Allison Hinderer

From: Sarah Absher
Sent: Wednesday, June 2, 2021 5:05 PM
To: Allison Hinderer
Subject: Comments re: Opposing Goal 18 exception; #851-21-000086-PLNG-01
Attachments: Opposing Goal 18 Exception_SurfriderOregon.pdf

Please make 13 copies.

Thank You,
Sarah

From: Briana Goodwin <bgoodwin@surfrider.org>
Sent: Thursday, May 27, 2021 3:58 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Cc: Charlie Plybon <cplybon@surfrider.org>; Three Capes Vice Chair <vicechair@threecapes.surfrider.org>
Subject: EXTERNAL: Comments re: Opposing Goal 18 exception; #851-21-000086-PLNG-01

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Ms. Absher,

Please accept the attached comments for the record regarding Opposing Goal 18 exception; #851-21-000086-PLNG-01.

Thank you,
Bri

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

May 27, 2021

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

Re: Opposing Goal 18 exception; #851-21-000086-PLNG-01: Goal exception request

Dear Ms. Absher,

Thank you for the opportunity to provide comments for the goal exception request (#851-21-000086-PLNG-01). The applicants seek,

> [a]pproval of a Floodplain Development and Zoning Permit to allow placement of a beachfront protective structure within an active eroding foredune approximately 10' landward of the existing vegetation line and within the rear yards of lots 11-20 of the Pine Beach Subdivision. (Pine Beach Way; Tax Lots J 14-1 23, Map 1N 1 OW07DD (adjacent and north of Camp Magruder)) and within the rear yards of Tax Lots 3000, 3100, 3104, 3203 and 3204 ("George Shand Tract"/"Ocean Boulevard properties") of Assessor's Map INIOW07DA.[1]

Moreover, applicants seek approval of an exception to Statewide Planning Goal 18, Implementation Requirement 5, to establish the beachfront protective structure (rip rap revetment) along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary (hereafter, "subject properties"). Surfrider Foundation is in opposition to applicant's request for a goal exception. Please enter this letter into the record of the hearing.

Who We Are

The Surfrider Foundation is an environmental nonprofit organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a

[1] *Pine Beach & Ocean Boulevard Combined Application for Shoreline Protection*, Goal Exception Request #851-21-000086-PLNG-01, pg. 1 (2021).

powerful activist network. We have chapters in Portland, the North Coast, South Tillamook County (Three Capes Chapter), Newport, Florence (Siuslaw Chapter), and Coos Bay. Our members live, work, visit, and recreate on Oregon's coastal beaches and value these special places for exploration, research and enjoyment.

Surfrider Foundation's Beach Preservation Policy

The Surfrider Foundation recognizes that beaches are unique coastal environments with ecological, recreational and economic value. The Surfrider Foundation further recognizes that beaches are a public resource and should be held in the public trust. As human activities and development in coastal areas increase, the need for preservation of beaches becomes ever more apparent.

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

This policy is general in nature; the Surfrider Foundation recognizes that every specific case must be evaluated in the context of its local setting. Beaches are often perceived as separate habitats, but in reality are small parts of much larger coastal ecosystems. These systems include watersheds, wetlands, and nearshore marine environments. Beaches are dynamic in nature and change on multiple temporal and spatial scales. These changes are therefore difficult to predict with certainty. Therefore, The Surfrider Foundation advocates actions to promote long term beach preservation for the benefit of the public.

Coastal areas that are free of development should be protected via proactive means that do not interrupt coastal processes. These include: placement of beaches and beachfront lands in public trust, establishment of beach setbacks based on current and historical erosion trends, and restoration of natural sediment transport processes in coastal watersheds.

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

For the purposes of this application and public process, Surfrider seeks to preserve the beach conditions north of the Barview Jetty which exists, without interruption of shoreline structure or hazards for over a 1km north of a popular surf and recreational area. This stretch of coastline is not only unique in providing for south protection from wind, but also exists as an

alternative opportunity for a natural setting beach for recreational users along this portion of the coast.

Applicants are Not Entitled to Shoreline Protection Because Development did not meet Goal 18 Date Restriction

> Goal 18, implementation requirement (5) states:
> Permits for beachfront protective structures shall be issued only where *development existed on January 1, 1977* [emphasis added]. 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.

Goal 18 establishes a bright line date by which property owners are permitted to implement beachfront protective structures in compliance with Goal 18 of the Statewide Land Use Planning Goals. Applicants argue that they are entitled to rip rap revetment because development existed prior to January 1, 1977. The applicant argues that the plat "Pine Beach" was recorded in 1932, however the Pine Beach Loop, was vacated in 1941. The Pine Beach replat was approved by Tillamook Co. in 1994, thus, on January 1, 1977, there was no eligible development on the oceanfront parcels at this site and it was not part of a statutory subdivision. The additional parcels to the north were from the George Shand Tracts, surveyed in 1950, but the tracts do not meet the statutory subdivision definition provided with ORS 92.010. Thus, these parcels also do not meet the definition of development as defined in Goal 18.

While under no circumstances do we support the installation of stabilization or sand retention structures along the coastline, we acknowledge statewide land use goals and regulations and their role in sustainable and long lasting coastal management. The January 1, 1977, restriction is reasonable for the implementation of beachfront protective structures. It allows for predictable outcomes on Goal 18 land use issues and does not penalize property owners who developed without notice of Goal 18. Decision makers should only permit exceptions when extraordinary circumstances justify waiving a legislative Statewide Land Use Planning Goal and amending the Tillamook County comprehensive development plan.

The Proposed Rip Rap Does Not Adhere to the Criteria Established Under Goal 18 for Review of All Shore and Beachfront Structures

The criteria for review of all shore and beachfront protective structures shall provide that: "(1) visual impacts are minimized; (2) necessary access to the beach is maintained; (3) negative impacts on adjacent property are minimized; and (4) long-term or recurring costs to the public are avoided."

(1) This 880-foot revetment structure would be visually unappealing and contrast the native landscape of our beloved Oregon Coast. Minimizing the visual impacts is virtually impossible. The sand will wash away, inevitability revealing the rip rap structure. Moreover, the rip rap will need constant attention and maintenance work. Construction teams negatively impact the natural environment's look and feel for the beach going public and the communities in Tillamook County.

(2) Another concern is the ability and safety of accessing the beach in the future, particularly as the beaches erode and more shoreline structures are put in place to try and prevent it. We need to plan to protect the public's access points, particularly as more permits are being applied for that are closer to the public access points.

(3) The proposed riprap structure most certainly will have negative impacts on adjacent properties. Our network has coastal property owners statewide. There is a concern at how their properties may be affected in such cases where a neighbor is permitted to install riprap revetment. Is rip rap not a public hazard? Who will be responsible for mitigating and responding to this hazard? Our network of activists are often beachgoers, surfers and people who recreate at the coast. We are concerned about the safety of our network and the public at large on the beach. Getting in and out of the water around giant boulders is unsafe and is recognized as a hazard in other areas. How will the public be protected from the possible perils of these property owners' places in a public way?

(4) Potential long-term costs persist. There are potential continued land use hearings, potential LUBA appeals, maintenance costs, surveying, and environmental assessments among other cost considerations.

We are Opposed to a Goal 18 Exception

The purpose of the application is to persuade the county that the applicant's situation warrants an exception; that it is atypical; and that Statewide Land Use Goals should be overlooked in this particular context. Only extraordinary facts should allow for a permit of a rip rap revetment at the location of the subject property because the structure would go against Goal 18's purpose. Nothing about the subject property is extraordinary and allowing the exception will create a pathway for similarly situated properties. In short, these facts are commonplace and do not warrant an exception.

We are **opposed** because:

(1) The applicants fail to meet the exception requirements presented in OAR 660-004-0020 Goal 2, Part II(c). There are four factors to be examined when permitting an exception. Those factors are:

a. Reasons that justify why the state policy embodied in the applicable goal should not apply;

b. Areas which do not require a new exception cannot reasonably accommodate the use;

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

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

(2) **Approval necessitates an examination of these factors.**

(3) The applicants were not given an implied exception as the applicants suggest.

(4) The applicants do not sufficiently engage in a discussion about why their situation is unique, and therefore deserving, to justify an exception to a Statewide Planning Goal. Recent LUBA decisions say that exceptions of this nature should only be allowed in extraordinary contexts. This is because Goal 18 assumes state protection and conservation of the beaches and dunes area.

(5) The application fails to adequately address the impact of rip rap revetment on the adjacent Tillamook County beaches, the surrounding beach environments, or the public access complication presented by revetment. Goal 18 functions to, "conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of the coastal beaches and dunes areas." The very purpose of the goal was not adequately discussed. Without acknowledging the negative effects that their proposed structure would have on the beaches and dunes holistically, an exception should not be granted. Moreover, continual rip rap along various stretches of beach are now threatening the natural sand transport of beaches along Oregon's coast. Refracted wave energy has created a net loss of beach sand in some areas. Ten years ago, beachgoers could walk uninterrupted down stretches of beaches that, today, are not walkable except during low tides.

(6) We are in opposition to this structure's permanence due to the threat it imposes on the beach, a public resource that drives our economy and provides ecosystem services that are unmeasurable.

(7) The applicants failed to address the long-term ramifications of the beachfront protective structure on the entire beach ecosystem, the adjacent properties, and the beachgoers that recreate along our coasts. What makes Oregon unique is that the

beaches are held open to the public and protected from private intrusion. The result of an exception may lead to a degradation in that public interest; the result would be a reshaping of what makes Oregon, Oregon.

(8) The application fails to establish that a reasons exception is justified in this case. However, even assuming it could meet the relevant goal exception criteria, the proposal must be denied because it fails to comply with the other statewide planning goals applicable to the subject properties.

(9) The applicants do not discuss other means to combat mitigating the erosive processes of the ocean. Applicants should exhaust other options and alternatives before an exception is warranted. Statewide Planning Goal 17, Implementation Requirement 5 states, "Land-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective structures; and fill, whether located in the waterways or on shorelands above ordinary high-water mark, shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns." Other means should be analyzed before permitting an exception.

Conclusion

In summary, Surfrider recommends that the subject properties be denied Goal 18 exception and permit to build rip rap revetment. The property was not "developed" before the date as defined by the Statewide Planning Goals. Moreover, they should be denied an exception under Goal 2 because they do not meet the required criteria for the exception. The ramifications of this decision on our beaches in Oregon could be devastating and long lasting. If granted an exception, what is to stop this decision from being the hallmark decision in allowing beach protective structures from being engineered all over the state? We need to consider appropriate long-term solutions that maximize public benefit In areas where erosion threatens existing coastal development. This includes landward retreat of structures from dynamic shorelines.

We reserve the right to submit further comments and request Tillamook County keep the record open for an additional seven (7) days after the hearing.

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

Sincerely,

Charlie Plybon
Oregon Policy Manager
Surfrider Foundation

Ben Moon
Vice Chair
Three Capes Chapter of Surfrider Foundation

Allison Hinderer

From: Rich and Kathy Snyder <kathyrich1966@msn.com>
Sent: Thursday, June 3, 2021 3:17 PM
To: Sarah Absher; Allison Hinderer
Subject: EXTERNAL: RE: Goal 18 Exception Notice
Attachments: 2021 Pine Beach 851-000086-PLNG-01.docx

Dear Sarah and Allison

Thank you for responding to our prior email. I do hope this response gets to all who asked for input. Let us know if there is further action we should take.

Rich and Kathy

June 3, 2021

Tillamook County Planning Commission

510-B Third Street

Tillamook, Oregon 97141.

Via Email to: sabsher@co.tillamook.or.us
c/o Planning Director Sarah Absher
Allison: ahindere@co.tillamook.or.us

Re: Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG-01
Land Use Applications for Goal Exception.

We built a home at 7805 Pine Beach Loop in 1998. There were several requirements expressed before we could build including getting an engineer's report on whether it was a safe place to build a home. We saw on the report that the SW corner of the development was not a good lot and was susceptible to flooding. Having grown up in Oregon I'd seen the impact on homes built on the ocean front as the constant maintenance tends to be costly. We wisely decided to build back from the ocean and have had decades of safe, wonderful experiences here. We back up to the camp I attended as a baby with my family and as an adolescent on my own. We were the third house in the development and followed the rules on vegetation, etc.

As more houses were built, we noticed that the beachfront lots were not following many of the rules that had been agreed to. The vegetation was taken from front lots for view purposes making us vulnerable to high tides. Private paths were cut to the ocean from beachfront homes and trees were topped. Lately we've been cut off from open communications about what is being proposed. While I've seen where they've claimed all of Pine Beach agrees to rip rap and wants it, we were not told this was going forward and haven't found anyone other than Board members who knew what was happening until we heard from other sources. Most know the dangers of rip rap from experience.

I'm not sure where they got that our lives would be in danger without rip rap, but it won't stop a tsunami. In fact, hauling boulders over a fragile road could do more harm to the infrastructure. The maintenance would be impossible as they are filling up the rest of the empty lots with new homes. They say they'll pay for it, "for now" which means the rest of the development will be paying for their poor choices.

We don't want anyone to lose their investment, but that is what we're being asked to do as well as our neighbors. The pictures put in evidence show wet sand and patios and water on the paths. Building next to the Pacific Ocean owners should anticipate water, and where it needs to go. With rip rap, they could end up with boulders instead of driftwood in their houses. Ideally they can find another option that won't impact others.

Regards,

Rich and Kathy Snyder

Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 3, 2021 3:39 PM
To: Sarah Absher
Cc: Allison Hinderer; Sarah Mitchell; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); Evan Danno; Heather Von Seggern; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); Mark and Alice Kemball; Megan Law; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispdx@gmail.com); Rachael Holland (rachael@pacificopportunities.com)
Subject: EXTERNAL: 6-3-2021 Applicants' Submittal - 851-21-000086-PLNG-01
Attachments: 6-3-2021 Applicants' Submittal.pdf; PRP_OS_permit_findings_2898_Hutsell.pdf; Exhibit A - Bartoldus Letter 9-28-2017.pdf; Exhibit B - G18EligibilityDetermination_wSupportingDocs_PacificPanoramaProperties.pdf; Exhibit C - Legislative History.pdf; Exhibit D - Access Easement Survey Stan Cook.pdf

Hi Sarah,

Attached please find the applicants' June 3, 2021 submittal for inclusion in the record in the above referenced matter. It includes a narrative, plus Exhibits A-D and an unmarked Exhibit PRP OS permit findings 2898 Hutsell. Exhibit E was sent under separate cover. Please confirm receipt. Thank you. All the best, Wendie

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June 3, 2021

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

RE: 851-21-000086-PLNG-01: Applicants' First Open Record Submittal

Dear Sarah,

As you know, this firm represents the Applicants who are 22 owners of beachfront properties in the Pine Beach and George Shand Tracts subdivisions, in the above-captioned matter. This letter provides additional information regarding issues raised during the May 27, 2021 public hearing on this application. Please include this letter in the record.

1. **"The Oregon Coastal Atlas Ocean Shores Viewer" (Coastal Atlas) shoreline armoring eligibility "map" has no regulatory significance, has not been adopted by the county, and does not use the correct bases for determining such eligibility.**

At the May 27, 2021 hearing, staff indicated the "Coastal Atlas'" shoreline armoring "eligibility" map, is probative of a property's eligibility under Goal 18 for shoreline protection. Staff is mistaken. The "Coastal Atlas" has no regulatory significance. It has not been adopted by the county, has not even been adopted by the state and purports only to show areas where developed structures can be seen in aerial images from 1977, which is not the test for Goal 18 eligibility. The county's own code requires the county to make its own independent determination on the subject properties' eligibility for shoreline protection based on the evidence in the record. The evidence in the record supports a conclusion that the subject properties were "developed" subdivision lots with the "provision of utilities" (water) and roads and subject to goal exceptions that allow the exact residential development to be on the exact dune that it is now on, eroding or otherwise. That means under Goal 18, they were "developed" on January 1, 1977.

Respectfully, the county must make its determination here based upon adopted regulations. It may not apply the unadopted "atlas" for a number of reasons. First, the "atlas" may not be applied here because relying upon it violates the "codification rule" of ORS 215.416(8) that standards and criteria only be applied that are in the adopted plan and code. *Waveseer of Oregon LLC, v. Deschutes County*, 308 Or App 494, 501 (2021); *Jones v. Willamette United Football Club*, 307 Or App 502, 514 (2020).

Second, DLCD has not "adopted" the "atlas" and it is not a part of any statute or rule.

Third, DLCD has even stated that it is up the county to make determinations of Goal 18 eligibility and that "[t]he inventory shown online on the Oregon Coastal Atlas is for *informational purposes only* and is *not legally binding*." Exhibit A (Emphasis supplied). DLCD has also made plain that notwithstanding what the Coastal Atlas might say, if the county were to make a determination that the property is eligible for shoreline protection, DLCD would consider that decision in updating the online map. Exhibit A.

Fourth, the "Coastal Atlas" does not use the correct bases for determining whether a property was "developed" under the Goal 18, IM 5 definition. A public records request to DLCD in a separate, unrelated matter unrelated, reveals that the formula used by the Coastal Atlas for determining whether property is eligible for shoreline protection is not consistent with Goal 18's original or current definition of "development" ort other eligibility tests.

On this, DLCD asserts that its eligibility determinations on the Coastal Atlas comes from an informal review of 1977 aerial imagery from the Army Corps of Engineers to see if "qualifying development (residential, commercial, or industrial buildings)" was present on a lot and whether the lot was part of a statutory subdivision on January 1, 1977. Exhibit B, p. 2. That is obviously not the Goal 18 test of whether property is "developed."

An obvious and critical defect is that the "Atlas" fails to identify "areas where an exception to (2) above has been approved" in the eligibility calculus. It is respectfully submitted that the subject property meets all of the adopted eligibility tests for shoreline protection, under the county code and under Goal 18.

2. The George Shand Tracts are a "subdivision".

In its letter dated May 19, 2021, DLCD argues that a subdivision that uses the term "tracts" is not a subdivision, taking the surprising position that "tracts are not considered a statutory subdivision as defined in ORS 92.010" and then from there erroneously concluding that the George Shand Tracts "do not meet the definition of development as defined in Goal 18." *Id.* at p. 2.

No doubt hundreds, perhaps thousands of developers in Oregon would be delighted to learn that it is DLCD's position that they can escape subdivision laws by merely calling their subdivision a "tract". The absurdity of DLCD's position self announces that it is silly, but it is also evident that its position is not founded in law. When the George Shand Tracts were created, platted and recorded in 1950, they were defined as a subdivision by state law and are still so characterized today.

The law in effect at the time the "George Shand Tracts" were platted (in 1950), did not contain any prohibition of the use of the term "tracts" in the title of a subdivision plat. The relevant old laws are appended as Exhibit C.

Rather, (1947) Section 95-1309 simply prohibited the use of a name of any other town or addition in the same county unless the plat was (1) contiguous to the town or addition of the

same name, and (2) that the new plat was either laid out by the same party or laid out with their consent. There was no prohibition on using the term "tracts" in the name of any plat, and DLCD offers no argument to the contrary. In fact, the subdivider could have named his subdivision the "George Shand Lots" or the "George Shand Units of Land," and still created a "subdivision."

As currently written, ORS 92.010(17) defines the term "subdivision" as "either an act of subdividing land or an area or *a tract of land subdivided.*" (Emphasis added). As first enacted in 1947 as part of the first modern subdivision statute, this definition similarly stated: "The term 'subdivision' shall mean either (1) an act of subdividing land or (2) *a tract of land subdivided as defined above*." *See* Section 95-1301a, 1947 Or Laws, ch 346. (Emphasis added). The reference to "as defined above" links to a definition for the term "subdivide land," which provides as follows:

> "The term 'subdivide land' shall mean to partition into four or more units, by division or subdivision, any tract or registered plat of land, shown on the last preceding tax rolls as a unit or contiguous units, for the transfer of ownership or for building development, whether immediate or future; provided, however, that the division of land for agricultural purposes into tracts containing five or more acres and not involving any new thoroughfare, or the widening of any existing thoroughfare, shall be exempt."

1947 Or Laws, Chapter 537, Section 7 (HB 418) applied to counties and provided as follows:

> "The governing body hereby is authorized to adopt regulations for the subdivision of land within the unincorporated territory under its jurisdiction, and it may require that hereafter no land may be subdivided and no subdivision plat filed or recorded until submitted to and approved by the county planning commission, and to make the violation of such regulations unlawful, including the sale of subdivided land by metes and bounds, and punishable by a fine of one hundred dollars ($100). *The term 'subdivide land' as used in this act shall mean to partition, plat, or subdivide land into four or more lots, blocks or tracts*, or containing a dedication of any part thereof as a public street or highway, for other than agricultural purposes." (Emphasis added).

Thus, under the law in effect when the "George Shand Tracts" was platted in 1950, the term "tract" was synonymous with the term "lot." Oregon's Attorney General recognized that tract and lot are synonymous in Opinion Request OP-6350, January 25, 1990, when he stated:

> "The first modern subdivision statute, however, was enacted in 1947. Or Laws 1947, ch 346. It applied only to divisions of tracts of land into four or more units defined variously as 'lots,' 'tracts' or 'parcels,' and it required the preparation and recording of a

'plat.'"

For this reason, the 1947 version of Oregon's subdivision law considers land that has been subdivided to constitute a "lot" or a "tract." This remains true today, as evidenced by ORS 215.010(2), which defines the term "tract" as "one or more contiguous lots or parcels under the same ownership."

It is axiomatic that the term "tract" can be used to refer to a "lot," because the term has historically been used that way. The term "tract of land" appears in Oregon case law as early as 1854, and it was always used in a generic manner to mean "unit of land." When Congress passed the Donation Land Claim Act in 1850, it uses the term "tract" to refer to a unit of land claimed by a settler. *See Vandolf v. Otis*, 1 Or 153 (1854) ("Section six provides, that at certain times "each of said settlers shall notify the surveyor–general of the precise tract, or tracts, claimed by them respectively."); Exhibit C.

Since that time, the term "tract" appears in Oregon law in various contexts, but it always means "unit of land." *See, e.g., Lee v. Simonds*, 1 Or 158 (1854) ("This suit is brought to recover possession of a certain tract of land in Linn County."); *Shively v. Welch*, 2 Or 288 (1868) ("This court having examined the transcript, find that, on the 18th day of February, 1860, Welch and Shively having, prior to that time, had a dispute respecting the title to a tract of land known as Shively's plat, of Astoria, in Clatsop county, undertook to adjust the difficulty by deeds and agreements to divide the land."); *Nodine v. City of Union,* 42 Or 613 (1903) ("The following steps are necessary to create a dedication by estoppel in pais: First, a survey or other segregation of the land intended to be devoted to a public use; second, the making of a plat representing the division of the tract; and, third, the sale of land so surveyed by reference to such plat."). The George Shand "Tracts" are nothing more than a subdivision of land into 22 small lots, calling the overall unit of land "tracts." Nothing more and nothing less, as DLCD really should know.

3. The proposed beachfront protective structure will be entirely constructed in the backyards of the property owners and will not impede beach access.

Some commenters expressed concern about the proposed BPS will impede their access across the beach during high tides. These concerns are mistaken. The proposal has no effect whatsoever on beach access during any tide.

The BPS is proposed approximately 185 feet landward of the surveyed Ocean Shore Line and landward of the line of established vegetation, which both are well landward of the reach of mean high tide. The Pine Beach BPS is also proposed to be constructed entirely on private property and in the backyards of the Pine Beach and George Shand Tracts property owners. There is no public right, by virtue of the doctrine of "custom" or otherwise, to recreate on privately owned and deeded land that for decades has been privately used by the George Shand Tracts and Pine Beach owners to the exclusion of the public. Even DLCD and OPRD do not and cannot claim otherwise. Oregon courts have declined to extend the doctrine of "custom" to land that is landward of the statutory vegetation line. *State v. Bauman*, 16 Or App 275, 517 P2d 1202 (1974). Any member of the public who now were to walk where the proposed BPS will be situated will be trespassing on private property.

4. **The proposed beachfront protective structure will not block the existing deeded beach access; rather, the BPS will maintain that existing beach access and improve on it by the construction of a gravel pathway and access ramp that goes over the revetment and allows access to the beach.**

Some commenters also expressed concern that the proposed BPS will block the deeded beach access easement along the southern boundary of the George Shand Tracts. This concern is mistaken. The proposed revetment design not only retains that existing beach access, but improves it with the construction of a gravel pathway and access ramp that goes over the revetment structure and onto the beach. Surveyor Stan Cook has surveyed both the 5' deeded access easement along the southern boundary of the George Shand Tracts and the adjacent 5' walkway of common area that belongs to the Pine Beach Subdivision. Exhibit D. Combined, the parallel and adjacent beach accesses are 10' wide. The proposal will leave in place the existing access and ensure public access continues to be provided. In addition to maintaining and improving that beach access, the construction of the BPS will also involve the removal of washed up logs and other debris that currently impede that existing beach access.

5. **There will be minimal effects, if any, on adjacent and surrounding properties from the beachfront protective structure.**

Finally, some commenters expressed concern that the proposed BPS will cause impacts of increased erosion to surrounding properties. As explained extensively in engineer Chris Bahner's technical memoranda included in this record, there will be no measurable effects of the BPS on properties in the vicinity or the littoral cell. As stated in his May 27, 2021 technical memorandum:

> "The proposed revetment will have no distinguishable adverse impacts to the shoreline since it will be located above the 1% annual chance of exceedance still water line, and the amount of sediment loss from the proposed structure is small relative to the active sediment volume within the surf zone. * * * [T]here will be no impacts to the surrounding properties (properties in the Rockaway Beach subregion) since it will not direct additional water to the surrounding property, increase wave heights/wave runup, or adversely impact the natural littoral drift of sediment along the coast. The northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion, and rocks will be placed to reduce the potential increases in velocities around the structure ends."

Finally, we attached a copy of the power point that we used at the May 27, 2027 hearing, under separate cover, due to its size. Thank you for your consideration.

Very truly yours,

Wendie L. Kellington

Cc: Clients

OCEAN SHORE
ALTERATION PERMIT

Application Approved with Conditions: ☒ Application Denied: ☐

Date: March 22, 2019 Applicant: Richard Hutsell

OPRD File Number: 2898-19 County: Lincoln

Project Location: The project is located on the ocean shore fronting the home at 4019 Lincoln Avenue in Lincoln Beach, north of Depoe Bay. The subject property is identified on Tillamook County Assessor's map #8-11-28BC as tax lot 2302.

OPRD's review included a staff inspection of the site and evaluation of the project against the Ocean Shore Permit Standards, OAR-736-020-0005 through 736-020-0030.

Project Description:

The applicant is requesting approval of an Ocean Shore Alteration Permit to replace existing riprap and a poured in-place concrete shoreline protection structure currently in place at the site. The existing shoreline protection structures have deteriorated and fail to meet currently accepted design standards, allowing continued erosion along the upper portion of the oceanfront bank. The new riprap revetment will be constructed along approximately 100 feet of shoreline with a bluff height of approximately 10-14 feet. The new riprap will have a maximum width of 31 feet and a slope of 2:1 (horizontal : vertical), will include a total of approximately 803 yards of material and will be covered with 2 feet beach sand, then planted with beach grass to reduce visual impacts of the project.

ORS.390.605 (2) defines the "ocean shore" to mean the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. In the location of the proposed project the statutory vegetation line is located farther inland.

The project is proposed to be located

☐ Seaward of the statutory vegetation line
☒ Seaward of the line of established upland shore vegetation

and therefore within OPRD's jurisdiction to make a decision on the application.

Submitted plans: Attached ☒ (See Condition 4) Not Applicable ☐

Based on the evaluation of the above standards, staff inspections of the site, and consideration of public and agency comments, the Oregon Parks and Recreation Department:

☒ Approves your application for a shoreline protection structure.

☐ Denies your application.

Permit Conditions:

1. Prior to construction, the Permittee or subsequent owners shall file with the Lincoln County Clerk, a Declaration of Conditions and Restrictions provided by OPRD. The Permittee shall pay any filing and recording costs. Upon recording, certified copies shall be submitted to OPRD as proof of compliance with this permit condition. Failure to provide OPRD with said certified Declaration of Conditions and Restrictions shall nullify this permit and all authorizations contained herein.

2. Prior to construction, the Permittee shall deliver to OPRD, a cash bond, or other security acceptable to OPRD, in the amount of $10,000, to ensure that all required conditions of the permit are met. If the permit conditions are not complied with by the permit expiration date (March 22, 2020), OPRD may undertake action to complete the work without further notice to the Permittees and may deduct any and all costs and expenses of accomplishing such work. Use of the cash bond or other security for such purposes does not preclude OPRD from pursuing any other legal remedies or enforcement action at its disposal to ensure that permit conditions are achieved.

3. Use of equipment or vehicles on the beach requires a separate permit from OPRD. Use of public beach access routes, construction of any roads or other temporary access improvements, and timing of inspections shall be subject to conditions of the Equipment Access Permit. Contact Jay Sennewald at (541) 563-8504 prior to construction for the necessary permit.

4. Prior to initiating construction of the project, Permittee shall provide to OPRD a detailed plan to protect ancient forest remains adjacent to, and in the vicinity of the work area. No work shall be conducted until the plan has been reviewed and found to be adequate to protect this resource.

5. The project shall be constructed in accordance with the submitted plans, specifications, and descriptions, and comply with the location, dimensions, and materials specified in the plans and descriptions. Only clean, erosion resistant rock from an upland source shall be used as riprap.

6. For the purposes of covering the riprap revetment with sand, use of on-site material shall be limited only to sand excavated from the toe trench. All other sand used as backfill or sand cover must be hauled from off-site, and be clean and free of invasive plant material. The project area shall be planted with European beach grass and/or native coastal vegetation found in dune habitats.

7. The Permittees shall be responsible for obtaining any Lincoln County Public Works permit or approvals for use any local public access to the beach. During construction activities, the beach access relied upon may not be blocked and shall allow for safe emergency or pedestrian travel onto to the ocean shore. Upon completion of the project, the beach access shall be returned to its pre-existing condition.

8. The project shall be completed prior to March 22, 2020. If it appears that, due to unforeseen circumstances, the project cannot be installed by the expiration date, the Permittee or authorized representative may request a permit extension. A time extension may be granted based on the submission of a revised construction schedule.

9. Upon completion of the project, the beach shall be cleared of all rock debris, or other debris associated with the riprap construction, and the beach shall be returned to its pre-existing condition.

10. The Permittees shall be responsible for obtaining any required permit approvals from the U.S. Army Corps of Engineers, and Oregon Department of State Lands, if applicable to this project.

11. The Permittee shall be responsible for maintaining the revetment. This includes retrieving and replacing rocks or other materials including the sand cover and stabilizing vegetation moved or damaged because of the ocean or any other cause. Failure to maintain the revetment, where such failure causes a public safety hazard

or detriment to ocean shore resources, may cause appropriate legal action to be pursued to ensure compliance with this provision.

12. In no event shall the issuance of the permit be construed as a sale, lease, granting of easement or any form of conveyance of the state recreational area, ocean shore or submerged lands.

13. The Permittee shall comply with the provisions of ORS 390.235 through 390.240, ORS 358.905 through 358.955 and OAR 736-051-0060 through 736 051 0090 as these statutes and rules affect the discovery, excavation, salvage, removal and disposition of archaeological resources and the permitting requirements for these activities as they affect archaeological sites on public and private land. If archeological objects are encountered during the project, all work must stop immediately, and work may not proceed until an archeological permit is issued under ORS 390.235

14. This approval does not affect any obligation the Permittees might have to other persons or agencies, local, state or federal.

15. If the Permittee fails to comply with the conditions provided herein and otherwise imposed by OPRD, OPRD shall exercise its authority under Oregon Revised Statutes 390.661 through 390.676; 390.990 through 390.995; and the provisions of OAR 736 020 0200 to cease any further activity by the Permittees on the ocean shore except as directed by OPRD. In such circumstances OPRD may assess a civil penalty according to the provisions of OAR 736-080-0005 through 736-080-0070.

16. The Permittee shall agree to save and hold harmless the State of Oregon, the Oregon Parks and Recreation Commission, and its members, and all officers, agents and employees of the Oregon Parks and Recreation Department, from any claim, suit or action whatsoever for damages to property, or injury or death to any person or persons due to negligence of permittee(s), their officers, agents or employees, and arising out of the performance of any work or project covered by the granting of a permit.

17. In issuing this permit, OPRD makes no representation regarding the quality or adequacy of the permitted revetment design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapter 390 and related regulations.

Trevor Taylor, Stewardship Program Manager
Oregon Parks and Recreation Department

Cc: Meg Reed, DLCD
Onno Husing, Lincoln County Planning and Development

Appeal Process

Any person aggrieved or adversely affected by the grant of a permit or the conditions imposed on the permit may file a written request for a hearing with the Parks and Recreation Director. The request must be received within 30 days of the date of the permit. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470

FINDINGS OF FACT
STAFF REPORT

Date:	March 22, 2019	OPRD Ocean Shores Coordinator:	Jay Sennewald		
OPRD File Number:	2898-19	County:	Lincoln	Applicant:	Richard Hutsell
Project Location:	4019 Lincoln Avenue Depoe Bay, OR Lincoln County Assessor's Map #8-11-28BC Tax Lot 2302.				
Brief Project Description:	The proposed project would replace an existing, deteriorated riprap and poured concrete revetment with a new, continuous riprap which would meet current design standards, to protect the subject property from active erosion caused by wave overtopping and inadequate design of the existing structures in place.				

ADMINISTRATIVE RULE STANDARDS AND RELEVANT FACTS

I. GENERAL STANDARDS, OAR 736-020-0010

Project Need – There shall be adequate justification for a project to occur on and alter the ocean shore area.

The applicant is requesting approval of an Ocean Shore Alteration Permit to repair and replace an existing riprap and poured concrete shoreline protection structure along approximately 100 feet of shoreline with a bluff height of approximately 10-14 feet in height, fronting the subject property. The northern approximately 15 feet of the bluff slope is protected by an old riprap revetment connected to the riprap revetment on the adjoining property to the north (Tax Lot 2201). This riprap is in a state of disrepair, and was not constructed to current design standards.

An older, damaged, poured-in-place concrete protective structure of approximately 65 feet in length exists between the old riprap and the south property line, where a concrete beach path has been damaged by erosion. The concrete revetment has been severely damaged since the time of construction; it has been undermined by erosion and broken into pieces. An erosional embayment of approximately 30 feet in length has occurred above the point where the concrete was completely undermined and broken.

Despite the existing shoreline protection measures in place, erosion has continued on the upper portion of the oceanfront bank. The applicant has submitted a detailed geologic engineering investigation prepared by H.G. Schlicker and Associates (the Schlicker Report), which finds that the previously constructed protective structures along the slope are in a state of severe disrepair. The report concludes that to mitigate future ocean

wave erosion and the resulting bluff recession, support the over-steepened bluff, protect the home at 4019 Lincoln Avenue from damage, and improve the aesthetics of the existing oceanfront protection, the report recommends that a riprap revetment be constructed. The Schlicker Report provides detailed design recommendations for replacement and reconstruction of a revetment on the northern portion of the bluff, and the design would also be applicable for a new revetment extending along the entire bluff face.

As proposed, the new and/or re-built riprap structure's design have a length of 100 feet, a height of approximately 17 feet (from toe) a width of approximately 31 feet, with a slope of 2:1 (Width:Height) and would include a total volume of 803 cubic yards of material, consistent with modern, accepted design standards for shoreline protection structures.

The request to modify and replace the structure as proposed will provide more adequate protection for the improvements on the upland property and will reduce or eliminate the continuing problems associated with erosion. In addition, the project would remove the old, broken concrete from the shoreline environment and replace it with a revetment constructed to modern standards and specifications intended to minimize future need to maintain and repair the protective structure(s).

Based on the above considerations, staff finds that the proposed project is justified.

Protection of Public Rights – Public ownership of or use easement rights on the ocean shore shall be adequately protected.

The proposed riprap modification will not affect any publically-owned land or public easement rights on the ocean shore. The project would simply replace an existing, but inadequate and improperly designed shoreline protective structure.

Public Laws – The applicant shall comply with federal, state, and local laws and regulations affecting the project.

The Lincoln County Planning Department has signed the County Planning Department Affidavit form in Section 9 of the permit application, and has determined that the project is consistent with the local comprehensive plan and zoning ordinances. State and federal laws and regulations are also being addressed through this permit review.

Federal regulations potentially involve a U.S. Army Corps of Engineers permit, and the Oregon Department of State Lands (DSL) may also require a fill/removal permit for the project. The issuance of an Ocean Shore Permit for the project will be contingent on the condition that Army Corps of Engineers and DSL permits shall also be obtained, if required by those agencies.

Alterations and Project Modifications – There are no reasonable alternatives to the proposed activity or project modifications that would better protect the public rights, reduce or eliminate the detrimental affects on the ocean shore, or avoid long-term cost to the public.

The application materials include an analysis of non-structural alternatives to the proposed project, including improvement to storm water control, vegetative stabilization, beach nourishment, dynamic structures, and home relocation. However, each of these alternatives has been deemed unfeasible or ineffective to address the continued erosion-related problems identified on the property. The details of the project alternatives analysis are provided in the Schlicker Report and incorporated into this report by reference

Based on these considerations, relocation of the home on the subject property and/or nonstructural protection methods are not reasonable alternatives to the proposed riprap modification.

Public Costs – There are no reasonable special measures which might reduce or eliminate significant public costs. Prior to submission of the application, the applicant shall consider alternatives such as nonstructural solutions, provision for ultimate removal responsibility for structures when no longer needed, reclamation of excavation pits, mitigation of project damages to public interests, or a time limit on project life to allow for changes in public interest.

There will be no public costs to modify or maintain the structure, as maintenance and needed repairs are the responsibility of the upland property owner.

Compliance with LCDC Goals – The proposed project shall be evaluated against the applicable criteria included within Statewide Planning Goals administered by the Department of Land Conservation and Development.

Lincoln County has certified that the project is in compliance with the Lincoln County Comprehensive Plan and Land Use Code, which are acknowledged by LCDC as meeting the Statewide Planning Goal requirements. The subject property has been determined to be developed prior to January 1st, 1977, and meets the eligibility requirements for shoreline protection under Statewide Planning Goal 18.

II. SCENIC STANDARDS, OAR 736-020-0015

Projects on the ocean shore shall be designed to minimize damage to the scenic attraction of the ocean shore area.

Natural Features – The project shall retain the scenic attraction of key natural features, for example, beaches, headlands cliffs, sea stacks, streams, tide pools, bedrock formations, fossil beds and ancient forest remains.

There are ancient forest remains immediately seaward of the project, which can become exposed when beach sand levels are low, typically during the winter months. However, measures can be implemented to protect these key natural features during the project construction. As a condition of permit approval, the permittee can be required to prepare and submit a plan to avoid unnecessary damage to, or removal of, the ancient forest stumps at the site.

The other natural features of the beach in the general vicinity will remain intact, and no significant landforms or natural features such as headlands, cliffs, sea stacks, tide pools, streams, bedrock formations, or fossil beds will be affected.

Shoreline Vegetation – The project shall retain or restore existing vegetation on the ocean shore when vital to scenic values.

The proposed project design includes plans to cover the upper portion of the riprap with sand and plant beach grass to restore or replace shoreline vegetation lost during project construction, consistent with this standard.

View Obstruction – The project shall avoid or minimize obstruction of existing views of the ocean and beaches from adjacent properties.

The proposed new riprap structure would not exceed the existing bank height and therefore will not result in obstruction of existing ocean views from adjacent properties.

Compatibility with Surroundings – The project shall blend in with the existing shoreline scenery (type of construction, color, etc.).

The subject property has an existing riprap structure along the northerly 15 feet of ocean frontage, and the existing riprap is in a state of disrepair. Most of the remaining shoreline frontage has been altered with an old, poured in-place concrete protective structure, The concrete section is also in a state of disrepair, having broken into smaller pieces that in the past have needed retrieval from the beach and repositioning through the use of heavy equipment. The project design includes placement of a sand cover over the upper riprap structure, planted with beach grass to resemble a more natural, dune-backed shoreline, which should result in an overall improvement over existing conditions where the shoreline is backed by broken concrete and deteriorated riprap.

Generally, the Gleneden-Lincoln Beach shoreline, which is approximately 2.5 miles in length, is located in a heavily developed, high-density residential area with numerous riprap revetments, concrete and wooden stairways, and other alterations. The proposed riprap at the subject location is similar to those existing alterations along this stretch of shoreline and will not represent a departure from the overall pattern of riprap and other modifications in place.

III. RECREATION USE STANDARDS, OAR 736-020-0020

Recreation Use – The project shall not be a detriment to public recreation use opportunities within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

The beach in this area fluctuates in width seasonally and from year to year, and the riprap will occupy some beach area, but it will not significantly affect public recreational use opportunities such as sunbathing, walking, kite flying, sandcastle building, or beachcombing, and therefore will not be a detriment to public recreation.

There is no state or federally listed species identified within this ocean shore area. In addition, there are no Oregon State sensitive species found utilizing this area of shoreline.

Recreation Access – The project shall avoid blocking off or obstructing public access routes within the ocean shore area except in those cases where it is determined necessary to protect sensitive biological resources such as state or federally listed species.

The project will need to extend out onto the ocean shore for a short distance, but in this area the beach is most often much wider than the proposed riprap structure. During storm events or winter high tides, wave run-up may reach the riprap structure. During normal conditions, however, the existence of the riprap will not cause an obstruction to north and south public access along the shoreline.

IV. SAFETY STANDARDS, OAR 736-020-0030

The project shall be designed to avoid or minimize safety hazards to the public and shoreline properties. The following safety standards shall be applied, where applicable, to each application for an ocean shore permit.

Structural Safety – The project shall not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage.

The proposed riprap structure was designed by a licensed, professional Engineering Geologist with extensive experience in designing shorefront protection structures. The geologic engineering report which accompanied the application recommends that the existing riprap and concrete structures be modified or replaced with a new structure with a minimum "toe" depth of 5 feet below existing beach level. The proposed design reflects current engineering standards intended ensure that that the new riprap revetment will be structurally sound under ocean shore conditions including wave attack during winter storms. If constructed according to the proposed design, the structure should not present a safety hazard or be susceptible to rapid damage under wave attack.

Obstructional Hazards – the project shall minimize obstructions to pedestrians or vehicles going onto or along the ocean shore area.

The riprap will have a maximum width of 31 feet from the top of the bank to its toe, which will be buried below beach level. At this width, the structure will not affect lateral beach access except during times of extreme high water and during winter storm events. During these periods, however, wave run-up is likely to be reaching the riprap on other properties to the north and south, and therefore the proposed new riprap will not create an obstruction to pedestrians or vehicles traveling along the beach unlike those under existing conditions.

Neighboring Properties – The project shall be designed to avoid or minimize ocean erosion or safety problems for neighboring properties.

As indicated previously, the proposed new riprap was designed by a licensed, professional Engineering Geologist with extensive experience in designing shorefront protection structures. The north end of the new riprap structure will be structurally connected into an adjacent riprap revetment, and the south end of the revetment is designed to curve and taper into the existing bluff. For these reasons, any end-effects, erosional, and safety problems will be minimized on both the subject and adjacent properties.

Property Protection – Beachfront property protection projects shall be designed to accomplish a reasonable degree of increased safety for the on-shore property to be protected.

The purpose of the proposed new revetment is to provide improved protection to the upland property from ocean erosion, in response to inadequate protection offered by existing shoreline protection measures in place. If the existing riprap and broken concrete structure are left unmodified, it is likely that the identified problems of wave overtopping, bank erosion, and continued degradation of the existing riprap and broken concrete revetment will persist. As indicated above, the design of the riprap modification was provided by a professional Engineering Geologist, intended to provide long-term protection with an increased degree of safety for the applicant's home.

V. NATURAL AND CULTURAL RESOURCE STANDARDS, OAR 736-020-0030

Projects on the ocean shore shall avoid or minimize damage to the following natural resources, habitat, or ocean shore conditions, and where applicable, shall not violate state standards:

Fish and wildlife resources including rare, threatened or endangered species and fish and wildlife habitats.

Oregon Department of Fish and Wildlife was notified and did not respond to the public notice and request for agency comments. Staff has not identified the presence of any rare, threatened, or endangered species of fish or wildlife at the project site.

Estuarine values and navigation interests.

The project is not adjacent to an estuary, and does not affect navigable water on the ocean.

Historic, cultural and archeological sites.

Notice of the application was provided to the State Historic Preservation Office (SHPO), to the Confederated Tribes of Siletz, and to the Confederated Tribes of Grand Ronde.

There were no reports of historic, cultural, or archeological sites at this location. However, the State Historic Preservation Office has stated for similar, nearby requests that the property lies within an area generally perceived to have a high probability for possessing archaeological sites and/or buried human remains. In the absence of sufficient knowledge to predict the location of cultural resources at the site, extreme caution is recommended during project-related ground disturbing activities. An Ocean Shore Alteration Permit for the project will include an appropriate condition to ensure that this standard is met.

Natural areas (vegetation or aquatic features).

At this location there are no areas of existing significant vegetation or aquatic features that will be impacted by the proposed riprap modification.

Air and water quality of the ocean shore area.

The project will take place above the ordinary high tide line and the materials used will be free of debris and foreign materials, so the proposed project will not adversely affect water quality on the ocean shore. Air quality will not affected as a result if its construction, except for a negligible amount of exhaust from the use of heavy equipment during the construction period.

Areas of geologic interest, fossil beds, ancient forest remnants.

As indicated in Section II above, there are ancient forest stumps on the ocean shore immediately adjacent to, and seaward of the project. However, measures can be implemented to protect these key natural features during the project construction. As a condition of permit approval, the permittee will be required to prepare and submit a plan to avoid unnecessary damage to, or removal of, the ancient forest stumps at the site.

When necessary to protect native plant communities or fish and wildlife habitat on the subject or adjacent properties, only native, non-invasive, plant species shall be used for revegetation.

The site is within a developed residential area, and there are no known protected native plant communities or fish and wildlife habitat on or adjacent to the subject property.

VI. PUBLIC COMMENT

Notice of the proposed project was posted at the site for 30 days in accordance with ORS 390.650. Individual notification and a copy of the application were mailed to government agencies, tribes and individuals on OPRD's ocean shore mailing list. During the public comment period, OPRD received no objections to the permit request, and there were no requests for a public hearing.

VII. FINDINGS SUMMARY

Project Need – The subject property is experiencing bank erosion and shoreline recession, despite the presence of existing shoreline protective measures in place at the site. The existing riprap and poured concrete structures are in a state of disrepair, and were not constructed to currently accepted design standards for shoreline protective structures. The proposed new riprap revetment was recommended by a professional Engineering Geologist in response to the continued bluff erosion resulting from severe wave attack. Denial of the permit request will likely result in a continuation of wave overtopping and bank erosion in the future. By

implementing the recommendations provided by the project geologist, the property owner will be able to better protect the property and home from future erosion.

Alterations and Project Modifications: According to the project's Engineering Geologist, other, non-structural methods of shoreline protection such as vegetative stabilization and sand alteration are not feasible alternatives to mitigate the hazards affecting the subject property and home.

Based on the above findings, the need for a new riprap structure engineered to meet modern design standards including a modest encroachment onto the ocean shore is justified, subject to appropriate conditions of approval.

The following checklist summarizes whether the application satisfies the general, scenic, recreation, safety and natural and cultural resource standards as defined in OAR 736-020-0010 through 736-020-0030:

Standard	Yes	No	Standard	Yes	No
Project Need	☒	☐	Structural Safety	☒	☐
Protection of Public Rights	☒	☐	Obstructional Hazards	☒	☐
Public Laws	☒	☐	Neighboring Properties	☒	☐
Alteration and Project Modifications	☒	☐	Property Protection	☒	☐
Public Costs	☒	☐	Fish and Wildlife Resources	☒	☐
Compliance with LCDC Goals	☒	☐	Estuarine Values and Navigation Interests	☒	☐
Natural Features	☒	☐	Historic, Cultural and Archeological Sites	☒	☐
Shoreline Vegetation	☒	☐	Natural Areas	☒	☐
View Obstruction	☒	☐	Air and Water Quality of the Ocean Shore	☒	☐
Compatibility with Surroundings	☒	☐	Areas of Geologic Interest	☒	☐
Recreation Use	☒	☐	Use of Native Plant Species when Necessary	☒	☐
Recreation Access	☒	☐			

VIII. STAFF RECOMMENDATION:

Based on an analysis of the facts and in consideration of the standards evaluated under OAR-736-020-0005 through OAR 736-020-0030, I recommend the following action:

☐ Approval

☒ Approval with conditions

☐ Denial

Jay Sennewald
Ocean Shores Coordinator

SEP 18 2017

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
www.oregon.gov/LCD

September 13, 2017

Dennis Bartoldus
PO Box 1510
Newport, OR 97365

Re: Shoreline Protection Status for Properties in Lincoln Beach, OR

Dear Mr. Bartoldus,

Thank you for your letter sent on August 4, 2017 regarding the eligibility status for shoreline armoring of four oceanfront lots located in Lincoln County (8-11-21-CD-14800, 14900, 15000, and 15100).

You have requested that these lots, which are currently designated as ineligible on the Oregon Coastal Atlas Ocean Shore's Viewer (www.coastalatlas.net/oceanshores/), be changed to eligible based on the evidence submitted with your letter. The current online inventory shows the lots to be ineligible because they were determined to be vacant and not part of a statutory subdivision as of January 1, 1977.

As you know, it is up to Lincoln County to make a determination of Goal 18 eligibility for beachfront protective structure permits, which are issued through Oregon State Parks and Recreation Department (OPRD). In light of the County not having an adopted Goal 18 eligibility inventory in their land use planning program, these determinations are made on a case-by-case basis. The inventory shown online on the Oregon Coastal Atlas is for informational purposes only and is not legally binding. While the County may use this information as evidence in making an eligibility determination, they may also consider any other information or evidence available to them.

At this time, the County has not made that determination. In the event that the County were to make a formal determination through the OPRD LUCS process that the subject properties are eligible for the placement of beachfront protective structures, the Department of Land Conservation and Development would consider that decision in updating the Coastal Atlas online inventory. The current online inventory will continue to show an ineligible status for the four identified lots until otherwise determined by Lincoln County.

If you have any questions, please contact me at (541) 574-0811, meg.reed@state.or.us.

Sincerely,

Meg Reed

Meg Reed, Coastal Shores Specialist
Oregon Coastal Management Program, Department of Land Conservation and Development

cc: Jay Sennewald, OPRD
Onno Husing, Lincoln County Planning
Patty Snow, DLCD

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD

April 14, 2021

SENT VIA E-MAIL

Dennis Bartoldus
Attorney at Law
PO Box 15150
Newport, OR 97365

Re: Oregon Coastal Atlas Ocean Shore's View

Dear Mr. Bartoldus,

In accordance with ORS 192.440(2), this is to acknowledge our receipt on April 13, 2021, of your request for the following records:

- Previously we had communication in 2017 regarding the Oregon Coastal Atlas Ocean Shore's Viewer on behalf of my clients the Tanabes, Grants, Kains and DeSylvias who own property in Lincoln Beach north of Depoe Bay in Lincoln County. Specifically, the property owned by my clients are 8-11-21-CD-14800, 14900, 15000 and 15100. As shown on the Oregon Coastal Atlas Ocean Shore's Viewer DLCD made an advisory determination that these 4 lots were not eligible for shoreline protection. By this email I am requesting that you provide me with all the information that DLCD utilized to make an "ineligible" determination on these 4 lots.

Due to resource constraints and competing priorities associated with DLCD's response to the COVID-19 pandemic, DLCD anticipates it will take longer than normal to process many public records requests for the foreseeable future. This will be the case for any requests that cannot be completed by teleworking employees. DLCD will strive to meet the statutory deadlines for either completing our response or to providing you with an estimated completion date within 15 business days of your request. However, depending upon the nature of your request, for the reasons describe above, it may be impracticable for DLCD to comply with those deadlines. In such cases, we will nevertheless complete our response as soon as practicable and without unreasonable delay upon the availability of staff to do so, and their return to work in our offices, in compliance with ORS 192.329(6) and (8).

Note: There may be fees associated with completing your request, please see the attached fee schedule. This may also be located on our website: https://www.oregon.gov/lcd/About/Pages/Public-Records-Requests.aspx

If you have any questions feel free to contact me at 971-345-1987 or via email at angela.williamson@state.or.us.

Sincerely,

Angela Williamson

Angela Williamson
Public Records Coordinator

Dept. of Land Conservation and Development
Updated April 23, 2021

Goal 18: Beaches and Dunes

Implementation Requirement #5: Decision-making summary

Properties: 08-11-21-CD-14800, 14900, 15000 and 15100

Owners: Tanabes, Grants, Kains, and DeSylvias

Location: Lincoln Beach, north of Depoe Bay, in Lincoln County

Determination: Ineligible for Beachfront Protective Structures

Process of Determination:

1) Using 1977 Aerial imagery from the Army Corps of Engineers, was qualifying development (residential, commercial, or industrial buildings) present on the four tax lots? No
2) Was the lot part of a statutory subdivision? Yes, Cummins Addition, approved in July 1948. However, the subdivision was then officially vacated on December 11, 1951. The vacation order, which is on file in Lincoln County, references that there were no improvements to the site at the time of vacation (e.g., no roads and no utilities). Therefore, on January 1, 1977, there was no eligible development on this site and it was not part of a statutory subdivision. The lot is now part of another subdivision, known as Pacific Panorama, which was approved in December 1978.
3) Determination = Not developed as of January 1, 1977 and not eligible for beachfront protection.
4) Current homes were built in 2004, 1990, 1994, and 1993.

OREGON LAWS

ENACTED

and

JOINT RESOLUTIONS
CONCURRENT RESOLUTIONS AND MEMORIALS

Adopted by the

Forty-fourth Regular Session of the Legislative
Assembly Beginning January 13 and
Ending April 5

1947

also

Constitutional Amendments Adopted and Laws Enacted
by the People at the Elections in 1945, 1946

Compiled by

ROBERT S. FARRELL JR.
Secretary of State

STATE PRINTING DEPT.

CHAPTER 346

AN ACT

[H. B. 331]

To amend section 95-1304, O. C. L. A.; to add a new section to chapter 13, title 95, O. C. L. A., to be known as section 95-1301a; and to add an additional new section to said chapter and title to be known as section 95-1306a, defining subdivision and relating to subdivisions.

Be It Enacted by the People of the State of Oregon:

Section 1. That a new section be and the same hereby is added to and made a part of article 1 of chapter 13, title 95, O. C. L. A., following section 95-1301, to be known as section 95-1301a, which new section shall read as follows:

Section 95-1301a. The term "subdivide land" shall mean to partition into four or more units, by division or subdivision, any tract or registered plat of land, shown on the last preceding tax roll as a unit or contiguous units, for the transfer of ownership or for building development, whether immediate or future; provided, however, that the division of land for agricultural purposes into tracts containing five or more acres and not involving any new thoroughfare, or the widening of any existing thoroughfare, shall be exempt.

The term "subdivision" shall mean either (1) an act of subdividing land or (2) a tract of land subdivided as defined above.

Section 2. That section 95-1304 be and the same hereby is amended so as to read as follows:

Sec. 95-1304. The initial point of all town plats, plats to all additions to towns, all cemetery plats, and of all plats of all lands divided into lots and blocks with streets, alleys, avenues, or public highways thereon, dedicated to public use, hereafter made, shall be marked with a monument, either of stone, concrete or galvanized iron pipe; if stone or concrete be used it shall not be less than six inches by six inches by twenty-four inches, and if galvanized iron pipe be used it shall not be less than two inches in diameter and three feet long, which said monument shall be set or driven six inches below the surface of the ground, and the location of the same shall be with reference to some known corner established by the United States survey. The intersections of all streets, avenues and public highways and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods; if stone or concrete be used they shall not be less than 6 inches by 6 inches by 24 inches, if galvanized

iron pipe be used they shall not be less than 1 inch in diameter and 30 inches long, and if iron or steel rods be used they shall not be less than five-eighths of an inch in least dimension and 30 inches long. Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth (1/10) of a foot. All lot corners shall be marked with monuments of either galvanized iron pipe not less than one-half inch in diameter or iron or steel rods not less than one-half inch in least dimension, and two feet long. The locations and descriptions of all monuments shall be carefully recorded upon the plat, and the proper courses and distances of all boundary lines shall be shown.

Section 3. That a new section be and the same hereby is added to and made a part of article 1 of chapter 13, title 95, O. C. L. A., following section 95-1306, to be known as section 95-1306a, which new section shall read as follows:

Sec. 95-1306a. Before any subdivision of land may be made and recorded, the subdivider or his authorized agent or representative shall make an application in writing to the nearest planning agency of the county or to the county court if there is no planning agency, for the approval of a plan of subdivision, and at the same time submit a tentative map showing the general design of the proposed subdivision. Any approval of the tentative map shall not constitute final acceptance of the plat for recording. No subdivider shall submit a plat of a subdivision for record, until all the requirements for the survey and the final map have been met. The survey and final map shall be made by a surveyor who is a registered engineer or a licensed land surveyor. The final map shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot shall be numbered and each block shall be lettered or numbered. Each and all lengths of the boundaries of each lot shall be shown. Each street shall be named. With the final map the subdivider also shall file a tracing of the final map, upon which the surveyor shall make affidavit that said tracing is an exact copy of the final map. The subdivider shall provide without cost one print each from said tracing for the county assessor and the county surveyor. The survey for the final map shall be of such accuracy that the error of closure shall not exceed one foot in 4,000 feet. Before approving the plat as required by section 95-1310, O. C. L. A., the county surveyor shall sufficiently check the plat and computations for making the plat, to determine if they comply with the provisions of this act and with the requirements of the planning agency or

the county court. For performing such service the county surveyor shall collect from the subdivider a fee not to exceed twenty-five dollars ($25).

Approved by the governor April 3, 1947.
Filed in the office of the secretary of state April 3, 1947.

CHAPTER 347

AN ACT

[H. B. 333]

To amend section 1, chapter 180, Oregon Laws 1941, relating to insurance companies.

Be It Enacted by the People of the State of Oregon:

Section 1. That section 1, chapter 180, Oregon Laws 1941, be and the same hereby is amended so as to read as follows:

Sec. 1. The capital stock of every domestic insurance corporation required to have a capital, to the extent of the minimum capital required by law, and the assets of every domestic mutual insurance corporation, to the extent of an amount equal to the minimum capital required of a like domestic stock corporation, shall be invested and kept invested as follows:

1. In the bonds or securities which are the direct obligations of the United States or which are secured or guaranteed as to principal and interest by the United States.

2. (a) In the bonds or evidences of indebtedness which are direct obligations of, or secured by the full faith and credit of, any state of the United States or the District of Columbia where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness, provided that such state or district shall not be in default in the payment of principal or interest on any bonds or other evidences of indebtedness at the date of such investment; and (b) in the bonds or evidences of indebtedness which are direct general obligations of any county, incorporated city, incorporated school district or incorporated district in this state where there exists the power to levy taxes for the prompt payment of principal and interest on such bonds or evidences of indebtedness, and which has not defaulted in the payment of principal or interest on any of its bonds or evidences of indebtedness within three years.

3. In real estate loans secured by first liens on improved unencumbered real property in this state, provided that such encumbrance does not exceed 50 per cent of the appraised value of the real estate constituting or offered as security and

or where his income is not taxable under this act, the commission shall, after auditing the annual return filed by the employe in accordance with section 110-1616, as amended, refund the amount of the excess deducted. No refund shall be made (a) where the amount of the excess deducted is less than two dollars, or (b) where the employe has failed to file a return under section 110-1616, as amended.

5. No amount shall be deducted or retained by any employer from the wages of any employe unless the aggregate of the wages paid by such employer during the calendar month exceeds the sum of fifty dollars ($50), or such other amount for any lesser period as the regulations may provide.

6. No amount shall be deducted or retained from (a) wages paid for active service in the military or naval forces of the United States, or (b) wages or salary paid to an employe of a common carrier where such employe is not a resident of Oregon as defined in section 110-1602, and regularly performs services both within and without the state of Oregon.

7. This act shall be effective with respect to all wages, salaries, bonuses or other emoluments for services as an employe, paid on or after January 1, 1948; provided, that this act shall not become operative with respect to such wages, salaries, bonuses or other emoluments for services of an employe if, on or before January 1, 1948, any act increasing the amount of the personal exemptions as provided for by section 110-1613, O. C. L. A., as amended by section 3, chapter 411, Oregon Laws 1945, has become effective and operative.

Approved by the governor April 19, 1947.
Filed in the office of the secretary of state April 19, 1947.

CHAPTER 537

AN ACT

[H. B. 418]

Providing for the appointment of county planning commissions, prescribing the powers, duties and financing thereof; providing for zoning, land use regulations and subdivision controls and defining the limits thereof; providing for building permits; and providing penalties.

Be It Enacted by the People of the State of Oregon:

Section 1. The governing body of any county hereby is authorized and empowered to create by ordinance a county planning commission, to appoint its members and to provide funds for its operation. The county planning commission shall consist of five, seven or nine members appointed by the governing body for four-year terms, or until their respective suc-

cessors are appointed and qualified; provided that in the first instance the terms of the initial members shall be staggered for one, two, three and four years, and any vacancy shall be filled by the governing body who may after hearing remove any member for misconduct or nonperformance of duty. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county and a majority shall reside in the unincorporated area thereof. In addition to the regular members, the county engineer, the county agricultural agent, if there be one, the county assessor, and the county manager, if there be one, shall be ex officio non-voting members.

Section 2. The commission hereby is authorized to appoint necessary employes and fix their compensation with the approval of the governing body, to select from its membership a chairman to serve for one year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business.

Section 3. For the purpose of furthering the health, safety and general welfare of the people of the county, the county planning commission hereby is empowered, and it shall be its duty, to make and adopt a development pattern for the physical and economic development of the county. Such development pattern, with the accompanying maps, plats, charts and descriptive matter shall show the commission's recommendations for the development of the county, and may include among other things the creation of or division of the county into districts within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries, or callings, or within which the height and bulk of future buildings and the area of yards, courts and other open spaces, and the future uses of land or buildings shall be limited and future building set back lines shall be established.

Section 4. Adoption by the commission of the development pattern, or any change therein, may be in whole or in part, but must be by the affirmative vote of a majority of the whole commission; provided, however, that prior to any such adoption a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected. The resolution adopting the pattern, or any part or parts covering one or more of the functional elements which may be included within

the pattern, shall refer expressly to the maps, charts and descriptive matters forming the pattern or part thereof.

Section 5. The commission, and any of its members, officers and employes, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon. In general, the commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this act. All public officials, departments and agencies, having information, maps and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning commission.

Section 6. The county planning commission shall advise and cooperate with other planning commissions within the state, and shall upon request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in county planning. The commission may, for the benefit and welfare of the county, prepare and submit to the governing body of the county drafts of ordinances for the purpose of carrying out the development pattern, or any part thereof, previously adopted by the commission, including zoning or land use regulations, the making of official maps and the preservation of the integrity thereof, and including procedure for appeals from decisions made under the authority of such ordinances, and regulations for the conservation of the natural resources of the county, and the governing body hereby is authorized to adopt such ordinances. Prior to the enactment of any such ordinance under the provisions of this act the county court shall first refer to the legal voters of the county at a general or special election called for that purpose the question "Shall the county court be authorized to enact zoning and land use regulations?". Notice of the election shall be given by publication in a newspaper of general circulation in the county once a week for four successive weeks prior to the election. If a majority of the legal voters voting at such election vote in favor thereof, the county court shall thereafter have the authority to enact ordinances as above provided. If a majority of the legal voters of the county voting at such election vote against such proposition, but a majority of the legal voters residing in an unincorporated area totaling not less than two square miles within such county shall thereafter by petition request such county court to enact such parts of such ordinances as affect such two square

mile area, such county court shall thereupon enact such an ordinance affecting only such area. No ordinance adopted under this act shall regulate lands used for grazing, agriculture, horticulture or for the growing of timber; and provided further that any ordinance adopted under the provisions of the act shall be a local law within the meaning of section 86-201, O. C. L. A., and subject to the provisions thereof; and provided further that existing nonconforming uses may be continued although not in conformity with such zoning regulations.

Section 7. The governing body hereby is authorized to adopt regulations for the subdivision of land within the unincorporated territory under its jurisdiction, and it may require that hereafter no land may be subdivided and no subdivision plat filed or recorded until submitted to and approved by the county planning commission, and to make the violation of such regulations unlawful, including the sale of subdivided land by metes and bounds, and punishable by fine of one hundred dollars ($100). The term "subdivide land" as used in this act shall mean to partition, plat or subdivide land into four or more lots, blocks or tracts, or containing a dedication of any part thereof as a public street or highway, for other than agricultural purposes.

Section 8. The governing body of a county hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration or enlargement of any building or structure otherwise subject to the provisions of this act, and may establish and collect reasonable fees therefor.

Section 9. The authority heretofore granted by law to incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this act except and until the governing body of the county having jurisdiction over such adjacent area establishes a planning commission, and adopts initial regulations for subdivision control within adjacent areas. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

Approved by the governor April 19, 1947.
Filed in the office of the secretary of state April 19, 1947.

1909-10

LORD'S OREGON LAW

SHOWING

All the Laws of a General Nature in Force in the State of Oregon

Including the Sessions of 1909, and the Laws and Constitutional Amendments Adopted at the General Election of 1910

Compiled and Annotated

BY

HON. WILLIAM PAINE LORD
Code Commissioner

AND

RICHARD WARD MONTAGUE
Of the Portland Bar

In Three Volumes

VOLUME II

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1910

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placed to the credit of the "Street Extension Bond Sinking Fund" shall from time to time, under the direction of the common council, board of trustees, or other competent authority, be deposited in such bank as will pay the highest rate of interest, or be invested in or used for the purchase of improvement bonds of such city at par. In the purchase of improvement bonds, the accrued interest thereon shall be paid out of the improvement bond interest fund, and all interest received by the treasurer on account of coupons due shall be placed to the credit of the street extension bond interest fund. Interest due on street extension bonds shall be paid out of the street extension bond interest fund. All bonds purchased by a city shall be held by the treasurer of such city as a sinking fund, and shall be disposed of by direction of the common council, board of trustees, or other competent authority, when required for the redemption of bonds previously issued, as they shall become due and payable. [L. 1907, c. 128, p. 231, § 6.]

§ 3261. Payments to Be Entered in Lien Docket—Effect.

Entries of payments of installments, interest, and costs, made under the provisions of this act, shall be made in the lien docket aforesaid as the same shall be received, with the date thereof, and such payments made and entered in said lien docket shall be and operate as a discharge of such lien, to the amount of such payment, and from the date thereof. [L. 1907, c. 128, p. 231, § 7.]

§ 3262. Obligations Not Part of Debt Limit.

No obligation incurred by any city in this state by virtue of this act shall be deemed or taken to be within or any part of the limitation by law as to indebtedness by such city. [L. 1907, c. 128, p. 231, § 8.]

§ 3263. Redemption of Bonds.

At any time after the bonds which may be issued by virtue of this act shall become payable, such city may redeem such bonds, and to that end shall redeem the same consecutively by number of such bonds, commencing with number one of such bonds, and shall give notice of the readiness of such city to redeem by publication in some newspaper published and having a general circulation among its subscribers in such city once each week for three successive weeks, giving therein the number of the bonds which will be redeemed, and the time at which such redemption will be made; and after such time so fixed for redemption, no interest shall accrue or become payable on such bonds so notified for redemption. [L. 1907, c. 128, p. 231, § 9.]

CHAPTER VII.

OF PLATS, ADDITIONS, AND VACATIONS.

3264: 129P1042
140P739,64O232

§ 3264. Penalty for Selling Lot Before Plat Recorded.

Any person or persons who shall dispose of or offer for sale, or lease for any time, any lot or lots in any town or addition to any town or city, or any

part thereof, which has been or shall be hereafter laid out, until the plat thereof has been duly acknowledged and recorded in the recorder's office in the county of which the same is situated, shall forfeit and pay $50 for each and every lot or part of lot so sold or disposed of, leased or offered for sale, to be collected before any court having competent jurisdiction, in the name of the county, for the use of the common school fund of the county where the town is not incorporated; and in the name of the common council where the town is incorporated, for the use and benefit of said town. [L. 1864; D. p. 925, § 1; H. § 4178; B. & C. § 2736.]

This section is cited in *Schooling* v. *Harrisburg*, 42 Or. 497, 71 Pac. 605.

§ 3265. Towns Heretofore Laid Out, Within What Time Plats Recorded.

Every person who has heretofore thus laid out any town or addition to any town, and sold lots within the same, without having the plat of the same recorded, shall have the said plat so recorded within six months from the taking effect of this act, and in case of failure so to record, shall be subject to the penalty in this act provided. [L. 1864; D. p. 926, § 2; H. § 4179; B. & C. § 2737.]

§ 3266. Donations to Public by Plat, How Construed.

Every donation or grant to the public, including streets and alleys, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered to all intents and purposes as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use for the purposes intended by the donor or donors, grantor or grantors, as aforesaid. [L. 1864; D. p. 926, § 3; H. § 4180; B. & C. § 2738.]

The recording of the plat of a tract of land, showing streets thereon, and the sale by the owners of lots as shown on such plat, constitute a dedication by the signers of the land shown as public ways: *Schooling* v. *Harrisburg*, 42 Or. 497, 71 Pac. 605.

Highways and streets may be lost to the public by continued nonuser and failure of the public authorities to accept the dedication thereof; thus, in 1871, plaintiff's predecessors in title acknowledged and recorded a plat of an addition to defendant city on which certain streets were marked, and thereafter conveyed lots in the addition with reference to the recorded plat. The streets and alleys so designated were never opened, and the donation was never accepted by the public, but the owners fenced the land, which was then and since continuously has been used by plaintiff and his grantor as a farm, fruit trees being planted in the streets, and a barn being erected across one of the alleys so designated. No steps were taken by the city to open the streets until April 16, 1901, when the city marshal was directed to compel the removal of all obstructions thereon; it was held, that the city was estopped from opening the streets: *Schooling* v. *Harrisburg, supra.*

Where the proprietor of lands lays out a town thereon in the manner provided by statute, platting the same into blocks and streets, and the plat is duly executed, acknowledged and recorded, and he sells lots therein with reference thereto, he thereby dedicates the streets to the public irrevocably: *Christian* v. *Eugene*, 49 Or. 170, 89 Pac. 419.

The selling of lots in a tract of platted land by the original lot proprietor, and the corresponding purchase by numbers of the public at large, amount to an acceptance of the streets shown on the plat without formal action by the authorities: *Christian* v. *Eugene, supra.*

Where land has been platted and lots sold with reference thereto, the dedicator cannot enjoin the public authorities from using the streets shown on such plat, because there was a mistake in the plat, for such an error can be rectified only by a suit for that purpose, to which all the persons interested must be made parties—no collateral attack on the plat will be permitted: *Christian* v. *Eugene, supra.*

Failure of a county or municipality to open or work roads laid out on a plat of land, does not defeat the right of the public therein, unless barred by adverse user: *Spencer* v. *Union County*, 41 Or. 257, 68 Pac. 519, 1108.

Recording an unacknowledged plat of land, showing lots, blocks and streets, does not constitute a statutory dedication of the streets, for the plat was not entitled to record, being without an acknowledgment: *Nodine* v. *Union*, 42 Or. 613, 72 Pac. 582.

The act of the owner of realty in selling and conveying parts of it by reference to a townsite plat made and recorded by one

who did not have title is an adoption of the plat as his own, and constitutes a dedication to the public of the property thereon marked as streets and parks: *Oregon City* v. *Oregon & Cal. R. Co.* 44 Or. 165, 74 Pac. 924.

A sale of lots with reference to a plat showing a street is sufficient to complete a dedication of such street, subjecting it to any new servitude incident to it as a street: *Oliver* v. *Newberg*, 50 Or. 92, 91 Pac. 490.

An owner who executes and records a plat of certain land, showing thereon lots or tracts divided by or adjoining streets or roads, and sells property with reference to such plat, must be considered as having established and dedicated such roads to public use, regardless of an actual use by the public at large: *Spencer* v. *Peterson*, 41 Or. 257, 68 Pac. 519, 1108.

Although title to land dedicated as a street cannot be acquired against a city through lapse of time under a statute of limitations, still rights to even a street may become so fixed by neglect to open and use it, that it may be more just to enforce an equitable estoppel against the municipality than to retake the street: *Oliver* v. *Synhorst*, 48 Or. 292, 86 Pac. 376.

The fee of the street is either in the adjacent lot owner or remains in the dedicator: *Huddleston* v. *Eugene*, 34 Or. 352, 55 Pac. 868; *McQuaid* v. *Portland & Vanc. Ry. Co.* 18 Or. 237, 22 Pac. 899.

The conversion of a county road into a city street does not impose an additional servitude on the land occupied by the road, requiring additional compensation to be made to the owner of the fee, under § 18, Art. I, Const. Or., prohibiting the taking of private property for public use except on payment of a just compensation to the owner: *Huddleston* v. *Eugene*, 34 Or. 354, 55 Pac. 868.

The use of a street for laying pipes, and constructing drains, sewers, and culverts, does not impose an additional servitude on the land, so as to prevent the conversion of a public road into a city street without additional compensation to the owner of the fee. The fact that adjacent property is liable to assessment for maintaining and improving the street does not constitute an additional servitude for which additional compensation must be made as a condition of changing a country road into a city street: *Huddleston* v. *Eugene, supra.*

The legislature has the power to regulate the use of roads and streets, and may therefore authorize a city to establish a street over a county road: *Huddleston* v. *Eugene, supra.*

An abutting proprietor has a property right in the use of the street in front of his premises to its full width as means of ingress and egress and for light and air, subject always to the right of the municipality to regulate and control the same for legitimate street purposes, but any structure on a street which is subversive of its use and efficiency as a public thoroughfare is not a legitimate street use, and imposes a new servitude on the rights of abutting owners for which compensation must be made: *Willamette Iron Works* v. *Oregon R. & N. Co.* 26 Or. 224, 37 Pac. 1016, 46 Am. St. Rep. 620.

In a conveyance of land bounded by a public road or street, the grantee ordinarily takes a legal title to the center thereof, subject to the rights of the public therein; but he does not thereby secure such a title to the land embraced in the road or street as will enable him to claim compensation from a railway corporation which locates and operates its road thereon: *McQuaid* v. *Portland & Vanc. Ry. Co.* 18 Or. 237, 22 Pac. 899; *Paquet* v. *Mt. Tabor St. Ry. Co.* 18 Or. 233, 22 Pac. 906.

Where the owner of a tract of land lays it out in lots and streets, and in the plan or map thereof, filed in the public records, designates a certain portion as "park," and afterwards conveys lots and blocks by reference to such plan, it operates as a dedication of the land for a public park. The sale and conveyance of lots according to such plat implies a covenant that the streets and other public places designated shall never be appropriated by the owner or his successor in interest to any use inconsistent with that represented on the original map: *Steel* v. *Portland*, 23 Or. 183, 31 Pac. 479; to the same effect, see *Carter* v. *Portland*, 4 Or. 340; *Meier* v. *Portland Cable Ry. Co.* 16 Or. 500, 19 Pac. 610; *Hogue* v. *Albina*, 20 Or. 182, 25 Pac. 386.

In order to constitute a dedication by parol there must be some act proved evincing a clear intention to dedicate the land to the public use: *Hogue* v. *Albina, supra; Lewis* v. *Portland*, 25 Or. 151, 35 Pac. 256, 42 Am. St. Rep. 772.

When the owner of land lays out a town and records a plat thereof on which streets are dedicated to the public, and it is sought to establish another and different dedication by the acts and conduct of the owner in exhibiting to intending purchasers another map prepared on the same day and selling lots by reference to the second plat, such second plat to have this effect must be essentially different from the recorded one, showing on its face an intention on the part of the owner to make an additional dedication: *Hogue* v. *Albina*, 20 Or. 182, 25 Pac. 386.

Formal acceptance by the corporate authorities of such dedication by parol is not necessary: *Carter* v. *Portland*, 4 Or. 340.

An owner of a tract of land is not estopped from denying that a certain strip of land is a street merely because he deeded lots in said tract by reference to the name under which the tract was platted, and because a lithographic map in general circulation in that community showed the strip in question to be a street, where it appears that there were several maps of the addition, and it is not shown that the owner ever knew of or recognized the lithographic map: *Lewis* v. *Portland*, 25 Or. 150, 35 Pac. 256, 42 Am. St. Rep. 772.

Where an owner of a tract of land, having platted part of it, showing that a certain strip is not a street, afterwards files a plat of an addition to his first plat, and for the purpose of showing its position relative to the land before platted, extends in blank, without names or numbers, the blocks and streets of the first plat and on this blank extension shows the same strip of land to be a street, he does not dedicate such strip for a street, since the dedication on the second map is only of the new land thereon platted: *Lewis* v. *Portland, supra.*

Though a passageway to a wharf was used by the public without objection for over twenty years, such fact does not show a dedication by user, where the owner always claimed to own the way, maintained a gate at the mouth for a part of the time, improved it and kept it in repair, and exercised general control over it: *Lewis* v. *Portland, supra.*

A dedication for a street of a strip of the public domain, made before the passage of the donation law, is not binding on one who subsequently, under such law, acquires title to the tract containing the strip so dedicated: *Lewis* v. *Portland, supra.*

Where the streets of a city have been dedicated by the proprietor to the public, the state, by its legislative assembly, may determine the necessity for, and character of, any improvement thereto, and what property will be benefited thereby; and whatever power the legislature possesses over the streets of a city, it may delegate to the corporate authorities, to be exercised in the mode and to the extent prescribed in the act conferring such power: *Oregon & Cal. R. Co.* v. *Portland*, 25 Or. 235, 35 Pac. 452.

Where defendants sold a number of lots, and represented to the purchasers that a tract adjacent thereto would be open as a street, receiving an increased price for the lots be-

cause of their proximity to the proposed street, defendants were estopped to deny that the strip was dedicated to the public: *Morse* v. *Whitcomb*, 54 Or. 412, 102 Pac. 789.

The existence of a street or highway may be proved by showing a parol dedication accompanied by the user thereof by the public: *Morse* v. *Whitcomb*, *supra*.

§ 3267. Initial Point of Plats to Be Marked.

The initial point of all town plats, plats of all additions to towns, all cemetery plats, and of all plats of all lands divided into lots and blocks with streets, alleys, avenues, or public highways thereon, dedicated to the public use, hereafter made, shall be marked with a monument, either of stone or galvanized iron pipe; if stone be used it shall not be less than six inches by six inches by twelve inches, and if galvanized iron pipe be used it shall not be less than two inches in diameter and three feet long, which said monument shall be set or driven six inches below the surface of the ground, and the location of the same shall be with reference to some known corner established by the United States survey, or two or more objects for identifying the location of the same. [L. 1909, c. 70, p. 123, § 1.]

§ 3268. Affidavit of Surveyor to Be Attached.

All town plats and all cemetery plats and all plats of any and all additions to any town or cemetery, and all plats or diagrams designating the location of land in any county in the state of Oregon, offered for record, shall have attached thereon an affidavit of the surveyor having surveyed the land represented on such plat, to the effect that he has correctly surveyed and marked with proper monuments the lands as represented, that he planted a proper monument, as in this act provided, indicating the initial point of such survey, and giving the dimensions and kind of such monument, and the location of the same with reference to some known corner established by the United States survey, or two or more objects for identifying the location of the same, and accurately describing the tract of land upon which said lots and blocks are laid out. [L. 1909, c. 70, p. 123, § 2.]

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§ 3269. How Plats Prepared.

All town plats and all cemetery plats, and all plats of any and all additions to any town or cemetery, and all plats or diagrams designating the location of land in any county in the state of Oregon, and dedication of streets, alleys, avenues, or roads, or public parks and squares, and other writings made a part of such plats or diagrams offered for record in any county in this state, shall be made with black india ink, upon a good quality of white, cold-pressed, double-mounted drawing paper, twenty-four inches by thirty-two inches in size, with the muslin extending three inches at one end for binding purposes. The dedication, affidavit of the surveyor, approval by the county assessor and county court, and the drawings and inscriptions, shall be made upon the same sheet of paper upon which said plat, drawing, or diagram is made, and no part of said drawing, inscription, approvals, or affidavit shall come nearer any edge of said sheet than one inch, and all such maps, plats, diagrams, affidavit, dedications, orders of approval, inscriptions, and other writing shall be of

such a scale as will permit the whole of the same to be placed upon one single page or sheet as above prescribed. [L. 1909, c. 70, p. 123, § 3.]

§ 3270. Filing and Recording; Copy to Be Filed.

All such maps, plats, and diagrams when so made and approved as by law required, when offered for record in the records of the county where the land thus described shall be situated, shall upon the payment of the fees provided by law, be filed by the county clerk or county recorder, and such filing with the date thereof shall be endorsed thereon, and shall then be securely bound with other maps and plats of like character in a proper book especially made and prepared for that purpose, and which book shall be known and designated as "Record of Town Plats"; that at the time of the approval, filing, and recording of such plat, map, or diagram, the person or corporation offering the same for approval, filing, and record shall also file with the county clerk or county recorder of such county an exact copy thereof, made with black india ink upon a good quality of tracing cloth, which said copy shall be duly certified to be such by the clerk or recorder of said county, and shall then be filed in the archives of such county, and be preserved by binding in board covers without folding. [L. 1909, c. 70, p. 123, § 4.]

§ 3271. Plat Record to Be Indexed.

The said books of "Record of Town Plats" shall be provided in the front part thereof with indices, in which shall be duly entered in alphabetical order, all maps, plats, and diagrams recorded therein, and such dedications to said maps, plats, and diagrams shall also be indexed in the indices of records of deeds for such county, and when so filed, bound, and indexed shall be the legal record of all such maps, plats, diagrams, dedications, and other writings. [L. 1909, c. 70, p. 123, § 5.]

§ 3272. Town Plats Must Have Distinctive Names.

All plats of towns, or additions, hereafter filed for record in the office of the recorder, or county clerk, must not bear the name of any other town or addition in the same county, nor can the same word, or words, or word or words similar or pronounced the same, be used in making a name for said town or addition, except the words town, city, place, court, addition, or similar words, unless the same is contiguous and laid out and platted by the same party, or parties, platting the addition bearing the same name, or a party files and records the written consent of the party, or parties, who platted the addition bearing the same name. All plats of the same name must continue the block numbers of the plat of the same name last filed. [L. 1909, c. 144, p. 210, § 1.]

§ 3273. Approval by Officers, Conditions Thereof.

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Before any plat can be recorded, for covering land within the corporate limits of any town or city, it must be approved by the city engineer, or city surveyor, if there be any, otherwise by the county surveyor, if outside the

corporate limits of any town or city, and all plats must be approved by the county assessor and the county court in which county said property is located, said officers seeing that the streets and alleys are laid out so as to conform to the adjoining plats, and that they are dedicated to the public use, without any reservation or restriction whatever, and that the name is proper, so as to comply with the provisions of section 3272, also see that all taxes and assessments have been paid. [L. 1909, c. 144, p. 210, § 2.]

§ 3274. Map Must Be Filed and Note Made on Vacation of Plat.

If any town, plat, or parts of any town or plat, is vacated by the county court of any county, or municipal authority of any city or town within any county, the vacation order or ordinance, and an intelligent map of the property vacated, must be recorded in the same record as the original town or plat is recorded, and shall be indexed in the same index as original towns or plats are indexed, and in addition thereto, the recorder or county clerk shall make notation on the original record of the vacation, giving the book and page in which said vacated portion of said town or plat is recorded. [L. 1909, c. 144, p. 210, § 3.]

§ 3275. Fees for Service.

The fee for performing the above services shall be as follows, to wit: For approval by the county court, the county clerk shall collect $1.00. For recording and indexing any plat or vacation of any plat, the recorder or county clerk, in whose office the deed records of the county are kept, shall charge as follows, to wit: For plats containing twenty lots, or less, $6.00; for plats containing over twenty lots, and less than thirty lots, $7.00; for plats containing thirty lots, and less than fifty lots, $8.50; for plats containing fifty lots, and less than seventy-five lots, $10; for plats containing seventy-five lots, and less than one hundred, or one hundred lots, $12; for plats containing over one hundred lots, in addition to the charge of $12, he shall make a charge of three cents per lot for all lots over one hundred. [L. 1909, c. 144, p. 210, § 4.]

§ 3276. Vacation of Lots or Streets in Unincorporated Town.

Whenever any person or body corporate interested in any town in this state, not incorporated, or which has not a corporation in active operation, may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square or part thereof in any such town, it shall be lawful for such person or corporation to petition the county court of the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, and the names of the persons to be particularly affected thereby; which petition shall be filed with the county clerk thirty days previous to the sitting of said county court, and notice of the pendency of said petition shall be given for the same space of time, either in a public newspaper printed in said town or by written notice thereof set up

in three of the most public places in said town, containing a description of the property to be vacated. [L. 1864; D. p. 926, § 4; H. § 3181; B. & C. § 2739.]

A petition to vacate town lots and blocks and the streets and alleys surrounding them, which shows that persons other than the petitioners are the owners of parts of the property abutting upon some of the streets or alleys sought to be vacated, is insufficient, where it does not show who such interested parties are, or what persons, if any, would be particularly affected by the vacation: *Merchant* v. *Marshfield*, 35 Or. 61, 56 Pac. 1013.

§ 3277. Petition Not Opposed, Court May Vacate.

If no opposition be made to such petition or application, the county court may vacate the same, with such restrictions as they may deem reasonable and for the public good. [L. 1864; D. p. 926, § 5; H. § 4182; B. & C. § 2740.]

The provisions of this section are not mandatory in view of §§ 3278 and 3285: *Merchant* v. *Marshfield*, 25 Or. 59, 56 Pac. 1013.

§ 3278. Petition Opposed, Application Continued and Hearing Had.

If opposition be made thereto, such application shall be continued until the next term of said county court, at which time, if the objector shall consent to said vacation, or if the petitioner shall produce to the county court the petition of two-thirds of the property holders in said town of lawful age, the said county court may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner, in whole or in part. [L. 1864; D. p. 927, § 6; H. § 4183; B. & C. § 2741.]

See § 3277 and note.

§ 3279. Vacated Property, in Whom Vests.

The part so vacated, if it be a lot, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto shall vest in the person or persons owning the property on such side thereof, in equal proportions, according to the length or breadth of such lots or ground as the same may border on such street or alley. [L. 1864; D. p. 927, § 7; H. § 4184; B. & C. 2742.]

§ 3280. Consent of Adjacent Owners Necessary to Vacation of Street.

But no such vacation of a street or alley, or any part thereof, shall take place unless the consent of the person or persons owning the property immediately adjoining that part of said street or alley to be vacated be obtained thereto in writing, which consent shall be acknowledged before some officer authorized to take acknowledgment of deeds, and filed with the county clerk. [L. 1864, D. p. 927, § 8; H. § 4185; B. & C. § 2743; L. 1907, c. 196, p. 358.]

See note to § 3276, *ante*.

§ 3281. Vacation of Lot or Street in Incorporated Town.

In cases where any person interested in any corporated town in this state, the corporate functions of which shall be in active operation, may desire to vacate any street, alley, or common, or part thereof, it shall be lawful for such person to petition the common council or other body in like manner as persons interested in towns not incorporated are authorized to petition

the county court; and the same proceeding shall be had thereon before such common council or other corporate body having jurisdiction as authorized to be had before the county court, and such common council or other corporate body may determine on such application, under the same restrictions and limitations as are contained in the foregoing provisions of this act. [L.1864, D. p. 927, § 9; H. § 4186; B. & C. § 2744.]

§ 3282. Public Square Vacated, Where Property Vests.

Whenever a public square or any part thereof shall be vacated, the property thereof shall vest in the county court, for the use of the proper county; and whenever any common or any part thereof in any incorporated town or belonging thereto shall be vacated, the same shall vest in the common council or other corporate body, for the use of such town; and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be. [L.1864, D. p. 927, § 10; H. § 4187; B. & C. § 2745.]

§ 3283. Either of Two Contiguous Platters May Petition to Vacate His Part.

In all cases where two or more persons have laid out or shall hereafter lay out a town, or lands contiguous and adjoining to each other, and such town does not improve, either of the individuals holding all the legal rights, title, and interest in all the lots laid off by such party and attached may have the same vacated as in case of a lot, street, or alley on application of the party laying out such addition or part of said town, or on the application of such person as may acquire or derive the legal title to the land and lots in such addition; and in no case shall persons purchasing lots in other additions of said town be capable of making any valid objection to said vacation if such vacation does not obstruct any public road or highway laid out and established by law. [L. 1864; D. p. 928, § 11; H. § 4188; B. & C. § 2746.]

In a proceeding to vacate a plat of a town or addition thereto, under this and the succeeding section, the petition must affirmatively show that the petitioner is the owner of all the property in such town or addition: *Merchant* v. *Marshfield*, 35 Or. 59, 56 Pac. 1013.

§ 3284. Town May be Vacated, When.

If any person shall lay off an addition to any town, which does not improve, and shall be the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, may have such addition or any part thereof vacated in like manner as provided in the last preceding section. [L, 1864, D. p. 928, § 12, H. § 4189; B. & C. § 2747.]

§ 3285. Appeal Lies From Order Refusing to Vacate.

Whenever the county court or city council shall refuse the application of any person or persons, made as provided in this chapter for the vacation of any part of any town or city, such person or persons may appeal from

such order refusing such application to the circuit court of the county where such town or city is situated. [L. 1866, p. 36, § 1; H. § 4190; B. & C. § 2748.]

§ 3286. Costs on Appeal.

In case of appeal under this chapter, as well as all other proceedings under the same, the costs shall be paid by the applicant. [L. 1866, p. 36, § 2; H. § 4191; B. & C. § 2749.]

NOTE: Sections 2750-2753, B. & C., are omitted, being deemed impliedly repealed, along with other laws of the same kind, by §§ 3267-3275, *ante*, which purport to provide a complete system for the filing and recording of plats.

CHAPTER VIII.

OF PARK COMMISSIONERS, AND PARKS AND THEIR MANAGEMENT.

§ 3287. When Park Commissioners May be Appointed.

In each of the incorporated cities of this state containing not less than three thousand inhabitants the mayor and city engineer, if there be one, and if not the city auditor, together with five citizens thereof, to be appointed by the circuit court in which such city is situated, shall constitute a board of park commissioners for such city; *provided,* that if there be more than one circuit judge in the circuit in which the city is situated, said appointment shall be made by all the judges thereof acting together, and not more than three of said citizens so appointed shall be of the same political party; *provided,* that this act shall not take effect in any of said cities unless accepted by a majority of the legal voters thereof, voting by ballot thereon. Such ballots shall be "yes" or "no" in answer to the question: "Shall an act relating to parks, approved on the seventeenth day of February, 1899, be accepted?" Said questions and the answer thereto shall be printed on ballots; *provided further,* that upon the application in writing of twenty-five taxpayers of any one of said cities, and not otherwise, the officer whose duty it is to provide ballots for city elections shall submit the above question in the manner above specified to the legal voters of the city, at any regular city election, before the acceptance by said city of said act. [L. 1899, p. 67, § 1; B. & C. § 2754.]

§ 3288. Organization of Commissioners.

Said commissioners shall organize at a meeting thereof, to be called by said mayor not less than thirty nor more than sixty days after the appointment of the commissioners is complete, and said mayor shall be chairman of the board. Whenever a vacancy occurs in that part of said commission appointed as aforesaid, the proper judge or judges shall fill the vacancy. None of said commissioners shall receive any compensation for their services as such. [L. 1899, p. 68, § 2; B. & C. § 2755.]

§ 3289. Secretary and Treasurer of the Board.

Said board shall appoint a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said board, including all rules and regulations adopted for the government or use of the parks, and the

OREGON COMPILED LAWS ANNOTATED

CONTAINING THE

GENERAL LAWS OF OREGON TO AND INCLUDING THOSE ENACTED AT THE FORTIETH REGULAR SESSION OF THE LEGISLATIVE ASSEMBLY, WITH ANNOTATIONS TO DECISIONS OF THE SUPREME COURT OF OREGON AND THE UNITED STATES COURTS

PUBLISHED BY AUTHORITY OF

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BY THE

PUBLISHER'S EDITORIAL STAFF UNDER THE SUPERVISION OF THE SUPREME COURT OF OREGON

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CODE COMMISSIONER

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OREGON COMPILED LAWS ANNOTATED

VOLUME 6

GOVERNMENT CODE

TITLE 84
Congressional Districts and Elections

CHAPTER 1
APPORTIONMENT OF STATE AND ELECTION OF REPRESENTATIVES

§ 84-101. Apportionment of state into districts: Counties composing several districts. The state of Oregon be and the same is hereby portioned into three congressional districts and that the same are hereby

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TITLE 95

Municipal Corporations

TITLE 96

Notaries Public

TITLE 97

Public Funds, Finances, and Property

town or municipal corporation; provided, however, that this act shall not apply to municipal irrigation districts. [L. 1915, ch. 211, § 3, p. 273; O. L. § 3753; O. C. 1930, § 56-1203.]

§ 95-1204. Application of general election laws. All provisions of the laws of the state of Oregon relating to the ballot, to the manner of voting and to the duties of election officers so far as applicable herein, and not in conflict with the provisions of this act, are hereby included and made a part of this act. [L. 1915, ch. 211, § 4, p. 273; O. L. § 3754; O. C. 1930, § 56-1204.]

Cross References: General election laws, see § 81-101 et seq.

CHAPTER 13

PLATTING AND VACATION OF TOWNSITES, ETC.

ARTICLE 1

GENERAL PROVISIONS

§ 95-1301. Sales, etc., of lots prior to recordation of plat: Penalty for non-compliance: Collection of penalty: Disposition. Any person or

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New sec. added
95-1301 (a)
47-346
49 Ch. 521

persons who shall dispose of or offer for sale, or lease for any time, any lot or lots in any town or addition to any town or city, or any part thereof, which has been or shall be hereafter laid out, until the plat thereof has been duly acknowledged and recorded in the recorder's office in the county of which the same is situated, shall forfeit and pay $50 for each and every lot or part of lot so sold or disposed of, leased or offered for sale, to be collected before any court having competent jurisdiction, in the name of the county, for the use of the common school fund of the county where the town is not incorporated; and in the name of the common council where the town is incorporated, for the use and benefit of said town. [L. 1864; D. p. 925, § 1; H. § 4178; B. & C. § 2736; L. O. L. § 3264; O. L. § 3807; O. C. 1930, § 56-701.]

Collateral References:

Platting in anticipation of improvement as a taking of property, see note, 64 A.L.R. 546.

Recordation of plat as extension of munipical boundaries, see note, 64 A.L.R. 1353.

NOTES OF DECISIONS

The act of 1864 set out a complete method for filing plats, dedicating streets and vacating public places. Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

This section does not prevent the passage of title to lots sold contrary to its provisions. Kern v. Feller, (1914) 70 Or. 140, 140 P. 735.

A plat may become the means of creating a number of different public easements. Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

It may be assumed that a plat which has been recorded has been duly executed. Bernard v. Willamette Box & Lumber Co., (1913) 64 Or. 223, 129 P. 1039.

CITED WITHOUT SPECIAL APPLICATION

Milarkey v. Foster, (1877) 6 Or. 378, 25 Am. Rep. 531; Huddleston v. Eugene, (1899) 34 Or. 343, 55 P. 868, 48 L.R.A. 444; Schooling v. Harrisburg, (1903) 42 Or. 494, 71 P. 605.

§ 95-1302. Recordation of plats of existing towns and additions: Penalty for non-compliance. Every person who has heretofore thus laid out any town or addition to any town, and sold lots within the same, without having the plat of the same recorded, shall have the said plat so recorded within six months from the taking effect of this act, and in case of failure so to record, shall be subject to the penalty in this act provided. [L. 1864; D. p. 926, § 2; H. § 4179; B. & C. § 2737; L. O. L. § 3265; O. L. § 3808; O. C. 1930, § 56-702.]

Cross References:

Authority of city planning commissions, see §§ 95-2307, 95-2308.

NOTES OF DECISIONS

A plat not acknowledged by the owner is not entitled to be recorded. Nodine v. Union, (1903) 42 Or. 613, 72 P. 582.

§ 95-1303. Construction of donations marked on plat: Warranty. Every donation or grant to the public, including streets and alleys, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered to all intents and purposes as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use for the purposes intended by the donor or donors, grantor or grantors,

as aforesaid. [L. 1864; D. p. 926, § 3; H. § 4180; B. & C. § 2738; L. O. L. § 3266; O. L. § 3809; O. C. 1930, § 56-703.]

Cross References:

Adverse possession of streets, parks and other public places, see § 100-3101.

Collateral References:

Effect of dedication of streets in land upon which state holds a mortgage, see Opinions of the Attorney-General, 1924-1926, p. 395.

NOTES OF DECISIONS

1. In General.
2. Dedication Generally.
3. —— Plat.
4. —— Sales.
5. —— Acceptance.
6. Effect of Dedication.
7. Loss of Rights in Dedicated Property.

1. IN GENERAL.

The sale and conveyance of lots according to a recorded plat implies a covenant that the streets and other public places designated thereon shall never be appropriated by the owner to a use inconsistent with that shown on the map. Steel v. City of Portland, (1892) 23 Or. 176, 31 P. 479; Christian v. Eugene, (1907) 49 Or. 170, 89 P. 419; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

Sale of a lot by a subdivider by reference to his plat gives rise to an implied covenant that the street upon which the lot abuts shall forever remain open for the purchaser's accommodation. McQuaid v. Portland & V. Ry. Co., (1889) 18 Or. 237, 22 P. 899.

This section creates a covenant that the donee or grantee shall enjoy the use of the property for the purposes intended by the donor or grantor, but passes no legal title. McQuaid v. Portland & V. Ry. Co., (1889) 18 Or. 237, 22 P. 899.

The warranty referred to in the above section does not become operative or binding until there has been an acceptance of the use. McQuaid v. Portland & V. Ry. Co., (1889) 18 Or. 237, 22 P. 899.

2. DEDICATION GENERALLY.

Dedication of land as a public street by estoppel in pais involves: (1) a survey or other segregation of the land; (2) a plat representing the division of the tract; and (3) a sale of the land by reference to the plat. Nodine v. Union, (1903) 42 Or. 613, 72 P. 582.

In order to constitute a dedication by parol there must be some act proved evincing a clear intention to dedicate the land to the public use. Hogue v. City of Albina, (1890) 20 Or. 182, 25 P. 386, 10 L.R.A. 673; Lewis v. City of Portland, (1893) 25 Or. 133, 151, 35 P. 256, 42 Am. St. Rep. 772, 22 L.R.A. 736.

An insufficient dedication by plat may be transformed into an effective common-law dedication by sales of lots with reference to the plat. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

The principles governing dedication of public streets apply also to dedication of public squares and parks. Steel v. City of Portland, 23 Or. 176, 31 P. 479.

3. —— PLAT.

A plat not acknowledged by the owner does not operate as a dedication of the streets delineated thereon, even though it is recorded. Nodine v. Union, (1903) 42 Or. 613, 72 P. 582.

There can be no dedication of streets shown on a plat if there is nothing to show that the owner of the land ever signed or acknowledged the plat. Lewis v. City of Portland, (1893) 25 Or. 133, 35 P. 256, 42 Am. St. Rep. 772, 22 L.R.A. 736.

The execution, acknowledgment and recordation of a plat are equivalent to a conveyance of the streets and alleys to the public. Christian v. Eugene, (1907) 49 Or. 170, 89 P. 419.

Land that the owner has already sold cannot be dedicated to public use by including it in a plat of other property that he still owns. Lewis v. City of Portland, (1893) 25 Or. 133, 35 P. 256, 42 Am. St. Rep. 772, 22 L.R.A. 736.

A land owner who designates on his plat an area as a public street thereby estops himself from claiming it as his own property. Portland Railway, Light & Power Co. v. Oregon City, (1917) 85 Or. 574, 166 P. 932.

Drawing a line parallel with the line of a subdivision and marking the space between the two as "street 40 ft. wide" may warrant a conclusion that the subdivider intended to dedicate the space as a public thoroughfare. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

Designation on a recorded plat of an area as "Park" operates to dedicate it to the public as such. Steel v. City of Portland, (1892) 23 Or. 176, 31 P. 479.

Reservation on a plat of an area for use as private property manifests a lack of intent to dedicate as a public street. Portland Railway, Light & Power Co. v. Oregon City, (1917) 85 Or. 574, 166 P. 932.

A plat containing a reservation expressly stating that only the east half of a street is intended to be dedicated to

the public use cannot be regarded as a dedication of the whole. Heiple v. City of Portland, (1885) 13 Or. 97, 8 P. 907.

A landowner who has made a map for making sales slightly variant from that recorded cannot be said to have made an additional dedication. Hogue v. City of Albina, (1890) 20 Or. 182, 25 P. 386, 10 L.R.A. 673.

4. —— SALES.

Sale of lots abutting on areas indicated on a recorded plat as streets, etc., amounts to an irrevocable dedication of such areas to public use. Meier v. Portland Cable Ry. Co., (1888) 16 Or. 500, 19 P. 610, 1 L.R.A. 856; Steel v. City of Portland, (1892) 23 Or. 176, 31 P. 479; Spencer v. Peterson, (1902) 41 Or. 257, 68 P. 519, 1108; Schooling v. Harrisburg, (1903) 42 Or. 494, 497, 71 P. 605; Nodine v. Union, (1903) 42 Or. 613, 72 P. 582; Oregon City v. Oregon & C. R. Co., (1904) 44 Or. 165, 74 P. 924; Christian v. Eugene, (1907) 49 Or. 170, 89 P. 419; Oliver v. Newberg, (1907) 50 Or. 92, 91 P. 470; McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

Reference to even an unrecorded plat in making a sale may, in a proper case, be construed as a dedication. Carter v. City of Portland, (1873) 4 Or. 339; Hogue v. City of Albina, (1890) 20 Or. 182, 25 P. 386, 10 L.R.A. 673; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

A land owner who sells lots by reference to a plat made by a person who had no title to the property thereby adopts the plat as his own and dedicates to the public the streets and alleys marked thereon. Oregon City v. Oregon & C. R. Co., (1904) 44 Or. 165, 74 P. 924.

But sale of lots in "couch's Addition" does not operate as an adoption of a lithographed map of such addition so as to effect a dedication of streets shown thereon, if such plat was made by a third person and there is nothing to show that the subdivider ever knew of its existence. Lewis v. City of Portland, (1893) 25 Or. 133, 150, 35 P. 256, 42 Am. St. Rep. 772, 22 L.R.A. 736.

There can be a dedication to public use of an area plainly indicated on the plat as a lot, if the subdivider sells an adjoining lot on the representation that the former was being reserved for use as a street. Morse v. Whitcomb, (1909) 54 Or. 412, 102 P. 788, 103 P. 775, 135 Am. St. Rep. 832.

An attempt by a subdivider to alter or amend his plat is void as to persons who have purchased lots in accordance therewith. Miller v. Fisher, (1918) 90 Or. 111, 174 P. 1152.

5. —— ACCEPTANCE.

Purchase of lots shown on the plat by members of the public amounts to acceptance of the areas thereon dedicated to the public. Christian v. Eugene, (1907) 49 Or. 170, 89 P. 419; Silverton v. Brown, (1912) 63 Or. 418, 128 P. 45.

Formal acceptance by the corporate authorities of a dedication by parol is not necessary. Carter v. City of Portland, (1873) 4 Or. 339; Whitney v. Crittenden, (1924) 112 Or. 278, 229 P. 378.

Neither confirmatory declaration nor immediate improvement is necessary to secure to a municipal corporation the benefits of dedication. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

Failure of a municipal corporation to open a street laid out on a plat does not necessarily defeat the right of the public therein. Spencer v. Peterson, (1902) 41 Or. 257, 68 P. 519, 1108; Oregon City v. Oregon & C. R. Co., (1904) 44 Or. 165, 74 P. 924.

A municipality is not obliged to open a dedicated street until its use is deemed necessary. Barton v. Portland, (1914) 74 Or. 75, 144 P. 1146; Killam v. Multnomah County, (1931) 137 Or. 562, 4 P. (2d) 323.

6. EFFECT OF DEDICATION.

The statutory dedication of property provided for by this section, operates by way of grant, and therefor one who seeks to enforce an easement by virtue of a statutory dedication need prove only words of grant. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

The fee to the property mentioned in this section is either in the dedicator or in the adjoining lot owner, and not in the public. McQuaid v. Portland & V. Ry. Co., (1889) 18 Or. 237, 22 P. 899; Huddleston v. City of Eugene, (1899) 34 Or. 343, 55 P. 868, 43 L.R.A. 444.

A sale of lots shown on a plat passes title to the fee of the street to the several purchasers. McQuaid v. Portland & V. Ry. Co., (1889) 18 Or. 237, 22 P. 899.

Dedication by the recordation of a plat may be the means of creating various public easements under this section. Menstell v. Johnson, (1928) 125 Or. 150, 152, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

The right to use the street passing in front of a lot shown on a plat is a part of the consideration passing to the purchaser. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

7. LOSS OF RIGHTS IN DEDICATED PROPERTY.

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Adverse possession of land duly dedicated to public use as a street is by itself insufficient to revest title thereto in the dedicator. Oliver v. Synhorst, (1906) 48 Or. 292, 86 P. 376, 7 L.R.A. (N.S.) 243; Christian v. Eugene, (1907) 49 Or. 170, 89 P. 419; Barton v. Portland, (1914) 74 Or. 75, 144 P. 1146; Killam v. Multnomah County, (1931) 137 Or. 562, 4 P. (2d) 323.

The grantees of a dedicator of land for a street may extinguish the right of the public by an unlawful encroachment for a term equal to the period of the statute of limitations. Nicholas v. Title & Trust Co., (1916) 79 Or. 226, 154 P. 391, Ann. Cas. 1917A, 1149.

95-1304
A. 47 Ch. 346
A. 49 Ch. 159

§ 95-1304. Marking of initial point of plat: Nature of monument: Setting. The initial point of all town plats, plats of all additions to towns, all cemetery plats, and of all plats of all lands divided into lots and blocks with streets, alleys, avenues, or public highways thereon, dedicated to the public use, hereafter made, shall be marked with a monument, either of stone or galvanized iron pipe; if stone be used it shall not be less than six inches by six inches by twelve inches, and if galvanized iron pipe be used it shall not be less than two inches in diameter and three feet long, which said monument shall be set or driven six inches below the surface of the ground, and the location of the same shall be with reference to some known corner established by the United States survey, or two or more objects for identifying the location of the same. [L. 1909, ch. 70, § 1, p. 123; L. O. L. § 3267; O. L. § 3810; O. C. 1930, § 56-704.]

CITED WITHOUT SPECIAL APPLICATION

Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

§ 95-1305. Attachment to plat of surveyor's affidavit: Contents of affidavit. All town plats and all cemetery plats and all plats of any and all additions to any town or cemetery, and all plats or diagrams designating the location of land in any county in the state of Oregon, offered for record, shall have attached thereon an affidavit of the surveyor having surveyed the land represented on such plat, to the effect that he has correctly surveyed and marked with proper monuments the lands as represented, that he planted a proper monument, as in this act provided, indicating the initial point of such survey, and giving the dimensions and kind of such monument, and the location of the same with reference to some known corner established by the United States survey, or two or more objects for identifying the location of the same, and accurately describing the tract of land upon which said lots and blocks are laid out. [L. 1909, ch. 70, § 2, p. 123; L. O. L. § 3268; O. L. § 3811; O. C. 1930, § 56-705.]

NOTES OF DECISIONS

The owner of the property adopts the surveyor's affidavit when he files the plat. Christie v. Bandon, (1917) 82 Or. 481, 162 P. 248.

CITED WITHOUT SPECIAL APPLICATION

Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

95-1306
New sec. added
95-1306 (a)
47-346
95-1306 (a)
49 Ch. 175

§ 95-1306. Preparation of plat: Arrangement of data. All plats, diagrams or drawings, subdividing any tracts of land in any county in this state and dedications of streets, alleys, avenues or roads or public

parks and squares and other writings made a part of such plats, diagrams or drawings, offered for record in any county in this state shall be made in black India ink, upon a good quality of white cold-pressed, double-mounted drawing paper eighteen inches by twenty-four inches in size, with the muslin extending three inches at one end for binding purposes. The plat, diagram or drawing shall be of such a scale, and the lettering of the approvals thereof, and of the dedication and affidavit of the surveyor, shall be of such a size or type as will permit the whole thereof to be placed upon one single sheet of paper, but no part thereof shall come nearer any edge of said sheet than one inch. All of such plat, diagram or drawing shall be on one side or page of the sheet, but the dedication or other written matter may be on the other side or page of such sheet. [L. 1909, ch. 70, § 3; L. O. L. § 3269; L. 1913, ch. 111, § 2, p. 187; O. L. § 3812; O. C. 1930, § 56-706.]

NOTES OF DECISIONS

There can be no acquisition of property by dedication unless the necessary intent of the owner is clearly established. Christie v. Bandon, (1917) 82 Or. 481, 162 P. 248.

The intent of the subdivider is usually expressed in the plat and the accompanying writings. McCoy v. Thompson, (1917) 84 Or. 141, 164 P. 589.

It may be assumed, in a proper case, that a plat was properly executed, even though a purported copy thereof does not contain any dedication. Bernard v. Willamette Box & Lumber Co., (1913) 64 Or. 223, 129 P. 1039.

CITED WITHOUT SPECIAL APPLICATION

Whitney v. Crittenden, (1924) 112 Or. 278, 229 P. 378.

95-1307
New sec. added
95-1307 (a)
49 Ch. 175

§ 95-1307. Filing and recordation: Record of town plats: Filing of copy. All such maps, plats, and diagrams when so made and approved as by law required, when offered for record in the records of the county where the land thus described shall be situated, shall upon the payment of the fees provided by law, be filed by the county clerk or county recorder, and such filing with the date thereof shall be indorsed thereon, and shall then be securely bound with other maps and plats of like character in a proper book especially made and prepared for that purpose, and which book shall be known and designated as "Record of Town Plats"; that at the time of the approval, filing, and recording of such plat, map or diagram, the person or corporation offering the same for approval, filing, and record shall also file with the county clerk or county recorder of such county an exact copy thereof, made with black india ink upon a good quality of tracing cloth, which said copy shall be duly certified to be such by the clerk or recorder of said county, and shall then be filed in the archives of such county, and be preserved by binding in board covers without folding. [L. 1909, ch. 70, § 4, p. 123; L. O. L. § 3270; O. L. § 3813; O. C. 1930, § 56-707.]

NOTES OF DECISIONS

A plat that is not acknowledged by the owner is not entitled to be recorded and does not operate as a dedication of the streets delineated thereon, even though it is recorded. Nodine v. Union, (1903) 42 Or. 613, 72 P. 582.

It may be assumed that a plat which has been recorded has been duly executed. Bernard v. Willamette Box & Lumber Co., (1913) 64 Or. 223, 129 P. 1039.

CITED WITHOUT SPECIAL APPLICATION

Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

§ 95-1308. Indexing of plat records. The said books of "Record of Town Plats" shall be provided in the front part thereof with indices, in

which shall be duly entered in alphabetical order, all maps, plats, and diagrams recorded therein, and such dedications to said maps, plats, and diagrams shall also be indexed in the indices of records of deeds for such county, and when so filed, bound, and indexed shall be the legal record of all such maps, plats, diagrams, dedications, and other writings. [L. 1909, ch. 70, § 5, p. 123; L. O. L. § 3271; O. L. § 3814; O. C. 1930, § 56-708.]

§ 95-1309. Designation of town-site or addition: Necessity for distinctiveness: Limitations on rule. All plats of towns, or additions, hereafter filed for record in the office of the recorder, or county clerk, must not bear the name of any other town or addition in the same county, nor can the same word, or words, or word or words similar or pronounced the same, be used in making a name for said town or addition, except the words town, city, place, court, addition, or similar words, unless the same is contiguous and laid out and platted by the same party, or parties, platting the addition bearing the same name, or a party files and records the written consent of the party, or parties, who platted the addition bearing the same name. All plats of the same name must continue the block numbers of the plat of the same name last filed. [L. 1909, ch. 144, § 1, p. 210; L. O. L. § 3272; O. L. § 3815; O. C. 1930, § 56-709.]

Collateral References:

Filing of plat under name that conflicts with that of an existing platted addition, see Opinions of the Attorney-General, 1926-1928, p. 266.

95-1310
47 Ch. 346

§ 95-1310. Approval of plat: Requisites for approval generally. Before any plat can be recorded, covering land within the corporate limits of any town or city, it must be approved by the city engineer or city surveyor, if there be any; otherwise by the county surveyor; and if it be outside of the corporate limits of any town or city, it shall be approved by the county surveyor, and all plats must be approved by the county assessor and the county court of the county in which said property is located, and said officers shall not approve any such plat, unless the streets and alleys are laid out so as to conform to the plats of adjoining property already filed, as to width, general direction, and in all other respects, and are dedicated to the public use without any reservation or restriction whatever, and the name is proper, so as to comply with the provisions of section 95-1309, and all taxes and assessments have been paid; nor can any plat be approved and filed purporting to be an addition to any city or town, or bear the name of any such city or town, unless the property platted adjoins the platted portion of such city or town or its additions already platted, or is within the corporate limits of such city or town. [L. 1909, ch. 144, § 2; L. O. L. § 3273; L. 1913, ch. 111, § 1, p. 187; O. L. § 3816; O. C. 1930, § 56-710.]

NOTES OF DECISIONS

A plat may become the means of creating various public easements. Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

The county court is the proper tribunal for acceptance of a road or highway not within an incorporated city or town. Whitney v. Crittenden, (1924) 112 Or. 278, 229 P. 378.

There is an acceptance of the streets and roads shown on a plat when the county court indorses its acceptance of the plat thereon following the approval of the surveyor and the assessor. Whitney v. Crittenden, (1924) 112 Or. 278, 229 P. 378.

§ 95-1311. —— Land in irrigation districts: Appeal from refusal to approve. All maps, plats and replats of land laid out in building lots or subdivisions, and the streets, alleys or other portions of the same intended to be dedicated for public use, or for the use of purchasers, or owners of lots, blocks or subdivisions fronting thereon, or adjacent thereto, and located within the boundaries of an irrigation district, and all plans or plats for vacating, laying out, widening, extending, parking or locating streets or alleys in such irrigation districts first shall be submitted to the board of directors of such irrigation district and a report thereon from such board of directors secured in writing before the same shall be approved by the county court. It shall be unlawful to receive or record such plan, plat or replat or deed in any public office, unless the same shall bear approval thereon by indorsement in writing of the board of directors of such irrigation district; provided, however, that an appeal may be taken from the action of the board to the circuit court of the county in which the land is situated. Said appeal shall be taken, perfected and prosecuted in the same manner as an appeal from the justice court. On said appeal the matter shall be tried de novo. [L. 1937, ch. 190, § 1, p. 246.]

95-1312
A. 47 Ch. 468

§ 95-1312. Records of vacations: Recordation of orders and ordinances: Designation on plat: Validation of prior vacations. If any town, plat, or plats of any city, town or plat is vacated by the county court of any county or municipal authority of any city or town within any county, the vacation order or ordinance shall be recorded in the deed records of said county and shall be indexed under the letter "V," title "Vacations," and whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon payment to him by the applicant of the sum of two dollars and fifty cents ($2.50), trace upon the original plat, with red ink, the portion of said town, city or plat so vacated and write therein the word "Vacated," with appropriate reference by number to notation, and shall make a notation on the original plat, in red ink, giving the book and page of the deed record in which said order or ordinance is recorded.

All vacations heretofore had where plats as required by law have not been filed shall, upon compliance with this section, become complete and be legalized. [L. 1909, ch. 144, § 3; L. O. L. § 3274; L. 1919, ch. 15, § 1, p. 28; O. L. § 3817; O. C. 1930, § 56-711.]

CITED WITHOUT SPECIAL APPLICATION

Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

§ 95-1313. Fees for approving and recording plats. The fee for performing the above services shall be as follows, to wit: For approval by the county court, the county clerk shall collect one dollar ($1). For recording and indexing any plat, the recorder or county clerk, in whose office the deed records of the county are kept, shall charge as follows, to wit: For plats containing twenty (20) lots, or less, six dollars ($6); for plats containing over twenty (20) lots, and less than thirty (30) lots, seven dollars ($7); for plats containing thirty (30) lots, and less than

fifty (50) lots, eight dollars and fifty cents ($8.50); for plats containing fifty (50) lots, and less than seventy-five (75) lots, ten dollars ($10); for plats containing seventy-five (75) lots, and less than one hundred (100) or one hundred (100) lots, twelve dollars ($12); for plats containing over one hundred (100) lots, in addition to the charge of twelve dollars ($12), he shall make a charge of three (3) cents per lot for all lots over one hundred (100). [L. 1909, ch. 144, § 4; L. O. L. § 3275; L. 1919, ch. 15, § 2, p. 28; O. L. § 3818; O. C. 1930, § 56-712.]

§ 95-1314. Vacation procedure in unincorporated areas and in municipalities not exercising their corporate functions: Filing of petition: Notice of hearing. Whenever any person, persons, firm, association or corporation interested in any town which is unincorporated, or which, if incorporated, is not exercising its corporate functions, or interested in any platted and subdivided tract of acreage outside the limits of any incorporated city or town, may desire to vacate any lot, tract, street, alley, road, highway, common, or any part thereof, or may desire to vacate any public square, or part thereof, in any such town, it shall be lawful for such person, persons, firm, association or corporation to petition the county court of the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, and the names of the persons to be particularly affected thereby; which petition shall be filed with the county clerk thirty days previous to the sitting of the said county court, and notice of the pendency of said petition shall be given for the same space of time, by written notice thereof, containing a description of the property to be vacated, posted in three of the most public or conspicuous places in said town or within the limits of said platted acreage, or in the event such property is located within a town in which there is published a newspaper, as defined by law, such notice may be published in such newspaper, once a week for four successive weeks. [L. 1864; D. p. 926, § 4; H. § 4181; B. & C. § 2739; L. O. L. § 3276; O. L. § 3819; L. 1925, ch. 212; L. 1925, ch. 253, § 1, p. 461; O. C. 1930, § 56-713.]

Collateral References:

See 25 Am. Jur., Highways, § 117 et seq.

Authority of county acquiring land for delinquent taxes to vacate subdivisions, see Opinions of the Attorney-General, 1932-1934, p. 425.

NOTES OF DECISIONS

The vacation of a road or street is the exercise of a power properly within the domain of the legislature. Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

The application provided for is an essential without which there can be no vacation of a block contained in the original plat of a town. State ex rel. v. Bay City, (1913) 65 Or. 124, 130, 131 P. 1038.

A petition which shows that persons other than the petitioners own property abutting upon streets and alleys sought to be vacated, is insufficient, if it fails to disclose who they are and how they would be affected by the vacation. Merchant v. Marshfield, (1899) 35 Or. 55, 61, 56 P. 1013.

The courts may take judicial notice of the boundaries of a city having a legislative charter. City of Eugene v. Garrett, (1918) 87 Or. 435, 169 P. 649, 170 P. 731.

A public survey referred to in the plat sought to be vacated may be the subject of judicial notice. City of Eugene v. Garrett, (1918) 87 Or. 435, 169 P. 649, 170 P. 731.

CITED WITHOUT SPECIAL APPLICATION

Learned v. Holbrook, (1918) 87 Or. 576, 170 P. 530, 171 P. 222.

§ 95-1315. —— In absence of opposition: Grant of petition: Restrictions. If no opposition be made to such petition or application, the county court may vacate the same, with such restrictions as they may deem reasonable and for the public good. [L. 1864; D. p. 926, § 5; H. § 4182; B. & C. § 2740; L. O. L. § 3277; O. L. § 3820; O. C. 1930, § 56-714.]

NOTES OF DECISIONS

The "may," as used in this section, is not to be construed as "must." Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

This section evidences a legislative intent to provide that the tribunal having jurisdiction of the proceedings shall act judicially therein. Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

The proceeding must be dismissed if the petition fails to state the necessary statutory facts upon which to predicate relief. Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

CITED WITHOUT SPECIAL APPLICATION

Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

95-1316
A. 53 Ch. 283

§ 95-1316. —— In presence of opposition: Continuance of application: Hearing: When petition granted. If opposition be made thereto, such application shall be continued until the next term of said county court, at which time, if the objector shall consent to said vacation, or if the petitioner shall produce to the county court the petition of two-thirds of the property holders of lawful age in said town, or owning two-thirds of the tracts in such platted and subdivided acreage, the said county court may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner, in whole or in part. [L. 1864; D. p. 927, § 6; H. § 4183; B. & C. § 2741; L. O. L. § 3278; O. L. § 3821; L. 1925, ch. 253, § 2, p. 461; O. C. 1930, § 56-715.]

NOTES OF DECISIONS

This section evidences a legislative intent to provide that the tribunal having jurisdiction of the proceedings shall act judicially therein. Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

CITED WITHOUT SPECIAL APPLICATION

Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

§ 95-1317. —— Vesting of title on vacation. The part so vacated, if it be a lot or tract, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a road, highway, street or alley, the same shall be attached to the lots or ground bordering on such road, highway, street or alley; and all right or title thereto shall vest in the person or persons owning the property on such side thereof, in equal proportions, according to the length or breadth of such lots or ground as the same may border on such road, highway, street or alley. [L. 1864; D. p. 927, § 7; H. § 4184; B. & C. § 2742; L. O. L. § 3279; O. L. § 3822; L. 1925, ch. 253, § 3, p. 461; O. C. 1930, § 56-716.]

Collateral References:

See 25 Am. Jur., Highways, § 128.

NOTES OF DECISIONS

Upon the closing of a street, the title reverts to the owner of the abutting premises freed from the easement. Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

A purchaser of a lot abutting on a public street acquires a possible reversionary interest in half of the street. Barton v. Portland, (1914) 74 Or. 75, 144 P. 1146.

CITED WITHOUT SPECIAL APPLICATION

Meier v. Portland Cable Ry. Co., (1888) 16 Or. 500, 19 P. 610, 1 L.R.A. 856; Huddleston v. Eugene, (1899) 34 Or. 343, 55 P. 868, 48 L.R.A. 444; Kurtz v. Southern Pac. Co., (1916) 80 Or. 213, 155 P. 367, 156 P. 794.

95-1318
A. 53 Ch. 283

§ 95-1318. —— Necessity for consent of adjoining owners: Acknowledgment and filing of consent: Limitation on rule: Prerequisites to order of vacation. But no such vacation of a road, highway, street or alley, or any part thereof, shall take place unless the consent of the person or persons owning the property immediately adjoining that part of said road, highway, street or alley to be vacated be obtained thereto in writing, which consent shall be acknowledged before some officer authorized to take acknowledgments of deeds and filed with the county clerk. Such road, highway, street or alley, or part thereof, may, nevertheless, be vacated without such consent, upon the petition of the person, persons or corporation owning two-thirds or more of the property abutting upon such road, highway, street or alley, when such road, street, highway or alley, or part thereof, has not been opened or used by the public for a period of 20 years and when such nonconsenting owner or owners have access to his, her or their property from some other public highway. However, before such order of vacation can be entered it must appear to the satisfaction of the court that such nonconsenting owner or owners have been served with notice of the pendency of such application in the same manner and for the same time as is now or may hereafter be provided for the service of the summons in an action at law. [L. 1864; D. p. 927, § 8; H. § 4185; B. & C. § 2743; L. 1907, ch. 196; L. O. L. § 3280; O. L. § 3823; L. 1925, ch. 253, § 4; L. 1929, ch. 374, § 1, p. 440; O. C. 1930, § 56-717.]

Cross References:

Service of summons in action at law, see § 1-605.

CITED WITHOUT SPECIAL APPLICATION

Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

§ 95-1319. Devolution of title on vacation of public squares and commons: Disposition of commons: Appropriation of proceeds. Whenever a public square or any part thereof shall be vacated, the property thereof shall vest in the county court, for the use of the proper county; and whenever any common or any part thereof in any incorporated town or belonging thereto shall be vacated, the same shall vest in the common council or other corporate body, for the use of such town; and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be. [L. 1864; D. p. 927, § 10; H. § 4187; B. & C. § 2745; L. O. L. § 3282; O. L. § 3825; O. C. 1930, § 56-719.]

Section 56-718, O. C. 1930, was repealed by L. 1931, ch. 259, § 10, p. 409.

See note, § 95-1331.

Collateral References:

See 20 R. C. L., Parks and Squares, § 12.

§ 95-1320. Vacation of town-site, etc., consisting of contiguous lands owned by different persons: Persons entitled to vacation: Protests of owners of lots in other additions. In all cases where two or more persons have laid out or shall hereafter lay out a town, or lands contiguous and adjoining to each other, and such town does not improve, either of the individuals holding all the legal rights, title, and interest in all the lots laid off by such party and attached, may have the same vacated as in case of a lot, street, or alley on application of the party laying out such addition or part of said town, or on the application of such person as may acquire or derive the legal title to the land and lots in such addition; and in no case shall persons purchasing lots in other additions of said town be capable of making any valid objection to said vacation if such vacation does not obstruct any public road or highway laid out and established by law. [L. 1864; D. p. 928, § 11; H. § 4188; B. & C. § 2746; L. O. L. § 3283; O. L. § 3826; O. C. 1930, § 56-720.]

See note, § 95-1331.

NOTES OF DECISIONS

The petition must show that ownership of all the lands proposed to be vacated are in the petitioner. Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

CITED WITHOUT SPECIAL APPLICATION

Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

§ 95-1321. Vacation of addition by sole owner: Procedure. If any person shall lay off an addition to any town, which does not improve, and shall be the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, may have such addition or any part thereof vacated in like manner as provided in the last preceding section. [L. 1864; D. p. 928, § 12; H. § 4189; B. & C. § 2747; L. O. L. § 3284; O. L. § 3827; O. C. 1930, § 56-721.]

See note, § 95-1331.

NOTES OF DECISIONS

The petition must show that ownership of all the lands proposed to be vacated are in the petitioner. Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013.

The courts may take judicial notice of the boundaries of a city having a legislative charter. City of Eugene v. Garrett, (1918) 87 Or. 435, 169 P. 649, 170 P. 731.

A public survey referred to in the plat sought to be vacated may be the subject of judicial notice. City of Eugene v. Garrett, (1918) 87 Or. 435, 169 P. 649, 170 P. 731.

CITED WITHOUT SPECIAL APPLICATION

Whitney v. Crittenden, (1924) 112 Or. 278, 229 P. 378; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

§ 95-1322. Appeal from order denying application to vacate. Whenever the county court or city council shall refuse the application of any person or persons, made as provided in this chapter for the vacation of any part of any town or city, such person or persons may appeal from such order refusing such application to the circuit court of the county where such town or city is situated. [L. 1866, p. 36, § 1; H. § 4190; B. & C. § 2748; L. O. L. § 3285; O. L. § 3828; O. C. 1930, § 56-722.]

See note, § 95-1331.

Collateral References:

See 25 Am. Jur., Highways, § 124.

CITED WITHOUT SPECIAL APPLICATION

Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311.

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§ 95-1323. **Liability for costs.** In case of appeal under this chapter, as well as all other proceedings under the same, the costs shall be paid by the applicant. [L. 1866, p. 36, § 2; H. § 4191; B. & C. § 2749; L. O. L. § 3286; O. L. § 3829; O. C. 1930, § 56-723.

See note, § 95-1331.

ARTICLE 2

VACATION OF STREETS, AVENUES, BOULEVARDS, ALLEYS, PLATS, PUBLIC SQUARES AND PLACES

§ 95-1331. **Filing of petition: Contents of petition: Appendix: Necessary consents: Property deemed affected: Form of consent: Acknowledgment.** Whenever any person or corporation interested in any real property in an incorporated city in this state shall desire to vacate any street, avenue, boulevard, alley, plat, public square or other public place, or any part thereof, such person or corporation may file with the city recorder, clerk, auditor or other recording officer of said city, a petition therefor. Such petition shall set forth a description of the street, avenue, boulevard, alley, plat, public square or other public place, or part thereof proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation, and there shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of said street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be given in writing

and duly acknowledged before an officer authorized to take acknowledgments of deeds, and such consent shall be attached to the petition for such vacation. [L. 1931, ch. 259, § 1, p. 405; O. C. 1935 Supp., § 56-730.]

Repeal. Section 10 of L. 1931, ch. 259, p. 409, provides: Section 56-718, Oregon Code 1930, is hereby repealed. Nothing contained herein shall be taken as repealing sections 56-719, 56-720, 56-721, 56-722 and 56-723, Oregon Code 1930 [§§ 95-1319, 95-1320, 95-1321, 95-1322 and 95-1323 herein].

Cross References:

Authority of city planning commissions, see §§ 95-2307, 95-2308.

Collateral References:

See 25 Am. Jur., Highways, § 117 et seq.; 20 R. C. L., Parks and Squares, § 12.

Authority of city to vacate tract of land included within city limits, see Opinions of the Attorney-General, 1932-1934, p. 551.

FORMER STATUTE CITED

Merchant v. Marshfield, (1899) 35 Or. 55, 56 P. 1013; Barton v. Portland, (1914) 74 Or. 75, 144 P. 1146; Learned v. Holbrook, (1918) 87 Or. 576, 170 P. 530, 171 P. 222; Menstell v. Johnson, (1928) 125 Or. 150, 262 P. 853, 266 P. 891, 57 A.L.R. 311; Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

§ 95-1332. **Presentation of petition: Examination and filing: Notice of consideration by council.** Such petition shall be presented to the city recorder, clerk, auditor or other recording officer of said city, who shall examine the same. If found by him to be sufficient he shall file the same and inform at least one of the petitioners when such petition will come before the council or governing body, but a failure to give such information shall not be in any respect a lack of jurisdiction for the council or governing body to proceed thereon. [L. 1931, ch. 259, § 2, p. 406; O. C. 1935 Supp., § 56-731.]

§ 95-1333. **Action by council: Denial: Fixing time for hearing.** The council, or governing body, shall, when said petition is presented, or at any time thereafter, determine whether notice thereon shall be given. If it appear to the council or governing body that such petition should be denied without the giving of notice and the hearing of objections, the council or governing body may deny the same after notice to the petitioners of such proposed action. But if it seems to the council or governing body that no reason manifestly exists why said petition should not be allowed in whole or in part, the council or governing body shall fix a time for a formal hearing upon said petition. [L. 1931, ch. 259, § 3, p. 406; O. C. 1935 Supp., § 56-732.]

§ 95-1334. **Notice of hearing: Contents of notice: Time for posting or first publication: Advancement of costs: Disposition of sum advanced.** The city recorder, clerk, auditor or other recording officer of said city shall then give notice by publishing a notice in the city official newspaper once each week for four consecutive weeks, and if there be no newspaper published in such incorporated city then such notice shall be given by written notice thereof posted in three of the most public places in said city. Such notices shall describe the street, avenue, boulevard, alley, plat, public square, or other public place, or part thereof, covered by such petition, give the date when such petition was filed, the name of at least one of the petitioners and the date when the said petition, together with any objection or remonstrance, which may be made in writing and filed with the city recorder, clerk, auditor or other recording

officer of said city prior to the time of hearing, will be heard and considered. Within five days after the first day of publication of said notice the city recorder, clerk, auditor or other recording officer of said city shall post or cause to be posted at or near each end of said proposed vacation a copy of said notice which shall be headed "Notice of Street Vacation," provided that if such petition be for the vacation of a plat then the same shall be headed "Notice of Plat Vacation," and if it be for both it shall be headed "Notice of Plat and Street Vacation," and such notice shall be posted in at least two conspicuous places in such proposed vacation of such street, and/or plat. The posting and first day of publication of such notice shall be not less than twenty-eight days before the time for such hearing. The city recorder, clerk, auditor or other recording officer of said city shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, the cost of such posting, and such other expenses as may be anticipated, which amount shall be held by the city recorder, clerk, auditor or other recording officer of said city until the actual cost shall have been ascertained, when the amount of the cost shall be paid into the city treasury and the surplus, if any, refunded to the person who deposited the same. [L. 1931, ch. 259, § 4, p. 407; O. C. 1935 Supp., § 56-733.]

§ 95-1335. Proceedings at hearing: Determination and decision: Discretion. At the time fixed by the council or other governing body for hearing said petition and the objections filed thereto, if any, or at any postponement or continuance of such matter, the council or governing body shall hear the petition and objections and shall ascertain and determine whether the consent of the owners of the requisite area has been obtained and whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or part or parts thereof, and if such matters be determined in favor of the petition the council or governing body shall by ordinance make such determination a matter of record and vacate such plat or street or part or parts thereof. Otherwise the council or governing body shall deny such petition. The council or governing body may upon the hearing of any such petition grant the same in part and deny the same in part, and/or make such reservations as appear to be for the public interest. [L. 1931, ch. 259, § 5, p. 407; O. C. 1935 Supp., § 56-734.]

NOTES OF DECISIONS

The statute grants a city council powers substantially similar to those elsewhere conferred upon the county court. Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

A city council may impose reasonable restrictions and limitations in vacation of a public street. Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

An ordinance vacating a street may be conditioned upon the performance of an act promised by the petitioner. Portland Baseball Club v. Portland, (1933) 142 Or. 13, 18 P. (2d) 811.

§ 95-1336. Proceedings on council's own motion: Limitations on power: Provision for damages: Joinder of streets in proceeding: Certificate showing payment of city liens and taxes: Appeal. The council or governing body shall have authority to initiate such vacation proceedings and to make such vacation without a petition or consent of property

owners; provided, however, that notice be given as hereinbefore provided, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis above provided, shall object in writing thereto, nor shall any street area be vacated without the consent of the abutting property if such vacation will substantially affect the market value of such property, unless the council or governing body provide for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the charter of such city may provide. Two or more streets, alleys, avenues and/or boulevards, or parts thereof, may be joined in one proceeding, provided that they intersect or are adjacent and parallel to each other. No ordinance for the vacation of a plat, or part of a plat, shall be passed by the council or governing body until such time as the city recorder, clerk, auditor or other recording officer of said city shall have filed in his office or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated. Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings shall have the right to appeal to the circuit court of the county where such town or city is situated in the manner provided by the charter of such city or town or if there be no provision for such appeal in any such charter then such appeal shall be taken within the time and in substantially the manner as is provided for taking an appeal from justice or district court in civil cases as provided by law [L. 1931, ch. 259, § 6, p. 408; O. C. 1935 Supp., § 56-735.]

Cross References: Appeal from justice court, see § 28-401 et seq.

§ 95-1337. Title to vacated areas: Streets: Public squares. The title to the street or other public area vacated shall attach to the lots or lands bordering on such area in equal portions, except where the area has been originally dedicated by different persons, it being intended that original boundary lines shall be adhered to and the street area which lies on one side of such boundary line shall attach to the abutting property on such side and the street area which lies upon the other side of such boundary line shall attach to the property on such side, in all cases where the fee title to such area has not been otherwise disposed of. If a public square is vacated the title thereto shall vest as provided by section 95-1319. [L. 1931, ch. 259, § 7, p. 408; O. C. 1935 Supp., § 56-736.]

NOTES OF DECISIONS

The buyer of a lot also acquires a possible reversionary interest in the portion of the street bordering thereon. Barton v. Portland, (1914) 74 Or. 75, 144 P. 1146.

§ 95-1338. Filing of copies of ordinance: Records of recorder: Costs. A certified copy of the ordinance vacating any street or plat area shall be filed for record with the recorder of the county, and there shall also be filed with said recorder any map or plat or other record in regard thereto which may be required or provided for by law, and said recorder shall make such record thereof and such indexes and notations concerning the same as may be provided by law. The petitioner for such vacation shall bear the cost thereof and the cost of preparing and filing the

certified copy of the ordinance, and such map as may be needed. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor. [L. 1931, ch. 259, § 8, p. 409; O. C. 1935 Supp., § 56-737.]

§ 95-1339. Vacations for purposes of rededication: Requisites of petition: Authority of council. No street shall be vacated upon the petition of any person or corporation when it is proposed to replat or rededicate any street or streets or portion or portions thereof in lieu of the original unless such petition shall be accompanied by a plat showing the proposed manner of replatting or rededicating, and if such proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the council or governing body, the council or governing body shall have authority to and shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication. [L. 1931, ch. 259, § 9, p. 409; O. C. 1935 Supp., § 56-738.]

§ 95-1340. Nature and operation of statute. The provisions of this act shall be alternative to the provisions of the charter of any incorporated city or town and nothing herein contained shall in anywise affect or impair the charter or other provisions of such cities and towns for the preservation of public access to and from transportation terminals and navigable waters. [L. 1931, ch. 259, § 11, p. 409; O. C. 1935 Supp., § 56-740.]

ARTICLE 3

VACATION FOR, AND AUTHORIZATION OF, FACILITIES FOR COMMERCE AND TRANSPORTATION

§ 95-1341. Vacations, etc., in municipalities included in port districts: Objectives of statute: Who may make application: Authority of common council: Permitting occupation of street: Vacating street along railroad easement. To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district now or hereafter organized as a municipal corporation in the state of Oregon, the common council or other governing body of such cities and towns may, upon the application of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within said city or town, or owner of property abutting any such terminal:

INSERT THE TONGUE OF THIS SUPPLEMENT UNDER THAT OF THE 1943 SUPPLEMENT IN POCKET AT BACK OF VOLUME

DO NOT DISCARD OR REMOVE THE 1943 SUPPLEMENT

OREGON COMPILED LAWS ANNOTATED

1944-1947 SECONDARY POCKET PART FOR VOLUME 6

This supplement brings the original volume down to and including

Or. Laws 1947
44 Or. Adv. Sheets, No. 1
(....) P. 2d (....)
91 L. Ed adv. opn.
157 F. 2d
68 F. Supp.
55 Am. Jur.
165 A.L.R.
Opns Atty Gen. 1944-1946
25 Or. L. Rev. No 4

Note: All 1947 laws, with the exception of emergency measures, are effective July 5, 1947, unless otherwise provided by their own terms.

EXPLANATORY NOTE

The investigator will refer herein for any new statutes enacted since compilation of the original work and the 1943 Supplement. After consulting a section in Oregon Compiled Laws Annotated and the 1943 Supplement, reference should be made to the corresponding section herein for legislative changes and any new annotation material. The omission of sections indicates that there is no legislative change or new annotation material for such sections. Cross-references are to sections in the original work unless otherwise indicated.

BANCROFT-WHITNEY COMPANY
SAN FRANCISCO
1947

distances of all boundary lines shall be shown. [Am. L. 1947, ch. 346, § 2.]

§ 95-1306a. Approval of plan: Application: Tentative map: Final map and tracing: Maximum error of closure: Checking plat: Before any subdivision of land may be made and recorded, the subdivider or his authorized agent or representative shall make an application in writing to the nearest planning agency of the county or to the county court if there is no planning agency, for the approval of a plan of subdivision, and at the same time submit a tentative map showing the general design of the proposed subdivision. Any approval of the tentative map shall not constitute final acceptance of the plat for recording. No subdivider shall submit a plat of a subdivision for record, until all the requirements for the survey and the final may have been met. The survey and final map shall be made by a surveyor who is a registered engineer or a licensed land surveyor. The final map shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot shall be numbered and each block shall be lettered or numbered. Each and all lengths of the boundaries of each lot shall be shown. Each street shall be named. With the final map the subdivider also shall file a tracing of the final map, upon which the surveyor shall make affidavit that said tracing is an exact copy of the final map. The subdivider shall provide without cost one print each from said tracing for the county assessor and the county surveyor. The survey for the final map shall be of such accuracy that the error of closure shall not exceed one foot in 4,000 feet. Before approving the plat as required by section 95-1310, O. C. L. A., the county surveyor shall sufficiently check the plat and computations for making the plat, to determine if they comply with the provisions of this act and with the requirements of the planning agency or the county court. For performing such service the county surveyor shall collect from the subdivider a fee not to exceed twenty-five dollars ($25). [L. 1947, ch. 346, § 3.]

§ 95-1312. Records of vacations: Indexing: Tracing and notation on plat: Fees: Validation of prior vacations. If any town, plat, or plats of any city, town or plat is vacated by the county court of any county or municipal authority of any city or town within any county, the vacation order or ordinance shall be recorded in the deed records of said county and shall be indexed under the letter "V", title "Vacations", and whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, trace upon the original plat, with red ink, the portion of said town, city or plat so vacated and write therein the word "Vacated", with appropriate reference by number to notation, and shall make a notation on the original plat, in red ink, giving the book and page of the deed record in which said order or ordinance is recorded. The fees for performing the above services shall be as follows, to wit: For recording in the county deed records, the county clerk or county recorder shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the original plat, the county clerk or county recorder shall collect two dollars and fifty cents ($2.50), to be paid by him to the county surveyor. All vacations heretofore had where plats as required by law have not been filed shall, upon compliance with this section, become complete and be legalized. [Am. L. 1947, ch. 468, § 1.]

§ 95-1314.

Collateral References: County courts have jurisdiction to vacate platted areas, § 13-209 transferring certain of county court's jurisdiction to circuit courts being inapplicable, see Opns. Atty. Gen., 1942-1944, p. 323.

ARTICLE 2

VACATION OF STREETS, AVENUES, BOULEVARDS, ALLEYS, PLATS, PUBLIC SQUARES AND PLACES

§ 95-1331.

Collateral References: See 39 Am. Jur., Parks and Squares, § 33.

In vacating plats pursuant to § 86-143, the county court is not required to follow the general procedure provided by this section, the procedure provided by § 86-143 being complete and exclusive, see Opns. Atty. Gen., 1942-1944, p. 367.

CHAPTER 14

FISCAL MATTERS

§ 95-1403. Sinking fund for purchase of equipment: Mode of creation. [Repealed, L. 1945, ch. 453, § 8.]

Cross References: Financing purchase of equipment, see §§ 97-901—97-907, this Supp.

ated, to act at such election, then fied electors present at the polls, roceeding to vote, may choose r to act in his place from among ber who shall duly qualify as ! before entering upon the dis- ? his duties as judge, or clerk, at ction.. [Am. L. 1945, ch. 388, 947, ch. 335, § 1; effective April

al References: A special municipal lled for the purpose of voting upon on of annexation of territory should it single question and other matters be submitted, see Opns. Atty. Gen., p. 71.

2a. Annexation of territory to dated: Majority of votes favor- notice published. All annexa- territory to cities prior to the of this act hereby are declared lections have been held in such annexed and in the city and a of the votes cast in the terri- the city respectively have been to such annexation and a notice a description of the area or be annexed and the time and uch election has been published paper of general circulation in ing city and area or areas at four weeks prior to such elec- 1947, ch. 164, § 1.]

b. —— Consent of majority y owners: Majority of votes Notice published. All annex- territory to cities prior to the ! this act hereby are declared majority of the owners of the rty in the area annexed gave en consent thereto, and a ma- ne votes cast in the city have able to such annexation, and a taining a description of the as to be annexed and the time of such election has been pub- newspaper of general circula- annexing city at least once prior to such election. [L. 54, § 2.]

CHAPTER 10

RS AND CONSOLIDATIONS

. Authority to merge: Con- erning: Time for elections: late of merger. Any city, nicipal corporation now exist- state, or which hereafter may ated therein, may surrender

its charter and be merged into an adjoining city, town or municipal corporation in the same or another county; provided, that cities, towns or municipal corporations having a river as a common boundary, for the purpose of this act, shall be deemed to be adjoining. No cities, towns or municipal corporations may become merged unless a majority of the electors of the two such cities, towns or municipal corporations affected authorize the surrender and merger as provided herein. The elections at which the surrender and merger are authorized in such two cities, towns or municipal corporations need not be held simultaneously, but it shall be sufficient if both are held within a period of one year; and the surrender and merger shall become effective 30 days after both cities, town or municipal corporations shall have authorized such surrender and merger. [Am. L. 1947, ch. 321; § 3.]

Collateral References: See 37 Am. Jur., Municipal Corporations, § 21.

§ 95-1001a. —— Situs of cities. For the purpose of the administration of all laws relating to incorporated cities other than the provisions of section 4, chapter 453, Oregon Laws 1941, as amended, every city in this state shall be deemed to have its legal situs in the county in which the seat of the city government is situated. [L. 1947, ch. 321, § 1.]

§ 95-1001b. —— Jurisdiction of government. Notwithstanding any other provision of law the jurisdiction and application of government of cities in this state shall be coextensive with the exterior boundaries of such cities, regardless of county lines. [L. 1947, ch. 321, § 2.]

CHAPTER 13

PLATTING AND VACATION OF TOWNSITES, ETC.

ARTICLE 1

GENERAL PROVISIONS

§ 95-1301.

Collateral References: See 37 Am. Jur., Municipal Corporations, § 26.

§ 95-1301a. Definitions. The term "subdivide land" shall mean to partition into four or more units, by division or subdivision, any tract or registered plat of land, shown on the last preceding tax roll as a unit or contiguous units, for the transfer of ownership or for building development, whether immediate or future; provided, however, that the division of land for agricultural purposes into tracts containing five or more acres and not involving any new thoroughfare, or the widening of any existing thoroughfare, shall be exempt.

The term "subdivision" shall mean either (1) an act of subdividing land or (2) a tract of land subdivided as defined above. [L. 1947, ch. 346, § 1.]

§ 95-1304. Marking initial point of plat: Nature of monument: Street intersections and boundary changes: Lot corners: Recording monuments. The initial point of all town plats, plats to all additions to towns, all cemetery plats, and of all plats of all lands divided into lots and blocks with streets, alleys, avenues, or public highways thereon, dedicated to public use, hereafter made, shall be marked with a monument, either of stone, concrete or galvanized iron pipe; if stone or concrete be used it shall not be less than six inches by six inches by twenty-four inches, and if galvanized iron pipe be used it shall not be less than two inches in diameter and three feet long, which said monument shall be set or driven six inches below the surface of the ground, and the location of the same shall be with reference to some known corner established by the United States survey. The intersections of all streets, avenues and public highways and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods; if stone or concrete be used they shall not be less than 6 inches by 24 inches, if galvanized iron be used they shall not be less than 1 inch in diameter and 30 inches long, and if iron or steel rods be used they shall not be less than five-eighths of an inch in least dimension and 30 inches long. Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth (1/10) of a foot. All lot corners shall be marked with monuments of either galvanized iron pipe not less than one-half inch in diameter or iron or steel rods not less than one-half inch in least dimension, and two feet long. The locations and descriptions of all monuments shall be carefully recorded upon the plat, and the proper courses and

https://pages.uoregon.edu/mjdennis/courses/hst469_donation.htm

The Donation Land Claim Act (1850)

An Act to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the said Public Lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a surveyor-general shall be appointed for the Territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the Territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of the Ohio, except as hereinafter provided.

Sec. 2. And be it further enacted, That the said surveyor-general shall establish his office at such place within the said Territory as the President of the United States may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter-yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is, appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office; and the further sum of one thousand dollars per annum for office rent, fuel, books, stationary, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

Sec. 3. And be it further enacted, That if, in the opinion of the Secretary of the Interior, it be preferable, the surveys in the said Territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the Secretary of the Interior of other Department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as Congress may from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line, and meridian to be surveyed, marked, and established, in the usual manner, at or near the mouth of the Willamette River; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade Mountains and the Pacific Ocean, and south and north of the Columbia River: Provided, however, That none other than township lines shall be run where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

Sec. 4. And be it further enacted, That there shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of

December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one half to himself and the other half to his wife, and enter the same on the records of his office; and in all cases where such married persons have compiled with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon, or since, and either shall have died before patent issues, the survivor and children or heirs of the deceased shall be entitled to the share or interest of the decreased in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: Provided, That no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the surveyor-general of Oregon, record evidence of his naturalization as a citizen of the United States has been completed; but if any alien, having made his declaration of intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: Provided, further, That in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: Provided, further, That all future contracts by any person or persons entitled to the benefits of this act, for the sale of the land to which he or they may be entitled under this act before he or they have received a patent therefor, shall be void: Provided, further, however, That this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain relative to the Oregon Territory, to claim both under this grant and the treaty, but merely to secure them the election, and confine them to a single grant of land.

Sec. 5. And be it further enacted, That to all white male citizens of the United States or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to and settling in said Territory between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male citizens, not hereinbefore provided for, becoming one and twenty years of age, in said Territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is, granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year after becoming twenty-one years of age as aforesaid, the quantity of one half section, or three hundred and twenty acres, one half to the husband and the other half to the wife in her own right, to be designated by the surveyor-general as aforesaid: Provided always, That no person shall ever receive a patent for more than one donation of land in said Territory in his or her own right: Provided, That no mineral lands shall be located or granted under the provisions of this act.

Sec. 6. And be it further enacted, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the surveyor-general, to be appointed under this act, of the precise tract or tracts claimed by them respectively under this law, and in all cases it shall be in a compact form; and where it is practicable by legal

subdivisions; but where that cannot be done, it shall be the duty of the said surveyor-general to survey and mark each claim with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in each case not to exceed the price paid for surveying the public lands. The surveyor-general shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily, on the township plats, the tract or tracts so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the surveyor-general: Provided, That after the first December next, all claims shall be bounded by lines running east and west, and north and south: And provided, further, That after the survey is made, all claims shall be made in conformity to the same, and in compact form.

Sec. 7. And be it further enacted, That within twelve months after the surveys have been made, or, where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act shall prove to the satisfaction of the surveyor-general, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act has been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the surveyor-general, or other officer appointed by law for that purpose, shall issue certificates under such rules and regulations as may be prescribed by the commissioner of the general land office, setting forth the facts of the case, and specifying the land to which the parties are entitled. And the said surveyor-general shall return the proof so taken to the office of the commissioner of the general land office, and if the said commissioner shall find no valid objections thereto, patents shall issue for the land according to the certificates aforesaid, upon the surrender thereof.

Sec. 8. And be it further enacted, That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent.

Sec. 9. And be it further enacted, That no claim to a donation right under the provisions of this act, upon sections sixteen or thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for governmental purposes, unless the residence and cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

Sec. 10. And be it further enacted, That there be, and hereby is, granted to the Territory of Oregon the quantity of two townships of land in the said Territory, west of the Cascade Mountains, and to be selected in legal subdivisions after the same has been surveyed, by the legislative assembly of said Territory, in such a manner as it may deem proper, one to be located

north, and the other south, of the Columbia River, to aid in the establishment of the university in the Territory of Oregon, in such manner as the said legislative assembly may direct, the selection to be approved by the surveyor-general.

Sec. 11. And be it further enacted, That what is known as the "Oregon city claim," excepting the Abernathy Island, which is hereby confirmed to the legal assigns of the Willamette Milling and Trading Companies, shall be set apart and be at the disposal of the legislative assembly, the proceeds thereof to be applied by said legislative assembly to the establishment and endowment of a university, to be located at such place in the Territory as the legislative assembly may designate: Provided, however, That all lots and parts of lots in said claim, sold or granted by Doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the commissioner of the general land office, by the surveyor-general, and patents to issue on said certificates, as in other cases: Provided, further, That nothing in this act contained shall be so construed or executed, as in any way to destroy or affect any rights to land in said Territory, holden or claimed under the provisions of the treaty or treaties existing between this country and Great Britain.

Sec. 12. And be it further enacted, That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the surveyor-general, who is hereby authorized to administer all such oaths or affirmations, or before some other competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly as agent for, or in the employment of others, in making such claims; and that they have made no sale or transfer, or any arrangement or agreement for any sale, transfer, or alienation of the same, or by which the said land shall ensure to the benefits of any other person. And all affidavits required by this act shall be entered of record, by the surveyor-general, in a book to be kept by him for that purpose; and on proof, before a court of competent jurisdiction, that any such oaths or affirmations are false or fraudulent, the persons making such false or fraudulent oaths or affirmations are false or fraudulent, the subject to all the pains and penalties of perjury.

Sec. 13. And be it further enacted, That all questions arising under this act shall be ajudged by the surveyor-general as preliminary to a final decision accord to law; and it shall be the duty of the surveyor-general, under the direction of the commissioner of the general land office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

Sec. 14. And be it further enacted, That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the President of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act; Provided, That if it shall be deemed necessary, in the judgement of the President, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War

to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled hereto, out of any money not otherwise appropriated.

Approved, September 27, 1850.

C. WAYNE COOK LAND SERVICES
3180 ALDERCREST
TILLAMOOK, OREGON
(503) 842 8380

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3180 ALDERCREST
TILLAMOOK, OREGON
(503) 842 8380

SITE SURVEY FOR
VON SEGGERN, BERG, LOCKWO
TAX LOTS 3000, 3100, 3104, 3203 & 3204, NE
TILLAMOOK COUNTY, O
JUNE, 2021

Allison Hinderer

From: Sarah Mitchell <sm@klgpc.com>
Sent: Thursday, June 3, 2021 3:53 PM
To: Allison Hinderer; Sarah Absher
Cc: Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispdx@gmail.com); Rachael Holland (rachael@pacificopportunities.com)
Subject: RE: EXTERNAL: 851-21-000086-PLNG-01 Applicants' Submittal Part 1

It is 46MB. I'll have to split it into 5 parts. I'll send now.

From: Allison Hinderer <ahindere@co.tillamook.or.us>
Sent: Thursday, June 3, 2021 3:51 PM
To: Sarah Mitchell <sm@klgpc.com>; Sarah Absher <sabsher@co.tillamook.or.us>
Cc: Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispdx@gmail.com) <mikeellispdx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>
Subject: RE: EXTERNAL: 851-21-000086-PLNG-01 Applicants' Submittal Part 1

Hi Sarah,

Our IS department doesn't like us to download things from an external server, can you please provide Exhibit E in a PDF?

Allison Hinderer | Offiice Specialist 2
TILLAMOOK COUNTY | Community Development | Surveyor's Office
1510-C Third Street
Tillamook, OR 97141
Phone (503)842-3423 ext. 3423
ahindere@co.tillamook.or.us

From: Sarah Mitchell <sm@klgpc.com>
Sent: Thursday, June 3, 2021 3:32 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>; Allison Hinderer <ahindere@co.tillamook.or.us>
Cc: Wendie Kellington <wk@klgpc.com>; Bill and Lynda Cogdall (jwcogdall@gmail.com) <jwcogdall@gmail.com>; Bill and Lynda Cogdall (lcogdall@aol.com) <lcogdall@aol.com>; Dave and Frieda Farr (dfarrwestproperties@gmail.com) <dfarrwestproperties@gmail.com>; David Dowling <ddowling521@gmail.com>; David Hayes (tdavidh1@comcast.net) <tdavidh1@comcast.net>; Don and Barbara Roberts (donrobertsemail@gmail.com) <donrobertsemail@gmail.com>; Don and Barbara Roberts (robertsfm6@gmail.com) <robertsfm6@gmail.com>; evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com) <jeffklein@wvmeat.com>; Jon Creedon (jcc@pacifier.com) <jcc@pacifier.com>; kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net) <michaelmunch@comcast.net>; Mike and Chris Rogers (mjr2153@aol.com) <mjr2153@aol.com>; Mike Ellis (mikeellispdx@gmail.com) <mikeellispdx@gmail.com>; Rachael Holland (rachael@pacificopportunities.com) <rachael@pacificopportunities.com>
Subject: EXTERNAL: 851-21-000086-PLNG-01 Applicants' Submittal Part 1

Hi Sarah and Allison,

Exhibit E to today's applicant submittal in 851-21-000086-PLNG-01 is too large to email, so I am provided it via this Dropbox link: https://www.dropbox.com/s/rmnhzrxbp9b0j1w/Exhibit%20E%20-%20May%2027%20Hearing%20Powerpoint%20UPDATED%20ONE%20USED.pdf?dl=0. Would you please confirm your receipt? The rest of the applicants' submittal will follow under separate cover. Thank you.

Best,
Sarah M.

Sarah C. Mitchell | Associate Attorney
P.O. Box 159
Lake Oswego, OR 97034
(503) 636-0069 office
(503) 636-0102 fax
sm@klgpc.com
www.wkellington.com

Pine Beach Combined Application for Shoreline Protection

Tillamook County Planning Commission
May 27, 2021

Presented by:
Wendie L. Kellington, Kellington Law Group, PC
P.O. Box 159, Lake Oswego, Or 97034

KELLINGTON LAW GROUP, PC

Subject Properties

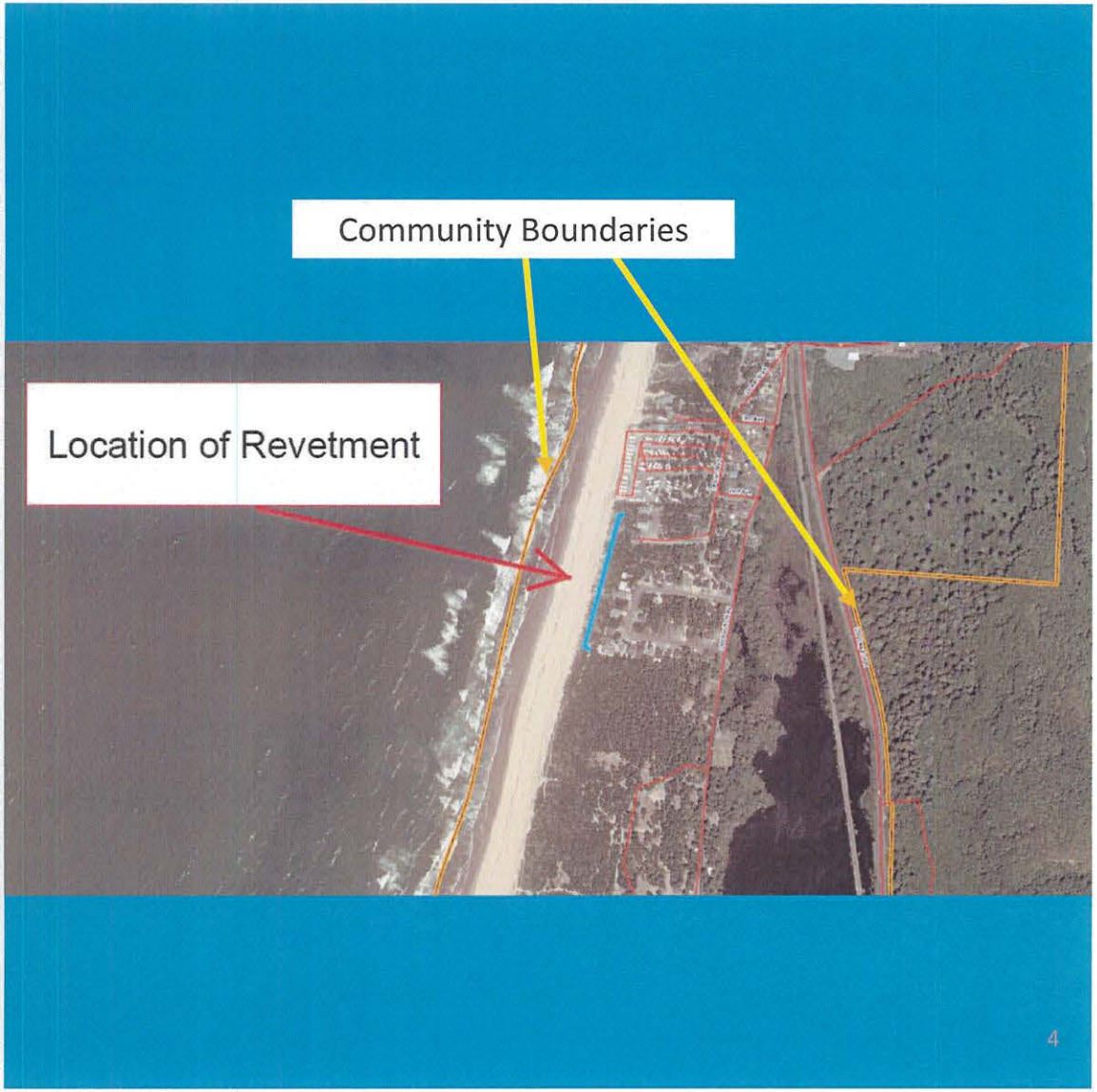
- Avoiding a piecemeal approach, the owners of 15 properties working together seek approval of critically needed shoreline protection.
- Proposal is supported by the Pine Beach HOA.
- Pine Beach Loop (Pine Beach Subdivision – first platted 1932; replatted 1994) and Ocean Blvd. (George Shand tracts platted 1950).

KELLINGTON LAW GROUP, PC

Proposed Exception Area and Adjacent Lands Map

KELLINGTON LAW GROUP, PC


Barview -
Watseco -
Twin Rocks
Community Area
Location of Revetment
Barview - Watseco - Twin Rocks
Roads


Community Boundaries
Location of Revetment

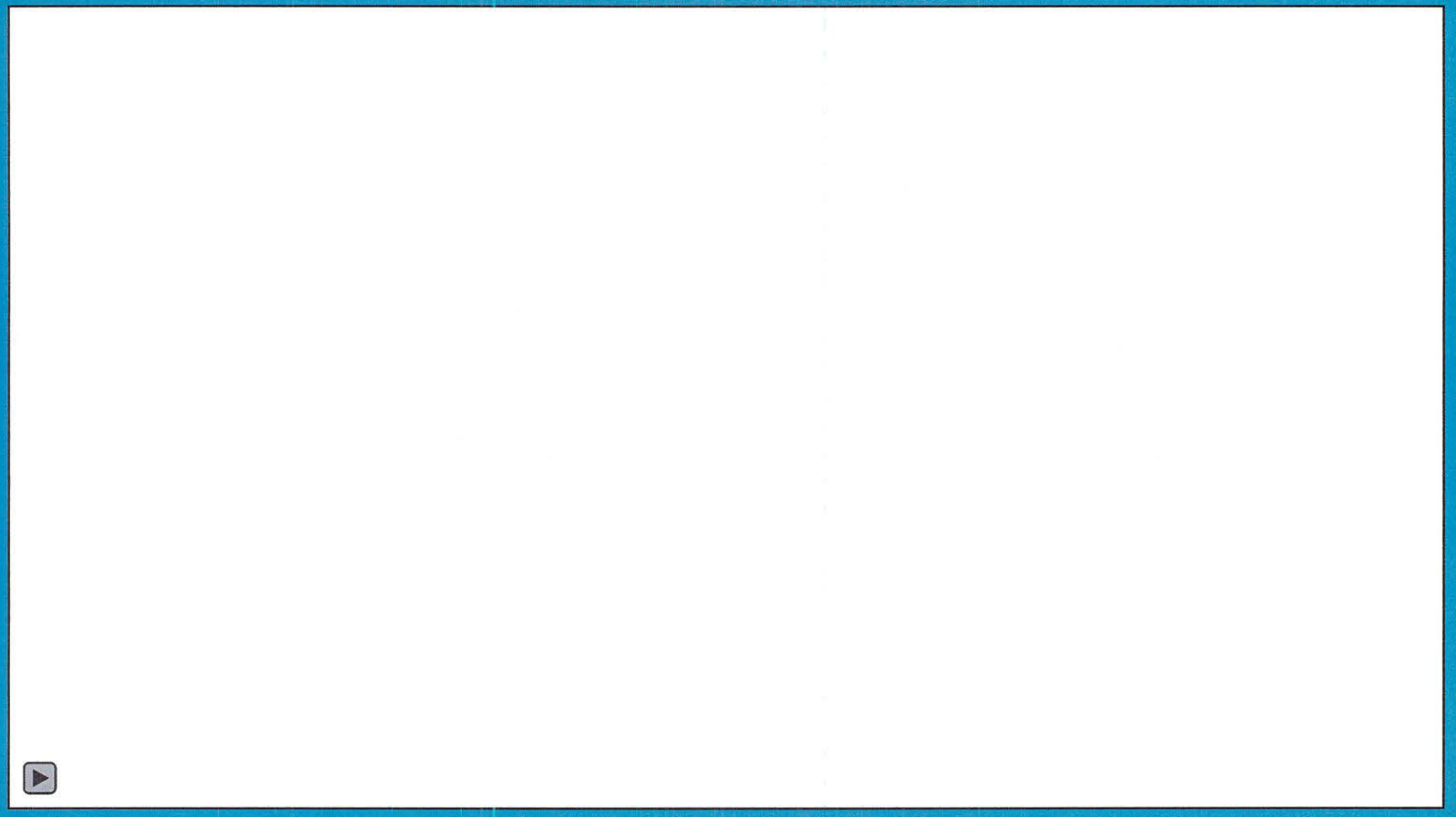
Subject Properties

KELLINGTON LAW GROUP, PC

Why the BPS is Sought: the properties and infrastructure are in imminent peril

- Retrograding beach since late 1990s
- King Tides in 2020 and 2021 reached oceanfront homes+
- Continued significant threat of flooding
- At risk is not only homes, but public water and sewer infrastructure.
- BPS protects public and private investments; avoids significant environmental harm from parts of destroyed homes and broken sewer and water pipes; broken electrical connections, gas connections; protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity or would cause significant strain the district's resources.
- Torn out infrastructure would cause dangerous service disruptions to the larger community.

January 12, 2021 Tides Flooding Pine Beach Properties



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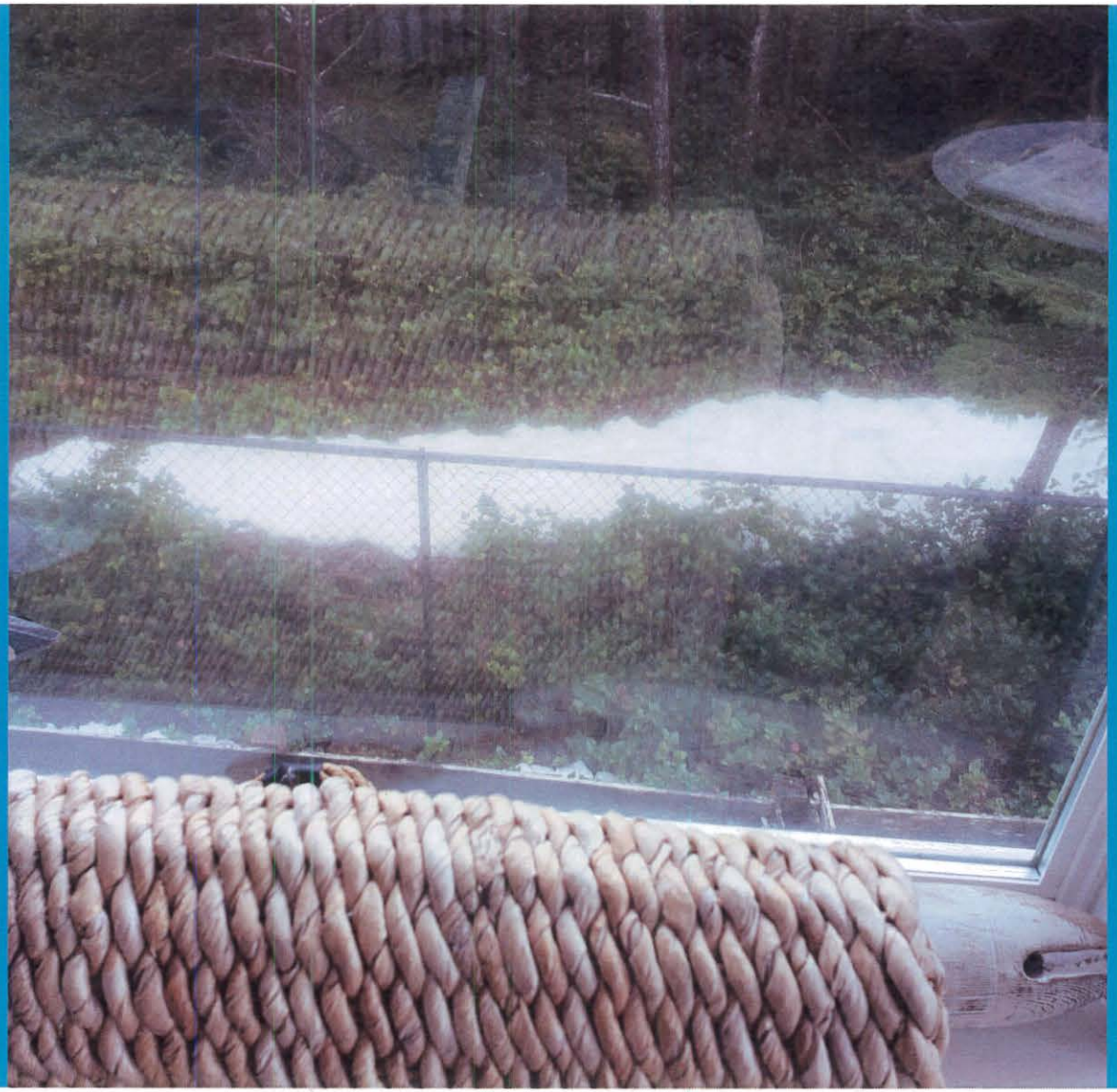

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KELLINGTON LAW GROUP, PC

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KELLINGTON LAW GROUP, PC

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LAW GROUP, PC

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LAW GROUP, PC

Properties and infrastructure are now in imminent peril

- More than $10 million in property value at risk of being lost.
- In addition to infrastructure (public water and sewer, roads, utilities)

Real Market Value Based on 2020 County Tax Assessment Reports

Account #	Map #	RMV
399441	1N1007DD00114	$1,575,520
399444	1N1007DD00115	$657,960
399447	1N1007DD00116	$834,070
399450	1N1007DD00117	$316,730
399453	1N1007DD00118	$710,300
399456	1N1007DD00119	$316,730
399459	1N1007DD00120	$705,120
399462	1N1007DD00121	$680,640
399465	1N1007DD00122	$698,930
399468	1N1007DD00123	$1,138,890
62425	1N1007DA03000	$690,130
62611	1N1007DA03100	$698,310
355715	1N1007DA03104	$636,220
62719	1N1007DA03203	$312,720
322822	1N1007DA03204	$312,720
	TOTAL:	$10,284,990

TOTAL: **$10,284,990**

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Properties and infrastructure are now in imminent peril

- Between 1994-2021, the shoreline has receded 142 feet.

EXHIBIT F
Page 3 of 26

Table 1. Summary of Loss of Property from 1994 to 2021

Year	Distance from Western Edge of Oceanfront Homes along Pine Beach Development and Ocean Boulevard Properties (ft)	Loss of Property since 1994 (ft)
1994	221	0
2000	138	-83
2005	138	-83
2012	86	-135
2021	79	-142

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The problem explained in graphics

Figure 2. Top of shoreline for the period between 1994 and 2021

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1994

Beach Erosion History – Google Earth

1994

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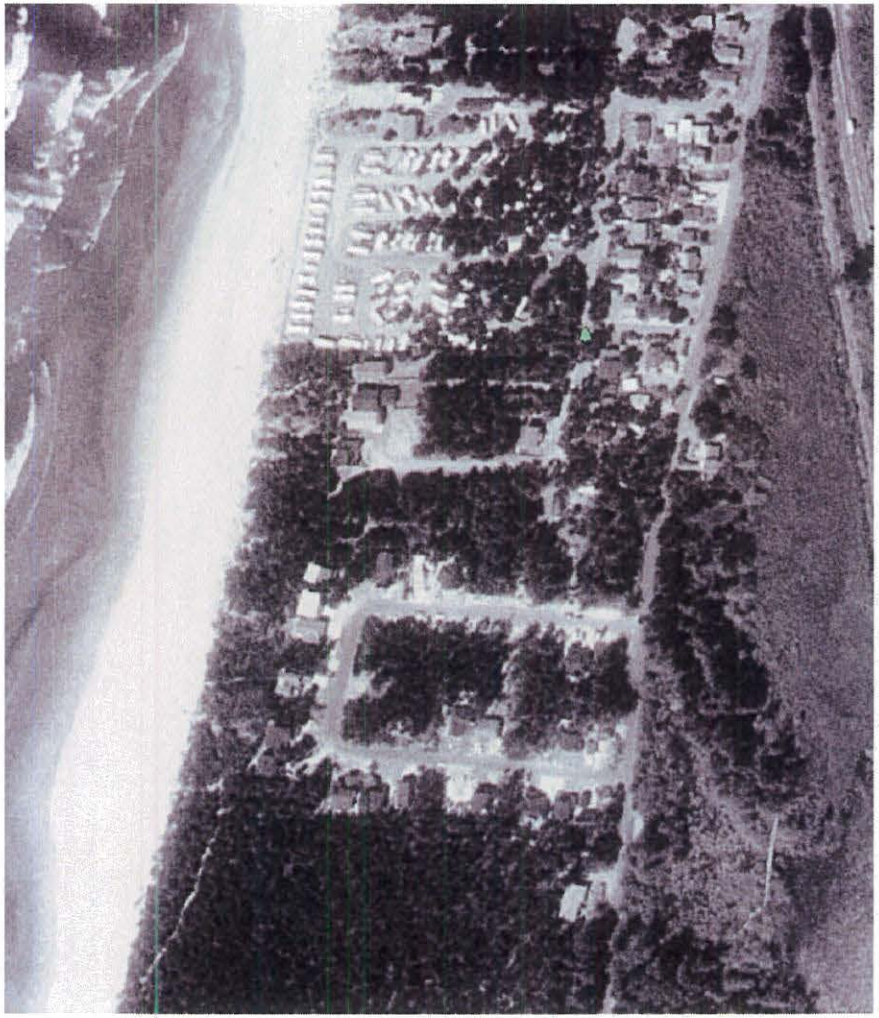
2000



2000

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8/2005

August 2005

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2011

2011

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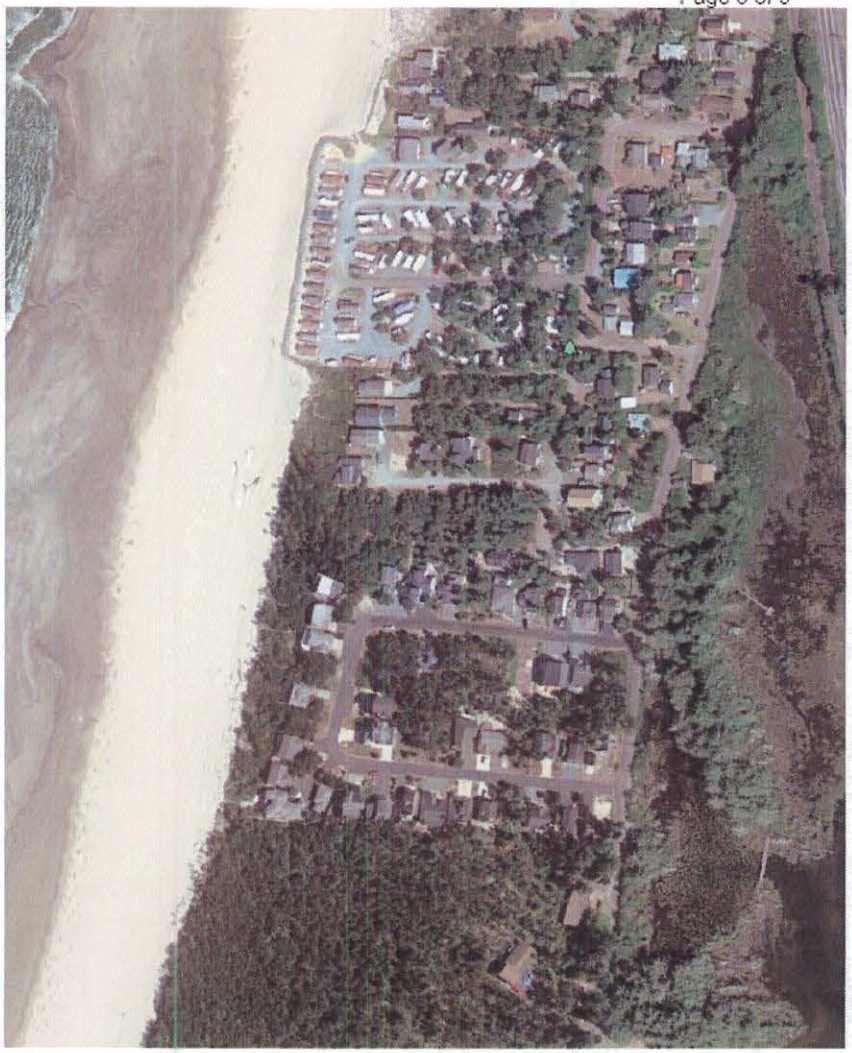
2014



2014

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2016

2016

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2017

2017

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2020

2020

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Owners – personal responsibility
Approval authority rests entirely with Tillamook County

- The beachfront protective structure ("BPS") is not on beach.
- The BPS is entirely in the backyards of the properties it will protect.
- BPS is entirely ***east*** of OPRD jurisdiction – east of established vegetation/SVL;
- DLCD approval not required – acknowledged urban unincorporated community with acknowledged appropriate residential development rights.
- △ Tillamook County is only the approval authority - local control.

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Legal Principles – the Easy Ones

1. Properties are already committed to urban residential development under acknowledged planning program that applies.
2. Goal 18 has two parts – the part that supports "appropriate development" and the part that prohibits development.
3. The properties are acknowledged under the "appropriate development" part.
4. The properties are committed to urban residential development because that is what the acknowledged planning program approves and requires for both the 11 built lots and the 4 that have only public infrastructure.
5. The easy, completely defensible decision here is to find that all the properties are entitled to a Goal 18, IM 2 and Goal 18, IM 5 exception because they are committed to the acknowledged planning urban residential development program - the "appropriate development" prong of Goal 18 - not the "prohibit development" prong of Goal 18.

You do not have to rely on the existing goal exceptions to make this finding

- You rely only on the existing and acknowledged planning program.
- There is no rule, no statute, no local code, no policy, nothing: that makes acknowledged planning programs irrelevant to whether land is committed to the existing and acknowledged planning program that governs them.
- They are the most relevant planning principles of all.

Legal Principles – Easy Ones # 2

- Built exception to Goal 18, IM 2 and 5.
- The properties are built with houses and the vacant lots are built with public infrastructure.
- It should be a no-brainer that at least the properties developed with houses are entitled to a "built" exception. Vacant lots that have public infrastructure at least a "committed" exception above, but also makes sense to find they are "built."
- Again, you do not have to rely upon the existing goal exceptions to make these findings.
- Again, these findings are completely defensible.

Legal Principles – Easy Ones # 3

- "Catch all" exception (DLCD likes this one) – exception to the prohibition on shoreline protection is necessary for the County to comply with Goal 7 – which requires the County to protect people and property from natural hazards.
- The BPS where proposed is the only location that can protect the properties – (no evidence otherwise).

Legal Principles – Easy Ones # 4

- OAR 660-004-0022(11) – the type of reasons exception specific to Goal 18 applies and is met.
- DLCD does not claim not met – just says does not apply.
- Both Goal 18, IM 2 and IM 5 prohibit development in the eroding foredune.
- OAR 660-004-0022(11) applies and the County should so find.
- The BPS should be approved under OAR 660-004-0022(11).

Legal Principle # 5 - riskier only because issue has never come up before

- There are existing exceptions to Goal 3, 4, 11, 14 and 17 for the subject properties allowing residential development on the foredune they are on.
- Implementing those exceptions, the Board of Commissioners approved a planning program that LCDC/DLCD acknowledged that commits the properties to residential development in an acknowledged urban unincorporated community.
- "Acknowledged" means that the planning program for the subject properties complies with all state goals – including Goal 18.
- When the foredune became hazardous, the scope of the existing exceptions still allows the residential development on the foredune that became hazardous.
- Therefore, the properties' existing exceptions also serve as exceptions to Goal 18, IM 2 that prohibits residential development on eroding foredunes.

Legal Principle #6 –riskier only because it hasn't come up before

- Properties are allowed to have BPS if they were "developed" on Jan 1, 1977 under definition of "developed" that existed until 1984:

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

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

- Both Pine Beach (original plat) and George Shand tracts were "developed" under this definition.
- That means they are entitled to approval of the requested BPS.

Legal Principle #7 – risky only because it has not come up before

- The version of Goal 18 IM 5 now in effect: shoreline protection allowed for property that was "developed" on January 1, 1977. "Developed" "means houses *** and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot ***."
- George Shand Tracts and Pine Beach subdivision meet this definition – there was "provision of" water from the Watseco Water District predecessor and streets ran to GS tracts and Pine Beach subdivision on 1/1/1977.
- That means they are entitled to approval of the requested BPS.

- The County should make affirmative findings on all approaches because the law and evidence supports doing so
- Applicants are willing and enthusiastic to work with County to help with findings as desired.

DLCD is Mistaken:

- **The 1932 Pine Beach Plat was NOT vacated.**
- **Subdivision titled "George Shand *Tracts*" is and always has been a "subdivision" under Oregon law.**
- **The properties DO have a Goal 17 exception.**
- **The property is NOT Goal 18 "resource land."**
- **No law whatsoever prohibits County approval of the Applicants' request.**

- DLCD's letter: inconsistent with its published position

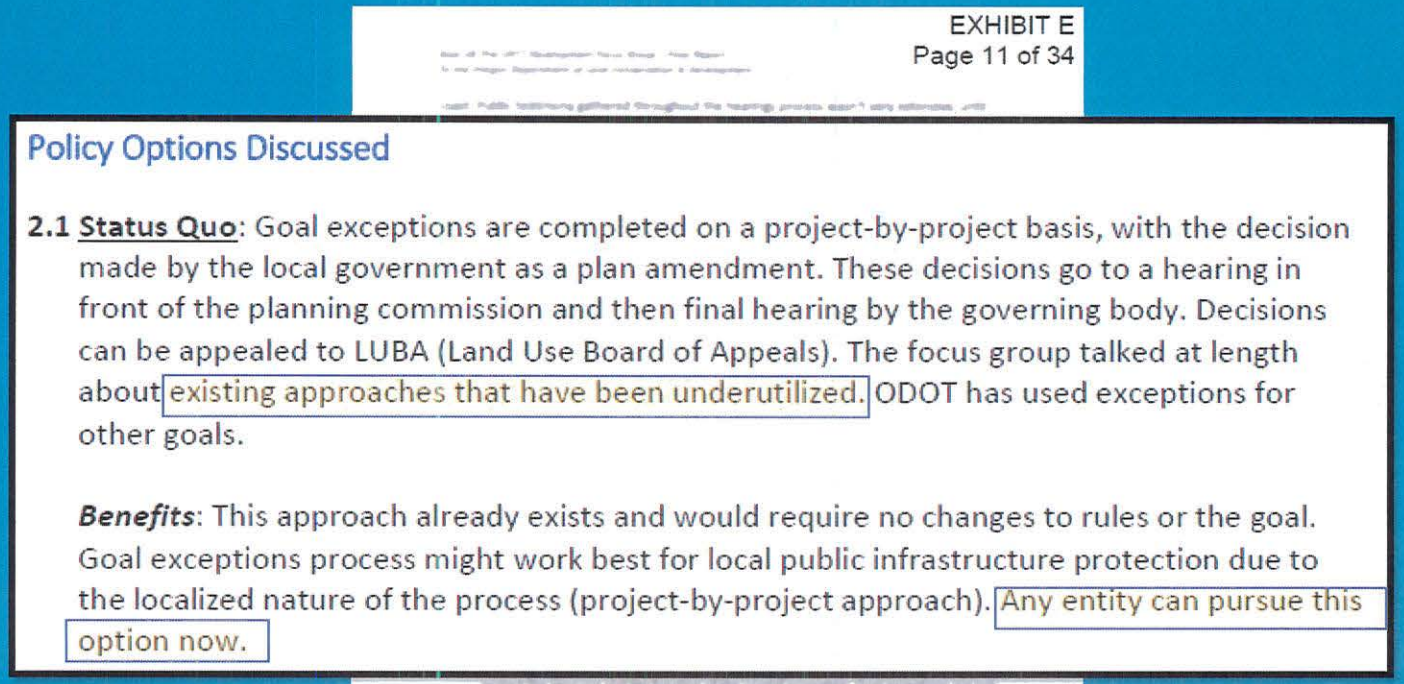

EXHIBIT E
Page 11 of 34

Policy Options Discussed

2.1 Status Quo: Goal exceptions are completed on a project-by-project basis, with the decision made by the local government as a plan amendment. These decisions go to a hearing in front of the planning commission and then final hearing by the governing body. Decisions can be appealed to LUBA (Land Use Board of Appeals). The focus group talked at length about existing approaches that have been underutilized. ODOT has used exceptions for other goals.

Benefits: This approach already exists and would require no changes to rules or the goal. Goal exceptions process might work best for local public infrastructure protection due to the localized nature of the process (project-by-project approach). Any entity can pursue this option now.

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Requested Planning Commission Decision:

1. Qualify for a "committed" and a "built" exception because they are "built" and "committed" under an acknowledged planning program that commits them to residential development. As a result, the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.
2. Qualify for the "catch all" reasons exception DLCD prefers. It is impossible for County to comply with Goal 7's requirement to protect life and property if County does not allow life and property to be protected from natural hazards. The circumstances are unique: the properties are acknowledged to comply with the "appropriate development" prong of Goal 18, and it is only the fact that the ocean reversed 70 years of prograding to aggressive retrograding, that triggers Goal 18, Implementation Measure 2. The Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

Requested Planning Commission Decision:

3. The Subject Properties qualify for a reasons exception under OAR 660-004-0022(11), because both Goal 18, Implementation Measures 2 and 5 prohibit foredune development and the proposed BPS meets all OAR 660-004-0022(11) standards. The Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

- OAR 660-004-0022(11) specifically allows exceptions to prohibitions on foredune development in Goal 18 IM 5 and Goal 18 IM 2.

Requested Planning Commission Decision:

4. The acknowledged residential development/urban unincorporated community planning program is based upon existing exceptions to Goals 3, 4, 11, 14 and 17. Is acknowledged to comply with Goal 18 as "appropriate development." As a result, those exceptions that allow residential development of the Subject Properties are also an exception to Goal 18, Implementation Measure 2, to allow that residential development if the foredune becomes subject to ocean overtopping/undercutting. That means there is an existing exception to "(2) above" and so the properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.
5. The Subject Properties were "developed" on January 1, 1977, under the definition of "developed" until 1984 when it changed. The subdivisions have a vested right to be protected under those standards under the common law of vested rights as well as ORS 215.427(3). Therefore, the properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.
6. The Subject Properties were also "developed" on January 1, 1977, under the definition of development that now applies because they were platted subdivision lots with the provision of utilities (water was available from the Watseco Water District and in fact one of the George Shand Lots, TL 2900, connected to it in 1974) and was served by roads.

PC Should find that this Request is Unique

- At the time that the Pine Beach subdivision was replatted (1994-1996) and the George Shand tracts were initially platted (1950) and whenmost houses were built, the ocean was PROGRADING – depositing sand, not taking it away.
- The professional reports stated homes would be more than 237 feet away from the surveyed statutory vegetation line and further still from the ocean.
- Now the statutory vegetation line is at the ocean.
- A large vegetated "common area" was platted oceanward of the Pine Beach lots.
- That "common area" is now entirely a dry sand beach.
- Shoreline protection is necessary because the ocean has dramatically shifted course from where it had been for more than 70 years.

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Unique

- Property is in an acknowledged and vibrant urban unincorporated community.
- Goal 3, 4, 11, 14 and 17 exceptions already.
- Acknowledged planning program for Goal 18 "appropriate development" prong; not resource use.

Planning Commission Should find that the Developers Did Everything Right

- George Shand Tracts (Ocean Blvd. properties) platted in 1950.
- Pine Beach **replatted** in 1994 and 1996.
- Development strictly avoided, by hundreds of feet, foredunes subject to overtopping and undercutting.
- When approved, there had been a **70-year period of ocean progration – depositing of sand and adding land.**
- **Planning commission should find it is inappropriate to punish the owners now that unexpected natural hazards have stricken and taken out natural foredune vegetation.**

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Pine Beach's BPS will blend into the natural coastal landscape

- Pine Beach BPS is in owners' backyards.
- Will not be on the beach.
- The BPS will be covered in excavated sand and replanted with native beach grasses, shrubs and trees.
- Will be maintained annually by owners.
- Will be periodically replenished with sand and replanted with native vegetation because the owners want to look at a beautiful seascape.

Revetment Details

- Harms no one per engineering analysis in the record
- Best chance of reestablishing natural vegetation
- Maintains existing beach accesses
- Approx. size: 6' thick 30' wide rock revetment; maximum height 3' above ground level
- Covered in excavated sand, replanted with native beach grasses
- Some confusion about the existing beach accesses. Whatever they are they will remain and not be blocked or impeded in any way.

Thank you

- Questions?

KELLINGTON LAW GROUP, PC

Allison Hinderer

From: Anuradha Sawkar <anu@crag.org>
Sent: Thursday, June 3, 2021 3:46 PM
To: Sarah Absher
Cc: Phillip Johnson, Oregon Shores/CoastWatch; Allison Hinderer; Melissa Jenck; Oregon Shores Conservation Coalition
Subject: EXTERNAL: Oregon Shores Comment, Tillamook County Files 851-21-000086-PLNG-01, -PLNG
Attachments: 2021.06.03 FINAL Or. Shores Test. Tillamook Files 851-21-000086-PLNG-01_ 851-21-000086-PLNG [Pine Beach].pdf

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

Dear Sarah,

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

I appreciate your time.

Thanks, Anu

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

Protecting and Sustaining the Pacific Northwest's Natural Legacy.

OREGON SHORES

CONSERVATION COALITION

June 3, 2021

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

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

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

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

Please accept these additional comments from the Oregon Shores Conservation Coalition and its members (collectively "Oregon Shores") to be included in the file for Tillamook County File Nos. 851-21-000086-PLNG-01 (Goal Exception) and 851-21-000086-PLNG (Flood Plain Development Permit) [Applications]. These comments are provided as part of the written testimony open record period following the public hearing on Thursday, May 27, 2021, as stated by the Planning Commission. Oregon Shores previously submitted comments for inclusion within the evidentiary record for the public hearing in this matter, timely filed with the Tillamook County Department of Community Development (TCDCD) prior to the stated deadline of 4:00 PM on Thursday, May 27, 2021.[1] Oregon Shores hereby adopts in full and incorporates by reference our previous comments in the record for File Nos. 851-21-000086-PLNG-01 (Goal Exception) and 851-21-000086-PLNG (Flood Plain Development Permit).

[1] Oregon Shores filed its comment via email on Thursday, May 27, 2021 at 3:45 PM, and does not concede that the comment was submitted subsequent to 4 PM or after the public hearing on that date. Further, Oregon Shores respectfully requests that the TCDCD correct the planning file in this matter to reflect this timely submission of Oregon Shores' first public hearing comment prior to the close of the record in this matter.

Please continue to notify us of any further decisions, reports, or notices issued or hearings held in relation to these Applications. Oregon Shores will provide further comments as appropriate and allowed within future open record periods.

As noted previously, Oregon Shores has offered testimony on numerous proposals involving shoreline protection structures ("SPS")[2] in order to express serious concerns about the known harmful impacts these structures have on shorelines, coastal ecosystems, the public's access to the beach, public safety, and public interest. Oregon Shores provides these additional written comments in order to underscore the apparent deficiencies in the combined Applications narrative, and to emphasize the importance of a robust review prior to approval of a goal exception and development of harmful SPS in a highly dynamic coastal environment. Upon the current record, the Applicants have not demonstrated compliance with the applicable approval criteria set forth in the Statewide Planning Goals ("Goals"), the Oregon Revised Statutes ("ORS"), applicable Oregon Administrative Rules (OARs), the Tillamook County Comprehensive Plan (TCCP), and the Tillamook County Land Use Ordinance (TCLUO).[3] Our comments support the view that the Applications fail to provide the minimum information necessary to be evaluated for compliance with applicable standards and criteria. For the reasons discussed below, Oregon Shores strongly argues that the Planning Commission should recommend denial in this matter.

1. The subject properties are ineligible for SPS under the limitation set forth in Goal 18, Implementation Requirement 5 (Goal 18, IR 5), and the proposal is inconsistent with Goal 18 and TCCP Goal 18 (Beaches and Dunes element).

The Applications are requesting an exception—pursuant to the process set forth in Goal 2, Parts II(b) and II(c)—to Goal 18 for the installation of a riprap revetment upon and along roughly 880 feet of the public's beach. The proposed project area is within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone as well as within an Area of Special Flood Hazard within the Flood Hazard Overlay Zone (TCLUO Section 3.510). The subject fifteen tax lots are Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123,[4] of Section 7DD, between 17300 to 17480 Pine Beach Loop in Rockaway Beach [Pine Beach Properties]. Additionally, the subject properties also include Tax Lots 3000, 3100, 3104, 3203, and 3204[5] (north to south) of Section 7DA [Ocean Boulevard Properties]. All properties are in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

The objective of Goal 18 is to

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

[3] Staff Report, 2. Oregon Shores does not concede that the proposals are consistent with any of these listed criteria.

[4] Per Oregon Shores' review, Tax Lots 117 and 119 appear to be currently undeveloped with any upland structures.

[5] Tax Lots 3203-3204 are presently undeveloped with upland structures. The developed tax lots span between 17488 to 17560 Ocean Blvd in Rockaway Beach.

> To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas;
>
> To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.[6]

As discussed previously, riprap is antithetical to beach conservation, and increases erosion to adjacent properties as well as creating a public safety hazard (through narrowing of the beach). For these reasons, the legislative declaration in ORS 390 and policy underlying Goal 18 effectively placed a cap on the amount of ocean shore in Oregon that may be armored to limit the cumulative impacts of such hardening. Specifically, Goal 18 prohibits permits for SPS where development exists after a date-certain:

> 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.[7]

As affirmed by precedent interpreting the above provision, Goal 18, IR #5 is an acknowledgment that SPS are man-made structures that cause problems for adjacent property owners, non-adjacent owners (e.g., public), and for the state, which owns and manages the ocean shore and all lands westward of the ocean shore in trust for the public. Because the Land Conservation Development Commission (LCDC) knew that SPS cause problems and also recognized that some development had already occurred in reliance on the ability to build such structures prior to January 1, 1977, it adopted Goal 18, IR #5. In other words, new development after January 1, 1977 would only occur with the knowledge that SPS will not be allowed, putting all potential developers on constructive notice. New development will not be allowed to cause problems for others.

As noted by the Staff Report and DLCD in this matter, development was not in existence on any of the subject properties on or prior to January 1, 1977. Specifically:

- County survey and tax records; information provided by Twin Rocks Sanitary District, Watseco Water District, and Tillamook People's Utility District (PUD); and 1977 aerial imagery from the Army Corps of Engineers establish that on January 1, 1977, there was no eligible development on any of these tax lots. The Applications fail to establish otherwise.
- The Pine Beach subdivision at issue for this was first platted 1994 (i.e., after 1977) and no development occurred there prior to 1977. Thus, on or prior to January 1, 1977, there

[6] Goal 18.
[7] Goal 18, IR 5.

was no eligible development on the oceanfront parcels at this site and it was not part of a statutory subdivision per ORS 92.010. The Applications fail to establish otherwise.

- The Ocean Boulevard Properties were part of the "George Shand Tracts," surveyed in 1950. However, as DLCD notes, tracts are not considered a statutory subdivision as defined in ORS 92.010. Hence, these parcels of land do not meet the definition of development as defined in Goal 18. The Applications fail to establish otherwise.
- As noted by DLCD, the fifteen lots subject to the request do not meet the definition of development because they were developed after 1977. Further, as noted by the Staff Report and indicated by DLCD, creation of the properties alone does not meet the definition of development under Goal 18. [8]

In addition to the fact that the subject properties were undeveloped on or prior to January 1, 1977, the area at issue is not part of an exception area to Goal 18. Tillamook County has identified and adopted specific exception areas for Goal 18, Implementation Requirement #2 in the County's Comprehensive Plan (Part 6 of the Beaches and Dunes Element). As noted in the Staff Report:

> Section 6 of the Goal 18 element of the [TCCP] inventories those built and committed areas where a Goal 18 exception has been taken. These are areas within unincorporated Tillamook County identified as built and committed areas located on 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. These built and committed areas are Cape Meares, Tierra Del Mar, Pacific City and Neskowin.

The areas specified in the Applications are not within these three adopted Goal 18, IR 2 exception areas, as set forth in the TCCP (TCCP Goal 18, §§6.1a-d). Despite this fact, the Applicants appear to argue, absent any meaningful evidence, that the tax lots at issue are already subject to this existing Goal 18, IR 2 exception, "because their residential development on a dune now subject to ocean undercutting and wave overtopping is authorized by an exception." Oregon Shores agrees with DLCD in its assertion that "[t]he notion of an implied exception, as the applicants suggest, is not supported by law." As DLCD states, a goal exception is an affirmative act that is incorporated into a comprehensive plan. Oregon Shores also agrees with the Staff Report's finding that the Applications must meet the burden of proof to satisfy the applicable exception criteria without the sole basis of argument that other exceptions have already been taken for areas that do not include the subject properties, or because there was a lack of need for an exception to be taken (e.g., to Goal 18, IR 2) at the time of development of the properties subsequent to January 1, 1977.

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[8] As noted in the Staff Report, the Oregon Coastal Atlas Map Goal 18 Eligibility Inventory, included in "Exhibit A" of the staff report, depicts properties determined to have eligibility for SPS based upon evidence of development as defined above that existed on January 1, 1977. Properties where it has been determined development did not exist as per the development definition above on January 1, 1977 are highlighted in red. Each of the subject properties are highlighted in red. While the Coastal Atlas inventory is by no means the end of the inquiry for permitting SPS (which should be limited by, at the very minimum, the footprint of a structure that would have required protecting prior to 1977), Oregon Shores generally agrees with the determination reflected on the Oregon Coastal Atlas map.

For the above reasons, Applications need a goal exception to the 1977 development date limitation of Goal 18: Beaches and Dunes. However, as discussed below, the Applications fail to establish that either a "committed exception" or a specific reasons exception under OAR 660-004-0022(11) are applicable to this proposal. Further, based on the information presented, Oregon Shores strongly argues that the Applications fall well short of the high bar required by the general reason set forth at OAR 660-004-0022(1). As such, the Planning Commission should recommend denial of the Applications.

2. The Applicants cannot establish a basis for a goal exception under the "committed exception" provision or the specific reasons exception to the foredune use prohibition.

As the Oregon Court of Appeals explained: "an exception must be just that – exceptional."[9] In other words, for the County to approve any goal exception request, it faces a high bar. There must be sufficient information provided in the record and reasoning to support each of the applicable exceptions criteria. The Applications advance alternative bases for a goal exception based on the provision set forth in ORS 197.732(2)(b) and OAR 660-004-0028 as well as the ORS 197.732(2)(c), OAR 660-004-0020, and OAR 660-004-0022(11). For the below reasons, Oregon Shores strongly argues that neither of the aforementioned pathways are available to support approval of the Applications. Further, per Oregon Shores' review, it does not appear that the Applications advance an exception under OAR 660-004-0022(1). Additionally, as discussed previously, the information presented is insufficient to meet the standards of OAR 660-004-0022(1), as interpreted by LUBA 2020-002 and LUBA 2020-012.

A. The Applications fail to establish that a "committed" exception is applicable to this case.

Per ORS 197.732(2)(b), A local government may adopt an exception to a goal if:

> The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.

OAR 660-004-0028 is the rule adopted by LCDC to implement this statutory provision. The rule is focused on adjacent uses and lands.[10] However, the Applicants do not establish that adjacent uses are the basis for this exception request, nor provide evidence sufficient to establish consistency with the above criteria. The Applications' construction of whether "uses allowed by [Goal 18]" are impracticable is inconsistent with statute and rule. Contrary to the Applications' suggestion, and as DLCD noted, the question at hand is not whether these properties should be "entitled to now benefit from the Goal 18 policy of reducing the hazard to human life and property," but rather, whether Goal 18 allows the development of the Applicants' preferred erosion mitigation structure (i.e., hardened SPS). The properties do benefit from Goal 18's object

[9] *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 731 (1984).

[10] OAR 660-004-0028(2)

to reduce hazards, and as stated above, cannot be allowed to increase hazards and intrude on the public's ownership of the beach inconsistent with Goal 18, absent a robust demonstration that their proposal is consistent with the above criteria. For the above reasons and for those argued previously, Oregon Shores agrees with DLCD that the Applicants' committed exception arguments cannot be the basis for an exception decision in this case.

B. The Applications fail to establish that a specific exception to the foredune use prohibition is applicable or justified.

Under OAR 660-004-0022(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.

Applicants refer to the West Consultants Technical Memorandum and accompanying construction plans stating that the SPS has been designed in a way to protect it from geologic hazards, wind erosion, undercutting ocean flooding and storm waves. As noted below the WEST memo is outdated, and thus insufficient to establish consistency with this criterion. The Applicants' focus on the particular design of the SPS at issue here is irrelevant. Rather, it is the broader issue – whether a protective structure is allowed at all. The siting and design of the protective structure is another matter subject to a development permit. Oregon Shores agrees with DLCD that the design should be evaluated through a separate process, subject to approval of an exception (although the latter is unjustified in this case).

The Applicants state, absent any meaningful evidence, that the proposal minimizes adverse environmental effects from the proposed use. The Applications state, absent meaningful support, that wave energy and erosion potential will be less because the proposed SPS will be located further inland and will be at a higher elevation than the nearby Shorewood RV Resort SPS. The Applications fail to indicate how the SPS being located further inland or at a higher elevation are relevant, and in fact, publicly available evidence suggests the contrary to be true. Applicants conclude, absent meaningful evidence, that ultimately, the proposed SPS will be a net benefit to the shoreline environment, minimizing and abating future landward shoreline erosion. This is contrary to accepted science, and Oregon Shores strongly disagrees. As discussed previously, the contrary is likely to be true. Hardened structures at this location will adversely impact the beach, adjacent properties, and the public's interest in the ocean shore.

The impacts of additional shoreline armoring on the beach, beach access, and surrounding properties are not adequately addressed in the Applications. Further, as DLCD noted, the County has an adopted inventory of beach and dune landforms subject to the

provisions of Goal 18 and it is not an ever-changing inventory. Finally, as discussed previously, the Applications fail to meaningfully address the criteria of OAR 660-004-0020. For the above reasons, a general reasons exception process is the applicant's only path forward. However, as discussed previously, an approval is foreclosed on that basis as well.

3. The Applicant fails to meet the criteria required for an amendment of the TCCP in order to take a "reasons" exception to Goal 18, IR #5

OAR 660-004-0020 details the criteria applicant must meet before Coos County can adopt an amendment to the TCCP in order to take a reasons exception to Goal 18. ORS 197.732 contains Oregon's statutory guidelines for the Goal 2 exception process and its criteria parallel the criteria set forth in OAR 660-004-0020. The four requirements for a goal exception are:

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

(b) Areas that do not require a new exception cannot reasonably accommodate the use.

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

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

As discussed through this comment and previously, because the proposed exception fails to demonstrate compliance with applicable provisions of OAR 660-004-0020, it cannot demonstrate compliance with OAR 197.732.

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

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

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

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

OAR 660-004-0020(2)(a) requires the Applicant identify "reasons" as to why Goal 18, #IR 5 criteria should not apply to the proposed sites. Erosion is part of the natural cycle of a beach, and coastal erosion is common throughout Oregon. If "eroding shorelands" is sufficient reason to justify an exception, then Goal 2 and Goal 18 are superfluous. OAR 660-004-0022 identifies the types of "reasons" that may be used to justify the exception. As noted above, the specific reason at OAR 660-004-0022(11) does not apply in this case and the Applications fail to advance an argument under OAR 660-004-0022(1). As such, the Applicants fail to demonstrate consistency with this criterion. As discussed below, the Applications fail to meet the criteria set forth in OAR 660-004-0020(2)(b)-(d).

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

OAR 660-002-0020(2)(b) requires a showing that areas that do not require an exception cannot reasonably accommodate the use. As discussed in detail above, the Applicant has not demonstrated a need for the proposal. Further, because the Applications fail to establish a unique and immediate need for the proposed armoring in this location and do not meaningfully discuss alternatives to an SPS to mitigate shoreline erosion (such as relocating the oceanfront homes). Because the Applicants has not sufficiently presented alternatives that would not require a goal exception, it fails to meet this criterion.

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

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

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

The Applications fail to provide a sufficient ESEE analysis consistent with this criterion. For the environmental considerations, the Applicants allege, absent supporting evidence, that the proposed structure was "designed to reduce adverse impacts" but subsequently fail to explain the expected impacts. Oregon Shores also argues that the Applications' economic analysis is

likewise deficient. It fails to acknowledge the economic impacts to adjacent properties, and the immeasurable impact of the public's loss of its beach. As noted, the Applications focus almost exclusively on the value of the existing homes and the possibility of damage to water and sewer facilities. For these reasons, this criterion is not met.

For the reasons stated above, the Applicant has not demonstrated that a Goal 18 exception is justified for the proposal.

IV. The Applicant fails to demonstrate consistency with the Goals.

As noted by DLCD, 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. Oregon Shores asserts that the Applications fail to provide sufficient information to evaluate whether the exception as proposed would comply with the rest of the goals. In particular, the impacts of additional shoreline armoring to the beach, beach access, and surrounding properties are not adequately addressed in the applications, inconsistent with Goal 18 and Goal 17. Further, Oregon Shores strongly argues that the Applications fail to demonstrate consistency with Goals 5, 6, 7, 8, 9, 10, 11, 12, 13, and 17. Therefore, the requests must be denied. Oregon Shores will provide further comment on these matters as appropriate and allowed.

V. The Applications are inconsistent with the criteria for additional review for approval of an SPS, as set forth in the TCLUO.

As discussed above, the proposed project is ineligible for SPS, and requires an exception to Goal 18. Further, the Applications fail to justify an exception request on any of the avenues advanced, whether under ORS 197.732(2)(b) or ORS 197.732(2)(b) and their implementing regulations. For these reasons, the Planning Commission should recommend denial of these Applications. However, should the County choose to approve the Goal 18, IR 5 Exception request, the development standards and criteria of the Beach and Dune Overlay Zone (TCLUO Section 3.530, et. seq.) and the Flood Hazard Overlay Zone (TCLUO Section 3.510, et. seq.) must also be met. Oregon Shores strongly argues that the Applications fail to meet these criteria, and will provide comment on the development permits deemed necessary for the proposed project once the plan map and text amendments as well as zoning changes have been resolved.

General comments are provided here for the purposes of clarity and preservation.

- Oregon Shores agrees with DLCD that much of the information cited in the WEST Memo and the rest of the Applications is dated. The Applications fail to explain how this dated information is relevant to establishing consistency with the applicable criteria. There are more up-to-date and publicly available publications and resources for the applicable area that should be consulted and included for public review prior to any final decision in this matter.
- The Applications fail to adequately discuss hazards.
- In the proposed goal exception location, there are four vacant oceanfront lots. Future uses of these lots would have to comply with the provisions of Goal 18, including to reduce

hazards to human life and property. The Applications fail to adequately address this matter

- The applicants claim that the lands requesting the exception are not resource lands. As DLCD notes, this is not true. The lands in the application are subject to both Goals 17 (Coastal Shorelands) and 18 (Beaches and Dunes), which are resource lands. Applicants should address impacts to these lands in their analysis, and have failed to do so.

VI. Climate Change and Cumulative Impacts

Per Oregon Shores' review, the Applications fail to provide any meaningful discussion of how the proposed project may affect, exacerbate, and perform under known and present climate change impacts. The most detrimental effect of SPSs is passive erosion. When a hard structure is built along a shoreline that is already undergoing long-term net erosion, as is natural for beaches, the shoreline will eventually and naturally migrate landward, behind the structure. The end result is that the beach in front of the SPS is gradually lost as the water deepens, and the natural shoreline migrates landward. As sea levels continue to rise, this beach loss will accelerate, and the public's beach will drown. Similarly, the Applications offer little assessment of cumulative impacts of adding substantial amounts of armoring to the littoral cell, inconsistent with OAR 660-004-0020(2)(d).

Oregon's new Climate Change Adaptation Framework ("CCAF") and Climate Equity Blueprint ("CEB") makes it clear that local governments are responsible to address the climate crisis in a way that prioritizes climate resilience (i.e., adaptation and mitigation).[11] This means the County must avoid piecemeal decision-making that exacerbates climate impacts on the public's use and enjoyment of our ocean shores and interferes with climate adaptative planning (which would, at the minimum, require an assessment of whether impacted upland structures could be moved east to protect the public's interest in the shore). Instead of allowing the proliferation of SPS to protect short-term private interests, the County needs to get in front of the climate crisis and make decisions on the basis of present and increasing climate risks, rather than accepting maladaptive land use proposals such as the one at issue. The presumption should be against proposals for hardened SPS, which encourage maladaptive development in high-risk coastal areas and destroy the public's long-term interest in the beach. Instead, the County must begin prioritizing climate adaptive solutions, such as relocating threatened structures, and protecting the public's beach consistent with the policy contained within ORS 390.610 and Goal 18.

VII. Conclusion

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

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[11] DLCD, 2021 Or. CCAF and CEB, (Jan. 19, 2021), *available at* https://www.oregon.gov/lcd/CL/Pages/Adaptation-Framework.aspx?utm_medium=email&utm_source=govdelivery. PDF available at: https://www.oregon.gov/lcd/CL/Documents/2021_CLIMATE_CHANGE_ADAPTATION_FRAMEWORKandBlueprint.pdf.

Sincerely,

Phillip Johnson
Executive Director
Oregon Shores Conservation Coalition
P.O. Box 33
Seal Rock, OR 97376
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phillip@oregonshores.org

Anuradha Sawkar <anu@crag.org>

Oregon Shores Comment, Tillamook County Files 851-21-000086-PLNG-01, -PLNG

Anuradha Sawkar <anu@crag.org> Thu, May 27, 2021 at 3:45 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Cc: "Phillip Johnson, Oregon Shores/CoastWatch" <orshores@teleport.com>, Oregon Shores Conservation Coalition <phillip@oregonshores.org>

Dear Sarah,

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

I appreciate your time.

Sincerely, Anu

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Protecting and Sustaining the Pacific Northwest's Natural Legacy.

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328K

oregon.gov

Department of Land Conservation and Development : Goal 18: Beaches and Dunes : Oregon Planning : State of Oregon

4-5 minutes

Beaches and dunes are the physical environments at the very edge of the sea. These are highly dynamic places; sand and gravel are moved by wind, waves, and currents. They serve as buffers between the energy of the ocean and the land. Beaches and dunes also provide the public with recreational opportunities and draw scores of visitors to Oregon each year.

Statewide Planning Goal 18 focuses on conserving and protecting Oregon's beach and dune resources, and on recognizing and reducing exposure to hazards in this dynamic, sometime quickly changing environment. Goal 18 is central to the work of coastal communities in addressing the impacts of coastal hazards and climate change in areas along the ocean shore.

Local governments are required to inventory beaches and dunes and describe the stability, movement, groundwater resources, hazards and values of the beach, dune, and interdune areas. Local governments must then apply appropriate beach and dune policies for use in these areas.

Goal 18 includes some requirements are of particular importance:

Prohibition Areas

The goal prohibits development on the most sensitive and hazardous landforms in the beach and dune

environment, including beaches, active foredunes and other dune areas subject to severe erosion or flooding. This requirement has been instrumental in preventing inappropriate development on these critical landforms.

Shoreline Armoring

The goal limits the placement of beachfront protective structures (i.e. shoreline armoring such as riprap and seawalls) to those areas where development existed prior to 1977. This policy effectively places a cap on the amount of ocean shore that may be hardened, and thus limits the cumulative impacts of such hardening.

Shoreline armoring can cause scouring and lowering of the beach profile, which can result over time in the loss of access to Oregon's public beaches. New development must account for shoreline erosion through non-structural approaches (e.g. increased setbacks). In the face of increased ocean erosion occurring in conjunction with climate change and sea level rise, limiting hard structures and allowing natural shoreline migration is a critical policy tool for conserving and maintaining Oregon's ocean beaches.

Dune Grading

The goal specifies detailed requirements for foredune grading (lowering of the dunes for views). Such grading is permitted in limited circumstances in association with existing development. It must be based on a specific dune system management plan that prescribes standards for maintaining flood protection, maintaining overall system sand supply, and post-grading sand stabilization (e.g. planting of beach grass). There are currently six official dune management plans in place in Oregon.

Ocean Shore Regulation

Oregon's ocean beaches are managed by the Oregon Parks and Recreation Department (OPRD) which has an extensive permitting program for shoreline protection under ORS 390.605 – 390.770, also known as the "Beach Bill." OPRD regulates activities affecting the ocean shorelands west of the statutory vegetation line or the line of established vegetation, whichever is most landward. This includes beachfront protective structures, stairways, walkways, or other structures than encroach on the public beach. OPRD has incorporated the Oregon Department of State Lands authority to regulate removal and fill activities along the ocean shore under its permit program. Permitted activities must be consistent with the Statewide Planning Goals (especially Goal 18), local comprehensive plans, and with the OPRD Ocean Shores Management Plan.

Original Adoption: 12/18/76; Effective: 6/7/77
Amended: 10/11/84; Effective: 10/19/84
Amended: 2/17/88; Effective: 3/31/88

Read the full text version of Goal 18

Administrative Rules that implement Goal 18:

OAR 660-034 – State and Local Parks Planning
OAR 660-035 – Federal Consistency

Related:

Coastal Goals
Oregon Parks and Recreation Department
Oregon Department of State Lands
Ocean Shores Management Plan
Goal 18: Pre-1977 Development Focus Group

1-18-5 cp-1

181528

BOOK 208 PAGE 56

DECLARATION OF EASEMENT

June 30, 1967

RAY B. LOSLI, a single man, and owner of a parcel of real property described as that part of Section 7, Township 1 North, Range 10 West of the Willamette Meridian beginning at a point that is 489.6 feet west of the initial point of the Plat of Watseco; thence West a distance of 401 feet; thence North 10° 25' West a distance of 60.34 feet; thence East a distance of 420.75 feet to the West line of Ocean Boulevard; thence South 8° 28' 26" West along the West line of said Ocean Boulevard to the point of beginning, in Tillamook County, Oregon, hereby sets aside the south five (5) feet of the parcel of real property hereinabove described for the use of and access across to the property owners of lots in Blocks 1, 3 and 5, Watseco, in Tillamook County, Oregon, such use of and access to be limited to said property owners and the members of their families, the easement being hereby granted, bargained and conveyed in equal rights to all present and future owners of lots in Blocks 1, 3 and 5, Watseco, Tillamook County, Oregon, said rights to run with the title to each and all of said lots forever, said access, however, to be limited to pedestrian traffic only and to include use for ingress or egress to and from the beach.

The grantor of this easement or successors in ownership of the property upon which such easement is located shall have no obligation whatsoever to maintain such easement or to keep it clear from debris or brush.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of June, 1967.

Ray B. Losli

Ray B. Losli

STATE OF OREGON)
County of Multnomah) ss

June 30, 1967

Personally appeared the above named Ray B. Losli and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Lee Siegel

Notary Public for Oregon
My Commission Expires: 2-27-71

LEE SIEGEL NOTARY PUBLIC STATE OF OREGON

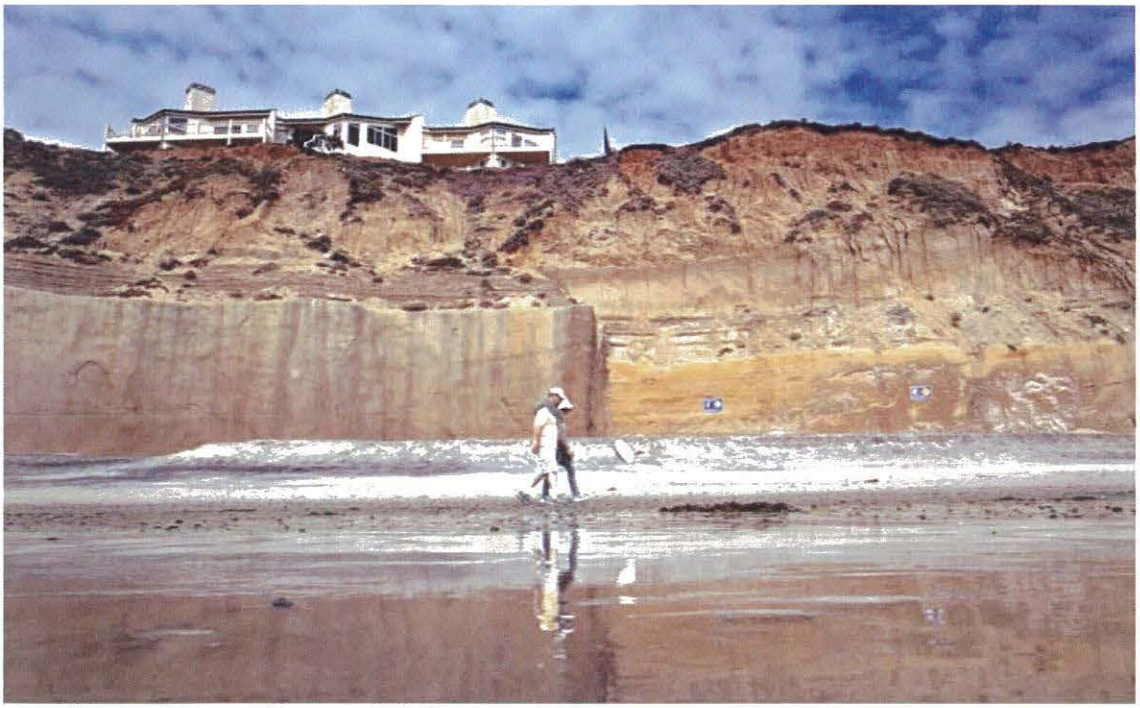
FILED FOR RECORD July 3 1967 AT 9:32 AM PM JUNE WAGNER, COUNTY CLERK

sandiego.surfrider.org

The True Cost of Armoring the Beach

8-10 minutes

When you walk along San Diego beaches, you can often see coastal armoring (seawalls and riprap) along the cliffs and in front of beachfront properties. Even though armoring is commonplace, these structures are often built to protect private homes while whittling away at the public beaches we know and love.



A stroll along Solana Beach's armored cliffs *credit: The Los Angeles Times*

Seawalls and rip rap narrow the public beach

Seawalls are concrete structures that hold coastal cliffs back from natural erosion – an important source of beach sand – and riprap is made of loose rocks meant to lessen the impact of waves on coastal cliffs.

Riprap at Torrey Pines State Beach

Unfortunately, the benefits of seawalls and riprap are privatized, and the more our coast becomes armored, the faster we lose our walkable beaches (see Figure 1 below). Here's a run down of how seawalls and rip rap take away the beach:

- Seawalls and riprap **occupy beach space that would otherwise be enjoyed by the public**. Their very presence reduces the width of our walkable beaches. For example, riprap can take up as much as 30 to 40 feet of beach width.[1]
- Seawalls and riprap **lock potential beach sand in place on the cliffs, removing an important source of natural sand replenishment for beaches**. A natural coastline, where waves bounce off unarmored cliffs, would instead slowly contribute sand to the public beaches. With many of California's rivers already dammed amidst the approaching threat of sea level rise, we cannot afford to cut off other sand supplies.
- **The most detrimental effect of seawalls is passive erosion**. When a hard structure is built along a shoreline that is already undergoing long-term net erosion, the shoreline will eventually and naturally migrate landward, behind the structure (Figures 1 and 2 below). **The end result is the beach in front of the seawall or hard structure is gradually lost as the water deepens, and the natural shoreline migrates landward**. As sea levels continue to rise, beach loss will accelerate, and beaches and reefs will drown.

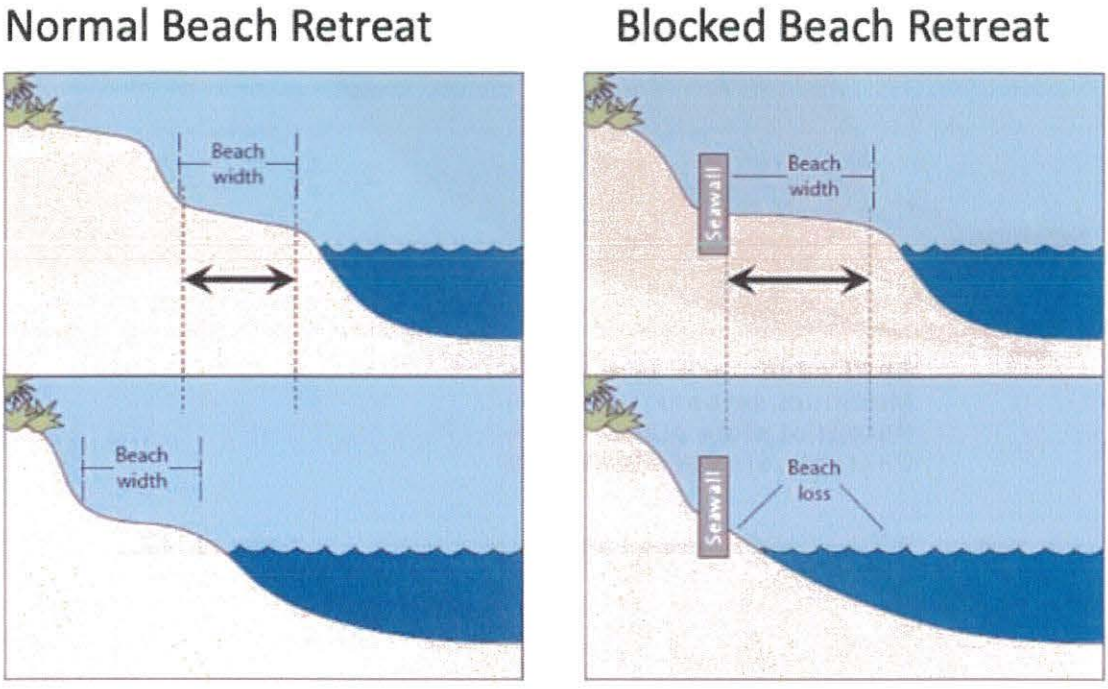


Figure 1. Landward migration of the beach with and without armoring. With armoring, the sand has nowhere to migrate to, and the beach eventually disappears due to passive erosion.[2]

Sand replenishment is an expensive, short-term bandaid

Some coastal armoring advocates look to sand replenishment as a cure-all to armoring's woes. However, pumping sand from the ocean or from other places onto the shore is difficult (the sand grain and size has to match each beach's sand) and prohibitively expensive (replenishment costs millions, and has to be repeated over time).

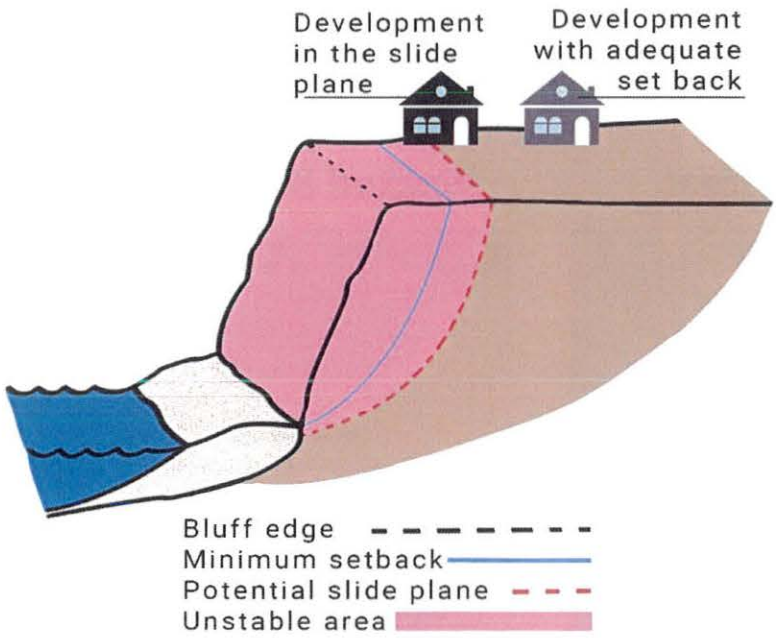
With so many beaches suffering from erosion, there isn't enough sand for all the cities that want to artificially replenish their beaches. Placing sand on beaches can offset sand impeded by dams, groins and jetties. However, placing an excess of sand on beaches – especially those with reefs and seagrass – will destroy vital coastal resources, including surf breaks.

Seawalls do NOT make beaches safer

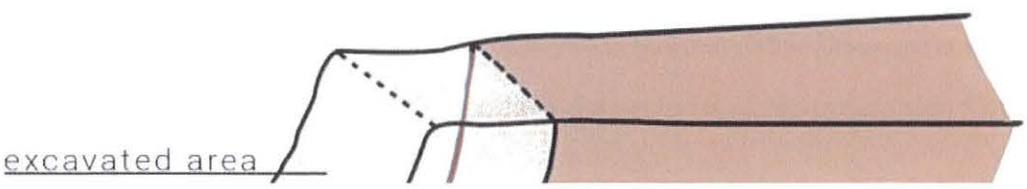
Some proponents of coastal armoring argue that seawalls add to public safety. However, the opposite is true: seawalls cause beaches to disappear over time. The narrower a beach becomes, the less safe space there is for the public to walk, run, or otherwise enjoy the beach.[4]

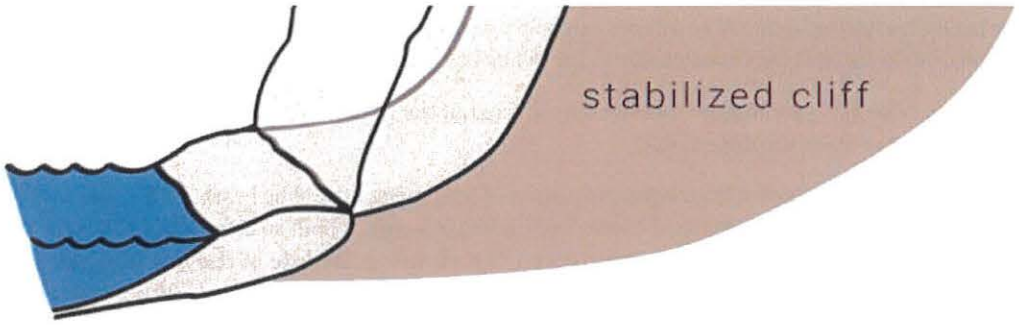
While seawalls may temporarily prevent lower bluff collapses at sea level, they won't necessarily prevent upper bluff collapses. For example, the upper bluffs in North County San Diego consists of largely unconsolidated sediment and is known to be particularly unstable.

If public safety is a genuine concern for unstable bluffs, one solution is to follow what ski resorts do when snow is unstable: avalanche control. Upper bluffs can be stabilized by triggering a collapse until the material is at a stable angle. This approach presents a choice between moving 1 row of houses back to accommodate stability, or destroying the beach below for visitors from 10,000 rows of houses in the name of preserving beachfront property.



Development must be slated behind an adequate setback to ensure homes are safe from landslides.





The unstable area can be excavated to ensure the remaining cliff is stabilized. This would often require homes to move slightly farther back from the minimum setback, but would ensure bluffs are stable and preserve the public beach.

Armoring protects beachfront structures at the cost of the public beach

The known costs of seawalls and riprap, combined with the downfalls of short-term fixes like sand replenishment, pose the question: "Who are these seawalls for?"

Seawalls and riprap protect properties built at the edge of coastal cliffs or on the shoreline, but they don't protect or preserve the public beaches. In fact, coastal armoring occupies public beach space and typically only benefits private property owners. **As sea levels continue to rise, the public beach will be further destroyed through passive erosion losses.**

Armoring usually privatizes the benefits for coastal homeowners, while passing on the costs to the public.

A surfer in front of a seawall in Carlsbad. photo credit: The San Diego Union Tribune

There are better ways to protect and preserve public beaches

Living shorelines can replace hard armoring with natural plants to reduce beach erosion in some areas, but they may be difficult to implement on bluff or cliff-backed beaches.

Preserving and restoring wetlands and dunes can help preserve the existence of these fragile but important ecosystems, while also helping to reduce storm impact on coastal communities.

If needed, unstable bluffs should have buffer zones in front. If the stability is of grave concern, avalanche control can occur to make the slope stable.

Thoughtful coastal development is an important aspect of preserving the public beach for decades to come. Hard armoring would not be necessary if homes and buildings were not built so close to the cliffs and ocean, and **future planning decisions will be critical in determining the fate of the beach. For example, when any development or redevelopment occurs next to the beaches, the buildings should be adequately set back far enough from the cliff edge to prevent a false need for a seawall.**[6]

Beach erosion is an issue facing all Californians, as over 80% of the California coastline is eroding[7]. The narrower the beaches get, the less space we have to walk, run, surf, or enjoy this vital public resource. Beach-dwelling animals and wildlife are also impacted as their habitat disappears due to sea level rise and accelerated erosion[8].

California's beloved public beaches are protected by law, but they continue to face threats to their very existence. The next time you surf or walk the beach, try looking at coastal armoring in a new light. Is armoring worth the cost of our public beach?

The Cardiff Dunes Restoration Project is an example of a living shorelines project in Encinitas

Citations

[1] Garry Griggs, California's Retreating Coastline: Where Do We Go From Here? (2005).

[2] Cal. Coastal Comm'n, Handouts for Senate Budget Subcommittee 2, Coastal Climate Adaptation, 12 (Mar. 20, 2014), available at https://www.coastal.ca.gov/climate/Handouts_SenateSubcommittee2_Mar20.2014.pdf.

[3] Hapke, Cheryl & Adams, Peter & Allan, J. & Ashton, Andrew & Griggs, Gary & Hampton, M. & Kelly, J. & Young, Adam. (2014). Chapter 9 The rock coast of the USA. Geological Society, London, Memoirs. 40. 137-154. 10.1144/M40.9.

[4] STAFF RECOMMENDATION ON CITY OF SOLANA BEACH MAJOR AMENDMENT LCP-6-SOL-16-0020-1 for Commission Meeting of May 11, 2017

[5] Johnsson, Mark. (2003). Establishing development setbacks from coastal bluffs – Briefing for the California Coastal Commission

[6] CA Pub Res Code § 30253 (2016)

[7] Living with the California Coast, (Gary B. Griggs & Lauret Savoy eds., Duke University Press, 1985); Gary B. Griggs, California's Coastline: El Niño, Erosion and Protection, in California's Coastal Natural Hazards: Santa

Barbara, California, University of Southern California Sea Grant Program 36, 36-55 (L. Ewing & D. Sherman eds., 1998).

[8] Hubbard, David. "Beach Inhabitants." Explore Beaches, University of California, Santa Barbara, explorebeaches.msi.ucsb.edu/climate-change/beach-inhabitants.

Shoreline Structures

From Beachapedia

Why We Should Care


Dana Point, CA before the Army Corps blocked its great waves, polluted its waters, and destroyed a rivermouth wetlands area.

(/File:Dana_point_photo.jpg)

Seawalls, groins, jetties and other shoreline stabilization structures have had tremendous impacts on our nation's beaches. Shoreline structures are built to alter the effects of ocean waves, currents and sand movement. They are usually built to "protect" buildings that were built on a beach that is losing sand. Sometimes they are built to redirect rivers and streams. Other times they are constructed to shelter boats in calm water. In many cases, seawalls, jetties, breakwaters and groins have caused down-coast erosion problems with associated costs that have greatly exceeded the construction cost of the structure.

Every surfrider knows that there are groins and jetties that have incidentally improved wave riding. However, in many other areas shoreline construction has ruined wildlife habitat (http://www.baltimoresun.com/features/green/blog/bs-md-hardened-shoreline-20150916-story.html), destroyed surfing waves and caused beaches to erode. As beach lovers and environmentalists, we need to understand the consequences of shoreline structures so that we may be able to effectively influence decisions on the impacts, placement or necessity of these structures. As an environmental group committed to maintaining the natural shoreline and beach equilibrium, we are usually opposed to construction that will disrupt the balance of forces that shape our coastline.

The Basics

Erosion: Where Has All The Sand Gone?

(/File:Lifeguard_bldg_photo.jpg)

Every winter, the newspapers show pictures of oceanfront buildings falling into giant surf. Beaches are not static piles of sand. Ocean currents cause beaches to move constantly. Beach sand is primarily a product of the weathering of the land (such as natural erosion of coastal bluffs). Sand can also come from ocean organisms such as coral. However, most of the sand along the world's beaches comes from rivers and streams. When natural processes are interfered with, the natural supply of sand is interrupted and the beach changes shape or can disappear completely. Sand production stops when coral reefs die from pollution, when coastal bluffs are "armored" by sea walls and

when rivers are dammed or channelized (lined with concrete) upstream for flood control and reservoir construction. The sand that collects behind upstream dams and reservoirs is often "mined" and sold for concrete production. It then never makes it to the beach. A public resource essential for our beaches is instead sold for private profit.

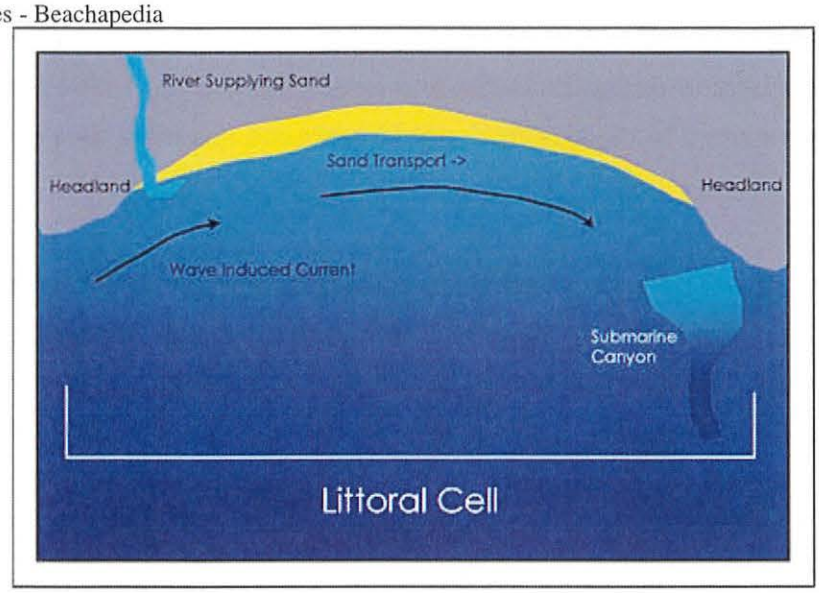
In the face of eroding beaches, owners of beachfront property will often try to use their political influence to demand that "something be done." The intelligent action would be to move the building away from the ocean. Unfortunately, what has often been done in the past has been to armor the coastline with rocks, concrete and steel. This does not protect or maintain the beach - it only protects the buildings, temporarily.

Millions of taxpayer dollars have been wasted subsidizing beachfront building. Federal flood insurance and expensive Army Corps of Engineer projects have done very little to make oceanfront buildings safe and have hastened beach erosion. In many cases, it would be more cost-effective for taxpayers to have the government buy the coastal property, condemn the buildings and allow the area to act as a buffer between the ocean and the remaining buildings. In urbanized areas with expensive real estate, a more cost effective and environmentally sound alternative to shoreline structures may be to periodically "nourish" the beach with sand.

The Littoral Cell

On the West Coast of the U.S., beach sand moves from river mouths to the beach. It then moves along the coast in the direction of prevailing currents and eventually it moves offshore. This sand transport system is called a littoral cell.

When waves break at an angle to the shoreline, part of the wave's energy is directed along the shore. These "longshore currents" flow parallel to the shore. Surfers call this the "drift". This current will move sand along the shore and a beach will be formed. The same current that transports a surfer down the beach from the point of entry will also move beach sand down the shoreline. When this longshore current turns seaward, it is called a rip current.



(/File:Littoral_cell.jpg)

Some areas have underwater canyons near the beach. These submarine canyons were prehistoric river mouths. Sometimes the longshore current will be interrupted by one of these canyons. In this case, the sand is lost from the beach in water too deep to be returned to shore. The littoral cell system, from the river mouth to the underwater canyon, will always lose beach sand. If the sand supply from the river is cut off, the beach will lose sand causing the beach to become narrower.

(/File:Canyons.jpg)

On the East Coast of the U.S., the shore formed differently. Sand comes from the erosion of headlands, bluffs and cliffs. The underwater coast (continental shelf) of the east is broad and flat. East Coast beaches are generally wider. Barrier islands run along the coast. In contrast to the West Coast, submarine canyons are rarely near the beach and seldom act as conduits for sand loss. A notable exception is the Hudson Canyon at the southwest end of Long Island, New York. Sand that moves south here is lost down the canyon. On the East Coast, sand "loss" is primarily from the movement of barrier islands. Barrier islands naturally migrate landward due to sea level rise, but this migration is accelerated

during storm events. Powerful hurricanes deposit sand inland by washing it over the dunes. Sometimes these storms will create strong currents that take sand too far offshore for it to return to the beach. The depth where sand is moved so far offshore that it cannot return is known as the "closure depth". The precise depth is under scientific debate and varies with time, wave and weather conditions. When humans try to interfere with the natural migration of barrier islands, it is usually at their long-term peril.

Erosion is a process, not a problem. Beaches are dynamic and natural. Buildings, bridges and roads are static. The problem occurs when there is a static structure built on a dynamic, moving beach. If buildings and roads were not built close to the shore, we would not have to worry about shoreline structures or sand erosion, as beaches would simply migrate inland.

Responses to Erosion

Seawalls

See the full article: Seawalls (/Seawalls)

(/File:Seawall_photo1.jpg)

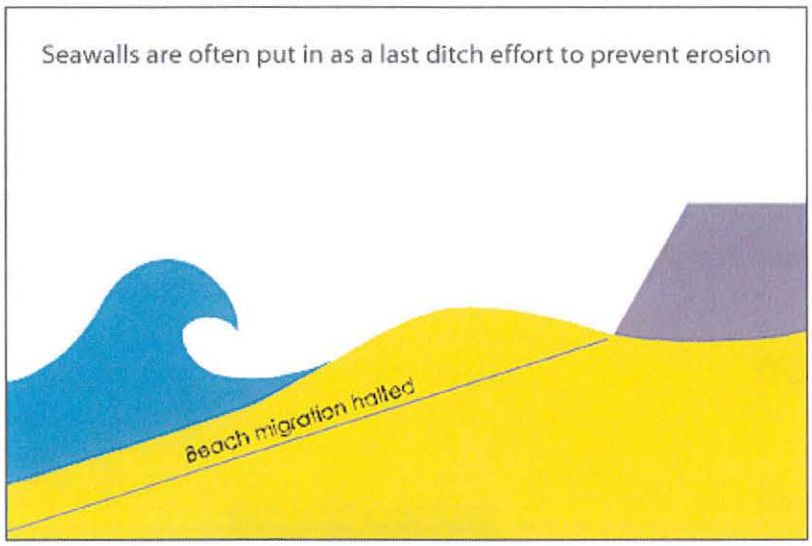
When coastal buildings or roads are threatened, usually the first suggestion is to "harden" the coast with a seawall. Seawalls are structures built of concrete, wood, steel or boulders that run parallel to the beach at the land/water interface. They may also be called bulkheads or revetments. They are designed to protect structures by stopping the natural movement of sand by the waves. If the walls are maintained they may hold back the ocean temporarily. The construction of a seawall usually displaces the open beach that it is built upon. They also prevent the natural landward migration of an eroding beach.

See this gallery of photos (http://picasaweb.google.com/santaaguila/Armoring#) of seawalls, revetments and other attempts at shoreline armoring from around the world.

When waves hit a smooth, solid seawall, the wave is reflected back towards the ocean. This can make matters worse. The reflected wave (the backwash) takes beach sand with it. Both the beach and the surf may disappear.

Seawalls can cause increased erosion in adjacent areas of the beach that do not have seawalls. This so-called "flanking erosion" takes place at the ends of seawalls. Wave energy can be reflected from a seawall sideways along the shore, causing coastal bluffs without protection to erode faster. When it is necessary to build a seawall, it should have a sloped (not vertical) face. Seawalls should also have pockets and grooves in them that will use up the energy of the waves instead of reflecting it.

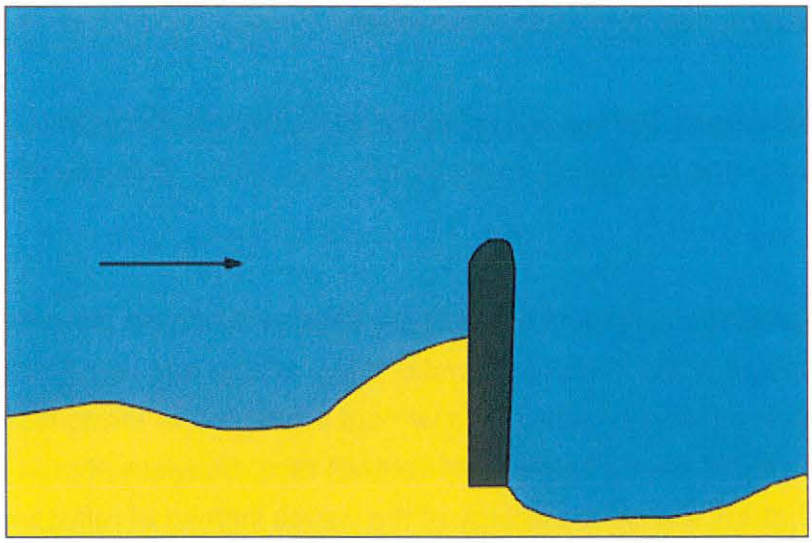
Usually the most cost-effective, environmental solution is to move the building away from danger. Building seawalls will buy time against natural processes, but it will not "solve the problem" of erosion by waves.



(/File:Seawall_graphic.gif)

Groins

Groins (/Groin) are another example of a hard shoreline structure designed as so-called "permanent solution" to beach erosion. A groin is a shoreline structure that is perpendicular to the beach. It is usually made of large boulders, but it can be made of concrete, steel or wood. It is designed to interrupt and trap the longshore flow of sand. Sand builds up on one side of the groin (updrift accretion) at the expense of the other side (downdrift erosion). If the current direction is constant all year long, a groin "steals" sand that would normally be deposited on the downdrift end of the beach. The amount of sand on the beach stays the same. A groin merely transfers erosion from one place to another further down the beach.



(/File:Groin.gif)

Groins occasionally improve the shape of surfing waves by creating a rip current next to the rocks. The rip can be a hazard to swimmers. The rip can also divert beach sand onto offshore sand bars, thereby accelerating erosion. Groins can also ruin the surf. If the waves are reflected off the rocks, the waves may lose their shape and "close-out."

As soon as one groin is built, property owners downdrift of it may start clamoring for the government to build groins to save "their" beach. Eventually, the beach may become lined with groins. Since no new sand is added to the system, groins simply "steal" sand from one part of the beach so that it will build up on another part. There will always be beach erosion downdrift of the last groin.

Breakwaters

A breakwater (/Breakwater) is a large pile of rocks built parallel to the shore. It is designed to block the waves and the surf. Some breakwaters are below the water's surface (a submerged breakwater). Breakwaters are usually built to provide calm waters for harbors and artificial marinas. Submerged breakwaters are built to reduce beach erosion. These may also be referred to as artificial "reefs."

A breakwater can be offshore, underwater or connected to the land. As with groins and jetties, when the longshore current is interrupted, a breakwater will dramatically change the profile of the beach. Over time, sand will accumulate towards a breakwater. Downdrift sand will erode. A breakwater can cause millions of dollars in beach erosion in the decades after it is built.

Beach Nourishment

In recent years, the hard structures described above have fallen somewhat out of favor by communities due to the negative impacts we have discussed. Beach nourishment (or beach fill (/Beach_fill)) is becoming the favored "soft" alternative. Beach nourishment is simply depositing sand on the beach in order to widen it. Although paid for by all taxpayers, it is frequently undertaken to protect private oceanfront buildings. Occasionally the taxpaying public is refused access to beaches that they have paid to protect. Sand nourishment is a costly, temporary solution. The projects are not intended to have a long life span and must be renourished on a regular basis, creating a cycle that will go on until the money runs out or shorefront buildings are relocated.

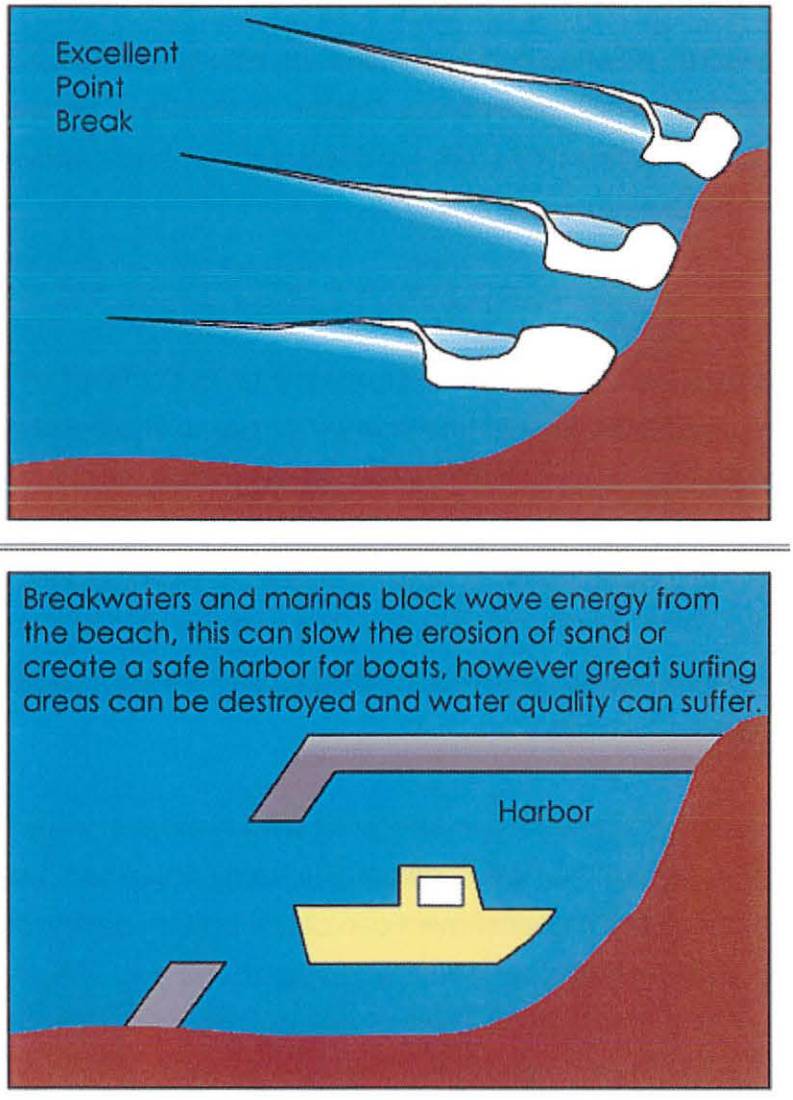
There are many considerations that must addressed when designing a nourishment project. If the grains of sand are not exactly the same size as that of the natural beach, the newly nourished beach may erode faster than the natural beach was eroding. Beach nourishment can cause bottom organisms and habitats to be smothered by "turbid" water that has sand and mud suspended in it. The shoreline is moved seaward into deeper water, causing the beach to drop off quickly, posing a hazard to swimmers. This may also impact the surf for a period of time, causing the waves to break as shore break, until the beach and sandbars can reestablish a level of equilibrium.

Navigation Structures

Harbors, Natural and Artificial

(/File:Harbor_photo1.jpg)

On the West Coast of the U.S., artificial harbors have been constructed by building a series of breakwaters and jetties. When an artificial harbor is built in an area that is subject to high-energy wave action, it will invariably interrupt the longshore flow of sand. This will cause serious downdrift erosion. Some harbor designs force the longshore current to make a 90-degree turn towards the ocean. This causes a large rip current that may carry sand offshore that might otherwise remain in the surf zone. This will have the effect of completely changing the shape of the ocean bottom. An artificial harbor mouth can act as a trap for the longshore sand transport causing it to clog up with sand, which makes costly periodic dredging projects necessary.



(/File:Breakwaters.gif)

Natural harbors, like San Francisco Bay, are protected from the ocean's fury but are still subject to tidal and wave energy. This causes water mixing and circulation. Stagnant artificial harbors are easily polluted by boating activities: paint, oil, grease, garbage and illegally dumped sewage. These wastes can poison the living creatures that swim in these waters. When the harbor is dredged, the sand and contaminated sediments cannot be returned to the beaches and must be disposed of in a safe place. Often, the sediments are dumped in deeper waters, poisoning the marine life food web.

Some harbors have been built by dredging wetland areas. Wetlands are habitat for birds and marine life. They can also provide water storage capacity to prevent coastal flooding during rains. Wetlands are natural water filters that purify land run-off before it enters the ocean. Dredging a wetland to build a boat harbor should never be done. We have lost over half the wetlands in the U.S. to human development. In California, we have lost over 94% of our wetlands.

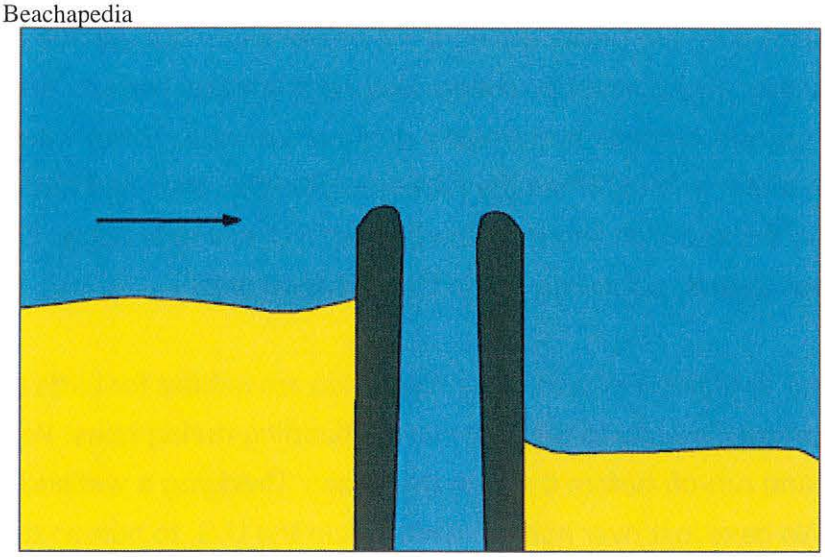
Jetties

Jetties (/Jetties) are large, man-made piles of boulders or concrete that are built on either side of a coastal inlet. Whereas groins are built to change the effects of beach erosion, jetties are built so that a channel to the ocean will stay open for navigation purposes. They are also built to prevent rivermouths and streams from meandering naturally.

Jetties completely interrupt or redirect the longshore current. Just as a groin accumulates sand on the updrift side, so do jetties. The major difference is that jetties are usually longer than groins and therefore create larger updrift beaches at the expense of the smaller downdrift beaches.

On East Coast barrier islands, ocean tidal inlets migrate naturally with the longshore current. A jetty system will permanently disrupt the equilibrium of the beach. This may seriously affect the tidal circulation and the health of the wetlands between the barrier islands and the mainland.

Inlets with short jetties that don't quite reach the surf will clog up with sand. The sand must be dredged on a regular basis. A "sand by-passing" system may be built to pump sand around the jetties. The sand pumping may come from within the inlet or from the updrift beach. These methods are expensive and must be maintained indefinitely.



(/File:Jetties.gif)

What You Can Do

Environmental Impacts

(/File:Hatteras.jpg)

Before a shoreline structure is built, the local community must be informed of its environmental impacts. The National Environmental Protection Act (NEPA) mandates that an Environmental Impact Statement (EIS) must be prepared to identify environmental impacts of the project. This document must spell out all effects that a new structure will have on the surrounding area. **It is during the scoping of and subsequent public comment period of preparing an EIS that Surfrider Foundation activists can have the greatest impact on the proposed project.**

The EIS process allows activists to educate the public about the project's impacts on the environment. Written comments on the draft EIS are crucial for legal purposes. Oral comments at hearings are even more important because they are picked up in the media, which allows more of the public to become informed.

Our goal is to make sure that the long-term effects and the true costs of the project are carefully spelled out for both the public and the decision-makers. If there are environmental impacts, the developer must provide ways to "mitigate" the damage. For instance, if the project will cause downcoast erosion, the developer may be required to install and maintain a sand replenishment system or promise to post a bond that will pay for periodic sand replenishment as long as the structure exists. This may be impractical. If there is wildlife habitat destroyed, the developer may be required to restore habitat on site if feasible.

The Only Permanent Solution: Retreat from the Beach

(/Managed_Retreat)!

"Hard" shoreline structures have severe environmental impacts on the longshore current and the natural processes of beach sand distribution. "Soft" solutions like sand nourishment are expensive and temporary. Marinas should be built in natural harbors away from the energy of the waves. Building on our ocean's shore is not a good idea. NATURE WILL ALWAYS PREVAIL.

Shoreline construction means that taxpayers pay the bills when the ocean behaves as expected. Whether it is fire department rescues, the Public Works Department placing sand bags, the police guarding vacant buildings from looters or the Army Corps of Engineers spending millions to "correct the problem," taxpayers are the ones who pay. Shoreline protection is, often, "welfare for the rich."

Shoreline property owners frequently limit the public's access to the beach by refusing to let the public cross their property to get to the beach.

Shoreline building also means habitat destruction. Birds, plants and animals that call coastal dunes and beaches their homes are slowly becoming extinct.

As humans continue to overpopulate our coastal areas (and the planet) we will have to be more thoughtful about our relationship with the ocean. Surfrider Foundation activists will continue to educate the public about the natural processes that create and maintain our shoreline. Sometimes shoreline structures must be built, but the public must know the impacts. Society will have to continually pay to maintain the structures and correct the environmental damage caused by them. The best solution is to retreat from the beach (/Managed_Retreat) and allow nature to replenish, maintain and change the beach as she sees fit.

Surfrider Foundation Beach Preservation Policy

Surfrider's official policy (http://www.surfrider.org/pages/beach-preservation-policy) regarding beach preservation and shoreline structures.

Restore the Shore Video

Video produced by the San Diego Chapter of Surfrider Foundation discussing beach erosion, shoreline structures and ways to respond to the changing coast.

Restore the Shore

North Carolina's Summary of the Effects of Shoreline Structures

Since 1985, North Carolina prohibited shoreline armoring. The following text, from the state's 2010 Habitat Protection Plan (http://portal.ncdenr.org/c/document_library/get_file?uuid=f43f10b1-b2bf-4895-8bab-349e09fe88cc&groupId=38337) does a good job explaining the physical and ecological effects of shoreline armoring:

"Shoreline hardening, or hard stabilization, involves construction of hard immovable engineered structures, such as seawalls, rock revetments, jetties, and groins. Seawalls and rock revetments run parallel to the beach. Seawalls are vertical structures, constructed parallel to the ocean shoreline, and are primarily designed to prevent erosion and other damage due to wave action. Revetments are shoreline structures constructed parallel to the shoreline and generally sloped in such a way as to mimic the natural slope of the shoreline profile and dissipate wave energy as the wave is directed up the slope. Breakwaters are structures constructed waterward of, and usually parallel to, the shoreline. They attempt to break incoming waves before they reach the shoreline, or a facility (e.g., marina) being protected. Jetties and groins are manmade structures constructed perpendicular to the beach, with jetties usually being much longer, and are located adjacent to inlets with the purpose of maintaining navigation in the inlet by preventing sand from entering it. In contrast, terminal groins are structures built at the end of a littoral cell to trap and conserve sand along the end of the barrier island, stabilize inlet migration, and widen a portion of the updrift beach. Terminal groins are designed so that when the area behind the groin fills in with sand, additional sand will go around the structure and enter the inlet system.

It is well accepted that hard stabilization techniques along high energy ocean shorelines will accelerate erosion in some location along the shore as a result of the longshore sediment transport being altered (Defeo et al. 2009). The hydromodifications resulting from coastal armoring modifies sediment grain size, increases turbidity in the surf zone, narrows and steepens beaches, and results in reduced intertidal habitat and diversity and abundance of macroinvertebrates (Walton and Sensabaugh 1979; NRC 1995; Dolan et al. 2004: 2006; Pilkey et al. 1998; Peterson et al. 2000a; Miles et al. 2001; Dugan et al. 2008; Walker et al. 2008; Riggs and Ames 2009). A study looking at the effect of a short groin (95m) on the benthic community found that the groin created a depositional condition on one side of the structure and erosion on the other, and macroinvertebrate diversity and abundance was significantly reduced within 30m of the structure, as sand particle size and steepness increased (Walker et al. 2008). The change in benthic community was attributed to the change in geomorphology of the beach. Hard structures along a sandy beach can also result in establishment of invasive epibenthic organisms (Chapman and Bulleri 2003). A secondary impact of hardened structures is that the areal loss of beach resulting from hardening of shorelines is often managed by implementing nourishment projects, possibly having additional damage to subtidal bottom (Riggs et al. 2009). Anchoring inlets also prevents shoal formation and diminishes ebb tidal deltas, which are important foraging grounds for many fish species. Recognizing that hardened structures are damaging to recreational beaches and the intertidal zone, four states have prohibited shoreline armoring: Maine, Rhode Island, South Carolina, and North Carolina (effective in North Carolina since 1985).

Perhaps the greatest impact of terminal groins and jetties results in the long-term effect on barrier islands and the effect that will have on marine and estuarine ecosystems. By stabilizing the inlet,

inlet migration and overwash processes are interrupted, causing a cascade of other effects (Riggs and Ames 2009). In the case of Oregon Inlet, the terminal groin anchored the bridge to Pea Island and stopped the migration of the inlet on the south side. But the continuing migration of the north end of Bodie Island led to an increased need for inlet dredging. The combination of reduced longshore transport of sediment due to the groin and the post-storm dune construction to open and protect the highway prevented overwash processes that allow Pea Island to maintain its elevation over time. With overwash processes disrupted, the beach profile has steepened, and the island has flattened and narrowed, increasing vulnerability to storm damage (Dolan et al. 2006; Riggs and Ames 2009; Riggs et al. 2009). At Oregon Inlet and Pea Island, the accelerated need for beach replenishment is further aggravated by the need to maintain Hwy 12 on the narrowing beach. From 1983 to 2009 approximately 12.7 million cubic yards of sand have been added to the shoreline within three miles of the terminal groin (Riggs and Ames 2009). Dolan (2006) documented that the large volumes of sand replenishment in this area, required to maintain the channel, protect the road, and maintain a beach have resulted in a significant reduction in grain size and reduction in mole crab abundance. Mole crabs are considered an important indicator of beach conditions due to their importance in the food web as prey for shorebirds and surf fish. In addition to causing erosion on downdrift beaches, altering barrier island migration processes, and accelerating the need for beach nourishment projects, jetties obstruct larval fish passage through adjacent inlets (Blanton et al. 1999)."

This article is part of a series on Shoreline Structures (/Category:Shoreline_Structures) looking at types of structures commonly built along shorelines, and the policies, laws, and regulations which can affect where and under what conditions they are built.

For information about laws, policies and conditions impacting shoreline structures (/State_of_the_Beach/Beach_Indicators/Shoreline_Structures) in a specific state, please visit Surfrider's State of the Beach (/State_of_the_Beach) report to find the State Report (/State_of_the_Beach/State_Reports) for that state, and click on the "Shoreline Structures" indicator link.

Categories (/Special:Categories): **A-Z (/Category:A-Z)** **Full Articles (/Category:Full_Articles)**

Beach Preservation (/Category:Beach_Preservation)

Climate Change Adaptation (/Category:Climate_Change_Adaptation) Articles (/Category:Articles)

Shoreline Structures (/Category:Shoreline_Structures)

Allison Hinderer

From: Wendie Kellington <wk@klgpc.com>
Sent: Thursday, June 3, 2021 3:58 PM
To: Allison Hinderer; Sarah Absher
Cc: Sarah Mitchell; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); Evan Danno; Heather Von Seggern; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); Mark and Alice Kemball; Megan Law; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispdx@gmail.com); Rachael Holland (rachael@pacificopportunities.com)
Subject: EXTERNAL: FW: Pine Beach profiles 6-3-2021 Applicants' Submittal - 851-21-000086-PLNG-01
Attachments: Attachment 2 - Plans_10ft path.pdf

Please include the attached in the record of the above referenced Pine Beach matter. Thank you. Wendie

---

From: Chris Bahner <cbahner@westconsultants.com>
Sent: Thursday, June 3, 2021 3:51 PM
To: Sarah Mitchell <sm@klgpc.com>
Cc: Wendie Kellington <wk@klgpc.com>
Subject: RE: Pine Beach profiles

Sarah,
Plans for 10ft path are attached.

Thanks,
Chris

ATTACHMENT 2

CONSTRUCTION PLANS

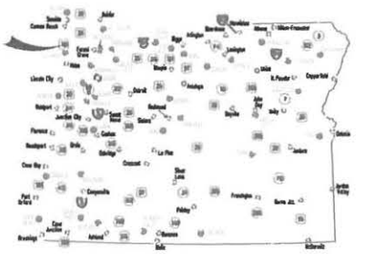
INDEX OF SHEETS	
SHEET NO.	DESCRIPTION
1	TITLE SHEET
2	EXISTING CONDITIONS
3	REVETMENT LAYOUT
4	REVETMENT DETAILS
5	REVETMENT RAMP DETAILS

PLANS FOR PROPOSED PROJECT

PINE BEACH DEVELOPMENT AND OCEAN BLVD. PROPERTIES ROCK REVETMENT

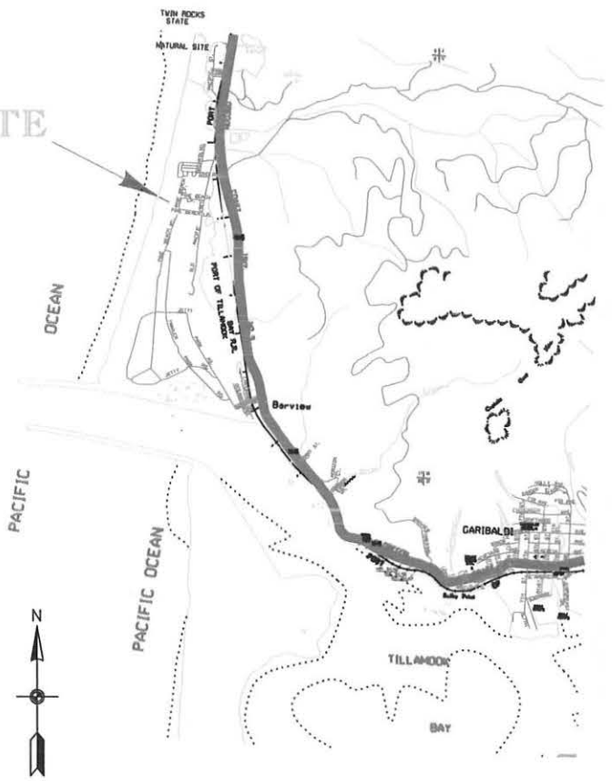
TILLAMOOK COUNTY

MARCH 2021



ATTENTION:
Oregon Law Requires You To Follow Rules Adopted By The Oregon Utility Notification Center. Those Rules Are Set Forth In OAR 952-001-0010 Through OAR 952-001-0090. You May Obtain Copies Of The Rules By Calling The Center. (Note: The Telephone Number For The Oregon Utility Center Is (503) 232-1987.)

PROJECT SITE



GENERAL NOTES

1. ALL CONSTRUCTION AND MATERIAL SHALL CONFORM TO THESE PLANS, THE PROJECT SPECIFICATIONS AND THE APPLICABLE REQUIREMENTS OF THE 2018 OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION.
2. THE COMPLETED INSTALLATION SHALL CONFORM TO ALL APPLICABLE FEDERAL, STATE, AND LOCAL CODES, ORDINANCES, AND REGULATIONS.
3. ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULE ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER AT (503) 232-1987. EXCAVATORS MUST NOTIFY ALL PERTINENT COMPANIES OR AGENCIES WITH UNDERGROUND UTILITIES IN THE PROJECT AREA AT LEAST 48 BUSINESS-DAY HOURS, BUT NOT MORE THAN 10 BUSINESS DAYS PRIOR TO COMMENCING AN EXCAVATION, SO UTILITIES MAY BE ACCURATELY LOCATED.
4. THE OWNER OR ENGINEER IS NOT RESPONSIBLE FOR THE SAFETY OF THE CONTRACTOR OR HIS CREW. ALL O.S.H.A. REGULATIONS SHALL BE STRICTLY ADHERED TO IN THE PERFORMANCE OF THE WORK.
5. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING ALL ROADWAYS, KEEPING THEM CLEAN AND FREE OF CONSTRUCTION MATERIALS AND DEBRIS, AND PROVIDING DUST CONTROL AS REQUIRED.
6. CONTRACTOR SHALL MAINTAIN ALL UTILITIES TO ADJACENT BUILDINGS AT ALL TIMES DURING CONSTRUCTION.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION AND SCHEDULING ALL WORK WITH THE OWNER.

REGISTERED PROFESSIONAL ENGINEER
67050
OREGON
2/10/2021
CHRIS D. BAHNER

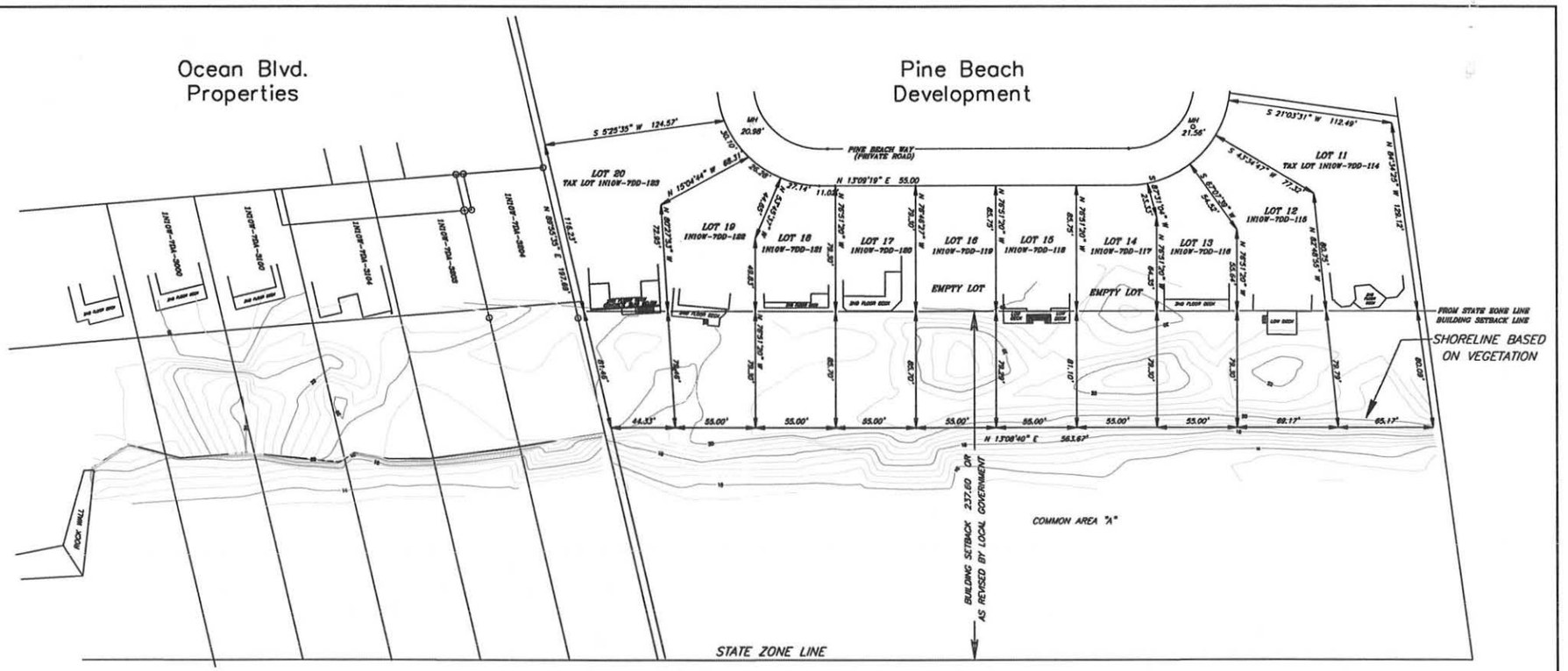
RENEWAL DATE: 12-31-2021

DESIGN ENGINEER

PINE BEACH DEVELOPMENT
ROCK REVETMENT
TILLAMOOK COUNTY

WEST Consultants, Inc.

SHEET NO. 1



NOTES

1. PINE BEACH DEVELOPMENT. TAX LOTS 114–123, SE–SE SECTION 7, T.1.N., R.10W. LOTS 11–20, PINE BEACH REPLAT TILLAMOOK COUNTY, OREGON.

2. OCEAN BEACH BLVD. PROPERTIES. TAX LOTS 3000, 3100, 3104, 3203 & 3204, NE–SE SECTION 7, T.1.N., R.10W., TILLAMOOK COUNTY, OREGON.

3. SURVEY COMPLETED BY C. WAYNE COOK LAND SURVEYING – 3180 ALDERCREST, TILLAMOOK, OREGON, (503–842–8380).

4. SURVEY COMPLETED FEBRAURY 2021.

5. VERTICAL DATUM OF NORTH AMERICAN VERTICAL DATUM OF 1988.

PLAN VIEW

70 35 0 70 140FT

SCALE: 1"=70'

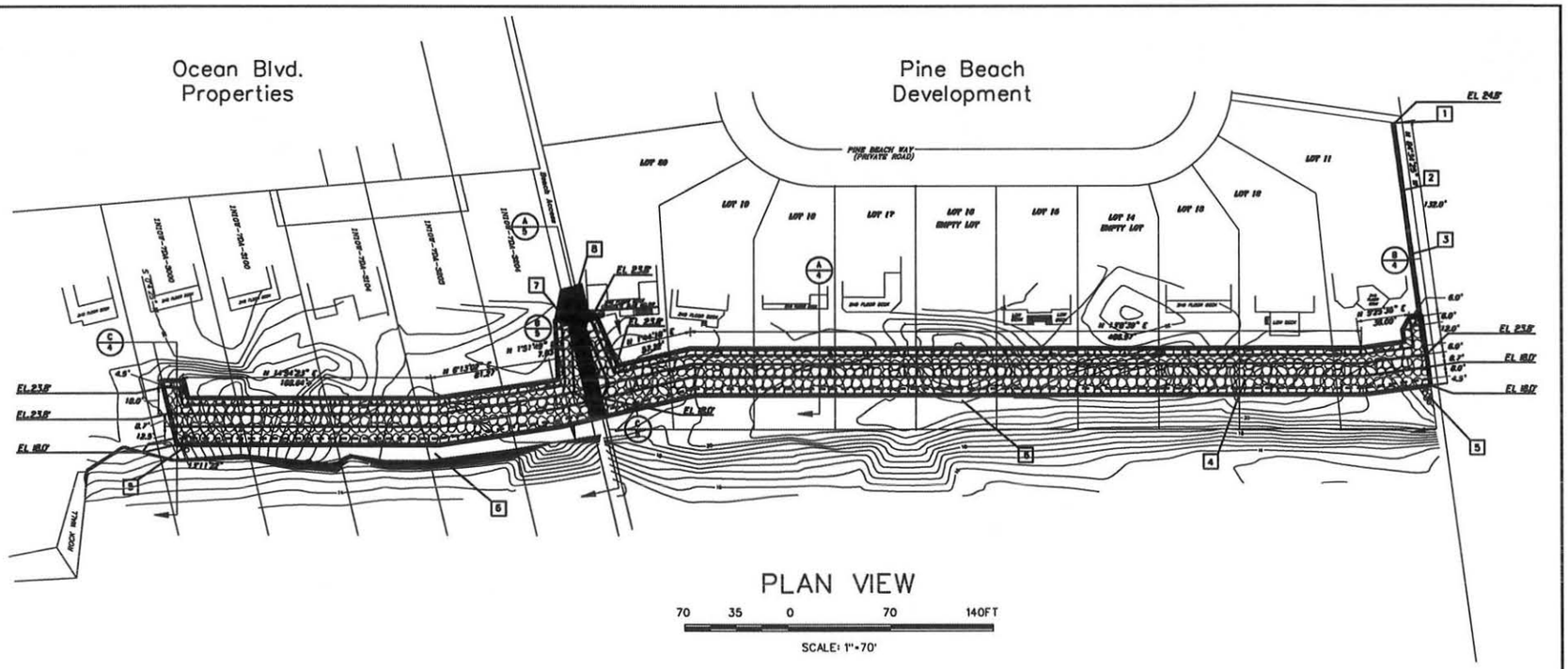
REGISTERED PROFESSIONAL ENGINEER
67050
OREGON
4/30/2020
CHRIS D. BAHNER
RENEWAL DATE: 12-31-2021

N

PINE BEACH DEVELOPMENT AND OCEAN BLVD. PROPERTIES ROCK REVETMENT
TILLAMOOK COUNTY

EXISTING CONDITIONS

SHEET NO. 2



PLAN VIEW

70 35 0 70 140FT

SCALE: 1"=70'

NOTES

1. CONTROL POINT AT CORNER OF WOOD FENCE ALONG THE SOUTHERN BOUNDARY OF PINE BEACH DEVELOPMENT LOT 11. X-COORDINATE OF 7,320,174.35 FT AND Y-COORDINATE OF 717,513.41 FT (HORIZONTAL DATUM OF NORTH AMERICAN DATUM OF 1983, STATE PLANE OREGON NORTH, FEET).
2. CONSTRUCT ECOLOGY BLOCK STRUCTURE. SEE DETAIL D ON SHEET 4.
3. REMOVE AND REPLACE EXISTING FENCE.
4. CONSTRUCT ROCK REVETMENT OVER GRANULAR FILTER. ROCKS SHOULD BE UNIFORM GRADATION RANGING IN SIZE FROM 3 TO 4 FT IN DIAMETER WITH THE ROCK HAVING A MINIMUM SPECIFIC GRAVITY OF 2.65. THE ROCK SHOULD CONSIST OF DENSE, NATURAL ROCK FRAGMENTS. ROCKS SHOULD BE RESISTANT TO WEATHERING AND TO WATER ACTION; AND FREE FROM OVERBURDEN SPOIL, SHALE AND ORGANIC MATERIAL. SHALE AND ROCKS WITH SHALE SEAMS ARE NOT ACCEPTABLE. THE DURABILITY INDEX AND PERCENT ABSORPTION SHALL BE DETERMINED BY AASHTO T 210 AND AASHTO T 85, RESPECTIVELY. COVER ROCK REVETMENT WITH SAND MATERIAL. SEE DETAIL A ON SHEET 4.
5. PLACE 7 3-FT-DIAMETER ROCKS AT AN ELEVATION OF 20.8 FT AND RANDOMLY SPACED NEAR THE NORTHERN AND SOUTHERN END OF PROPOSED STRUCTURE.
6. SAVE EXISTING LARGE LOGS, AND PLACE THROUGHOUT BENCH AREA. REPLANT DISTURBED AREA WITH NATIVE GRASS AND TREES. PLANTING COMPLETED BY OWNERS.
7. CONSTRUCT RAMP. SEE DETAIL ON SHEET 5.
8. CONTRUCT ECOLOBY BLOCK STRUCTURE AND PLACE SAND FILL ON THE SOUTH AND EAST SIDE. SEE DETAIL ON SHEET 5.
9. ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NORTH AMERICAN VERTICAL DATUM OF 1983.

REGISTERED PROFESSIONAL ENGINEER
67050
OREGON
7/9/2001
CHRIS D. BAHNER
RENEWAL DATE: 12-31-2021

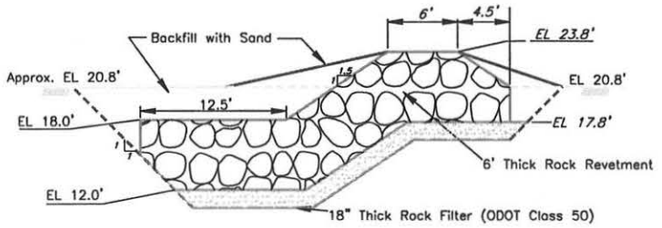
N

PINE BEACH DEVELOPMENT
AND OCEAN BLVD. PROPERTIES
ROCK REVETMENT
TILLAMOOK COUNTY

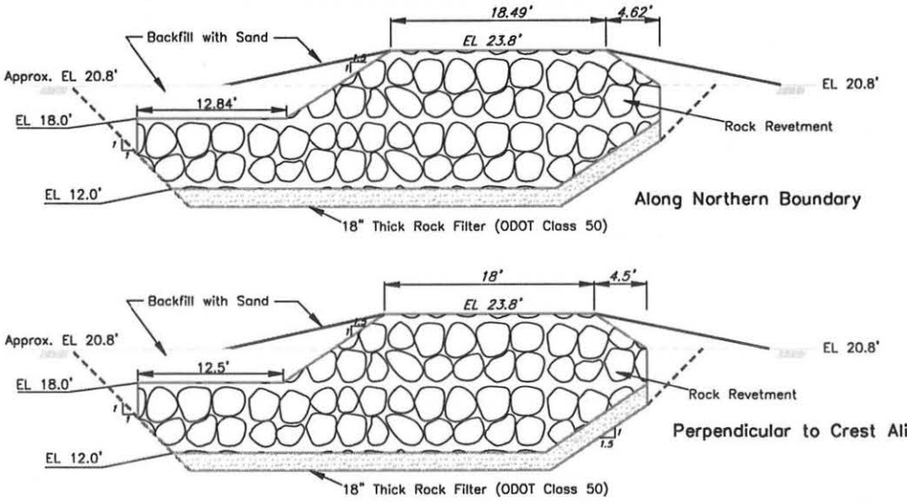
REVETMENT LAYOUT

SHEET NO. 3

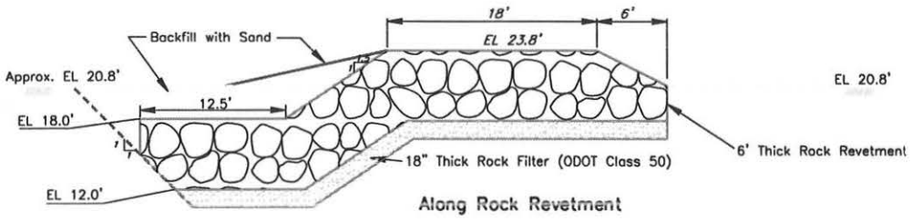
ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NORTH AMERICAN VERTICAL DATUM OF 1988

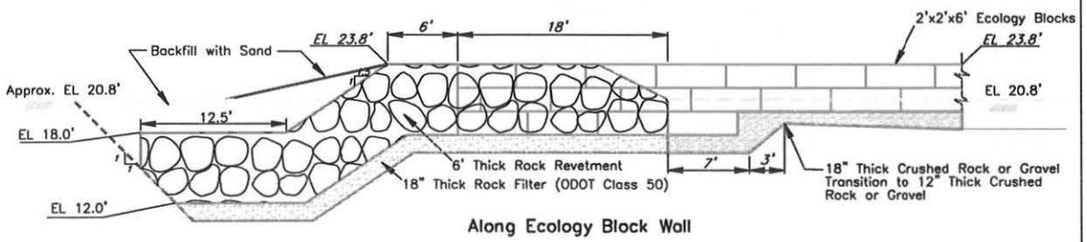


DETAIL A – TYPICAL SECTION OF ROCK REVETMENT
(NOT TO SCALE)

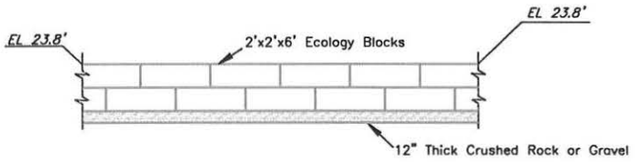


DETAIL C – ALONG NORTHERN BOUNDARY
(NOT TO SCALE)





DETAIL B – ALONG SOUTHERN BOUNDARY
(NOT TO SCALE)



DETAIL D – ECOLOGY BLOCK WALL
(NOT TO SCALE)

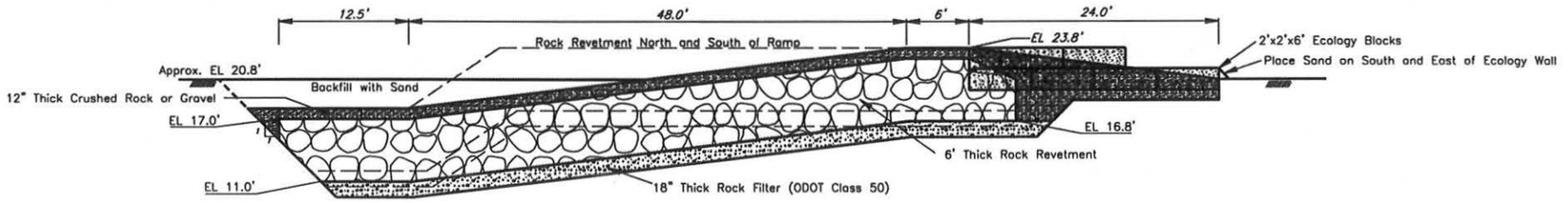
REGISTERED PROFESSIONAL ENGINEER
67050
Chris Bahner
OREGON
7/9/2001
CHRIS D. BAHNER
RENEWAL DATE: 12-31-2021

PINE BEACH DEVELOPMENT AND OCEAN BLVD. PROPERTIES ROCK REVETMENT
TILLAMOOK COUNTY

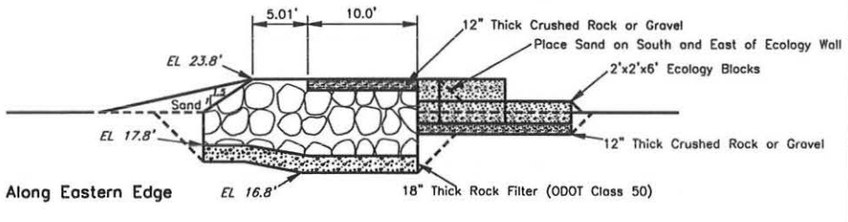
REVETMENT DETAILS

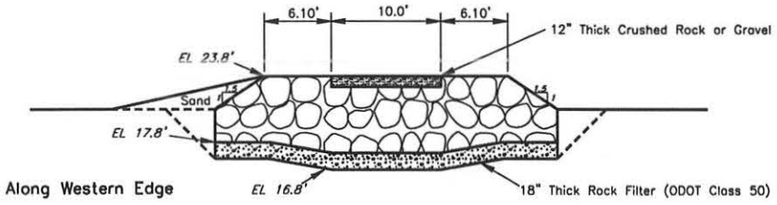
SHEET NO. 4

ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NORTH AMERICAN VERTICAL DATUM OF 1988

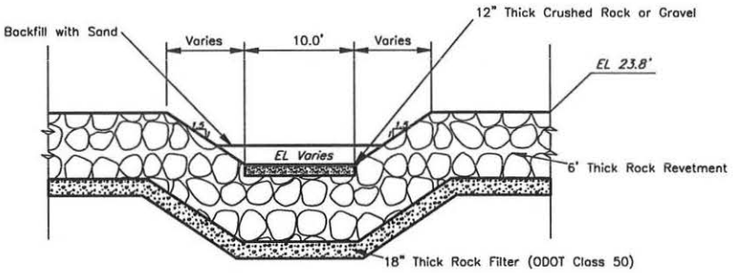


DETAIL A – TYPICAL PROFILE OF ACCESS RAMP
(NOT TO SCALE)





DETAIL B – TYPICAL SECTION OF ROCK REVETMENT
(NOT TO SCALE)



DETAIL C – TYPICAL SECTION OF ACCESS RAMP
(NOT TO SCALE)

REGISTERED PROFESSIONAL ENGINEER
67050
OREGON
7/9/2001
CHRIS D. BAHNER
RENEWAL DATE: 12-31-2021

PINE BEACH DEVELOPMENT
AND OCEAN BLVD. PROPERTIES
ROCK REVETMENT
TILLAMOOK COUNTY

ACCESS RAMP DETAILS

SHEET NO. 5

Allison Hinderer

From: Briana Goodwin <bgoodwin@surfrider.org>
Sent: Thursday, June 3, 2021 3:58 PM
To: Sarah Absher; Allison Hinderer
Subject: EXTERNAL: Additional comments - Goal 18 Exception
Attachments: Additional Comments; Goal 18 Exception.pdf

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

Hi, Sarah:

Please include the attached additional comments in the record for #851-21-000086-PLNG-01: Goal exception request.

Thank you,
Bri

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

June 3, 2021

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

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

Re: Additional comments opposing beachfront protective structure; #851-21-000086-PLNG-01: Goal exception request

Dear Ms. Absher,

Thank you, again, for allowing us to provide written testimony regarding the proposed beachfront protective structure ("BPS") in the Pine Beach Subdivision and George Shand Tract, Ocean Boulevard properties. On behalf of our activist network, we would like to formally oppose the BPS project, the Goal 18 exception, and hope that the Commissioner's office rejects the applicant's proposal outright. Please include these comments—as well as our comments submitted on May 27, 2021—on the record.

In this letter you will find: 1) a request to include on the record our comments filed at 3:58 p.m. on May 27 that were not reflected in the Public Comments file; 2) our comments on potential beach access loss; 3) our comments on the BPS's negative impacts on adjacent properties; 4) and our comments on alternative solutions; and 5) a photograph of the deeded easement we reference.

1) Our Original Testimony Was Timely Filed by the 4 p.m. Deadline on May 27

Please let the record reflect that our first set of comments was submitted in a timely manner before 4 p.m. on May 27, 2021.

2) The BPS will Likely reduce or Eliminate a Unique Recreational Site for Beachgoers

If the BPS is permitted, access to this stretch of beach would be reduced or completely eliminated to the public and to the neighbors with an easement interest. We believe this is a problem for multiple reasons. First, we hope that you consider that the beach near Barview jetty has unique qualities for beachgoers that are rare in the region. This is because it offers the only wind protection from southerly winds in the area. Anyone who has ever been to the beach knows that even mild wind can make for an unpleasant beach experience. This is amplified for ocean-goers, who use wind conditions as a determining factor when considering where to surf, swim, fish, etc. Loss of access would be detrimental to this recreational site that exemplifies the open spaces for which Oregon is recognized. We hope that you reject the application because we need this specific stretch of beach to go to. It is unlike any beaches in the area because of its southerly wind protection.

Additionally, there is an equity issue that we would like for you to consider. We are very concerned about the potential loss of beach access and how easy the existing beach access is for beachgoers. The BPS, if it does not completely eliminate access to the beach altogether, would present a very real access problem for anyone that experiences physical disabilities. Traversing a physical obstruction like the one the BPS would present would be difficult—if not impossible—for some people. As detailed in the public comments of adjacent landowners, a deeded easement exists within the project area (Exhibit 1). The current beach access, which is relatively flat, allows community members with limited mobility to access the beach. If this project moves forward, it will prohibit people with a deeded easement from safely accessing the beach. Requiring people to climb down rip rap or use stairs is a significant change to the character of the current flat, sandy beach access points.

Further, the applicants did not sufficiently research access impacts as this easement was not referenced in their application.

3) BPS Would Likely Harm Adjacent Properties

We would like you to consider the detrimental impact the BPS would have on properties adjacent to the proposed structure. Property owners have time and again commented on the detrimental effect they witness on rip rap adjacent properties. Water gets refracted off of the hard structure and creates more erosion to the adjacent properties than if the structure was not there. It can funnel and focus wave energy to create destruction. We, along with some of the residents in the area urge you to consider the negative impact the structure would have on adjacent properties.

Moreover, the 1967 easement allows neighbors (lots in Blocks 1,3, and 5 in Watseco) to access the beach, intersecting the project area. The BPS will obstruct the easement—rendering it null—and prevent the neighbors from easily accessing the beach like they have for decades.

The BPS will likely negatively impact the adjacent property designated for recreational use. The beach area adjacent to the proposed structure is a recreational management zone (RM). The RM is designated "for public and private parks and day-use facilities. This includes areas that contain significant natural or scenic values. The RM zone is intended to accommodate the

type of recreational developments that preserve an area's natural values." (Tillamook County website). The increased erosion caused by rip rap could decrease the actual land and usable space in the RM properties.

4) Alternatives to the Proposed BPS Should be Considered

The Surfrider Foundation is an environmental nonprofit organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. To further understand our stance on beach preservation, please refer to our Beach Preservation Policy.[1]

We are concerned that the applicants have not exhausted all of their options to mitigate property loss and intrusion to our beaches before installing BPS. We urge the applicants to look into alternate ways of mitigating ocean erosion before the BPS project is approved. Surfrider is a solution-oriented organization. We are experienced in finding solutions to problems with competing interests and welcome the opportunity to assist in searching for alternative solutions.

When it comes to beach development, we favor non-structural solutions. We have engaged in multiple projects that do not use BPS as a solution for property threatened by coastal erosion. For example, in Coos Bay, we were involved in a relocation project where we helped move a house 50 feet away from a deteriorating bluff. Surfrider is also currently engaged in a collaborative partnership with the City of Cannon Beach, private property owners, and nonprofit partners to seek funding and solutions to erosion on Ecola Creek. We would like you and the applications to consider other alternatives before implementing BPS. We feel that alternate methods can adequately redress the applicant's problem.

Conclusion

In summary, Surfrider requests that the subject properties be denied Goal 18 exception and permit to build rip rap revetment. The ramifications of this decision on our beaches in Oregon could be devastating and long lasting. If granted an exception, what is to stop this decision from being the hallmark decision in allowing beach protective structures from being engineered all over the state? We need to consider appropriate long-term solutions that maximize public benefit in areas where erosion threatens existing coastal development. This includes landward retreat of structures from dynamic shorelines.

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

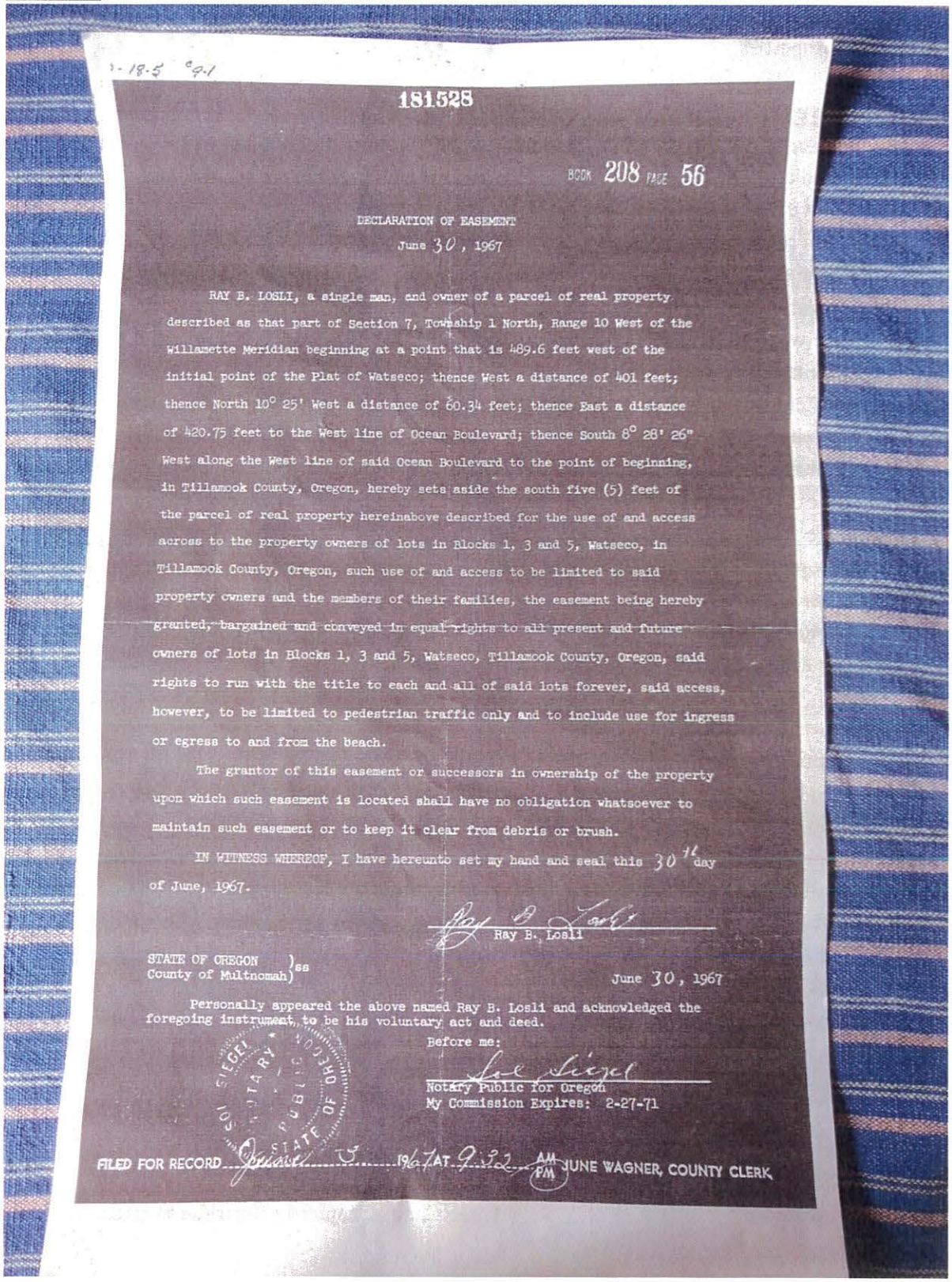
Sincerely,

Briana Goodwin
Oregon Policy Manager
Surfrider Foundation

Ben Moon Vice Chair
Vice Chair
Three Capes Chapter of Surfrider Foundation

[1] https://www.surfrider.org/pages/beach-preservation-policy

Exhibit 1



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BOOK 208 PAGE 56

DECLARATION OF EASEMENT

June 30, 1967

RAY B. LOSLI, a single man, and owner of a parcel of real property described as that part of Section 7, Township 1 North, Range 10 West of the Willamette Meridian beginning at a point that is 489.6 feet west of the initial point of the Plat of Watseco; thence West a distance of 401 feet; thence North 10° 25' West a distance of 60.34 feet; thence East a distance of 420.75 feet to the West line of Ocean Boulevard; thence South 8° 28' 26" West along the West line of said Ocean Boulevard to the point of beginning, in Tillamook County, Oregon, hereby sets aside the south five (5) feet of the parcel of real property hereinabove described for the use of and access across to the property owners of lots in Blocks 1, 3 and 5, Watseco, in Tillamook County, Oregon, such use of and access to be limited to said property owners and the members of their families, the easement being hereby granted, bargained and conveyed in equal rights to all present and future owners of lots in Blocks 1, 3 and 5, Watseco, Tillamook County, Oregon, said rights to run with the title to each and all of said lots forever, said access, however, to be limited to pedestrian traffic only and to include use for ingress or egress to and from the beach.

The grantor of this easement or successors in ownership of the property upon which such easement is located shall have no obligation whatsoever to maintain such easement or to keep it clear from debris or brush.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of June, 1967.

Ray B. Losli

Ray B. Losli

STATE OF OREGON)
County of Multnomah) ss

June 30, 1967

Personally appeared the above named Ray B. Losli and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Lee Siegel

Notary Public for Oregon
My Commission Expires: 2-27-71

LEE SIEGEL NOTARY PUBLIC STATE OF OREGON

FILED FOR RECORD July 5 1967 AT 9:32 AM PM JUNE WAGNER, COUNTY CLERK

Allison Hinderer

From: Sarah Absher
Sent: Thursday, June 3, 2021 4:11 PM
To: Allison Hinderer
Cc: Reed, Meg
Subject: 2020 Beach and Dune Mapping for Pine Beach and Ocean Blvd properties
Attachments: Beach&Dune-PineBeach-Map-O-20-04.pdf

13 copies and post please

From: REED Meg * DLCD <meg.reed@state.or.us>
Sent: Thursday, June 3, 2021 2:44 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Cc: PHIPPS Lisa * DLCD <lisa.phipps@state.or.us>
Subject: EXTERNAL: 2020 Beach and Dune Mapping for Pine Beach and Ocean Blvd properties

[**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,

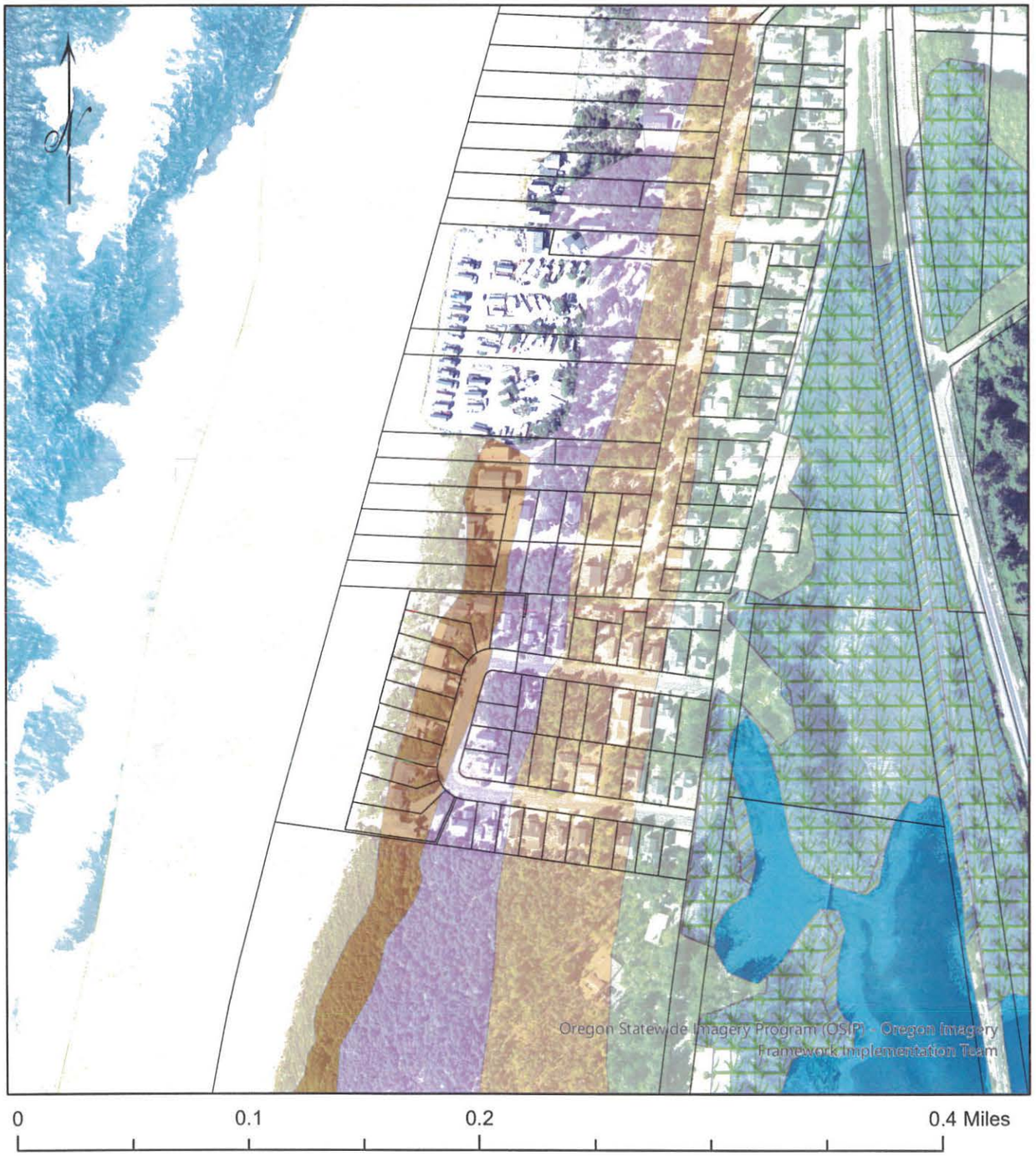
Please find attached a map and text that DLCD would like to submit into the record for 851-21-000086-PLNG-01, goal exception request.

The 15 tax lots subject to the request in 851-21-000086-PLNG-01 are mapped here using data from DOGAMI's O-20-04 report, which maps beach and dune features in Tillamook County and was published in 2020. This report was commissioned by the Oregon Department of Land Conservation and Development and Tillamook County Department of Community Development to serve as the basis for upcoming proposed amendments to the Goal 18 element of Tillamook County's Comprehensive Plan and Land Use Ordinance. This information is provided for informational purposes only. The western half of the tax lots, where there is no development, are categorized as Active Foredune (subject to wave erosion, runup, overwash and inundation). The eastern portions of the lots are categorized as Recently Stabilized Foredune.

Data citation: Open-File Report O-20-04, Temporal and spatial changes in coastal morphology, Tillamook County, Oregon, by Jonathan C. Allan.

Thank you,
Meg

DLCD
Meg Reed
Coastal Shores Specialist | Oregon Coastal Management Program
Pronouns: she/her
Oregon Department of Land Conservation and Development
Cell: 541-514-0091
meg.reed@state.or.us | www.oregon.gov/LCD



DOGAMI Open File Report O-20-04, Pine Beach goal exception request area

Legend

- B - Beach
- FDA - Active foredune
- AFDA - Artificial dune
- FD (W) - Reactivated, erosion/flooding
- H - Hummocks, active
- FD - Stabilized foredune
- IFD - Inland foredune
- DC - Dune complex
- DC (W) - wet
- DS - Dune, younger stabilized
- ODS - Dune, older stabilized
- OS - Open sand
- W - Interdune
- WMF - Wet mountain front
- WDP - Wet deflation plain
- WL - Wetland
- WSP - Wet surge plain
- WFP - Wet flood plain
- LK - Lake
- CT - Coastal terrace
- LD - Landslide
- FED - Fluvial, estuary deposit

The 15 tax lots subject to the request in 851-21-000086-PLNG-01 are mapped here using data from DOGAMI's O-20-04 report, which maps beach and dune features in Tillamook County and was published in 2020. This report was commissioned by the Oregon Department of Land Conservation and Development and Tillamook County Department of Community Development to serve as the basis for upcoming proposed amendments to the Goal 18 element of Tillamook County's Comprehensive Plan and Land Use Ordinance. It is important to note that the 1975 beach and dune mapping undertaken by the US Department of Agriculture Soil Conservation Service is still the official and adopted inventory for the County. This information is provided for informational purposes only. The western half of the tax lots, where there is no development, are categorized as Active Foredune (subject to wave erosion, runup, overwash and inundation). The eastern portions of the lots are categorized as Recently Stabilized Foredune.

Map created on 6/3/2021 by the Oregon Department of Land Conservation & Development