal 18 IM 2, and to Goal 18, IM 5.

And in the alternative, to also find that the existing exception that allows the residential development is now also an exception that allows the residential development on the dune now that it is become subject to wave overtopping/undercutting.

The proposal is consistent with Goal 18 IM 5.

Goal 18, IM 6 provides:

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

No foredunes will be breached as part of this proposal. The proposal is consistent with Goal 18, IM 6.

Goal 18, IM 7 provides:

*"Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if the area is committed to development or is within an acknowledged urban growth boundary and only as part of an overall plan for managing foredune grading."*  
[requirements omitted].

Goal 18, IM 7 applies to activities related to maintaining views and preventing sand inundation. While grading and sand movement will occur with development of the proposed beachfront protective structure, such activity is not for the purpose of maintaining views or to prevent sand inundation. Consequently, this proposal does not invoke IM 7.

Goal 18, Guideline E promotes responsible public access to the beaches. There are no public beach access affected by the proposal and so this guideline does not apply. Regardless,

the private beach access that runs between Tax Lots 123 and 3204 will be maintained. The proposed structure will improve that beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach. The proposal maintains the southern beach access and does not affect it at all. And the proposal has no impact whatsoever on access across the beach. The proposal is consistent with this guideline.

Goal 18, Guideline F states that dune stabilization actions should be evaluated for their potential impact. The Applicants' expert engineer has evaluated the proposal for its potential impact. Those conclusions are herein incorporated. The proposal is consistent with this guideline.

The proposal is consistent with Goal 18.

#### Goal 19 – Ocean Resources

*“To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.”*

Goal 19 concerns Oregon's off-shore ocean resources. To the extent that the proposal prevents the ocean destroying 11 houses, and their public water and sewer infrastructure and street system, it benefits the ocean by keeping out harmful pollutants. Other than that benefit, nothing about the proposal impacts ocean resources. The proposal is either consistent with or does not implicate Goal 19.

The proposal is consistent with the Statewide Planning Goals.

TCLUO 9.030(3)(b) provides:

**“(b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);”**

As an initial matter, TCLUO 3.530(4)(A)(4) authorizes beachfront protective structures that are authorized by an exception to Goal 18. Goal exceptions must be made part of the Comprehensive Plan, which requires an amendment to the text of the Comprehensive Plan. TCLUO 9.030(3)(b) requires that amendments to the comprehensive plan must demonstrate consistency with the Comprehensive Plan other than the parts being amended.

Because this is a quasi-judicial, site specific amendment to the Plan and does not involve an amendment of general applicability to the Comprehensive Plan requirements or even a Plan Designation/Zone Change, which can invoke a broad range of plan sections, this letter only address Comprehensive Plan provisions that are relevant to this application.

In summary, given the limited nature of the proposed BPS, only certain provisions from the Hazards Element (Goal 7), Housing (Goal 10), Public Facilities and Services (Goal 11), Goal 14 (Urbanization) and Beaches and Dunes Element (Goal 18) as well as the Twin Rocks-Barview-Watseco Urban Unincorporated Community Plan, are applicable. We note that the property already has an exception to Goal 17 and regardless, the Coastal Shorelands Element (Goal 17) findings and policies for rural shorelands at Finding 8.2 recognize the urban residential use of the subject property area. Finally, while not generally relevant, the Plan includes policies implementing Goal 16 with which the proposal is consistent.

#### COUNTY NATURAL RESOURCES ELEMENT (Goal 5)

This element implements statewide planning Goal 5 in its various sections related to natural resources, environmental resources, economic resources, and state and federal programs that concern Goal 5 resources. The Comprehensive Plan includes inventories, findings and related policies. The Subject Properties are not listed on any of the County's Goal 5 inventory sites and the proposal does not impact any Goal 5 designated resources. That means that the proposal is consistent with Goal 5.

#### COUNTY HAZARDS ELEMENT (Goal 7)

##### County Goal 7 – 2.4 Erosion

Policy 2.4a provides that prevention or remedial action shall include any or all of the items that follow in a list. Responses to the relevant actions are listed by number.

- (1) The proposed BPS will aid in maintaining the existing vegetation on the younger stabilized foredune from potential future erosion.
- (2) The design, and restoration and maintenance plan for the BPS calls for the rapid revegetation of the structure following construction as well as the continued maintenance and re-vegetation of the development site if necessary.
- (3) The proposal seeks to stabilize the shoreline with a beachfront protection structure (similar to riprap) as called for by this policy. As discussed above, the historic natural protections, which were vegetated, have eroded in a manner that was not predicted by the evidence at the time the subdivision was approved.
- (5) The evidence in the record demonstrates that the proposal will not result in any increased runoff due to development. The proposed BPS will be set back 10 feet from the existing line of established vegetation allowing that area to remain in its natural state. Plus, as noted above, the BPS will be covered in sand and revegetated to further reinforce the integrity of the vegetation line area.

Policy 2.4b is not applicable because there are no slopes greater than 15% on the Subject Properties.

#### County Goal 7 – 2.5 Flooding

Policy 2.5f provides that new construction shall be by methods and practices that minimize flood damage. The evidence in the record demonstrates that the proposed BPS has been designed to resist the adverse effects of ocean flooding such as overtopping and undercutting. In addition, the proposed structure will not cause an increase to the FEMA total water levels near the proposed structure.

Policy 2.5h requires all development meet Federal requirements. West Consultants explain that the proposed structure has been designed to meet all FEMA requirements for construction within the flood hazard zone. (Application, Exhibit F, p. 9).

Policy 2.5i provides that measures shall be taken to ensure that the cumulative effect of a proposed development will not increase the water surface elevation. The West Consultants Technical Memorandum explains that the BPS will not increase water surface elevations. (See Application, Exhibit F, p. 9).

#### County Goal 7 – 2.6 Tsunamis (Seismic Waves)

While most of this section of the Plan is dedicated to tsunami planning, Policy 4 relating to reducing development risk in high tsunami risk areas, calls for protecting and enhancing existing dune features and coast vegetation to promote natural buffers and reduce erosion. The original 1994 Pine Beach Subdivision proposal utilized natural barriers, but those have failed. The George Shand Tracts have utilized placement of structures as far eastward as reasonably possible. The proposed beachfront protective structure is designed to reduce erosion and stabilize the natural buffers on the site's foredune vegetation.

The proposal is consistent with the Hazards Element (Goal 7) of the comprehensive plan.

### COUNTY HOUSING ELEMENT (Goal 10)

#### County Goal 10 – Policy 3.2

“Tillamook County will plan to meet housing needs by encouraging the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Tillamook County's households and allow for flexibility of housing location, type and density while preserving the County's resource base.”

Without the proposed BPS, 11 homes are at risk of being destroyed and removed from the County's housing supply. The proposal is consistent with this housing policy.

## COUNTY PUBLIC FACILITIES ELEMENT (Goal 11)

### County Goal 11 – Policy 3.1

“Tillamook County will further the development of a timely, orderly and efficient arrangement of public facilities and services with the following actions;

“(1) Planning and providing services for which it has responsibility;

“(2) Planning and implementing a logical pattern of land uses;

“(3) Using its authority to approve or disapprove annexations to service districts;  
and

“(4) Encouraging or discouraging federal financing of service facilities through the A-95 review process.”

Without the proposed BPS, public facilities and services such as water and sewer are at risk of being destroyed. The proposal is consistent with this public facilities policy.

## COUNTY ESTUARINE RESOURCES ELEMENT (GOAL 16)

The Estuarine Resources Element is generally not applicable to the Subject Properties. However, the Beaches and Dunes Element (Goal 18) Policy 4.4d provides that the shoreline stabilization policies of Section 7.5 of the Goal 16 element shall apply to beachfront protective measures. Consequently, the relevant policies from that section are addressed immediately below.

### County Goal 16 – 7.5 Shoreline Stabilization

*“2. Within estuarine waters, intertidal areas, tidal wetlands and along WDD shoreland zones and other shoreland areas, general priorities for shoreline stabilization for erosion control are, from highest to lowest:*

*“a. proper maintenance of existing riparian vegetation;*

*“b. planting of riparian vegetation;*

*“c. vegetated riprap;*

*“d. non-vegetated riprap;*

*“e. groins, bulkheads and other structural methods.”*

As explained by the 1994 staff report (Application, Exhibit G), the Dune Hazard Reports from 1994 (Application, Exhibit H) and the West Consultants Technical Memorandum (Application, Exhibit F), the 1994 Pine Beach Subdivision approval incorporated approach (a), the existence and maintenance of riparian vegetation, as the solution for shoreland stabilization

and erosion control. The evidence in the record demonstrates that this was also the case for the George Shand Tracts to the north which were similarly set back. *See* Application, Exhibit L, p. 6; Exhibit M, p. 8; Exhibit N, p. 19; Exhibit O, p. 2, 4; Exhibit P, p. 2, 4.

Due to the unanticipated reversal in shoreline change conditions, which was contrary to a more than 70-year pattern of progradation that followed the installation of the two jetties, the first two shoreline stabilization techniques are no longer possible. The shoreline stabilization proposed here is the highest option left, which is vegetated “riprap.” As discussed in Application, Exhibit F, the BPS will be overlain with the sand excavated to install the structure and will be planted with native grasses and shrubs. That replanting will be monitored annually and replanted as necessary, which is consistent with this policy, thus implementing the vegetated riprap approach.

*“3. Proper maintenance of existing riparian vegetation and planting of additional vegetation for purposes of shoreline stabilization shall be permitted within all estuary zones, and along WDD shoreland zones and other shoreland areas. Tillamook County supports the efforts of the Tillamook Soil and Water Conservation District to maintain and improve streamside habitat along the County's rivers and streams.”*

As discussed, the proposal includes a maintenance plan for the planting of additional vegetation and maintenance by the property owners.

*“4. Structural shoreline stabilization methods within estuary zones, WDD shoreland zones or other shorelands areas shall be permitted only if:*

*“a. flooding or erosion is threatening a structure or an established use or there is a demonstrated need (i.e., a substantial public benefit) and the use or alteration does not unreasonably interfere with public trust rights; and*

*“b. land use management practices or non-structural solutions are inappropriate because of high erosion rates or the use of the site; and*

*“c. adverse impacts on water currents, erosion and accretion patterns and aquatic life and habitat are avoided or minimized.”*

(a) The evidence in the record demonstrates that coastal erosion and related ocean flooding are threatening the 15 residentially designated lots that make up the Subject Properties and the development on those lots, including 11 homes. It is also threatening the supporting water and sewer and other public facilities that serve all the Subject Properties’ lots. The proposal does not interfere with any public trust rights. All the property at issue is private property in which the public has no interest. Moreover, all existing beach accesses are private and so not in the public trust and regardless the private accesses are retained by the proposal. The proposed revetment is east of both the statutory vegetation line and the line of established vegetation, so the public has



no affected recreational easement impacted at all. The public has no trust interest in the area where the proposed BPS will be located.

(b) As discussed above and demonstrated by expert evidence in the record, land use management practices and non-structural solutions are no longer appropriate because of the high erosion rates over the past several years such that they cannot protect the Subject Properties and have not been able to do so. Only the proposed BPS will protect the Subject Properties.

(c) Application, Exhibit F explains that the proposed beachfront protective structure has been designed to not have any adverse impact on erosion or accretion patterns in the area. There are no aquatic life or habitat areas that could be impacted by the proposal. The proposed BPS is in the backyards of small residential lots in residential subdivisions.

*“5. In Estuary Natural (EN) and Estuary Conservation Aquaculture (ECA) zones, structural shoreline stabilization shall be limited to riprap, which shall be allowed only to protect:*

*“a. existing structures or facilities, which are in conformance with the requirements of this ordinance, or non-conforming structures or facilities; and*

*“b. unique natural resources or sites with unique historical or archaeological values; and*

*“c. established uses on private property.”*

Consistent with requirements (a) and (c) above, the proposed beachfront protective structure will protect existing dwellings and public water and sewer facilities that were developed in conformance with the requirements of the Tillamook County Comprehensive Plan and Land use Ordinance. Those structures are established uses on private property.

*“6. In Estuary Conservation 1 (EC1) and Estuary Conservation 2 (EC2) zones, structural shoreline stabilization (riprap, groins or bulkheads) shall be permitted only if:*

*“a. consistent with the long-term use of renewable resources; and*

*“b. does not cause a major alteration of the estuary.”*

Despite not being in the EC1 or EC2 zone, the beachfront protective structure will not adversely affect long term use of the beach resource and will not cause alteration of the beachfront other than at the protected location.

*“7. In Estuary Development (ED) zones, structural shoreline stabilization (riprap, groins or bulkheads) shall be permitted only if consistent with the maintenance of*

*navigational and other needed public, commercial and industrial water-dependent uses.”*

The proposed BPS is not in an ED zone. This provision does not apply. Regardless, construction of the proposed beachfront protective structure will not interfere with navigational or commercial and industrial water-dependent uses and is therefore consistent with those uses. The proposal is consistent with and incorporates the existing private accesses to the beach.

*“8. Structural shoreline stabilization in WDD shoreland zones shall not preclude or conflict with existing or reasonable potential water-dependent uses on the site or in the vicinity.”*

The subject properties are not in a WDD zone. This standard does not apply. Regardless, there are no water-dependent uses on the site or in the vicinity nor are any planned or zoned for the area. The beachfront protective structure will not conflict with any of water-dependent uses.

The proposed beachfront protective structure is consistent with the shoreline stabilization policies in Section 7.5.

#### COUNTY URBANIZATION ELEMENT (Goal 14)

County Goal 14, Section 2.3 provides a definition of “urbanization” and then provides that “According to this definition, urbanizable lands in Tillamook County include lands within the acknowledged urban growth boundaries of the cities of Bay City, Garibaldi, Manzanita, Nehalem, Rockaway, Tillamook, and Wheeler. They also include land within the separate urban growth boundaries of Neahkahnie and Twin Rocks/Barview. (More about separate urban growth boundaries for Neahkahnie and Twin Rocks/Barview in Section 3.2).” Plan Section 3.2 identifies Watseco as an urban unincorporated area. Plan Section 3.8 requires the County to establish “community growth boundaries” around the unincorporated community. Policy 3.11 states that land in community growth boundaries are areas where “urban development is appropriate and where urban services will be made available over the next 20 years.” The proposal to protect urban residential areas designated for urban residential development deemed by the governing body to be appropriate over the long-term planning horizon with BPS, is consistent with these policies. Allowing the community to be destroyed by ocean flooding is inconsistent with these policies.

The proposal is consistent with the Plan Goal 14 urbanization policies.

#### BARVIEW/WATSECO/TWIN ROCKS COMMUNITY PLAN (Goal 14)

The Subject Properties are within the Barview/Watseco/Twin Rocks Urban Unincorporated Community. The Barview/Watseco/Twin Rocks Community Plan is part of the

County's Comprehensive Plan and contains goals and policies relevant to the application's consistency with the Comprehensive Plan under TCLUO 9.030(3)(b).

As a general matter, the Community Plan supports a vibrant urban community of people who deserve their government's willingness to protect them when natural disaster strikes and they are willing to foot the bill, and need only their government's approval.

The proposal is consistent with Goal 14 and the community plan.

Goal 1: Barview/Watseco/Twin Rocks will be an attractive, safe and clean community.

Policy 1.2: "The County will work with community groups and organizations, business and property owners and agencies to improve the general appearance of Barview/Watseco/Twin Rocks."

Not approving the proposed BPS to protect the Subject Properties will allow continued coastal erosion and flooding which could destroy the properties, homes and public facilities and services. Detritus from destroyed homes and public infrastructure could fall into the ocean and be strewn across the beaches in the area. In a worst-case scenario, the homes on the Subject Properties could become unsafe or be destroyed by the continued onslaught of the ocean and the occupants would be forced to abandon them, if they were able to safely get out in time; if not lives may be lost. These results are inconsistent with the goal's policy of working with property owners to improve the general appearance of the community. Approval of the proposed BPS is consistent with this policy of improving the general appearance of the community, by protecting a significant part of it and its infrastructure, from destruction.

Goal 2: Barview/Watseco/Twin Rocks will have safe drinking water and sanitation.

Policy 2.1: "The County will work with property owners, community groups and organizations and agencies to secure safe drinking water and sanitation in Barview/Watseco/Twin Rocks."

Not approving the proposed BPS will threaten the water and sanitation systems on the Subject Properties and within the surrounding community by allowing ocean erosion and coastal flooding to continue unabated. Inundation of water and sanitation systems by ocean flooding will cause them to deteriorate and could foreseeably lead to significant contamination. Approving the proposed BPS is consistent with the goal's policy of working with property owners to ensure that drinking water is safe and that sanitation systems are safe.

Policy 2.2: "The County will work with property owners, community groups and organizations and agencies to provide assistance for community infrastructure needs in Barview/Watseco/Twin Rocks."

A community infrastructure “need” encompasses not only meeting a demand for needed infrastructure, but also ensuring that that infrastructure is safe and protected from hazards such as those presented by the coastal flooding and erosion that the proposed BPS seeks to mitigate. Approving the proposed BPS is consistent with this goal policy of working with property owners to provide assistance for community infrastructure needs. Denial would be the converse of providing such assistance.

Goal 3: Barview/Watseco/Twin Rocks will be surrounded by outstanding protected natural resources.

Policy 3.1: “The County will continue to protect beaches along Barview/Watseco/Twin Rocks from inappropriate development.”

As explained throughout this letter, the requested BPS is not proposed to be on the beach. It will be located entirely in the Applicants’ backyards, on a vegetated foredune and landward of both the “state beach zone line” and the line of established vegetation. The proposal is consistent with this goal’s policy.

The proposal is consistent with the Barview/Watseco/Twin Rocks Community Plan.

#### COUNTY BEACHES AND DUNES ELEMENT (GOAL 18)

##### County Goal 18 – 2.2b Beach & Dune Use Capabilities: Active Foredune

The County Comprehensive Plan Goal 18 under Section 2.2b, (Active Foredune) recognizes that “*certain management practices are necessary in order to minimize the hazards of developing on active foredunes*”. The relevant management practices, as applied here are:

1. *Vegetate open sand areas and protect existing vegetation*
2. *Minimize dune alteration and disturbance of vegetation, temporarily protect disturbed areas and re-vegetate as soon as possible*
3. *Locate structures and facilities as far from the beach as possible[.]*

The Plan at 2.2b also recognizes that management practices are not always successful explaining “In the Nedonna, Pacific City and Neskowin areas, severe wave erosion necessitated the placement of riprap.” These are unincorporated communities, like the Watseco Community. Thus, the Plan recognizes that riprap may be required to protect people and property from the natural hazard of severe wave erosion. The proposal is consistent with this policy.

##### Locate structures as far from the beach as possible

The proposed BPS is proposed to be situated away from the beach and entirely on private property. The proposal complies with this policy.

Vegetate open sand areas and protect existing vegetation

The proposal is to revegetate the dune that has actively eroded and to protect the disturbed area with the proposed BPS to enable vegetation to be re-established to supply greater protection. The proposed BPS will be located approximately 185 feet landward of the statutory vegetation line. As shown in Exhibit F, the design by West Consultants provides for re-sanding over the structure and the planting of beach grasses and native vegetation over the area where the structure is placed. This vegetation will be monitored, and the area revegetated as necessary as part of the maintenance program. Application, Exhibit F, p. 8. This will allow native vegetation to flourish, thereby restoring the natural resource that has been rapidly eroding away. *See* (2) above. The proposal is consistent with this policy.

Minimize dune alteration and disturbance of vegetation, temporarily protect disturbed areas and re-vegetate, as soon as possible

The proposal will minimize dune alteration and as noted above, vegetation will be restored and maintained, contrary to the current situation. The proposal will protect the existing vegetation within the existing shoreline, permanently protect the disturbed, (eroding active foredune) and re-vegetate that foredune, all of which will be located 185-feet from the statutory vegetation line.

The proposal meets the above-stated elements based on the evidence above.

County Goal 18 – Implementation Measure 2.3a.1 Beach and Dune Management Requirements: Findings

Implementing Requirement (1) states that, (in relevant part):

*“Local government and state and federal agencies shall base decisions . . . and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:*

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

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

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

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

(a) The placement of a beachfront protective structure along the Subject Properties’ existing shoreline is intended to “reduce the adverse impact” of the on-going eastward march of shoreline erosion at the Subject Properties. The evidence in the record demonstrates that all impacts

resulting from the proposed beachfront protective structure will be positive, not negative. The design of the beachfront protective structure is to minimize adverse effects it could otherwise have on adjacent properties and the area in general. As the revetment structure at the Shorewood RV Resort shows, a well-designed structure in this area will not have adverse impacts on adjacent properties, although it cannot halt the progression of beach erosion on those other properties if erosion continues. (See Application, Exhibit J, Google Earth Historic Aerial Images).

(b) The proposal is for a permanent stabilization program that calls for future monitoring and maintenance of the proposed BPS and overlying vegetation, with re-vegetation if necessary, paid for by the owners of the Subject Properties. The proposed BPS is to be located 10-foot landward of the line of established vegetation, thereby preserving that vegetation in its native state.

(c) As explained in Application, Exhibit F, the proposed BPS is designed to not have any adverse impacts to the natural runoff, beach access or surrounding properties.

(d) The proposal will in fact reduce the hazards to life, public and private property, as well as the natural environment by halting future shoreline regression (erosion) that will otherwise occur in the future. If the shoreline change reverts to the prograding that historically occurred throughout the 20th Century, the proposed structure will likewise offer no hazards to the public, property, or the natural environment.

County Goal 18 – Implementation Measure 2.3a.6 Beach and Dune Management Requirements: Urban and Rural Development

This section discusses urban and rural development in dune areas and explains that younger and older stabilized dunes “are the most suitable dune forms for urban and rural development.” These Implementation Measure provisions were expressly addressed by the Applicants and in the staff report for the 1994 Pine Beach Subdivision as well as in each of the hazard reports for each of the Subject Properties in the George Shand Tracts/Ocean Boulevard subdivision. Those approvals were consistent with all the requirements of this section. This proposal is also consistent with these requirements. See Application, Exhibits H (Dune Hazard Report for Pine Beach Subdivision) and Exhibits L-P (Dune Hazard Reports for each Ocean Boulevard lot).

As discussed throughout this letter, the proposal is consistent with the listed management practices necessary to minimize the hazards of developing on foredunes. The proposal protects existing vegetation as much as possible, especially at the line of established vegetation. Disturbance of vegetated areas due to construction activity will be mitigated and the area revegetated as soon as possible afterwards, with follow up monitoring and revegetation as needed. The proposed beachfront protective structure is located as far away from the beach as possible (entirely on private property) and still serve its function. And the design is such as to protect against wave damage and to allow sand build-up.

As prescribed by this Implementation Measure, there is no development on open dune sand or other areas where development is not well tolerated.

#### County Goal 18 – Implementation Measure 2.3b – Implementation Measure 2

This provision recognizes that allowing development in foredune areas requires compliance with the requirements of Goal 18, IM 2. However, it also states that Tillamook County is continuing to allow development in foredune areas which are irrevocably committed to development.” While the Plan policy references specific areas that were at the time understood to be residential development on an eroding dune, the policy that this Plan policy expresses, supports allowing BPS for other areas like the Subject Properties in the Watseco Community that is committed to residential development to be protected with BPS, when severe ocean erosion strikes in property circumstances. The proposal is consistent with Goal 18, IM 2 if the Board makes the recommended alternative findings that the existing exception that allows the residential development to be on the dune it is on is also an exception that allows it to be on that same dune now that it starts eroding. Or it is consistent with Goal 18, IM 2 if the County takes the exception requested here, to allow the same. Either way, the proposal complies with this policy.

#### County Goal 18 – Implementation Measure 2.3c – Implementation Measure 3

This provision repeats the requirements of Goal 18, Implementation Measure 3. In response, the Applicants incorporate their arguments from the section addressing the Goal 18, IM 3, above.

#### County Goal 18 – Implementation Measure 2.3d – Implementation Measure 4

This provision repeats the requirements of Goal 18 Implementation Measure 4. The policy explains that the County has taken exceptions to this requirement for areas inundated by sand. This policy does not apply because it speaks to breaching foredunes. The proposal does not breach a foredune.

#### County Goal 18 – Policy 2.4 – Policies

Each of the applicable policies are identified and addressed below.

Policy 2.4a: *“All decisions on land use actions in beach and dune areas other than older stabilized dunes shall be based on the following specific findings unless they have been made in the comprehensive plan:*

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

*“(b) The temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;*

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

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

(a) The type of proposed use is a beachfront protective structure. The possible adverse effects the use may have on the site and adjacent areas are addressed throughout this letter and the Applicants' various submittals. Those responses are hereby incorporated.

(b) This letter and the Applicants' submittals explain the permanent stabilization program proposed (a beachfront protective structure) and that the structure will be overlaid with sand removed during construction, replanted with native grasses and shrubs and maintained by an annual inspection and revegetated, if necessary, by the property owners.

(c) This letter and the Applicants' submittals explain how the surrounding area will be protected through the design of the beachfront protective structure. The BPS is designed to prevent erosion of adjacent properties and will not cause an increase to the FEMA total water levels near the proposed structure.

(d) This letter and the Applicants' submittals explain that the purpose of the beachfront protective structure is to protect life, public and private property and the natural environment from the adverse impacts that may flow from continued erosion of the shoreline and from storm surges and tidal events.

The evidence in the record demonstrates the proposal is consistent with this policy.

Policy 2.4b: *“Development in beach and dune areas shall comply with the requirements of the Flood Hazard Overlay zone.”*

The requirements of the Flood Hazard Overlay zone are provided under the sections addressing TCLUO 3.510(5)(b) and (10), which are herein incorporated.

Policy 2.4c: *“Grading and vegetation removal shall be the minimum necessary to accommodate the development proposed. Removal should not occur more than 30 days prior to the start of construction. Open sand areas shall be temporarily stabilized during construction and all new and pre-existing open sand areas shall be permanently stabilized with appropriate vegetation.”*

Grading and vegetation removal will be conducted in accordance with the West Consultants Technical Memorandum and the County's regulations. Sand will be retained and stabilized during construction and placed over the structure and the BPS will be appropriately vegetated and monitored as prescribed in the Technical Memorandum, Application, Exhibit F, p. 6, 9.



Policy 2.4d: *“Excavated, filled, or graded slopes shall not exceed 30 degrees unless adequate structural support is provided. Clearing of these slopes shall be minimized and temporary and permanent stabilization measures shall be applied to safeguard the slope from erosion and slumping.”*

There are no 30-degree slopes on the property, nor will any be created by the proposal. This policy is not invoked by the proposal.

Policy 2.4f: *“Residential, commercial, and industrial buildings shall be prohibited on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding except on lots where such development is specifically authorized by Section 5. Ocean flooding includes areas of velocity flooding and associated shallow marine flooding mapped by the Federal Emergency Management Agency (FEMA). Other development in these areas shall be permitted only if the findings required in policy 2.4a are presented and it is determined that the proposed development:*

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

*“(b) is designed to minimize adverse environmental effects.”* (Emphasis supplied.)

The findings required by Policy 2.4a are addressed above and hereby incorporated.

The two alphabetically designated standards for Policy 2.4f are identical to those for OAR 660-004-0022(11) addressed above. Those findings are hereby incorporated.

The emphasized portion of the policy refers to *“lots where such development is specifically authorized by Section 5.”* There is no corresponding Section 5 that specifically authorizes development on eroding dunes. There is a Section 6 that authorizes development under Goal exceptions. Section 6 takes separate goal exceptions for unincorporated communities subject to ocean flooding. The proposal will add to those exceptions. The Subject Properties are either developed on the dune that they are on under existing exceptions, or this exception allows the same. The proposal is consistent with this policy.

Policy 2.4g: *“Foredunes shall be breached only on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching is consistent with sound principles of conservation. Policy 2.4a shall apply.”*

No foredunes are proposed to be breached. The proposal complies with this standard.

Policy 2.4h: *“Because of the sensitive nature of active and conditionally stable dunes, vehicular traffic and recurring pedestrian and equestrian traffic should be limited to improved roads and trails.”*

The existing private beach accesses are approximately 5-feet wide and are only suitable for pedestrian or equestrian traffic. They are not intended for or suitable for vehicular traffic. Those accesses will be maintained and the beach access between Tax Lots 3204 and 123 will be improved. The proposal does not affect the southern beach access.

County Goal 18 – Section 3 – Foredune Management:

The proposal does not invoke any of the Foredune Management Policies listed in section 3 of the Beaches and Dunes Element under 3.3. Those provisions apply to “grading or sand movement necessary to maintain views or prevent sand inundation” consistent with Goal 18 Implementation Measure 7. This proposal does not seek to grade or move sand for that purpose.

County Goal 18 – Section 4 – Coastal Erosion:

The County Comprehensive Plan Goal 18 Section 4, (Coastal Erosion) recognizes the role of a balance of sand deposits and removal from the winter to the summer plays in shoreline change:

“Erosion of the beach and adjacent dunes occurs on a yearly cycle. Winter storm waves erode the beach and deposit sand in offshore bars. . . . In the summer, gentler waves redistribute the sand in offshore bars back onto the beach and form a wide berm . . . If the summer beach build-up does not equalize winter losses over the period of several years, there is a net erosion of the beach...”

The evidence in the record establishes that at the time of the approval of the 1994 Pine Beach Subdivision, historic records indicated that there had been a more than 70-year precedent where the shoreline steadily increased (prograded). Application, Exhibit G, p.1-2. Similarly, the hazard reports for the George Shand Tract/Ocean Boulevard residences, say the same thing. Application, Exhibit L, p. 9; Exhibit M, p. 17; Exhibit N, p. 17; Exhibit O, p. 7; and Exhibit P, p. 7. That historic shoreline prograding change is documented in Map 7 of the Beaches and Dunes Element of the Comprehensive Plan, which shows the “Shoreline Change” for the beach areas along the subject properties as “Prograding.” Exhibit I, p. 2. However, the West Consultants Technical Memorandum (Application, Exhibit F) as well as the Google Earth Historical Aerial Imagery (Application, Exhibit J) document a reversal of that trend and the rapid erosion that has occurred over the past two decades.

Section 4.2 Management Considerations recognizes that: *“The primary means of guarding residences or other structures from damage is to locate them back from the eroding coastline”* Evidence in the record shows that is precisely what was done when the Pine Beach

Subdivision was platted in 1994 and at the time the houses in the George Shand Tracts/Ocean Boulevard were approved. For the Pine Beach Subdivision, a two-acre Common Area, approximately 190-foot wide, separated the rear yards of the Pine Beach beachfront lots from the statutory vegetation line. The George Shand/Ocean Boulevard lots north were similarly setback with extensive “oceanfront yards” with development allowed only on the eastern portion of the properties. Therefore, at least still in 1994, the westernmost rear yards of the Pine Beach Subdivision and the George Shand/Ocean Boulevard properties were located “back from the eroding coastline”. However, later, that eroding coastline changed and instead made a rapid eastward march towards those rear yards of the Pine Beach and Ocean Boulevard beachfront lots, removing approximately 142 feet of shoreline vegetation. Therefore, based on the above, when the subdivisions were approved, precautionary measures were taken to compensate for the possibility of an eroding shoreline, despite the historic more than 70-year trend of progradation, by placing the sites for development on the lots well eastward of the then shoreline and outside the areas of ocean undercutting and wave overtopping.

Section 4.2 also recognizes that, *“In cases of severe erosion, it may be necessary to use some means of structural shoreline stabilization such as a revetment or seawall.”* That is what is being proposed here. It seems only equitable and fair to allow these properties to provide needed relief from the wholly unexpected shoreline erosion that began after the subdivisions were approved years ago and houses built. The proposal is consistent with this policy that recognizes sometimes BPS is necessary.

The section also discusses the potential visual impacts from beachfront protective structures and impacts on erosion in the surrounding area. The proposed beachfront protective structure will be located overlain with the sand removed when excavating for the structure. That sand will then be revegetated with native grasses and shrubs and will result in a vegetated mound no taller than three feet above grade that appears natural. Exhibit F. As discussed elsewhere, the revetment structure has been designed to minimize adverse erosion impacts on the surrounding area.

#### Policy 4.4c: Coastal Erosion: Policies; Protective Structures

This policy implements Goal 18 Implementation Measure 5 by limiting beachfront protective structures to where development existed on January 1, 1977. TCLUO 3.530(4)(A)(4) implements this policy and provides that it is possible to take an Exception to Goal 18 to develop a beachfront protective structure for development that did not exist on January 1, 1977. This application requests approval of a Goal exception to allow BPS as this policy contemplates. In the alternative, this Board should decide that the Subject Properties already have an exception to the prohibition in Goal 18, IM 2 on houses on eroding dunes, and so are allowed their protective structure under the express terms of Goal 18, IM 5 and this plan policy.

Policy 4.4d: *“The shoreline stabilization policies in Section 7.5 of the Goal 16 element shall apply to beachfront protective structures.”*

The shoreline stabilization policies in Section 7.5 of the County's Goal 16 element are addressed above and that response is hereby incorporated.

Policy 4.4e: *"Policy 2.4a shall apply to beachfront protective structures."*

The County's Beaches and Dunes Element Policy 2.4a is addressed above. That response is hereby incorporated.

Policy 4.4f: *"Shoreline protection measures shall not restrict existing public access."*

There are no public beach accesses. This policy does not apply. The two private beach accesses in the area of the proposal are protected or unaffected by it. One private beach access runs between Tax Lots 123 and 3204 to the beach. See Exhibit Q, p. 2. The other access runs from Pine Beach Loop between Tax Lots 113 and 114, and then along the southern boundary of Tax Lot 114 to the beach. See Exhibit Q, p. 2. The proposed structure will improve the northern private beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach. The proposal does not affect the southern beach access. The proposed beachfront protective structure will not restrict the existing private beach accesses. Moreover, the proposal studiously avoids the public beach altogether and so has no effect on access across the beach, either.

The proposal is consistent with the Tillamook County Comprehensive Plan.

TCLUO 9.030(3)(c) provides:

**"(c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and"**

It is in the public interest to protect the Subject Properties, as well as the water and sewer public facilities and supporting street system that serve them. The proposal protects an important part of an acknowledged urban unincorporated community that the County and state have encouraged and supported delivering urban residential land uses over the long-term planning horizon. It is in the public's interest to protect that urban residential development with the proposed BPS. Moreover, the County's public obligations are expressed in state Goal 7 and the County's implementing rules that demand that the County protect persons and property from natural hazards. The proposal responds to natural hazards threatening the community that were contrary to the more than 70-year trend of shoreline prograding that existed at the time of residential development. The public's interest in protecting developments that are entirely appropriate that find themselves befallen by a severe natural hazard.

TCLUO 9.030(3)(d) provides:

**“(d) The amendment must conform to Section 9.040 Transportation Planning Rule Compliance.”**

TCLUO 9.040 provides:

*“Proposals to amend the Comprehensive Plan, Zoning Map or Ordinance shall be reviewed to determine whether they significantly affect a transportation facility pursuant with Oregon Administrative Rule (OAR) 660-012-0060 (Transportation Planning Rule - TPR). Where the County, in consultation with the applicable roadway authority, finds that a proposed amendment would have a significant affect on a transportation facility, the County shall work with the roadway authority and applicant to modify the request or mitigate the impacts in accordance with the TPR and applicable law.”*

The proposed BPS does not significantly affect a transportation facility. The proposal will not generate additional traffic other than on a temporary basis, during construction. Consequently, the proposal will not significantly affect a transportation facility as that term is defined and used in OAR 660-012-0060. Therefore, the provisions of the Transportation Planning Rule are not triggered, and the proposal is consistent with the Transportation Planning Rule.

The proposal meets all applicable approval criteria for a Comprehensive Plan text amendment.

#### **V. The Proposal is Entitled to a Floodplain Development Permit.**

##### **TCLUO 3.014 – Community Medium Density Urban Residential Zone (CR-2)**

The Subject Properties are zoned Community Medium Density Urban Residential (CR-2). The purpose of the CR-2 zone is “to designate areas for medium-density single-family and duplex residential development, and other, compatible, uses. Land that is suitable for the CR-2 zone has public sewer service available and has relatively few limitations to development.” TCLUO 3.014(1). The Subject Properties consist of fifteen lots, which include eleven developed beachfront lots and four vacant beachfront lots. The proposed beachfront protective structure is a “compatible” use that will be essential to, if not accessory to, the primary medium-density single family residential use permitted by the CR-2 zone. This criterion goes on to say that land is suitable for the CR-2 zone if it has public sewer service available and has relatively few limitations to development. The Subject Properties are served by the Twin Rocks Sanitary District, which provides sewer service to the Pine Beach subdivision, the George Shand Tracts and other residences in the vicinity. The Subject Properties are flat. The only limitation to the development of the four, vacant beachfront lots is the on-going shoreline erosion. This concern

is best remedied by the installation of the proposed beachfront protective structure, which will also protect the existing public water and sewer facilities and all the lots in the Pine Beach Subdivision and the George Shand Tracts.

In the CR-2 zone, one or two-family dwellings and their accessory uses are permitted outright, subject to all applicable supplementary regulations in the TCLUO. TCLUO 3.014(2). The proposed beachfront protective structure is an accessory use to the single-family dwellings on the Subject Properties. There are no prohibitions against the installation of beachfront protective structures.

### **TCLUO 3.510 – Flood Hazard Overlay Zone (FH)**

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. Accordingly, the County’s applicable Flood Hazard Overlay Zone provisions apply. Findings for the applicable Flood Hazard Overlay Zone provisions are discussed below.

TCLUO 3.510(5) provides general standards that must be met for all areas of special flood hazards, such as the VE zone here. Standards applicable to this application are as follows:

#### *“ANCHORING*

*“(b) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.”*

The beachfront protective structure will be “anchored” to the ground by first excavating approximately 8 feet below the 20.8-foot shoreline elevation, placing approximately two-thirds of the structure under the ground, and backfilling the underground portion with sand. An “ecology” block wall will be installed at the northern and southern ends of the beachfront protective structure to ensure that the predicted future wave runup will not flow around the beachfront protective structure, which if such runup occurs could potentially flood the beachfront homes or otherwise undermine the structural integrity of the BPS. The BPS will be constructed with a launchable toe on each end that will prevent undermining of the structure from erosion and scouring. The said beachfront protective structure will be engineered to prevent flotation, collapse, or lateral movement of the structure.

#### *“CONSTRUCTION METHODS AND MATERIALS*

*“(d) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.*

*“(e) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.”*

The proposed beachfront protective structure has been engineered to resist flood damage through the use of large boulders. Each of these are designed to withstand the pounding of waves and of ocean flooding. The structure will be overlain with sand and will be planted with beach grasses and native vegetation, thereby providing “anchoring” into the shoreline, and thus be resistant to flooding by high tides and wave run-up.

The top of the proposed beachfront protective structure will be 23.8 feet, which West Consultants have calculated to be tall enough to account for the circumstance where the “total water level” at this location will be 23.4 feet (a 10% chance). (See Application, Exhibit F, Table 2). Also, the height of the beachfront protective structure is set at 3-feet above the ground elevation, which complies with the allowable County-required 3-foot maximum height for accessory beachfront protective structures. Placing the beachfront protective structure at the proposed entire 3-foot maximum height minimizes the potential that any of the homes will experience flood damage.

The proposal complies with these standards.

TCLUO 3.510(10) provides specific standards for development in Coastal High Hazard areas, identified to include the VE zone as here. Standards applicable to this application are as follows:

*“(a) All new construction and substantial improvements in Zones VI-V30, VE and V shall be elevated on pilings and columns so that:*

*“(1) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above one foot above the base flood level: and*

*“(2) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).”*

This standard, which applies to “new construction” and “substantial improvements” in Coastal High Hazard Areas is not applicable to this proposal. “New construction” for floodplain management purposes is defined in TCLUO 3.510(4) to mean “structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.” “Substantial improvement” is defined in TCLUO 3.510(4) to mean “[a]ny reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement.” These terms refer only to “structures” which, in turn, are defined in TCLUO

3.510(4) as “a walled and roofed building, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.” The proposed beachfront protective structure is not a “structure” for purposes of the Flood Hazard Overlay provisions; it is not a walled or roofed building, a modular or temporary building, or a gas or liquid storage tank. Accordingly, these standards are not applicable to this proposal.

*“(b) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a)(1) and (a)(2) above. A certificate shall be submitted, signed by the registered professional engineer or architect that the requirements of this Section will be met.”*

Chris Bahner, a registered professional engineer for West Consultants, Inc. has prepared a technical report and construction plans, and developed and reviewed the beachfront protective structure’s structural design, specifications and plans for the construction. As discussed immediately above, the provisions of TCLUO 3.510(10)(a)(1) and (a)(2) are not applicable to this proposal.

*“(c) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones VI-30, VE, and V and whether or not such structures contain a basement. The Community Development Director shall maintain a record of all such information.”*

The proposed beachfront protective structure is not a “structure” for purposes of the Flood Hazard Overlay Zone, therefore there is no “lowest structural member of the lowest floor (excluding pilings and columns)”. Accordingly, this standard is not applicable to this proposal. As background information, the Applicants have provided construction plans (Application, Exhibit F, Attachment 2, Sheet 4 (Revetment Details)), which provide detailed elevations for all aspects of the proposed BPS.

*“(d) All new construction shall be located landward of the reach of mean high tide.”*

Again, “new construction” for purposes of the Flood Hazard Overlay Zone refers only to “structures” which are also defined for purposes of the Flood Hazard Overlay Zone as walled or roofed buildings, modular or temporary buildings, or gas or liquid storage tanks. Accordingly, this standard is not applicable to the proposed BPS. Nevertheless, as West Consultants’ Technical Memorandum (Application, Exhibit F) explains and as shown on the revetment plans, the proposed BPS is “located landward (or east) of the existing vegetation line near the western edge of the beachfront properties and beachfront homes. The structure will be located about 185



feet landward” of the statutory vegetation line which is well-landward of the reach of mean high tide.

*“(e) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this Section a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:*

“[standards relating to breakaway wall collapse and elevated portions of buildings]”

As explained above, the proposed BPS is not “new construction” or a “substantial improvement”, therefore, this standard is not applicable to this proposal. The proposed BPS does not have “walls” and therefore the standards for breakaway walls and other elevated portions of a building are not applicable.

*“(f) If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.”*

No breakaway walls will be utilized, as explained immediately above. This standard is likewise not applicable to this proposal.

*“(g) Prohibit the use of fill for structural support of buildings.”*

The proposed BPS is not a “building” and is not proposed for structural support any building. This standard is not applicable to this proposal.

*“(h) Prohibit man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage.”*

The purpose of the proposed BPS is to decrease potential flood damage. Accordingly, and in order to accomplish this purpose, the man-made alteration of sand dunes, including vegetation removal, will be temporary and is required in order to install and locate the proposed BPS. The proposed beachfront protective structure will be back filled with sand and revegetated. The disturbed area surrounding the proposed beachfront protective structure will be restored to its natural state, monitored annually and replanted when necessary as part of the maintenance

program to ensure that native beach grasses and shrubs establish on the site. Therefore, once the native vegetation is reestablished after replanting, there will be minimal if any impacts and no permanent disturbance to the actively eroding dune adjacent to the Subject Properties. The establishment of the BPS will protect the dune and its vegetation and reduce potential flood damage.

All applicable standards for Coastal High Hazard Areas are met.

TCLUO 3.510(14) requires a permit application and approval for all development activities before construction or development can begin in any area of the special flood hazard zone. TCLUO 3.510(14)(a) provides requirements for the application.

*“(a) Application for a development permit shall be made on forms furnished by the Community Development Director and shall include but not necessarily be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information in 3.510(14)(a)(1) – (4) is required and Development Permits required under this Section are subject to the Review Criteria put forth in Section 3.510(14)(b):*

*“(1) Elevation in relation to mean sea level of the lowest floor, including basement, of all structures as documented on an Elevation Certificate;*

*“(2) Elevation in relation to mean sea level to which any proposed structure will be floodproofed as documented on an Elevation Certificate;*

*“(3) If applicable, certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Subsection (6)(c)(3) of this Section; and*

*“(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.”*

Applicants' Application, Exhibit F satisfies this standard. That exhibit, which is the Applicants' expert's technical memorandum contains plans drawn to scale showing the nature, location, dimensions and elevations of the area in question, as well as existing structures and their locations. As explained above, the proposed BPS is not a "structure" within the meaning of the Flood Hazard Overlay Zone provisions. Accordingly, listed provisions (1), (2) and (3) are not applicable to this proposal. No watercourses will be altered or relocated as a result of the proposed development, so provision (4) is also inapplicable

TCLUO 3.510(14)(b) provides the floodplain development permit review criteria. Each criterion is discussed below.

*“(b) Development Permit Review Criteria*

*“(1) The fill is not within a Coastal High Hazard Area.”*

No fill will be placed within a Coastal High Hazard Area. The BPS is proposed in the VE zone, which is a Coastal High Hazard Area, however, no fill is involved in its construction. The County’s definition of “fill” is “[a]ny material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed on land including existing and natural floodplains, or in waterways, for the purposes of development or redevelopment.” TCLUO 3.510(4). The proposed protective structure is the development, it is not filling land for the purposes of development. There will be no net increase of material placed within the Coastal High Hazard Area constituting fill. Accordingly, this standard does not apply. All excavated sand will be placed back over the proposed protective structure, so there will be no loss or addition of sand from the foredune area.

*“(2) Fill placed within the Regulatory Floodway shall not result in any increase in flood levels during the occurrence of the base flood discharge.”*

No fill will be placed within a regulatory floodway. This criterion is inapplicable. Regardless, based on the evidence from West Consultants that there will no increase in flood levels under the proposal.

*“(3) The fill is necessary for an approved use on the property.”*

Although no fill is involved in the construction of the BPS, the residential uses, for which the beachfront protective measure is accessory and necessary, is an approved use on the property.

*“(4) The fill is the minimum amount necessary to achieve the approved use.”*

Although no fill is involved in the construction of the BPS, the elevation of the proposed BPS is at 23.8 feet, just 3 feet above the shore elevation, which is the minimum amount necessary to achieve the intended protection for the existing structures and public facilities on the subject properties. The Applicants’ expert has calculated a 10% chance that the “total water level” at this location will be at 23.4 feet. Therefore, the proposed elevation of the BPS is the minimum necessary to achieve the necessary protection.

*“(5) No feasible alternative upland locations exist on the property.”*

No feasible alternative upland locations for the BPS exist on the Subject Properties. The BPS is proposed to be placed at the most landward point possible on the Subject Properties given the location of the existing residential structures the BPS is intended to protect. Application, Exhibit F, Attachment 2, Sheet 3 shows that there are mere feet between the proposed BPS and several of the residences.

*“(6) The fill does not impede or alter drainage or the flow of floodwaters.”*

Although no fill is involved in the construction of the BPS, the BPS will not impede or alter drainage or the flow of floodwaters. The Applicants' expert analysis concludes that the BPS will not impede or alter drainage or flow of the floodwaters in a manner that will result in any adverse off-site impacts. Application, Exhibit F, p. 9.

*“(7) If the proposal is for a new critical facility, no feasible alternative site is available.”*

The proposal is not for a new critical facility; this standard is not applicable to this proposal.

*“(8) For creation of new, and modification of, Flood Refuge Platforms, the following apply, in addition to (14)(a)(1-4) and (b)(1-5): [list follows]”*

This proposal is not for a new or modified Flood Refuge Platform. This standard is not applicable to this proposal.

The application meets all standards for a floodplain development permit.

#### **TCLUO 3.530 – Beach and Dune Overlay (BD)**

The Subject Properties are located within the County's Beach and Dune Overlay (BD). Accordingly, the County's applicable BD Overlay provisions apply. Findings for the applicable BD Overlay provisions are discussed below.

TCLUO 3.530(4)(A) lists the uses permitted in the BD Overlay and provides standards for those permitted uses. TCLUO 3.530(4)(A)(2) permits “accessory structures for beach access, oceanfront protection or stabilization” subject to the standards of TCLU 3.530(5) and the following use-specific standards:

*“a. The location of accessory structures will be determined in each case on the basis of site-specific information provided by a Dune Hazard Report, pursuant to the provisions of Section 3.530(5) B.”*

The beachfront protective structure is an accessory structure to the permitted residential use of the Subject Properties. As detailed in Application, Exhibit F, West Consultants in their Technical Memorandum, have prepared and supplied on pages 7-9 a “Detailed Site Investigation” report, which provides evidence to demonstrate that all applicable and relevant standards for such a report have been met.

*“b. Any accessory structure higher than three feet as measured from existing grade will be subject to the variance procedure and criteria set forth in Article VIII of the Tillamook County Land Use Ordinance.”*

As shown in West Consultants' Technical Memorandum and construction plans (Application, Exhibit F), the proposed accessory structure, (i.e., revetment), will be no more than three feet above the existing grade.

*“c. Accessory structures for on-site subsurface sewage disposal systems may not be located ocean ward of the primary structure on the subject property unless the following provisions are met: [list follows]”*

The proposal is not for an accessory structure for an on-site subsurface sewage disposal system. These standards are not applicable to this proposal.

TCLUO 3.530(4)(A)(4) provides the following specific standards for beachfront protective structures:

*“b. Beachfront protective structures (rip-rap and other revetments) shall be allowed only in Developed Beachfront Areas and Foredune Management Areas, where ‘development’ existed as of January 1, 1977, or where beachfront protective structures are authorized by an Exception to Goal 18.”*

This standard provides that beachfront protective structures are only allowed in three circumstances: (1) in Developed Beachfront Areas and Foredune Management Areas; (2) in areas where “development” existed as of January 1, 1977; and (3) in areas where beachfront protective structures are authorized by an Exception to Goal 18. The Subject Properties qualify under the first and third factors. “Developed Beachfront Areas” are defined in TCLDO 3.530 as “Active foredune areas where an Exception to Goal 18 allows development on the active foredune. These areas are described in Section 6.1 of the Goal 18 Element of the Comprehensive Plan.” The proposal is for a Goal exception that will allow the existing residential development to be on the active foredune and the exception will be added to Section 6.1 of the Goal 18 Element of the Plan. The proposal meets this provision.

#### Developed Beachfront Areas

As requested and explained above, the Board should find **in the alternative only**, that the Subject Properties are already subject to an existing exception that allows residential development on a dune that is now subject to ocean undercutting and wave overtopping (i.e., an active foredune). Those explanations are incorporated herein. That means in the alternative only, the Board should find that the Subject Properties already have a goal exception that allows the residential development on the eroding dune.

#### Areas Where Beachfront Protective Structures are Authorized by an Exception to Goal 18

The Subject Properties are entitled to an exception to Goal 18 to allow a beachfront protective structure for the reasons explained in this letter. In the alternative only, the Board should also find that the Subject Properties’ existing exception is an exception that authorizes residential development on an eroding dune and so is in substance an exception to Goal 18, IM 2 and that means that the proposed BPS is allowed under Goal 18, IM 5 and this plan policy. Accordingly, either way, the Subject Properties are in an area where beachfront protective

structures are authorized by either an existing or a new exception to be herein granted, to Goal 18.

TCLUO 3.530(4)(a)(4)(c) provides that proposals for beachfront protective structures demonstrate the following:

*“1. The development is threatened by ocean erosion or flooding;”*

The development on the Subject Properties is threatened by ocean erosion and flooding. As has been detailed in Application, Exhibit F, the Subject Properties have been subject to rapidly advancing coastal erosion and have been losing portions of their properties from coastal flooding during high tides, combined with high wave run-up during winter King Tides, such as those that occurred on February 8-12, 2020. Application, Exhibit F, p. 1-3. During that subject event, the maximum still water level reached the ocean front homes and went past the southernmost home for a distance of about 45 feet. As stated by West Consultants’ Chris Bahner, PE, in his Technical Memorandum, there is a high level of risk for future damage to the subject 11 structures on the Subject Properties and the remaining properties and their infrastructure. Application, Exhibit F, p. 1. The Technical Memorandum also notes that an additional 40 or so homes are also threatened by coastal flooding, as are the Subject Properties’ water and sewer infrastructure and the Pine Beach Loop vehicular access, if no actions are taken to stop future erosion. Application, Exhibit F, p. 8.

*“2. Non-structural solutions cannot provide adequate protection;”*

Non-structural solutions cannot provide the Subject Properties with adequate protection. West Consultants’ Supplemental Memorandum in the record, dated May 27, 2021, provides a detailed analysis of alternatives to the proposed rock rip rap revetment that were explored by the Applicants. That analysis demonstrates that non-structural solutions cannot provide the needed protection for the Subject Properties, persons and infrastructure that have been impacted by severe coastal erosion and flooding and are imminently threatened by further erosion and flooding, within the proposal’s defined constraints. The alternatives analysis concludes that the rock revetment was selected over non-structural solutions because it meets the project objectives within the defined constraints, is flexible and will accommodate sediment, it easy to maintain and modify, is resistant to damage by debris, absorbs and dissipates wave energy instead of reflecting it, and results in less wave runup and overtopping than a vertical wall structure.

*“3. The beachfront protective structure is placed as far landward as possible;”*

The BPS is proposed to be placed as far landward as possible. As stated in Application, Exhibit F, West Consultants have determined that the most effective placement of the proposed beachfront structure will be to construct and install it within an active eroding foredune approximately 10 feet landward of the existing vegetation line and within the rear yards of the subject properties. That placement will also be about 185 feet landward of the statutory

vegetation line and is as close to the existing residential dwellings as is possible. The BPS is placed as far landward as possible given the need at its proposed location and siting restraints.

*“4. Adverse impacts to adjoining properties are minimized by angling the north and south ends of the revetment into the bank to prevent flank erosion;”*

Any adverse impacts adjoining properties are minimized by the angling of the north and south ends of the BPS into the bank to prevent flank erosion. Application, Exhibit F, page 6, Figure 4 of the West Consultants’ Technical Memorandum provides a plan view of the proposed beachfront protective structure that shows that the north and south ends of the revetment are angled into the bank. (See also Application, Exhibit F, Attachment 2, Sheet 3). The purpose of angling the ends of the revetment in that way is to prevent flank erosion. Application, Exhibit F, p. 6. The Technical Memorandum explains that the proposed revetment will not have any adverse impacts to adjoining properties.

*“5. Public costs are minimized by placing all excess sand excavated during construction over and seaward of the revetment, by planting beach grass on the sand-covered revetment, and by annually maintaining the revetment in such condition;”*

Public costs will be minimized by placing all of the excess sand excavated during the construction of the BPS over the revetment, by planting beach grass on the sand-covered revetment, and by annually maintaining the revetment in such condition. The proposal requires the BPS to be covered in all of the excess sand excavated during construction and replanted with native beach grasses and shrubs that will reestablish natural shoreline vegetation. The proposal also requires annual maintenance by the property owners and replanting of beach grasses and shrubs as needed. These measures will minimize public costs of the BPS, if any.

*“6. Existing public access is preserved; and”*

There is no existing public beach access or any other public access affected by the proposal. Use of the northern access point, (the 5’ Watseco blocks easement and 5’ Pine Beach common area walkway) is, by the express terms of the easement and the Pine Beach Replat narrative (Application, Exhibit G), for the benefit of certain property owners and their families, not the general public. Likewise, the southern access, by the express terms of the Pine Beach Replat, is to property owners within that subdivision. Claims that the BPS interferes with the general public’s access to the beach are mistaken because the public has no right of access anywhere on the Subject Properties including the two existing access points. The proposed BPS has no impact on the beach or its accesses. This provision does not apply as a result or if it does, it is met.

Regardless, the existing private access is preserved by the proposal. The ten-foot (10’) combined access easement (northern access) that the Subject and some neighboring properties have to the beach is preserved by the graveled path and ramp over the BPS, which is plainly

shown on the construction drawings submitted by the Applicants' consultant on June 3, 2021. The result of the ramp will be improved access to the beach. The BPS does not affect the southern five-foot (5') beach access that belongs to the occupants of the Pine Beach subdivision, at all.

*"7. The following construction standards are met:*

*"a. The revetment includes three components; an armor layer, a filter layer of graded stone (beneath armor layer), and a toe trench (seaward extension of revetment structure)."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2, the proposed beachfront protective structure consists of an armor layer (large boulders), a filter layer of graded stone (beneath armor layer), and a toe trench (seaward extension of revetment structure). This standard is met.

*"b. The revetment slope is constructed at a slope that is between 1:1 to 2:1."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2, the proposed beachfront protective structure will be constructed with a slope of 1:1.5, which is between 1:1 to 2:1. This standard is met.

*"c. The toe trench is constructed and excavated below the winter beach level or to the existing wet sand level during the time of construction."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2, the proposed beachfront protective structure will have a toe trench constructed and excavated below the winter beach level or to the existing wet sand level. This standard is met.

*"d. Beachfront protective structures located seaward of the state beach zone line (ORS 390.770) are subject to the review and approval of the State Parks and Recreation Division. Because of the concurrent jurisdiction with the Division of State Land, the Parks Division includes the Division of State Lands in such beach permit reviews."*

This standard does not apply to the proposal because the BPS is not proposed to be located seaward of the state "beach zone line" as defined by ORS 390.770. As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2, the proposed BPS will be constructed and installed approximately 10 feet landward of the existing line of established vegetation and within the rear yards of the subject properties. That placement will be about 185 feet landward of the "state beach zone line" or statutory vegetation line described in ORS 390.770. Therefore, the proposed BPS will not be located seaward of the state beach zone line (ORS 390.770) and thus, the proposal does not require State Parks and Recreation Division approval.



*“e. The State Parks and Recreation Division shall notify Tillamook County of emergency requests for beachfront protective structures. Written or verbal approval for emergency requests shall not be given until both the Parks and Recreation Division and the County have been consulted. Beachfront protective structures placed for emergency purposes, shall be subject to the construction standards in Section 3.140(17).”*

This standard also does not apply to the proposal because the BPS is not being proposed to the State Parks and Recreation Division approval as “an emergency request for beachfront protective structures”. Furthermore, given the location of the proposed BPS landward of both the “state beach zone line” and the statutory vegetation line described in ORS 390.770, the application does not require State Parks and Recreation Division approval. Consequently, the proposal does not require that the State Parks and Recreation Division notify Tillamook County of this request.

TCLUO 3.530(5) provides site development standards and requirements for development within the Beach and Dune Overlay zone. The applicable standards and requirements are addressed below.

TCLUO 3.530(5)(B) provides that a Dune Hazard Report is required prior to the approval of a building permit. TCLUO 3.530(5)(B)(3) provides the requirements for the Dune Hazard Report. Those requirements are addressed below.

*“The Dune Hazards Report shall include the results of a preliminary site investigation and where recommended in the preliminary report, a detailed site investigation.*

*“a. Preliminary Site Investigation*

*“1. The purpose of the Preliminary Site Report is to identify and describe existing or potential hazards in areas proposed for development. The report shall be based on site inspections conducted by a qualified person, such as a geologist, engineering geologist, soil scientist, civil engineer, or coastal oceanographer.*

*“2. The preliminary Site Report shall either recommend that a more detailed site investigation report is needed to fully disclose the nature of on-site hazards or it shall conclude that known hazards were adequately investigated, and recommend development standards for buildable areas.”*

*“3. The Preliminary Site Report shall include plan diagrams of the general area, including legal descriptions and property boundaries, and geographic information as required below:*

*“a. Identification of each dune landform (according to either the Goal 18 or SCS system of classification);*

*“b. History of dune stabilization in the area;*

*“c. History of erosion or accretion in the area, including long-term trends;*

*“d. General topography including spot elevations;*

*“e. Base flood elevation and areas subject to flooding, including flood areas shown on the NFIP maps of Tillamook County;*

*“f. Location of perennial streams or springs in the vicinity;*

*“g. Location of the state beach zone line;*

*“h. Location of beachfront protective structures in the vicinity;*

*“i. Elevation and width of the foredune crest.*

*“j. Land grading practices, including standards for cuts and fills and the proposed use and placement of excavated material.*

*“Elevations shall relate to the National Geodetic Vertical Datum of 1929, NGVD.”*

The proposal satisfies the requirements of a preliminary site investigation. The Applicants' expert consultant, Chris Bahner, a registered professional engineer (“P.E.”) of West Consultants, Inc., prepared a Technical Memorandum, dated March 25, 2021, (“Dune Hazards Report”) that includes the results of a preliminary site investigation, a preliminary site report and a detailed site investigation. Application, Exhibit F.

*“b. Detailed Site Investigation*

*“1. The purpose of a Detailed Site Investigation is to fully describe the extent and severity of identified hazards. Such investigation shall be required either where recommended in a Preliminary Site Report or when building plans, including grading plans for site preparation, were not available for review as part of the preliminary site investigation.*

*“The Detailed Site Report shall be based on site inspections or other available information and shall be prepared by a qualified person, such as a registered civil engineer or engineering geologist.*

*“2. The report of a Detailed Site Investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations. The report shall include standards for:*

*“a. Development density and design;*

*“b. Location and design of roads and driveways;*

*“c. Special foundation design (for example spread footings with post and piers), if required;*

*“d. Management of storm water runoff during and after construction.”*

The proposal satisfies the requirements of a detailed site investigation.

*“c. Summary Findings and Conclusions. The Preliminary and Detailed Site Reports shall include the following summary findings and conclusion:*

*“1. The proposed use and the hazards it might cause to life, property, and the natural environment;*

*“2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure.*

*“3. Measures necessary to protect the surrounding area from any hazards that are a result of the proposed development;*

*“4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.”*

The proposal satisfies the requirements for the preliminary and detailed site reports’ summary findings and conclusions.

The application meets all approval standards for beachfront protective structures in the Beach and Dune Overlay zone.

The application meets all approval standards for a Floodplain Development Permit.

## **VI. Conclusion**

As the staff report and the Application make clear, the historical facts and legal context surrounding the Applicants’ proposed beachfront protective structure are complex. The Applicants have submitted the Application due to circumstances not of the County’s or Applicants’ making.

At the time the County’s acknowledged development program assigned medium density residential development as the appropriate use of the Subject Properties, they were located several hundred feet from the shoreline with a well-vegetated protective barrier in-between. The Pine Beach/George Shand Tracts areas had seen nearly a century (at least 70 years) of prograding beach, pushing the shoreline farther and farther from the Subject Properties and

vegetation on the foredune was increasing. Now the Subject Properties, and supporting infrastructure are threatened by ocean undercutting, wave overtopping, runup and flooding that is unique to the subregion of the littoral cell in which they are located.

The Application narrative and the supporting evidence in the record demonstrate that, under any legal approach, the County can and should approve the proposed BPS. The application narrative has carefully analyzed and addressed each of the approval standards, providing evidence that supports each approach. The proposed BPS has been carefully designed to ensure that there are no adverse off-site impacts, that existing beach access points are private ones and not public ones but nevertheless, they are maintained by the proposal. A natural foredune environment, albeit hardened, will be restored and maintained under the proposal.

The proposal meets all relevant standards for approval of proposed BPS. A published report by DLCDC explained, in dismissing any need to fundamentally change Goal 18, Implementation Measure 5 (Application, Exhibit E), that the exception process “works” to allow protective structures where needed. It should work here. It is hard to imagine a more compelling situation for approving an exception to allow the proposed BPS. If the proposal here cannot be approved, it cannot be approved anywhere.

Accordingly, the Applicants respectfully request that the Board approve the proposed BPS. Thank you for your consideration.

Very truly yours,



Wendie L. Kellington

WLK:wlk

CC: Clients

#### Exhibits

Exhibit 1 – Images of Subject Properties

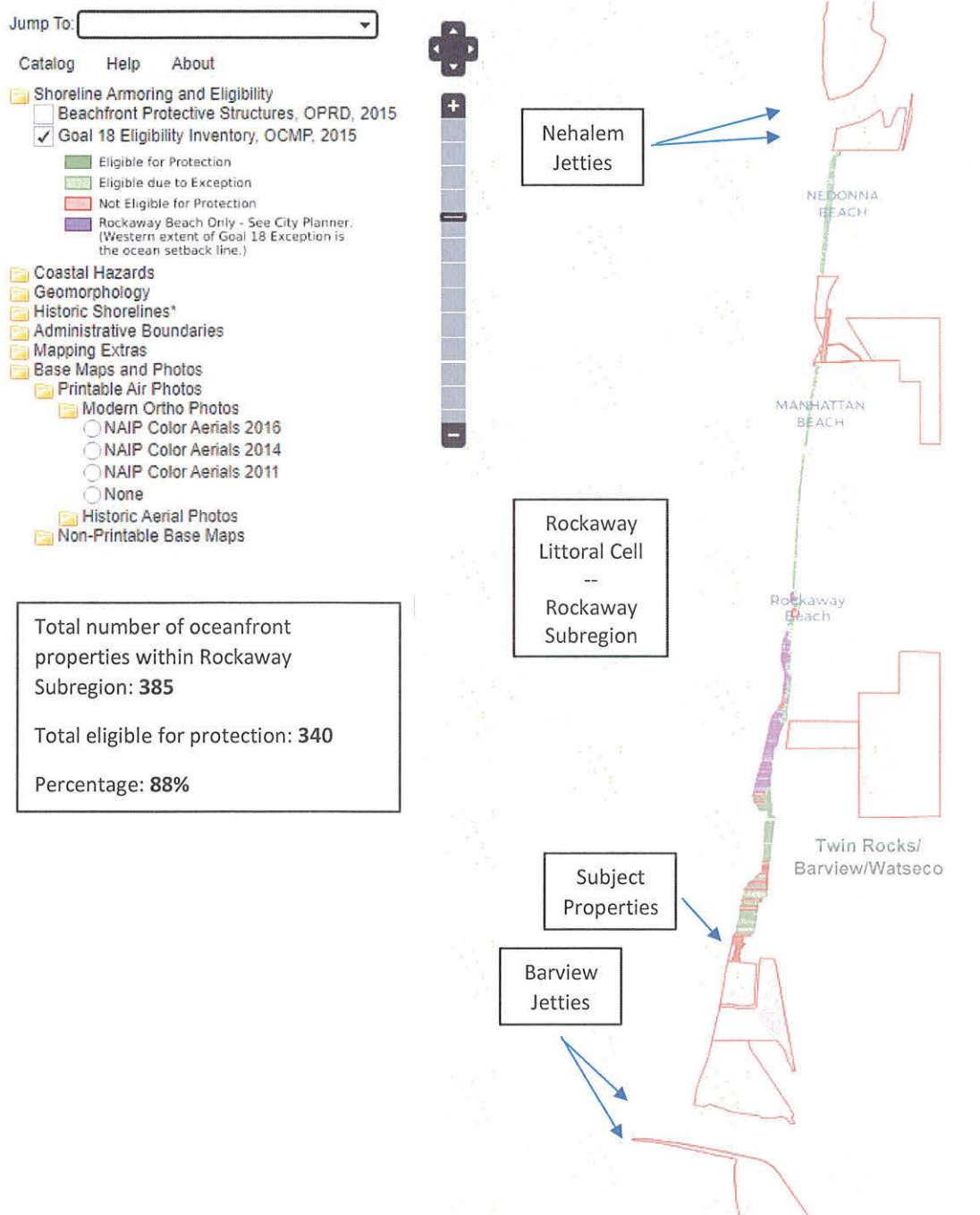
Exhibit 2 – Oregon Coastal Atlas Maps

Exhibit 3 – Legislative History Pre-1984 “Development” Definition

Exhibit 4 – West Consultants’ Third Supplemental Technical Memorandum

Oregon Coastal Atlas

Goal 18 Eligibility Inventory – Rockaway Littoral Cell-Rockaway Subregion



Total number of oceanfront properties within Rockaway Subregion: **385**

Total eligible for protection: **340**

Percentage: **88%**

Nehalem Jetties

Rockaway Littoral Cell  
--  
Rockaway Subregion

Subject Properties

Barview Jetties

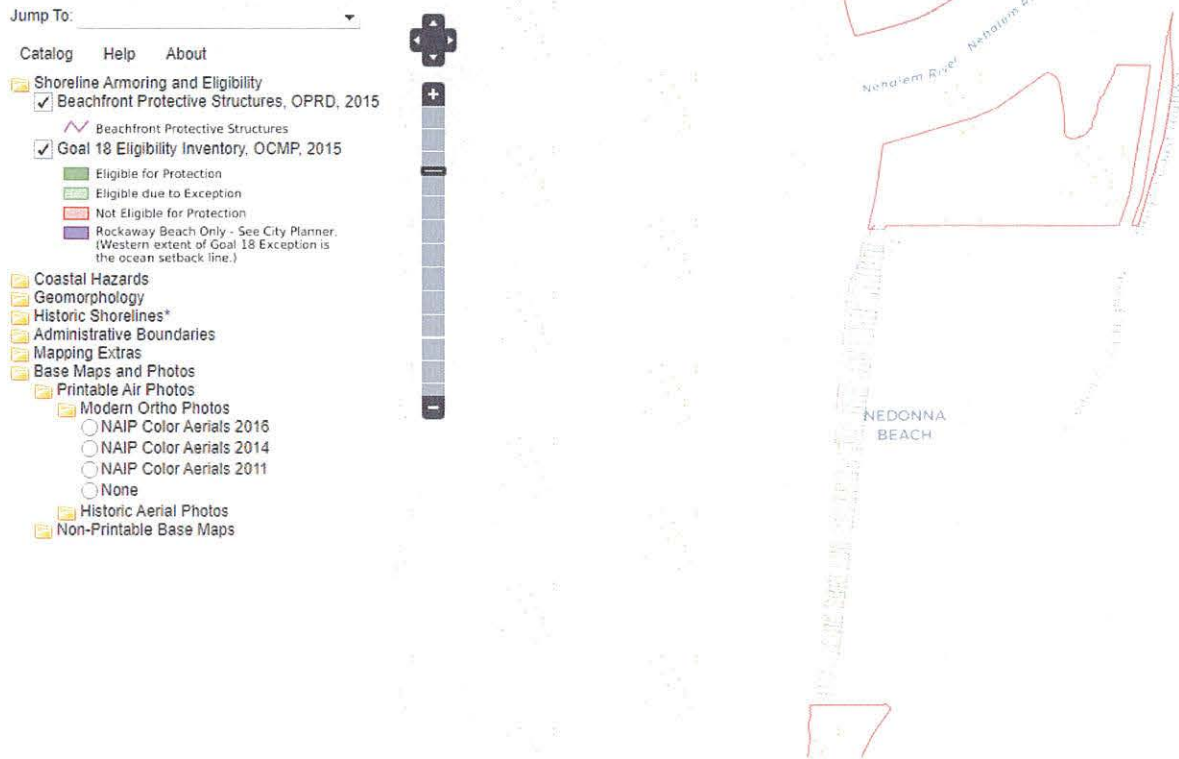
NEDONNA BEACH

MANHATTAN BEACH

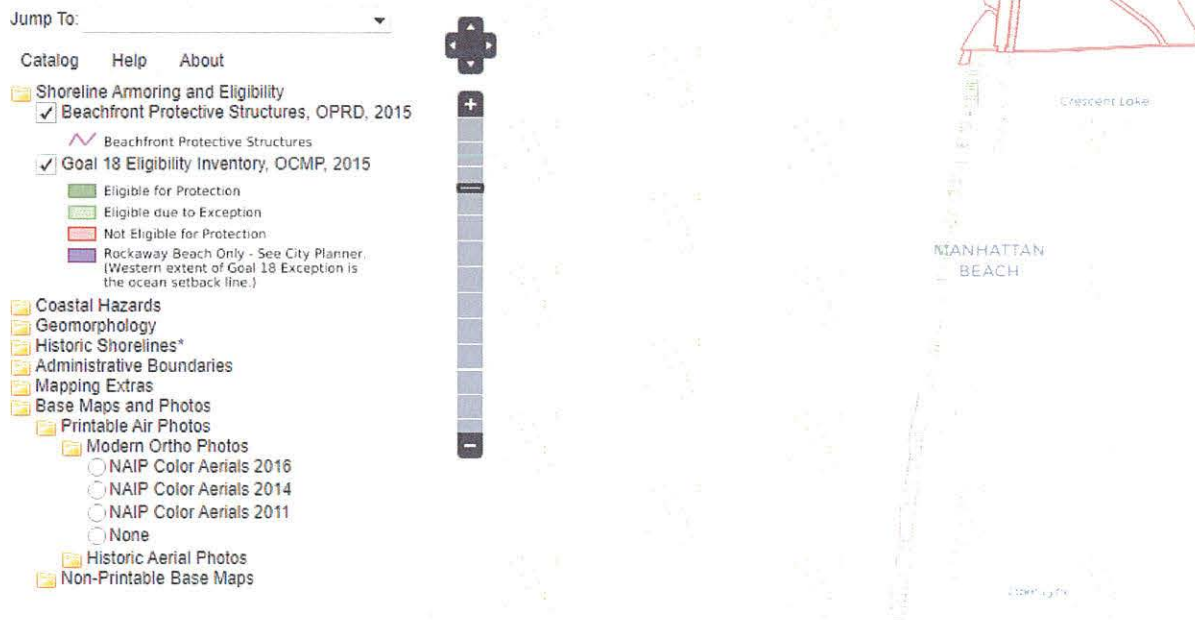
Rockaway Beach

Twin Rocks/  
Barview/Watseco

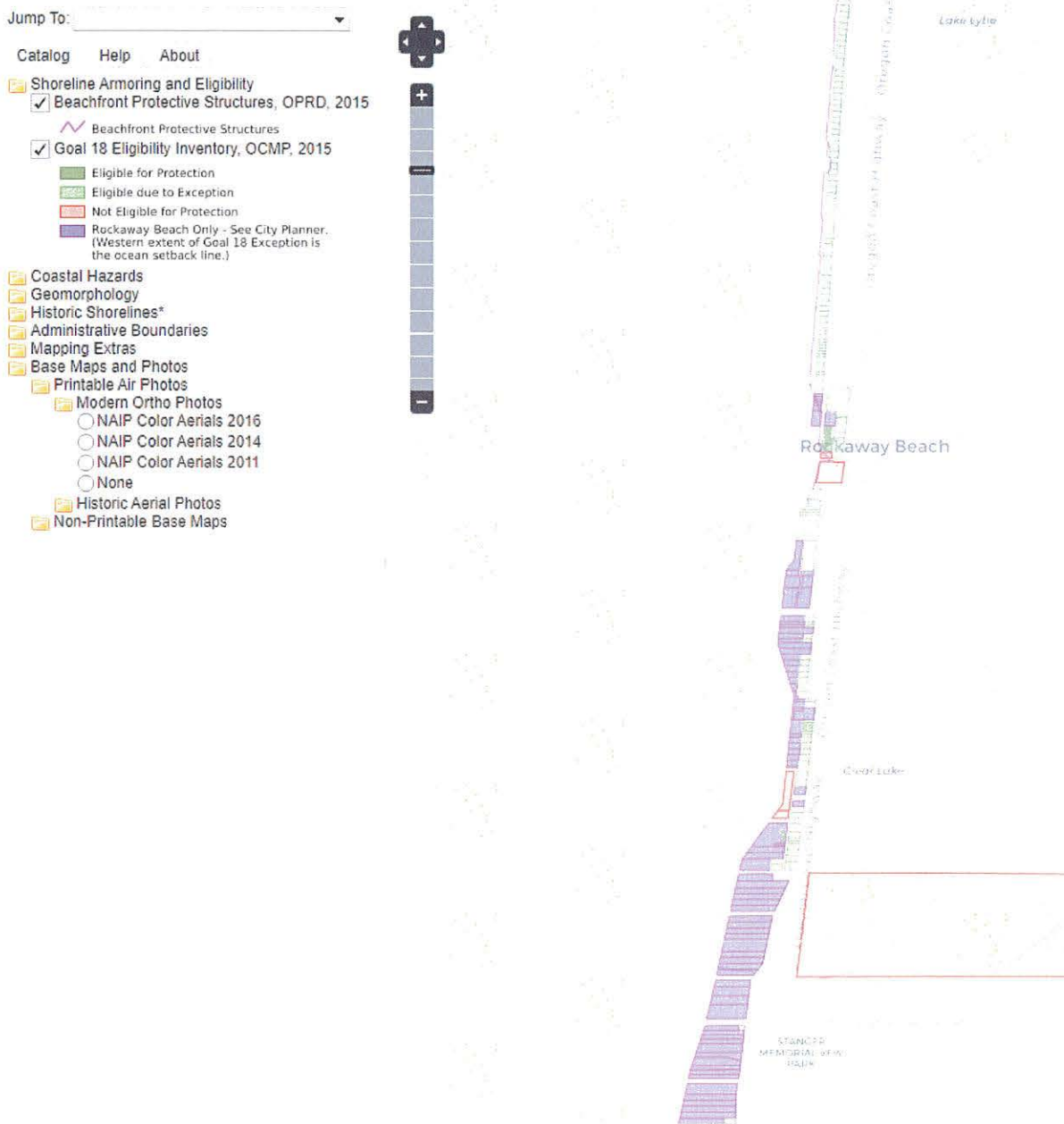
### Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Nedonna Beach



### Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Manhattan Beach








### Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Rockaway Beach



### Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Twin Rocks/Barview/Watseco

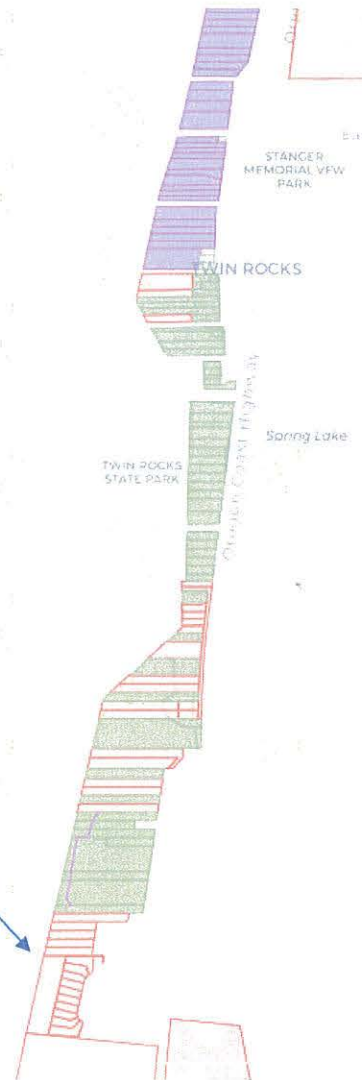
Jump To:

Catalog Help About

- Shoreline Armoring and Eligibility
  - Beachfront Protective Structures, OPRD, 2015
    -  Beachfront Protective Structures
  - Goal 18 Eligibility Inventory, OCMP, 2015
    -  Eligible for Protection
    -  Eligible due to Exception
    -  Not Eligible for Protection
    -  Rockaway Beach Only - See City Planner. (Western extent of Goal 18 Exception is the ocean setback line.)
- Coastal Hazards
- Geomorphology
- Historic Shorelines\*
- Administrative Boundaries
- Mapping Extras
- Base Maps and Photos
  - Printable Air Photos
    - Modern Ortho Photos
      - NAIP Color Aerials 2016
      - NAIP Color Aerials 2014
      - NAIP Color Aerials 2011
      - None
    - Historic Aerial Photos
  - Non-Printable Base Maps



Subject Properties





# Technical Memorandum

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**To:** Wendie Kellington, Kellington Law Group  
**From:** Chris Bahner, P.E., D. WRE  
**Date:** July 21, 2021  
**Subject:** Third Supplement Technical Memorandum

---

## 1. Introduction

This memorandum discusses questions/comments brought up during the 15 July 2021 Planning Commission meeting for a proposed shoreline protection revetment for the oceanfront properties of the Pine Beach subdivision and all but one of the oceanfront lots in the George Shand Tracts (Ocean Boulevard Properties), together referred to as the “Subject Properties.” The Subject Properties are located on the Oregon coast about 2 miles south of Rockaway Beach along the northwest coast of Oregon (Figure 1). These oceanfront landowners have been losing portions of their property due to coastal erosion and are experiencing coastal flooding as a result of high tides and wave run-up. Most recently, coastal flooding occurred during the King Tides in January of 2021, as well as in February of 2020. During these events, the maximum stillwater level reached the oceanfront homes, and went past the southernmost home for a distance of about 45 feet. There is a high level of risk for future damage to the Subject Properties’ land, structures, and infrastructure without the proposed revetment. It is not accurate to state, as some commentors have, that the Subject Properties are not subject to wave overtopping or undercutting. They are subject to both.

WEST Consultants, Inc. (WEST) was contracted by Kellington Law Group to study and if appropriate to develop a rock riprap revetment design, which if constructed, is expected to prevent further erosion of the landowners’ properties and to reduce the risk of coastal flooding. The revetment structure design and information required by Tillamook County was documented in a technical memorandum completed by WEST in March 2021 (WEST, 2021a). WEST also completed a supplemental technical memorandum in May 2021 (WEST, 2021b) in response to comments made by the Department of Land Conservation and Development (DLCD) sent in a letter to Tillamook County about the proposed protective structure (May 2021). Finally, WEST completed a second supplemental technical memorandum in June 2021 (WEST, 2021c) in response to objections filed concerning the proposed Subject Properties structure.



**Figure 1. Location map**

This technical memorandum present information of the following: (1) performance of the launchable toe, (2) north-south beach access, (3) sand coverage, (4) Oregon Parks and Recreation Department (OPRD) standards, (5) non-structural alternatives, (6) jetty influences, (7) uniqueness (Neskowin Cell), and (8) potential adverse impacts.

## **2. Performance of Launchable Toe**

The proposed design includes a launchable toe to prevent the undermining of the proposed structure from future shoreline changes that are highly uncertain. Figure 2 illustrates the performance of the launchable toe where the rock will launch into the area eroded in front of the structure without any changes to the revetment above the revetment toe. Prior to being undermined, the launchable toe section will also prevent any scour at the revetment toe associated with waves and/or side currents.

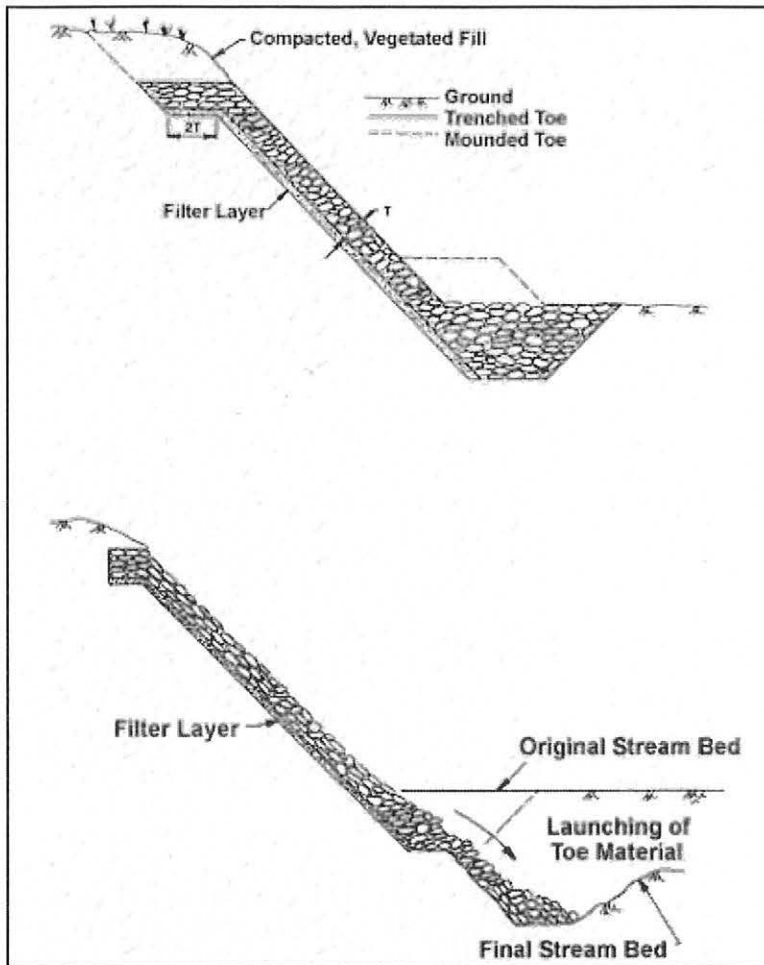


Figure 2. Illustration of launchable toe performance

### 3. North-South Beach Access

Concerns have been expressed over impacts to the beach access along the north-south direction. The structure will have no influence on the north-south beach access for the present conditions since it will be constructed within the existing dune. An analysis of comparing total water levels to anticipated elevations at the structure was completed for a three period to assess the potential futures impact to the north-south beach access. The analysis involved comparing the total water levels for the period from 2018 to 2020. The total water level was computed as the summation of the tide elevation and the wave runoff. Tide elevation was obtained from the National Oceanic and Atmospheric Administration (NOAA) Tides and Currents website (NOAA, 2021a). Wave runoff was computed using equation 6.4 in *Coastal Flood Hazard Study, Tillamook County, Oregon* (DOGAMI, 2015). The wave height and wave period used in the wave run-up equation were obtained from Wave Buoy 46243 available from NOAA's National Data Buoy Center website (NOAA, 2021b).

The north-south access would be impassable when the total water level extends above the beach-dune elevation at the structure. Several beach-dune elevations were considered: (1) future elevation at proposed revetment structure; (2) upper limit of future elevation, which represents the summer profile; (3) lower limit of future elevation, which represents the winter profile; (4) existing elevation at Shorewood RV Park revetment (DOGAMI, 2015); and (5) minimum beach-dune elevation for the reach south of the proposed revetment structure (DOGAMI, 2015). The best-estimate for the future elevation of the beach at the proposed revetment structure was estimated by applying the current beach profile from the future top of shoreline located at the dividing line between the active foredune and recently stable foredune defined as part of the DOGAMI 2020 study (DOGAMI, 2020). This profile was then adjusted using the shoreline changes at Rockaway2 beach monitoring location obtained for the period between 1997 and 2021, which is available from the Northwest Association of Networked Ocean Observing Systems (NANOOS) website (NANOOS, 2021) to define the lower (Winter) and upper (Summer) profiles and elevations at the structure.

Table 1 provides the number of hours and percentage of time for the 2018 to 2020 period where the north-south access would be impassable at the Subject Project. The results indicate that there will be about 1.1-percent of the time the north-south access will be impassable at the Subject Property when considering the entire year and 0.1-percent of the time for the non-winter seasons. This is a slight increase for the reach south of the Subject Property, but noticeably less than for the Shorewood RV Park structure.

**Table 1. Summary of North-South Access is Impassable**

Season	Location	Beach-Dune Elevation	Hours North-South Access is Impassable	Percentage of Time North-South Access is Impassable
Entire Year	Future Upper Limit (Summer Profile)	16.9	67	0.8
	Future Average Profile	15.4	97	1.1
	Future Lower Limit (Winter Profile)	13.4	169	1.9
	Shorewood RV Park	10.3	667	7.6
	Reach South of Proposed Structure	16.1	81	0.9
Non-winter (April – November)	Future Upper Limit (Summer Profile)	16.9	2	0.03
	Future Average Profile	15.4	6	0.1
	Future Lower Limit (Winter Profile)	13.4	19	0.2
	Shorewood RV Park	10.3	149	1.7
	Reach South of Proposed Structure	16.1	4	0.04

#### 4. Sand Coverage

The proposed revetment will be covered with sand and located east of the existing top of dune, but could be exposed in the future from future coastal erosion. When this occurs is difficult to estimate to the uncertainty on the number and magnitude of future coastal events and how the beach responds to these events. The ongoing beach monitoring data indicates that the beach profile fluctuates seasonally with the upper profile representing the summer profile and the lower profile representing the winter profile. The coastal processes in the summer will encourage the beach to build back up in front of the structure.

There is a potential for the upper portion of the rock revetment to be exposed after a large winter event. If the structure is still exposed in late spring, the property owners are committed to cover the structure with imported sand. One concern is that the proposed will always be exposed, and a question was asked if there are any structures where the beach has re-established itself in front of rock revetment structure. Figure 3 shows that a beach and vegetation can re-establish itself in front of a structure where the black line represents the top edge of a rock revetment that has been naturally buried.



**Figure 3. Naturally buried revetment near Rockaway Beach (revetment edge represented by black line)**

The proposed plan is to replant the dune with natural grass and trees. It has been expressed that there is a concern with this plan because the area is now subject to inundation. The existing dune has always been subject to coastal inundation and the proposed plan does not increase the frequency and duration that the area would be inundated. Also, the existing dunes currently have

native grass (Figure 4) that were able to withstand flooding during last two years. The highest risk to the native dune grasses is from coastal erosion. Therefore, this is not a concern.



**Figure 4. Photo of existing beach dune with native grass**

## **5. Oregon Parks and Recreation Department (OPRD) Standards**

Oregon Parks and Recreation Department (OPRD) standards were not considered because the proposed revetment will be located on private property, it meets Tillamook County's requirement, and was designed by a Professional Civil Engineer.

## **6. Non-structure Alternatives**

There are no non-structure alternatives that can be adopted for the Subject Properties. Relocation of the structures is impossible because they are already located on the eastern edge of their property. The use of pilings to either raise the house or allow it not to fail from future erosion is also not a reasonable alternative. Specifically, the structures will be inaccessible and dangerous because water will still flood all around them and potentially destroy their infrastructure during storms and other flood events. Also, the structures or part of the structures could eventually be located within the beach.

## **7. Jetty Influences**

Table 2 documents specific statements about the influence of jetty structures on changes to the shoreline along the Oregon Coast. These statements clearly indicate that jetty structures have had a pronounced influence on the shorelines near the structures.

**Table 2. Documented Statements Related to Jetty Structures**

Reference	Littoral Cell	Statements Related to Jetty Structures
USGS, 2012	Bandon	<i>The jetty influence is still apparent in the short-term shoreline change signal with impoundment on the south side of the Coquille River and erosion to the north.</i>
	Coos Bay	<p><i>Jetty construction started first on the northern spit; by the beginning of the 20th century, the shoreline had prograded seaward by about 1 km as sand piled up against the northern jetty. With the construction of the southern jetty early in the 20th century, a similar response was observed in the south as to the north. Sand accreted against the jetty and against the rocky shore, and the shoreline prograded seaward until the 1960s. However, the short-term shoreline change rate immediately north of the northern jetty indicates relatively high rates of erosion.</i></p> <p><i>Most likely as a result of the construction of three sets of jetties at the mouths of Coos Bay, the Umpqua River, and the Siuslaw River, the long-term shoreline change in the Coos Bay littoral cell was progradational.</i></p>
	Lincoln County	<i>Jetty construction at Yaquina Bay in 1896 caused significant effects to shoreline change patterns.</i>
	Tillamook County	<p><i>The most significant historical shoreline changes identified in Tillamook County have occurred in response to human activities, particularly as a result of jetty construction during the early part of the 20th century. In particular, jetty construction has had a dramatic influence on the morphology of Bayocean Spit. Jetty-induced erosion in the vicinity of the Cape Meares community (fig. 2) has resulted in significant coastline retreat. In contrast, erosion from jetty construction has been much lower along the Rockaway Beach and Manzanita coastlines. Coastal change adjacent to the nonmodified bay mouths and spit ends has been large in the past. These features are capable of migrating over large distances in response to changes in both the sediment supply and the predominant wave conditions.</i></p> <p><i>The Tillamook County shorelines have also been particularly effected by major El Niño events.</i></p> <p><i>To date, many of the beaches on the northern Oregon coast, particularly in Tillamook County, have yet to fully recover from the cumulative effects of the 1997–8 El Niño and the severe winter 1998–9.</i></p> <p><i>However, this is largely the result of the construction of the Tillamook Bay South Jetty in 1974 and the massive accretion south of this jetty in subsequent years. The greatest statewide short-term rate of shoreline progradation, 26.5 m/yr, occurs in this cell. However, of note, 25 percent of the analyzed transects eroded at rates faster than –1 m/yr, and 3 percent eroded more rapidly than –3 m/yr. The Rockaway Beach area of the cell was almost entirely erosional except for some accretion in the immediate vicinity of the Nehalem Bay South Jetty. The combined trends of the Rockaway and Nehalem areas again indicate a counter clockwise shoreline rotation, possibly a result of the two major El Niño events that occurred during the 35-year short-term analysis period.</i></p>
	Tillamook County	<p><i>Some of the most dramatic shoreline changes identified on the Oregon coast have occurred in the Rockaway littoral cell, particularly in response to the construction of the north jetty at the mouth of Tillamook Bay.</i></p> <p><i>While the historical patterns of change suggest overall stability, this is in fact not the case. Commencing in the late 1990s, the beach between the Tillamook and Nehalem jetties have been subject to a number of major storms that have resulted in chronic erosion hazards.</i></p>

**Table 2. Documented Statements Related to Jetty Structures**

Reference	Littoral Cell	Statements Related to Jetty Structures
		<p><i>Farther north along the Rockaway-Manzanita coastline, the 1920s and 1950s shorelines track well landward of the contemporary shorelines (Figures 2-26 and 2-27). This type of pattern is a direct response to construction of the north Tillamook jetty. However, the erosion that occurred along the Rockaway-Manzanita beaches was generally much less than on Bayocean Spit (Komar, 1997).</i></p> <p><i>In summary, this section has presented information on the historical shoreline changes that have occurred along the Tillamook County coastline over the past century. The analyses indicate that for the most part the dune-backed shorelines respond episodically to such processes as the El Niño/La Niña Southern Oscillation, and as a result of rip current embayments that cause highly localized “hotspot erosion” of the coast. Accordingly, the coastline undergoes periods of both localized and widespread erosion, with subsequent intervening periods during which the beaches and dunes slowly rebuild. Perhaps the most significant coastal changes identified in Tillamook County have occurred in response to human activity, particularly as a result of jetty construction during the early part of last century.</i></p>
DOGAMI, 2015	Tillamook County	<p><i>More recently, the Rockaway subcell (north of Tillamook Bay and south of the Nehalem Bay mouth) has experienced extensive erosion as a result of the 1997-1998 El Niño. The erosion was further enhanced during the even more severe 1998-1999 La Niña winter, so that the coast experienced a “one-two punch,” with little time to recover.</i></p> <p><i>Perhaps the most significant coastal changes identified in Tillamook County have occurred in response to humans, particularly as a result of jetty construction during the early part of last century. In particular, jetty construction has had a dramatic influence on the morphology of Bayocean Spit and, to a lesser extent, between the north Tillamook jetty and the Rockaway-Manzanita beaches to the north. Finally, the present analyses have shown that the mouths of the estuaries and the spit ends are extremely dynamic features, migrating over large distances in response to changes in both the sediment supply and the predominant wave conditions, making these areas hazardous for any form of development.</i></p>

## 8. Uniqueness (comparison to Neskowin Cell)

The location of the Subject Property is located within a littoral cell that is unique to the Oregon Coast. Figure 5 shows the littoral cells along the Oregon Coast. The proposed revetment will be located within the Rockaway Beach littoral cell. This littoral cell extends from Cape Falcon on the north to Cape Madreas on the south, a distance of about 20 miles. This littoral cell has three subregions: (1) Nehalem, which is the area north of the Nehalem Bay jetties; (2) Rockaway, which is the area between Nehalem Bay and Tillamook Bay; and (3) Bayocean, which is the area south of the Tillamook Bay jetties. The proposed project would be located in the Rockaway subregion (between Nehalem Bay and Tillamook Bay). It is the only littoral subregion that is bounded by jetty structures, which as discussed in Section 7 have a pronounced influence on changes to the shoreline.



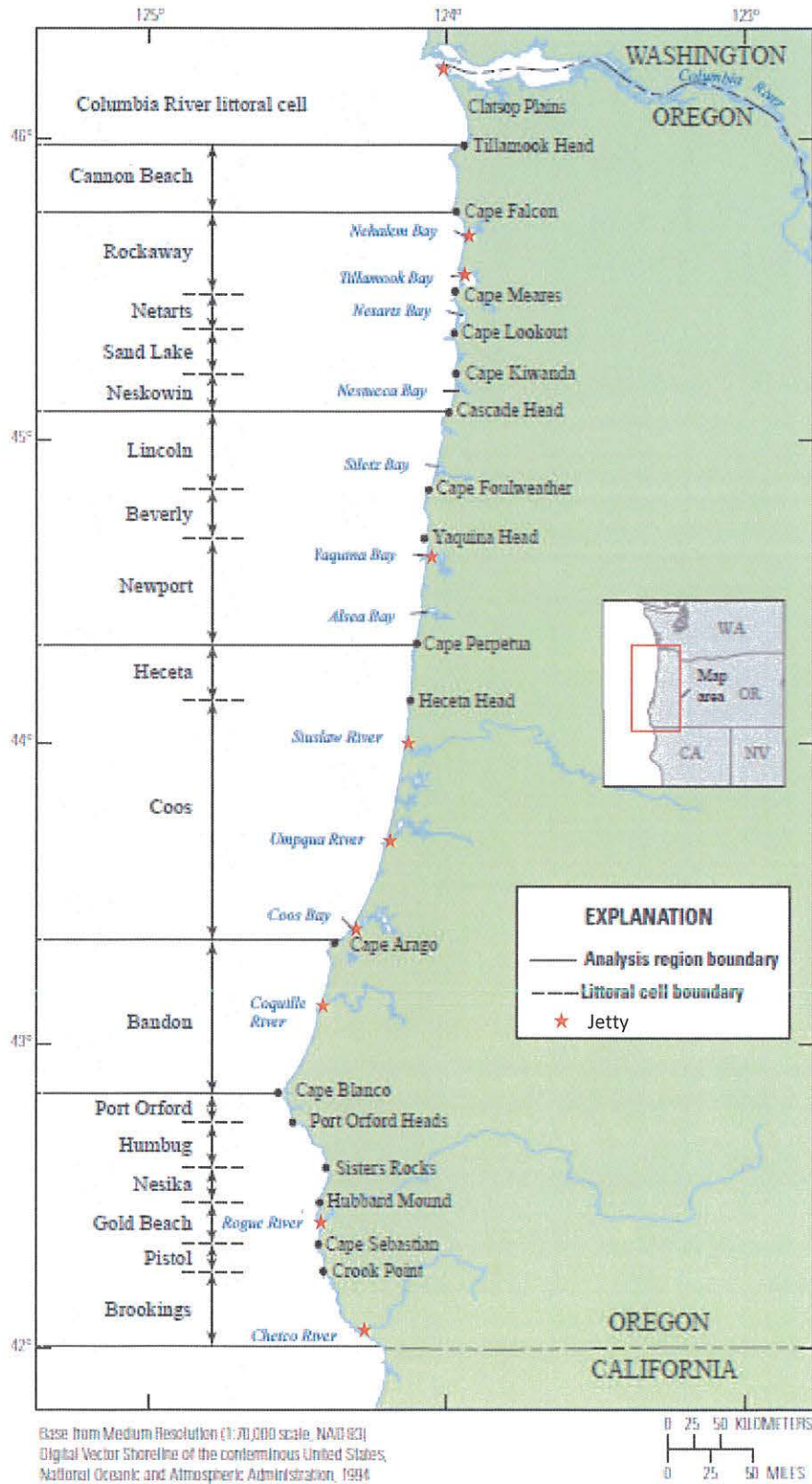


Figure 16. Oregon coast littoral cells (USGS, 2012)

The changes to the shoreline within the subregion have been documented in the June supplemental memorandum (WEST, 2021c). The Subject Property is located within the only reach of the Rockaway littoral cell that is experiencing erosion. It was noted during the July 2021 planning commission meeting that erosion along the Oregon Coast or Tillamook County is not unique with a specific reference to the Neskowin subregion cell. Erosion has occurred within various locations along the Oregon Coast, including the Neskowin subregion cell. The claim of uniqueness was intended to refer to the Rockaway littoral cell and not other locations along the Oregon Coast or Tillamook County, and the fact that is bound by jetty structures that have a profound influence on changes to the shoreline in the Rockaway subregion.

The Neskowin littoral cell extends from Cascade Head to Cape Kiwanda for a distance of about 8.8 miles, and it contains the communities of Neskowin along the southern end and Pacific City along the northern end with the entrance to Nestucca Bay located approximately midway. There are no jetty structures within this littoral cell. Erosion has been particularly acute along parts of the Neskowin littoral cell, caused in part by the effects of recent major El Niño events. Examination of beach monitoring data indicates that the reach north of Nestucca Bay is experiencing accretion while the reach south is experiencing erosion. For the southern reach, the average erosion rate ranges from 0.39 to 1.08 feet per year (average of 0.73 feet per year), which is less than the erosion rate along the southern end of the Rockaway subregion of 0.26 to 3.90 feet per year (1.40 average per year).

## **9. Potential Adverse Impacts**

The May 2021 supplemental technical memorandum includes a section about potential impacts (WEST, 2021b). Three main points from the May 2021 memorandum are briefly presented as follows: (1) the proposed 880-foot-long riprap revetment for the Subject Properties will increase the total revetment length in the entire Rockaway Beach littoral cell to 6,810 feet, an increase of 0.8% (a 2.8% increase for Rockaway subregion); (2) the proposed revetment will be Type II structure in Weggel's classification system, indicating a structure with minimal impacts on the coastal processes within the littoral cell system; and (3) the proposed revetment will have no distinguishable adverse impacts to the shoreline since it will be located above the 1% annual chance of exceedance still water line, and the amount of sediment loss from the proposed structure is small relative to the active sediment volume within the surf zone.

As stated in the March 2021 technical memorandum (WEST, 2021a), there will be no impacts to the surrounding properties (properties in the Rockaway Beach subregion) since it will not direct additional water to the surrounding property, increase wave heights/wave runup, or adversely impact the natural littoral drift of sediment along the coast. The northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion, and rocks will be placed to reduce the potential increases in velocities around the structure ends.

The concept of coastal erosion can be viewed as passive or active. 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. Active erosion is the assertion that the proposed structure induces or accelerate beach erosion. A detail 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 to the active

erosion on the shoreline near the structures.

## 10. References

- 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.
- 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 \(nanoos.org\)](https://www.nanoos.org/), accessed May 2021
- National Oceanic and Atmospheric Administration, 2021a. *CO-OPS Map – NOAA Tides and Currents*, <https://tidesandcurrents.noaa.gov/map/index.html?region=Oregon>, accessed 2021.
- National Oceanic and Atmospheric Administration, 2021b. *National Data Buoy Center*, <https://www.ndbc.noaa.gov/>, accessed 2021.
- 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
- State of Oregon Department of Geology and Mineral Industries, 2015. *Coastal Flood Hazard Study, Tillamook County, Oregon, Special Paper 47*, prepared by Jonathan C. Allan, Peter Ruggiero, Gabriel Garcia, Fletcher O'Brien, Laura L Stimely, and Jed Roberts.
- State of Oregon Department of Geology and Mineral Industries, 2020. *Temporal and Spatial Changes in Coastal Morphology, Tillamook County, Oregon*, prepared by Jonathan C. Allan
- U.S. Army Corps of Engineers, 2011 (September). *EM 1110-2-1100, Coastal Engineering Manual, Part V, Chapter 3 –Shore Protection Projects*

U.S. Geological Survey, 2012. *National Assessment of Shoreline Change: Historical Shoreline Change along the Pacific Northwest Coast*, Open-File Report 2012-1007

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*

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.

## Allison Hinderer

---

**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Wednesday, July 21, 2021 11:45 AM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** Exhibit 1 - Photos of Subject Properties North to South\_Part1.pdf  
**Importance:** High

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Part 2

---

**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:38 AM  
**To:** sabsher@co.tillamook.or.us; 'Allison Hinderer' <ahindere@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Brett Butcher (brett@passion4people.org) <brett@passion4people.org>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>; teriklein59@aol.com  
**Subject:** 851-21-000086-PLNG-01 Applicants' Submittal  
**Importance:** High

Hi Sarah and Allison,

Please find attached the Applicants' submittal for inclusion in the Board of Commissioners' packet for the upcoming hearing on 851-21-000086-PLNG-01. There will be several parts that follow. Would you please confirm your receipt? Thank you.

Best,  
Sarah



KELLINGTON  
LAW GROUP

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Backyards of Subject Properties South to North



## Allison Hinderer

---

**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Wednesday, July 21, 2021 11:46 AM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** Exhibit 1 - Photos of Subject Properties North to South\_Part2.pdf  
**Importance:** High

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Part 3

---

**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:43 AM  
**To:** sabsher@co.tillamook.or.us; 'Allison Hinderer' <ahindere@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Brett Butcher (brett@passion4people.org) <brett@passion4people.org>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>; teriklein59@aol.com  
**Subject:** RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Importance:** High

Part 2

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**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:38 AM  
**To:** sabsher@co.tillamook.or.us; 'Allison Hinderer' <ahindere@co.tillamook.or.us>  
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**Subject:** 851-21-000086-PLNG-01 Applicants' Submittal

**Importance:** High

Hi Sarah and Allison,

Please find attached the Applicants' submittal for inclusion in the Board of Commissioners' packet for the upcoming hearing on 851-21-000086-PLNG-01. There will be several parts that follow. Would you please confirm your receipt? Thank you.

Best,  
Sarah



Sarah C. Mitchell | Associate Attorney

P.O. Box 159

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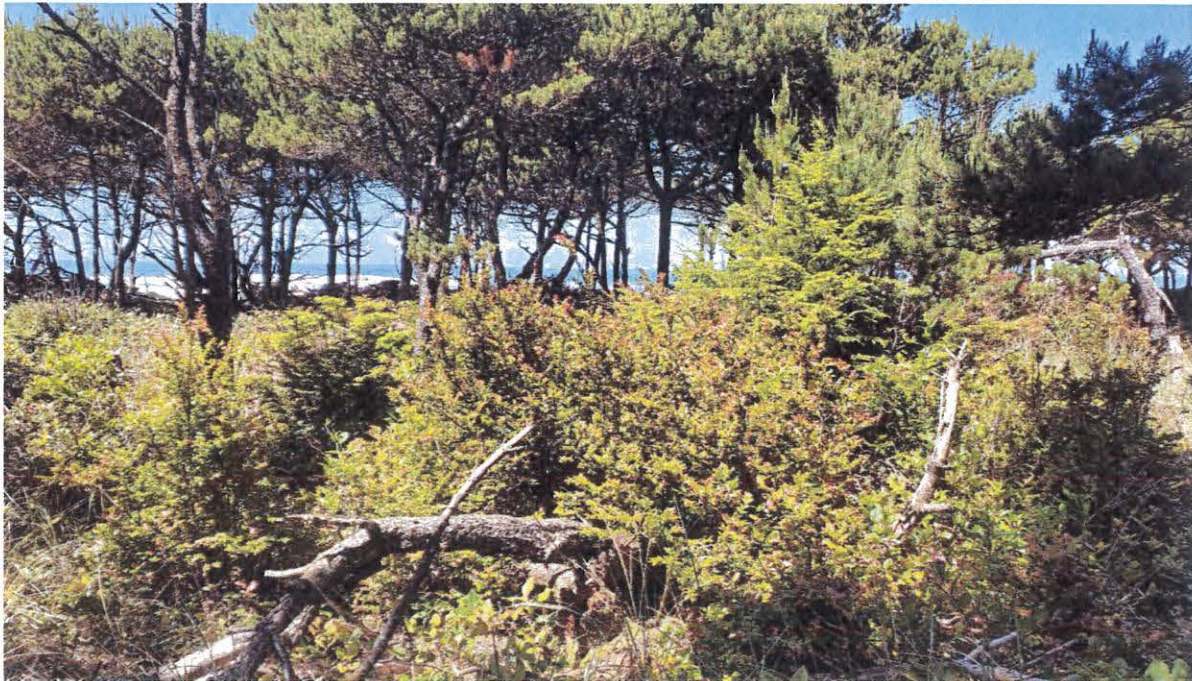
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Backyards of Subject Properties South to North



Backyards of Subject Properties South to North



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## Allison Hinderer

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**Sent:** Wednesday, July 21, 2021 11:47 AM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** TABLE OF CONTENTS.pdf  
**Importance:** High

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Part 4

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**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:46 AM  
**To:** sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Brett Butcher (brett@passion4people.org) <brett@passion4people.org>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>; teriklein59@aol.com  
**Subject:** RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Importance:** High

Part 3

---

**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:43 AM  
**To:** [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us); 'Allison Hinderer' <[ahindere@co.tillamook.or.us](mailto:ahindere@co.tillamook.or.us)>  
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## Allison Hinderer

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**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Wednesday, July 21, 2021 12:01 PM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** Exhibit 3 - Memo\_ProposedAmendmentstoCoastalGoals\_1984-04-16\_Part1.pdf  
**Importance:** High

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Part 5

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**To:** sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>  
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same memo sent to  
LCDC for its April meeting

Exhibit 3  
Page 1 of 24




## Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

### M E M O R A N D U M

April 16, 1984

TO: Interested Persons  
FROM: James F. Ross, Director   
SUBJECT: PROPOSED AMENDMENTS TO THE COASTAL GOALS

This memo and the attached worksheet summarize concerns with the Coastal Goals raised at a series of public meetings held by the Department in March. The worksheet also lists a series of Goal revisions recommended by the Department. If LCDC concurs on April 26, these revisions will be fine-tuned and presented in the form of proposed amendments to Goals 16, 17, 18, and 19. The proposed amendments would be circulated in June and be the subject of ten public hearings in July and September.

The attached worksheet lists the current Goal requirements, the concerns expressed in public meetings, and the Department's proposed revisions. Public testimony on the staff recommendations will be considered by LCDC on April 26. The Commission may choose to add or delete possible revisions from the list of proposed Goal amendments. (The Commission may also choose to do this during its ten public hearings in July and September.) At this point, we want to know if we have identified the important issues and proposed reasonable solutions. If you feel we have left out an important Goal problem or you want to suggest an alternative solution, now is the time to make your thoughts known. The exact wording of possible revisions, however, is best left to the hearings process this summer. Right now we want to make sure all the issues and appropriate solutions are being considered.

#### General Concerns

The worksheet discusses in detail concerns raised with specific Goal requirements and in addition to these specific concerns, the public meetings identified a number of general concerns with the Goals that the Department has summarized and responded to separately. These are listed below.

### Development in Estuaries

Several persons felt that Goal 16's provisions placed too much restriction on development in development estuaries and that these restrictions should be eased.

### Dune Grading/Management

About 25 people from Nedonna Beach, as well as Seaside and Neskowin argued Goal 18's restrictions on foredune alteration should be changed. Most would like to be able to maintain the dunes at a lower height to either preserve access or ocean or beach views.

### Public Access

One group and several individuals felt the Goals should include requirements for public access at major waterfront developments. They felt that existing state access need to be supplemented by more local access.

### Rehabilitation of Dikes in Areas Reverted to the Estuary

Three property owners in Clatsop County felt that Goal 16 should allow reconstruction of dikes that are in disrepair even if the land has reverted to estuarine influence.

Several changes to the Development Management Unit Section of the Goals are proposed. Since most estuary plans are acknowledged sufficient sites for development have been designated. Also, the Exceptions Goal 2 requirement for exceptions and the exceptions process have recently been amended to clarify and simplify the requirements for exceptions for water dependent development.

As noted in the worksheet, the Department will meet with a Technical Working Group to discuss this issue and try to reach a consensus on the extent to which dunes can be altered and not undo their protective function.

The Department has not prepared a response to this proposal.

Reconstruction is allowed if an area has not reverted. This usually gives a property owner one to two years to repair a dike. DSL's authority over estuaries as "state waters" extends to lands which have reverted to estuarine influence. Correspondence between the Goal and the law are needed to assure predictability. Even if the Goal were changed, DSL could not approve a permit for fill to rebuild the dike.

Dredging from Shallow Upstream  
Areas to Prevent Downstream  
Sedimentation

One farmer felt the Goals prohibition of dredging in natural management units should be amended to allow removal of material for dike reconstruction or soil building on agricultural land. It was felt this could reduce downstream sedimentation and the need for dredging.

Excluding Certain Lands From  
the Estuary

One person suggested that estuarine lands within urban growth boundaries that are only occasionally inundated should be excluded from Goal 16's requirements. It was felt these areas could be better used or protected under Goal 17.

Upstream Extent of Estuaries and  
Shorelands

Several groups argued that land uses above head of tide (particularly forest practices) contribute to downstream sedimentation and justify extending both Goal 16 and 17 further up estuaries.

Development in Hazardous Areas

Several persons felt Goal 7's requirements for safeguards were not adequate in oceanfront areas subject to landslides especially since structure shoreline stabilization is often recommended as an "appropriate safeguard."

Inadequate Enforcement

A number of speakers criticized LCDC and other state agencies and local governments for being lax in enforcing rules. This, it was agreed, places an unfair burden on citizens to enforce the law and encourages violations.

Dredging is now permitted to maintain tidegates. Dredging for dike maintenance is limited to areas where there are no feasible alternatives, such as upland sources. Removal of intertidal muds and silts in most areas would result in resource impacts inconsistent with the purposes of natural management units.

The definition of "estuary" used in the Goals is based on the Fill and Removal law. Correspondence between the Goal and the law is needed to assure predictability for plan decisions.

A specific proposal for new upstream limit to shorelands and estuaries has not been made. Other mechanisms, such as changes to the FPA may be more effective than new planning requirements in addressing this problem.

The Department will study ways to strengthen Goal 17 to limit development in areas subject to erosion and landslides.



Comments and Schedule

The Commission will accept written and oral testimony on the worksheet at its April 26 meeting in Salem. If you would like to comment and do not have time to attend or write, please call Bob Cortright at 378-5453.

JFR:BC:11t  
8333B/7B

COASTAL GOAL ISSUES

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<p>Dredge, fill, or other reduction or degradation of these natural values by man shall be allowed only:</p> <p>(1) If required for navigation or other water-dependent uses that require an estuarine location; and</p> <p>(2) If a public need is demonstrated; and</p> <p>(3) If no alternative upland locations exist; and</p> <p>(4) If adverse impacts are minimized as much as feasible.</p>	<p>A. The overall requirement applies only generally to planning and is most relevant to permit decisions. It should also be referenced in the impact assessment as the test for actions with significant impacts and for administering the resource capability test.</p> <p>B. It is not clear what actions qualify as other degradations or reductions. This creates confusion for implementation of this requirement.</p> <p>C. DEQ already regulates log storage for water quality purposes. Local government should not be required to impose a second layer of review on the same activity.</p> <p>D. The Development Management unit requirements allow other degradation or reduction of estuarine values for non-water dependent uses not requiring fill. This inconsistency with requirement 1 should be resolved.</p>	<p>A. Move this requirement to the <u>Implementation</u> section of the Goal as Requirement 2. Indicate that these findings should be made using the impact assessment required by the Goal unless findings are part of the plan.</p> <p>B. Add "Activities which may result in a significant reduction or degradation of the estuary include in-water structures, log storage, aquaculture, application of herbicides or pesticides, effluent discharge or water intake or withdrawal, and other activities conducted in the estuary which have significant off-site effects on the estuary's physical processes or biological resources."</p> <p>C. The Goal does not require that these findings be made by local government. IF DEQ does not object, local plans can require these findings be made by DEQ.</p> <p>D. No change is needed. Only if an activity or alteration results in a significant degradation does this requirement apply.</p>

Goal Requirement

Concern/Problem

Proposed Revision

- E. The requirement to demonstrate public need is unnecessary. Application of the other requirements of this section as well as the rest of the Goal should limit uses so that this test is not needed. To be consistent with state and federal law, a standard of non-interference with public uses could be added.
- F. Requirement 3 is too rigid. In application, the Department and others have interpreted this to mean that no reasonable alternative sites are available. Also, since this test applies only to water dependent uses, examination of alternatives ought to be limited to shorelands.

- E. Replace existing language of 2 with: "If it is demonstrated that the proposed use or alteration will not significantly interfere with the public interest in water resources of the estuary."
- F. Change requirement 3 to read: "If no reasonable alternative upland locations exist; and..." (The word "upland" is retained because the requirement that uses be water-dependent elsewhere in the goals is removed.)

Management Unit Designation

Natural--In all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific research and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural geological and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.

Permissible uses in natural areas shall be undeveloped low-intensity

Overall--The headings for each of the sections and the organization of the requirements is confusing.

- A. The Estuary Classification Rule and various acknowledgment reviews have determined that a number of other uses are appropriate in Natural Management units. These uses should be added to the list of permissible uses. Other uses should also be permitted because of their minimal impacts.

Provide headings for designation, permissible uses for each type of management unit.

- A. Add the following uses to those permissible in natural management units:
  - (1) dredging for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures.
  - (2) Rip-rap for protection of
    - (a) uses existing as of October 7, 1977,
    - (b) unique natural resource and historical and archaeological values, and

Goal Requirement

water-dependent recreation, research and educational observation; navigational aids, such as beacons and buoys; protection of habitat, nutrient, fish, wildlife and aesthetic resources; and passive restoration measures; and where consistent with the resource capabilities of the area and the purposes of this management unit, aquaculture, communication facilities and active restoration measures.

Conservation - In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and

Concern/Problem

- B. Aquaculture requiring dredge or fill is generally incompatible with protection of natural values and should not be allowed.
- C. While restoration actions are permissible, another similar mitigation measure, estuarine enhancement is not clearly allowed.
- A. The requirement to include oyster and clam beds appears to affect "major tracts of tideflat" which are also required to be designated natural. This overlap needs to be eliminated. Also there are many clam beds in recognized development management units that are of minimal commercial or recreational value because of their location.

Proposed Revision

- (c) public facilities.
- Where consistent with resource capabilities and the purpose of the unit:
  - (3) Boat ramps for public use where no dredging for navigational access is needed
  - (4) Pipelines.
  - (5) Aquaculture which does not involve dredge or fill other than incidental dredging for harvest of benthic species.
- B. See A(5)--immediately above.
- C. Add "and estuarine enhancement" to active restoration as an activity permitted subject to a resource capability decision.
- A. Amend the section to: limit clam and oyster beds included in conservation to important recreational or commercial clam and oyster beds not included in natural management units.

Goal Requirement

enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above, and oyster and clam beds. Partially altered areas or estuarine areas adjacent to existing development of moderate intensity shall also be included in this classification unless otherwise needed for preservation or development consistent with the overall Oregon Estuary Classification.

Permissible uses in conservation areas shall be those allowed in (1) above; active restoration measures; aquaculture; and communication facilities. Where consistent with resource capabilities of the area and the purposes of the management unit, high-intensity water-dependent recreation; maintenance dredging of existing facilities; minor navigational improvements; mining and mineral extraction; water-dependent uses requiring occupation of water surface area by means other than fill; and bridge crossings, shall be appropriate.

Concern/Problem

- B. "Partially altered areas" and "areas adjacent to existing development of moderate intensity which qualify as natural or conservation management units should be so designated. As presently written areas with minor alterations which are otherwise highly productive could arguably be designated for development.
- C. Other uses have been determined to be appropriate in conservation units. These should be added to the list of permissible uses.
- D. The types of alterations which may be permitted for high-intensity water-dependent recreation are not specified.
- E. The permissible use language appears to limit filling for all water-dependent uses, including high-intensity water-dependent recreation. There is no similar limit on dredging, although one is implied in the Goal.
- F. A definition of minor navigational improvements is needed to place clear limits on the amount of alteration permissible, particularly for dredging.

Proposed Revision

- B. Change the designation section of the Goal as follows: "Areas that are partially altered and adjacent to existing development of moderate intensity which do not meet the resource characteristics of natural or development management units.
- C. If the natural unit requirements are changed as proposed above, no change is needed since uses allowed in natural units are also permitted in conservation units.
- D. Define high-intensity water-dependent recreation in terms of specific facilities and permitted alterations (i.e., boat ramps, marinas and new dredging for marinas).
- E. Change permissible use requirement to read: "...other water-dependent uses requiring occupation of water surface area by means other than fill or dredging..."
- F. Define minor navigational improvements as follows: Minor Navigational Improvements are alterations necessary to provide water access to existing or permitted uses in conservation management units including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar surface-only attenuation structures.

Goal Requirement

Development Management Units

In estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary.

Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses. Where consistent with the resource capabilities and the purposes of this management unit, water-related and nondependent, nonrelated uses not requiring fill; mining and mineral extraction; and activities identified in 1 and 2 above, shall also be appropriate.

As appropriate, needs for the following uses shall be included:

- (a) Dredge or fill, as allowed elsewhere in the goal;
- (b) Navigation and water-dependent commercial enterprises and activities;

Concern/Problem

- A. The natural and conservation management unit requirements have been interpreted in a way which makes designation of development units difficult without an exception. This is because many areas with lesser natural values usually fit conservation management unit requirements even though they also qualify, for example, as deep water close to shore. Clearer criteria or standards are needed in the development section to resolve apparent conflicts between development and conservation designation requirements.
- B. Navigation channel is not defined.
- C. The resource capabilities test is not relevant to management decisions in development units given the management unit purpose and the types of areas included in development management units.
- D. The list of uses which may be provided for when "needed and appropriate" creates confusion about when they may be allowed and the standard, if any, against which they must be judged.

Proposed Revision

- A. None at this time. The exceptions process provides an adequate means of assessing and providing for needed development and balancing those needs against resource values. The exceptions process has worked and more than adequate areas have been designated for future development. Exceptions are an appropriate way to review changed circumstances for new development units.
- B. Define "Navigation Channels"
- C. Delete resource capability test from the permissible uses section so that the sentence would read: "Where consistent with the purposes of this management unit and adjacent shorelands designated as especially suited for water dependent uses."
- D.
  - 1. Make the list of appropriate uses a list of permissible uses.
  - 2. Modify Item (d) as follows:  
  
Flow-lane disposal of dredged material shown not to contribute to estuarine sedimentation in other than a development area.
  - 3. Delete items (f) through (i), as they are already permitted by reference to permissible uses in natural and conservation management units.

Goal Requirement

- (c) Water transport channels where dredging may be necessary;
- (d) Disposal of dredged material;
- (e) Water storage areas where needed for products uses in or resulting from industry, commerce, and recreation;
- (f) Marinas;
- (g) Aquaculture;
- (h) Extraction of aggregate resources;
- (i) Restoration.

(Cumulative Effects)

The cumulative effect of all such uses, activities and alterations shall be considered and described during plan development and adoption. In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

Resource Capabilities

Natural, Conservation, and Development management unit standards all allow some uses subject to a determination that the use is "consistent with the resource capabilities of the area and the purpose of the management unit."

Concern/Problem

The cumulative effects test should be applied to all management units and consider strictly estuarine effects. The requirement to consider use of upland sites should be limited to nonwater-dependent uses since it is not possible to relocate water-dependent uses in upland areas.

This qualitative standard is unclear and requires both substantial information about impacts and educated judgments to be properly implemented. A clearer standard is needed so that relevant information can be gathered and so that decisions properly reflect the intent of this test.

Proposed Revision

Move the cumulative effects test to the comprehensive plan requirements section of the Goal so it will apply to all management units. Add a new (5): Consider during plan development and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description will necessarily be general, but shall be based on the best available information and projections.

Define Resource Capability as: "A use or activity is consistent with the resource capabilities of an area when either the impacts of the use or activity on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and continue to function as a natural or conservation management unit."

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<u>Priorities of Use</u>  Priorities of use of each of the management units shall be designated which maintain, promote, encourage, or enhance uses and activities compatible with the requirements of this Goal, the capability of the resources and the objectives of the classification.  While the priorities may vary between individual management units consistent with these requirements, the general priorities (from highest to lowest) for use of estuarine resources for designating different estuarine management units shall be:  (1) Uses which maintain the integrity of the estuarine ecosystem;  (2) Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuarine Classification;  (3) Water-related uses which do not degrade or reduce the natural estuarine resources and values; and  (4) Nondependent, nonrelated uses which do not alter, reduce or degrade the estuarine resources and values.	  The priorities have not been a meaningful standard in estuary planning. They overlay and restate in much more general terms the objectives already carried out through other Goal 16 requirements particularly those for management unit designation and permissible uses.	  Delete.



Goal Requirement

Concern/Problem

Proposed Revision

Implementation Requirements

1. Impact Assessment

Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the integrity of the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration, and a demonstration of the public's need and gain which warrant such modification or loss.

- A. "Actions which would potentially alter the estuarine ecosystem" are not defined. It is not clear how these differ from "other degradations and reductions" regulated elsewhere in the Goal.
- B. The information required to be provided by the impact assessment should be clearly set forth in the implementation requirement. Adding the guideline language to the Goal would accomplish this.

- A. Require an impact assessment for all estuarine uses and activities that could alter the estuary.
- B. Move the following language from the Guideline to the Goal:  
  
"The impact assessment should not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:
  - 1. The type and extent of alterations expected;
  - 2. The type of resource(s) affected;
  - 3. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
  - 4. The methods which could be employed to avoid or minimize adverse impacts.

## Allison Hinderer

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**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Wednesday, July 21, 2021 12:02 PM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Attachments:** Exhibit 3 - Memo\_ProposedAmendmentstoCoastalGoals\_1984-04-16\_Part2.pdf  
**Importance:** High

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

Part 6

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**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 12:00 PM  
**To:** sabsher@co.tillamook.or.us; 'Allison Hinderer' <ahindere@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Brett Butcher (brett@passion4people.org) <brett@passion4people.org>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispx@gmail.com) <mikeellispx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>; teriklein59@aol.com  
**Subject:** RE: 851-21-000086-PLNG-01 Applicants' Submittal  
**Importance:** High

Part 5

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**From:** Sarah Mitchell  
**Sent:** Wednesday, July 21, 2021 11:47 AM  
**To:** sabsher@co.tillamook.or.us; Allison Hinderer <ahindere@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Brett Butcher (brett@passion4people.org) <brett@passion4people.org>; Dave and Frieda Farr (dfarrwestproperties@gmail.com)

Goal Requirement

Concern/Problem

Proposed Revision

2. Overall Dredge & Fill Test

(No current requirement.)

C. The public need and benefit test appears unnecessary if the impact minimization and resource capability tests required by the Goal are met.

Add revised dredge and fill test from the overall statement as a new Implementation Requirement.

C. Delete the public need and benefit test and in its place add the four-part test for dredge, fill and other degradations. This could best be done by adding a new implementation requirement to the Goal.

Dredging and/or filling shall be allowed only:

- (a) if required for navigation or other water-dependent uses that require an estuarine location; and
- (b) if it is demonstrated that the action will not substantially interfere with public use and rights; and
- (c) if no feasible alternative shoreland locations exist; and
- (d) If adverse impacts are minimized.

Other uses and activities which could significantly alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met.

Other uses and activities include:  
in-water structures, rip-rapping, new

Goal Requirement

Concern/Problem

Proposed Revision

OTHER GOAL 16 ISSUES

- Role of State Agencies, particularly DSL, in implementing Goal requirements.
- Administrative burden of detailed review standards.

LCDC has not carried out Goal 16 requirements which apply to other state agencies.

No goal amendment is suggested to remedy this problem. The Commission should (1) review state agency coordination programs to insure state agencies are carrying out coastal goal implementation requirements and (2) sponsor a joint federal, state and local effort to coordinate permit and environmental reviews.

GOAL 17 COASTAL SHORELANDS

Shorelands Planning Area

Goal 17 describes an area along the ocean, estuaries, and coastal lakes which must be inventoried to identify coastal shoreland values.

The Coastal Shorelands planning area should include lands East of Highway 101 in those areas where the highway runs immediately along the shoreline and important shoreland values exist east of the highway.

None at this time. Local governments have the option of adding land east of the coast highway to the shorelands boundary. It is unclear what important coastal values are unprotected by the existing planning area.

Shorelands Identification

Land contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:

- (1) Lands which limit, control, or are directly affected by the hydraulic action of the coastal water body, including floodways;

A. Factor 1 results in large areas of pasture land and floodplain being designated and managed as shoreland only because it is subject to flooding. The Goal does not regulate activities in these areas which may justify their inclusion in the shoreland's boundary (i.e., feed lots). In general including broad floodplains (to 1000 feet from the estuary) has caused unnecessary restrictions on uses in these areas. A narrower boundary should be selected.

A. Limit factor (1) to floodways and areas subject to ocean flooding but not less than 50 feet from the coastal lakes and estuaries nor less than 100 feet from the ocean shore.

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
COASTAL SHORELAND USES		
<p>(1) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources, and historic and archaeological sites shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation.</p>	<p>A. Protected resources should correspond to those identified through the inventory work required by the Shoreland Identification requirements above.</p> <p>B. It is unclear what special values historic and archaeological sites in the shorelands area have that compels more protection than that required by Goal 5.</p>	<p>A. Limit (1) to major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources as inventoried in the Identification Section.</p> <p>B. Delete historic and archaeological sites and instead rely on Goal 5 requirements to protect or manage conflicting uses for these sites.</p>
<p>(2) Shorelands in urban and urbanizable areas especially suited for water-dependent uses shall be protected for water-dependent recreational, commercial and industrial uses. Some factors which contribute to this special suitability are:</p> <p>(a) deep water close to shore with supporting land transport facilities suitable for ship and barge facilities;</p> <p>(b) potential for aquaculture;</p> <p>(c) protected areas subject to scour which would require little dredging for use as marinas; and</p> <p>(d) potential for recreational utilization of coastal water or riparian resources.</p>	<p>A. Shorelands in built and committed areas which are suitable for water-dependent uses should also be subject to this requirement.</p> <p>B. This requirement provides little guidance on the extent of shoreland which must be designated as especially suited for water-dependent use. Plan reviews have indicated this should consider the land needs of expected development.</p> <p>C. Some limited uses are consistent with protection of ESWD sites for water-dependent uses. These include temporary uses and incidental nonwater-dependent uses that are added to a water-dependent use at a site. The goal should specifically address this issue.</p>	<p>A. Add "and in rural areas built upon or irrevocably committed to nonresource use" to "shorelands in urban and urbanizable areas..."</p> <p>B. No change. Areas which are especially suited for water-dependent use are very limited in extent. Expansion of water-dependent uses in the future will require waterway alterations which can be reduced or avoided if all suitable shorelands are protected for the future. The exceptions process is appropriate for changing proposed use of an ESWD site.</p> <p>C. Add the following to this requirement: Other uses which may be permitted in these areas are temporary uses which involve minimal capital investment and no permanent structures, or a use in conjunction with and incidental to a water-dependent use. (Possibly add a guideline listing examples.)</p>

Goal Requirement

(g) a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal.

Concern/Problem

F. If the built and committed shorelands are not considered rural shorelands and the boundary is reduced by exclusion of floodplains, requirement (g) should be deleted. If retained, it would be a broad lot-of-record provision above and beyond that provided by statute.

Proposed Revision

F. Delete requirement (g).

PRIORITIES OF USE

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

- (1) Promote uses which maintain the integrity of estuaries and coastal waters;
- (2) Provide for water-dependent uses;
- (3) Provide for water-related uses;
- (4) Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;
- (5) Provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;
- (6) Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

This requirement has not provided important guidance for local comprehensive plans. It reiterates in general terms the specific requirements set forth in the Goals for permissible uses.

Delete

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<p>5. <u>Riparian Vegetation</u></p> <p>Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resource, riparian vegetation shall be maintained; and where appropriate, restored and enhanced, consistent with water-dependent uses.</p>	<p>The Goal does not define what amount of alteration is consistent with the requirement to maintain riparian vegetation. Removal of dead and dying trees and other activities, such as trimming or partial removal are usually consistent with the objective of the Goal but are not specifically provided for. Some nonwater-dependent uses may require removal of riparian vegetation but this is not specifically allowed.</p>	<p>This is a complicated issue. An administrative rule should be considered to define the type and extent of alterations that are consistent with maintenance of riparian vegetation.</p>
<p>GOAL 18 BEACHES AND DUNES</p> <p><u>Comprehensive Plan Requirements</u></p> <p>Uses</p> <p>Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat.</p>	<p>It is unclear whether this requirement mandates additional inventories of sensitive resource sites or whether use of inventories required by other goals is adequate.</p>	<p>Add "...as identified through application of Goals 5 and 17."</p>
<p><u>Implementation Requirements</u></p> <p>2. <u>Dunes Subject to Ocean Flooding</u></p> <p>Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation</p>	<p>A. The definition of Ocean Flooding provided in the Goals does not correspond to the available data. The Goal definition should be rewritten to correspond to the available FEMA studies.</p>	<p>A. Define ocean flooding using FEMA flood information.</p>

Goal Requirement

- (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.

6. Foredune Breaching

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

GOAL 19 OCEAN RESOURCES

BC:ad  
7637B

Concern/Problem

- B. Even with an improved definition, there will be uncertainty about what areas were "developed" as of January 1, 1977. Local plans should show areas which were developed.
- C. The Beach Zone Line administered by ODOT is often seaward of the bluff or dune line. Consequently, many areas intended to be covered by this requirement are not subject to it. The Goal requirement should apply to all permits for beachfront protective structures.

This requirement has been interpreted to prohibit any removal of sand from the foredune. Many ocean front property owners would like to grade the foredune and manage its height to protect dwellings from sand inundation or to protect views or beach access.

The Goal has worked well to express the State's priority of use for renewable resources over nonrenewable resources. The Goal needs to be strengthened to respond to future proposals for off-shore development.

8254B

Proposed Revision

- B. Add the following:  
  
Comprehensive plans shall identify areas where development existed as of January 1, 1977.
- C. Expand coverage to all proposals for beachfront protective structures (i.e., require local governments or DSL to apply the requirement landward of the beach zone line). In addition ODOT should resurvey and reset the beach zone line to conform to the existing beach line.

The Department intends to convene a Technical Advisory Group of dune experts to address this issue. The objective will be to seek professional consensus on whether or not foredunes can be graded and not significantly impair or reduce their flood protection benefits. Specific limits and conditions on grading will also be discussed.

Require state management agencies ODFW, DSL, DOGAMI, and ODOT to develop a nearshore ocean resource plan. The Goal should also require that more detailed inventories of off-shore resources be prepared.

8242B



Goal Requirement

Concern/Problem

Proposed Revision

2. Overall Dredge & Fill Test

(No current requirement.)

C. The public need and benefit test appears unnecessary if the impact minimization and resource capability tests required by the Goal are met.

Add revised dredge and fill test from the overall statement as a new Implementation Requirement.

C. Delete the public need and benefit test and in its place add the four-part test for dredge, fill and other degradations. This could best be done by adding a new implementation requirement to the Goal.

Dredging and/or filling shall be allowed only:

- (a) if required for navigation or other water-dependent uses that require an estuarine location; and
- (b) if it is demonstrated that the action will not substantially interfere with public use and rights; and
- (c) if no feasible alternative shoreland locations exist; and
- (d) If adverse impacts are minimized.

Other uses and activities which could significantly alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met.

Other uses and activities include:  
in-water structures, rip-rapping, new

Goal Requirement

Concern/Problem

Proposed Revision

4. Mitigation

When dredge or fill activities are permitted in inter-tidal or tidal marsh areas, their effects shall be mitigated by creation or restoration of another area of similar biological potential to ensure that the integrity of the estuarine ecosystem is maintained.

Addition of a mitigation requirement to DSL's statute makes this specific requirement unnecessary and potentially duplicative of DSL permits.

Goal 16 does not but should provide clear guidance on planning for mitigation (i.e., designation of sites, general correspondence of sites to amount of development area, etc.).

Log storage, aquaculture, application of pesticides or herbicides, water intake or withdrawal and effluent discharge, and other activities which could have significant off-site effects on the estuary's physical processes or biological resources.

All or portions of these requirements may be applied at the time of plan development for actions identified in the plan. Otherwise, they shall be applied at the time of permit review.

Delete existing language. Rewrite this requirement to provide direction for mitigation planning. Require that plans for development. estuaries designate suitable mitigation sites which generally correspond to areas identified for potential intertidal dredge or fill using DSL rules.

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<u>OTHER GOAL 16 ISSUES</u>  -- Role of State Agencies, particularly DSL, in implementing Goal requirements. -- Administrative burden of detailed review standards.	LCDC has not carried out Goal 16 requirements which apply to other state agencies.	No goal amendment is suggested to remedy this problem. The Commission should (1) review state agency coordination programs to insure state agencies are carrying out coastal goal implementation requirements and (2) sponsor a joint federal, state and local effort to coordinate permit and environmental reviews.
<u>GOAL 17 COASTAL SHORELANDS</u>  <u>Shorelands Planning Area</u>  Goal 17 describes an area along the ocean, estuaries, and coastal lakes which must be inventoried to identify coastal shoreland values.	The Coastal Shorelands planning area should include lands East of Highway 101 in those areas where the highway runs immediately along the shoreline and important shoreland values exist east of the highway.	None at this time. Local governments have the option of adding land east of the coast highway to the shorelands boundary. It is unclear what important coastal values are unprotected by the existing planning area.
<u>Shorelands Identification</u>  Land contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:  (1) Lands which limit, control, or are directly affected by the hydraulic action of the coastal water body, including floodways;	A. Factor 1 results in large areas of pasture land and floodplain being designated and managed as shoreland only because it is subject to flooding. The Goal does not regulate activities in these areas which may justify their inclusion in the shoreland's boundary (i.e., feed lots). In general including broad floodplains (to 1000 feet from the estuary) has caused unnecessary restrictions on uses in these areas. A narrower boundary should be selected.	A. Limit factor (1) to floodways and areas subject to ocean flooding but not less than 50 feet from the coastal lakes and estuaries nor less than 100 feet from the ocean shore.

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
(2) Adjacent areas of geologic instability;	B. Factor 2 requires that geologically unstable areas near but unrelated to coastal waters would be subject to Goal 17, such as landslide areas distant from an estuary or the ocean shore.	B. Redefine "area of geologic instability" to apply only to areas where the geologic instability is related to or will impact a coastal water body.
(3) Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas;	C. Factor 4 does not limit significant habitat to those related to the Coastal water bodies. Consequently, when habitat for upland species, such as deer or elk, occurs in the Goal 17 planning area, they are subject to Goal 17 rather than Goal 5.	C. Redefine "significant wildlife habitat" to apply only to habitats whose resource habitat quality is primarily derived from or related to the association with coastal water areas;
(4) Areas of significant shoreland and wetland biological habitats;	D. The limit on 1000 feet sometimes results in bisecting important habitat areas; portions of the same habitat are arbitrarily subject to the different standards in Goal 5 and Goal 17. Since they are the same, they ought to be subject to only one requirement.	D. Clarify that shoreland boundary must extend beyond "planning boundary" if identified "major marsh" or "significant wildlife habitat" extends beyond planning boundary;
(5) Areas necessary for water-dependent and water-related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities, and areas having characteristics suitable for aquaculture;	E. Some dredged material disposal sites may be located outside the shorelands boundary and are technically not subject to Goal 17's requirements.	E. Add "...and dredged material disposal and mitigation sites..." to (5).
(6) Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or related to the association of coastal water areas; and		
(7) Coastal headlands.  Coastal Lakes--Lakes in the Coastal Zone that are created by a dune formation or that have a hydrologic surface or subsurface connection with salt water.	The definition "hydrologic surface...connection..." includes virtually all lakes in the coastal zone. Some lakes on the coast are remote from the ocean and estuary and are little different from lakes elsewhere in the state and should be excluded from Goal 17.	Clarify by listing the definition of coastal lakes subject to the Goals requirements.

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
COASTAL SHORELAND USES		
<p>(1) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources, and historic and archaeological sites shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation.</p>	<p>A. Protected resources should correspond to those identified through the inventory work required by the Shoreland Identification requirements above.</p> <p>B. It is unclear what special values historic and archaeological sites in the shorelands area have that compels more protection than that required by Goal 5.</p>	<p>A. Limit (1) to major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources as inventoried in the Identification Section.</p> <p>B. Delete historic and archaeological sites and instead rely on Goal 5 requirements to protect or manage conflicting uses for these sites.</p>
<p>(2) Shorelands in urban and urbanizable areas especially suited for water-dependent uses shall be protected for water-dependent recreational, commercial and industrial uses. Some factors which contribute to this special suitability are:</p> <p>(a) deep water close to shore with supporting land transport facilities suitable for ship and barge facilities;</p> <p>(b) potential for aquaculture;</p> <p>(c) protected areas subject to scour which would require little dredging for use as marinas; and</p> <p>(d) potential for recreational utilization of coastal water or riparian resources.</p>	<p>A. Shorelands in built and committed areas which are suitable for water-dependent uses should also be subject to this requirement.</p> <p>B. This requirement provides little guidance on the extent of shoreland which must be designated as especially suited for water-dependent use. Plan reviews have indicated this should consider the land needs of expected development.</p> <p>C. Some limited uses are consistent with protection of ESWD sites for water-dependent uses. These include temporary uses and incidental nonwater-dependent uses that are added to a water-dependent use at a site. The goal should specifically address this issue.</p>	<p>A. Add "and in rural areas built upon or irrevocably committed to nonresource use" to "shorelands in urban and urbanizable areas..."</p> <p>B. No change. Areas which are especially suited for water-dependent use are very limited in extent. Expansion of water-dependent uses in the future will require waterway alterations which can be reduced or avoided if all suitable shorelands are protected for the future. The exceptions process is appropriate for changing proposed use of an ESWD site.</p> <p>C. Add the following to this requirement: Other uses which may be permitted in these areas are temporary uses which involve minimal capital investment and no permanent structures, or a use in conjunction with and incidental to a water-dependent use. (Possibly add a guideline listing examples.)</p>

Goal Requirement

- (3) Shorelands in rural areas other than those designated in (1) above shall be used as appropriate for:
- (a) farm uses as provided in ORS Chapter 215;
  - (b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
  - (c) private and public water-dependent recreation developments;
  - (d) aquaculture;
  - (e) water-dependent commercial and industrial uses and water-related uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated on shorelands in urban and urbanizable areas;
  - (f) subdivisions, major and minor partitions and other uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat; and

Concern/Problem

- A. These requirements should only apply to rural shorelands outside of built and committed lands.
- B. Factors (a) and (b) should be expanded to allow other uses permitted or conditionally allowed in farm or forest zones and because the shorelands planning area is too extensive.
- C. Factor (e) should not require the finding to be made by the county governing body. This makes counties go through an additional level of review with little if any added benefit.
- D. Factor (e) should require consideration of suitable sites on built and committed lands.
- E. Factor (f)'s requirement to review lot creation in coastal shorelands is unnecessary. Underlying farm and forest lot sizes should adequately restrict partitioning. The requirement limiting partitioning can be avoided by dividing the portion of the parcel outside the shorelands boundary. In addition, requirements of underlying farm and forest zones should adequately limit inappropriate divisions. Other requirements of the Goal independently assure protection of riparian vegetation and important wildlife habitat.

Proposed Revision

- A. Modify the language of (3) to read: "Shorelands in rural areas other than those built upon or irrevocably committed to nonresource use and those designated in (1) above shall be used as appropriate for:..."
- B. This change is not needed if the shorelands boundary is narrowed as recommended above.
- C. Delete "...by the governing body..." from factor (e).
- D. Modify the last portion of factor (e) to read: "shorelands in urban or urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use."
- E. Delete factor (f) and make "other uses" subject to factor (e) requirements.

Goal Requirement

- (g) a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal.

Concern/Problem

- F. If the built and committed shorelands are not considered rural shorelands and the boundary is reduced by exclusion of floodplains, requirement (g) should be deleted. If retained, it would be a broad lot-of-record provision above and beyond that provided by statute.

Proposed Revision

- F. Delete requirement (g).

PRIORITIES OF USE

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

- (1) Promote uses which maintain the integrity of estuaries and coastal waters;
- (2) Provide for water-dependent uses;
- (3) Provide for water-related uses;
- (4) Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;
- (5) Provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;
- (6) Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

This requirement has not provided important guidance for local comprehensive plans. It reiterates in general terms the specific requirements set forth in the Goals for permissible uses.

Delete

<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<u>IMPLEMENTATION REQUIREMENTS</u>		
1. <u>FPA &amp; Shoreland Values</u>		
The Oregon Department of Forestry shall recognize the unique and special values provided by coastal shorelands when developing standards and policies to regulate uses of forest lands within coastal shorelands. With other state and federal agencies, the Department of Forestry shall develop forest management practices and policies which protect and maintain the special shoreland values and forest uses.	The Department of Forestry should rely on designations made by county plans to carry out the objective of this requirement.	Have DOF amend FPA rule and program to further protect shoreland values consistent with acknowledged comprehensive plans, especially for natural shorelands and riparian vegetation.
2. <u>Floodplain Management</u>		
The land use planning and regulatory authorities of local government and state and federal agencies shall manage floodplain areas in coastal shorelands to promote use and development consistent with the hazards to life and property. Priority uses for flood hazard and floodplain areas shall include agriculture, forestry, recreation and open space, and uses which are water-dependent.	This section does not establish any more specific requirements than those already in place as a result of Goal 7 (Natural Hazards), Goal 3 (Agricultural Lands), and Goal 17's requirements for protection of sites especially suited for water-dependent development.	Delete.
4. <u>DMD Site Protection</u>		
Coastal shorelands identified under the Estuarine Resources Goal for dredged material disposal shall be protected from new uses and activities which would prevent their ultimate use for dredged material disposal	Some dredged material disposal sites are located on uplands outside of the coastal shorelands boundary. Technically, this requirement does not apply to such sites.	Change shoreland boundary identification factors to include DMD sites (see above).



<u>Goal Requirement</u>	<u>Concern/Problem</u>	<u>Proposed Revision</u>
<p>5. <u>Riparian Vegetation</u></p> <p>Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resource, riparian vegetation shall be maintained; and where appropriate, restored and enhanced, consistent with water-dependent uses.</p>	<p>The Goal does not define what amount of alteration is consistent with the requirement to maintain riparian vegetation. Removal of dead and dying trees and other activities, such as trimming or partial removal are usually consistent with the objective of the Goal but are not specifically provided for. Some nonwater-dependent uses may require removal of riparian vegetation but this is not specifically allowed.</p>	<p>This is a complicated issue. An administrative rule should be considered to define the type and extent of alterations that are consistent with maintenance of riparian vegetation.</p>
<p>GOAL 18 BEACHES AND DUNES</p> <p><u>Comprehensive Plan Requirements</u></p> <p>Uses</p> <p>Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat.</p> <p><u>Implementation Requirements</u></p> <p>2. <u>Dunes Subject to Ocean Flooding</u></p> <p>Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation</p>	<p>It is unclear whether this requirement mandates additional inventories of sensitive resource sites or whether use of inventories required by other goals is adequate.</p> <p>A. The definition of Ocean Flooding provided in the Goals does not correspond to the available data. The Goal definition should be rewritten to correspond to the available FEMA studies.</p>	<p>Add "...as identified through application of Goals 5 and 17."</p> <p>A. Define ocean flooding using FEMA flood information.</p>

Goal Requirement

plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

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

4. Groundwater Drawdown

Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies.

5. Beachfront Protective Structures

Permits for beach front protective structures shall be issued under ORS 390.605 - 390.770, only where development existed on January 1, 1977. The Oregon Department of Transportation, cooperating with local, state and federal agencies shall develop criteria to supplement the Oregon Beach Law (ORS 390.605 - 390.770) for issuing permits for construction of beach front protective structures. The criteria shall provide that:

Concern/Problem

- B. The requirements for siting of new dwellings in foredunes that are irrevocably committed to development are unclear.

It is expensive and inappropriate to require individual determinations on building permits for single family dwellings. Ideally, such decisions should be made in the plan for an entire aquifer. If decisions are deferred, they should be made at the time of subdivision to minimize cost and burden of property owners.

- A. ODOT and DSL have relied on the general definition of development included in the goals for administering this requirement. Both partitions and platting are considered development under that definition. As a result, ODOT and DSL consider most, if not all, of the coastline to be developed. Since 1978 LCDC has indicated "development" was to be more narrowly construed for this requirement and that when Goal amendments were proposed, this change would be made.

Proposed Revision

- B. The commission should consider adopting an administrative rule establishing standards for siting of new dwellings in foredunes that are irrevocably committed to development, but avoiding dune impacts (e.g., setbacks, requests for beachfront protective structures).

Modify the language to state: "...and permit reviews except for building permits for single family dwellings..."

- A. Adopt a different definition of development for this section of the Goals: means houses, commercial, and industrial buildings and vacant subdivision lots physically improved for development through construction of streets and other utilities to the lot.

Goal Requirement

- (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.

6. Foredune Breaching

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

GOAL 19 OCEAN RESOURCES

BC:ad  
7637B

Concern/Problem

- B. Even with an improved definition, there will be uncertainty about what areas were "developed" as of January 1, 1977. Local plans should show areas which were developed.
- C. The Beach Zone Line administered by ODOT is often seaward of the bluff or dune line. Consequently, many areas intended to be covered by this requirement are not subject to it. The Goal requirement should apply to all permits for beachfront protective structures.

This requirement has been interpreted to prohibit any removal of sand from the foredune. Many ocean front property owners would like to grade the foredune and manage its height to protect dwellings from sand inundation or to protect views or beach access.

The Goal has worked well to express the State's priority of use for renewable resources over nonrenewable resources. The Goal needs to be strengthened to respond to future proposals for off-shore development.

8254B

Proposed Revision

- B. Add the following:  
  
Comprehensive plans shall identify areas where development existed as of January 1, 1977.
- C. Expand coverage to all proposals for beachfront protective structures (i.e., require local governments or DSL to apply the requirement landward of the beach zone line). In addition ODOT should resurvey and reset the beach zone line to conform to the existing beach line.

The Department intends to convene a Technical Advisory Group of dune experts to address this issue. The objective will be to seek professional consensus on whether or not foredunes can be graded and not significantly impair or reduce their flood protection benefits. Specific limits and conditions on grading will also be discussed.

Require state management agencies ODFW, DSL, DOGAMI, and ODOT to develop a nearshore ocean resource plan. The Goal should also require that more detailed inventories of off-shore resources be prepared.

8242B



## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Wednesday, July 21, 2021 12:47 PM  
**To:** Allison Hinderer  
**Cc:** Wendie Kellington; Sarah Mitchell  
**Subject:** Letter in support of the revetment  
**Attachments:** Beach letter.docx

**Importance:** High

Hello Allison,

Please confirm with Heather this letter was received.

Thank You,  
Sarah

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**From:** Heather VonSeggern <Heather.VonSeggern@img.education>  
**Sent:** Wednesday, July 21, 2021 12:38 PM  
**To:** Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Wendie Kellington <wk@klgpc.com>; Sarah Mitchell <sm@klgpc.com>; Megan Berg (meganberglaw@aol.com) <meganberglaw@aol.com>  
**Subject:** EXTERNAL: Letter in support of the revetment  
**Importance:** High

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

Hi Sarah,  
So sorry for the delay in getting our letter to you.  
I hope it is not too late to have it included.

Thank you,  
Heather

 **Heather Von Seggern**, College Counselor for Academics, Golf, Lacrosse and Performance  
T: 941 749- 8716 / F: 941 752-2433 / [Heather.VonSeggern@img.education](mailto:Heather.VonSeggern@img.education)  
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July 21, 2021

Tillamook County Board of Commissioners  
C/O Sarah Absher, Director  
Department of Community Development  
1510 B Third Street  
Tillamook, Oregon 97141

Dear Members of the Tillamook County Board of Commissioners

This letter is to request your approval of our request for beach front protection for our properties at Twin Rocks.

Since purchasing our lots at 0 Ocean Drive and speaking with neighbors and residents of Pine Beach loop, we have joined them in legal consultation to confirm that we meet all the legal requirements for a Goal 18 exception allowing property protection, also taking prudent steps of obtaining engineering and geologic investigations to insure our homes would be safe and secure.

The plan design will build the protection on our property inside the current tree line and cover the rock with sand, beach grass and trees. When completed the 3 foot high revetment will be practically invisible from view on the beach. The design will also improve beach access beyond the current unpredictable situation. The Planning Commission voted 5-1 to approve our design.

Two members of the Commission and some public comments have contended that beach protection always does harm by increasing erosion around the ends of the revetment. That is not correct; the engineering studies we've submitted confirm that there is no risk conferred to the adjacent properties,

We look to build on the land within the next few years and invest heavily in creating our dream home, as many others have in that area. If we do not help to preserve the structures already existing and those to come, millions of dollars will be lost to the ocean, given the current pace of erosion, in addition to the environmental hazard of their remains. The environmental and financial risks to the sewer, water and electrical systems is unknown.

Just as an added note, the plan design in no way impedes access to the beach, and as owners of the properties that abut the easement on the north side of the Pine Beach loop, we are committed to maintain the path to the beach and abide by the commitments in our deed.

Tillamook County and The State of Oregon have designated this as an urban residential area and should not forbid us from protecting our homes and properties.

We appreciate the effort and consideration of the Planning Commission in recommending approval, 4-2, of our protection plan. We sincerely believe our proposal is valid and that your approval is justified.

Sincere thanks for your consideration,

*Heather Von Seggern and Megan Berg*