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CERTIFICATE OF MAILING

I certify that I served the foregoing Notice regarding <sup>851-21-0000810-PLNG-01</sup> ~~851-21-0000810-PLNG~~ as shown on the attached, and made a part hereof, on the 19 day of October, 2021, a true and correct copy of the Notice of Decision, contained in a sealed envelope addressed to person as shown at their last known address as shown in the latest records in the Tillamook County Assessor's Office, and deposited in the official mail deposit of the Tillamook County Courthouse at Tillamook, Oregon, on the 19 day of October, 2021, and that the postage thereon was prepaid to each addressee.

By: \_\_\_\_\_



\_\_\_\_\_

10-19-21

Date

Name	Address
Mary & Tom Gossart	593 NW 94th Terrace Portland, OR 97229
Barbara Trout	17640 Old Pacific Hwy Rockaway Beach, OR 97136
Elaine Cummings	17690 Old Pacific Hwy Rockaway Beach, OR 97136
Paul & Velma Limmeroth	17495 Ocean Blvd Rockaway Beach, OR 97136
Chris Berrie	<a href="mailto:keeks54@gmail.com">keeks54@gmail.com</a>
Dale & Lisa Wacker	17475 Ocean Blvd Rockaway Beach, OR 97136
Aubrey Pagenstecher	<a href="mailto:aubpag@gmail.com">aubpag@gmail.com</a>
Troy Taylor	<a href="mailto:troy@campmagruder.org">troy@campmagruder.org</a>
Sean Malone	<a href="mailto:seanmalone8@hotmail.com">seanmalone8@hotmail.com</a>
Phillip Johnson	<a href="mailto:phillip@oregonshores.org">phillip@oregonshores.org</a>
Camryn Pennington	<a href="mailto:campennington@gmail.com">campennington@gmail.com</a>
Dave Robertson	17655 Ocean Blvd Rockaway Beach, OR 97136
Briana Goodwin	<a href="mailto:bgoodwin@surfrider.org">bgoodwin@surfrider.org</a>
Charlie Plybon	<a href="mailto:cplybon@surfrider.org">cplybon@surfrider.org</a>
Three Capes Vice Chair	<a href="mailto:vicechair@threecapes.surfrider.org">vicechair@threecapes.surfrider.org</a>
Rich & Kathy Snyder	<a href="mailto:kathyrich1966@msn.com">kathyrich1966@msn.com</a>
Anuradha Sawkar	<a href="mailto:anu@crag.org">anu@crag.org</a>
Meg Reed	<a href="mailto:meg.reed@dlcd.oregon.gov">meg.reed@dlcd.oregon.gov</a>
Lisa Phipps	<a href="mailto:lisa.phipps@dlcd.oregon.gov">lisa.phipps@dlcd.oregon.gov</a>
Nicholas Ellis	<a href="mailto:nicellisidx@gmail.com">nicellisidx@gmail.com</a>
<a href="mailto:mikeellisidx@gmail.com">mikeellisidx@gmail.com</a>	
Bill Cogdall	<a href="mailto:jwcogdall@gmail.com">jwcogdall@gmail.com</a>
Evan Danno	<a href="mailto:evandanno@hotmail.com">evandanno@hotmail.com</a>
Deborah D. Danno	17490 Ocean Blvd Rockaway Beach, OR 97136
Don Roberts	<a href="mailto:donrobertsemail@gmail.com">donrobertsemail@gmail.com</a>
Rachael Holland	<a href="mailto:rachael@pacificopportunities.com">rachael@pacificopportunities.com</a>
David Hayes	<a href="mailto:tdavidh12@gmail.com">tdavidh12@gmail.com</a>
David Hayes	<a href="mailto:tdavidh12@icloud.com">tdavidh12@icloud.com</a>
Barbara Roberts	<a href="mailto:robertsfm6@gmail.com">robertsfm6@gmail.com</a>
Conrad Buckies iii	<a href="mailto:cbuckthree@outlook.com">cbuckthree@outlook.com</a>
Mark Kemball	<a href="mailto:kemballm@gmail.com">kemballm@gmail.com</a>
Shannon Butcher	<a href="mailto:shannon@innocencefound.org">shannon@innocencefound.org</a>
Brett Butcher	<a href="mailto:brett@passion4people.org">brett@passion4people.org</a>
Alice Kemball	<a href="mailto:kemball@easystreet.net">kemball@easystreet.net</a>
Katie Buckles	<a href="mailto:katie@katieandconrad.com">katie@katieandconrad.com</a>
Heather VonSeggern	<a href="mailto:heather.vonseggern@img.education">heather.vonseggern@img.education</a>
Megan Berg	<a href="mailto:meganberglaw@aol.com">meganberglaw@aol.com</a>
<a href="mailto:Patty.snow@dlcd.org">Patty.snow@dlcd.org</a>	
<a href="mailto:heather.wade@dlcd.oregon.gov">heather.wade@dlcd.oregon.gov</a>	
<a href="mailto:steve.shipsey@doj.state.or.us">steve.shipsey@doj.state.or.us</a>	
Teryn Yazdani	<a href="mailto:teryn@crag.org">teryn@crag.org</a>
Cameron La Follette	<a href="mailto:cameron@oregoncoastalliance.org">cameron@oregoncoastalliance.org</a>



[mgossart@earthlink.net](mailto:mgossart@earthlink.net)  
[coastaltrout33@aim.com](mailto:coastaltrout33@aim.com)  
[esmccummings1244@gmail.com](mailto:esmccummings1244@gmail.com)

[lisa.wacker@centurylink.net](mailto:lisa.wacker@centurylink.net)

[drm41@gmail.com](mailto:drm41@gmail.com)

17480 Pine Beach Loop Rockaway Beach, OR 97136

17490 Ocean Blvd Rockaway Beach, OR 97136

17380 Pine Beach Loop Rockaway Beach, OR 97136

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AGENCY NAME and POC	AGENCY ADDRESS	AGENCY EMAIL
X DLCD, Heather Wade	810 SW Alder, Suite B, Newport, OR 97365	heather.wade@state.or.us
X DLCD, Lisa Phipps	4301 Third Street, Room 206, Tillamook, OR 97141	lisa.phipps@state.or.us
DLCD, Hilary Foote	4301 Third Street, Room 206, Tillamook, OR 97141	hilary.foote@state.or.us
X DLCD, Ceilinda Adair (FEMA Contact)	635 Capital Street NE, Ste 150, Salem, OR 97301-2540	ceilinda.adair@state.or.us
DLCD, Jason Gately (NHMP Contact)	635 Capital Street NE, Salem, OR 97301	jason.gately@state.or.us
Department of State Lands, Dan Cary	1775 Summer Street NE, Salem, OR 97301	DSL Online Notice Form
Department of State Lands, Blake Helm	775 Summer Street NE, Ste. 100, Salem, OR 97301-1279	DSL Online Notice Form
X Department of State Lands, Jevra Brown	775 Summer Street NE, Ste. 100, Salem OR 97301-1279	jevra.brown@dsl.state.or.us
ODFW, Robert Bradley	4907 Third Street, Tillamook, OR 97141	robert.bradley@state.or.us
ODFW, Matt Hunter	2001 Marine Drive, Room 120, Astoria, OR 97103	Matthew.v.hunter@state.or.us
OEOG, York Johnson	2310 1st Street, Suite 4, Tillamook, OR 97141	Johnson.York@deg.state.or.us
ODOT	455 Airport Road SE, Building B, Salem, OR 97301	ODOTR2PLANMGR@odot.state.or.us
Department of Forestry, Kate Skinner	5005 Third Street, Tillamook, OR 97141	kate.j.skinner@oregon.gov
X Oregon Parks and Recreation, Jay Sennewald	12735 NW Pacific Coast Hwy, Seal Rock, OR 97367	jay.sennewald@oregon.gov
Oregon State Marine Board, Joe Severson	430 Commercial Street NE, Salem, OR 97310	Joe.severson@oregon.gov
ODOT Aviation, Heather Peck	3040 25th Street SE, Salem, OR 97302	Heather.Peck@aviation.state.or.us
ODOT Aviation, Jeff Caines *Copy Both Please	3040 25th Street SE, Salem, OR 97302	Jeff.Caines@aviation.state.or.us
Oregon Water Resources Dept, Nikki Hendricks	4000 Blimp Blvd Suite 400 Tillamook, OR 97141 (Don't mail)	Nikki.M.Hendricks@state.or.us
X Oregon SHPO Environmental Compliance	725 Summer St NE, Suite C, Salem, OR 97301	
EPA, Yvonne Vallette	805 SW Broadway, Suite 500, Portland, OR 97205	Vallette.Yvonne@epa.gov
US Fish & Wildlife, Michelle Zwartjes	911 NE 11th Avenue, Portland, OR 97232	Fw1ofwo@fws.gov
National Marine Fisheries Service, Ken Phippen	1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232	ken.phippen@noaa.gov
X US Army Corp of Engineers, Kinsey Friesen	P.O. Box 2946, Portland, OR 97208	kinsey.M.Friesen@usace.army.mil
BLM	4610 3rd Street, Tillamook, OR 97141	
USFS, Alex Wickham	P.O. Box 235, Jint, OR 97122	aswickham@fs.fed.us
USFS, John Porier	P.O. Box 235 Hebo, OR 97122	porier@fs.fed.us
X Tillamook SWCD	4000 Blimp Blvd, Suite 200, Tillamook, OR 97141	doryfreshfish@embarqmail.com
Economic Development, Terre Cooper	4506 Third Street, Tillamook, OR 97141	terrecooper@tillamookbaycc.edu
X 911, Tiffany Miller	P.O. Box 911, Tillamook OR 97141	tmiller@tillamook911.com
Neahkahnie School District, Mark Sybouts	P.O. Box 28 Rockaway Beach, OR 97136	marks@nknsd.org
Tillamook School District	2510 1st Street, Tillamook, OR 97141	
Nestucca School District, Misty Wharton	P.O. Box 99 Cloverdale, OR 97112	mistyW@nestucca.k12.or.us
Business Oregon, Melanie Olson	4301 Third Street, Tillamook, OR 97141	Melanie.Olson@oregon.gov
DOGAMI	229 Broadalbin St. SW, Albany, OR 97321-2246	Becky.johnson@oregon.gov
<b>Districts</b>		
Cannon Beach Fire Department, Matt Benedict	P.O. Box 24, Cannon Beach, Oregon 97110	mbenedict@cbfire.com
Nehalem Fire and Rescue, Chris Beswick	36375 Hwy 101 N. Nehalem, OR 97131	c.beswick@nbfdr.org
Bay City Fire Department	P.O. Box 3309, Bay City OR 97107	
X Garibaldi Rural Fire Protection District	P.O. Box 675, Garibaldi OR 97118	firechief@ci.garibaldi.or.us
Netarts Oceanside RFD, Tim Carpenter	P.O. Box 219, Netarts OR 97143	Continue to Mail Please
Tillamook Fire District, Daron Bement	2310 4th Street, Tillamook, OR 97141	firechief@tillamookfire.com
Tillamook Fire District, Rueben Descloux	2310 4th Street, Tillamook, OR 97141	rdescloux@tillamookfire.com
Nestucca Rural Fire Protection District, James Oeder	30710 US-101, Cloverdale, OR 97112	joeder@nrfdp.com
Manzanita, Cynthia Alamillo	P.O. Box 129, Manzanita, OR 97130-0129	calamillo@ci.manzanita.or.us
Manzanita, Jerry Taylor	P.O. Box 129, Manzanita, OR 97130-0129	jtaylor@ci.manzanita.or.us
Nehalem, Dale Shafer	P.O. Box 143 Nehalem, OR 97131	dshafer@neehalem.gov
Nehalem, Melissa Thompson-Kiefer	P.O. Box 143 Nehalem, OR 97131	mthompson@neehalem.gov
Wheeler, Lori Rieger	P.O. Box 177, Wheeler, Oregon 97147.	cityofwheeler@neehalem.net
X Rockaway, Becca Harth <i>Rock Fire Dept</i>	P.O. Box 5 Rockaway Beach, OR 97136	bharth@corb.us
Garibaldi	P.O. Box 708 Garibaldi, OR 97118	geoff@ci.garibaldi.or.us
Bay City	P.O. Box 3309, Bay City OR 97107	acherry@ci.bay-city.or.us
Tillamook, Paul Wyntergreen	210 Laurel Avenue, Tillamook, OR 97141	pwyntergreen@tillamookor.gov
Port of Nehalem	P.O. Box 476 Nehalem OR 97131	
Port of Garibaldi	P.O. Box 10 Garibaldi, OR 97118	Geoff@ci.garibaldi.or.us
Port of Tillamook, Michele Bradley	4000 Blimp Blvd Tillamook, OR 97141	mbradley@potb.org
<b>Water and Sanitation</b>		
Beaver Water District, Debbie Hodgdon	P.O. Box 306 Cloverdale, OR 97112	beaverwater@hotmail.com
Cloverdale Water District, Faith Melendy	P.O. Box 166 Cloverdale, OR 97112	cloverdalewater@earthlink.net
Fairview Water District, David Pace	403 Marolf Loop Road, Tillamook, OR 97141	davidpace@fairviewwater.com
Falcon-Cove Beach Water District	79387 Ray Brown Road, Arch Cape, OR 97102	cadice@hotmail.com
Hebo Joint Water Sanitary	P.O. Box 328 Hebo, OR 97122	hebojwsa@outlook.com
Hunt Water District, Carol Leuthold	2425 McCormick Loop, Tillamook OR 97141	leutholddairy@hotmail.com
Kilchis Water District, Beverly Prince	8105 Hathaway Road, Tillamook OR 97141	ltino2014@charter.net
Long Prairie Water District, Janell Werner	P.O. Box 331, Tillamook OR 97141	clyde@zwald.org
Long Prairie Water District,	P.O. Box 331, Tillamook, Or 97141	nonda@zwald.org
Neahkahnie Water District	9155 Nehalem Road, Nehalem, OR 97131	
Neskowin Regional Water District, Jana Ackerman	P.O. Box 823, Neskowin OR 97149	
Netarts Water District, Dee Ann Gregg	P.O. Box 50 Netarts OR 97143	office@netartswaterdistrict.com
Northwoods Water District, Norman Brennan	7645 Sollie Smith Road, Tillamook OR 97141	USPS Mail Only Please
Oceanside Water District, Julie Johnson	P.O. Box 360 Oceanside OR 97134	oceansidewaterdistrict@gmail.com
Pacific City Joint Water-Sanitary Authority	34005 Cape Kiwanda Drive, Pacific City, OR 97135	mhuighes@pcjwsa.com - Michelle
Pacific City Joint Water-Sanitary Authority	34005 Cape Kiwanda Drive, Pacific City, OR 97135	rdeloe@pcjwsa.com - Rachelle
Pleasant Valley Water District	P.O. Box 538, Tillamook, OR 97141	nonda@zwald.org
South Prairie Water District	8460 Bewley Creek Road, Tillamook, OR 97141	
Tone Water District, Judith Robitsch	1455 Tone Road, Tillamook OR 97141	
X Twin Rocks Water District, Earl Reeves	P.O. Box 240, Rockaway Beach OR 97136	
X Watseco - Barview Water District, Barbara Trout	P.O. Box 295, Rockaway Beach, OR 97136	watsecobarview@centurylink.net
Cloverdale Sanitary District, Heidi Reid	P.O. Box 157, Cloverdale OR 97112	cloverdalesd@embarqmail.com
Nehalem Bay Wastewater Agency, Bruce Halverson	P.O. Box 219, Nehalem, OR 97131	nbwa2@neehalem.net
Neskowin Regional Sanitary Authority, Annis Leslie	P.O. Box 383, Neskowin OR 97149	nrsa01@centurylink.net
Netarts-Oceanside Sanitary District, Dan Mello	1755 Cape Meares Loop Road, W, Tillamook OR 97141	vona@nosd.us
X Twin Rocks Sanitary District, Cyndy Arvin	P.O. Box 69, Rockaway Beach OR, 97136	shella@twinrocks.us
<b>CAC</b>		
Neskowin CAC	P.O. Box 805 Neskowin, OR 97149	biff@neskowincac.org
Oceanside CAC	P.O. Box 232 Oceanside, OR 97134 (Do not mail)	jerkykeene@aol.com
Netarts CAC		tim.netarts@gmail.com
Barview, Twin Rocks, Watseco CAC	15510 Lakeside Drive Rockaway Beach, OR 97136	garyatbright97136@gmail.com
Cloverdale CAC	P.O. Box 133 Cloverdale, OR 97112	
Pacific City CAC		pcwoodscac@gmail.com

Assessor, Denise Vandecoevering | Public Works, Ron Newton | Sanitation, Chris Chiola [ ] | Surveyor, Michael Rice [ ]  
 Health Department, Annette Pampash [ ] | Planning Commission [ ] | Surveyor, Travis Porter [ ]

*South Fork*  
*at Chin Beach*

\* Add Josh Brown Sheriff  
 \* Add Chris Laity - TC PDW  
 \* Add Karen Shank (email)  
 \* Add Cameron Lafayette (email) → check & confirm

Revised 03/18/2021

1N1007DD00120  
17420 PINE BEACH WAY LLC  
5012 DOGWOOD DR  
LAKE OSWEGO, OR 97035

1N1007DD00145  
ARCHITECT CTRL CMTEE OF PINE B  
5651 SW WINDFIELD LP  
LAKE OSWEGO, OR 97035

1N1007DD00136  
ARCHITECTURAL CONTROL/PINE BEA  
5651 SW WINDFIELD LP  
LAKE OSWEGO, OR 97035

1N1007DD00200  
ARCHITECTURAL CONTROL/PINE BEA  
5651 SW WINDFIELD LP  
LAKE OSWEGO, OR 97035

1N1007DD00214  
BARCAN, CRISTIAN & MEGGAN A  
16050 NORTHCLIFF SQ  
ELBERT, CO 80106

1N1007DD00144  
BEAN, GEORGE M & KATHLEEN K  
PO BOX 1417  
ROCKAWAY BEACH, OR 97136-1417

1N1007DA03203  
BERG, MEGAN  
1734 W YAMPA ST  
COLORADO SPRINGS, CO 80904

1N1007DA03205  
BERGER, TRAVIS B & PAIGE H  
PO BOX 906  
ROCKAWAY BEACH, OR 97136

1N1007DD00125  
BUCKLES, CONRAD L III & KATIE  
PO BOX 1369  
ROCKAWAY BEACH, OR 97136

1N10000001100  
CHURCH, OREGON CONF OF METHODI  
1505 SW 18TH AVE  
PORTLAND, OR 97201

1N1007DD00114  
COGDALL, JOHN WILLIAM IV & LYN  
39455 NW MURTAUGH RD  
NORTH PLAINS, OR 97133

1N1007DD00117  
CREEDON, JONATHAN C  
7501 SE 17TH ST  
VANCOUVER, WA 98664

1N1007DA03100  
DANNO, EVAN F TRUSTEE  
144 HIGHLAND RIDGE RD  
KALISPELL, MT 59901

1N1007DD00112  
DERR, BENJAMIN G & ERIN K  
7725 PINE BEACH AVE  
ROCKAWAY BEACH, OR 97136

1N1007DA03103  
DIXON, DOUGLAS D & JANELL K  
8005 NE 37TH AVE  
VANCOUVER, WA 98665

1N1007DA03202  
DIXON, DOUGLAS DAVID & JANELL  
8005 NE 37TH AVE  
VANCOUVER, WA 98665

1N1007DA03107  
DONKIN, HAL O & JONNIE  
12153 SE FLAVEL ST  
PORTLAND, OR 97266

1N1007DA03000  
DOWLING, DAVID A & ANGELA M  
19690 WILDWOOD DR  
WEST LINN, OR 97068

1N1007DD00123  
ELLIS, MICHAEL LEON TRUSTEE  
2614 Q ST  
VANCOUVER, WA 98663

1N1007DA03001  
ERDMANN, MARK  
21101 NW CANNES DR  
PORTLAND, OR 97229

1N1007DD00116  
FARR, DAVID L & FRIEDA F  
17340 PINE BEACH WAY  
ROCKAWAY BEACH, OR 97136

1N1007DA04800  
FLANNERY, LOUIS W & IRENE M TR  
10555 SW CLUTTER RD  
SHERWOOD, OR 97140

1N1007DA03101  
FREEMAN, JAMES D &  
15415 SE SUN PARK DR  
VANCOUVER, WA 98683

1N1007DD00216  
GILKEY, JOHN P & JUDY L (TOD)  
7730 PINE BEACH LP  
ROCKAWAY BEACH, OR 97136

1N1007DA02900  
GOSSART, TOM J & MARY G  
593 NW 94TH TERR  
PORTLAND, OR 97229-6368

1N1007DA02901  
GOSSART, TOM J & MARY G  
593 NW 94TH TERR  
PORTLAND, OR 97229-6368

1N1007DD00124  
HATCH, MICHAEL D & KATHLEEN H  
884 SE 25TH CT  
HILLSBORO, OR 97123

1N1007DD00215  
HERBOTH, WILLIAM D CO-TRUSTEE  
6006 NE RODNEY AVE  
PORTLAND, OR 97211

1N1007DD00122  
HOLLAND, GLENNA M TRUSTEE &  
3136 NE 45TH AVE  
PORTLAND, OR 97213

1N1007DD00213  
HORTON, MARLON R & KIMBERLY C  
31790 RAYMOND CREEK RD  
SCAPPOOSE, OR 97056



1N1007DA03201 JOHNSON, JOANIE M & 13084 SW ASCENSION DR TIGARD, OR 97223-5686	1N1007DA02500 JUNIPER RESIDENTIAL, LLC 52644 NE 1ST ST SCAPPOOSE, OR 97056	1N1007DA02600 JUNIPER RESIDENTIAL, LLC 52644 NE 1ST ST SCAPPOOSE, OR 97056
1N1007DD00121 KLEIN, JEFFREY S & TERRY 12230 SW RIVERVIEW LN WILSONVILLE, OR 97070	1N1007DA03207 KOLIN, KEVIN J TRUSTEE & 155 N CORAL ST ROCKAWAY BEACH, OR 97136	1N1007DD00109 LAYZELL, KAREN 7785 PINE BEACH ST ROCKAWAY BEACH, OR 97136
1N1007DA05000 LIMMEROOTH, PAUL & VELMA 17495 OCEAN BLVD ROCKAWAY BEACH, OR 97136-9610	1N1007DA03104 LOCKWOOD, MARY ANN CO-TRUSTEE 2355 SW SCENIC DR PORTLAND, OR 97225	1N1007DD00119 MUNCH, MICHAEL T TRUSTEE 5012 DOGWOOD DR LAKE OSWEGO, OR 97035
1N1007DA03206 NETTINGA, TAMMY M & PO BOX 1100 ROCKAWAY BEACH, OR 97136	1N1007DD00217 POSTLETHWAITE, ANTHONY E & JAC 13887 NW MEADOWRIDGE DR PORTLAND, OR 97229-2451	1N1007DD00138 REED, ROBERT T TRUSTEE PO BOX 764 GARIBALDI, OR 97118-0764
1N1007DD00128 REED, RODNEY 22600 NW MEIER RD HILLSBORO, OR 97124	1N1007DD00207 RESLER, MARILYN 7262 SE TAMARACK CT MILWAUKIE, OR 97267	1N1007DD00206 RESLER, MARILYN 7262 SE TAMARACK CT MILWAUKIE, OR 97267
1N1007DD00205 RESLER, MARILYN 7262 SE TAMARACK CT MILWAUKIE, OR 97267	1N1007DD00118 ROBERTS, DONALD W 1/2 TRUSTEE 503 RHODODENDRON DR VANCOUVER, WA 98661	1N1007DD00208 ROBINSON, KENNETH A TRUSTEE & 20415 NW ROCK CREEK BLVD PORTLAND, OR 97229
1N1007DD00110 ROCKAWAY CABIN LLC 500 NE OCHOCO AVE PRINEVILLE, OR 97754-1229	1N1007DA03105 ROCKAWAY LOT1 LLC 2495 NW 133RD PL PORTLAND, OR 97229	1N1007DD00115 ROGERS, MICHAEL TRUSTEE & 17231 NW DAIRY CREEK RD NORTH PLAINS, OR 97133
1N1007DA04701 ROLEN, ROGER & DENISE 1/3 & 282 AMANDA CT OREGON CITY, OR 97045	1N1007DD00127 SCHEELE, DONALD & PO BOX 1190 ROCKAWAY BEACH, OR 97136	1N1007DA03106 SCHULZ, MICHAEL M & 4304 MONTGOMERY LN PASCO, WA 99301
1N1007DD00113 STAVREV, SVETOSLAV & TSVETALIN 12930 NW TIGON LN PORTLAND, OR 97229	1N1007DD00126 STOCK, JULIE A & 4810 BIRCH RD PASCO, WA 99301	1N1007DD00111 SUSEE, MICHAEL J & STEPHANIE N 19420 SW POMONA DR BEAVERTON, OR 97007
1N1007DD00142 THIELMAN, BRENT & ERIN 1650 SE MCBROD AVE MILWAUKIE, OR 97222	1N1007DA03204 VON SEGGERN, HEATHER STECK 337 SOMERSET AVE SARASOTA, FL 34243	1N1007DA05100 WACKER, DALE & LISA M 17475 OCEAN BLVD ROCKAWAY BEACH, OR 97136

1N1007DA04900  
ZINK, ROBERT DONALD 50%  
3907 NE 98TH AVE  
VANCOUVER, WA 98662

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KURT HECKEROTH  
PO BOX 140  
NETARTS, OR 97143

GALE OUSELE  
8105 SLAB CREEK ROAD  
NESKOWIN, OR 97149

DON LAFRANCE  
7730 TRASK RIVER ROAD  
TILLAMOOK, OR 97141

MINUTE MASTER

JOEL STEPHENS

GUY SIEVERT  
PO BOX 1031  
NESKOWIN, OR 97149

MARK ROBERTS  
P.O. BOX 546  
MANZANITA, OR 97130

APPLICANT

SARAH ABSHER

MEGAN GILLAS  
PO BOX 668  
PACIFIC CITY, OR 97135

CHAD ALLEN  
2935 OLD LATIMER ROAD  
TILLAMOOK, OR 97141

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

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*Land of Cheese, Trees and Ocean Breeze*

**NOTICE OF BOARD OF COUNTY COMMISSIONER DECISION:**  
**GOAL 18 EXCEPTION REQUEST #851-21-000086-PLNG-01 &**  
**FLOODPLAIN DEVELOPMENT PERMIT REQUEST #851-21-000086-**  
**PLNG: PINE BEACH & SHAND TRACTS**

*NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:  
ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,  
IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.*

**DATE OF NOTICE: October 19, 2021**

**RE:** In the matter of #851-21-000086-PLNG-01, a Goal Exception request for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a “committed” exception and/or a “reasons” exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary together with Floodplain Development Permit Request #851-21-000086-PLNG for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone on properties identified as Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123, of Section 7DD, and Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. Multiple Applicants & Property Owners.

Dear Interested Parties:

This letter is to confirm the action taken by the Tillamook County Board of Commissioners on August 16, 2021, regarding the above-referenced request. The Tillamook County Board of Commissioners opened a de novo public hearing on July 28, 2021, and continued the hearing to August 16, 2021. The hearing was properly noticed according to the requirements of ORS Chapters 197 and 215. The hearings followed the Planning Commission hearings that took place on May 27, 2021, June 24, 2021, and July 15, 2021, where the Planning Commission voted 4 in favor and 2 against recommending approval of Goal Exception request #851-21-000086-PLNG-01 to the Board of County Commissioners. After consideration of the findings of fact, testimony received, evidence in the record and the May

20, 2021, staff report, a motion passed in 5 in favor and 1 against recommending approval of Development Permit request #851-21-000086-PLNG to the Board of County Commissioners.

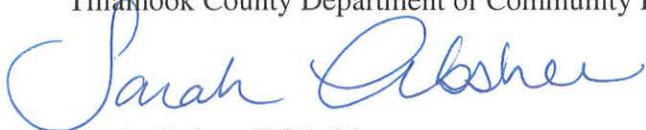
After reviewing the applicable criteria and development standards, the Applicant's submission, Planning Commission's decisions, staff reports and findings contained therein, testimony, and the record and file, the Board, by a vote of 3-to-0, approved the Goal 18 Implementation 5 (IM 5) request and also voted 3-to-0 to approve the associated Floodplain Development Permit at the public hearing on August 16, 2021, on the basis of the findings of fact included as "Exhibit A" attached to the Board Order. The Board Order with "Exhibit A" can be found on the Community Development Land Use Application Page here: <https://www.co.tillamook.or.us/commdev/project/851-21-000086-plng-01>

Goal 18 Exception request #851-21-000086-PLNG-01 and associated Floodplain Permit Development request #851-21-000086-PLNG are hereby **APPROVED**. The Board of County Commissioner Order and other documents associated with the request is available for review and inspection at the Tillamook County Department of Community Development office located at: 1510-B Third Street, Tillamook, Oregon 97141 or on the Department website: <https://www.co.tillamook.or.us/commdev/project/851-21-000086-plng-01>

Participants in the process that led to the decision to approve these requests may appeal this decision to the Land Use Board of Appeals (LUBA) as provided by ORS 197.620 and 197.80-197.845. Notice of intent to appeal must be filed with LUBA by no later than 21 days from the day this notice was mailed.

If you have any questions about this notice, you may contact this office at (503) 842-3408 x 3317.

Sincerely,  
Tillamook County Department of Community Development



Sarah Absher, CFM, Director

Encl: Vicinity, Assessor and Zoning Maps



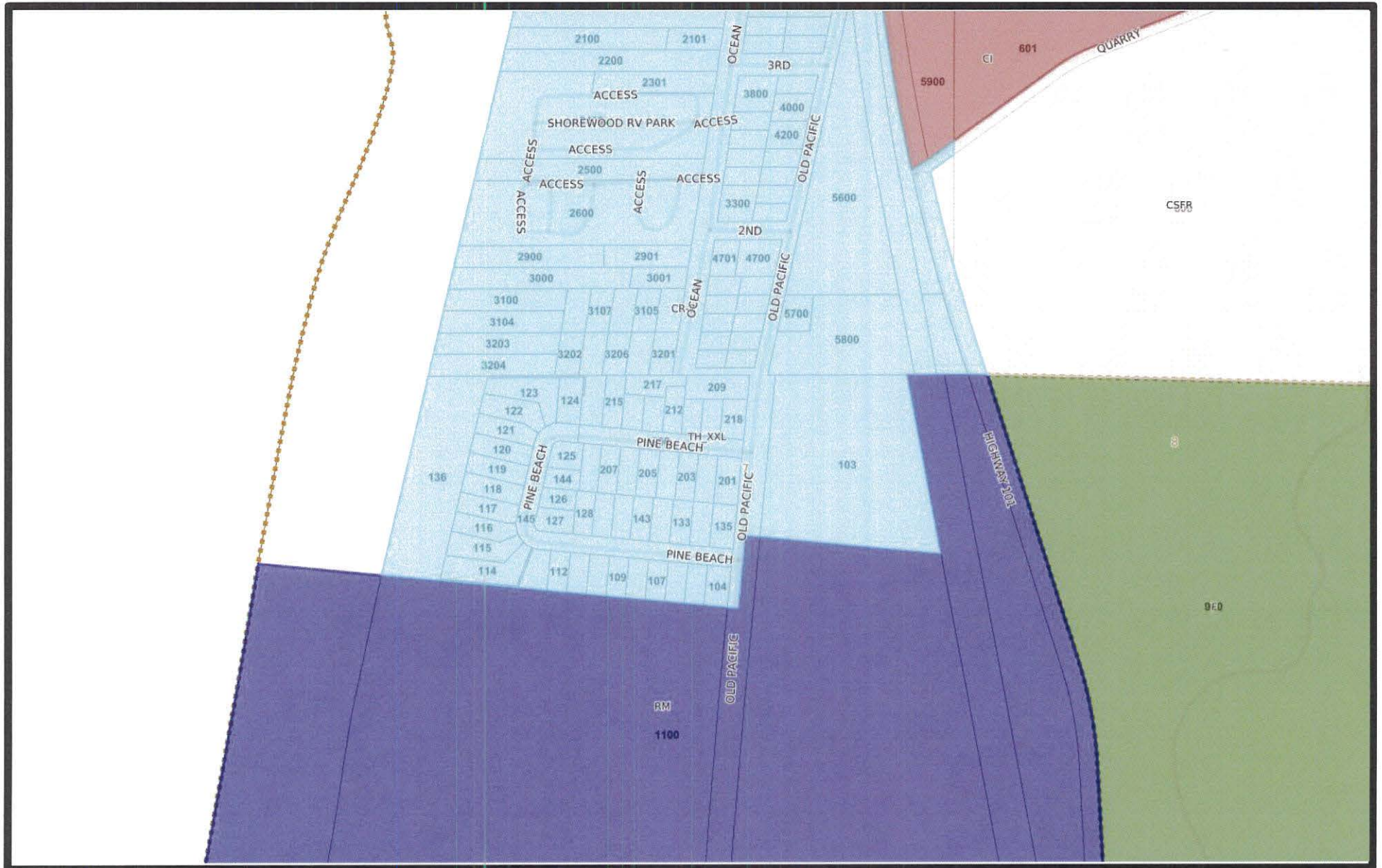


SUBJECT  
AREA

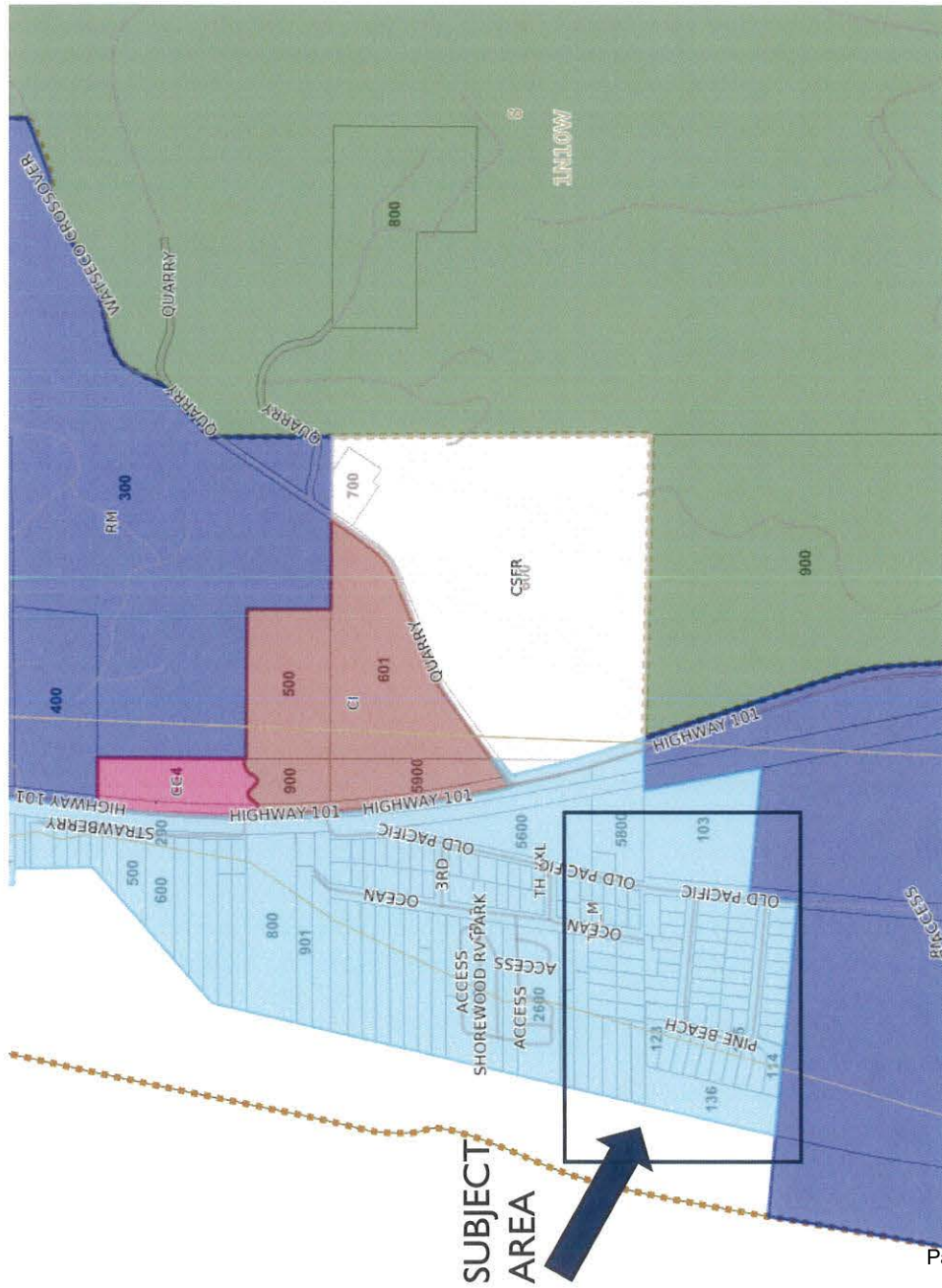
Barview



# Map



# ZONING MAP





**BEFORE THE BOARD OF COMMISSIONERS  
 FOR TILLAMOOK COUNTY, OREGON**

<p>In the matter of #851-21-000086-PLNG-01, a Goal Exception request for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a “committed” exception and/or a “reasons” exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary together with Floodplain Development Permit Request #851-21-000086-PLNG for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone on properties identified as Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123, of Section 7DD, and Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. Multiple Applicants &amp; Property Owners.</p>	<p><b>) Findings of Fact and Decision</b>   <b>) #851-21-000086-PLNG</b>  <b>) #851-21-000086-PLNG-01</b></p>
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This matter came before the Tillamook County Board of Commissioners for public hearings on July 28, 2021, and August 16, 2021, upon application by the Applicants as stated in the record for the construction of a beachfront protective structure (shoreline stabilization) permitted through a Goal 18 Implementation Measure 5 (IM 5) Exception together with a Floodplain Development Permit to satisfy permitting requirements of Tillamook County Land Use Ordinance (TCLUO) Section 3.510: Flood Hazard Overlay Zone and Section 3.530: Beach and Dune Overlay Zone.

The Board of Commissioners, being fully apprised of the testimony, records and files in this matter, now finds as follow:

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

3. The Tillamook County Board of Commissioners opened a de novo public hearing on July 28, 2021, and continued the hearing to August 16, 2021. The hearing was properly noticed according to the requirements of ORS Chapters 197 and 215. The Board, by a vote of 3-to-0, approved the Goal 18 Implementation 5 (IM 5) request together with the Floodplain Development Permit on the basis of the findings of fact included as "Exhibit A" of this order.

**NOW THEREFORE, THE TILLAMOOK COUNTY BOARD OF COMMISSIONERS ORDERS AS FOLLOWS:**

1. Goal 18 Implementation Measure 5 (IM 5) request #851-21-000086-PLNG-01 is **APPROVED**.
2. Floodplain Development Permit #851-21-000086-PLNG is **APPROVED**.
3. Tillamook County Comprehensive Plan Goal Element 18 is amended to reflect Goal Exception approval #851-21-000086-PLNG-01 for the construction of a beachfront protective structure on the subject properties as stated in the record.
4. The findings for these decisions are hereby incorporated into this Order as "Exhibit A".

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DATED THIS 13<sup>th</sup> DAY OF October, 2021.

**BOARD OF COUNTY COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON**

Aye    Nay    Abstain/Absent

MF Bell  
Mary Faith Bell, Chair

8    \_\_\_\_\_    1

\_\_\_\_\_  
David Yamamoto, Vice-Chair

\_\_\_\_\_    \_\_\_\_\_    1 ✓

Erin D. Skaar  
Erin D. Skaar, Commissioner

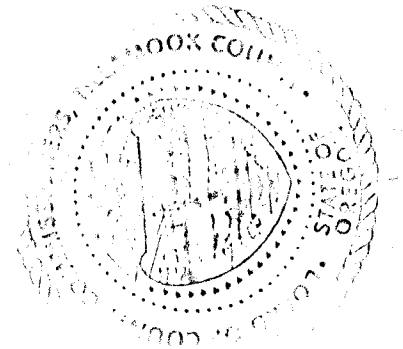
✓    \_\_\_\_\_    1

ATTEST: Tassi O'Neil,  
County Clerk

Tassi O'Neil  
Special Deputy

APPROVED AS TO FORM:

Joel Stevens  
Joel Stevens, County Counsel



Conditions of Approval  
#851-21-00086-PLNG-01 and #851-21-00086-PLNG

1. The owners of the properties currently owned by the applicants (hereinafter Applicants) shall obtain all applicable Federal, State and local permits prior to the start of the installation of the approved Beachfront Protective Structure (BPS).
2. If construction of the BPS or the north access including its ramp (north access plus its ramp to the beach that is located between the Pine Beach Subdivision and George Shand Subdivision (hereinafter referred to in these conditions as "the access") requires the use of equipment or vehicles on the beach, the Applicants shall obtain required permit(s) from the State of Oregon Parks and Recreation Department. A copy of the permit(s) shall be provided to the Department of Community Development prior to commencement of development.
3. The BPS and the access shall be constructed in substantial conformity with the plans, specifications plans and descriptions and with the location, dimensions and materials specified in the plans and descriptions submitted by the Applicants' engineer, West Consultants, Inc.
4. Construction of the BPS shall comply with all applicable Beach and Dune Overlay Zone construction standards for BPS in TCLUO 3.530(4)(A)(4)(c)(7)(a)-(c).
5. The area disturbed by construction of the BPS, with the exception of the access ramp, shall be covered in excavated sand and replanted with European beach grass and/or native coastal vegetation. The access ramp shall be covered with the material contemplated for the access ramp in the plans and descriptions submitted by the Applicants' engineer, West Consultants, Inc. Prior to development, a copy of the dune stabilization plan shall be submitted to the Department of Community Development.
6. The Applicants shall conduct annual inspections of the BPS and shall replace the BPS sand cover and revegetate the BPS as needed to substantially maintain it in its original condition at the time the BPS is finally installed.
7. The Applicants shall conduct annual inspections of the access ramp and shall replace its cover as needed to maintain it in its original condition at the time it was finally installed.
8. The Applicants shall be responsible for maintaining the BPS and the access ramp substantially in the condition they were in when finally installed. This includes replacing rocks as needed, periodically recovering exposed rock on the BPS with sand and replanting vegetation that may have washed or blown away in storms, as well as replacing the gravel cover on the access ramp as needed.
9. Failure to maintain the BPS or access ramp, where such failure causes a public safety hazard or detriment to ocean shore resources, may cause the County to pursue appropriate legal action to ensure compliance with this condition.

“EXHIBIT A”

BEFORE THE TILLAMOOK COUNTY BOARD OF COMMISSIONERS

Goal Exception Request #851-21-000086-PLNG-01 and  
Floodplain Development Permit Request #851-21-000086-PLNG  
Findings of Fact; Conclusions of Law

**I. GENERAL INFORMATION:**

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

**Location:** The subject properties are Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114-123 of Section 7DD (“Pine Beach Properties”), and Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA (“George Shand Tracts”) all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon (Exhibit A).

**Applicants and Property Owners:** Multiple: *See* Exhibit B for applicant/property owner contact information.

**Property and Vicinity Description:** The Subject Properties are 15 oceanfront properties located within the acknowledged Barview/Twin Rocks/Watseco Urban Unincorporated Community Boundary, specifically within the Watseco region of the unincorporated community (Exhibit A). The urban unincorporated community is nearby to the urban growth boundaries of the City of Garibaldi to the south and the City of Rockaway Beach to the north. Uses in the area are predominantly residential with recreational facilities located to the north (Shorewood RV Park), to the south (Camp Magruder) and further to the east across Oregon State Highway 101 (Twin Rocks



Friends Camp). The only inventoried Goal 5 resource identified in the area is Smith Lake, a coastal lake (Exhibit A), which is approximately 625 feet east and south from the subject properties. The only other natural resource in the area is the beach and ocean.

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

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

**Background:**

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

Public hearings were held before the Tillamook County Board of Commissioners on July 28 and August 16, 2021. At the August 16, 2021 hearing, two actions were taken by the Board of Commissioners following discussion and consideration of Goal Exception request #851-21-000086-PLNG-01 and Development Permit request #851-21-000086-PLNG. After consideration of the findings of fact, testimony received, evidence in the record, and the Planning Commission's recommendation, the Board of Commissioners unanimously voted to approve a general "reasons" exception to Goal 18, IM 5 for Goal Exception request #851-21-000086-PLNG-01 and to approve Development Permit request #851-21-000086-PLNG.

**II. APPLICABLE PROVISIONS:**

**A. Goal Exception**

- a. Oregon Statewide Planning Goal 18: Beaches and Dunes
- b. ORS 197.732
- c. Oregon Administrative Rules
  - i. OAR 660-004-0020: Goal 2, Part II(c), Exception Requirements
  - ii. OAR 660-004-0022: Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)
- d. Ancillary Goal Exception Process Rules
  - i. OAR 660-004-0000: Purpose
  - ii. OAR 660-004-0005: Definitions
  - iii. OAR 660-004-0010: Application of the Goal 2 Exception Process to Certain Goals
  - iv. OAR 660-004-0015: Inclusion as Part of the Plan
  - v. OAR 660-004-0030: Notice and Adoption of an Exception

**B. Comprehensive Plan Amendment**

- a. Tillamook County Land Use Ordinance (TCLUO)
  - i. TCLUO 9.010: Authorization to Initiate Amendments
  - ii. TCLUO 9.030: Text Amendment Procedure and Criteria
- b. Applicable Statewide Planning Goals
- c. Applicable Tillamook County Comprehensive Plan (TCCP) Provisions
- d. TCLUO Article 10: Development Approval Procedures

**C. Development Permit**

- a. TCLUO 3.014: Community Medium Density Urban Residential Zone (CR-2)
- b. TCLUO 3.510: Flood Hazard Overlay Zone (FH)
- c. TCLUO 3.530: Beach & Dune Overlay Zone (BD)
- d. TCLUO Article 10: Development Approval Procedures

**III. SUMMARY OF APPLICATION:**

The Applicants sought approval of a beachfront protective structure (BPS) to protect their properties from destruction by ocean undercutting and wave overtopping of the foredune under three different legal approaches or a combination thereof. Each approach also sought County approval of a Development Permit for a BPS.

The Applicants acknowledged that Goal 18: Beaches and Dunes applies to their application. Goal 18, Implementation Measure (IM) 5 provides that “[p]ermits for beachfront protective structures shall be issued only where development existed on January 1, 1977. \* \* \* ‘[D]evelopment’ 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. \* \* \*” “(2) above” is a reference to Goal 18, IM 2, which provides that “[l]ocal governments \* \* \* shall prohibit residential developments \* \* \* on beaches, active foredunes, on other foredunes which are

conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.” Therefore, the Applicants argued that the proposed BPS is allowed under Goal 18 in three circumstances: (1) where “development” existed on January 1, 1977; (2) where an exception to Goal 18, IM 2 has been approved; (3) where an exception to Goal 18, IM 5 is taken.

Under the first approach, the Applicants sought the County’s recognition that the existing exceptions allow residential development on the Subject Properties to be where it is and where it has been approved – on a foredune that is now subject to ocean undercutting and wave overtopping. Under such recognition, the Applicants argued that the County should find that the existing exceptions allow residential development on an eroding dune contrary to Goal 18, IM 2’s prohibition on residential development on such dunes and so BPS is allowed under Goal 18, IM 5, which allows BPS where an exception to Goal 18, IM 2 has been approved. The County chooses not to approve the requested BPS on this basis.

Under the second approach, the Applicants sought County approval of a Comprehensive Plan amendment adopting new “built/developed”, “committed” and/or “reasons” exceptions to Goal 18, IM 2 for the Subject Properties that were not “developed” on January 1, 1977, which, the Applicants’ argued, would allow the requested BPS via Goal 18, IM 5. The County chooses not to approve the requested BPS on this basis.

Under the third approach, the Applicants sought County approval of a Comprehensive Plan amendment adopting “built/developed”, “committed” and/or “reasons” exceptions to Goal 18, IM 5 for the Subject Properties that were not “developed” on January 1, 1977, to allow the requested BPS. Under the “reasons” exception to Goal 18, IM 5 approach, the Applicants explained that their circumstances are unique and compelling and justify a reasons exception under both the general, so called “catch-all”, reasons standard in OAR 660-004-0022(1) and the narrower “demonstrated need” non-exclusive example of reasons standard in OAR 660-004-0022(1)(a)-(b). For the latter standard, the Applicants have explained that the reasons exception is necessitated by the County’s obligations under Statewide Planning Goals 7, 10, 11, 14 and 18. As explained below, the County is persuaded that the properties that were not developed on January 1, 1977 are entitled to a “catch all” reasons exception.

The Applicants submitted extensive evidence, argument and analyses addressing the applicable criteria under each approach in their application and in their various submittals throughout the proceedings before the County Planning Commission and Board of Commissioners. The Applicants submitted evidence and argument that the George Shand Tracts were “developed” on January 1, 1977, and so an exception for those properties is not required to approve the requested BPS. Expert reports in the record from Chris Bahner, Professional Engineer (P.E.), Diplomate, Water Resources Engineering (D.WRE) at West Consultants, Inc., conclude that the requested BPS is necessary to protect the Subject Properties and supporting infrastructure from the unanticipated and hazardous foredune erosion and ocean flooding that threatens them. The Applicants submitted evidence into the record documenting that more than \$10 million in property value is at risk of being lost if the requested BPS is not approved.

Mr. Bahner's expert reports provide detailed analyses of the littoral cell and its subregion and conclude that the littoral subregion in which the Subject Properties are located has been uniquely affected by the destructive interplay between the two manmade jetties in unusually close proximity that cabin the subregion and the lasting effects of the El Niño events of the late 1990s. The expert reports explain that between 1917 (the year the Barview Jetty was constructed) and the mid-1990s (when the subdivisions were approved for residential development), the beach had been in a 70+ year period of progradation (adding sand) and the expert reports prepared during that time period did not anticipate reversal of that trend. However, the El Niño and El Niña events of the late 1990s suddenly and unexpectedly reversed that accretionary trend and since then, the beach and the subregion as a whole has experienced, and continues to experience, extreme erosion unlike any other subregion in the littoral cell that has since recovered from the late-1990s El Niño/Niña events. The Applicants submitted evidence that nearly 90% of the ownerships in the Rockaway subregion are already entitled to BPS (the remaining 10% is mostly in non-residential use zoned for recreation management and open space) and that those properties will install BPS when it becomes necessary. Mr. Bahner's expert reports also provide detailed and thorough evaluation of alternatives to BPS that were considered and conclude that the requested rock revetment BPS is the only mitigation that will meet the objectives of the proposal – reducing the risk of damage to life, property and the natural environment from beach erosion and coastal flooding.

#### **IV. SUMMARY OF DECISION:**

The Tillamook County Board of Commissioners ("Board") concludes that the appropriate exception to allow the proposed BPS is the general "catch-all" "reasons" exception in OAR 660-004-0022(1) to Goal 18, IM 5 for the properties that were not "developed" on January 1, 1977.

The Board finds that the George Shand Tracts were "developed" on January 1, 1977, and so no exception to Goal 18, IM 5 is necessary to allow the requested BPS on those properties. The Board finds that the Pine Beach Properties were not "developed" on January 1, 1977, and so a general "reasons" exception to Goal 18, IM 5 is required to allow the requested BPS on those properties. The Board concludes that for the Pine Beach Properties, the requested general "reasons" exception to Goal 18, IM 5 is justified and satisfies all applicable criteria.

In the alternative only, the Board finds that to the extent that a reviewing authority decides that the George Shand Tracts were not "developed" on January 1, 1977, then the Board concludes, in the alternative, that the requested general "reasons" exception to Goal 18, IM 5 for all of the Subject Properties, including the George Shand Tracts, is justified and satisfies all applicable criteria.

The Board finds that sufficient reasons exist to exclude the Subject Properties from the limitation on BPS in Goal 18, IM 5. The overarching purpose of Goal 18 is two-fold: it is to "conserve, protect, where appropriate develop, and where appropriate restore coastal beach and dune areas, and to reduce the hazard to human life and property from natural or man-induced actions in such areas." The first prong of Goal 18's purpose acts to protect beaches and dunes by prohibiting development in the most sensitive beach and dune areas and allowing only "appropriate develop[ment]" As relevant here, the second prong exists to protect "appropriate develop[ment]"

- to "reduce the hazard to human life and property." Protecting "appropriate develop[ment]" under Goal 18 happens by residential and commercial development not being sited on dunes subject to wave overtopping or undercutting (Goal 18, IM 2) and allowing BPS in certain circumstances (Goal 18, IM 5).

As noted, per Goal 18, IM 2, "appropriate develop[ment]" occurs on dunes that are not subject to wave overtopping or undercutting. Per Goal 18 IM 5, development may be protected by BPS, if it existed on January 1, 1977, or if it exists on a dune subject to wave overtopping and undercutting under a goal exception. The subject properties were platted as residential subdivision lots as "appropriate development" under Goal 18, IM 2 because at the time, the dune on which the lots were located was not subject to wave overtopping or undercutting. However, due to unusual events, the Subject Properties are now threatened by the same processes that the approval standards ensured were avoided. The relevant "Site Investigation Reports" established that the subject properties were appropriate for residential development because they were safe from the hazards of an eroding dune. The Subject Properties only became exposed to such hazards due to the unusual reversal of the 70+ year prograding trend caused by the confluence of unusually closely spaced together jetties and two successive El Niño/La Niña events. Under these circumstances, the exceptions process is appropriately invoked – to allow flexibility in the otherwise strict application of the goals by providing a process to exempt certain properties faced with unique and exceptional circumstances, as here, from the goal's requirements.

The record supports the conclusion that the Subject Properties are faced with unique and exceptional circumstances. The Subject Properties represent "appropriate development" as defined by Goal 18 – the residential subdivisions and most of the development was approved to be limited to the areas Goal 18, IM 2 allows; was setback more than 200 feet from the statutory vegetation line, more than 200 yards from the ocean and were separated from the ocean by a coastal forest – all of which was appropriate under Goal 18 and was designed to protect the properties from coastal hazards. In spite of these protective measures and contrary to the expert analyses at the time, the Subject Properties are now threatened with destruction by unanticipated coastal erosion and flooding. Analysis from the Applicants' expert in the record demonstrates that the natural processes in the littoral subregion in which the Subject Properties are located have been uniquely disrupted by the combined effects of the two manmade jetties, which are unusually close in proximity and cabin the littoral subregion like nowhere else on the Oregon Coast, and the lasting effects of the El Niño/La Niña events of the late 1990s. Accordingly, the requested exception is supported by unique and exceptional circumstances and is consistent with the overarching purpose and intent of Goal 18 and the exceptions process.

The Board further concludes that the requested Development Permit satisfies all applicable criteria set forth in the County's land use ordinance (TCLUO).

These conclusions are based upon specific findings set forth in the following paragraphs that the requested "reasons" exception to Goal 18, IM 5 under OAR 660-0040022(1), Comprehensive Plan amendment and Development Permit satisfy all applicable standards and criteria.

**V. GENERAL FINDINGS OF FACT:**

The following are key findings of fact underlying supporting approval of the application.

**A. The Subject Properties are in imminent danger of destruction from wave runup and ocean flooding in the absence of a beachfront protective structure.**

The fifteen (15) Subject Properties are the ten (10) oceanfront lots of the Pine Beach Replat Subdivision (Pine Beach Properties) and the five (5) oceanfront lots of the George Sand Tracts subdivision (George Shand Tracts). When the George Shand Tracts and both the original Pine Beach Subdivision and its replat were approved, they were several hundred yards away from the shoreline and were in a period of progradation – the land was accreting because of the installation of two jetties in the early 20th century – the Barview Jetty and the Nehalem Jetty. A widening coastal forest (due to progradation) separated the Subject Properties from the beach and the ocean beyond. However, at some point about 20 years ago, the ocean began overtopping and undercutting the dune on which the Subject Properties are situated, a problem that has become much worse over time. Such has now progressed to the point that the Subject Properties are exposed to significant danger due to the wave overtopping and undercutting that now reaches them. The record demonstrates that the Subject Properties have seen a loss of 142 feet of beachfront property since 1994, with the Pine Beach “common area” that was densely vegetated when the Pine Beach Replat was approved and recorded, now dry sand beach.

Evidence in the record demonstrates that more than \$10 million in property value is at risk of being lost, in addition to public infrastructure to include public water and sewer, utilities and roads. The lives of the Subject Properties’ occupants are also at risk from unpredictable and dangerous wave runup. The proposed beachfront protective structure will responsibly mitigate this significant threat in a manner that is consistent with the County’s development standards. The threat to the Applicants’ properties is present and very real. Any avoidable delay in issuing the requested development permit for the BPS, unjustifiably places lives and property in serious jeopardy.

**B. The beach in front of the Subject Properties had been prograding (adding sand) for over 70 years at the time of the County’s approval of residential uses on the Subject Properties and nothing suggested that that trend would reverse, resulting in the unanticipated and extensive erosion that has occurred in recent years.**

As the exhibits to the Application demonstrate, between 1917 when the Barview Jetty was first constructed, and 1994, the shoreline in front of the Subject Properties had accreted (grew) westerly by at least 1,000 feet. Application, Exhibit H, p. 11 (Paul D. See and Associates, Inc., Dune Hazard Report for Pine Beach Development, dated June 1, 1994). This history is confirmed by the County’s adopted and acknowledged Goal 18 Shoreline Changes, Hazards and Damages Map, (Application, Exhibit I), which shows the entire area between Nehalem Bay and the Barview Jetty, which includes the Subject Properties, as an area of “prograding” beaches. By the time of the Pine Beach Replat and the construction of the first dwellings around 1994, the area had seen over 70 years of prograding beaches and every expert who had examined the forming beaches in the preceding decades concluded that evidence did not support a conclusion

that the trend of beach accretion would reverse. The evidence demonstrated otherwise, and nothing hinted at the unanticipated and extensive retrograding that occurred in recent years, triggered by two successive El Niño/La Niña events in the area of the Subject Properties and their influence on the Rockaway littoral cell subregion due to the presence of two unusually closely placed jetties.

**C. The unique combination of two manmade jetties in unusually close proximity to one another coupled with El Niño events of the late 1990s, have resulted in severe, permanent disruptions to the ocean's behavior in the Rockaway subregion of the larger Rockaway littoral cell in which the Subject Properties are located.**

The Subject Properties are located within the Rockaway littoral subregion of the larger Rockaway littoral cell. The Rockaway subregion is uniquely defined by the presence of two jetties in unusually close proximity to one another (Barview and Nehalem). No other littoral subregion on the Oregon Coast is bounded by jetties in such close proximity. It is well-documented in evidence in the record that the jetties have a significant influence over the natural ocean and beach processes within the Rockaway littoral cell and, particularly, in the Rockaway subregion. Those disruptive jetty influences, which had a well-known effect on the ill-fated Bayocean Spit to the south of the jetty, also caused the 70+ years of beach accretion north of the jetty in the area of the Subject Properties. However, more recently, the interaction of the El Niño/La Niña events at the end of the 1990s with the jetties resulted in a severe change in the ocean's behavior in the Rockaway subregion of the Rockaway littoral cell, a problem not reproduced elsewhere. After the El Niño/La Niña events of 1997 and 1998, the ocean processes, already significantly disrupted by the jetties, abruptly changed from adding sand to pulling it away and redistributing it elsewhere in the littoral cell. This will happen in no other part of the Oregon Coast because nowhere else is defined by two jetty systems so close together that they act as a funnel during extreme winter storms, as here. Evidence of this unusually disrupted ocean and beach process is that the extreme erosion that has been seen since the El Niño/La Niña events is occurring predominately in the Rockaway subregion and it is the only subregion where there is no prograding occurring any longer, whatsoever. While other parts of the littoral cell continue then and now to see sand being depositing, only the Rockaway subregion has seen steady, extreme, and unusual sand losses.

**D. Nearly 90% of the ownerships in the Rockaway subregion are entitled to a beachfront protective structure.**

According to DLCDC's "Coastal Atlas", nearly 90% of the ownerships within the Rockaway subregion are already protected by BPS or are entitled to be protected by BPS when the time comes. Thus, when necessary, the already unhealthy ocean/beach interface will be further hardened. There is no "natural" beach/ocean process that can be saved on this beach/ocean by refusing to allow the BPS/rip rap requested here in this unique Rockaway subregion. At some point in the not too distant future 90% of the ownerships will have rip rap, because they are eligible under Goal 18, according to DLCDC's Coastal Atlas.

**E. The oceanfront George Shand Tracts were “developed” on January 1, 1977 and so are eligible for a beachfront protective structure under Goal 18, IM 5 without the need to take an exception.**

Goal 18, IM 5 provides that permits for beachfront protective structures (BPS) may only be issued where “development” existed on January 1, 1977. “Development” is defined by Goal 18, IM 5 to mean “houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot[.]” The Board finds that “development” existed on January 1, 1977, within the meaning of Goal 18, IM 5, for Tax Lots 3000, 3100, 3104, 3203 and 3204 of map 01N10W07DA (the oceanfront “George Shand Tracts”). The evidence in the record demonstrates that in January 1, 1977, the George Shand Tracts were lots in the George Shand Tracts Subdivision, platted in 1950, Ocean Boulevard had been constructed to serve them, and water was provided by Watseco Water District and individual septic systems. An example of this is Application, Exhibit D in the record, which is the building permit for tax lot 2900, directly north of the George Shand Tracts, approved in 1974 and indicating that “Witseco Water” would be used and a “septic tank”. Clearly, the predecessor to the Watseco-Barview Water District’s infrastructure in Watseco was available to serve the George Shand Tracts as early as 1974. Moreover, DLCD has confirmed that it is that agency’s position that these lots were developed on January 1, 1977 under Goal 18, IM 5. Accordingly, the Board finds that the George Shand tracts may be issued a permit for BPS without the need to take an exception to Goal 18, IM 5.

**F. In the alternative only, if a reviewing authority decides that the George Shand Tracts were not “developed” on January 1, 1977 and so are ineligible for a beachfront protective structure, then as a precaution only and only if such an appellate finding of ineligibility under Goal 18, IM 5 unless an exception is taken, is made, then the Board also approves an exception to Goal 18, IM 5 for the specified George Shand tracts.**

Accordingly, it is only in the alternative and in the event that an appellate authority reverses or remands our determination that the George Shand Tracts were “developed” on January 1, 1977, that the Board approves, in the alternative, a Goal 18, IM 5 exception to the date of eligibility for the George Shand Tracts.

**G. The oceanfront Pine Beach properties were not “developed” on January 1, 1977 and so are ineligible for a beachfront protective structure under Goal 18, IM 5 unless an exception is taken.**

The Board finds that the record lacks substantial evidence demonstrating that the Pine Beach Properties were “developed” on January 1, 1977. Accordingly, the Pine Beach Properties are ineligible for BPS unless an exception to Goal 18, IM 5 is approved. This decision approves said Goal 18, IM 5 exception.

**H. The Board adopts and incorporates as additional findings of fact the expert analyses and conclusions in the expert reports submitted by the Applicants and made part of the record.**



The expert reports adopted and incorporated by reference as additional findings of fact are:

1. *Technical Memorandum: Pine Beach and Ocean Boulevard Properties Revetment Design*, Chris Bahner, P.E., D.WRE, West Consultants, Inc., March 25, 2021.
2. *Technical Memorandum: Supplement to the March 2021 Pine Beach Revetment Technical Memorandum*, Chris Bahner, P.E., D.WRE, West Consultants, Inc., May 27, 2021.
3. *Technical Memorandum: Second Supplemental Memorandum*, Chris Bahner, P.E., D.WRE, West Consultants, Inc., June 10, 2021.
4. *Technical Memorandum: Third Supplement Technical Memorandum*, Chris Bahner, P.E., D.WRE, West Consultants, Inc., July 21, 2021.
5. *Technical Memorandum: Fourth Supplemental Technical Memorandum*, Chris Bahner, P.E., D.WRE, West Consultants, Inc., July 27, 2021.

## **VI. SATISFACTION OF CRITERIA:**

### **A. GOAL EXCEPTION**

#### **1. Oregon Statewide Planning Goal 18, Implementation Measure 5**

- "5. 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. \* \* \*"*

**Findings:** Goal 18, IM 5 provides that permits for beachfront protective structures (BPS) may only be issued where "development" existed on January 1, 1977. "Development" is defined by Goal 18, IM 5 to mean "houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot[.]" As noted above, the George Shand Tracts were "developed" on January 1, 1977 within the meaning of Goal 18, IM 5. The Pine Beach subdivision was not "developed" on that date.

The Board hereby approves a general "reasons" exception to Goal 18, IM 5 for the Pine Beach properties to that the proposed BPS may be established. Further, as noted, only if an appellate authority determines that the George Shand Tracts were not developed on January 1, 1977, then does the Board adopt an exception to Goal 18, IM 5's date restriction herein in the alternative and as a precaution only.

#### **2. ORS 197.732 – Goal Exceptions**

*“(1) As used in this section:*

*“(a) ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses*

*“(b) ‘Exception’ means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:*

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

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

*“(C) Complies with standards under subsection (2) of this section.*

*“(2) A local government may adopt an exception to a goal if:*

*“(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;*

*“(b) 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; or*

*“(c) The following standards are met:*

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

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

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

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

*“\* \* \**

*“(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.”*

**Findings:** The Board finds that it may adopt a “reasons” exception to Goal 18, IM 5 under ORS 197.732(2)(c) for the George Shand Tracts as a precaution and in the alternative only to the

Board's finding that they qualify for BPS under Goal 18, IM 5, and may adopt an exception to the date restriction in Goal 18, IM 5 for the Pine Beach properties (collectively, for the reader's ease of reference, only referred to herein as "the Subject Properties"). The exception is an amendment to the County's Comprehensive Plan that applies only to the Subject Properties and does not establish a planning or zoning policy of general applicability.<sup>1</sup> The exception does not comply with Goal 18, IM 5's limitation on BPS to areas where "development" existed on January 1, 1977. The exception complies with the standards under ORS 197.732(2)(c) for a "reasons" exception. The following sets forth findings of fact and a statement of reasons that demonstrate that the standards of ORS 197.732(2)(c)(A) through (D) above have been met.

### 3. ORS 197.732(2)(c)(A)-(D)

Under ORS 197.732(2)(c), the County may approve a "reasons" exception to Goal 18, IM 5 if the four standards of ORS 197.732(2)(c)(A) through (D) are met. *Confederated Tribes of Coos v. City of Coos Bay*, \_\_ Or LUBA \_\_ (LUBA No. 2020-012, May 4, 2021). Those four standards are as follows:

*"(c) The following standards are met:*

*"(A) Reasons justify why the state policy embodied in the applicable goals should not apply;*

*"(B) Areas that do not require a new exception cannot reasonably accommodate the use;*

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

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

LCDC rules at OAR 660-004-0020 elaborate on those four standards. *Confederated Tribes of Coos, supra*. OAR 660-004-0022 further provides a set of standards for evaluating whether the first of those standards, ORS 197.732(2)(c)(A), is met, *i.e.*, whether "reasons" justify why the state policy embodied in the applicable goals should not apply. *Id.*

The following sections set forth findings demonstrating that the four standards of ORS 197.732(2)(c)(A) through (D) are met as they are elaborated on by OAR 660-004-0020 and OAR

<sup>1</sup> If the Board's findings that the George Shand Tracts are sustained in any appeal, or if those findings become final without appeal, then there will only be a Goal 18, IM 5 exception reflected in the County plan for the Pine Beach properties. There is no need for, and it is not appropriate to take, a goal exception for a use allowed by the applicable goal. If the Board's findings that the George Shand Tracts were developed on January 1, 1977 become final without appeal or are sustained on appeal, there is no justification to take a Goal 18, IM 5 exception for those properties and none is taken in that case, as explained herein.

660-004-0022. Our analysis begins with a demonstration that the proposal also satisfies other ancillary provisions of OAR Chapter 660, Division 4.

#### 4. OAR 660-004-0000 – Purpose

*“(1) The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. This division explains the three types of exceptions set forth in Goal 2 ‘Land Use Planning, Part II, Exceptions.’ \* \* \* [T]he definitions, notice, and planning and zoning requirements of this division apply to all types of exceptions. \* \* \**

*\* \* \**

*“(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government’s comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.*

*“(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:*

*“(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and*

*“(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.*

*“(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.”*

**Findings:** OAR 660-004-0000 sets forth the purpose of the division, which is to interpret the requirements of Goal 2 and ORS 197.732 regarding the taking of exceptions to the Statewide Planning Goals. Documentation for the exception that supports this Board’s conclusion that the standards for an exception have been met will be set forth in the County’s Comprehensive Plan

with the adoption of the Comprehensive Plan amendment that is requested with the application. This Board's conclusion is based on these findings of fact which are supported by the evidence in the record of these proceedings and sets forth reasons why BPS should be allowed on the Subject Properties.<sup>2</sup>

**5. OAR 660-004-0005 – Definitions**

*“For the purpose of this division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition, the following definitions shall apply:*

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

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

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

*“(c) Complies with ORS 197.732(2) [and] the provisions of this division[.]”*

**Findings:** As explained above, the approved exception is an amendment to the County's Comprehensive Plan that applies only to the Subject Properties and does not establish a planning or zoning policy of general applicability. It establishes only that the Subject Properties (George Shand Tracts in the alternative only and as a precaution) do not comply with Goal 18, IM 5's limitation on BPS to areas where “development” existed on January 1, 1977, and so, as set forth in the following sections, complies with the standards under ORS 197.732(2)(c) as well as the applicable provisions of OAR Chapter 660, Division 004 for a general “reasons” exception.

**6. OAR 660-004-0010 – Application of the Goal 2 Exception Process to Certain Goals**

*“(1) \* \* \* The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:*

*\* \* \**

*“(g) Goal 18 ‘Beaches and Dunes.’”*

*\* \* \**

*\* \* \**

*“(3) An exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses*

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<sup>2</sup> As noted, the exception is only adopted for and only applies to the George Shand Tracts if an appellate authority determines that the George Shand Tracts were not “developed” on January 1, 1977. The reference to the “Subject Properties” in these findings shall have this limitation and is made for convenience to avoid undue repetition.

*at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.”*

**Findings:** OAR 660-004-0010(1) provides that the exceptions process is applicable to Goal 18. OAR 660-004-0010(3) provides that an exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements. The Subject Properties are subject to exceptions to Goal 3, 4 and 17. These existing exceptions do not ensure compliance with or exempt the Subject Properties from compliance with Goal 18, IM 5. Accordingly, an exception to Goal 18, IM 5 is required to allow the proposed BPS for the Pine Beach Subdivision and in the alternative for the George Shand Tracts.<sup>3</sup>

**7. OAR 660-004-0015 – Inclusion as Part of the Plan**

*“(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.”*

**Findings:** With the approved goal exception, the County is adopting a Comprehensive Plan amendment that sets forth findings of fact and a statement of reasons, supported by substantial evidence, that demonstrate that the standards for an exception have been met.

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

OAR 660-004-0020(1) provides:

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

**Findings:** The Board finds, based upon substantial evidence in the record, that there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by Goal 18, IM 5. Specifically, there are reasons consistent with OAR 660-004-0022 to allow BPS on the Subject Properties where “development” did not exist on January 1, 1977. Those reasons are set forth in the following sections. The Board approves with this Goal Exception request, a Comprehensive Plan amendment. The Board’s justification for the goal exception will be set forth in the Comprehensive Plan as an exception.

OAR 660-004-0020(2) provides:

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<sup>3</sup> See footnote 1.

*“(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:*

The following sets forth the Board’s findings addressing the four standards for a reasons exception set forth in OAR 660-004-0020(2) and ORS 197.732(2)(c).

OAR 660-004-0020(2)(a) provides:

*“(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;”*

**Findings:** There are reasons, compelling ones, that justify why the state policy embodied in Goal 18, IM 5 (prohibiting BPS to protect development that did not exist on January 1, 1977), should not apply to the Subject Properties. The facts and assumptions that are the basis for this determination are summarized as follows:

(1) An at least 70-year history of beach prograding prior to or at the time of subdivision and subdivision replat approval, was followed by the unanticipated and extreme reversal to beach retrograding that now significantly threatens the Subject Properties. Residential use on the Subject Properties was approved in complete conformity with the requirements of Goal 18 and was located in a way that was anticipated to be safe and compliance with Goal 18, IM 2. In other words, the developers did everything right and their residential subdivision and its infrastructure was placed where Goal 18 and other rules said it should be. Acknowledged residential zoning was applied to the Subject Properties when residential uses were appropriate and in conformity with Goal 18. The County finds that no legitimate purpose is served by punishing the Applicants with large losses of their property and perhaps lives, by refusing to allow them to protect their residential properties in acknowledged residential zone, in an acknowledged urban unincorporated community, under a planning program approved in complete conformity with Goal 18, because an unanticipated natural disaster has stricken. That natural disaster was triggered by successive El Niño/La Niña events influencing unusual man-made changes to the ocean processes and beach in the Rockaway littoral cell subregion of two jetty systems placed in unusually close proximity to one another, and cabining that littoral cell subregion.

(2) The Rockaway subregion of the Rockaway littoral cell, is uniquely affected by those two man-made jetties that are in close proximity to one another (by jetty standards), that cabin the subregion in a manner that is not common to anywhere else on the entire Oregon Coast.

(3) The severe and remarkable retrograding in the Rockaway subregion where the Subject Properties are located, is unusual because the rest of the littoral cell is largely depositing sand. No part of the Rockaway subregion is depositing sand. It is entirely receding. No other part of the littoral cell is only receding. The erosion of the dune on which the Subject Properties are located is not the result of the normal ocean cycles of erosion (which the Chris Bahner, May 27, 2017, Technical Memorandum in the record establishes), or the result of sea level rise that will affect all properties on the coast in the same way, as some commenters have suggested.

(4) Except for a handful of properties in non-residential use that are zoned for recreation management and open space, nearly 90% of all residential properties in the Rockaway subregion are identified as eligible for protection as shown on DLCD's Oregon Coastal Atlas, Ocean Shores Data Viewer. West Consultants has determined that approximately 5.6% (5,930 feet of 106,200 feet) of the littoral cell already has BPS, not including the two jetties (totaling four hardened revetments) within the cell. See West Consultants' May 27, 2021 Supplemental Technical Memorandum in the record. The proposed BPS (880 feet) will increase the amount of BPS within the littoral cell by only 0.8%. As for the Rockaway subregion, the proposed BPS will increase the amount of BPS within that subregion by only 2.8%. In a separate Lincoln County Goal 18, IM 5 exception case, DLCD accepted that a reason to justify the exception in that case was that most of the Gleneden Beach coastline was already armored or has the right to be protected with BPS. DLCD's Lincoln County letter, dated June 7, 2021, is in the record as Exhibit B to Applicants' June 10, 2021 submittal. DLCD explained that: "While the general effects of climate change, sea level rise, and El Niños are occurring coastwide, those phenomena occurring in a littoral cell that has extensive beachfront protective structures that cut off sand supply to an already depleted system is unique." DLCD's analysis in the Gleneden Beach situation applies here to similarly support the proposed BPS. Here, the effects of climate change, sea level rise and El Niño/La Niña events are occurring in another unique situation caused by man-made changes. Here, the relevant littoral subregion is cabined by two, unusually close in proximity, man-made jetties that the evidence demonstrates is significantly disrupt natural ocean and beach processes causing the subregion to severely be depleted of its sand. There is no other littoral cell or sub cell in all of Oregon that have jetty systems in as close of proximity to one another. In Lincoln County the beach disruption was caused by in armoring. Here, the man-made disruption is caused by a different type of armoring - jetties cabining a littoral subregion as in no other part of Oregon. In other words, other littoral cells are not subject to those forces because they do not have the influence of two close by man made jetty systems. Moreover, here as in Lincoln County nearly 90% of properties in the littoral cell subregion are either eligible for BPS or have installed it. With the aggressive erosion that is occurring in the littoral cell subregion it can reasonably be expected that those properties eligible for armoring, will be armored. There can be no reasonable dispute that unique forces have irrevocably changed the natural ocean and beach processes in the applicable littoral cell subregion.

The primary purpose of Goal 18, IM 5 is to avoid proliferation of BPS to preserve natural littoral cell functionality. That policy cannot be achieved in the Rockaway subregion



where (1) the two jetty systems have irrevocably disrupted natural sediment supply forces in the littoral regional cell and those natural forces cannot be restored with the jetty systems in place regardless of the proposed BPS, and (2) nearly 90% of the oceanfront properties within the subregion are already protected by BPS or already entitled to a install BPS to mitigate the ongoing and pronounced erosion unique to the Rockaway subregion.

(5) The Subject Properties were approved for residential development at a time and place in compliance with Goal 18 and where Goal 18 expressly states is a location that is safe and "appropriate" for residential development. They had a large, vegetated buffer in the nature of a coastal forest that separated the then approved residential development and its significant public infrastructure of water, sewer, electricity, gas and road systems, from the ocean and areas of ocean undercutting/wave overtopping.

(6) The Subject Properties are in an urban unincorporated urban community that is acknowledged by DLCDC as an appropriate place for urban level development to include urban infrastructure. The County's buildable land inventory (BLI) has determined that the Subject Properties and the Twin Rocks/Barview/Watseco urban unincorporated community within which they exist, are appropriate to meet County urban residential development needs. Under that acknowledged planning program, residential development in this area has been determined and acknowledged to comply with Goal 18 as DLCDC and other commentators have reinforced is the case. As a result, the question becomes, when an acknowledged urban unincorporated community is developed in conformity with all goals, including Goal 18, and an unforeseen natural disaster strikes, will the Oregon land use planning system allow that urban unincorporated community to be protected from devastation? The County believes that the answer is "yes" and that under the unique circumstances here, a Goal 18, IM 5 exception is justified to protect the Subject Properties and the people who live there.

Accordingly, the Board finds that the above reasons justify why the state policy embodied in Goal 18, IM 5, that BPS only be allowed for properties that were "developed" on January 1, 1977, should not apply.

The size of the requested BPS is approximately 840' long x 30' wide, so the total amount of land to be used for the BPS is approximately 25,200 sq. ft. or 0.58 acres. However, the majority of the BPS will be buried within the foredune and replanted with native beach grasses, trees and shrubs that will reestablish natural shoreline vegetation. Once established, the BPS will ultimately blend into the shoreline of the Subject Properties, such that its appearance and function will be compatible with other existing shoreline vegetated areas of those uses north and south of the Subject Properties.

As explained throughout these findings, because the proposed exception is necessary for the protection of the structures and associated infrastructure and people living on the Subject Properties, the BPS requires placement in its proposed location in the rear yards of the Subject Properties between the structures and the ocean. Beachfront protective structures are, by design and function, site-specific. They cannot serve the purpose of abating shoreline erosion and wave

overtopping unless they are located, constructed, and installed in the proper location for the properties they are intended to protect. For the Subject Properties, that is at the location shown on Application, Exhibit F, Attachment 2 in the record. (The area for which the exception is taken is also identified in Application, Exhibit Q in the record, and is hereby incorporated herein). Locating the BPS anywhere else will not protect the Subject Properties.

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

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

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

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

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

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

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

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

*“(C) The ‘alternative areas’ standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a*

*local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.*

**Findings:** Because the proposed exception is necessary for the protection of the structures and associated infrastructure on the Subject Properties, the BPS can only be placed in its proposed location in the rear yards of the Subject Properties between the structures and the ocean. Beachfront protective structures are, by design and function, site-specific. DLCD accepted as adequate in the Lincoln County Goal 18, IM 5 exception case, that in order to be effective, the only place BPS can be located is on the oceanfront. DLCD Lincoln County letter, dated June 7, 2021, p. 4, in the record as Exhibit B to Applicants' June 10, 2021 submittal. They cannot serve the purpose of abating shoreline erosion and wave overtopping unless they are located, constructed, and installed in the proper location for the properties they are intended to protect. For the Subject Properties, that is at the location shown on Application, Exhibit F, Attachment 2 in the record. (The area for which the exception is taken is also identified in Application, Exhibit Q in the record, and is hereby incorporated herein). Locating the BPS elsewhere, for example, at any properties eligible for protection, will not protect the Subject Properties. Accordingly, there are no areas that do not require a new exception that can reasonably accommodate the use.

Based on the above-cited evidence, there is no practical, reasonable, factual, or evidentiary reason to evaluate additional alternative sites for the protective structure or to otherwise address "the location of possible alternative areas considered for the use that do not require a new exception" standard. The requirement to evaluate areas that can "reasonably accommodate" the proposed use, necessarily means that the alternative locations must be capable of reasonably providing the requested protection. *See Columbia Riverkeeper v. Columbia County*, 297 Or App 628, 645 (2019). There is no such property. The only nearby areas for which an exception would not be required for a BPS is the Shorewood RV Park to the north of the Subject Properties which already has shoreline protection that does and can only protect it, and tax lot 2900 directly to its south. Locating protective structures there or anywhere else will not afford any protective benefit to the Subject Properties.

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

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

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

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

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

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

The “economic” factor of the looming loss of more than \$10 million in property value and the property taxes to the County and special districts that would be lost, further justify this reasons exception to protect the Subject Properties and their associated infrastructure from otherwise certain destruction.

It is also a relevant factor that the Subject Properties were approved as a part of an acknowledged urban planning program designed to deliver urban residential development, exactly where it is. The Subject Properties have been developed doing everything right. This is relevant and favors granting this exception.

With regard to (B)(i), no resource land is being used for the proposed shoreline protection. The Subject Properties are already committed to an urban residential development planning program with a full panoply of public facilities and services. They are subject to a Goal 3, 4 and 17 exception. There is no adjacent resource land in the unincorporated urban community in which the Subject Properties are located either, other than the beach and ocean to the west, which are also in the urban unincorporated community and which are also subject to the area's Goal 17 exception. The proposal studiously avoids the dry sand beach and of course, the ocean. The proposed BPS will be barely visible from the beach or ocean, as the modeling in the record demonstrates. (Applicants’ June 10, 2021 Submittal, Exhibit F). It will not interfere with north south or east west beach accesses. It will not change the way the beach would otherwise interact with the ocean in this area (or vice versa), either.

Regardless, the proposed BPS cannot “be reasonably accommodated on non-resource land that would not require an exception.” The property to be protected by the exception is the Subject Property. Designating the subject oceanfront lots as the sole exception area subject to this

request is justified because the proposed location is the only one that can provide beachfront protection to them.

As with several of the other inquiries, (B)(ii) presumes the exception requests development on resource lands. As explained above, the Subject Properties are not "resource land." They are not a Goal 18 resource either because they were approved under Gola 18 as "appropriate development." The subject properties are medium density, single-family residentially zoned land, (CR-2), which, by definition, is not resource-zoned land; rather it is land that is already planned and zoned for non-resource use. To the extent relevant, neither is the Recreation Management (RM) zoned Camp Magruder or land to the north (a residential lot and the RV park both zoned for urban residential use) considered resource land. The site of the proposed BPS is contained within the County-designated Barview/Watseco/Twin Rocks Community Plan area, which is a Tillamook County urban unincorporated community and is situated entirely on the Applicants' vegetated properties. The BPS is proposed to be located within an urban unincorporated community boundary to protect the residential development that the boundary is acknowledged and tasked to deliver.

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

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

With regard to (B)(iv), the proposed BPS's location, construction and maintenance will all occur without the "provision of a proposed public facility or service" because it does not require, nor rely upon, any public services, (e.g., sewer, water, electric) for the efficient design and function for its intended use. It is a static structure, designed to protect the subject oceanfront properties' shoreline from further coastal erosion and flooding. The Applicants and their successors have pledged to maintain it and will be bound to maintain it via a condition of approval.

With regard to (C), the "alternative analysis" standard to demonstrate that there are not alternative locations for the proposed BPS by undertaking "a broad review of similar types of areas rather than a review of specific alternative sites" is not functionally possible for this specific reasons exception to Goal 18, IM 5 given the site-specific protections that are necessary and that are only afforded by a BPS oceanward of the Subject Properties.

The Applicants have established that there are no other "specific sites that can reasonably accommodate the proposed use." No party to this proceeding has described "specific sites that

can more reasonably accommodate the proposed use.” Therefore, site-specific comparisons of alternative sites and the Subject Properties are not required. Again, this inquiry is concerned with alternative sites, not alternative methods of protection. And even if the standards did require an analysis of alternative “methods” the Applicant has thoroughly evaluated all alternatives and the Board finds that none would provide adequate protection.

Some opponents argue that residences on the Subject Properties should be elevated. That is not an alternative site, it suggests an alternative method, which as explained is not the relevant inquiry. Regardless, the Board finds that here that is not a reasonable alternative method even if that is relevant. As explained in West Consultants’ Third Supplemental Technical Memorandum in the record, raising the homes on pilings is not reasonable because during flood events, the structures will be inaccessible and dangerous because water will flood all around them and would also potentially destroy the homes’ water, sewer, electrical and other infrastructure. Elevating the homes would also not protect the foredune on which the homes are situated because it would not curb the ongoing erosion to the dune and could result in the homes eventually being located on the beach.

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

**Findings:** Despite the fact that the location of a BPS at some other location would do nothing to protect the Subject Properties, this standard requires a comparison of the environmental,



economic, social and energy (EESA) impacts between location of the BPS at the Subject Properties and at other properties that would also require an exception to Goal 18. In an abundance of caution, the Board conducts an EESA analysis.

Environmental:

As noted, there is no other location capable of protecting the Subject Properties than the proposed location.

The placement of a BPS along the Subject Properties' existing shoreline is intended to "reduce the adverse impact" of the on-going eastward march of shoreline erosion and ever more frequent wave overtopping of the Subject Properties. The evidence in the record demonstrates that the impacts resulting from the proposed BPS on the Subject Properties will be neutral or positive. The BPS's design is a measure designed to reduce adverse impacts of the proposed BPS on other properties and on the environment in general, namely additional erosion of the shoreline and the loss of shoreland vegetation.

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

The evidence in the record establishes that the littoral cell subregion in which the Subject Properties exist have been irrevocably damaged by the two jetty systems which cabin it, that are placed in usually close proximity to one another, and that wholly prevent natural ocean/beach processes from occurring. West Consultants Third Supplemental Technical Memorandum, dated July 21, 2021, p. 6-10. These two jetty systems have introduced significant amounts of ocean hardening that have interacted with two successive El Niño/La Niña events to cause aggressive and severe beach losses that are specific to this littoral cell subregion, that are unusual in their etiology and unparalleled in any area that is not otherwise eligible for BPS. The evidence establishes that there is no littoral cell or subregion location on the Oregon Coast which has two jetty systems in as close a proximity to one another, as here. The evidence in the record establishes that the proposed BPS will not have any effect on the rate or extent of beach losses, the loss of coastal vegetation, or the ocean itself in the location of the proposed BPS or in the areas around it. West Consultants Supplement to the March 2021 Pine Beach Revetment Technical Memorandum, dated May 27, 2021, p. 4-13; West Consultants Third Supplement Technical Memorandum, dated July 21, 2021, p. 10-11. Moreover, the Subject Properties exist in a subregion (Rockaway subregion) of a littoral cell (Rockaway) for which nearly 90% (or 91% counting the George Shand Tracts) of the ownerships either already have BPS or are eligible to have BPS under Goal 18, IM 5 according to DLCDs coastal atlas. According to the atlas, as of 2015, of the 345 eligible oceanfront ownerships in the littoral cell subregion, fully 125 are armored and the remaining 220 are entitled to be armored with BPS.<sup>4</sup> Applicants' July 21, 2021

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<sup>4</sup> This number includes the five (5) George Shand Tracts that the County and DLCD agree are entitled to the proposed BPS, contrary to DLCD's online "atlas".

submittal, Exhibit 2. There are only 45 ownerships not already protected by BPS or entitled to be protected by BPS (including the George Shand Tracts) and 6 of them are public parks or Camp Magruder that do not need armoring. The Subject Properties are among the only 39 private ownerships not otherwise entitled to BPS. The fact that the 90% of a portion of a littoral cell subregion was either entitled to have BPS or had BPS was a sufficient reason for DLCDC and others to support approval of a much larger BPS system, protecting numerous properties in Lincoln County. That justification pertains with equal force here.

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

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

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

In summary, the environmental consequences of locating the requested BPS would be the same whether located on the Subject Properties or located in another area that would or would not

require an exception. Moreover, the environmental consequences of approving the proposal are overwhelmingly positive or at the least neutral. The environmental consequences of denying the proposal are overwhelmingly negative.

Economic:

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

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

The record demonstrates that approving the proposed BPS and avoiding the loss of land and dwelling value of the Subject Properties also has a broader impact on the land and dwelling value of the landward properties, because all land and dwelling sale prices, in part, are established by comparing comparable and recent land and dwelling sale transactions to determine the value of a subject lot and/or dwelling.

The evidence shows that in turn, the lowering of property values for the oceanfront lots, as would happen if a revetment is not constructed, would impact, and potentially lower, the asking price of the land and dwelling value of lots within the immediate vicinity. Realtors and others would learn that the County refuses to protect properties from the natural disaster of ocean flooding making properties potentially exposed to ocean flooding less valuable. Thus, for other developed lots that include adjacent or nearby developed inland lots, that adverse economic impact would be avoided by approval of the proposed BPS.

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

Likewise, retaining the value of the fifteen subject properties will result in maintenance of their property tax income to the County that would be lost if the Subject Properties are not protected. Furthermore, if the Subject Properties are claimed by the ocean, it will be an emergency of significant proportion. It will require the activation of several emergency services and agencies, to include local, state and potentially federal: fire, medical, environmental responses, FEMA, EMS, which will put a wholly avoidable significant economic strain on responsible agencies.

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

Social:

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

Granting the requested exception would respect Goal 18's policy to reduce natural hazards to human life as well as respect local land use decisions made consistent with Goal 18's mandates. It will respect the credibility of the Oregon land use planning program, that if citizens develop their property consistently with all of the rules, that when disaster comes, that the land use system will not foreclose protection from harm. Approval of the proposal does not establish a precedent because there is no other situation like it in Oregon. Here, the Subject Properties were approved for residential development consistent with all of Goal 18's mandates and was supported by the best evidence possible at the time, which showed a prograding beach for the area, as shown on the Comprehensive Plan Map. Application, Exhibit I. It was the unforeseen interaction between the two closely spaced jetty systems and the two "EI" events that caused the beach and ocean processes to reverse and begin to aggressively deplete the littoral cell subregion's sand supply systems at an alarming rate. The unnatural ocean/beach behavior cannot be reversed without removal of the two jetty systems causing it, which is not a reasonable expectation. When citizens obtain residential land use approval in these circumstances under an acknowledged planning program that determines their property is properly located, it is not socially beneficial to use the land use system to withhold necessary life and property saving protections when unforeseen natural disaster strikes. This errs in favor of approving the proposed BPS.

The proposal does not directly affect the public beach. However, approving the proposed BPS will protect the beach for public enjoyment. Approving the proposed BPS means that the risk will be greatly reduced of catastrophic residential detritus from catastrophic flooding, marring the beach or ocean or of broken sewer or water infrastructure contaminating the beach and ocean.

The fact that the proposed BPS will be covered with sand and beach grasses helps to ensure that it is either out of view or is pleasing to view either from the beach or the Subject Properties. There are no public beach accesses that are affected by the proposal. The two beach accesses in the area are private ones. Nonetheless, the northern access to the beach between Tax Lots 123 and 3204 will be maintained and improved and the southern access to the beach between Tax Lots 113 and 114 is not affected whatsoever. Moreover, the proposal will not impede access along the beach either. It will be established in backyards, not the public beach where the public has no right of access anyway. During storms and high tide events, the public is not walking on the beach anyway because it is extremely dangerous to do so and/or the beach is inaccessible.

Some opponents claim it is not possible to plant inundated areas with beach grasses and point out that the areas are now subject to inundation. It is true that the area where the BPS is proposed to be established is now subject to severe inundation during storm events. But beach grasses and other native vegetation is not always swept away. West Consultants explains in its Third Supplemental Technical Memo in the record, that beaches and coastal vegetation can reestablish themselves, even after the sand covering it is washed away. Here the properties owners have committed to make the effort. The BPS will be covered in sand, about that there is no dispute. The owners will make best efforts to maintain native plantings as well and there is a reasonable chance that they will succeed. If they do not succeed in maintaining native plantings as the opponents posit, then the BPS will be at least periodically recovered with sand. The point is that the owners wish to maintain the proposed BPS in an attractive condition and have committed to do so.

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

The social benefits are on balance, positive from approval of the proposal.

#### Energy:

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

#### EESE Conclusions:

As the analysis above demonstrates, the consequences that would result from the use at the proposed site, are not significantly more adverse than would typically result from the same proposal being located in a different area that would or would not require a Goal 18, IM 5 exception. The EESE analysis weighs in favor of locating the beachfront protective structure at the proposed location because the chosen site is not significantly more adverse than would result from locating it in another area that would also require an exception. And it is the only site that will protect the Subject Properties.

OAR 660-004-0020(2)(d) provides:

*“(d) ‘The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.’ The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”*

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

Furthermore, the expert evidence in the record establishes that the BPS will have no adverse physical impacts on adjacent or nearby uses. That evidence establishes that it will not deflect wave energy to adjacent properties, nor will it cause an increase to the FEMA total water levels in the area; nor will it cause accelerated erosion or otherwise affect the rate or extent of erosion that the beach in this area or the rest of the littoral subregion, is experiencing.

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

*“(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.”*

**Findings:** The Board finds that the reasons and circumstances are the same for the George Shand tracts and the Pine Beach properties, and so considers the areas as a group for the purposes of this goal exception. Each area is identified on a map (Exhibit A) and is keyed to the appropriate findings.



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

*“An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. \* \* \**

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

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

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

**Findings:** An exception to Goal 18, IM 5 to allow BPS where development did not exist on January 1, 1977, is not specifically provided for in OAR 660-004-0022 subsections (2) through (11), so subsection (1), the general “reasons” exception provisions, apply to this application.

OAR 660-004-0022(1) broadly states that “reasons shall justify why the state policy embodied in the applicable goals should not apply.” And provides one nonexclusive example of reasons that will justify an exception. *Todd v. City of Florence*, 52 Or LUBA 445, 451 (2006) (explaining that OAR 660-004-0022(1) lists non-exclusive reasons why the policy embodied by the applicable goals should not apply, including (but not the only reason) a ‘demonstrated need’ for the proposed use.”); *Friends of Marion County v. Marion County*, 59 Or LUBA 323, 341 (same); *DLCD v. Yamhill County*, 31 Or LUBA 488 (1996) (“reasons to justify a reasons exception ‘include, but are not limited’ to those stated in OAR 660-004-0022(1)(a)-(c)”.) OAR 660-004-0022(1) provides examples of reasons that may be used to justify an exception to include the showing of a “demonstrated need” and a locational requirement. The Board finds that the proposal meets both of those requirements. However, the Board also finds that the proposal may be justified using other reasons and does not rely solely on the reasons set forth as an example in OAR 660-004-0022(1). Each justification is discussed in turn.

- a. Reasons Provided by OAR 660-004-0022(1): “Demonstrated Need” and Locational Requirement:

“Demonstrated Need”:

Oregon caselaw has set out the framework for analysis for reasons exceptions. Key points from those cases are summarized below and the subsequent analysis follows the framework LUBA has recently applied to reasons exceptions that have utilized the non-exclusive example of types of reasons provided in OAR 660-004-0022(1).

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

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

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

The Board finds that the County is at risk of violating its Goal 7 Natural Hazards; Goal 10 Housing; Goal 11 Public Facilities and Services; Goal 14 Urbanization; and Goal 18 Beaches and Dunes obligations, as explained immediately below.

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

(1) Identify obligations:

There are several statewide planning goals and Tillamook County Comprehensive Plan sections that implement those goals, that impose obligations on the County that the County would be at risk of violating if the requested exception not be granted. These include: Goal 7 Natural Hazards; Goal 10 Housing; Goal 11 Public Facilities and Services; Goal 14 Urbanization; and Goal 18 Beaches and Dunes. Each is summarized below.

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

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

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

Evidence in the record establishes that measures 1, 2, 4 and 7 above were imposed on the Pine Beach subdivision approval and subsequent development, in both the Pine Beach subdivision and the George Shand tracts. The issue here is whether the Applicants are allowed to take remedial action using mitigation measure number 3 above, given the failure of the other methods to prevent erosion. The County interprets its plan to authorize the proposed shoreline stabilization (BPS) under the unique circumstances described in these findings that affect the Subject Properties.

With respect to flooding, Plan policy 2.5(e) provides: "where development within floodplains is allowed, the developer shall provide appropriate safeguards to insure public safety and protect individuals residing in the flood zone." The evidence in the record demonstrates that those appropriate safeguards were imposed and performed. But despite best efforts, the behavior of the ocean changed as a result of the effect of two "El" events on a littoral cell subregion that lies between two unusually closely spaced jetty systems. The land use safeguards (setbacks, separation from the beach by a coastal forest) have been claimed by these unnatural forces and there is no place on the Subject Properties to move far enough east to be out of harm's way.

Goal 10's policy is: "To provide for the housing needs of the citizens of the state." It requires local governments to inventory buildable lands for residential use and to evaluate their housing needs and to ensure those needs can be met, to include housing at all price ranges and rent levels, through their comprehensive plans. Goal 2 requires a local government's buildable lands inventory to be part of the comprehensive plan. OAR 660-006-0010 and 660-008-0005(5)<sup>5</sup>; *Lengkeek v. City of Tangent*, 50 Or LUBA 367, 377-78 (2005). LUBA has stated that this policy imposes on counties an "obligation to maintain an adequate inventory of buildable lands". *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 694-95 (1995). OAR 660-022-0040 implements Goal 10 with respect to urban unincorporated communities, such as the Twin Rocks-Watseco-Barview urban unincorporated community which includes the Subject Properties, and imposes on counties planning obligations for such lands. *Seabreeze Assoc. Limited Partnership v. Tillamook County*, 71 Or LUBA 218 (2015).

The County has implemented Goal 10 in its acknowledged plan and determined the housing needs in unincorporated areas of the County and to meet that need. Comprehensive Plan, Goal 10 Element, p. 30; p. 39. The County's acknowledged Goal 10 Buildable Lands Inventory (Exhibit 4 to Applicants' July 27, 2021 submittal) relies greatly upon its urban unincorporated communities, to include the Twin Rocks-Watseco-Barview urban unincorporated community, to provide medium density residential uses to satisfy the County's housing needs. The County Plan's Housing policy 3.2 provides: "Tillamook County will plan to meet housing needs by encouraging the availability of adequate numbers of housing units[.]" Goal 10 Element, p. 43. The County's analysis of housing needs includes addressing expected population growth and projected additional housing units by type for specific market areas, to include the Twin Rocks/Barview/Watseco unincorporated community. See, Plan, Goal 10 Element, Table 36 and Table 43. The County also adopted Policy 3.6 to implement Goal 10, which provides: "Tillamook County encourages the use of planned developments in urban and rural areas in order to efficiently use land, provide public services efficiently, and to reduce the impact of residential development on natural resources." The County would be at risk of failing to meet its Goal 10 obligations expressed in its Goal 10 implementing regulations to refuse to protect the very residential lands it is required to protect to deliver housing in the County. It would put the County at risk of violating those Goal 10 obligations by demanding instead that such land be washed away into the ocean instead of approving the proposed BPS to protect the land that the County's acknowledged Goal 10 implementing obligations require be maintained for housing.

Goal 11's purpose is: "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Relevant here, the County adopted Goal 11 Element Policy 3.1, which states the County "will further the development of a timely, orderly and efficient arrangement of public facilities and services" through a number of actions. Plan, Goal 11 Element, p. 11-40. The County complies with Goal 11 but complying with its Goal 11 implementing measures. The County would be at risk of failing to meet its Goal 11 obligation for orderly and efficient arrangement of public facilities and services if it refused to approve BPS to protect such public facilities and services and

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<sup>5</sup> OAR 660-008-0010 provides that the mix and density of housing needs are determined in the "housing needs projection". OAR 660-008-0005(5) requires that the "housing needs projection" be "justified in the plan."

insisting that they be destroyed by wave action, when a nonharmful mitigation measure is available as here as proposed.

Goal 14's purpose is: "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." Its provisions discuss land needs and how, among other things, unincorporated communities help meet those needs. To implement Goal 14, the County adopted Goal 14 Element Policy 3.8, which mandated establishing community growth boundaries around unincorporated communities and expressly named Twin Rocks/Barview/Watseco as one of those communities. Looking at the Twin Rocks/Barview community directly, the Plan states there is a "[d]emonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals" in the Twin Rocks-Barview Watseco urban unincorporated community; as well as a "need to accommodate 130 additional housing units by the year 2000," and that the community will accommodate a total of 320 dwellings. Plan, Goal 14 Element, p. 14-44. Other provisions concerning the Twin Rocks/Barview/Watseco urban unincorporated community include the orderly and economic provision of public facilities and services and committing the lands within the community growth boundary to development. Plan, Goal 14 Element, p. 14-45. The County would be at risk of not meeting its Goal 14 obligations reflected in the County plan, if it refused to protect this acknowledged urban community for which the County has an acknowledged "demonstrated need"; but rather to demand instead that the community for which there is a demonstrated need be wiped out by a natural hazard with a BPS that the evidence in the record demonstrates harms no one.

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

Each of the above goals imposes an obligation on the County that is relevant to this proposal.

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

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

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

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

Goal 11 and the County's implementing Plan provisions require that the County to provide for an "orderly and efficient arrangement of public facilities and services" to support urban levels of development in this area. There is nothing orderly or efficient about allowing public facilities and services to be destroyed when that infrastructure can be readily protected from a known natural hazard, the effects of which can be prevented at no cost to the taxpayer generally or recreating public specifically. In response to opponents who argue that one can simply turn a few switches or levers to halt the flow of water and sewer services to the area and protect the greater system, those persons fail to appreciate that even if a system can be "turned off" before disaster strikes, turning it back on when key parts have been ripped out, is not so simple. The Board finds that the unnecessary sacrifice of public investment is not "efficient" and abandoning such facilities to destruction is not "orderly." Failing to approve the proposed BPS causes the County to be at risk of failing to meet its Goal 11 obligations imposed by the Goal itself and through the County's acknowledged Goal 11 obligations.

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



requested exception will mean that the County risks failing to comply with its Goal 14 obligation to accommodate its urban population and provide for a “livable community” in the urban unincorporated Twin Rocks-Barview-Watseco Community.

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

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

Not approving the requested exception places the County at risk of failing to meet its identified obligations under the Goals and implementing Comprehensive Plan provisions discussed above.

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

Approval of the exception will allow development of the proposed beachfront protective structure. The evidence in the record demonstrates that that structure will protect the residents and Subject Properties from the threat posed by dune overtopping, wave runup and ocean flooding over the next 20 years, even taking into account anticipated sea level rise due to global warming and will do so without causing harm to adjacent properties as a result of erosion, increased wave velocities or higher flood water levels, or other impacts and with minimal (less than 1%) effects to the littoral cell's "natural processes", even if it had such left, which the evidence shows it does not due to the two jetty's.

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

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

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

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

Locational Requirement:

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

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

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

b. Other Reasons Justifying Why Goal 18, IM 5 Should Not Apply:

The Board finds that in addition to satisfying the example of reasons that may be used to justify an exception in OAR 660-004-0022(1), the proposal is also justified by other reasons that are "unique" and "exceptional" and those reasons will not be readily applicable to other properties.

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

As an initial matter, the Board observes that the “unique” or “exceptional” requirement is not contained in the plain language text or context of the statute, goals or implementing regulations. Regardless, the Board finds that the situation here is unique and exceptional and does not establish a rule of general applicability, and is consistent with LUBA’s interpretation of the general reasons exception requirements.

The unique facts here are that: (1) an at least 70-year history of beach prograding had occurred prior to and during subdivision and urban community approval and those urban residential development approvals were based upon expert reports that did not anticipate that the approved development would be unsafe. Rather, the acknowledged urban residential planning program covering the Subject Properties was established in compliance with all state planning goals including Goal 18, and then was followed by the unanticipated and extreme reversal to beach retrograding that now significantly threatens the Subject Properties; (2) the natural functioning of the Rockaway subregion of the littoral cell has been irrevocably disrupted, eliminating the natural sediment deposition functions as a result of the impact of two "EI" events of the late 1990s on the two closely spaced man-made jetties that cabin the applicable littoral cell subregion. No where else on the Oregon coast are there two jetty systems in as close a proximity as found in the applicable Rockaway subregion of the Rockaway littoral cell; (3) the severe and remarkable retrograding in the littoral cell is primarily in the Rockaway subregion where the Subject Properties are located and is unusual because the rest of the littoral cell is still in the main depositing sand; (4) 90% of the Rockaway littoral cell subregion is already either hardened with BPS or entitled to be hardened with BPS, according to the DLCD 2015 "atlas".

This situation is not the result of the normal ocean cycles of erosion (which the Chris Bahner, May 27, 2017, Technical Memorandum in the record explains), or the result of sea level rise that will affect all properties on the Oregon Coast as some commenters have suggested. This is a unique set of circumstances where the residential development was approved during 70+ years of prograding consistent with all conceivable planning rules and professional analyses and, then, suddenly the ocean reversed course due to the unique interplay of man-made jetties placed in close proximity to one another and ocean forces. The record establishes that there is no similarly situated property along Oregon’s coast outside of the Rockaway subregion of the Rockaway littoral cell and nobody in these proceedings has identified any other properties that make the same case as is presented here.

The Board finds that the situation here is unique, and is exceptional and is not a basis upon which other locations can argue for a Goal 18 exception. The proposal satisfies LUBA’s “unique” / “exceptional” requirement.

The Board finds that the proposal meets all of the standards for a general reasons exception and approves the requested exception to Goal 18, IM 5 for the Subject Properties.

## 10. OAR 660-004-0030 – Notice and Adoption of an Exception

*“(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.*

*“(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals through the acknowledgment or periodic review processes under OAR chapter 660, divisions 3 or 25, and by the Board when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.”*

**Findings:** The notices for the public hearings on the proposal complied with TCLUO and state notice rules. The notices specifically identified that a goal exception was being proposed and summarized the issues in an understandable manner. The exception to Goal 18, IM 5 will take effect upon the signing of the order by this Board adopting the accompanying amendment to the County’s Comprehensive Plan.

## B. COMPREHENSIVE PLAN AMENDMENT

### 1. TCLUO 9.010: Authorization to Initiate Amendments

*“An AMENDMENT to a zoning map maybe initiated by the Board, the Commission, the Department, or by application of a property owner. Anyone may initiate proceedings to AMEND the text of this Ordinance.”*

**Findings:** The requested Comprehensive Plan text amendment was initiated by the Applicants who are the owners of the 15 Subject Properties. The Board finds that the Applicants have authorization to initiate the requested amendment under TCLUO 9.010.

### 2. TCLUO 9.030: Text Amendment Procedure

*“(1) A COMPREHENSIVE PLAN TEXT or ORDINANCE AMENDMENT may be requested by any person, subject to the requirements of a Type IV procedure and Article 10. The proponent of COMPREHENSIVE PLAN or ORDINANCE AMENDMENT shall arrange a pre-application conference with the Department, pursuant to Section 10.030.”*

**Findings:** The Applicants are requesting a quasi-judicial Comprehensive Plan text amendment in the nature of a goal exception for specific properties. The request is not for an amendment applicable county-wide. Consequently, the proposal is not a Type IV legislative plan amendment. Rather, TCLUO Table 10.1: Review Procedures Summary indicates the proposal is to be subject to the requirements of a Type III procedure. A preapplication conference was conducted with the County on July 30, 2019. The Board finds that this standard is met.

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

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

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

TCLUO 9.030(3) provides:

*“(3) Criteria. Commission review and recommendation, and Board approval, of an ordinance amending the Zoning Map, Development Code or Comprehensive Plan shall be based on all of the following criteria:*

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

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

The following demonstrates state goal compliance.

#### Goal 1 – Citizen Involvement

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

Goal 1 calls for the opportunity for citizens to be involved in all phases of the planning process. The application has been processed in accordance with the County’s acknowledged land use regulations and procedures, which have provided ample opportunity for public participation. A total of four public hearings were held on the application with the opportunity for the public to provide evidence and testimony. The proposal is consistent with Goal 1.

Goal 2 – Land Use Planning

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

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

Goal 3 – Agricultural Lands

*“To preserve and maintain agricultural lands.”*

The Subject Properties are not agricultural land or zoned for agricultural use because they are subject to a Goal 3 exception. The proposal will have no impacts on agricultural land. The proposal does not implicate Goal 3.

Goal 4 – Forest Lands

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

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

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

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



Goal 5 requires the County to identify, inventory and provide protective measures in its land use code, if appropriate, for specific resources. The evidence in the record demonstrates that there are no identified Goal 5 resources on the Subject Properties or on immediately surrounding or even nearby properties. The nearest Goal 5 resource is Smith Lake with is several hundred feet to the east and south of the Subject Property, across hold Highway 101. The proposal does not implicate Goal 5.

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

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

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

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

The proposed use will be developed consistent with the adopted and acknowledged land use regulations and will comply with any development requirements intended to protect air, water and land resource qualities. The proposal is consistent with Goal 6.

#### Goal 7 – Areas Subject to Natural Hazards

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

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

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

### Goal 8 – Recreational Needs

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

Goal 8 is focused on a County’s obligation to plan for the recreational needs of its residents and visitors and imposes few requirements outside of those sites the County’s planning department determines are necessary to meet recreational needs. The County has not determined and could not determine that the Subject Properties where the BPS will be situated, is a necessary public recreational site or facility. This is because the proposed BPS is in the Applicants’ private backyards.

Further, Goal 8 does not require, and could not require as some opponents suggest, that the County fail to protect private property from natural hazards in the hope that homes, property and public infrastructure might be destroyed so that beachgoers might have a more pleasurable environment in which to recreate. The proposed BPS is located in the vegetated private property foredune, zoned and planned for residential development and is not proposed on any part of the beach, and as expert Chris Bahner’s May 27, 2021, Technical Memorandum in the record explains, the BPS will not interfere with the beach processes in the littoral subregion or anywhere else.

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

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

Further, the Board acknowledges that the public has a significant interest in recreating on the beach and the ocean. Approval of the proposal protects those public recreation interests from the harm that would occur to the ocean and beaches if the ocean claimed the 11 homes, as well as the water, sewer, gas, electricity and other infrastructure and potentially roads serving the 15 Subject Properties. The proposal is consistent with Goal 8.

### Goal 9 – Economic Development

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

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

#### Goal 10 – Housing

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

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

#### Goal 11 – Public Facilities and Services

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

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

#### Goal 12 – Transportation

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

Goal 12 is implemented by the Goal 12 rule (OAR 660 division 12). The Goal 12 rule is triggered when an amendment to a comprehensive plan would “significantly affect” an existing or planned transportation facility. OAR 660-012-0060(1). To “significantly affect” is defined to mean when a proposal will change the functional classification of a transportation facility, changes the standards that implement a functional classification system, or allows types of levels of traffic or access inconsistent with the functional classification of a transportation facility, or will degrade the performance of a transportation facility below the standards identified in the TSP or even further if the facility is projected to fall below TSP standards. OAR 660-012-0060(1). Here, the proposed BPS will not generate any continuing traffic related to its use. The only traffic that will be generated will be temporary traffic required for construction of the structure, which will be similar (but will occur over a shorter period) to that of constructing the residential structures on the Subject Properties. Such traffic levels will not “significantly affect”

any existing or planned transportation facility as that term is used by Goal 12, consequently the Goal 12 rule is not triggered by the proposal. The proposal is consistent with Goal 12.

Goal 13 – Energy Conservation

*“To conserve energy.”*

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

Goal 14 – Urbanization

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

The County acknowledged Plan, Goal 14 element, explains that in the Twin Rocks-Barview-Watseco urban unincorporated community, that there is a “[d]emonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals.” Plan 14-44. The Subject Properties are already in an area that is acknowledged to provide urban levels of residential use as a part of a vital urban unincorporated community, served with urban public facilities and services, outside of a city UGB. The proposed BPS is necessary to protect the safety and livability of the Subject Properties within the urban Barview/Twin Rocks/Watseco Community. The proposal is consistent with Goal 14.

Goal 15 – Willamette River Greenway

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

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

Goal 16 – Estuarine Resources

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

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

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

Goal 17 – Coastal Shorelands

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

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

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

The design of the BPS will be located on shorelands above the ordinary high-water mark. The evidence in the record demonstrates that the proposal has been designed to minimize adverse impacts on the existing environment and will not have any impact on the existing erosive forces that uniquely affect the littoral cell subregion within which the Subject Properties are located, as explained previously in these findings. The evidence in the record establishes that the proposal will not cause adverse impacts on water flow and erosion of any other properties. The analysis of the Applicants’ expert consulting engineer in the record concludes that the BPS will have no impact on accretion patterns should the shoreline change pattern return to an accretion/prograding pattern.

Some opponents claim that the proposed BPS will interfere with recreational uses of the beach in violation of Goal 17. This is incorrect. The BPS is located on private vegetated property, not on the beach. The location of the BPS cannot interfere with recreational use of the beach because it will not be located on the beach and all of the evidence establishes that the proposed BPS will not harm the beach at all or access to or along it at all.

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

depriving Tillamook County citizens of their lives and property as some suggest they'd like. The Oregon and Federal Constitutions, and probably criminal law for that matter, prohibit the County from intentionally exercising its authority to destroy lives or private property to bestow perceived benefits on other people who wish such property for themselves.

Goal 17 does not apply and regardless the proposal complies with it.

Goal 18 – Beaches and Dunes

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

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

The proposal requests an exception to Goal 18, IM 5. Findings of consistency with the requirements for a general reasons exception are discussed above.

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

Goal 18, IM 1 provides:

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

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

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

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

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

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

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

(c) Expert evidence in the record demonstrates that the BPS design protects surrounding properties from the adverse impacts of development. For example, given the nature of the BPS design, there will be no off-site stormwater runoff during or after construction. The design of the structure is such that it will not direct additional water to surrounding properties, increase wave heights or wave runoff, or impact the natural littoral drift of sediment along the coast. The collection of Google Earth photos of the shoreline within the vicinity of the existing Shorewood RV Resort's BPS in the record shows no pronounced differences in the erosion of the shoreline south of the structure than what is now naturally occurring within the area. Given the location and higher elevation of the proposed BPS, the wave energy and erosion potential is anticipated to be even lower. On this matter, West Consultants Technical Memorandum in the record concludes, "the proposed structure will not have an adverse impact to the surrounding properties. No additional measures are necessary to protect the surrounding area as a result of the proposed revetment structure." Moreover, as explained elsewhere, the natural processes of this subregion of the littoral cell have been permanently and irrevocably disrupted by the two closely spaced jetty systems that cabin the Subject Properties. There is nothing about the proposal that will change or exacerbate that reality, other than to protect the Subject Properties from the deleterious effects of it.

(d) The expert evidence in the record demonstrates that the proposed BPS will reduce the risk of damage to life, property and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides and resulting severe erosion resulting from the unhealthy impact of the two jetty's. The proposal as designed will not cause any hazard to any person or property.

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

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

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

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

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



The proposal is not for “residential developments” or “commercial and industrial buildings”. Rather it will protect existing residentially developed land from a serious natural disaster that is threatening it. Accordingly, the prohibition of residential development on certain beach and dune features in Goal 18, IM 2 is not implicated in this request.

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

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

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

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

Goal 18, IM 3 provides:

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

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

Also discussed above and demonstrated by expert evidence in the record is the fact that the proposed BPS will not change in any way or adversely affect wave patterns that will lead to beach erosion elsewhere.

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

Goal 18, IM 4 provides:

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

The proposed BPS does not use groundwater or affect it in any way. The BPS was designed by West Consultants to minimize adverse environmental impacts such as the ones identified in IM 4. The proposal calls for re-sanding, revegetation, and monitoring as part of the BPS’s design and maintenance. The BPS does not reach down to the water table and will not lead to loss of water quality or the intrusion of salt water into water supplies.

The proposal is consistent with Goal 18, IM 4.

Goal 18, IM 5

As discussed above, this request is for the Board to approve an exception to the date limitation on BPS in Goal 18, IM 5. The proposal is consistent with the process for taking an exception to a goal requirement. Those findings are hereby incorporated.

Goal 18, IM 6 provides:

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

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

Goal 18, IM 7 provides:

*“Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if the area is committed to development or is within an acknowledged urban growth boundary*

*and only as part of an overall plan for managing foredune grading.” [requirements omitted].*

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

Goal 18, Guideline E promotes responsible public access to the beaches. There are no public beach access affected by the proposal and so this guideline does not apply. Regardless, the private beach access that runs between Tax Lots 123 and 3204 will be maintained. The proposed structure will improve that beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach. The proposal maintains the southern beach access and does not affect it at all. And the proposal has no impact whatsoever on access across the beach. During periods of high tides, it is not possible and extremely dangerous for persons to walk on the beach. Accordingly, the claim made by some opponents that the proposal will impair access across the beach during high tides is not well-founded. Regardless, even during high tides, the proposal will still be on the Subject Properties backyards, which is private and not public property accessible to the public regardless of whether there is a high tide or a storm. The proposal is consistent with this guideline.

Goal 18, Guideline F states that dune stabilization actions should be evaluated for their potential impact. The Applicants' expert engineer has evaluated the proposal for its potential impact. His conclusions are herein incorporated. The Board finds credible and persuasive the Applicants' engineer's analysis that the proposal will have no adverse impact on any adjacent or nearby property, and adopts that conclusion as its own. The proposal is consistent with this guideline.

The proposal is consistent with Goal 18.

#### Goal 19 – Ocean Resources

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

Goal 19 concerns Oregon's off-shore ocean resources. To the extent that the proposal prevents the ocean destroying 11 houses, and the public water, sewer, gas, electrical and other infrastructure and street system for 15 residential lots, it benefits the ocean by keeping out harmful pollutants. Other than that benefit, nothing about the proposal impacts ocean resources. The proposal is either consistent with or does not implicate Goal 19.

The proposal is consistent with the Statewide Planning Goals.

TCLUO 9.030(3)(b) provides:

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

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

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

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

#### COUNTY HAZARDS ELEMENT (Goal 7)

##### County Goal 7 – 2.4 Erosion

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

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

BPS will be covered in sand and revegetated to further reinforce the integrity of the vegetation line area.

Policy 2.4b is not applicable because there are no slopes greater than 19% on the Subject Properties.

#### County Goal 7 – 2.5 Flooding

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

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

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

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

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

The proposal is consistent with the Hazards Element (Goal 7) of the Comprehensive Plan.

#### COUNTY HOUSING ELEMENT (Goal 10)

##### County Goal 10 – Policy 3.2

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

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

COUNTY PUBLIC FACILITIES ELEMENT (Goal 11)

County Goal 11 – Policy 3.1

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

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

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

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

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

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

COUNTY ESTUARINE RESOURCES ELEMENT (GOAL 16)

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

County Goal 16 – 7.5 Shoreline Stabilization

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

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

*“b. planting of riparian vegetation;*

*“c. vegetated riprap;*

*“d. non-vegetated riprap;*

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

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

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

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

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

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

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

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

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

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

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

(b) As discussed above and demonstrated by expert evidence in the record, land use management practices and non-structural solutions are no longer appropriate because of the high erosion rates



over the past several years such that they cannot protect the Subject Properties and have not been able to do so. Only the proposed BPS will protect the Subject Properties.

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

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

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

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

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

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

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

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

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

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

*“7. In Estuary Development (ED) zones, structural shoreline stabilization (riprap, groins or bulkheads) shall be permitted only if consistent with the maintenance of navigational and other needed public, commercial and industrial water-dependent uses.”*

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

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

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

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

#### COUNTY URBANIZATION ELEMENT (Goal 14)

County Goal 14, Section 2.3 provides a definition of “urbanization” and then provides that “According to this definition, urbanizable lands in Tillamook County include lands within the acknowledged urban growth boundaries of the cities of Bay City, Garibaldi, Manzanita, Nehalem, Rockaway, Tillamook, and Wheeler. They also include land within the separate urban growth boundaries of Neahkahnie and Twin Rocks/Barview. (More about separate urban growth boundaries for Neahkahnie and Twin Rocks/Barview in Section 3.2).” Plan Section 3.2 identifies Watseco as an urban unincorporated area. Plan Section 3.8 requires the County to establish “community growth boundaries” around the unincorporated community. Policy 3.11 states that land in community growth boundaries are areas where “urban development is appropriate and where urban services will be made available over the next 20 years.” The proposal to protect urban residential areas designated for urban residential development deemed by the governing body to be appropriate over the long-term planning horizon with BPS, is consistent with these policies. Allowing the community to be destroyed by ocean flooding is inconsistent with these policies. The Goal 14 element of the County plan establishes that there is a "Demonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals" in the Twin Rocks-Barview-Watseco urban unincorporated community. Plan 14-44. The Board finds that this proposal to protect that property for which the County has a "demonstrated need" from a serious natural hazard is consistent and required by the County plan Goal 14 element.

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

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

The Subject Properties are within the Barview/Watseco/Twin Rocks Urban Unincorporated Community. The Barview/Watseco/Twin Rocks Community Plan is part of the County’s Comprehensive Plan and contains goals and policies relevant to the application’s consistency with the Comprehensive Plan under TCLUO 9.030(3)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTY BEACHES AND DUNES ELEMENT (GOAL 18)

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

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

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

The proposal will locate the proposed BPS as far from the beach as is possible - it is not on the public beach, but on the private backyards of the Applicants. The disturbed areas will be revegetated after the BPS is installed. The proposal will protect existing vegetation and is to vegetate open sand areas. The proposal is consistent with this plan policy. Moreover the Plan at 2.2b also recognizes that management practices are not always successful, explaining: *“In the Nedonna, Pacific City and Neskowin areas, severe wave erosion necessitated the placement of riprap.”* These are unincorporated communities, like the Watseco Community. Thus, the Plan recognizes that riprap may be required to protect people and property from the natural hazard of severe wave erosion. The proposal is consistent with this policy.

Locate structures as far from the beach as possible

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

Vegetate open sand areas and protect existing vegetation

The proposal is to revegetate the dune that has actively eroded and to protect the disturbed area with the proposed BPS to enable vegetation to be re-established to supply greater protection. The proposed BPS will be located approximately 185 feet landward of the statutory vegetation line. As shown in Application, Exhibit F in the record, the design by West Consultants provides for re-sanding over the structure and the planting of beach grasses and native vegetation over the area where the structure is place. This vegetation will be monitored,

and the area revegetated as necessary as part of the maintenance program. Application, Exhibit F, p. 8. This will allow native vegetation to flourish, thereby restoring the natural resource that has been rapidly eroding away. See (2) above. The proposal is consistent with this policy.

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

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

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

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

Implementing Requirement (1) states, in relevant part:

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

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

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

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

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

(a) The placement of a beachfront protective structure along the Subject Properties’ existing shoreline is intended to “reduce the adverse impact” of the on-going eastward march of shoreline erosion at the Subject Properties. The evidence in the record demonstrates that all impacts resulting from the proposed beachfront protective structure will be positive, not negative. The design of the beachfront protective structure is to minimize adverse effects it could otherwise have on adjacent properties and the area in general. As the revetment structure at the Shorewood RV Resort shows, a well-designed structure in this area will not have adverse impacts on adjacent properties, although it cannot halt the progression of beach erosion on those other properties if erosion continues. (See Application, Exhibit J, Google Earth Historic Aerial Images).

(b) The proposal is for a permanent stabilization program that calls for future monitoring and maintenance of the proposed BPS and overlying vegetation, with re-vegetation if necessary, paid

for by the owners of the Subject Properties. The proposed BPS is to be located 10-feet landward of the line of established vegetation, thereby preserving that vegetation in its native state.

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

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

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

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

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

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

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

This provision recognizes that allowing development in foredune areas requires compliance with the requirements of Goal 18, IM 2. However, it also states that Tillamook County is continuing to allow “residential development in foredune areas which are irrevocably committed to development.” While the Plan policy references specific areas that were at the time understood to be residential development on an eroding dune, the policy that this Plan policy expresses, supports allowing BPS for other areas like the Subject Properties in the Watseco Community that is committed to residential development to be protected with BPS, when severe ocean erosion strikes in proper circumstances, as here. The proposal complies with this policy.

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

This provision repeats the requirements of Goal 18, Implementation Measure 3. Thus, the Board incorporates its findings from the section addressing the Goal 18, IM 3, above.

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

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

County Goal 18 – Policy 2.4 – Policies

Each of the applicable policies are identified and addressed below.

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

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

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

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

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

(a) The type of proposed use is a beachfront protective structure. The possible adverse effects the use may have on the site and adjacent areas are addressed throughout these findings and documented in the Applicants’ various submittals in the record, which the Board accepts and finds persuasive.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

The emphasized portion of the policy refers to *“lots where such development is specifically authorized by Section 5.”* There is no corresponding Section 5 that specifically authorizes development on eroding dunes. There is a Section 6 that authorizes development under Goal exceptions. Section 6 takes separate goal exceptions for unincorporated communities subject to ocean flooding. The proposal will add to those exceptions.<sup>6</sup> The proposal is consistent with this policy.

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

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

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

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

County Goal 18 – Section 3 – Foredune Management:

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

County Goal 18 – Section 4 – Coastal Erosion:

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

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<sup>6</sup> Again, as stated previously, only for the Pine Beach Applicants. The George Shand Tracts will be added to the Goal 18 exception element only if a reviewing authority decides that the Board's primary findings that the George Shand Tracts were “developed” on January 1, 1977 are reversed or remanded.

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

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

Section 4.2 Management Considerations recognizes that: *“The primary means of guarding residences or other structures from damage is to locate them back from the eroding coastline”* Evidence in the record shows that is precisely what was done when the Pine Beach Subdivision was platted in 1994 and at the time the houses in the George Shand Tracts/Ocean Boulevard were approved. For the Pine Beach Subdivision, a two-acre Common Area, approximately 190-foot wide, separated the rear yards of the Pine Beach beachfront lots from the statutory vegetation line. The George Shand/Ocean Boulevard lots north were similarly setback with extensive “oceanfront yards” with development allowed only on the eastern portion of the properties. Therefore, the westernmost rear yards of the Pine Beach Subdivision and the George Shand/Ocean Boulevard properties were located “back from the eroding coastline” until the extreme reversal occurred due to the confluence of the two “El” events of the late 1990s on the two man-made jetty systems that are placed too close together and disallowed natural processes to reign. The abnormal effects of the two man made jetty systems constructed in close proximity to one another caused the ocean to claim sand at an alarming rate such that now the rear yards of the Pine Beach and George Shand beachfront lots, have lost approximately 142 feet of shoreline vegetation. Therefore, based on the above, when the subdivisions and many of the residences on them and the public infrastructure were approved, the sites for development on the lots were established well eastward of the then shoreline and outside the areas of ocean undercutting and wave overtopping.

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

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

Policy 4.4c: Coastal Erosion: Policies; Protective Structures

This policy implements Goal 18, Implementation Measure 5 by limiting beachfront protective structures to where development existed on January 1, 1977. TCLUO 3.530(4)(A)(4) implements this policy and provides that it is possible to take an exception to Goal 18 to develop a beachfront protective structure for development that did not exist on January 1, 1977. The application requests approval of a Goal exception to allow BPS as this policy contemplates. This decision approves the requested BPS, as contemplated by this Plan policy.

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

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

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

The County's Beaches and Dunes Element Policy 2.4a is addressed above. Those findings are hereby incorporated.

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

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

Moreover, to the extent relevant, the proposal does not interfere with any access across the public beach either. In fact, the proposal avoids the public beach altogether. It simply has no effect on access across the beach or to the beach.

The proposal is consistent with the Tillamook County Comprehensive Plan.

TCLUO 9.030(3)(c) provides:

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

The Board finds that it is in the public interest to protect the Subject Properties, as well as the water and sewer and other public facilities and supporting street system that serve them. The proposal protects an important part of an acknowledged urban unincorporated community that the County and state have encouraged and supported to deliver urban residential land uses over the short, medium and long-term planning horizon. It is in the public’s interest to protect that urban residential development with the proposed BPS in order to protect it. Moreover, the County’s public obligations are expressed in state Goal 7 and the County’s implementing rules that demand that the County amend its plan to protect persons and property from natural hazards. The proposal responds to natural hazards threatening the Subject Properties in the community that suddenly reversed a more than 70-year trend of shoreline prograding that existed at the time of residential development approval. The public’s interest is in protecting developments that are entirely appropriate and consistent with all state and local plans and goals but regardless find themselves befallen by a severe natural hazard. This standard is met.

TCLUO 9.030(3)(d) provides:

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

TCLUO 9.040 provides:

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

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

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

### **C. DEVELOPMENT PERMIT**

## **1. TCLUO 3.014: Community Medium Density Urban Residential Zone (CR-2)**

The Subject Properties are zoned Community Medium Density Urban Residential (CR-2). The purpose of the CR-2 zone is “to designate areas for medium-density single-family and duplex residential development, and other, compatible, uses. Land that is suitable for the CR-2 zone has public sewer service available and has relatively few limitations to development.” TCLUO 3.014(1). The Subject Properties consist of fifteen lots, which include eleven fully developed beachfront lots and four vacant beachfront lots that are developed with urban infrastructure and a system of roads. The proposed beachfront protective structure is a “compatible” use that will be essential to, if not accessory to, the primary medium-density single family residential use permitted by the CR-2 zone. This criterion goes on to say that land is suitable for the CR-2 zone if it has public sewer service available and has relatively few limitations to development. The Subject Properties are served by the Twin Rocks Sanitary District, which provides sewer service to the Pine Beach subdivision, the George Shand Tracts and other residences in the vicinity. The Subject Properties are flat. The only limitation to the development of the Subject Properties is the on-going shoreline erosion caused by the interface of the two successive "EI" events and the irrevocable man-made changes caused by two closely sited jetty systems that cabin the Rockaway littoral cell subregion. The danger the Subject Properties face is best remedied by the installation of the proposed beachfront protective structure, which will also protect the existing public water and sewer and other public facilities and the lots in the Pine Beach Subdivision and the George Shand Tracts to the east.

In the CR-2 zone, one or two-family dwellings and their accessory uses are permitted outright, subject to all applicable supplementary regulations in the TCLUO, TCLUO 3.014(2). The proposed beachfront protective structure while not a residential development on its own is an accessory use to the single-family dwellings on the Subject Properties. There are no prohibitions against the installation of beachfront protective structures.

## **2. TCLUO 3.510: Flood Hazard Overlay Zone**

The Subject Properties are partially located within FEMA Flood Hazard Zone VE, which is assigned to coastal areas with a 1% or greater chance of flooding, and areas with an additional hazard associated with storm waves. Specifically, the houses on the Subject Properties are located outside of the high hazard zone and the proposed BPS will be located within it. Accordingly, the County’s applicable Flood Hazard Overlay Zone provisions apply. Findings for the applicable Flood Hazard Overlay Zone provisions are discussed below.

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

### ***“ANCHORING***

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

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

*“CONSTRUCTION METHODS AND MATERIALS*

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

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

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

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

The proposal complies with these standards.

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

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

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

*“(2) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and*



*water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval)."*

This standard, which applies to "new construction" and "substantial improvements" in Coastal High Hazard Areas is not applicable to this proposal. "New construction" for floodplain management purposes is defined in TCLUO 3.510(4) to mean "structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures." "Substantial improvement" is defined in TCLUO 3.510(4) to mean "[a]ny reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement." These terms refer only to "structures" which, in turn, are defined in TCLUO 3.510(4) as "a walled and roofed building, a modular or temporary building, or a gas or liquid storage tank that is principally above ground." The proposed beachfront protective structure is not a "structure" for purposes of the Flood Hazard Overlay provisions; it is not a walled or roofed building, a modular or temporary building, or a gas or liquid storage tank. Accordingly, these standards are not applicable to this proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

The purpose of the proposed BPS is to decrease potential flood damage. Accordingly, and in order to accomplish this purpose, the man-made alteration of sand dunes, including vegetation removal, will be temporary and is required in order to install and locate the proposed BPS. The proposed beachfront protective structure will be back filled with sand and revegetated. The disturbed area surrounding the proposed beachfront protective structure will be restored to its natural state, monitored annually and replanted when necessary as part of the maintenance program to ensure that native beach grasses and shrubs establish on the site. Therefore, once the native vegetation is reestablished after replanting, there will be minimal if any impacts and no permanent disturbance to the actively eroding dune adjacent to the Subject Properties. The establishment of the BPS will protect the dune and its vegetation and reduce potential flood damage.

All applicable standards for Coastal High Hazard Areas are met.

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

TCLUO 3.510(14)(a) provides requirements for the application.

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

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

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

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

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

Applicants' Application, Exhibit F in the record satisfies this standard. That exhibit, which is the Applicants' expert's technical memorandum contains plans drawn to scale showing the nature, location, dimensions and elevations of the area in question, as well as existing structures and their locations. As explained above, the proposed BPS is not a "structure" within the meaning of the Flood Hazard Overlay Zone provisions. Accordingly, listed provisions (1), (2) and (3) are

not applicable to this proposal. No watercourses will be altered or relocated as a result of the proposed development, so provision (4) is also inapplicable.

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

*“(b) Development Permit Review Criteria*

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

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

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

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

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

Although no fill is involved in the construction of the BPS, the residential uses, for which the beachfront protective measure is accessory and necessary, is an approved use on the property.

*“(4) The fill is the minimum amount necessary to achieve the approved use.”*

Although no fill is involved in the construction of the BPS, the elevation of the proposed BPS is at 23.8 feet, just 3 feet above the shore elevation, which is the minimum amount necessary to achieve the intended protection for the existing structures and public facilities on the subject properties. The Applicants’ expert has calculated a 10% chance that the “total water level” at this location will be at 23.4 feet. Therefore, the proposed elevation of the BPS is the minimum necessary to achieve the necessary protection.

*“(5) No feasible alternative upland locations exist on the property.”*

No feasible alternative upland locations for the BPS exist on the Subject Properties. The BPS is proposed to be placed at the most landward point possible on the Subject Properties given the location of the existing residential structures the BPS is intended to protect. Application, Exhibit

F, Attachment 2, Sheet 3 shows that there are mere feet between the proposed BPS and several of the residences.

*“(6) The fill does not impede or alter drainage or the flow of floodwaters.”*

Although no fill is involved in the construction of the BPS, the BPS will not impede or alter drainage or the flow of floodwaters. The Applicants’ expert analysis concludes that the BPS will not impede or alter drainage or flow of the floodwaters in a manner that will result in any adverse off-site impacts. Application, Exhibit F, p. 9.

*“(7) If the proposal is for a new critical facility, no feasible alternative site is available.”*

The proposal is not for a new critical facility; this standard is not applicable to this proposal.

*“(8) For creation of new, and modification of, Flood Refuge Platforms, the following apply, in addition to (14)(a)(1-4) and (b)(1-5): [list follows]”*

This proposal is not for a new or modified Flood Refuge Platform. This standard is not applicable to this proposal.

The application meets all standards for a floodplain development permit.

### **3. TCLUO 3.530: Beach & Dune Overlay Zone**

The Subject Properties are located within the County’s Beach and Dune Overlay (BD). Accordingly, the County’s applicable BD Overlay provisions apply. Findings for the applicable BD Overlay provisions are discussed below.

TCLUO 3.530(4)(A) lists the uses permitted in the BD Overlay and provides standards for those permitted uses. TCLUO 3.530(4)(A)(2) permits “accessory structures for beach access, oceanfront protection or stabilization” subject to the standards of TCLU 3.530(5) and the following use-specific standards:

*“a. The location of accessory structures will be determined in each case on the basis of site-specific information provided by a Dune Hazard Report, pursuant to the provisions of Section 3.530(5) B.”*

The proposed BPS while not itself a residential use is an accessory structure to the permitted residential use of the Subject Properties. As detailed in Application, Exhibit F, West Consultants in their Technical Memorandum, have prepared and supplied on pages 7-9 a “Detailed Site Investigation” report, which provides evidence to demonstrate that all applicable and relevant standards for such a report have been met.

*“b. Any accessory structure higher than three feet as measured from existing grade will be subject to the variance procedure and criteria set forth in Article VIII of the Tillamook County Land Use Ordinance.”*

As shown in West Consultants' Technical Memorandum and construction plans (Application, Exhibit F), the proposed accessory structure, (i.e., revetment), will be no more than three feet above the existing grade.

*“c. Accessory structures for on-site subsurface sewage disposal systems may not be located ocean ward of the primary structure on the subject property unless the following provisions are met: [list follows]”*

The proposal is not for an accessory structure for an on-site subsurface sewage disposal system. These standards are not applicable to this proposal.

TCLUO 3.530(4)(A)(4) provides the following specific standards for beachfront protective structures:

*“b. Beachfront protective structures (rip-rap and other revetments) shall be allowed only in Developed Beachfront Areas and Fore-dune Management Areas, where ‘development’ existed as of January 1, 1977, or where beachfront protective structures are authorized by an Exception to Goal 18.”*

This standard provides that BPS are only allowed in three circumstances: (1) in Developed Beachfront Areas and Fore-dune Management Areas; (2) in areas where “development” existed as of January 1, 1977; and (3) in areas where beachfront protective structures are authorized by an Exception to Goal 18. The Subject Properties qualify under the third factor which authorizes BPS through an exception to Goal 18 which is approved in this decision. The proposal meets this standard.

TCLUO 3.530(4)(a)(4)(c) provides that proposals for beachfront protective structures demonstrate the following:

*“1. The development is threatened by ocean erosion or flooding;”*

The development on the Subject Properties is threatened by ocean erosion and flooding. Some have suggested that the Subject Properties are not threatened by flooding because the existing County plan shows the dunes as stable. The Board disagrees. The County Plan, Goal 18 element at pages 5-6 explains that the County's "Beaches and Dunes of the Oregon Coast" is "the County's inventory of beaches and dunes." However, it goes on to say that "Where greater accuracy and detail is needed, the County will consult the USDA Soil Conservation Service Soils Survey for coastal Tillamook County and will perform field inspections using criteria described in "A System of Classifying and Identifying Oregon's Beaches and Dunes" in the "Beaches and Dunes Handbook for the Oregon Coast." The Board finds that the evidence presented by the Applicant establishes that greater accuracy and detail is needed to decide whether the development is threatened by ocean erosion or flooding." The Board finds that it is persuaded by

the evidence presented by the Applicants' professional engineer as well as photographs in the record that the Subject Properties and their "development " (which include homes, garages as well as public infrastructure) is threatened by ocean erosion or flooding.

The Board finds that as has been detailed in Application, Exhibit F in the record, the Subject Properties have been subject to rapidly advancing coastal erosion and have been losing portions of their properties from coastal flooding during high tides, combined with high wave run-up during winter King Tides, such as those that occurred on February 8-12, 2020. Application, Exhibit F, p. 1-3. During that subject event, the maximum still water level reached the ocean front homes and went past the southernmost home for a distance of about 45 feet. As stated by West Consultants' Chris Bahner, PE, in his Technical Memorandum in the record, there is a high level of risk for future damage to the subject 11 structures on the Subject Properties and the remaining properties and their infrastructure. Application, Exhibit F, p. 1. The Technical Memorandum also notes that an additional 40 or so homes are also threatened by coastal flooding, as are the Subject Properties' water and sewer infrastructure and the Pine Beach Loop vehicular access, if no actions are taken to stop future erosion. Application, Exhibit F, p. 8. This standard is met.

*"2. Non-structural solutions cannot provide adequate protection;"*

Non-structural solutions cannot provide the Subject Properties with adequate protection. West Consultants' Supplemental Memorandum in the record, dated May 27, 2021, provides a detailed analysis of alternatives to the proposed rock rip rap revetment that were explored by the Applicants. That analysis demonstrates that non-structural solutions cannot provide the needed protection for the Subject Properties, persons and infrastructure that have been impacted by severe coastal erosion and flooding and are imminently threatened by further erosion and flooding, within the proposal's defined constraints. The alternatives analysis concludes that the rock revetment was selected over non-structural solutions because it meets the project objectives within the defined constraints, is flexible and will accommodate sediment, it easy to maintain and modify, is resistant to damage by debris, absorbs and dissipates wave energy instead of reflecting it, and results in less wave runup and overtopping than a vertical wall structure.

*"3. The beachfront protective structure is placed as far landward as possible;"*

The BPS is proposed to be placed as far landward as possible on the Subject Properties. Contrary to where most applicants seek to place BPS, the Applicants here seek to place their proposed BPS in their own backyards, and not on the public beach. As stated in Application, Exhibit F in the record, West Consultants have determined that the most effective placement of the proposed beachfront structure will be to construct and install it within an active eroding foredune approximately 10 feet landward of the existing vegetation line and within the rear yards of the subject properties. That placement will also be about 185 feet landward of the statutory vegetation line and is as close to the existing residential dwellings as is possible. The BPS is placed as far landward as possible given the need at its proposed location and siting restraints.

*“4. Adverse impacts to adjoining properties are minimized by angling the north and south ends of the revetment into the bank to prevent flank erosion;”*

Any adverse impacts adjoining properties are minimized by the angling of the north and south ends of the BPS into the bank to prevent flank erosion. Application, Exhibit F, page 6, Figure 4 of the West Consultants' Technical Memorandum in the record, provides a plan view of the proposed beachfront protective structure that shows that the north and south ends of the revetment are angled into the bank. (See also Application, Exhibit F, Attachment 2, Sheet 3). The purpose of angling the ends of the revetment in that way is to prevent flank erosion. Application, Exhibit F, p. 6. The Technical Memorandum explains that the proposed revetment will not have any adverse impacts to adjoining properties.

*“5. Public costs are minimized by placing all excess sand excavated during construction over and seaward of the revetment, by planting beach grass on the sand-covered revetment, and by annually maintaining the revetment in such condition;”*

There are no public costs. Overall costs to be borne by the property owners, will be minimized by placing all of the excess sand excavated during the construction of the BPS over the revetment, by planting beach grass on the sand-covered revetment, and by annually maintaining the revetment in such condition. The proposal requires the BPS to be covered in all of the excess sand excavated during construction and replanted with native beach grasses and shrubs that will reestablish natural shoreline vegetation. The proposal also requires annual maintenance by the property owners and replanting of beach grasses and shrubs as needed. These measures will minimize public costs of the BPS, if any.

*“6. Existing public access is preserved; and”*

There is no existing public beach access or any other public access affected by the proposal. The proposal does not affect the public's access across the public beach because it is not on the public beach but entirely on private property in the Applicants' own back yards. Use of the northern access point, (the 5' Watseco blocks easement and 5' Pine Beach common area walkway) is, by the express terms of the easement and the Pine Beach Replat narrative (Application, Exhibit G), for the benefit of certain property owners and their families, not the general public. Likewise, the southern access, by the express terms of the Pine Beach Replat, is to property owners within that subdivision. Claims that the BPS interferes with the general public's access to the beach are mistaken because the public has no right of access anywhere on the Subject Properties including the two existing access points. The proposed BPS has no impact on the beach or its accesses. This provision does not apply as a result or if it does, it is met.

Regardless, the existing private access is preserved by the proposal. The ten-foot (10') combined access easement (northern access) that the Subject and some neighboring properties have to the beach is preserved by the graveled path and ramp over the BPS, which is plainly shown on the construction drawings submitted by the Applicants' consultant on June 3, 2021. The result of the



ramp will be improved access to the beach. The BPS does not affect the southern five-foot (5') beach access that belongs to the occupants of the Pine Beach subdivision, at all.

*"7. The following construction standards are met:*

*"a. The revetment includes three components; an armor layer, a filter layer of graded stone (beneath armor layer), and a toe trench (seaward extension of revetment structure)."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2 in the record, the proposed beachfront protective structure consists of an armor layer (large boulders), a filter layer of graded stone (beneath armor layer), and a toe trench (seaward extension of revetment structure). This standard is met.

*"b. The revetment slope is constructed at a slope that is between 1:1 to 2:1."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2 in the record, the proposed beachfront protective structure will be constructed with a slope of 1:1.5, which is between 1:1 to 2:1. This standard is met.

*"c. The toe trench is constructed and excavated below the winter beach level or to the existing wet sand level during the time of construction."*

As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2 in the record, the proposed beachfront protective structure will have a toe trench constructed and excavated below the winter beach level or to the existing wet sand level. This standard is met.

*"d. Beachfront protective structures located seaward of the state beach zone line (ORS 390.770) are subject to the review and approval of the State Parks and Recreation Division. Because of the concurrent jurisdiction with the Division of State Land, the Parks Division includes the Division of State Lands in such beach permit reviews."*

This standard does not apply to the proposal because the BPS is not proposed to be located seaward of the state "beach zone line" as defined by ORS 390.770. As discussed in Application, Exhibit F, and as shown in Exhibit F, Attachment 2 in the record, the proposed BPS will be constructed and installed approximately 10 feet landward of the existing line of established vegetation and within the rear yards of the subject properties. That placement will be about 185 feet landward of the "state beach zone line" or statutory vegetation line described in ORS 390.770. Therefore, the proposed BPS will not be located seaward of the state beach zone line (ORS 390.770) and thus, the proposal does not require State Parks and Recreation Division approval.

*“e. The State Parks and Recreation Division shall notify Tillamook County of emergency requests for beachfront protective structures. Written or verbal approval for emergency requests shall not be given until both the Parks and Recreation Division and the County have been consulted. Beachfront protective structures placed for emergency purposes, shall be subject to the construction standards in Section 3.140(17).”*

This standard also does not apply to the proposal because the BPS is not required to be and is not being proposed to the State Parks and Recreation Division approval as “an emergency request for beachfront protective structures”. OPRD has no jurisdiction because the proposal is not on the dry sand beach or west of the statutory vegetation line. Accordingly, given the location of the proposed BPS landward of both the “state beach zone line” and the statutory vegetation line described in ORS 390.770, the application does not require State Parks and Recreation Division approval. Consequently, the proposal does not require that the State Parks and Recreation Division notify Tillamook County of this request.

TCLUO 3.530(5) provides site development standards and requirements for development within the Beach and Dune Overlay zone. The applicable standards and requirements are addressed below.

TCLUO 3.530(5)(B) provides that a Dune Hazard Report is required prior to the approval of a building permit. TCLUO 3.530(5)(B)(3) provides the requirements for the Dune Hazard Report. Those requirements are addressed below.

*“The Dune Hazards Report shall include the results of a preliminary site investigation and where recommended in the preliminary report, a detailed site investigation.*

*“a. Preliminary Site Investigation*

*“1. The purpose of the Preliminary Site Report is to identify and describe existing or potential hazards in areas proposed for development. The report shall be based on site inspections conducted by a qualified person, such as a geologist, engineering geologist, soil scientist, civil engineer, or coastal oceanographer.*

*“2. The preliminary Site Report shall either recommend that a more detailed site investigation report is needed to fully disclose the nature of on-site hazards or it shall conclude that known hazards were adequately investigated, and recommend development standards for buildable areas.”*

*“3. The Preliminary Site Report shall include plan diagrams of the general area, including legal descriptions and property boundaries, and geographic information as required below:*

*“a. Identification of each dune landform (according to either the Goal 18 or SCS system of classification);*

*“b. History of dune stabilization in the area;*

*“c. History of erosion or accretion in the area, including long-term trends;*

*“d. General topography including spot elevations;*

*“e. Base flood elevation and areas subject to flooding, including flood areas shown on the NFIP maps of Tillamook County;*

*“f. Location of perennial streams or springs in the vicinity;*

*“g. Location of the state beach zone line;*

*“h. Location of beachfront protective structures in the vicinity;*

*“i. Elevation and width of the foredune crest.*

*“j. Land grading practices, including standards for cuts and fills and the proposed use and placement of excavated material.*

*“Elevations shall relate to the National Geodetic Vertical Datum of 1929, NGVD.”*

The proposal includes a site investigation report that satisfies the requirements of a preliminary site investigation. The Applicants' expert consultant, Chris Bahner, a registered professional engineer (“P.E.”) of West Consultants, Inc., prepared a Technical Memorandum, dated March 25, 2021, (“Dune Hazards Report”) in the record that includes the results of a preliminary site investigation, a preliminary site report and a detailed site investigation, that the Board finds meets all standards. Application, Exhibit F.

*“b. Detailed Site Investigation*

*“1. The purpose of a Detailed Site Investigation is to fully describe the extent and severity of identified hazards. Such investigation shall be required either where recommended in a Preliminary Site Report or when building plans, including grading plans for site preparation, were not available for review as part of the preliminary site investigation.*

*“The Detailed Site Report shall be based on site inspections or other available information and shall be prepared by a qualified person, such as a registered civil engineer or engineering geologist.*

*“2. The report of a Detailed Site Investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations. The report shall include standards for:*

*“a. Development density and design;*

*“b. Location and design of roads and driveways;*

*“c. Special foundation design (for example spread footings with post and piers), if required;*

*“d. Management of storm water runoff during and after construction.”*

The proposal satisfies the requirements of a detailed site investigation.

*“c. Summary Findings and Conclusions. The Preliminary and Detailed Site Reports shall include the following summary findings and conclusion:*

*“1. The proposed use and the hazards it might cause to life, property, and the natural environment;*

*“2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure.*

*“3. Measures necessary to protect the surrounding area from any hazards that are a result of the proposed development;*

*“4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.”*

The proposal satisfies the requirements for the preliminary and detailed site reports' summary findings and conclusions.

The application meets all approval standards for beachfront protective structures in the Beach and Dune Overlay zone.

The application meets all approval standards for a Development Permit.

## **VII. CONCLUSION**

As the staff report, the application and supporting evidence in the record make clear, the historical facts and legal context surrounding the Applicants' proposed beachfront protective structure are complex.

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

The application narrative and the supporting evidence in the record demonstrate that the requested Goal 18, IM 5 exception is justified. The application narrative has carefully analyzed and addressed each of the approval standards, providing evidence that supports a general "reasons" exception to Goal 18, IM 5. The proposed BPS has been carefully designed to ensure that there are no adverse off-site impacts, that existing beach access points are private ones and

not public ones but nevertheless, they are maintained by the proposal. A natural foredune environment, albeit hardened, will be restored and maintained under the proposal.

The proposal meets all relevant standards for approval of the proposed BPS. A published report by DLCDC explained, in dismissing any need to fundamentally change Goal 18, IM 5 (Application, Exhibit E), that the exception process “works” to allow protective structures where needed. It works here. It is hard to imagine a more compelling situation for approving an exception to allow the proposed BPS. If the proposal here cannot be approved, it cannot be approved anywhere.

Accordingly, the Board approves the request for a general “reasons” exception to Goal 18, IM 5 for the Subject Properties and approves the requested Development Permit.

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**BOARD OF COMMISSIONERS:**

**Mary Faith Bell**, Chair            mfbell@co.tillamook.or.us  
**David Yamamoto**, Vice-Chair    dyamamoto@co.tillamook.or.us  
**Erin D. Skaar**, Commissioner    eskaar@co.tillamook.or.us

**CONTACT:**

201 Laurel Avenue  
Tillamook, Oregon 97141  
503.842.3403  
[www.co.tillamook.or.us](http://www.co.tillamook.or.us)

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**COMMUNITY UPDATE MEETING**  
**Tuesday, August 17, 2021 at 8:00 a.m.**  
Teleconference

**WORKSHOP**  
**Wednesday, August 18, 2021 at 8:30 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

**BOARD MEETING**  
**Wednesday, August 18, 2021 at 10:00 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

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**PUBLIC COMMENT**

The board will allow public comment at workshop and board meetings during a public comment period. Those intending to provide public comment for the workshop or board meeting may attend in-person or email submissions to [publiccomments@co.tillamook.or.us](mailto:publiccomments@co.tillamook.or.us). Public comments received by 5:00 p.m. on Tuesday will be distributed to the board and become part of the public record.

Public comments submitted via email after the deadline or during the workshop or board meeting will be presented by staff to the board during the public comment period. Unless otherwise specified, these submissions will be presented during the board meeting. Public comments can also be mailed to the Board of Commissioners' Office, 201 Laurel Avenue, Tillamook, Oregon, 97141.

Two minutes is allowed per comment. The chair may, at his/her sole discretion, further limit or expand the amount of time for individuals to speak.

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## JOIN THE BOARD OF COMMISSIONERS MEETINGS

The Board is committed to community engagement and provides opportunity for public attendance during meetings via in-person, video, or audio options. Live video and audio are [listen-only](#).

- **Community Meetings: Tuesdays at 8:00 a.m.** (*Teleconference & KTIL-FM at 95.9*)  
Dial 971-254-3149, Conference ID: 736 023 979#
- **Workshop: Wednesdays at 8:30 a.m.**  
Dial 971-254-3149, Conference ID: 736 023 979#  
Agenda items are generally for discussion only. Certain items may also be scheduled for consideration.
- **Board Meetings: Wednesdays at 10:00 a.m.** (*Live Video at tctvonline.com*)  
Dial 971-254-3149, Conference ID: 736 023 979#  
Agenda items are for discussion or consideration.

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## MEETING INFORMATION AND RULES

- Matters for discussion and consideration by the board shall be placed on an agenda prepared by the Board Assistant and approved by the board chair. Any commissioner may request items on the agenda.
- Public hearings are formal proceedings publicized in advance through special public notice issued to media and others. Public hearings held by the board are to provide the board an opportunity to hear from the public about a specific topic. Public hearings are therefore different regarding audience participation at regular and workshop meetings.
- Individuals who wish to testify in-person during meetings and hearings shall do so at the table placed in front of the dais. Individuals testifying will, for the record, first identify themselves.
- Commissioners will be addressed by their title followed by their last name.
- Commissioners shall obtain approval from the chair before speaking or asking questions of staff, presenters, and public. As a courtesy, the chair shall allow an opportunity, by the commissioner who has the floor, to ask immediate follow-up questions.
- A majority of the board shall constitute a quorum and be necessary for the transaction of business.
- All board meeting notices are publicized in accordance with public meeting laws.
- All board meetings will commence with the Pledge of Allegiance.
- The chair will utilize the gavel as needed to maintain order, commence and adjourn meetings, and signal approval of motions.
- The board reserves the right to recess to executive session as may be required at any time during noticed public meetings, pursuant to ORS 192.660(1).
- The courthouse is accessible to persons with disabilities. If special accommodations are needed for persons with hearing, visual, or manual impairments who wish to participate in the meeting, please contact (503) 842-3403 at least 24 hours prior to the meeting so that the appropriate communications assistance can be arranged.

## **AGENDAS**

### **COMMUNITY UPDATE**

CALL TO ORDER: Tuesday, August 17, 2021 8:00 a.m.

1. Welcome and Board of Commissioners' Roll Call
2. Adventist Health Tillamook
3. Coastal Caucus
4. Tillamook County Community Health Center
5. Rinehart Clinic
6. Tillamook Family Counseling Center
7. Others:
8. Governor's Office
9. Board of Commissioners
10. Cities
  - a. Manzanita
  - b. Nehalem
  - c. Wheeler
  - d. Rockaway Beach
  - e. Garibaldi
  - f. Bay City
  - g. Tillamook
  - h. South County

### **ADJOURN**

### **WORKSHOP**

CALL TO ORDER: Wednesday, August 18, 2021 8:30 a.m.

1. Welcome & Request to Sign Guest List
2. Public Comment



3. Non-Agenda Items
4. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
5. Discussion and Consideration of a Personnel Requisition for a Replacement Part-Time, Not to Exceed 19 Hours, Nutritionist in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services
6. Discussion Concerning Professional Services Agreement #21/22-002 with [Tillamook Family Dental](#) for Federally Qualified Health Center (FQHC) Oregon Health Plan Medicaid and Non-Insured Dental Services/Marlene Putman, Administrator, Health and Human Services
7. Discussion Concerning Coronavirus Relief Fund Community Distribution State of Oregon Grant Agreement #2629 with [Cody McDonald, dba Cody Mac Media](#), for COVID-19 CARES Act Vaccination, Outreach and Response Services/Marlene Putman, Administrator, Health and Human Services
8. Discussion Concerning Coronavirus Relief Fund Community Distribution State of Oregon Grant Agreement #2629 with [Oregon State University Extension Services, Tillamook County](#) for COVID-19 CARES Act Vaccination Services/Marlene Putman, Administrator, Health and Human Services
9. Discussion Concerning an Order in the Matter of Declaring [County Owned Property as Surplus](#)/Matt Kelly, Undersheriff
10. Discussion and Consideration of Personnel Requisition for a Replacement Regular Full-Time Legal Assistant 1 in the District Attorney's Office/William B. Porter, District Attorney
11. Discussion Concerning an [Updated Tillamook County COVID-19 Response Policy](#)/Erin Frost, Human Resources Director
12. Discussion Concerning a Drainage Easement with [Jack I. Case and Nancy L. Case for](#) Property Located at Slab Creek Road South, Section 31, Township 5 South, Range 10 West, Tillamook County/Chris Laity, Director, Public Works
13. Discussion Concerning a Contract for Goods with [Peterson Machinery Company](#) for the Purchase of a 5-Ton Mini Excavator/Chris Laity, Director, Public Works
14. Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time Road Maintenance Equipment Operator Journey Level in the Public Works Department/Chris Laity, Director, Public Works
15. Discussion Concerning Modification #1 to Title III Grant Agreement #5010 with the [Oregon Department of Forestry](#) for the Tillamook County Yard Debris Program/David McCall, Solid Waste Program Manager

16. Discussion Concerning an [Oregon Department of Veterans' Affairs Grant Application](#) for Fiscal Year 2022/Nicholas Torres, Veterans Service Officer
17. Discussion Concerning an Order in the Matter of Declaring [County Owned Property as Surplus](#)/Damian Laviolette, Director, Information Services
18. Discussion Concerning an Order in the Matter of Annexation of Land and Territory to the [Cannon Beach Rural Fire Protection District](#)/Joel Stevens, County Counsel
19. Concerns – Non-Agenda Items
20. Public Comments

## **ADJOURN**

## **MEETING**

CALL TO ORDER: Wednesday, August 18, 2021 10:00 a.m.

1. Welcome & Request to Sign Guest List
2. Pledge of Allegiance
3. Public Comment
4. Non-Agenda Items
5. [Tillamook County Juntos Presentation](#)/Tillamook High School Students and Nat Macias, Juntos Coordinator, Oregon State University

## **LEGISLATIVE – ADMINISTRATIVE**

6. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
7. Consideration of Professional Services Agreement #21/22-002 with [Tillamook Family Dental](#) for Federally Qualified Health Center (FQHC) Oregon Health Plan Medicaid and Non-Insured Dental Services/Marlene Putman, Administrator, Health and Human Services
8. Consideration of Coronavirus Relief Fund Community Distribution State of Oregon Grant Agreement #2629 with [Cody McDonald, dba Cody Mac Media](#), for COVID-19 CARES Act Vaccination, Outreach and Response Services/Marlene Putman, Administrator, Health and Human Services

9. Consideration of Coronavirus Relief Fund Community Distribution State of Oregon Grant Agreement #2629 with [Oregon State University Extension Services, Tillamook County](#) for COVID-19 CARES Act Vaccination Services/Marlene Putman, Administrator, Health and Human Services
10. Consideration of an Order in the Matter of Declaring [County Owned Property as Surplus](#)/Matt Kelly, Undersheriff
11. Consideration of a Drainage Easement with [Jack I. Case and Nancy L. Case](#) for Property Located at Slab Creek Road South, Section 31, Township 5 South, Range 10 West, Tillamook County/Chris Laity, Director, Public Works
12. Consideration of a Contract for Goods with [Peterson Machinery Company](#) for the Purchase of a 5-Ton Mini Excavator/Chris Laity, Director, Public Works
13. Consideration of Modification #1 to Title III Grant Agreement #5010 with the [Oregon Department of Forestry](#) for the Tillamook County Yard Debris Program/David McCall, Solid Waste Program Manager
14. Consideration of an [Oregon Department of Veterans' Affairs Grant Application](#) for Fiscal Year 2022/Nicholas Torres, Veterans Service Officer
15. Consideration of an Order in the Matter of Declaring [County Owned Property as Surplus](#)/Damian Laviolette, Director, Information Services
16. Consideration of an Order in the Matter of Annexation of Land and Territory to the [Cannon Beach Rural Fire Protection District](#)/Joel Stevens, County Counsel
17. Board Concerns – Non-Agenda Items
18. Public Comments
19. Board Announcements

## **ADJOURN**

### **OTHER MEETINGS AND ANNOUNCEMENTS**

The Commissioners will attend a Local Public Safety Coordinating Council meeting on **Monday, August 16, 2021 at 12:00 p.m.** The meeting will be held in the Stan Sheldon Board Room at the Tillamook County Emergency Communications District, 2311 Third Street, Tillamook, Oregon. The teleconference number is: 971-254-3149, Conference ID: 113 785 794#.

The Pacific City/Woods Parking Advisory Committee has scheduled a meeting for **Monday, August 16, 2021 at 1:00 p.m.** The teleconference number is 1-253-215-8782, Meeting ID: 826 3627 1523, and Passcode: 345999.

The Commissioners will attend a second public hearing **Monday, August 16, 2021 at 2:00 p.m.** concerning [#851-21-000086-PLNG-01](#): A Goal Exception Request for Approval of an Exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; Approval of a 18, Comprehensive Plan Amendment for a "Committed" Exception and/or a "Reasons" Exception to Goal Implementation Measure 5 for the Construction of Shoreline Stabilization along the Westerly Lots of the Pine Beach Subdivision and Five Oceanfront Lots to the North Located Within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary Together with Floodplain Development Permit Request #851-2 1-000086-PLNG for the Installation of a Beachfront Protective Structure (Rip Rap Revetment) Within an Active Eroding Foredune East of the Line of Established Vegetation in the Coastal High Hazard (VE) Zone, an Area of Special Flood Hazard Within the Flood Hazard Overlay Zone. The Subject Properties are Lots 11-20 of the Pine Beach Replat Unit #1, Designated as Tax Lots 114 Through 123, of Section 7DD, and Tax Lots 3000,3 100,3104,3203 And 3204 of Section 7DA all in Township 1 North, Range 10 West of The Willamette Meridian, Tillamook County, Oregon. There are Multiple Property Owners and Applicants. The teleconference number is 1-971-254-3149, Conference ID: 736 023 979#.

The Emergency Medical Services Advisory Council has scheduled a meeting on **Tuesday, August 17, 2021 at 10:00 a.m.** The meeting will be held in the Stan Sheldon Board Room at the Tillamook County Emergency Communications District, 2311 Third Street, Tillamook, Oregon.

The Commissioners will hold a Board Briefing on **Wednesday, August 18, 2021 at 2:00 p.m.** to discuss weekly commissioner updates. The meeting will be held in the Nestucca Room in the Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, Oregon. The teleconference number is 1-971-254-3149 Conference ID: 736 023 979#.

The Commissioners will hold an executive session on **Monday, August 23, 2021 at 10:00 a.m.** pursuant to ORS 192.660(2)(i) to conduct a performance evaluation. The executive session will be held in the Commissioners' Meeting Rooms A & B in the Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, Oregon. The executive session is not open to the public.

The Commissioners will attend a legislative summit on **Wednesday, August 25, 2021 at 1:00 p.m.** The summit will be held in meeting rooms 214/215 at the Tillamook Bay Community College, 4301 Third Street, Tillamook, Oregon.

The Commissioners will hold an executive session on **Thursday, August 26, 2021 at 3:00 p.m.** pursuant to ORS 192.660(2)(i) to conduct a performance evaluation. The executive session will be held in the Nehalem Room in the Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, Oregon. The executive session is not open to the public.

**Tillamook County**



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

1510 – B Third Street  
Tillamook, Oregon 97141  
[www.tillamook.or.us](http://www.tillamook.or.us)

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

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*Land of Cheese, Trees and Ocean Breeze*

# *MEMO*

**Date:** August 9, 2021  
**To:** Tillamook County Board of Commissioners  
**From:** Sarah Absher, CFM, Director  
**Subject:** Continuation of #851-21-000086-PLNG-01 & #851-21-000086-PLNG: Goal 18 Exception Request and Development Permit Request for Construction of a Beachfront Protective Structure

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Attached are comments received prior to the conclusion of the 5:00pm August 6, 2021, written comment period. The public comment period for this request has closed and the hearing will reopen with Applicants' final comments on August 16, 2021, at 2:00pm.

Please be advised that the August 16, 2021, meeting is in virtual and teleconference format only.

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

Sincerely,  
Sarah Absher, CFM, Director





# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

810 SW Alder Street, Suite B

Newport, OR 97365

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



August 6, 2021

Mary Faith Bell, Chair  
Tillamook County  
Board of County Commissioners  
201 Laurel Avenue  
Tillamook, OR 97141

Re: 851-21-000086-PLNG-01: Goal Exception Request  
851-21-000086-PLNG: Floodplain Development Permit Request

Dear Chair Bell and Tillamook County Commissioners,

Thank you for the opportunity to provide written testimony for the goal exception request, #851-21-000086-PLNG-01, and for the floodplain development permit request, #851-21-000086-PLNG. These applicants ultimately seek to place a beachfront protective structure along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary. Please enter this letter into the record of the hearing on the subject requests.

The Oregon Department of Land Conservation and Development (DLCD) previously submitted written comments for inclusion within the record for this matter before the Planning Commission on May 19, 2021, and June 10, 2021, and before the Board of County Commissioners on July 27, 2021, which we hereby incorporate.

This testimony will focus on clarifying the appropriate decision-making process the County must follow in the consideration of the goal exception request. Because state law prohibits an exception for a use allowed by a statewide planning goal, the County must first make a factual determination whether each of the properties is currently eligible for a beachfront protective structure (BPS) under Goal 18. For any properties that are ineligible under Goal 18 as a matter of fact, the County may then consider the exception request under the appropriate law.

### **Threshold Factual Determination – Development Status**

The request of the applicants is to protect their oceanfront properties from erosion and flooding by constructing a beachfront protective structure (BPS). In deciding whether to approve this request, the County must first determine whether it considers the above referenced properties (15 tax lots) developed under the definition of “development” provided in Goal 18, Implementation Requirement (IR) 5:

*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.*

Thus, if development existed on a property on January 1, 1977, IR5 authorizes the County to issue the requested Floodplain Development Permit if all the applicable criteria have been met. Tillamook County must make the threshold factual determination of eligibility for BPS very clear for each of the tax lots in this matter and develop findings supported by substantial evidence for that determination.

An “exception” is an amendment to the comprehensive plan that does “not comply with some or all goal regulations applicable to the subject property.” ORS 197.732(1)(b)(B). State law only authorizes a county to take a goal exception in two circumstances: (1) for uses not allowed by the goal, or (2) to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. Thus, for Goal 18, IR 5, if an area was developed on January 1, 1977, then a county need not, and cannot lawfully, take an exception to permit BPS. It simply isn’t necessary. Previous case law has affirmed that a goal exception cannot be taken for a use that the goal allows. *DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462 (2002).

Thus, the initial determination before the County is one of fact: whether the applications are for properties that were or were not developed on January 1, 1977.

**Threshold Factual Determination – Existing Exception to Goal 18**

The second determination the County must make on these requests is also a factual determination: whether the properties in question have an existing Goal 18, IR 2 exception. In addition to authorizing permits for BPS where development existed on January 1, 1977, Goal 18, IR 5 authorizes BPS in areas where a county has an exception to Goal 18, IR2. The applicants request approval of several different types of goal exceptions (discussed further below) and additionally for the County to make “alternative findings.” The County cannot make alternative findings because it would obviate the need for a Goal 18, IR5 exception. The applicants either need a goal exception or they do not. As stated above, the County cannot take an exception for a use the goal allows.

The applicants express in their July 21, 2021 application materials that “[t]he Applicants ask you to approve the proposed BPS, in the alternative only, on the basis that the Applicants already have goal exceptions that allow residential development on the dune that is now subject to wave overtopping and undercutting. As such, as a practical matter the Applicants already have an exception to Goal 18, Implementation Measure 2 that prohibits residential development on such a dune.” It does not suffice to determine that a goal exception exists here as a “practical matter.” A goal exception is an affirmative act that is incorporated into a comprehensive plan. Tillamook County has identified and adopted specific exception areas for Goal 18, IR 2 in the County’s Comprehensive Plan (Part 6 of the Beaches and Dunes Element). The lands in the application are not part of an existing goal exception under Goal 18 and are not reflected in the Tillamook County Comprehensive Plan.

If the County determines that the properties subject to these application requests were not developed as of January 1, 1977, then they need a goal exception to move forward with the construction of a BPS. An exception to Goal 18, IR 5 is the path under Oregon land use to protect otherwise ineligible properties with a BPS. If the County determines that some, or all, of the properties subject to these application requests were developed as of January 1, 1977, then those properties do not need a goal exception to move forward with a request for BPS; only a floodplain development permit would be necessary if that is determined to be the case.

#### **Threshold Legal Determination – Applicable Exception Process**

If the County finds that a goal exception is needed for these properties, then the third determination is one of law: what exception process is applicable in this case and what are the relevant criteria for making a goal exception decision. The applicants are requesting a goal exception for both Goal 18, IR 2, and IR 5. They also wish the County to approve their exception request through four different types of exceptions: a specific reasons exception, a general reasons exception, an irrevocably committed exception, and a built exception.

The request before the County is whether to allow the construction of a BPS for these 15 tax lots. Therefore, the applicants do not need an exception to Goal 18, IR 2 (which is about, among other provisions, the prohibition of houses on certain dune forms subject to ocean flooding). They only need an exception to Goal 18, IR 5, for the protection of existing property with a BPS. The only appropriate pathway for a goal exception in this case is a general reasons exception for Goal 18, IR 5.

Part II of Statewide Planning Goal 2 provides a process a local government can follow when taking an “exception” to one of the land use goals, when unique circumstances justify that the state policy should not apply. The rules governing exceptions are provided in OAR chapter 660, division 4. There are several goals and goal provisions to which a specific pathway is outlined, **but for those where no other specific pathway exists or fits, a general “reasons” exception applies.**

The department agrees with the Tillamook County Planning Commission that a general “reasons” exception to Goal 18, IR 5 is necessary for the lots that are not eligible for BPS and that the proper administrative rule provisions are those of OAR 660-004-0022(1) and OAR 660-004-0020. The applicants do not qualify for, nor need, an exception to Goal 18, IR 2, which also means they do not qualify for, nor need, a specific exception under OAR 660-004-0022(11), which is about development that is otherwise prohibited on foredunes.

The homes that exist in the application area were built in conformance with the other provisions of Goal 18, specifically Goal 18, IR 2. The houses were **not** built in an active foredune or in a dune area subject to ocean flooding at the time of development, which means they did not need an exception to Goal 18, IR2. The other goal exceptions (to Goals 3, 4, 11, and 14) that allow for the Barview/Twin Rocks/Watseco community to be residentially developed do not mean the properties have exceptions to any other goals. While the homes in this area now experience ocean flooding, they do not need a retroactive exception to continue to exist where they are located.



The question at hand is not whether these properties need an exception to exist where they are, but whether they can install a beachfront protective structure to protect the existing development. For each ineligible property, the applicants require an exception to the date-based limitation on the placement of BPS for Goal 18.

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

A specific reasons exception under OAR 660-004-0022(11), a built exception under OAR 660-004-0025, and a committed exception under OAR 660-004-0028, are not applicable in this case because the applicants do not need permission for the existing lawfully developed houses. Since there is not a specific section in OAR 660-004-0022 pertaining to reasons for an exception to allow BPS for an ineligible development, a general “reasons” exception is the appropriate pathway for the applicants. OAR 660-004-0022(1).

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

Under ORS 197.732(3)(b), the Land Conservation and Development Commission (LCDC) is authorized to adopt rules establishing “[u]nder what circumstances particular reasons may or may not be used to justify an exception” under the “reasons exception” standards of Part II of Goal 2 and ORS 197.732(2). LCDC has adopted OAR 660-004-0022. As mentioned above, for this matter, the provisions of OAR 660-004-0022 specify the pathway for the applicants for the ineligible properties. Specifically, OAR 660-004-0022(1) provides:

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

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

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

An application that does not satisfy these provisions fails and may not be approved. As provided in OAR 660-004-0022(1), reasons shall justify why the state policy embodied in Goal 18 should not apply in this case. While a county can demonstrate this need based on one or more of the requirements of Goals 3 to 19, they do not have to utilize that approach. *See DLCD v. Yamhill County*, 31 Or LUBA 488, 496-497 (1996) (holding that “include but are not limited to” means the reasons in OAR 660-004-0022(1)(a) are not exclusive, but that a local government should clearly indicate in the findings that it is not relying on subsection (1)(a)).

Applicants argue that the County is obligated under Goal 7 to protect these properties from ocean flooding and erosion, and therefore needs to grant an approval. Goal 7 obligates jurisdictions to plan for natural hazards by adopting inventories, policies and implementing measures in their comprehensive plans to reduce risk to people and property from natural hazards. The goal does not obligate the County to protect life and property indefinitely once development has occurred, but to consider natural hazards in the course of planning. The County is not compelled by the Goal 7 requirements to grant the exception, nor would the County be out of compliance with Goal 7 in the absence of the exception.

The applicants argue that because the County has planned for urban levels of residential development to occur in the Barview/Twin Rocks/Watseco community that they are obligated to grant the exception for a BPS to protect the homes and infrastructure in this community. Under this argument, Goal 18, IR 5 would never have an application. To render Goal 18, IR 5 to have no effect at all is contrary to the general rules of construing law. ORS 174.010. The purpose of Goal 18, IR 5 is to protect beach and dune areas by only allowing pre-1977 development the option to utilize a beachfront protective structure for purposes of mitigating coastal erosion. It puts all other development ‘on notice’ that such measures are not available to them and should incorporate other non-structural options for mitigating coastal hazards.

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

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

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

It is imperative that the County focus on these standards when evaluating the exception application for the lots deemed ineligible within the Barview/Twin Rocks/Watseco Unincorporated Community

Boundary. As already stated, the other exception pathways the applicants present are not applicable in this case and those arguments cannot be the basis for an exception decision. In addition, “the exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.” OAR 660-004-0000(2). Therefore, not agreeing with the policy does not authorize the County to use that disagreement as a basis for a valid goal exception decision.

**Conclusion**

To summarize, DLCD recommends that the County make a clear determination on: 1) the eligibility status of each of the 15 tax lots under the application; 2) whether a new exception is needed, and 3) what exception pathway and criteria are appropriate to base a decision on. As previously stated, a goal exception cannot be taken for a use already allowed by the goal. Additionally, it is the department’s position that the pathway of review for this application is a general “reasons” exception as provided in OAR 660-004-0020 and OAR 660-004-0022(1). Only the criteria for this pathway should be evaluated for a goal exception decision.

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

Sincerely,



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

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





Wendie L. Kellington  
P.O. Box 159  
Lake Oswego Or  
97034

Phone (503) 636-0069  
Mobile (503) 804-0535  
Facsimile (503) 636-0102  
Email: [wk@klgpc.com](mailto:wk@klgpc.com)

August 6, 2021

Via Electronic Mail  
[sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us)  
Tillamook County Board of Commissioners  
c/o Sarah Absher  
Community Development Director  
1510-B Third Street  
Tillamook, OR 97141

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

Dear Chair Bell and Members of the Board:

As you know, this firm represents the Applicants who are 22 owners of beachfront properties in the Pine Beach and George Shand Tracts subdivisions. Please include this letter in the record of the above matter. The Applicants are aware that their request is complex and their submittals lengthy, but such has been necessary to thoroughly address each of the numerous state and local standards at issue and to respond to claims made by opponents and questions raised by the Board. We continue to appreciate the Board's time and consideration of this matter and hope that this letter provides additional clarity and helps the Board to conclude that the Applicants' request should be approved. Should you decide that approval is warranted, the Applicants request that you direct staff to work with the Applicants to write the findings supporting approval. The Applicants are ready and willing to draft findings for staff and your review and revision or to assist in any other way you feel is appropriate.

## **I. Introduction**

This letter responds to questions that were raised by the Board during the July 28, 2021 hearing on this matter, responds to comments submitted the morning of that hearing by DLCD, Oregon Coast Alliance (ORCA) and Oregon Shores Conservation Coalition (Oregon Shores), and adjusts and clarifies the Applicants' position in order to respond to DLCD's changed position. No new evidence is submitted, per the Board's directive.

As you know, on the morning of the July 28, 2021 hearing, the Applicants were given DLCD's letter to this Board in which the agency dramatically changed its position, determining now that the subject properties in the George Shand Tracts subdivision were "developed" on January 1, 1977 and so are eligible for a beachfront protective structure (BPS) without the need to take an exception to Goal 18.

In light of DLCD’s new position, which we understand is now supported by County staff, the Applicants adjust and clarify their request in Section III of this letter. Section IV responds to questions raised by the Board at the July 28, 2021 hearing. Section V responds to specific claims raised by opponents in testimony received at the July 28, 2021 hearing. The Applicants respectfully requests that the Board follow the Planning Commission recommendation and approve the Applicants’ request to protect their homes.

## II. Goal 18

Goal 18 is not the rigid, cruel law that opponents claim. And it does not demand that the County ignore the plight of its urban unincorporated Twin Rocks-Barview-Watseco community, any more than it requires the City of Tillamook or other urban area to be ignored in the face of disaster. Rather, its basic requirements are:

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

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

Tillamook County has taken numerous goal exceptions (Goals 3, 4 and 17 at least) and applied urban unincorporated community laws to establish the Twin Rocks-Barview-Watseco community exactly where it is, as a place where dense, urban level coastal residential development is appropriate. In turn, DLCD has acknowledged the Twin Rocks-Barview-Watseco community in which the Subject Properties exist, complies with Goal 18. That means the Subject Properties’ residential development is “appropriate development” under Goal 18 and has been deemed to comply with Goal 18 under goal exceptions and other laws. No one seriously disputes any of the foregoing.<sup>1</sup>

Goal 18 allows properties to have a “Beachfront Protective Structure” (BPS) or “rip rap” in two situations.<sup>2</sup> One situation is if the property was "developed" on January 1, 1977 (Goal 18

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<sup>1</sup> Some more strident opponents chose to ignore Goal 18’s recognition of “appropriate development” and its requirement to “reduce hazards to life and property.” Ignoring Goal 18’s express terms does not erase that they exist.

<sup>2</sup> The relevant parts of Goal 18 are:

**“2. Local governments and state and federal agencies shall prohibit residential developments \* \* \* on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, \* \* \*”**

**“5. 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**

Implementation Measure 5). The other situation where BPS or rip rap is allowed, is if property has an existing or a new exception that allows residential development on a dune that is subject to wave overtopping or undercutting (we call this for simplicity an “eroding dune”). This second situation that allows BPS/rip rap is under Goal 18, Implementation Measures 2 and 5. The policy underpinnings of this second basis for allowing BPS/rip rap are embedded in Goal 18 itself. Places where the County has allowed intense urban residential development and the establishment of an intricate system of urban infrastructure under Goal exceptions, must be allowed to be protected. This serves the part of Goal 18 that requires that hazards to people and property be reduced. BPS/rip rap reduces a serious, significant hazard.

However, there are organized and well-funded opponents who seriously take the position that Goal 18 exists only to serve their recreational and aesthetic desires; so property and lives must be sacrificed in service of those desires and that coastal land owners essentially “have it coming”. They wish to mold Goal 18 to serve only this view. Goal 18 is vulnerable to being shaped because there are almost no cases to guide how it is to be interpreted and applied.

Accordingly, it makes sense then, that if the Applicants qualify for BPS/rip rap on both of Goal 18’s written bases, that the Applicants should rely upon both bases (as they have) to maximize the likelihood that their lives and property will be protected before it is too late.

The opponents mostly focus on the Applicants’ positions that they already have exceptions that allow residential development that is now on an eroding dune, which means that they are entitled to BPS/rip rap under Goal 18, Implementation Measures 2 and 5. Relatedly, opponents focus on the Applicants’ alternative position that if they are not entitled to BPS/rip rap under their existing exceptions, then they are entitled to **new** exceptions to allow BPS/rip rap on the dune, now that it has started to erode.

Rather, the opponents say that under Goal 18 Implementation Measure 2, that there is no way that the Applicants can get a new exception to the prohibition on residential development on the eroding dune *and* their existing exceptions are not good enough. They say that in order to have an existing exception that allows residential development on a dune that is eroding, the dune has to be eroding when the exception is taken. That is why they say that the existing exceptions are not good enough. But inconsistently they *also* say that you can’t take a new exception when the dune starts to erode either, because the residential use for which the exception is being taken is already allowed by Goal 18 (under the existing goal exceptions and the planning program that builds on them). In other words, they acknowledge that the Subject

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and **includes areas where an exception to (2) above has been approved.** The criteria for review of all shore and beachfront protective structures shall provide that:

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

Properties have existing exceptions that allow them to be where they are and that the dune is now eroding. They just state what seems to be a tautology: The existing exception now allows residential development on an eroding dune, but because of that, no new exception can be taken to protect that residential development and, because the dune was not eroding when the existing exceptions were taken, they aren't good enough.

Opponents have a different position about the Applicants' requested exceptions to Goal 18, Implementation Measure 5. Until a few minutes before the Board's hearing on July 28, all opponents asserted that if the standards are met, the Applicants can only, at most, have a "catch all" "reasons exception" to Goal 18, Implementation Measure 5. They just disagreed that the standards are met. The reason that they try to pin the Applicants to that type of exception (the "catch all" reasons exception), is because it is the hardest one to get and to defend at LUBA. It is this type of exception that LUBA has said has to show unique or "exceptional" circumstances. Other types of exceptions are much more straightforward and need not show that unique circumstances drive the need for the exception.

Then, to make a complicated case more so, just before the July 28 hearing, DLCD changed its position and said they now agree that the George Shand Tracts were "developed" on the magic date and so are eligible for BPS/rip rap. Having said that, they then say that is why the County cannot take a Goal 18 Implementation Measure 5 exception to the magic date for the George Shand Tracts: because they are already eligible.<sup>3</sup> However, the rest of the opponents continue to say the George Shand Tracts are ineligible under any basis asserting the Subject Properties were not "developed" on the magic date and fail to meet any goal exception standard and the existing exceptions are not good enough.

None of this is fleshed out in any LUBA or appellate case, and so it is unwise for the Applicants to rely upon a single basis for approval. Hence, the critical importance of alternative bases for approval.

### **III. Revised Summary of the Applicants' Request**

The Applicants seek approval of BPS to protect their properties (Subject Properties) from certain destruction by dangerous coastal erosion and ocean flooding. Opponents are determined to insist that more than \$10 million dollars of property value, \$75,000 a year in annual tax revenue, 22 Tillamook County families' biggest investment and potentially their lives, wash away into the ocean in the face of a serious threat. We hope you will not let that happen and will approve this request.

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<sup>3</sup> You can't take an exception to a goal for a use that is already allowed by the applicable goal. They say the use of BPS/rip rap is already allowed on the George Shand Tracts.



*The Applicants' George Shand Tracts Position*

Based upon DLCD (and staff's) changed positions that the George Shand Tracts were "developed" on January 1, 1977, the George Shand Tracts' owners' request for BPS should be approved as follows:

1. They are eligible for BPS under Goal 18, Implementation Measure 5, because they were "developed" on January 1, 1977 under the old (pre-1984) and current (post-1984) definitions of that term.

However, alternative findings should also be adopted approving the BPS for the George Shand Tracts because other opponents continue to claim otherwise and the Applicants do not know how an appellate authority will view "developed".

Therefore, **IN THE ALTERNATIVE ONLY:**

2. The existing exceptions allow residential development on a dune that is eroding and so the Subject Properties are entitled to BPS/Rip Rap under Goal 18 Implementation Measure 2 through the command of Implementation Measure 5.

The Board should observe the undisputed point that Goal 18 says residential development properties are eligible for BPS if they have a goal exception that allows residential development on a dune that is eroding. The Board should further observe that the George Shand Tracts have "built and committed" goal exceptions that allow residential development where it is, which is now on a dune that is eroding. The Board should therefore conclude that the George Shand Tracts are also eligible for the BPS because their existing built and committed exception allows residential development on an eroding dune (what Goal 18, Implementation Measure 2 prohibits) This is not an "implied" exception. This is an actual exception, that actually and indisputably exists; that actually and indisputably allows what Goal 18, Implementation Measure 2 prohibits – residential development on a dune that is now eroding. Therefore, it seems evident, the existing exceptions are exceptions to the prohibition on residential development on eroding dunes, in Goal 18, Implementation Measure 2. The Board should observe the position of DLCD and other opponents (viz.) that the Subject Properties are allowed to be on the eroding dune they are on, under a County approved/DLCD acknowledged land use planning program including goal exceptions. The Board should then decide that position demonstrates that the George Shand Tracts have acknowledged exceptions allowing residential development on an eroding dune, making them eligible for BPS.

**IN THE ALTERNATIVE ONLY TO THE ABOVE:**

3. If the existing exceptions are not good enough to be exceptions to Goal 18, Implementation Measure 2, then the George Shand Tracts are eligible for **Goal 18, Implementation Measure 2** exceptions, of several different types:



- Built and Committed Exceptions: the lots with residences/garages are committed to residential development and built with residential development on a dune that has started to erode.
- Committed Exceptions: the vacant lots within the same subdivision, are surrounded by residential development and residential infrastructure (water, sewer, gas, electricity, telephone, roads) is stubbed to serve them, they are committed to residential development on a dune that has started to erode.
- Goal 18-specific reasons exception: Allowing residential development to exist on a dune that is eroding.

The Board should respond to opponent claims that the Board cannot protect the Subject Properties because the County has not updated its Comprehensive Plan dune maps to recognize that the dune is eroding. Thus, the Board should acknowledge that its Comprehensive Plan Goal 18 element specifically inventories its dunes with reference to adopted maps showing the location of eroding dunes. The Board should also acknowledge that its same Goal 18 element expressly states that where more detailed information is needed that “the County will consult the USDA [SCS] Survey for coastal Tillamook County and will perform field inspections using criteria described in ‘A System of Classifying and Identifying Oregon’s Beaches and Dunes’ in the ‘Beaches and Dunes Handbook for the Oregon Coast.’” Accordingly, the County should find that more specific information is needed here, and that the Applicants have provided the specific field inspection and applied the referenced classification system to establish that the dune at issue is now of a type (in Goal 18’s language) that is conditionally stable and subject to wave overtopping and undercutting. The Board should adopt that more specific information for the dune at issue here.

4. The Board should also find (again in the alternative only to the finding that the George Shand Tracts were “developed” on the magic date and so are eligible and do not need an exception to have BPS/rip rap) that if the Subject Properties were not “developed” on January 1, 1977, then they are entitled to a Goal 18, Implementation Measure 5 exception to the magic date requirement because they are eligible for a “catch all” reasons exception.

The County should find all of the following justify the “catch all” reasons exception to Goal 18, Implementation Measure 5 for the George Shand Tracts:

To meet the “catch all” requirement that “[t]here is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19”, the Board should find all of the following:

- An acknowledged urban unincorporated community is in severe risk of a natural hazard that will harm persons and property. They need the proposed BPS/rip rap to reduce their risk of harm.

- Goal 7 requires the following: “Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.”
- An exception to Goal 18, Implementation Measure 5 is a plan amendment that here is for the sole purpose of protecting persons and property from a devastating hazard that threatens them.
- If the County does not approve the requested exception, the County cannot comply with its Goal 7 obligation to amend its plan to protect persons and property from natural and man-made hazards.
- Goal 18 requires the County “[t]o reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”
- If the County does not approve the requested exception to Goal 18, Implementation Measure 5, then the County cannot comply with its Goal 18 obligations to protect acknowledged Goal 18 “appropriate development” from natural and man-made hazards.
- To meet the LUBA created requirement to show “unique” or “exceptional” circumstances, the Board should find that the following unique and exceptional circumstances exist:
  - Man-made changes to the Rockaway subregion of the Rockaway Littoral cell of installing two jetties in unusually close proximity to one another, have irrevocably altered ocean and beach processes in the Rockaway subregion. No other known jetties on the Oregon Coast have been constructed in such close proximity to one another, causing the unusual ocean sickness seen in this subregion. These man-made changes have resulted in an unusual ocean and beach interaction such that the ocean prograded sand for more than 70-years, and then when two El Niño events hit in 1997 and 1998, the sick ocean ecosystem reacted like a cancer and changed from metastasizing sand to pulling sand away and redistributing it elsewhere. This will happen in no other part of the Oregon Coast because no where else has the jetties too close together acting as a funnel, as here. Evidence of this unusually diseased ocean and beach process is that the extreme erosion we have seen since the El Niño events is occurring predominately in the Rockaway subregion and it is the **only** subregion where there is **no** prograding occurring any longer whatsoever.
  - Without counting the jetties or the George Shand Tracts, 90% of the properties in the Rockaway subregion are already rip rapped or eligible for rip rap according to DLCD's own “Atlas.” Thus, when necessary, the already sick ocean/beach interface will be hardened. There is no “natural” beach/ocean process that can be saved on this beach/ocean by refusing to allow the requested BPS/rip rap requested here, in this unique Rockaway subregion. At some point in the not too distant future 90% of the properties will have rip rap, because they are eligible under Goal 18, according to DLCD’s own “Atlas.”

- The Subject Properties were approved for residential development at a time when the ocean had been prograding for more than 70-years. None of the expert reports that evaluated the residential development proposals foretold of the change in the ocean/beach interface that happened. The Subject Properties are part of a vibrant urban unincorporated community that is acknowledged to provide the County with dense urban residential opportunities, based upon the idea that they are safe.
- The County has taken Goal 18 exceptions for all other of the County's limited urban unincorporated communities in extreme danger as here. The County has never intentionally sacrificed the coastal area of an acknowledged urban unincorporated community to natural disaster. Rather, per Goal 7 and 18, and the basic role of government in the first place, it is the established policy of the County to protect its limited designated acknowledged urban unincorporated communities. This does not open a "floodgate". The County and indeed the state has few acknowledged unincorporated communities. They are not the norm. But when extreme hazards come calling, as here, they must be protected.
- The Property owners did everything right. They bought and developed their properties in good faith on the strength of the County's urban acknowledged planning program that encourages residential development on the Subject Properties. They should not be punished because a natural disaster has befallen them, any more than Portland should be forbidden to shore up buildings to protect lives and property from the Cascadia subduction earthquake or fire fighters should refuse to respond to wildfire that threatens urban unincorporated communities or incorporated ones like Phoenix Oregon.

*The Applicants' Position Regarding the Pine Beach Subject Properties*

The Applicants' position regarding the Pine Beach properties is similar to the above EXCEPT, they withdraw their position that Pine Beach was "developed" on the magic date. That issue is a needless distraction and is one that your staff does not support. Having withdrawn that the Pine Beach properties were "developed" on the magic date, Pine Beach is eligible for a Goal 18, Implementation Measure 5 exception to the 1977 date requirement, without that being an alternative position.

Therefore, the Pine Beach owners' request for BPS should be approved as follows:

1. The Board should find that the Pine Beach properties were not "developed" on January 1, 1977, and so they are entitled to a Goal 18, Implementation Measure 5 exception to the date requirement, because they are eligible for a "catch all" reasons exception.

This was the decision that the Planning Commission recommended you approve. The bases for the requested catch all exception to Goal 18, Implementation Measure 5 are the same as the one discussed above for the George Shand Tracts' alternative "catch all" reasons exception to Goal 18, Implementation Measure 5. For the George Shand Tracts, the catch all reasons

exception is in the alternative because DLCD and staff believe than the George Shand Tracts are already eligible for BPS/rip rap under Goal 18, Implementation Measure 5 finding they were “developed” on the magic date.

The County should find all of the same reasons that justify the “catch all” reasons exception to Goal 18, Implementation Measure 5 for the George Shand Tracts described above, apply equally to the Pine Beach properties.

IN THE ALTERNATIVE ONLY:

2. The Board should find that the existing exceptions allow residential development on a dune that is eroding and so the Subject Pine Beach Properties are entitled to BPS/Rip Rap under Goal 18 Implementation Measures 2 and 5.

The Board should observe the undisputed point that Goal 18 says residential development properties are eligible for BPS if they have a goal exception that allows residential development on a dune that is eroding. The Board should further observe that the Pine Beach properties have a “built and committed” goal exception that allows residential development where it is, which is now on a dune that is eroding. The Board should further observe that the Pine Beach properties have “built and committed” goal exceptions that allow residential development where it is, which is now on a dune that is eroding. The Board should therefore conclude that the Pine Beach properties are also eligible for the BPS because their existing built and committed exception allows residential development on an eroding dune (what Goal 18, Implementation Measure 2 prohibits). The Board should expressly find that this is not an “implied” exception. This is an actual exception, that actually and indisputably exists, that actually and indisputably allows what Goal 18, Implementation Measure 2 prohibits. Therefore, the Board should find that it seems evident they are an exception to the prohibition in Goal 18, Implementation Measure 2. The Board should observe the position of DLCD and other opponents (viz.) that the Subject Properties are allowed to be on the eroding dune they are on, under a County approved/DLCD acknowledged land use planning program including goal exceptions. The Board should decide that position demonstrates that the Pine Beach properties have acknowledged exceptions that allow residential development on an eroding dune making them eligible for BPS.

3. If the existing exceptions are not good enough, *then in the alternative*, the Board should find that the Pine Beach properties are eligible for **Goal 18, Implementation Measure 2** exceptions, of several different types:
  - Built and Committed Exceptions: the lots *with residences/garages* are **committed** to residential development and **built** with residential development on a dune that has started to erode.
  - Committed Exceptions: the *vacant lots* within the same subdivision, are surrounded by residential development and residential infrastructure (water, sewer, gas, electricity, telephone, roads) is stubbed to serve them, they are committed to residential development on a dune that has started to erode.

- Goal 18-specific reasons exception: Allowing residential development to exist on a dune that is eroding.

Just like for the George Shand properties, the Board should respond to opponent claims that the Board cannot protect the Subject Properties because the County has not updated its Comprehensive Plan dune maps to recognize that the dune is eroding. Thus, the Board should acknowledge that its Comprehensive Plan Goal 18 element specifically inventories its dunes with reference to adopted maps showing the location of eroding dunes. The Board should also acknowledge that its same Goal 18 element expressly states that where more detailed information is needed that “the County will consult the USDA [SCS] Survey for coastal Tillamook County and will perform field inspections using criteria described in ‘A System of Classifying and Identifying Oregon’s Beaches and Dunes’ in the ‘Beaches and Dunes Handbook for the Oregon Coast.’” Accordingly, the County should find that more specific information is needed here, and that the Applicants have provided the specific field inspection and applied the referenced classification system to establish that the dune at issue is now conditionally stable and subject to wave overtopping and undercutting. The Board should adopt that more specific information for the dune at issue here.

For the Board’s convenience, the chart below summarizes the Applicants’ requests for each of the Subject Properties:

Lots	Applicants’ Position (Board Should Find)	Alternative Findings ONLY
Lots 114-116, 118 and 120-123 Pine Beach Replat Unit 1 (developed with houses)	1. Not “developed” on January 1, 1977; eligible for “catch all” reasons exception to Goal 18, IM 5	2. Existing “built and committed” exceptions allow residential development on an eroding dune notwithstanding the prohibition in Goal 18, IM 2 that residential development not be allowed on an eroding dune.  3. Eligible for new Goal 18, IM 2 <sup>4</sup> exceptions: <ul style="list-style-type: none"> <li>• Built with residences on an eroding dune;</li> </ul>

<sup>4</sup> If the existing exceptions are not good enough to allow residential development on an eroding dune, then the County may decide exceptions to Goal 18, IM 2 are appropriate regardless of Goal 18, IM 5 eligibility or new exceptions being granted. This is because Goal 18, IM 2 exceptions are a helpful planning tool to not only ensure the Subject Properties are eligible for BPS, but also to allow residential development to continue as planned under the existing County planning program for Twin Rocks-Barview-Watseco now that it is plain that the dune is eroding. Doing so will avoid claims in the County’s next periodic review or major plan amendment that the changed dune means that residential development may not continue. Granting Goal 18, IM 2 exceptions in this proceeding for all of the Subject Properties – even the George Shand lots – if the existing exceptions are not good enough, avoids the possibility of such claims.



Lots	Applicants' Position (Board Should Find)	Alternative Findings ONLY
		<ul style="list-style-type: none"> <li>• Committed to residential development on an eroding dune; and</li> <li>• Goal 18-specific reasons to include eligibility for BPS through other exceptions.</li> </ul>
<p>Lots 117 and 119 Pine Beach Replat Unit 1 (vacant, but public infrastructure stubbed to each lot)</p>	<p>1. Not “developed” on January 1, 1977; eligible for “catch all” reasons exception to Goal 18, IM 5</p>	<p>2. Existing “built and committed” exceptions to allow residential development on an eroding dune notwithstanding the prohibition in Goal 18, IM 2 that residential development not be allowed on an eroding dune.</p> <p>3. Eligible for new Goal 18, IM 2 exceptions:</p> <ul style="list-style-type: none"> <li>• Committed to residential development on an eroding dune; and</li> <li>• Goal 18-specific reasons to include eligibility for BPS through other exceptions.</li> </ul>
<p>Tax lots 3000, 3100 and 3104 George Shand Tracts (developed with houses)</p>	<p>1. “Developed” on January 1, 1977; eligible for BPS under Goal 18, IM 5</p>	<p>2. Existing “built and committed” exceptions allow residential development on an eroding dune notwithstanding the prohibition in Goal 18, IM 2 that residential development not be allowed on an eroding dune.</p> <p>3. Eligible for new Goal 18, IM 2 exceptions:</p> <ul style="list-style-type: none"> <li>• Built with residences on an eroding dune;</li> <li>• Committed to residential development on an eroding dune; and</li> <li>• Goal 18-specific reasons to include eligibility for BPS through other exceptions.</li> </ul>

Lots	Applicants' Position (Board Should Find)	Alternative Findings ONLY
		4. Eligible for "catch all" reasons exception to Goal 18, IM 5
Tax lots 3203 and 3204 George Shand Tracts (vacant, but public infrastructure stubbed to each lot)	1. "Developed" on January 1, 1977; eligible for BPS under Goal 18, IM 5	2. Existing "built and committed" exceptions to allow residential development on an eroding dune notwithstanding the prohibition in Goal 18, IM 2 that residential development not be allowed on an eroding dune. 3. Eligible for new Goal 18, IM 2 exceptions: <ul style="list-style-type: none"> <li>• Committed to residential development on an eroding dune; and</li> <li>• Goal 18-specific reasons to include eligibility for BPS through other exceptions.</li> </ul> 4. Eligible for "catch all" reasons exception to Goal 18, IM 5

Also for the Board's convenience, the relevant standards for each type of exception are provided below:

- "Catch All" Reasons Exception: OAR 660-004-0022(1)
- Built Exception: OAR 660-004-0025
- Committed Exception: OAR 660-004-0028
- Goal 18-Specific (Foredune Development) Reasons Exception: OAR 660-004-0022(11)

**IV. Response to Question Raised by the Board at the July 28, 2021 Hearing Regarding the Unique Effects of Combination of Usually Close Together Jetties and El Niño/La Niña Events**

The Subject Property is located within the Rockaway subregion of the Rockaway littoral cell. The Rockaway subregion is uniquely defined by two engineered structures – two jetty systems on either end of the subregion in relative close proximity, which is not seen in any other littoral subregion on the Oregon Coast. As discussed in West Consultants' July 21, 2021, technical memorandum, several documents in the record clearly state that these jetty structures have had a pronounced influence on the shorelines near jetties along the Oregon coast (DOGAMI Open File Report O-08-15 (2008) (Exhibit 1 to Applicants' July 27, 2021 Submittal,

p. 19-21); DOGAMI, Special Paper 47 (2015) (Exhibit 2 to Applicants' July 27, 2021 Submittal, p. 45-50; DOGAMI Open File Report O-20-04 (2020) (Exhibit 3 to Applicants' July 27, 2021 Submittal, p. 18-20)). The undisputed evidence in the record shows that the installation of these jetties in unusually close proximity to one another have caused irreparable damage to the ocean and beach processes in the Rockaway subregional of the Rockaway littoral cell.

For the first 70+-years, that irreparable damage caused the beach in front of the Subject Properties to grow by 1,000 feet after the construction of the north Barview Jetty in 1914. See West Consultants' May 27, 2021 technical memorandum and DOGAMI reports in the record. It is well-documented that this jetty also caused pronounced erosion on the Bayocean Spit.

Two El Niño events reacted badly with the two jetty structures because of their close location to one another, causing the already malfunctioning ocean system to stop its aggressive prograding, and instead begin unprecedented erosion, focused upon the properties in the Rockaway subregion, specifically upon the Subject Properties in the south end of the subregion. (DOGAMI Open File Report O-08-15 (Exhibit 1 to Applicants' July 27, 2021 Submittal, p. 21). As explained in DOGAMI Open File Report O-08-15 (2008) in the record, "because of the proximity of the storm systems to the south, the arrival of waves on the Oregon coast tend to occur at strongly oblique angles relative to the shore, contributing to greater erosion at the south ends of the littoral cells (*i.e.*, north of the headlands and jetties)." *Id.*

There can be no dispute that the Barview Jetty interferes with sediment transport to the north which is the area in which the Subject Properties are located. There can be no dispute that because both the Barview and Nehalem jetties cabin the Rockaway subregion, they interfere with natural storm processes and contribute to the ocean's unusual behavior. There can be no dispute that the two jetties are in unusually close proximity to one another; if there are others placed similarly in Oregon there are not many; the Applicants' expert stated he was aware of no others. There can be no dispute that the combination of these two jetties irrevocably damaged the natural ocean/beach functions and replaced them with a sick dysfunctional system that, when combined with the two El Niño events of the late 1990s, caused significant and unusual erosion of the beaches in the Rockaway subregion.

In response, the County can expect that the 90% of properties in the Rockaway subregion that are eligible for BPS/rip rap according to DLCD's "Atlas" will install BPS/rip rap to protect themselves. The evidence demonstrates that the natural beach function is already lost at the location of the Subject Properties.

## **V. Responses to Specific Claims Raised in July 28, 2021 Testimony**

This section responds to the specific claims raised in DLCD's, ORCA's and Oregon Shores' letters submitted at the July 28, 2021 hearing.

1. Were the oceanfront lots of the George Shand Tracts subdivision, including the vacant lots, "developed" on January 1, 1977, and so would be entitled to BPS without the need to take a Goal 18 exception?



In a surprising turn, DLCDC now agrees with County staff that the oceanfront lots of the George Shand Tracts subdivision, including the two vacant lots, were “developed” on January 1, 1977 and so are entitled to BPS without the need to take a Goal 18, IM 5 exception:

“After much research, County planning staff have determined that the five lots that are part of the George Shand Tracts subdivision, Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon, do meet the definition of development under Goal 18, IR 5, and thus do not need an exception to the goal for placement of a BPS.” DLCDC Letter, dated July 27, 2021.

Conversely, ORCA and Oregon Shores maintain that the subject lots in the George Shand Tracts subdivision were not “developed” on January 1, 1977.

As County staff has correctly determined, and as DLCDC has now agreed, the oceanfront lots of the George Shand Tracts subdivision, including the two vacant lots, were “developed” on January 1, 1977 under both the current definition of “development” in Goal 18 and the pre-1984 definition. The evidence in the record demonstrates that the lots were created, platted and recorded in 1950. Ocean Boulevard had been constructed to serve all of the lots by January 1, 1977. There was “provision of utilities” to each lot – water was provided via the predecessor to the Watseco-Barview Water District, and in fact, one lot just north of the Subject Properties (tax lot 2900) was connected to it, with sewer provided by individual septic systems. There is ample evidence in the record to support a finding that the subject oceanfront lots in the George Shand Tracts subdivision were “developed” on January 1, 1977, and so are entitled to BPS as of right.

2. Subject lots in the Pine Beach subdivision were not “developed” on January 1, 1977.

As explained above, the Applicants have withdrawn their request for a finding that the subject oceanfront lots in the Pine Beach subdivision were “developed” on January 1, 1977. Instead, the Applicants request that the Board adopt one or more of the exceptions described above which would make the subject oceanfront lots in the Pine Beach subdivision eligible for the requested BPS. They are eligible for exceptions, because they were not “developed” on the magic date.

3. Built and committed exceptions to allow the requested BPS are inapplicable to this application.

Some opponents claim that the only pathway to approval of this request is to grant an exception to Goal 18, Implementation Measure 5 under the “catch all” reasons exception criteria at OAR 660-004-0022(1). Those claims are mistaken. It is true that the requested Goal 18, Implementation Measure 5 “catch all” reasons exception is proper, appropriate and should be approved. But there is no reason that the County cannot also find that the Subject Properties are “committed” to residential development on an eroding dune and eligible for a Goal 18, Implementation Measure 2 exception. There is no reason that the County cannot find that at

least the Subject Properties with houses on them are “built” with houses on an eroding dune and so are eligible for a “built” exception to Goal 18, Implementation Measure 2. There is no reason that the County cannot take a Goal 18-specific reasons exception to allow houses on an eroding dune under a Goal 18, Implementation Measure 2 exception, that will then among other things, make those houses eligible for BPS/rip rap to protect them.

4. Uses allowed by the applicable goal cannot justify an exception.

Opponents assert the truism that uses allowed by the applicable goal cannot form the basis for an exception to that goal. Applicants are very aware of this truism and that is the reason why the Applicants make alternative requests. That truism does not prohibit the Applicants’ request. It goes the other way: the opponents’ point illustrates the merits of the Applicants’ position that their existing exceptions are good enough to justify the requested BPS/rip rap.

The requested exceptions to Goal 18, Implementation Measure 2 are exceptions to allow residential development on an eroding dune. Goal 18, Implementation Measure 2 prohibits residential development on an eroding dune. If Goal 18 already allows that use on the Subject Properties as opponents claim, then it does so under existing exceptions blended into an acknowledged planning program, which is the point the Applicants make above that they already have goal exceptions that allow residential development on an eroding dune. However, if the Applicants’ existing exceptions are interpreted as not allowing residential development on an eroding dune, then the Applicants are entitled to take an exception to Goal 18, IM 2 to allow residential development on an eroding dune.

The Goal 18, Implementation Measure 5 “catch all” reasons exception for the George Shand Tracts is requested in the alternative only to the position of staff and DLCDD that they are eligible for BPS/rip rap because they were developed on the magic date. The Pine Beach Goal 18, Implementation Measure 5 “catch all” reasons exception is requested because the properties are otherwise ineligible under the magic date criteria of Goal 18, Implementation Measure 5.

It is only if the Subject Properties are ineligible for BPS/rip rap under Goal 18, that they seek an exception to allow it.

5. The Applicants may not rely on existing exceptions to form the basis for an exception to Goal 18, IM 2

The statement proves too much. What OAR 660-004-0010(3) actually says, is:

“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.* Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.”

This means that the existing exceptions to Goals 3, 4 and 17 are not exceptions to Goal 18. But they are exceptions that allow residential development on a dune that has started eroding. Goal 18 says no more and no less than BPS/rip rap is allowed to protect properties that have a goal exception that allows residential development on an eroding dune. That is what the existing goal exceptions covering the Subject Property do. If they do not, then a new Goal 18 exception is required and the Applicants recognize that and request new Goal 18 exceptions in the alternative to their position that their existing exceptions are good enough.

Moreover, the Applicants are not asking the County to rely on the Subject Properties' existing exceptions to form the basis for the requested exception to Goal 18, IM 2 and 5. Rather, it is the fact that Subject Properties are in an acknowledged urban unincorporated community, with an acknowledged medium density residential zone and planning program that has allowed the Subject Properties to be built/developed with uses that require BPS that is not allowed by Goal 18, IM 2 and 5. It is the existing and acknowledged urban planning program that commits the Subject Properties to urban residential development on the foredune that has become subject to ocean undercutting and wave overtopping.

6. Goal 7 does not obligate the County to protect life and property indefinitely once development has occurred, but only to consider natural hazards in the course of planning.

This is DLCD's argument and the agency knows better or should. Goal 7 requires the following:

#### "A. NATURAL HAZARD PLANNING

"1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards."

The proposal is very much taking place under the framework of the County's planning program and is for the County to amend its Comprehensive Plan to protect people and property from risks presented by natural hazards. In this regard, Goal 7 defines "natural hazards" to include coastal flooding and erosion. Nothing in Goal 7 remotely says that the County is excused from the obligation to protect people or property from natural hazards once it adopts its plan for the first time. It is questionable whether DLCD's position in this regard, is made in good faith.<sup>5</sup>

The Board should understand what DLCD is doing here. The agency is saying (1) the only kind of goal exception the Applicants can even apply for is a "catch all" reasons exception to Goal 18, Implementation Measure 5's magic date, and (2) then they are saying that the Applicants cannot satisfy the "catch all" reasons exception standard that requires a

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<sup>5</sup> This is not the first time DLCD has advanced a frivolous position to oppose the Applicants' effort to protect their lives and property. Until the final moments before the July 28, 2021 hearing, DLCD claimed that the George Shand Tracts subdivision was not a subdivision because it was named a "tract". DLCD has of course now abandoned that silly position.

“demonstrated need” for the proposed use based upon requirements of Goal 7 (and any other goals with “requirements” in them), (3) because they want to make new law to say that Goal 7 applies only when the County first adopts its plan. Goal 7 says no such thing.

LUBA interpreted the “catch all” exception’s “demonstrated need” standard to require that the County (1) identify one or more obligations under Goals 3 to 19 [or under its comprehensive plan implementing Goals 3-19], (2) explain why the county is at risk of failing to meet those obligations if it does not approve the requested exception, and (3) explain why the proposed exception to the requirements of one goal will help the county maintain compliance with its other goal obligations. *Oregon Shores Conservation Coalition v. Coos County*, \_\_ Or LUBA \_\_, \*31 (LUBA No. 2020-002, May 4, 2021); *Confederated Tribes of Coos v. City of Coos Bay*, \_\_ Or LUBA \_\_, \*25 (LUBA No. 2020-012, May 4, 2021).

If the County approves the requested “catch all” reasons exception, it will achieve all three of LUBA’s requirements. (1) Goal 7 requires the County to adopt comprehensive plan provisions, to include policies and implementing measures for beach and dune areas to reduce the hazard to human life and property; (2) denying the requested exception, is refusing to adopt a comprehensive plan amendment necessary to protect people and property from a natural hazard; and (3) refusing to approve the proposal will put the County at risk of failing to meet its planning obligations under Goal 7. The requested exception will help the County maintain compliance with its obligation under Goals 7 and 18 to adopt comprehensive plan provisions to reduce the risk of danger to human life and property from coastal hazards.

What is plain in fact, is that the proposal meets the “demonstrated need” standard under a proper reading of Goal 7.

7. The BPS may fail over time.

This speculative claim is not a basis upon which to deny the proposal. The only evidence in the record is that the proposed BPS will significantly reduce the risk of ocean flooding and erosion to human lives and property. The Applicants understand that nothing is perfect and if an extraordinary storm occurs or a tsunami hits, the proposed BPS will not fully protect them. But there can be no dispute on the record that the proposed BPS/rip rap will quite definitely be effective to reduce the risk to human life and property. Nothing more can be asked of a BPS or is being asked of the proposed BPS.

8. By approving additional BPS, the County is committing to a preference for private development protection over protection of the beach and dune resource.

There is no “preference” of anything here. There is applying the law as it is written, nothing more and nothing less. By approving the proposed BPS, the County is doing its job to protect all people, under law including Goal 18 which exists per its express terms to protect coastal lives and property. Opponents’ preference that lives and property be lost so they might have a bit more beach to play on, finds no support in any law and is so extreme a position that it should be strongly rebuked. The County is applying the law as it is written to allow private

property to be protected with a BPS that is not on the public beach (like all other proposals), and that cannot even be seen, to protect their lives and property just like 90% of the other properties are entitled to in the Rockaway littoral cell.

9. The Applicants' expert's calculations of impacts to north-south access along the beach do not take into account sea level rise.

West Consultants in its Third Supplemental Technical Memorandum, dated July 21, 2021, provides a thoughtful and thorough response to the concern over north-south beach access. That memo provides detailed calculations showing how the BPS will have no meaningful impact on persons walking along the beach or any other existing access. In this regard it is important to understand that all applicable standards concerning beach access impose an obligation to protect *existing* public access; they do not require evaluating and protecting public access that does not now exist or that may or may not exist in the future. If sea level rise overwhelms the Subject Properties, there will be no public access or anything else at the Subject Properties. The Applicants' expert reports establish that existing beach accesses are protected under the proposal.

10. Oregon Shores claims that the proposal does not meet various criteria under the County's land use ordinance (TCLUO) and comprehensive plan (TCCP). Each claim requiring a response is addressed below.

- a. TCLUO Section 3.510: Flood Hazard Overlay (FH) Zone:
  - i. Purpose

Oregon Shores erroneously claims that the purpose of the FH zone is not met because the proposal overlooks the negative impacts that BPS will have on the shoreline, adjacent properties and on the public's safety and access. These claims are so off base, that the only explanation is that the commenters have not read the application materials and expert reports and analyses, which thoroughly explain how this proposed BPS in this specific location will not cause the negative impacts that some commenters speculate would happen. Oregon Shores relies upon generalized statements of how BPS can cause erosion on adjacent properties or narrowing of the beach, which ignores that the specific proposal at this specific location is designed to have minimal impacts on coastal processes under the well-established scientific "Weggel" model of BPS types. They ignore the Applicants' expert engineer's site-specific reports and analyses which demonstrate that the proposed BPS will not increase wave runup, cause flanking or otherwise accelerate erosion on or otherwise impact, neighboring properties. They ignore the expert's reports and analyses which demonstrate that the BPS will not have an effect on the shoreline or on the public's safety and access.

The proposal is entirely consistent with the stated purpose of the FH zone. (a) The proposed beachfront protective structure will help protect human life and health by mitigating the effects of flooding that may threaten existing residential structures and their occupants. (b) The costs of construction and maintenance of the revetment and environmental restoration will be borne by the property owners, (c) thus minimizing the expenditure of public money for the cost of the structure or potential rescue efforts. Also, consistent with the stated purposes, (e) the



BPS will protect and certainly minimize damage to the existing public facilities and utilities – sewer, water, gas, electricity, telephone and roads – that serve the subject properties. (f) Protection of the subject properties will help to retain their value and thus maintain a stable tax base. (h) As discussed throughout these proceedings, at the time the subdivisions were proposed and houses approved, there was no reason to believe that the pattern of shoreline change would reverse or that erosion would threaten these properties. The property owners (Applicants) are assuming responsibility by requesting an exception to build a BPS in their own backyards, under procedures authorized by state law and the County’s code.

ii. Specific standards for Coastal High Hazard Areas

The first thing to keep in mind is that the places where the houses are approved to be, is not in a high hazard area. The BPS will be in the “Coastal High Hazard” area, but the houses are not. Oregon Shores claims that because the proposal to install a BPS involves disturbance of the dune and removal of vegetation in order to install the BPS, it is inconsistent with TCLUO 3.510(10)(h). Oregon Shores’ reading of TCLUO 3.510(10)(h) is mistaken. The standard prohibits “man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage.” This standard does not categorically prohibit the alteration of dunes or vegetation removal that does not increase flood potential, as here. The County standard by its express terms, only prohibits activities that increase potential flood damage. The proposed BPS will decrease potential flood damage – that is its sole purpose. Moreover, the disturbance of the dune, including vegetation removal, will be temporary. The BPS will be recovered in excavated sand and replanted with native vegetation, restoring the dune to its natural state. The BPS will be monitored annually and recovered with sand and replanted when necessary.

iii. Development permit review criteria

Oregon Shores’ claim that TCLUO 3.510(14)(b)(5) that “no feasible alternative upland locations exist on the property” has not been adequately analyzed, is another demonstration that they have failed to read the Applicants’ materials. The BPS is proposed to be placed at the most landward point possible on the Subject Properties given the location of the existing residential structures that the BPS is intended to protect. The construction drawings in the record show that there are mere feet between the proposed BPS and several of the residences. Moreover, DLCDD’s determination in the Lincoln County matter, included with Applicants’ June 10, 2021 Second Open Record Submittal, properly recognized and accepted the argument of the Applicants’ there that beachfront protective structures must be located to prevent the hazard, and that on the ocean shore, this means between the structure and the shoreline to be protected. Oregon Shores’ suggestion that this criterion requires non-structural alternatives to be considered is not supported by the plain text of the standard, which requires only feasible alternative upland *locations* to be considered. Regardless, the Applicants have provided an analysis of alternative methods and their expert has concluded that none of those alternative methods are feasible or adequate to achieve the necessary protection from risk.

b. TCLUO Section 3.530: Beach and Dune Overlay (BD) Zone:

i. Non-structural solutions

Oregon Shores claims that the Applicants have not meaningfully addressed TCLUO 3.530(4)(A)(2) requiring a showing that “non-structural alternatives cannot provide adequate protection”. Again, it appears that they did not read the Applicants’ materials. The Applicants have provided an analysis of alternative methods (West Consultants Supplemental Memorandum, dated May 27, 2021 in the record) and their expert has concluded that none of those alternative methods can provide adequate protection from the looming risk for the Subject Properties.

ii. Public access

Oregon Shores claims that the application does not meet TCLUO 3.530(4)(A)(6)’s requirement that existing public access is preserved. The evidence in the record shows that there are two private beach accesses in the exception area. The proposed structure will improve the northern beach access with a gravel path and ramp that goes over the rock revetment and allows improved access to the beach and the proposal does not do anything with let alone interfere with the southern beach access.

The proposal also does not interfere with access along the beach either. The proposal has been carefully designed to be only on private property that no member of the public has access to now. Further, as explained above, West Consultants in its Third Supplemental Technical Memorandum, dated July 21, 2021, provides a thoughtful and thorough response to the concern over north-south beach access. That memo provides detailed calculations demonstrating that the proposed BPS will have no meaningful impact on persons walking along the beach. The proposed BPS has no impact on access along or to the beach.

c. TCLUO Article 10 – Administrative Provisions

Oregon Shores claims that the application is not in compliance with TCLUO Article 10 asserting that it fails to show compliance with a reasons exception under ORS 197.732. The application is being processed in compliance with the exceptions process outlined in ORS 197.732 and has addressed every applicable standard under ORS 197.732 and OAR 660-004 implementing the statute. The proposal is compliant with TCLUO Article 10.

d. TCLUO 9.030(3) Text Amendment Criteria:

i. Consistency with Statewide Planning Goals and Comprehensive Plan

1. State Goal 5 and TCCP Goal 5

Oregon Shores claims that the application fails to consider potential impacts to nearby inventoried Goal 5 resources Hidden Lake, Smith Lake and Camp Magruder. First, it bears repeating that there are no inventoried Goal 5 resources on the Subject Properties as explained in the Applicants’ June 10, 2021 submittal. Second, Camp Magruder is not an inventoried Goal 5 resource. Although Camp Magruder is mentioned in the County’s description of Smith Lake, a

Goal 5 resource, it is not inventoried as a Goal 5 resource. Regardless, there will be no discernable impact to Camp Magruder from the proposed BPS. The evidence in the record is also that the proposed BPS will not harm adjacent properties – it will not increase wave runup, cause flanking or otherwise accelerate erosion on neighboring properties. As for Hidden Lake and Smith Lake, those resources are hundreds of feet east and south of the Subject Properties and will not be impacted whatsoever by the proposed BPS. If the evidence in the record is that the proposed BPS will not harm adjacent properties, it will certainly do no harm to resources that are hundreds of feet away and separated from the Subject Properties by an entire subdivision and a road. The proposal is consistent with Goal 5.

## 2. TCCP Goal 7 Section 1.1(b)(4)

Oregon Shores claims the proposed BPS will create natural hazards. Here again, they are mistaken. The application materials and expert reports address the possible creation of new natural hazards by the proposed BPS, such as the potential impacts to surrounding properties, and conclude that the proposal will not create any new hazards. The Applicants' expert engineer's site-specific reports and analyses conclude that the proposed BPS will not increase wave runup, cause flanking or otherwise accelerate erosion on neighboring properties, and will not cause any hazards that might interfere with access along the beach. The proposal is consistent with this implementation guideline.

### ii. Consistency w/Comprehensive Plan Policies

#### 1. TCCP Goal 7, Policy 2.4(a)

Oregon Shores claims the proposed BPS fails to meet this policy, without much embellishment to understand their objection. This policy provides a list of prevention or remedial actions that shall be taken to address the hazard of erosion. That list includes the stabilization of eroding shorelines with riprap. This policy contains no requirement to analyze how proposed riprap will impact the stability of the surrounding area over time, the implications that riprap will have on public safety or how a proposal may result in the proliferation of even more riprap as Oregon Shores claims. Rather, this policy supports the Applicants' proposal in that it provides for the stabilization of eroding shorelines with riprap as a prevention or remedial measure that *shall* be taken to prevent eroding shorelines. The proposal is consistent with this policy.

#### 2. TCCP Goal 7, Policy 2.5(d)

Oregon Shores suggests that this policy which concerns permanent structures in stream channels subject to flash flooding, and not ocean flooding, applies to this proposal. This application does not propose a structure in a stream channel. This policy is inapplicable to the proposal.



3. TCCP Goal 16, Policy 7.5(2)

Oregon Shores erroneously asserts that the Applicant failed to address alternative methods of shoreline stabilization listed in this policy. Again, Oregon Shores apparently did not read the Applicants' submittals. The Applicants have provided an analysis of alternative methods to structural shoreline stabilization (West Consultants Supplemental Memorandum, dated May 27, 2021) and their expert has concluded that none of those alternative methods can provide the necessary protection for the Subject Properties. The proposal is consistent with this policy.

4. TCCP Goal 16, Policy 7.5(5)-(6)

As Oregon Shores correctly points out, these policies apply only to Estuary Natural/Conservation zones and are inapplicable to this proposal.

5. TCCP Goal 17, Policies 4.2 and 4.3

The Subject Properties have received an exception to Statewide Planning Goal 17. The Goal 17 exception applies to the entire Twin Rocks-Barview-Watseco community which extends to the ocean. Goal 17 does not apply to development of the Subject Properties and uses on the property cannot be found to violate Goal 17, as a matter of law.

6. TCCP Goal 18, Policy 2.4a and 4.4e

These policies require that decisions on land use actions in beach and dune areas be based on certain specific findings. Despite this policy requiring *decisions* to be based on the listed specific findings, each of the required findings are thoroughly addressed throughout the Applicants' materials.

iii. TCLUO 9.040 – TPR Compliance

The proposed BPS will not generate any continuing traffic related to its use. The only traffic that will be generated will be temporary traffic required for construction of the structure, which will be similar (but will occur over a shorter period of time) to that of constructing the residential structures in the subdivision. Such traffic levels will not "significantly affect" any existing or planned transportation facility. The proposal is consistent with the transportation planning rule.

## VI Conclusion

The Application narrative and the supporting evidence in the record demonstrate that under any approach, the County can and should approve the proposed BPS. The Applicants have carefully analyzed and addressed each of the relevant approval standards, and have responded to all objections, and have providing evidence that supports approval. It is respectfully submitted that the proposal meets all relevant standards for approval of the requested BPS. The Applicants request that you adopt the recommendation of the Planning Commission and approve the requested PBS.

Thank you for your consideration.

Very truly yours,



Wendie L. Kellington

WLK:wlk  
CC: Clients

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**BOARD OF COMMISSIONERS:**

**Mary Faith Bell**, Chair            mfbell@co.tillamook.or.us  
**David Yamamoto**, Vice-Chair    dyamamoto@co.tillamook.or.us  
**Erin D. Skaar**, Commissioner    eskaar@co.tillamook.or.us

**CONTACT:**

201 Laurel Avenue  
Tillamook, Oregon 97141  
503.842.3403  
[www.co.tillamook.or.us](http://www.co.tillamook.or.us)

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**COMMUNITY UPDATE MEETING**  
**Tuesday, July 27, 2021 at 8:00 a.m.**  
Teleconference

**WORKSHOP**  
**Wednesday, July 28, 2021 at 8:30 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

**BOARD MEETING**  
**Wednesday, July 28, 2021 at 10:00 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

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**PUBLIC COMMENT**

The board will allow public comment at workshop and board meetings during a public comment period. Those intending to provide public comment for the workshop or board meeting shall email submissions to [publiccomments@co.tillamook.or.us](mailto:publiccomments@co.tillamook.or.us). Public comments received by 5:00 p.m. on Tuesday will be distributed to the board and become part of the public record.

Public comments submitted via email after the deadline or during the workshop or board meeting will be presented by staff to the board during the public comment period. Unless otherwise specified, these submissions will be presented during the board meeting. Public comments can also be mailed to the Board of Commissioners' Office, 201 Laurel Avenue, Tillamook, Oregon, 97141.

Two minutes is allowed per comment. The chair may, at his/her sole discretion, further limit or expand the amount of time for individuals to speak.

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## JOIN THE BOARD OF COMMISSIONERS MEETINGS

The Board is committed to community engagement and provides opportunity for public attendance during meetings via in-person, video, or audio options. Live video and audio are [listen-only](#).

- **Community Meetings: Tuesdays at 8:00 a.m.** (*Teleconference & KTIL-FM at 95.9*)  
Dial 971-254-3149, Conference ID: 736 023 979#
- **Workshop: Wednesdays at 8:30 a.m.**  
Dial 971-254-3149, Conference ID: 736 023 979#  
Agenda items are generally for discussion only. Certain items may also be scheduled for consideration.
- **Board Meetings: Wednesdays at 10:00 a.m.** (*Live Video at tctvonline.com*)  
Dial 971-254-3149, Conference ID: 736 023 979#  
Agenda items are for discussion or consideration.

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## MEETING INFORMATION AND RULES

- Matters for discussion and consideration by the board shall be placed on an agenda prepared by the Board Assistant and approved by the board chair. Any commissioner may request items on the agenda.
- Public hearings are formal proceedings publicized in advance through special public notice issued to media and others. Public hearings held by the board are to provide the board an opportunity to hear from the public about a specific topic. Public hearings are therefore different regarding audience participation at regular and workshop meetings.
- Individuals who wish to testify in-person during meetings and hearings shall do so at the table placed in front of the dais. Individuals testifying will, for the record, first identify themselves.
- Commissioners will be addressed by their title followed by their last name.
- Commissioners shall obtain approval from the chair before speaking or asking questions of staff, presenters, and public. As a courtesy, the chair shall allow an opportunity, by the commissioner who has the floor, to ask immediate follow-up questions.
- A majority of the board shall constitute a quorum and be necessary for the transaction of business.
- All board meeting notices are publicized in accordance with public meeting laws.
- All board meetings will commence with the Pledge of Allegiance.
- The chair will utilize the gavel as needed to maintain order, commence and adjourn meetings, and signal approval of motions.
- The board reserves the right to recess to executive session as may be required at any time during noticed public meetings, pursuant to ORS 192.660(1).
- The courthouse is accessible to persons with disabilities. If special accommodations are needed for persons with hearing, visual, or manual impairments who wish to participate in the meeting, please contact (503) 842-3403 at least 24 hours prior to the meeting so that the appropriate communications assistance can be arranged.

## **AGENDAS**

### **COMMUNITY UPDATE**

CALL TO ORDER: Tuesday, July 27, 2021 8:00 a.m.

1. Welcome and Board of Commissioners' Roll Call
2. Adventist Health Tillamook
3. Coastal Caucus
4. Tillamook County Community Health Center
5. Rinehart Clinic
6. Tillamook Family Counseling Center
7. Others:
8. Governor's Office
9. Board of Commissioners
10. Cities
  - a. Manzanita
  - b. Nehalem
  - c. Wheeler
  - d. Rockaway Beach
  - e. Garibaldi
  - f. Bay City
  - g. Tillamook
  - h. South County

### **ADJOURN**

### **WORKSHOP**

CALL TO ORDER: Wednesday, July 28, 2021 8:30 a.m.

1. Welcome & Request to Sign Guest List
2. Public Comment
3. Non-Agenda Items

4. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
5. Discussion Concerning [Oregon Health Authority](#) Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services
6. Discussion Concerning a Memorandum of Agreement with [HIV Alliance](#) for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services
7. Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Public Health Program Representative in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services
8. Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time Accounting Clerk II in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services
9. Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Permit Technician in the Department of Community Development/Sarah Absher, Director, Department of Community Development
10. Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time IT Specialist III in the Information Services Department/Damian Laviolette, Director, Information Services
11. Board Concerns – Non-Agenda Items
12. Public Comments

## **ADJOURN**

## **MEETING**

CALL TO ORDER: Wednesday, July 28, 2021 10:00 a.m.

1. Welcome & Request to Sign Guest List
2. Pledge of Allegiance
3. Public Comment
4. Non-Agenda Items
5. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest

## LEGISLATIVE – ADMINISTRATIVE

6. Consideration of [Oregon Health Authority](#) Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services
7. Consideration of a Memorandum of Agreement with [HIV Alliance](#) for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services
8. **10:30 a.m.**  
**First Public Hearing:** Concerning [#851-21-000086-PLNG-01](#): A Goal Exception Request for Approval of an Exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; Approval of a 18, Comprehensive Plan Amendment for a "Committed" Exception and/or a "Reasons" Exception to Goal Implementation Measure 5 for the Construction of Shoreline Stabilization along the Westerly Lots of the Pine Beach Subdivision and Five Oceanfront Lots to the North Located Within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary Together with Floodplain Development Permit Request #851-2 1-000086-PLNG for the Installation of a Beachfront Protective Structure (Rip Rap Revetment) Within an Active Eroding Fore dune East of the Line of Established Vegetation in the Coastal High Hazard (VE) Zone, an Area of Special Flood Hazard Within the Flood Hazard Overlay Zone. The Subject Properties are Lots 11-20 of the Pine Beach Replat Unit #1, Designated as Tax Lots 114 Through 123, of Section 7DD, and Tax Lots 3000,3 100,3104,3203 And 3204 of Section 7DA all in Township 1 North, Range 10 West of The Willamette Meridian, Tillamook County, Oregon. There are Multiple Property Owners and Applicants/Sarah Absher, Director, Department of Community Development
9. Board Concerns – Non-Agenda Items
10. Public Comments
11. Board Announcements

## **ADJOURN**

### **OTHER MEETINGS AND ANNOUNCEMENTS**

The Commissioners will hold a Leadership Team Teleconference with Tillamook County Elected Officials and Department Heads on **Monday, July 26, 2021** at **9:00 a.m.** The teleconference number is 1-971-254-3149, Conference ID: 736 023 979#.

The Commissioners will attend a planning meeting for the Kiwanda Corridor Project on **Tuesday, July 27, 2021** at **2:00 p.m.** The meeting will be held in the Kiwanda Community Center, Faye Jensen Room, 34600 Cape Kiwanda Drive, Pacific City, Oregon.

The Pacific City/Woods Parking Advisory Committee has scheduled a meeting for **Wednesday, July 28, 2021** at **1:00 p.m.** The teleconference number is 1-253-215-8782, Meeting ID: 826 3627 1523, and Passcode: 345999.

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# #85 I-2 I-000086-PLNG-0 I: GOAL 18 EXCEPTION REQUEST #85 I-2 I-000086-PLNG: FLOODPLAIN DEVELOPMENT PERMIT

SARAH ABSHER, CFM, DIRECTOR

TILLAMOOK COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT





SUBJECT  
AREA



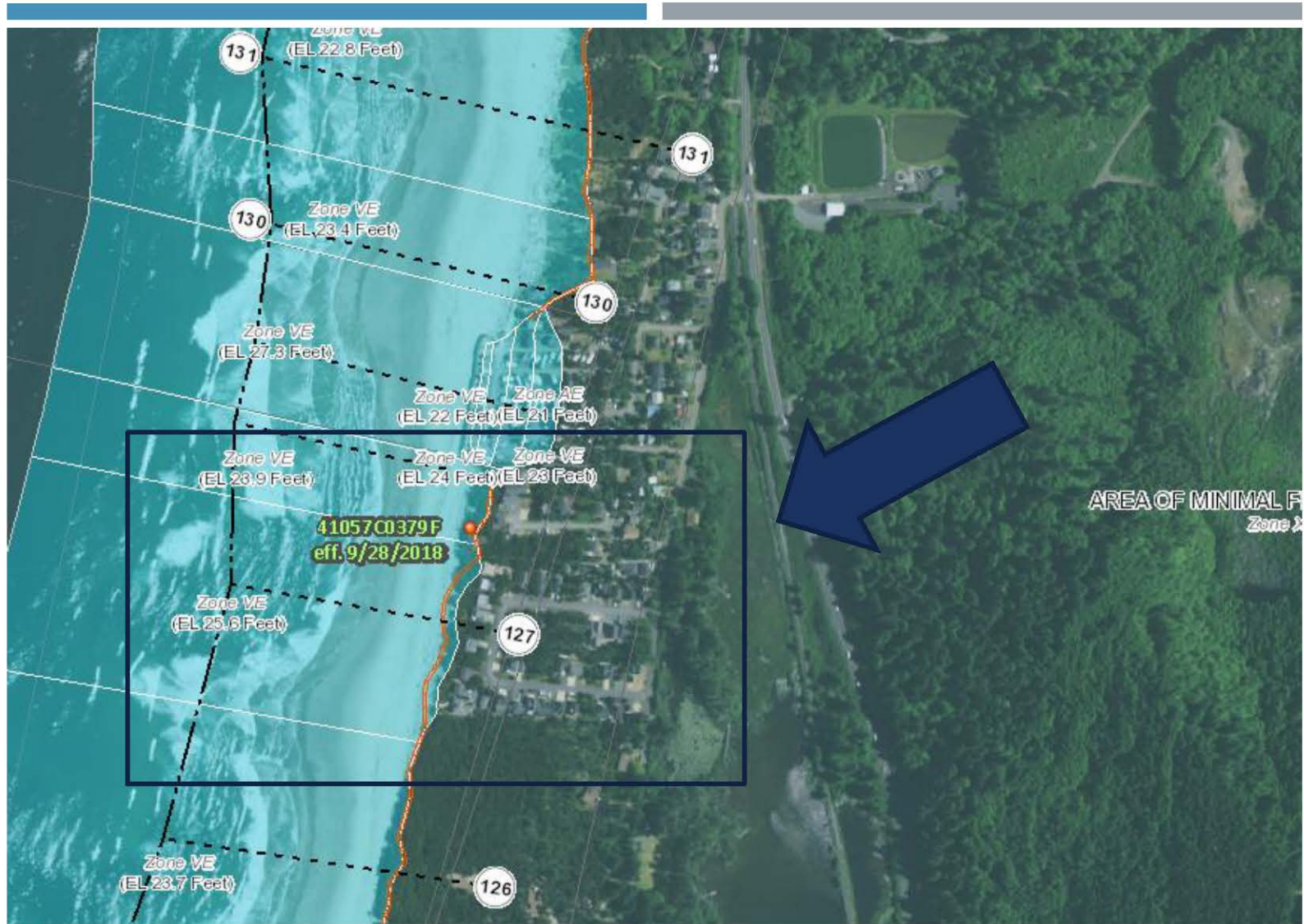
Barview



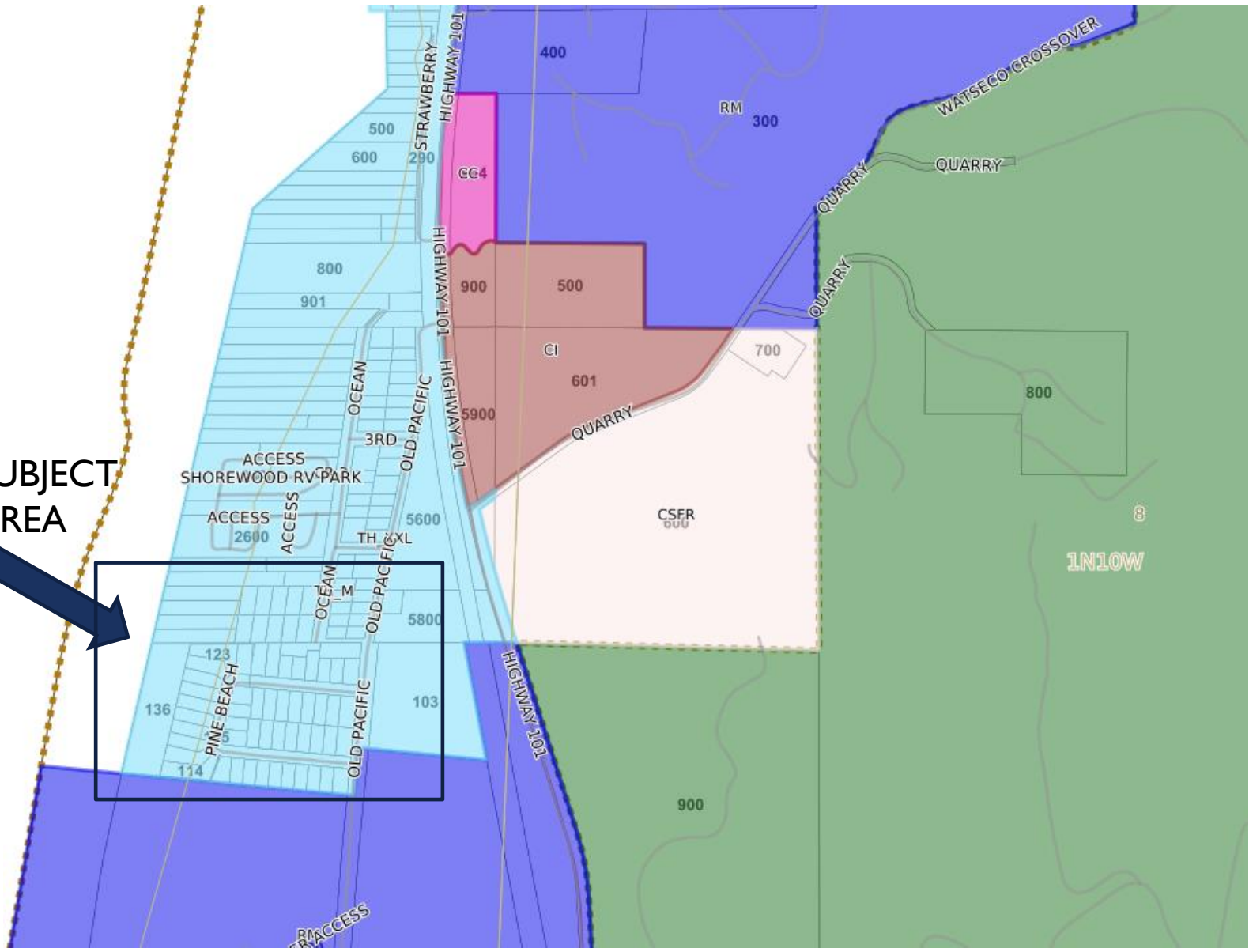


# VICINITY MAP & SUBJECT AREA





**SUBJECT  
AREA**



# ZONING MAP



## Shoreline Armoring and Eligibility

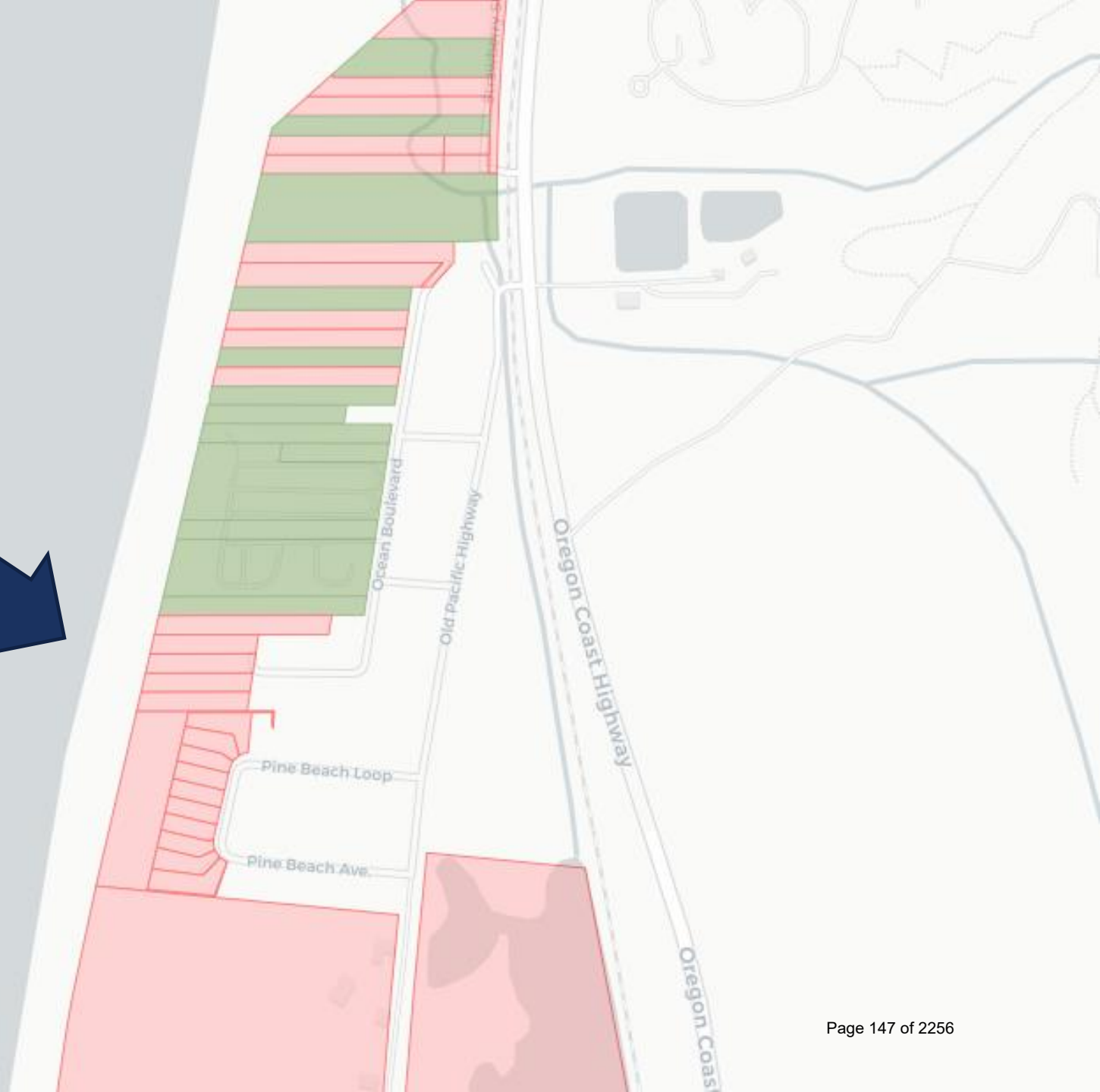
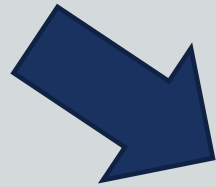
Beachfront Protective Structures, OPRD, 20

Goal 18 Eligibility Inventory, OCMP, 2015

- Eligible for Protection
- Eligible due to Exception
- Not Eligible for Protection
- Rockaway Beach Only - See City Planner.  
(Western extent of Goal 18 Exception is the ocean setback line.)

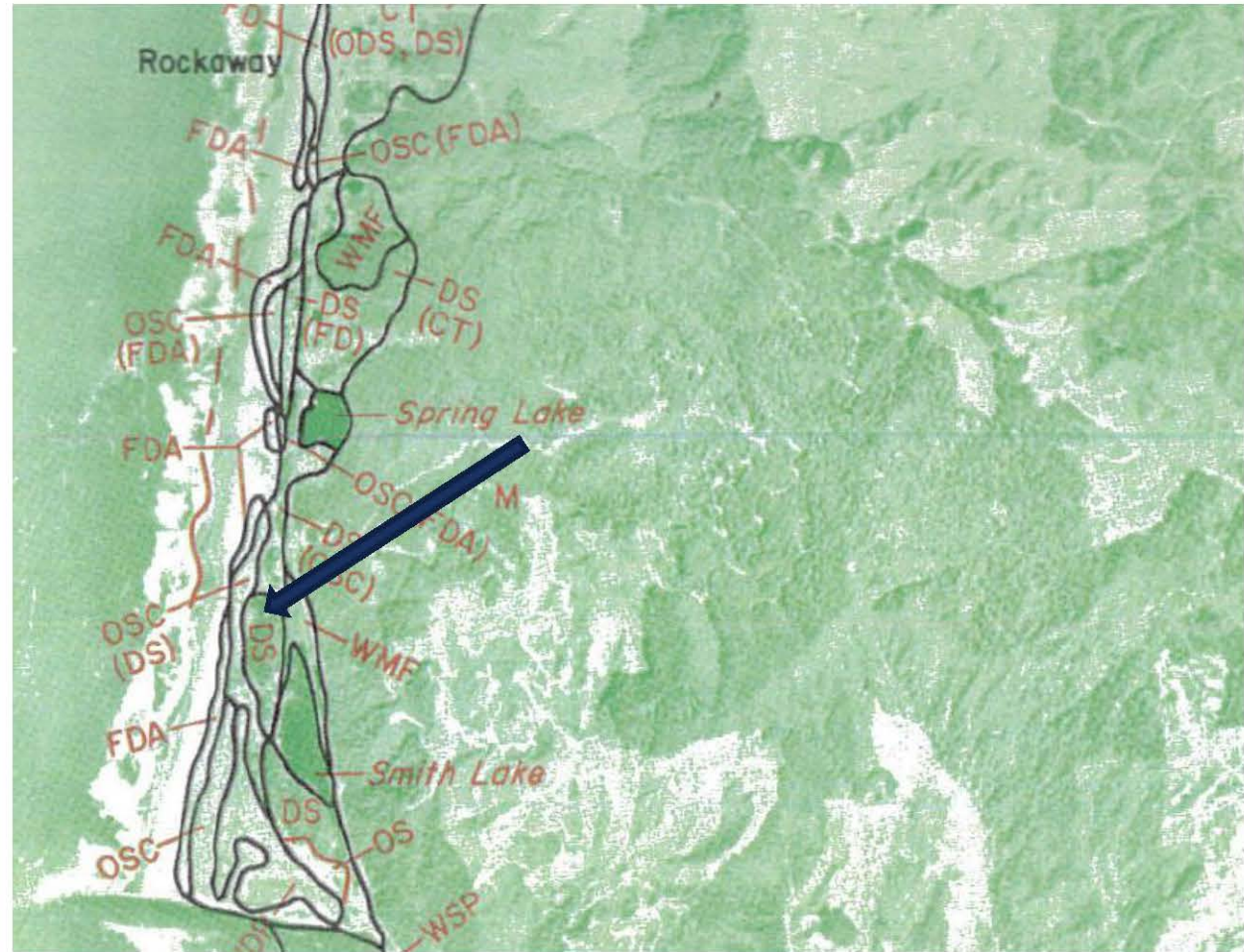
[HTTPS://WWW.COASTALATLAS.NET/OCEANSHORES/](https://www.coastalatlascity.com/ocmp/goal18/)

Coastal Atlas,  
Goal 18 Eligibility  
Inventory, OCMP,  
2015



### DUNE LEGEND

AID	Active inland dune
B	Beach
CT	Coastal terrace
DC	Dune complex of OS, OSC,
DS	Younger stabilized dunes
FD	Recently stabilized foredune:
FDA	Active foredune
H	Active dune hummocks
M	Mountain scarp
ODS	Older stabilized dunes
OS	Open dune sand
(OS)	Designates items of secondary
OSC	Open dune sand conditionall
W	Wet interdune
WDP	Wet deflation plain
WFP	Wet flood plain
WMF	Wet mountain front
WSP	Wet surge plain



# APPLICATIONS UNDER REVIEW

- Goal Exception request for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a “committed” exception and/or a “reasons” exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary .
- Development Permit Request for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone.
  - Beach & Dune Hazard Overlay Zone provisions are also made part of this permit review process.

# **CONSIDERATION FOR ACTION**

## **2 SEPARATE APPLICATIONS & DECISIONS**

### **#85 I-2 I-000086-PLNG-01**

- EXCEPTION TO GOAL 18 IMPLEMENTATION MEASURE 5 TO ALLOW THE CONSTRUCTION OF A BEACHFRONT PROTECTIVE STRUCTURE (BPS)

### **#85 I-2 I-000086-PLNG**

- DEVELOPMENT PERMIT FOR CONSTRUCTION OF BPS (BEACH & DUNE OVERLAY ZONE) & DEVELOPMENT WITHIN AREA OF SPECIAL FLOOD HAZARD



## GOAL 18 IMPLEMENTATION MEASURES #2 & #5

- Statewide Planning Goal 18 Implementation Measure #2 requires prohibition of residential, commercial and industrial development on beaches, active foredunes and other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.
- 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.**
- Implementation Measure #5 of Statewide Planning Goal 18 only allows beachfront protective structures where development existed on **January 1, 1977.** *Development is defined as 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.*
- Criteria that must be met for the construction of beachfront protective structures is included in Implementation Measure #5 and require evidence that visual impacts are minimized, access to the beach is maintained, negative impacts to adjacent properties are minimized, and long-term or recurring costs to the public are avoided.

# APPLICABLE PROVISIONS

Oregon Statewide Planning Goals

Oregon Revised Statutes

- ORS 197.732

Oregon Administrative Rules, Exception Requirements

- OAR 660-004-0020-0022 Goal 2, Part II(c), Exception Requirements, (11) Goal 18 Foregone Development Reasons Exception Requirements

Tillamook County Comprehensive Plan

TCLUO Section 3.510: Flood Hazard Overlay Zone

TCLUO Section 3.530: Beach & Dune Overlay Zone

TCLUO Section 9.030: Text Amendment Procedure and Criteria

TCLUO Article 10: Administrative Provisions

# DEFINITION OF “DEVELOPMENT”

## STATEWIDE PLANNING GOAL 18

### ■ 1977

- Develop
- 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.
- Development
- The act, process, or result of developing.

### ■ 1984

- Houses and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot.

# DISCUSSION & CONSIDERATION

- **DEFINITION OF DEVELOPMENT**
  - **1977- IS EXCEPTION REQUIRED IF DEVELOPMENT MET DEFINITION?**
    - **1941 SUBDIVISION PLAT VACATION OF PINE BEACH**
  - **1984- EXCEPTION WOULD BE REQUIRED IF DEVELOPMENT DOES NOT MEET 1984 DEFINITION OF DEVELOPMENT**
- **WHAT TYPE OF EXCEPTION IS APPROPRIATE FOR CONSIDERATION? APPLICANT EXPLORES ALL THREE. TESTIMONY RECEIVED BY DLCD & OTHERS ARGUE THAT A REASONS EXCEPTION IS THE ONLY PATH FORWARD FOR A GOAL 18 IM5 EXCEPTION**
- **DEVELOPMENT LAWFULLY PERMITTED. GOAL 18 IM2/IM5 EXCEPTIONS WERE NOT REQUIRED TO BE TAKEN ON THE YOUNGER STABILIZED DUNE. THREAT OF EROSION & OCEAN FLOODING WAS NOT PRESENT AT THE TIME OF DEVELOPMENT BUT ARE PRESENT NOW.**

## THE BEACH IS THE RESOURCE- PURPOSE OF GOAL 18 IS TO PRESERVE & PROTECT THE BEACH RESOURCE

- PROTECTION PRIORITY: DEVELOPMENT OR THE BEACH?
  - POLICIES OF GOAL 18 ITSELF- PROTECT BEACH RESOURCE- WHAT IMPACT, IF ANY, DOES THE BPS HAVE ON THE RESOURCE NOW AND IN THE FUTURE, AND ULTIMATELY WILL THE BPS RESULT IN FURTHER DEGRADATION OF THE RESOURCE?
- WHILE SITE CONDITIONS MAY CHANGE DUE TO CONTINUED EROSION, THE CONSTRUCTION OF THE PROPOSED BPS IS LOCATED WHOLLY WITHIN PRIVATE PROPERTY BOUNDARIES OF THE SUBJECT PROPERTIES
  - FUNCTION OF BPS- ONLY WHEN THREAT OF EROSION EXISTS AT THE LOCATION OF THE BPS. UNTIL THEN, WHAT IS THE PURPOSE AND FUNCTION OF THE BPS?
- ENSURING PUBLIC ACCESS ALONG THE BEACH, NOT NECESSARILY ACCESS TO THE BEACH FROM THE PRIVATE/PUBLIC ROAD SYSTEM
- LINCOLN COUNTY APPLICATION VS TILLAMOOK COUNTY FROM DLCD STANDPOINT- SITE CONDITION CONSIDERATION

## RELATIONSHIP WITH OTHER POLICIES & GOALS

- GOAL 7, NATURAL HAZARDS- COUNTY'S OBLIGATION TO UPHOLD OTHER POLICIES OF STWP & COMPREHENSIVE PLAN- BPS PROPOSAL AND GOAL EXCEPTION REQUEST IS CONSISTENT WITH GOAL 7 POLICIES?
- GOAL 10 HOUSING ELEMENT- POLICY TO PROMOTE DIVERSE HOUSING STOCK & HOUSING CRISIS?
- SHORELAND GOAL 17 ELEMENT- HAS EXCEPTION BEEN TAKEN? PRIORITY OF NON-STRUCTURAL VS STRUCTURAL SOLUTIONS? SHOULD AN ALTERNATIVE ANALYSIS BE DONE TO PROVE WHY NON-STRUCTURAL SOLUTIONS CANNOT BE CONSIDERED?

DISCUSSION & CONSIDERATION CONTINUED

# RELEVANT GOALS & GOAL ELEMENTS

Goal 1- Planning  
Process & Citizen  
Involvement

Goal 2- Land Use Plan  
& Exception Process  
(Reasons/Committed  
Exception Request)

Goal 7- Hazards

Goal 11- Public  
Facilities

Goal 14- Urbanization

Goal 17- Shorelands

Goal 18- Beaches &  
Dunes

- Goal 18 IM #2
- Goal 18 IM #5

## CRITERIA DISCUSSION

## REQUEST: 4 EXCEPTIONS

ORS 197.732: GOAL EXCEPTIONS; CRITERIA; RULES;  
REVIEW

OAR 660-004-0020 GOAL 2, PART II(b), COMMITTED  
EXCEPTION

OAR 660-004-0020 GOAL 2, PART II(c), EXCEPTION  
REQUIREMENTS

OAR 660-004-0022: REASONS NECESSARY TO  
JUSTIFY AN EXCEPTION UNDER GOAL 2, PART II(c)

TCLUO ARTICLE 9, SECTION 9.030(3) CRITERIA FOR  
TEXT AMENDMENT



# SUMMARY OF FINDINGS MADE BY APPLICANT TO JUSTIFY WHY EXCEPTIONS SHOULD BE GRANTED

- DEVELOPMENT was lawfully permitted by Tillamook County
  - Some if not all properties meet definition of “DEVELOPMENT” as originally defined in Goal 18
    - Determination and identification of properties that meet definition of “development”
  - Subject area is an irrevocably committed area intended for urban residential use
- REQUEST IS CONSISTENT WITH GOAL 18 (AND GOAL 7) POLICIES TO REDUCE HAZARD TO HUMAN LIFE & PROPERTY FROM NATURAL ACTIONS ASSOCIATED WITH COASTAL BEACH & DUNE AREAS
- Visual impacts are minimized and existing beach access is maintained.
- BPS IS DESIGNED TO MINIMIZE IMPACTS ON ADJACENT PROPERTIES AND WILL NOT INCREASE RISK OF HAZARDS (WAVE RUN-UP, INCREASED WAVE HEIGHT, INCREASED FLOOD RISK OR DIVERSION OF FLOOD WATER)
- BPS IS DESIGNED TO MEET GOAL 18 REQUIREMENTS & BEACH & DUNE HAZARD OVERLAY ZONE STANDARDS
  - (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.

# SUMMARY CONTINUED

- The project design protects surrounding properties from the adverse impacts of development, including protection from direction of additional water to surrounding properties, increase in wave heights or wave runup, or impact to the natural littoral drift of sediment along the coast.
- As stated in the Technical Memorandum provided by West Consultants, the proposed revetment structure will reduce the risk of damage to life, property and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides.
- West Consultants Technical Memorandum explains that the structure is designed to address ocean flooding and storm waves and that its design will not cause an increase to FEMA total water levels near the structure.
- The proposed beachfront protective structure will protect the natural environment from beach erosion and adverse impacts from coastal flooding.
- Applicants state the design of the proposed beachfront protective structure is consistent with Goal 18, IM 3 and will provide protective measures where natural protective measures have failed including protection (not the destruction) of desirable vegetation.
- Applicants state the proposed beachfront protective structure does not use or affect groundwater as the structure does not reach down to the water table and will not lead to loss of water quality or the intrusion of salt water into water supplies.
- Foredune breaching is not part of the proposed development.
- Applicants state that while grading and sand movement will occur for the development of the proposed beachfront protective structure, these construction activities are not for the purposes of maintaining views or preventing sand inundation (Exhibit B). The proposal to construct a beachfront protective structure will protect the foredune.
- BPS will be constructed and maintained (including vegetation maintenance requirements) by the property owners.

# ENVIRONMENTAL, ECONOMIC, SOCIAL & ENERGY CONSEQUENCE ANALYSIS SUMMARY

- Applicants state the ESEE demonstrates consequences that would result from the construction of a beachfront protective structure at the subject location are not significantly more adverse than what would typically result from the same proposal being located in a different area that would or would not require a Goal 18, IM 5 exception. Applicants add that there are only two differences between the proposed exception area and the other sites:
  - The proposed exception area is much larger than individual property elsewhere and while the adverse environmental impact of building a beachfront protective structure at the subject location is greater than for a single property, the impact will be temporary given the impact area will be recovered with sand, replanted and monitored.
  - An environmental benefit will result from this proposal for a larger area as a greater area of the foredune (not just an area within a single lot) will be restored and protected with beach grasses, shrubs and trees.
  - Locating the beachfront protective structure at any other location would not protect the subject properties and related public infrastructure, hence the reason for the exception request.

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# TCLUO SECTION 9.030(CRITERIA)

- (a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- (b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);
- (c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and
- (d) The amendment must conform to Section 9.040 Transportations Planning Rule Compliance.

# PUBLIC & AGENCY COMMENTS

- LACK OF EVIDENCE THAT EXCEPTION SHOULD BE GRANTED
- ALTERNATIVES ANALYSIS DOES NOT MEET JUSTIFICATION FOR EXCPETION
- THREAT OF EROSION TO ADJACENT PROPERTIES
- INCREASED THREAT OF FLOOD RISK TO ADJACENT PROPERTIES
- PROTECTION OF EXISTING DEVELOPMENT DOES NOT JUSTIFY NEED TO GRANT EXCEPTION
- EXCEPTION SHOULD NOT BE GRANTED SIMPLY BECAUSE EXCEPTIONS IN THIS AREA HAVE ALREADY BEEN TAKEN
- THREAT OF BEACH ACCESSIBILITY ON STRETCH OF BEACH ADJACENT TO THE SUBJECT PROPERTIES

# DEVELOPMENT PERMIT DISCUSSION

## BEACH & DUNE OVERLAY ZONE, TCLUO SECTION 3.530

- **PERMITTED CONSTRUCTION OF A BPS REQUIRES GOAL EXCEPTION**
- *For the purposes of this requirement, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through the construction of streets and provision of utilities to the lot. Lots or parcels where development existed as of January 1, 1977, are identified on the 1978 Oregon State Highway Ocean Shores aerial photographs on file in Tillamook County.*
- **SITE DEVELOPMENT REQUIREMENTS & DETAILED SITE INVESTIGATION REQUIRED**
- *The report of a Detailed Site Investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations. The report shall include standards for:*
  - *a. Development density and design;*
  - *b. Location and design of roads and driveways;*
  - *c. Special foundation design (for example spread footings with post and piers), if required;*
  - *d. Management of storm water runoff during and after construction.*
- *Summary Findings and Conclusions. The Preliminary and Detailed Site Reports shall include the following summary findings and conclusion:*
  - *1. The proposed use and the hazards it might cause to life, property, and the natural environment;*
  - *2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure.*
  - *3. Measures necessary to protect the surrounding area from any hazards that are a result of the proposed development;*
  - *4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.*
- **BPS WILL NOT EXCEED 3-FOOT HEIGHT MAXIMUM**

# DEVELOPMENT PERMIT DISCUSSION

## FLOOD HAZARD OVERLAY ZONE, TCLUO SECTION 3.510

- GENERAL STANDARDS
  - ANCHORING
  - CONSTRUCTION MATERIALS & METHODS
  - UTILITIES
- SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD AREAS
  - ELEVATION & PILING CONSTRUCTION (NOT APPLICABLE)
  - MUST BE ENGINEERED DESIGN
  - MUST BE LOCATED LANDWARD OF THE REACH OF MEAN HIGH TIDE
  - PROHIBIT MAN-MADE ALTERATION OF SAND DUNES, INCLUDING VEGETATION REMOVAL, WHICH WOULD INCREASE POTENTIAL FLOOD DAMAGE



# DEVELOPMENT PERMIT DISCUSSION

## FLOOD HAZARD OVERLAY ZONE CRITERIA, TCLUO SECTION 3.150

### *Development Permit Review Criteria*

- *(1) The fill is not within a floodway, Coastal High Hazard Area, wetland, riparian area or other sensitive area regulated by the Tillamook County Land Use Ordinance.*
  - *(2) The fill is necessary for an approved use on the property.*
  - *(3) The fill is the minimum amount necessary to achieve the approved use.*
  - *(4) No feasible alternative upland locations exist on the property.*
  - *(5) The fill does not impede or alter drainage or the flow of floodwaters.*
- 
- *BPS is not a new or modified Flood Refuge Platform*

# CONCLUSIONS

ARE THE  
CIRCUMSTANCES  
UNIQUE AND  
EXCEPTIONAL TO  
JUSTIFY GRANTING  
AN EXCEPTION?

GOAL 18 CRITEIRA  
FOR  
BPS MET?

BEACH AND DUNE  
DEVELOPMENT  
STANDARDS FOR  
BPS MET?

FLOOD HAZARD  
OVERLAY ZONE  
STANDARDS FOR  
DEVELOPMENT  
WITHIN THE SFHA-  
CRITERIA MET?

# FINDINGS IN SUPPORT OF APPROVING THE GOAL 18 EXCEPTION REQUEST BY THE PLANNING COMMISSION

- Unique and exceptional circumstances apply to these properties. The subdivision and subsequent development of the lots was done through appropriate land use and permitting processes and were done in good faith.
- Zoning allows for residential development of these properties within the Unincorporated Community of Barview/Twin Rocks/Watseco, an urbanized area committed to urban development through previously taken Goal Exceptions (3,4, 11 and 14).
- Because this area has historically been categorized as a stabilized dune, no Goal 18 Exceptions were needed to be considered or taken for this area at the time of adoption of the Tillamook County Comprehensive Plan.
- Request for Goal 18 Exception is not a self-created issue. At the time of permitting and land use review, development was sited on a stabilized dune. Site conditions that exist today did not exist at the time of development- specifically erosion and ocean flooding.
- In relation to adjacent lots not part of this exception request, granting a Goal 18 Exception does not prevent those who already have a right to rip rap or develop from pursuing same option in the future. It is not right to deny a property owner the same opportunities to protect their property that others are afforded due to grandfathered rights that allow them to take action for protection of their property. (Properties where “development” existed on January 1, 1977.)
- The development standards and criteria of the Flood Hazard Overlay Zone have been met through design and location of the proposed BPS.
- The development standards and criteria of the Beach and Dune Overlay Zone have been met through design and location of the proposed BPS.

## ADDITIONAL FINDINGS BY THE PLANNING COMMISSION:

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

# Pine Beach Combined Application for Shoreline Protection

Tillamook County Board of Commissioners  
July 28, 2021

Presented by:

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



# Subject Properties/Proposal

- Avoiding a piecemeal approach, the owners of 15 properties working together seek approval of a critically needed beachfront protective structure.
- Application is for Goal 18 exception and County Development Permit
- Proposal is supported by the Pine Beach HOA.
- Proposal is supported by the County Planning Commission
- Pine Beach Loop (Pine Beach Subdivision – first platted 1932; replatted 1994) and Ocean Blvd. (George Shand tracts platted 1950).
- Acknowledged urban unincorporated community (Twin Rocks/Barview/Watseco), long planned and zoned for medium density urban residential use under an acknowledged urban planning program.

### Proposed Exception Area and Adjacent Lands Map





Barview -  
Watseco -  
Twin Rocks  
Community Area

Location of Revetment



Community Boundaries

Location of Revetment





### Subject Properties



# Owners – personal responsibility

## Tillamook County is sole Decisionmaker

- The beachfront protective structure (“BPS”) is not on beach.
- The BPS is entirely in the backyards of the properties it will protect.
- All other BPS proposals including Shorewood RV Park’s was on the dry sand beach and County and OPRD had to approve.
- BPS here is entirely east of OPRD jurisdiction – east of established vegetation/SVL and east of the dry sand beach;
- Neither OPRD nor DLCD approval required – the Subject Properties are in an acknowledged urban unincorporated community that is part of an acknowledged and appropriate residential development program.
- △ Tillamook County is only the approval authority - local control.

# Beachfront Protection is Urgently Needed

- 70-plus years of prograding; residential development approved on stable ground.
- Sudden onset retrograding beach: winter 1997-98 El Nino/1998-1999 El Nina.
- Aggressive erosion ever since.
- Now, King Tides in 2020 and 2021 reached Subject Properties + 45' beyond
- Continued significant threat of severe flooding.
- At risk are human lives, residential development, public water and sewer infrastructure.
- The proposal protects people; public and private investments; avoids significant environmental harm from destroyed homes; garaged vehicles; broken sewer and water infrastructure; broken electrical connections, gas connections; proposal protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity; at minimum would cause significant strain districts' resources.
- Torn out infrastructure risks dangerous service disruptions to the larger community.



# January 12, 2021 Tides Flooding Pine Beach Properties



































































# 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:		<b>\$10,284,990</b>

**TOTAL:**

**\$10,284,990**

# Property Owners Contribute \$75,000/year to County in Taxes

Account #	Map #	Tax 2020-21
399441	1N1007DD00114	\$8,969.35
399444	1N1007DD00115	\$5,075.78
399447	1N1007DD00116	\$5,456.46
399450	1N1007DD00117	\$2,329.53
399453	1N1007DD00118	\$5,566.80
399456	1N1007DD00119	\$2,329.53
399459	1N1007DD00120	\$5,249.30
399462	1N1007DD00121	\$5,451.05
399465	1N1007DD00122	\$5,181.77
399468	1N1007DD00123	\$7,609.27
62425	1N1007DA03000	\$5,787.17
62611	1N1007DA03100	\$5,419.97
355715	1N1007DA03104	\$5,261.53
62719	1N1007DA03203	\$2,647.78
322822	1N1007DA03204	\$2,647.78
<b>TOTAL:</b>		<b>\$74,983.07</b>

**TOTAL: \$74,983.07**

# Subject Properties are an Important Source of Property Taxes Supporting County Service Providers

- If Subject Properties are wiped out, \$75,000 in annual tax revenues will be irrevocably lost.
  - Police
  - Fire
  - Schools
  - Education Service Districts

Catastrophic loss not only would cause lost property tax revenues, but also impose fiscal strain:

- Allowing Subject Properties to be wiped out: strain emergency providers and social services networks.
- Allowing Subject Properties to be wiped out: strain public facilities district equipage and resources.
- Approval is necessary so the Applicants can protect themselves and their homes.



# Application Legal Framework for Decision

- The Oregon land use planning system consists of state statutes, administrative rules, the Statewide Planning Goals and local plans and regulations.
- The legislature ensured local authority:
  - DLCD is responsible to “acknowledge” local plans and regulations to certify that local plans and regulations comply with all the state land use rules.
  - But local governments are vested with authority and responsibility to approve land use requests like the proposal.
  - This application is a local land use request that is exclusively within the control of the County Board of Commissioners.
- The legislature expressly authorizes cities and counties to adopt goal exceptions to retain flexibility in the land use system. ORS 197.732.
- DLCD rules echo the same: “The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals.” OAR 660-004-000(3).
- DLCD rules specifically say Goal 18 exceptions are permitted. OAR 660-004-0010(1)(g).
- Goal exceptions are site specific amendments to the County’s Plan.
- It is simply mistaken that Goal 18 exceptions can never be granted to provide beachfront protection.
- The legal framework allows them in proper circumstances, such as those here.



# Goal Exceptions

- The legislature outlines three appropriate types of exceptions. ORS 197.732. All are relevant here.
- They are:
  - The land is “**physically developed** to the extent that it is no longer available for the uses allowed by the applicable goal.”
  - The land is “**irrevocably committed** \*\*\* to uses not allowed by the applicable goal because adjacent uses and other relevant factors make the uses allowed by the applicable goal impractical.”
    - Often referred to together as “built and committed” exceptions – this is how County plan refers to them.
  - “**Reasons** justify why the state policy” in a goal should not apply.
    - DLCDC rules expressly allow two types of “reasons” exceptions. One is specific to Goal 18, and one is called the “catch all” that applies generally.

# County is Familiar with Goal Exceptions and has Adopted them Previously

- County has taken and DLCD has acknowledged as completely appropriate a “built and committed” Goal 17 Exception for the entire urban unincorporated community of Twin Rocks/Barview/Watseco (including where the proposed BPS will be located and beach beyond)– from County Plan:
- **“8.2 \*\*\*"Built and Committed" Rural Shorelands from Goal 17 Rural shoreland Use Requirements 3e. Tillamook County finds that there are shoreland areas which are \*\*\*"built and committed" to a type and degree of development which is not rural in nature. These include the following communities \*\*\* which are necessary, suitable or intended for urban use (Netarts, Oceanside, Pacific City, Neskowin, Cloverdale, Neahkahnne and Twin Rocks-Watseco-Barview.)”**

Barview -  
Watseco -  
Twin Rocks  
Community Area

Location of Revetment



Community Boundaries

Location of Revetment



# Request is for a Limited Exception to Goal 18, Implementation Measures 2 and 5

## \*\*\* Exception to Goal 18, Implementation Measure 2 \*\*\*

- Goal 18, Implementation Measure 2 says the County should not allow residential development on dunes subject to wave overtopping/undercutting.
  - No one thought Goal 18, Implementation Measure 2 would be triggered here.
  - When the County approved residential development on the Subject Properties, the beach had been in a 70+ year period of prograding; the approved residential development was east of a coastal forest, safe and exactly where Goal 18, IM 2 said it should be – nothing was proposed on a dune subject to overtopping/undercutting.
  - In fact, all residential development was approved far away from such dunes.
  - Residential development was established on Subject Properties in good faith based upon compliance with all rules.
  - Later, the dune dramatically changed; now, the Subject Properties are in significant danger.
  - Now, Subject Properties are residential development on a type of dune that Goal 18, IM 2 forbids.
- The requested limited Goal 18, IM 2 exception will do two things:
  - Allow the County to continue its long planned urban residential development program in Twin Rocks/Barview/Watseco.
  - Allow the County to protect urban residential development in that long-planned program so the County can comply with its obligations to protect people and property from destruction caused by natural or man-made hazards.
- Approval of requested limited Goal 18, IM 2 exception will mean Goal 18 allows the proposed beachfront protective structure.



## \*\*\*Limited Exception to Goal 18, Implementation Measure 5 \*\*\*

- Goal 18, Implementation Measure 5 says the County should prohibit beachfront protective structures for property that was not “developed” on Jan 1 1977.
- The limited Goal 18, IM 5 exception will *also* allow the protective structure, even though properties not “developed” by 1977.
- Request for exceptions to both Goal 18, Implementation Measures 2 and 5 is to provide the best insurance that the Subject Properties are protected.
- Either exception will allow the proposed beachfront protection system.
- But approving both Goal 18, Implementation Measure 2 and Implementation Measure 5 exceptions, maximizes any County approval decision being sustained if there are appeals.



# The Proposed BPS Meets Standards for Exceptions

\*\*\* Physically developed/committed type \*\*\*

The Subject Properties are residentially developed/committed to residential development.

- All are in platted subdivisions;
- 11 are built with houses/garages; many occupied by full time residents;
- 4 do not yet have houses, but are developed with urban infrastructure (sewer, water, electricity, gas, telephone) and roads,
- All are in an acknowledged urban unincorporated community and zoned R-3 (med density residential). County Plan reinforces Twin Rocks-Barview-Watseco commitment to residential development:

Lands included within the community growth boundary are committed to development and can be easily served with sewer and water.

Environmental consequences are beneficial because committed areas are used for development.

The entire area is included within sewer and water districts. Developed areas are currently served and undeveloped areas are in close proximity to existing lines.

Economic consequences are favorable because sufficient land that can be easily served is included within the boundary.

- (5) County Plan states the County “needs” the Subject Properties and the rest of Twin Rocks-Barview-Watseco to maintain housing:

1) Demonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals:

There is a need to accommodate approximately 130 additional housing units by the year 2000. The community growth boundary will accommodate approximately 320 dwellings.

- In fact, the acknowledged County Comprehensive Plan defines facts here to meet “committed” exception type

Another form of “commitment” could consist of significant earlier public decisions, such as the approval and recording of a subdivision upon which construction has been started. Such construction might be the laying of a water or sewer line specifically designed and sized to permanently serve the subdivision.

# Proposed BPS Also Meets “Reasons” Exception Standards

- Demonstrated need for the County to amend its Plan to meet state Goal 7 obligations to protect persons and property from natural / man-made hazards.
- Demonstrated need for the County to comply with its acknowledged Goal 10 (housing) obligations to provide urban residential development on the Subject Properties.
- Demonstrated Goal 14 need to provide for the livability of the County designated urban unincorporated communities of Twin Rocks/Barview/Watseco.
- Demonstrated Goal 18 need to “reduce the hazard to human life and property from natural or man-made actions” in beach and dune areas.
- Denial would put County at risk of not complying with these state Goal obligations.

# “Reasons” Exception Standards

- "Areas that do not require a new exception cannot reasonably accommodate the use".
  - **NOTE:** This is not an alternative *methods* issue, but an alternative *areas* issue.
  - Regardless, the evidence shows that there is no other area for the proposed BPS or other method that can protect the human lives and properties at severe risk.
- “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.”
- "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”
- **NOTE:** Rule defines meaning of “compatible”: “‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”
- Evidence demonstrates only that the proposal is compatible with other adjacent uses.

# Goal 18 Specific “Reasons” Exception Standards

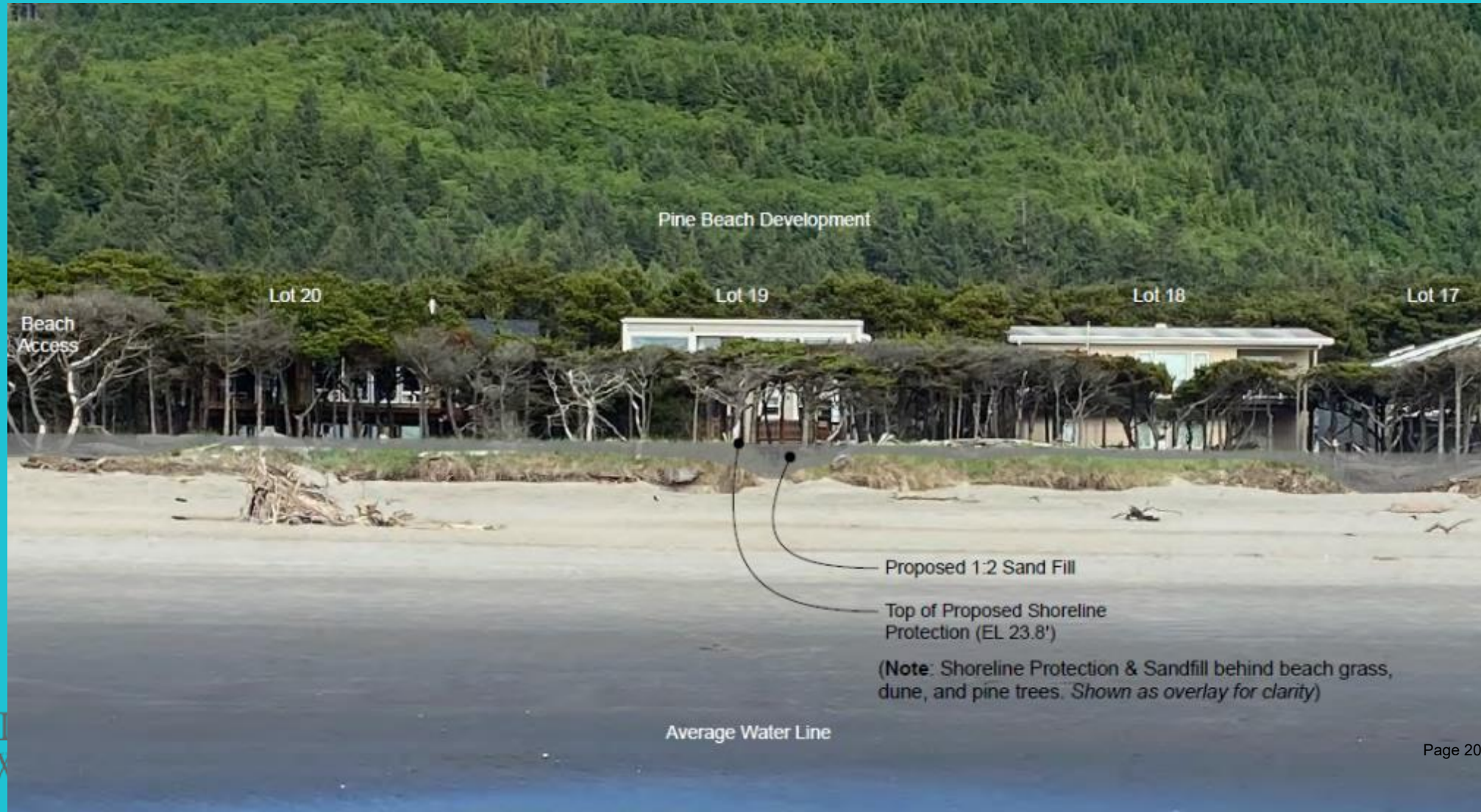
- “Goal 18 – Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 ‘Beaches and Dunes’, Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:
- “(a) The use will be adequately protected 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.”
- (c) meets other previously listed reasons exception standards.
- The evidence, opinions of experts, County Planning Commission and legal analyses show that all “reasons” exception standards are met.



# Expert Analysis Establishes that Approval Furthers State and County Land Use Programs and Policies

- Planning Commission reviewed and agreed that approval is appropriate.
- Expert analysis backed by authoritative papers (DOGAMI and others) proves that all standards are met .
- Expert analysis proves that the proposed beachfront protection is compatible, minimizes adverse environmental effects, is properly designed and will not cause ocean flanking, accelerated wave runup, or any other harm.
- Evidence demonstrates that the proposal does not cause adverse impacts to persons on the beach walking north/south; no adverse impact on east/west private access points to the beach.
- Proposed protection cannot be easily seen by beachgoers.

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



- Approval is Consistent with DLCD’s “Goal 18 Focus Group” Expectations – the Exception Process is Appropriate

**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.**

# Claims that there is no severe, imminent flooding risk, are mistaken

- 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**

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



The problem explained in graphics



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



1994

Beach Erosion History – Google Earth



1994

2000



2000

8/2005



August 2005

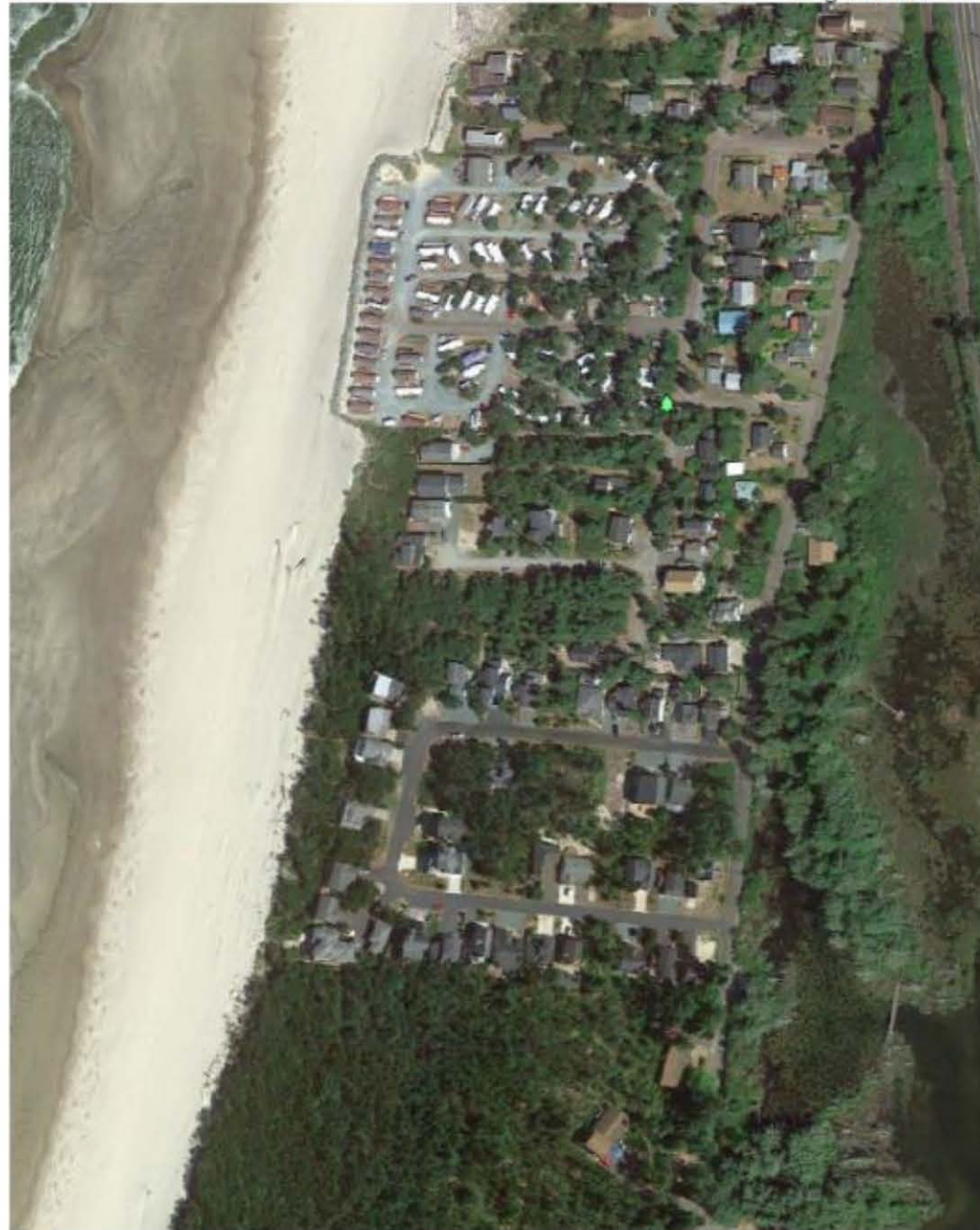


2011



2011

2014



2014



2016



2016

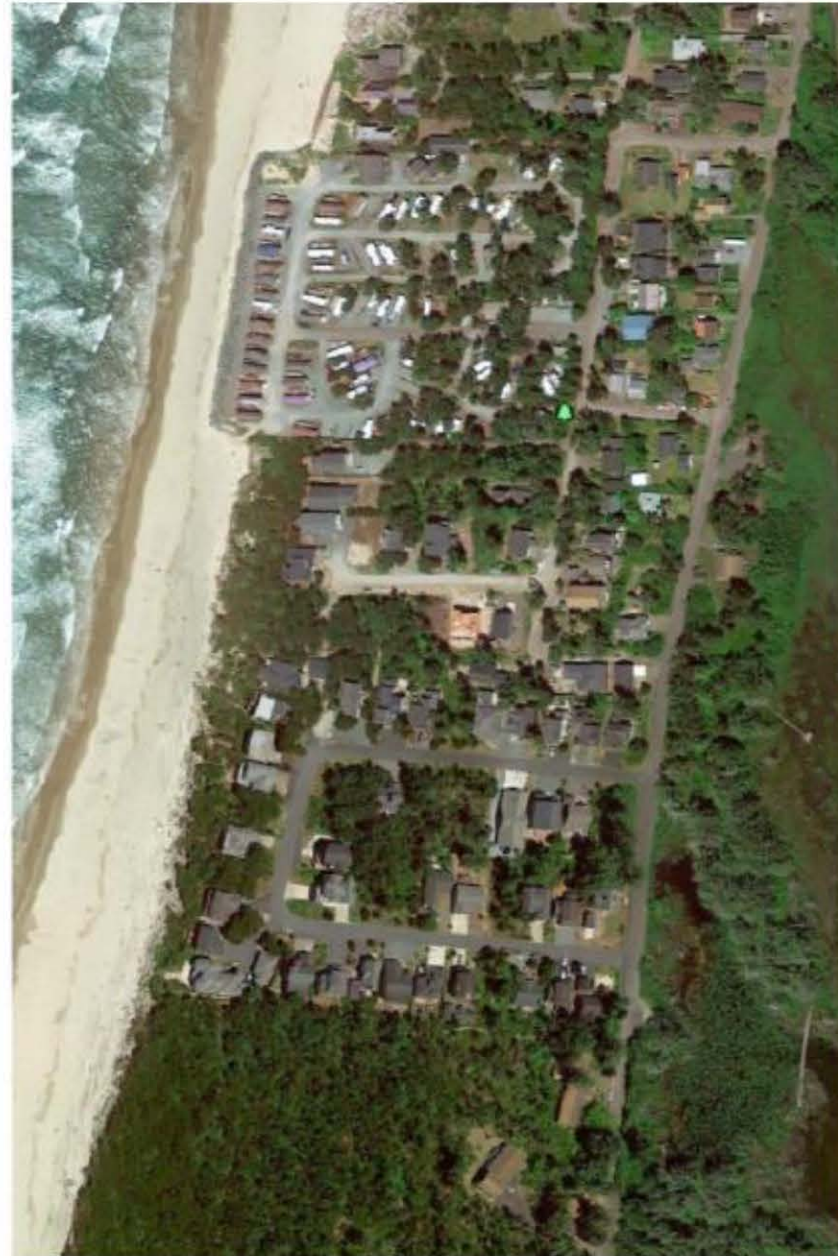
2017



2017



2020



2020

# Dune Changes - 1975-2020

## 1975 (USDA):

- Younger stabilized dune
- Open dune sand conditionally stable

## 1994 (Pine Beach Dune Hazard Report):

- 70-year history of ocean prograding
- Coastal forest had grown on open dune sand
- Homes to be sited on younger stabilized dune
- No active foredunes
- No risk of wave overtopping undercutting



Figure 2. Beach and dune geomorphic mapping classifications at Subject Project (USDA, 1975)

# Dune Changes 1975-2020

## 2020 (DOGAMI):

- Subject Properties are now on “recently stabilized foredune” (DLCD classification: “conditionally stable foredune”).
- That dune is now subject to ocean undercutting / wave overtopping
- BPS will be on active foredune.



Figure 3. Beach and dune geomorphic mapping classifications at Subject Project (DOGAMI, 2020)



# Changes in 1975-2020

- Summary:
  - When the residential development on the Subject Properties was approved, the development was where Goal 18 said it should be - on a “younger stabilized dune” that was not subject to ocean undercutting or wave overtopping.
  - Now, the residential development on the Subject Properties is on a “conditionally stable foredune” that is subject to ocean undercutting and wave overtopping, where Goal 18, IM 2 forbids residential development without a goal exception.
  - Hence the requested exception to Goal 18, IM 2.

- Applicants respectfully request that the County Board follow the recommendation of its planning commission and approve the requested exceptions because the law and evidence supports doing so
- Applicants are willing and enthusiastic to work with County to help draft findings as desired.

# Alternative Request

- The Applicants request the County also make **alternative findings** that the existing built/committed exceptions to Goals 3, 4 and 17 that allow the approved residential development **to be exactly where it is**, is also a built and committed exception that allows the approved residential development **to continue to exist** where it is even when the dune changed and became subject to wave overtopping/undercutting.
- Recall that Goal 18, Implementation Measure 2, prohibits residential development on a dune subject to wave overtopping/undercutting without an exception that allows the residential development to be there.
- The Goal 3, 4 and 17 exceptions were approved on the basis that the Subject Properties and Twin Rocks-Barview-Watseco was committed to residential use.
- They allow the Subject Properties residential development to be where it is.
- Which is now on an eroding dune. Therefore, the existing exceptions allow residential development on an eroding dune.

# The Policy Underpinnings for Existing Exceptions Demonstrates Approved Residential Development may Remain in Place and, as such, Goal 18 Requires they be Protected from Harm

- It is true that exceptions to one goal do not “ensure compliance with any other applicable goal” (OAR 660-004-0010(3)).
- However, it is also the case that the existing exceptions that cover the Subject Properties, together with the acknowledged applicable urban planning program, commit the Subject Properties to residential development.
- Goal 18 states that its purpose is “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”
- Accordingly, it furthers the policy of Goal 18 to protect life and property from hazards, to interpret the existing committed exceptions that allow residential development on the Subject Properties, to be exceptions to Goal 18, Implementation Measure 2 such that Goal 18 allows Beachfront Protective Structures, without a new exception.

# Requested Board of Commissioners Decision:

1. The Subject Properties meet standards for a “committed” and a “built” exception to Goal 18, Implementation Measure 2 that otherwise prohibits residential development on a dune subject to wave overtopping/undercutting.
2. The Subject Properties meet standards for a “committed” and a “built” exception to Goal 18, Implementation Measure 5 that otherwise prohibits beachfront protection for property not “developed” on January 1, 1977.
3. The Subject Properties meet the standards for a Goal 18 specific “reasons” exception to Goal 18, Implementation Measure 2.
4. The Subject Properties qualify for the “catch all” reasons exception to Goal 18, Implementation Measure 2 and 5. (DLCD prefers).

**IN THE ALTERNATIVE ONLY**, the existing exceptions that cover the Subject Properties allow residential development on a dune that is now eroding and so they are in fact an exception to Goal 18, Implementation Measure 2. Which means Goal 18 allows the proposed BPS.

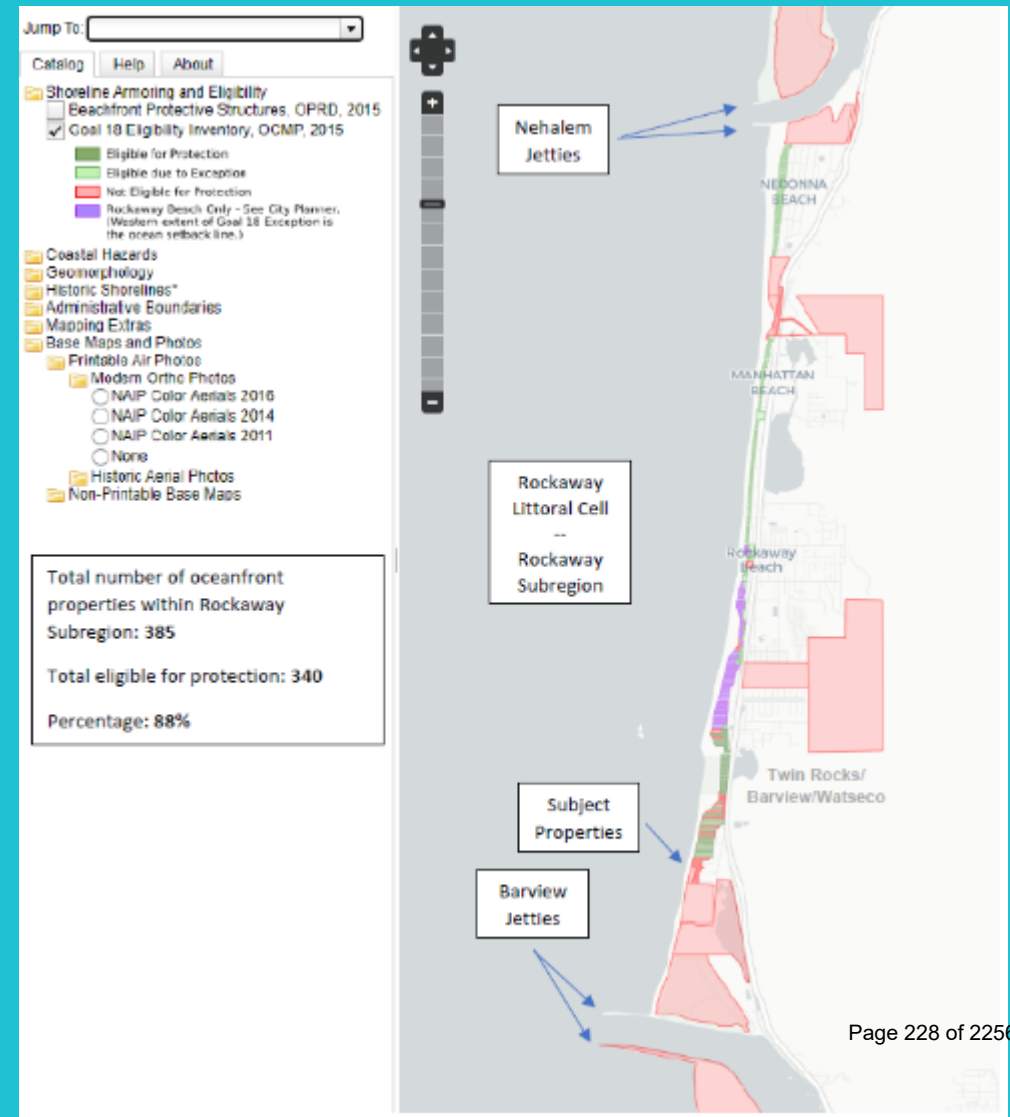


# The Request is Unique – not reproducible elsewhere

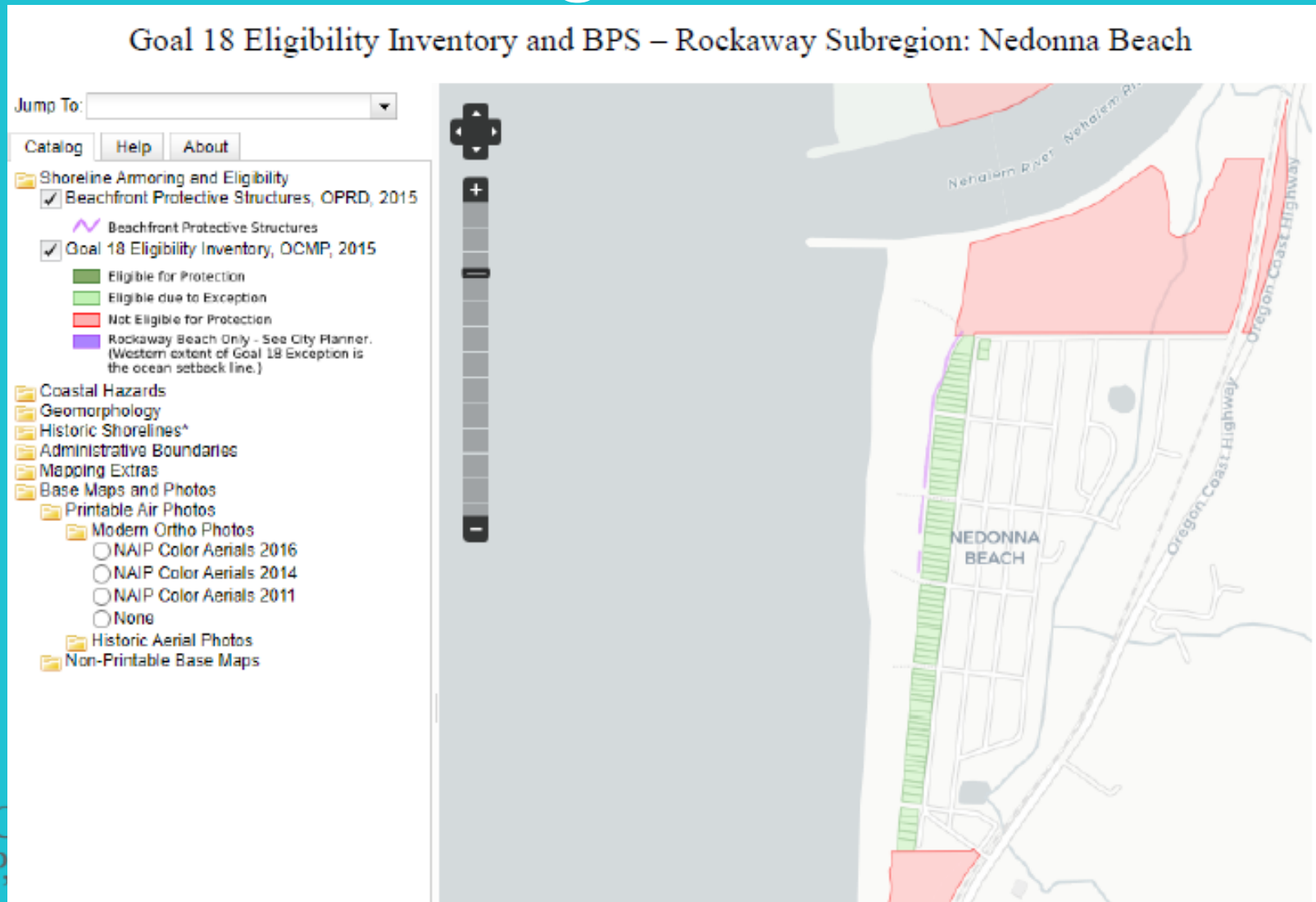
- When the Pine Beach subdivision was replatted (1994-1996); when the George Shand tracts were initially platted (1950); when water and sewer was extended to the subdivisions and when most houses were built, the ocean had been PROGRADING for 70-years– depositing sand, not taking it away.
- The professional reports of the time, stated residential development would be more than 237 feet away from the surveyed statutory vegetation line and further still from the ocean.
- A coastal forest separated residential development from the beach.
- The Subject Properties’ residential development was approved in good faith in complete compliance with all state and County standards. No reason to punish good faith landowners.
- Coastal processes substantially influenced by two man-made jetties on either end of the Rockaway littoral subregion.
- No other known littoral cell or littoral subregion on Oregon Coast is bounded by jetties in such close proximity to one another.
- The unusual placement of the man-made jetties in the Rockaway subregion has caused extreme erosion in the subregion where the Subject Properties are located, yet sand is still being deposited the rest of the littoral cell. The problem is unique to the Rockaway subregion.
- Subject Properties are in an acknowledged and vibrant urban unincorporated community.
- Goal 3, 4 and 17 exceptions already.
- 90% of the properties in the Rockaway subregion either have or are entitled to have rip rap per DLCD’s own “Atlas.” This was the compelling reason that DLCD and others used to approve BPS in Lincoln County. No reason this justification does not also apply here.

# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

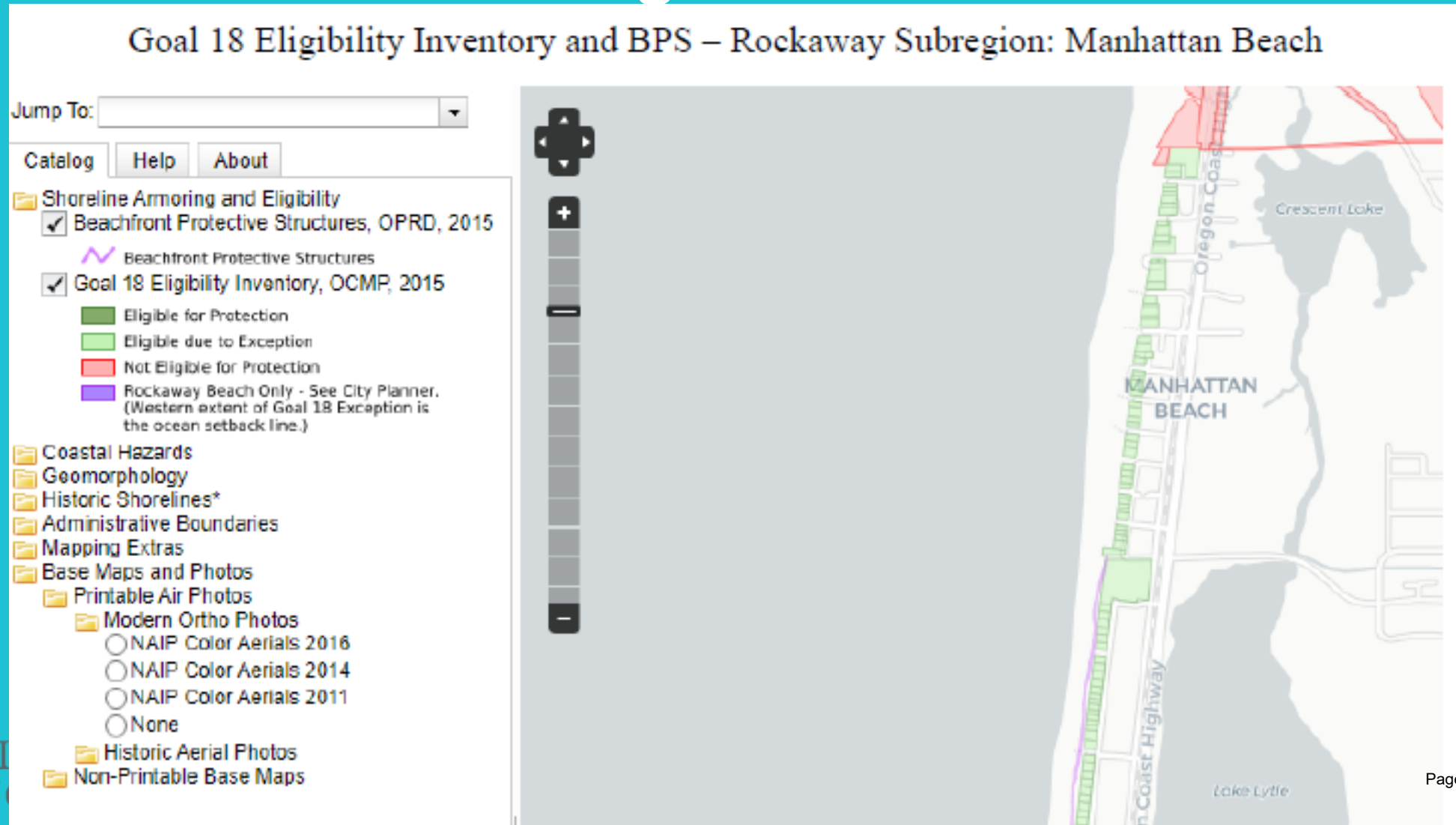
- 90% of the residential properties with development are identified as eligible for protection on DLCD's "Coastal Atlas".
- Non-eligible properties are the Subject Properties and properties that are generally zoned RM and Open Space w/little to no development.



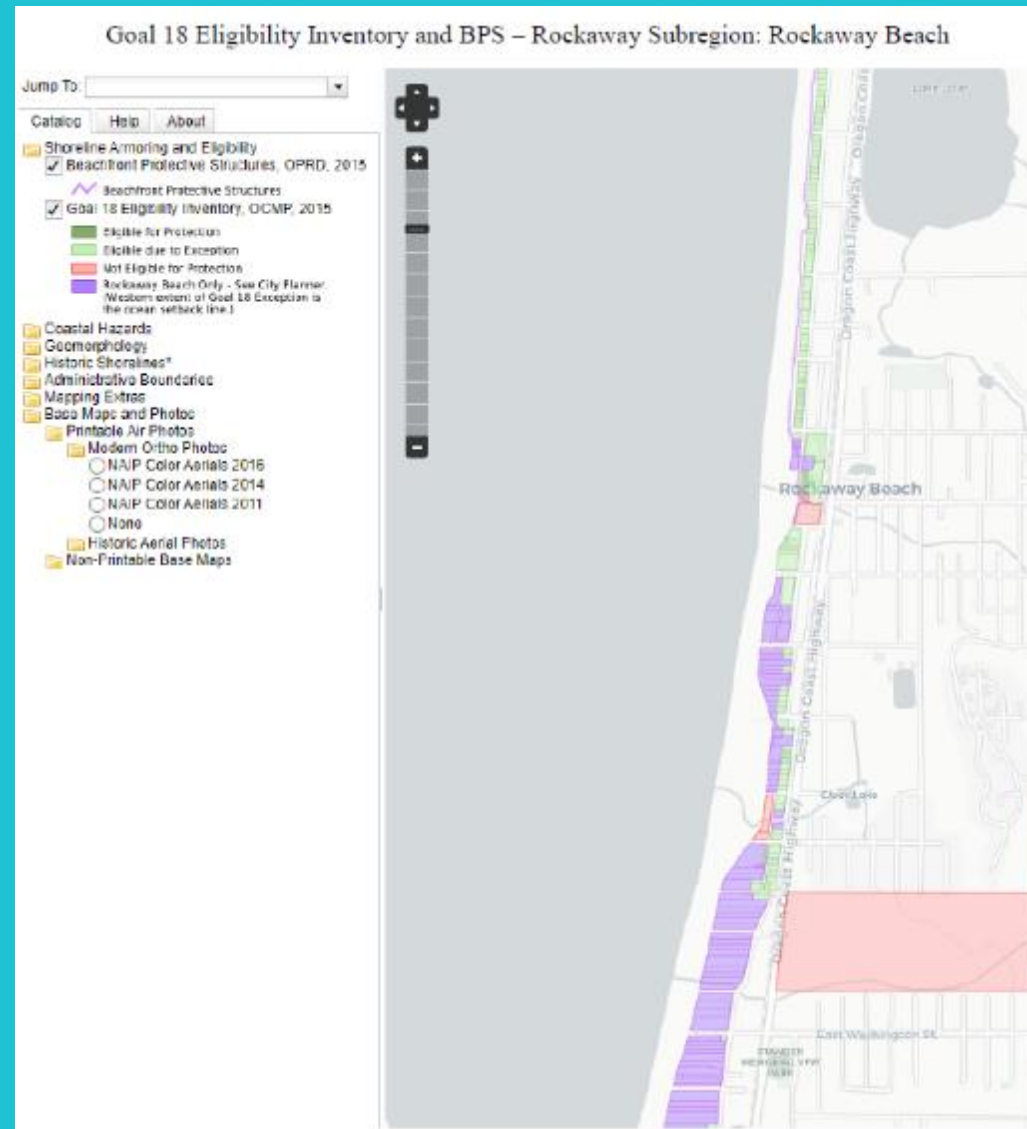
# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS



# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

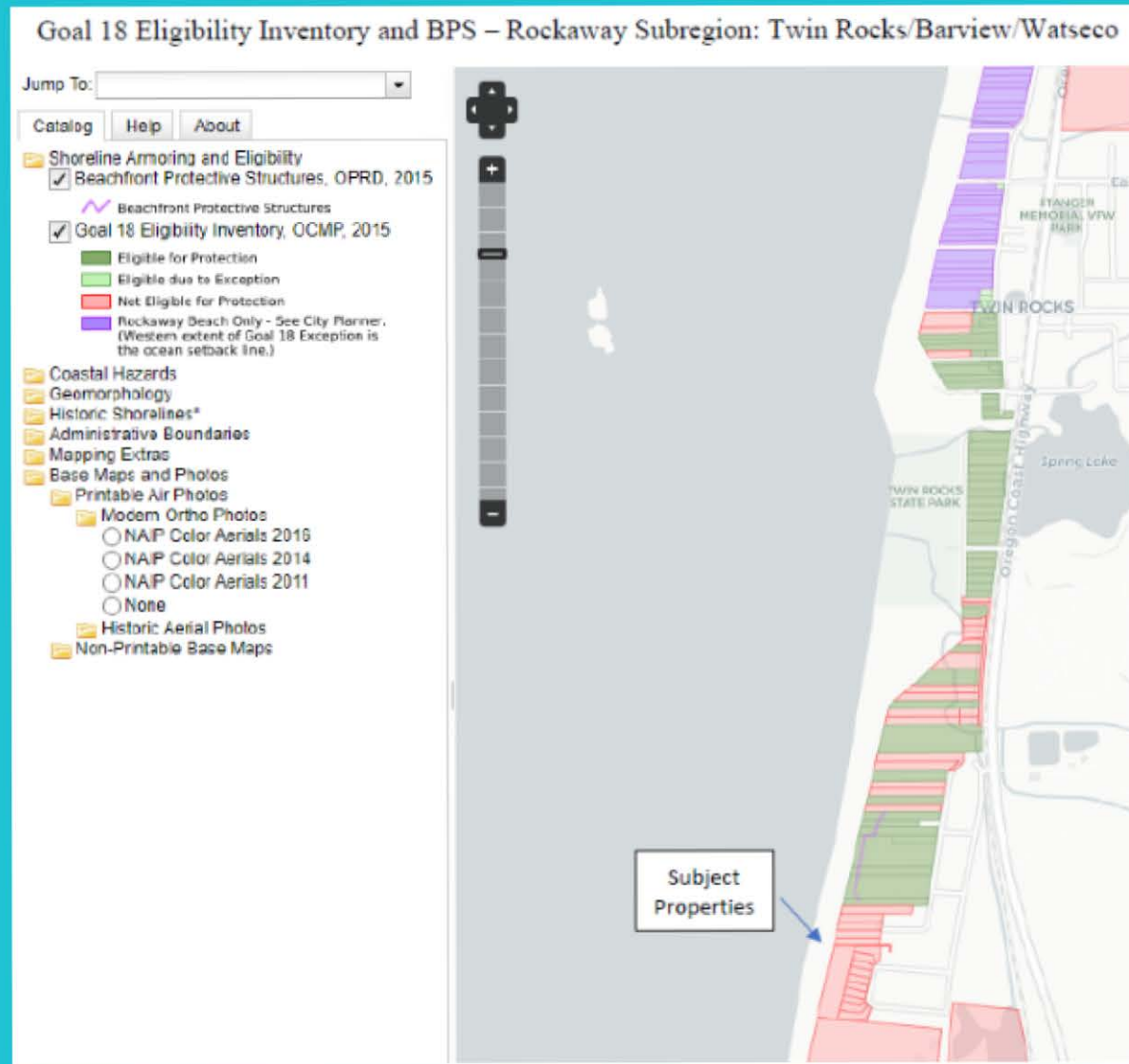


# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS





# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS



# 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.

# Comment/Answer

- This section addresses comments made by people who objected to the proposal before the planning commission.

# Comment/Answer

- *“Site conditions and environmental factors that impact development are beyond the County’s control. At what point does the County’s responsibility to protect private properties developed in coastal high hazard areas end?”*
- The existing residential development on the Subject Properties was never in a mapped “coastal high hazard area.”
- The Subject Properties became subject to ocean undercutting/wave overtopping due to the unusual effect of too closely placed man-made jetties influenced by successive El Nino and El Nina events causing unexpected erosion in the Rockaway subregion that reversed the 70+-year period of prograding that had been occurring when residential development was approved on the Subject Properties.
- County obligations under Goal 7: “Protect people and property from natural hazards.” Goal 18: “Reduce the hazard to human life and property from natural or man-induced actions associated with [coastal beach and dune] areas.”

# Comment/Answer

- *“Goal 18 recognizes importance of natural function of the beach. Actions should not contribute to loss of a natural resource. Rip rap always contribute to loss of natural function of the beach”*
- The proposed BPS will not contribute to loss of the beach. The BPS will not be sited on the beach; it will be sited entirely in the Applicants’ backyards which are still vegetated.
- Proposed BPS is “Type II” in Weggel’s classification system = structure w/minimal impacts on coastal processes within littoral cell system.
- There are types of BPS that cause harm, but the **proposed BPS is not one of them** – it has been carefully designed and per the well-known classification system, the proposal has minimal impact.



# Comment/Answer

- *“Goal 18 protects public access to the beach and citizen rights to enjoy the beach. Construction of a BPS will restrict access to the beach.”*
- As explained throughout the record, the BPS will not restrict access to or along the beach any more than is already occurring.
- Shorewood RV Resort’s BPS restricts access along the beach during high tides.
- Proposed BPS will be located further inland than Shorewood RV Resort’s BPS.
- High tides already restrict N-S access along the beach in front of Subject Properties (water comes right up to homes). BPS will not further restrict N-S access.

# Comment/Answer

- *“The beach is the natural resource and protecting the resource is greater than the right to protect private property from erosion and ocean flooding.”*
- Goal 18 places two overarching goal obligations on the County: (1) To conserve, protect, **where appropriate develop**, and where appropriate restore the resources and benefits of coastal beach and dune areas; **and** (2) To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.
- The acknowledged planning program for the Subject Properties is under Goal 18’s “appropriate development” prong.
- County is obligated under Goal 18 to protect human life and property from the hazards of coastal erosion and flooding.

# Comment/Answer

- *“Concern of negative impacts to neighboring properties if BPS is constructed. Shorewood RV Park and other properties in the County were identified to support these concerns.”*
- BPS will have no negative impacts to adjacent properties.
- Property to north is entitled to BPS (built before 1977), hence not part of this application. And can get BPS anytime they want it without going through a Goal exception process.
- Shorewood RV Park BPS does not harm neighboring properties. Erosion on adjacent properties caused by same forces that are eroding the Subject properties.

# Comment/Answer

- *“Lack of demonstration and justification to grant exception through Reasons criteria.”*
- The Applicants have thoroughly demonstrated that the proposal complies with the requirements for a Goal 18-specific “reasons necessary” standard under OAR 660-004-0022(11) and the requirements for a “catch-all” reasons exception under OAR 660-004-0020(1).
- Respectfully, it appears likely that many commentors have not read the Applicants’ submittals.

# Comment/Answer

- *“Blanket exceptions should not be granted. The taking of one exception does not alone constitute or satisfy criteria for granting additional exceptions.”*
- This is no “blanket exception.” Authoritative papers encourage property owners to work together as here to avoid the “sawtooth effect.”
- Subject Properties’ existing exceptions not sole basis for granting the requested exceptions, but factor into “reasons why” calculus of why the requested exception should be approved.
- Existing exceptions are only directly used in the Applicants’ requested ALTERNATIVE decision that the existing exceptions already allow residential development on the eroding dune and so are an exception to the prohibition in Goal 18, Implementation Measure 2, that residential development be prohibited on an eroding dune.



# Comment/Answer

- *“This decision is precedent setting, as DOGAMI projections indicate conditions are going to get worse, what obligation will the County be under in the future should this exception request be approved?”*
- DOGAMI and other professional projections indicate only Rockaway littoral subregion is experiencing significant continued erosion.
- 90% of all properties in Rockaway subregion are already entitled to BPS, so will not require a Goal 18 exception when they need BPS.
- Other 10% are mostly large tracts in public ownership or large tracts with no development that would require a BPS.
- Neskowin is also experiencing significant erosion but they also already have a Goal 18 exception that allows the BPS.
- Other Goal 18 exceptions requests will have to be evaluated on a case-by-case basis.
- No reasonable basis to conclude this is precedent setting because no other known part of the County or the state has the unique circumstances that are causing severe erosion here.

# Thank you

- Questions?

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**#851-21-000086-PLNG-01: GOAL 18 EXCEPTION REQUEST**  
**#851-21-000086-PLNG: FLOODPLAIN DEVELOPMENT**  
**PERMIT**

SARAH ABSHER, CFM, DIRECTOR  
TILLAMOOK COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

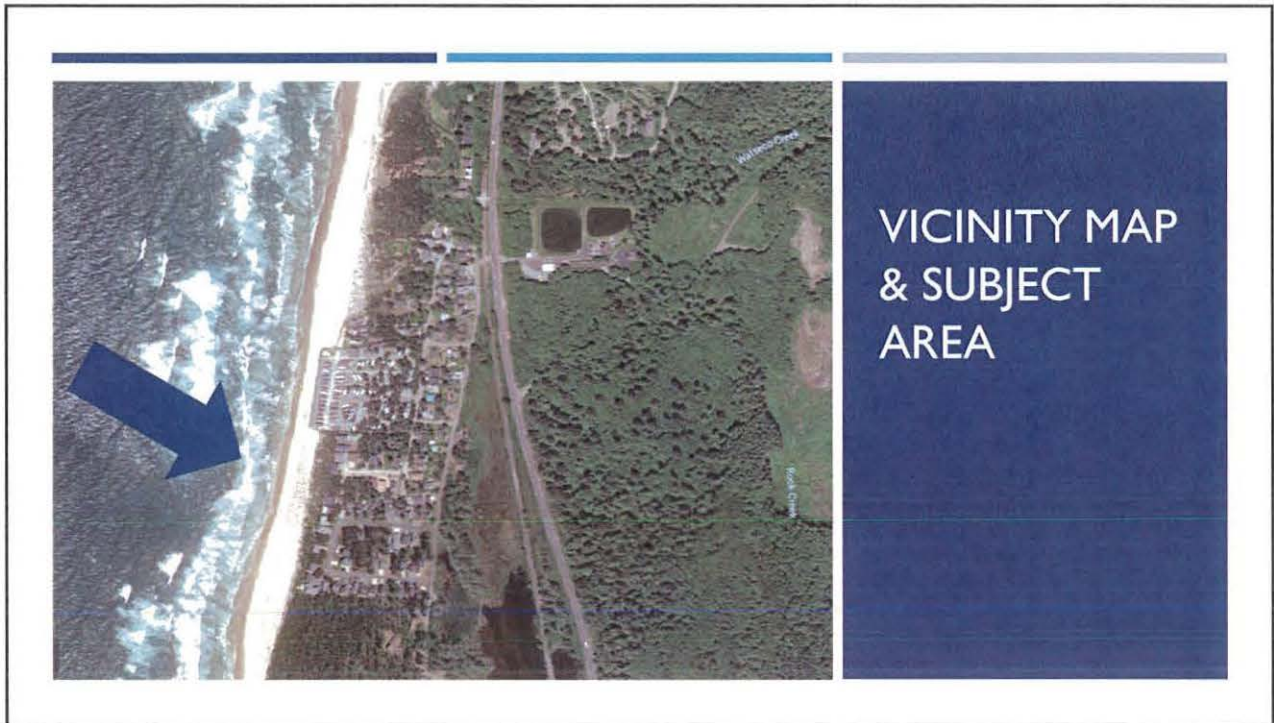


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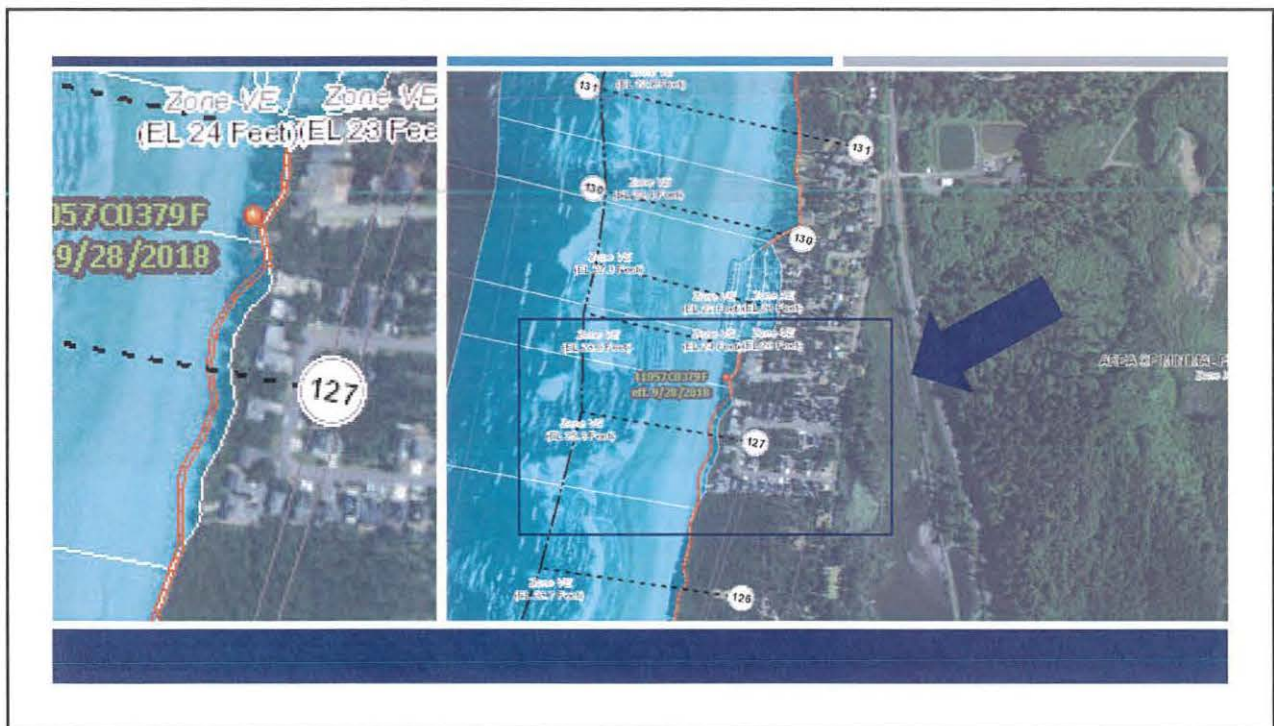


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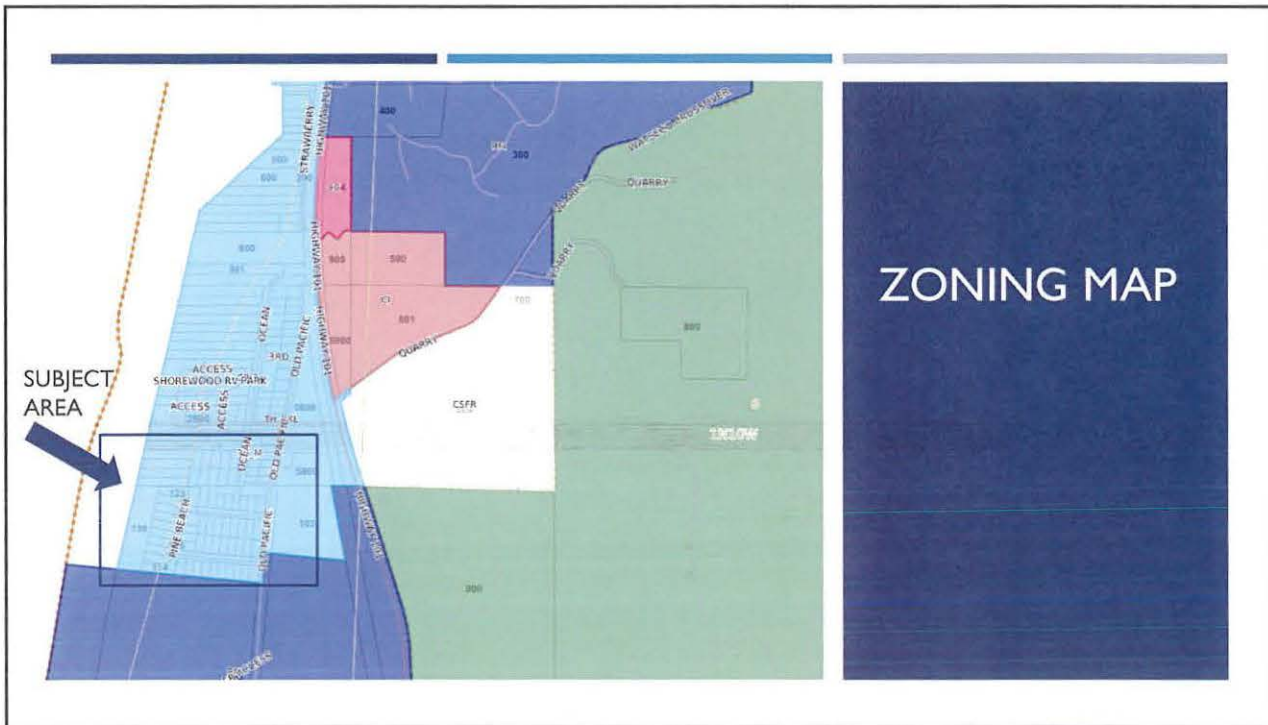




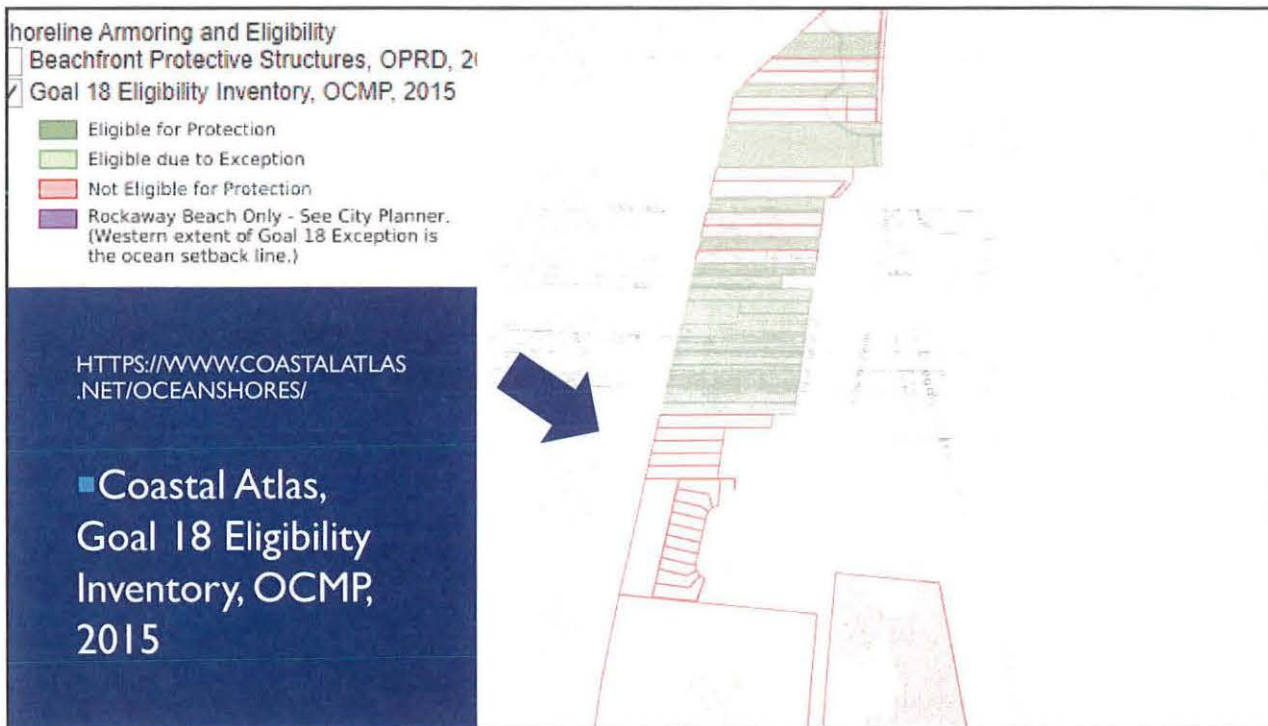
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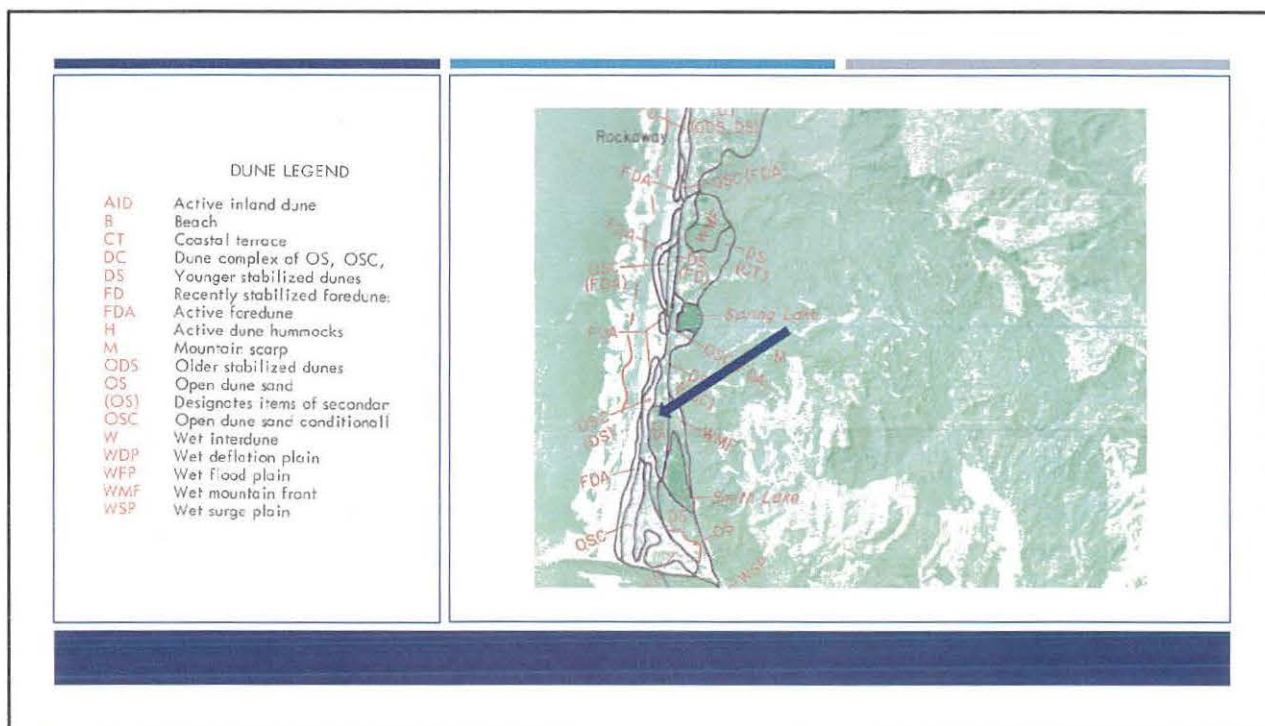


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## APPLICATIONS UNDER REVIEW

- Goal Exception request for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a "committed" exception and/or a "reasons" exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary .
- Development Permit Request for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone.
  - Beach & Dune Hazard Overlay Zone provisions are also made part of this permit review process.

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## CONSIDERATION FOR ACTION 2 SEPARATE APPLICATIONS & DECISIONS

### #851-21-000086-PLNG-01

### #851-21-000086-PLNG

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>▪ EXCEPTION TO GOAL 18 IMPLEMENTATION MEASURE 5 TO ALLOW THE CONSTRUCTION OF A BEACHFRONT PROTECTIVE STRUCTURE (BPS)</li> </ul> | <ul style="list-style-type: none"> <li>▪ DEVELOPMENT PERMIT FOR CONSTRUCTION OF BPS (BEACH &amp; DUNE OVERLAY ZONE) &amp; DEVELOPMENT WITHIN AREA OF SPECIAL FLOOD HAZARD</li> </ul> |
|--|--|

9

## GOAL 18 IMPLEMENTATION MEASURES #2 & #5

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>▪ Statewide Planning Goal 18 Implementation Measure #2 requires prohibition of residential, commercial and industrial development on beaches, active foredunes and other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.</li> <li>▪ 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. <u>These built and committed areas are Cape Meares, Tierra Del Mar, Pacific City and Neskowin.</u></li> </ul> | <ul style="list-style-type: none"> <li>▪ Implementation Measure #5 of Statewide Planning Goal 18 only allows beachfront protective structures where development existed on <b>January 1, 1977</b>. <i>Development is defined as 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.</i></li> <li>▪ Criteria that must be met for the construction of beachfront protective structures is included in Implementation Measure #5 and require evidence that visual impacts are minimized, access to the beach is maintained, negative impacts to adjacent properties are minimized, and long-term or recurring costs to the public are avoided.</li> </ul> |
|--|--|

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## APPLICABLE PROVISIONS

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

11

## DEFINITION OF “DEVELOPMENT” STATEWIDE PLANNING GOAL 18

■ **1977**

- **Develop**
- 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.
- **Development**
- The act, process, or result of developing.

■ **1984**

- Houses and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot.

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## DISCUSSION & CONSIDERATION

- **DEFINITION OF DEVELOPMENT**
  - 1977- IS EXCEPTION REQUIRED IF DEVELOPMENT MET DEFINITION?
    - 1941 SUBDIVISION PLAT VACATION OF PINE BEACH
  - 1984- EXCEPTION WOULD BE REQUIRED IF DEVELOPMENT DOES NOT MEET 1984 DEFINITION OF DEVELOPMENT
- WHAT TYPE OF EXCEPTION IS APPROPRIATE FOR CONSIDERATION? APPLICANT EXPLORES ALL THREE. TESTIMONY RECEIVED BY DLCD & OTHERS ARGUE THAT A REASONS EXCEPTION IS THE ONLY PATH FORWARD FOR A GOAL 18 IM5 EXCEPTION
- DEVELOPMENT LAWFULLY PERMITTED. GOAL 18 IM2/IM5 EXCEPTIONS WERE NOT REQUIRED TO BE TAKEN ON THE YOUNGER STABILIZED DUNE. THREAT OF EROSION & OCEAN FLOODING WAS NOT PRESENT AT THE TIME OF DEVELOPMENT BUT ARE PRESENT NOW.

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**THE BEACH IS THE RESOURCE- PURPOSE OF GOAL 18 IS TO PRESERVE & PROTECT THE BEACH RESOURCE**

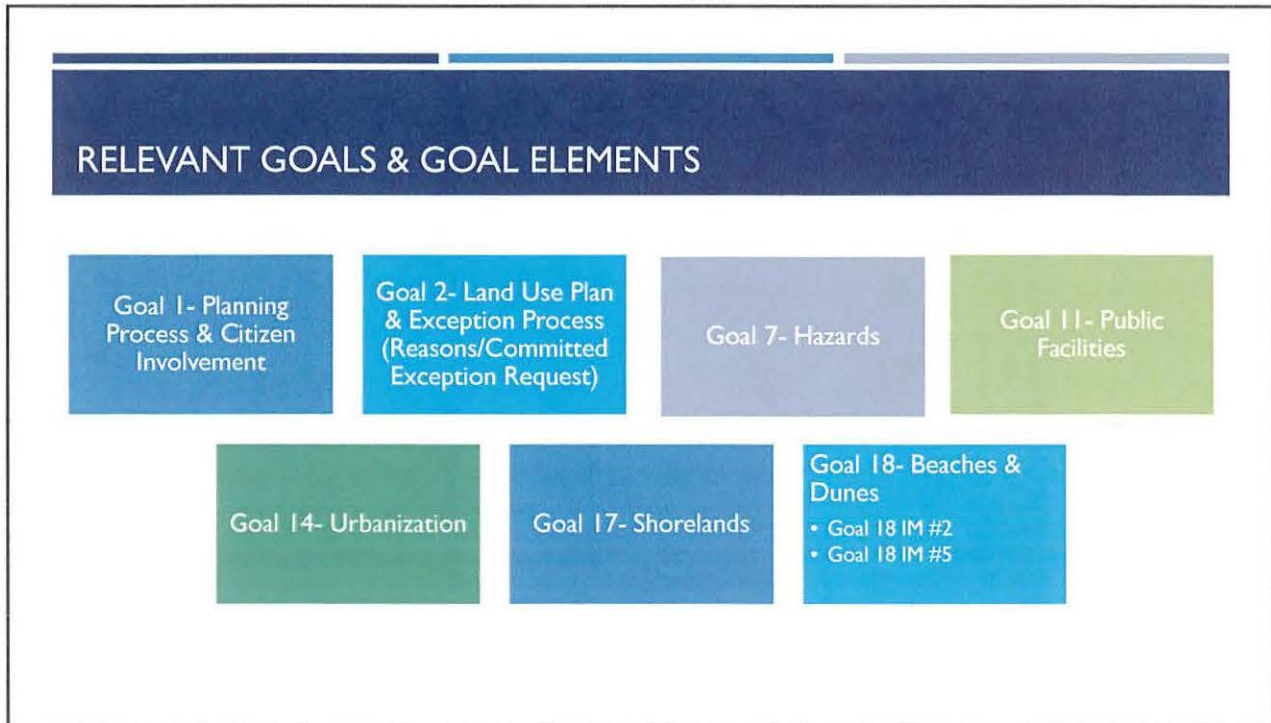
- PROTECTION PRIORITY: DEVELOPMENT OR THE BEACH?
- POLICIES OF GOAL 18 ITSELF- PROTECT BEACH RESOURCE- WHAT IMPACT, IF ANY, DOES THE BPS HAVE ON THE RESOURCE NOW AND IN THE FUTURE, AND ULTIMATELY WILL THE BPS RESULT IN FURTHER DEGRADATION OF THE RESOURCE?
- WHILE SITE CONDITIONS MAY CHANGE DUE TO CONTINUED EROSION, THE CONSTRUCTION OF THE PROPOSED BPS IS LOCATED WHOLLY WITHIN PRIVATE PROPERTY BOUNDARIES OF THE SUBJECT PROPERTIES
  - FUNCTION OF BPS- ONLY WHEN THREAT OF EROSION EXISTS AT THE LOCATION OF THE BPS. UNTIL THEN, WHAT IS THE PURPOSE AND FUNCTION OF THE BPS?
- ENSURING PUBLIC ACCESS ALONG THE BEACH, NOT NECESSARILY ACCESS TO THE BEACH FROM THE PRIVATE/PUBLIC ROAD SYSTEM
- LINCOLN COUNTY APPLICATION VS TILLAMOOK COUNTY FROM DLCD STANDPOINT- SITE CONDITION CONSIDERATION

**RELATIONSHIP WITH OTHER POLICIES & GOALS**

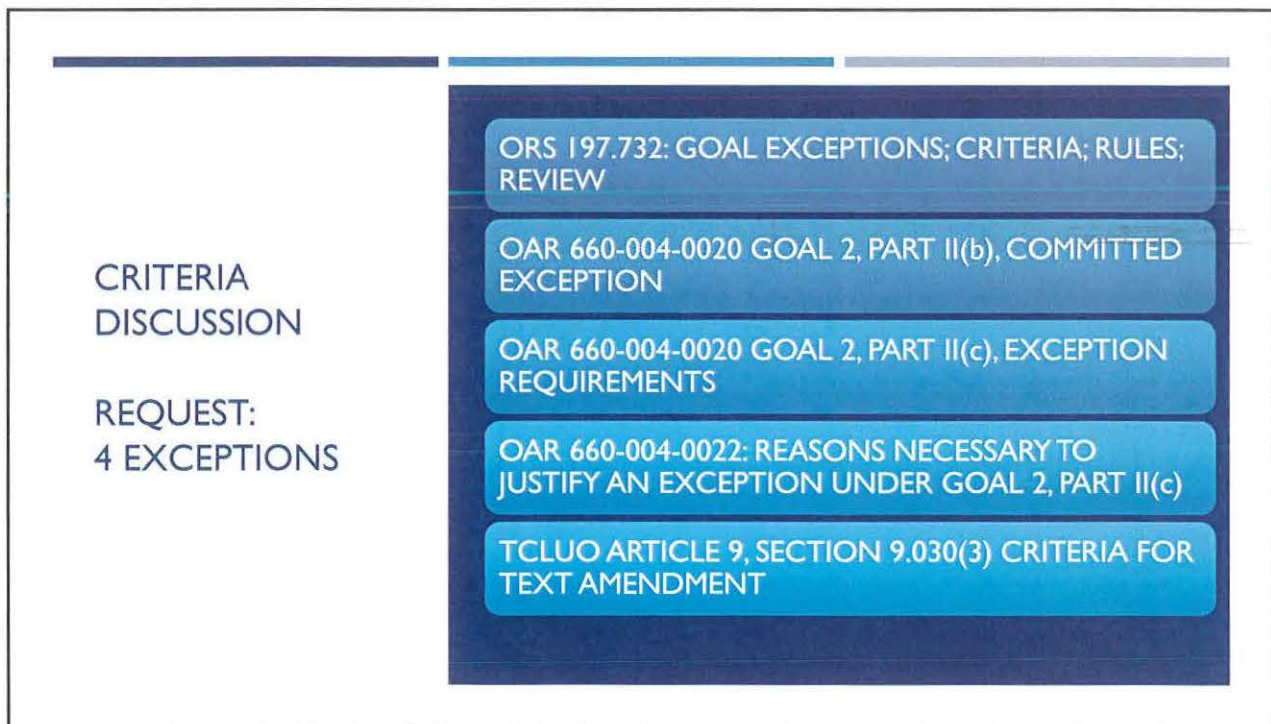
- GOAL 7, NATURAL HAZARDS- COUNTY'S OBLIGATION TO UPHOLD OTHER POLICIES OF STWP & COMPREHENSIVE PLAN- BPS PROPOSAL AND GOAL EXCEPTION REQUEST IS CONSISTENT WITH GOAL 7 POLICIES?
- GOAL 10 HOUSING ELEMENT- POLICY TO PROMOTE DIVERSE HOUSING STOCK & HOUSING CRISIS?
- SHORELAND GOAL 17 ELEMENT- HAS EXCEPTION BEEN TAKEN? PRIORITY OF NON-STRUCTURAL VS STRUCTURAL SOLUTIONS? SHOULD AN ALTERNATIVE ANALYSIS BE DONE TO PROVE WHY NON-STRUCTURAL SOLUTIONS CANNOT BE CONSIDERED?

## DISCUSSION & CONSIDERATION CONTINUED

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## SUMMARY OF FINDINGS MADE BY APPLICANT TO JUSTIFY WHY EXCEPTIONS SHOULD BE GRANTED

- DEVELOPMENT was lawfully permitted by Tillamook County
  - Some if not all properties meet definition of "DEVELOPMENT" as originally defined in Goal 18
    - Determination and identification of properties that meet definition of "development"
    - Subject area is an irrevocably committed area intended for urban residential use
- REQUEST IS CONSISTENT WITH GOAL 18 (AND GOAL 7) POLICIES TO REDUCE HAZARD TO HUMAN LIFE & PROPERTY FROM NATURAL ACTIONS ASSOCIATED WITH COASTAL BEACH & DUNE AREAS
- Visual impacts are minimized and existing beach access is maintained.
- BPS IS DESIGNED TO MINIMIZE IMPACTS ON ADJACENT PROPERTIES AND WILL NOT INCREASE RISK OF HAZARDS (WAVE RUN-UP, INCREASED WAVE HEIGHT, INCREASED FLOOD RISK OR DIVERSION OF FLOOD WATER)
- BPS IS DESIGNED TO MEET GOAL 18 REQUIREMENTS & BEACH & DUNE HAZARD OVERLAY ZONE STANDARDS
  - (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.

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## SUMMARY CONTINUED

- The project design protects surrounding properties from the adverse impacts of development, including protection from direction of additional water to surrounding properties, increase in wave heights or wave runup, or impact to the natural littoral drift of sediment along the coast.
- As stated in the Technical Memorandum provided by West Consultants, the proposed revetment structure will reduce the risk of damage to life, property and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides.
- West Consultants Technical Memorandum explains that the structure is designed to address ocean flooding and storm waves and that its design will not cause an increase to FEMA total water levels near the structure.
- The proposed beachfront protective structure will protect the natural environment from beach erosion and adverse impacts from coastal flooding.
- Applicants state the design of the proposed beachfront protective structure is consistent with Goal 18, IM 3 and will provide protective measures where natural protective measures have failed including protection (not the destruction) of desirable vegetation.
- Applicants state the proposed beachfront protective structure does not use or affect groundwater as the structure does not reach down to the water table and will not lead to loss of water quality or the intrusion of salt water into water supplies.
- Fore-dune breaching is not part of the proposed development.
- Applicants state that while grading and sand movement will occur for the development of the proposed beachfront protective structure, these construction activities are not for the purposes of maintaining views or preventing sand inundation (Exhibit B). The proposal to construct a beachfront protective structure will protect the fore-dune.
- BPS will be constructed and maintained (including vegetation maintenance requirements) by the property owners.

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## ENVIRONMENTAL, ECONOMIC, SOCIAL & ENERGY CONSEQUENCE ANALYSIS SUMMARY

- Applicants state the ESEE demonstrates consequences that would result from the construction of a beachfront protective structure at the subject location are not significantly more adverse than what would typically result from the same proposal being located in a different area that would or would not require a Goal 18, IM 5 exception. Applicants add that there are only two differences between the proposed exception area and the other sites:
  - The proposed exception area is much larger than individual property elsewhere and while the adverse environmental impact of building a beachfront protective structure at the subject location is greater than for a single property, the impact will be temporary given the impact area will be re-covered with sand, replanted and monitored.
  - An environmental benefit will result from this proposal for a larger area as a greater area of the foredune (not just an area within a single lot) will be restored and protected with beach grasses, shrubs and trees.
  - Locating the beachfront protective structure at any other location would not protect the subject properties and related public infrastructure, hence the reason for the exception request.

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## TCLUO SECTION 9.030(CRITERIA)

- (a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- (b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);
- (c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and
- (d) The amendment must conform to Section 9.040 Transportations Planning Rule Compliance.

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## PUBLIC & AGENCY COMMENTS

- LACK OF EVIDENCE THAT EXCEPTION SHOULD BE GRANTED
- ALTERNATIVES ANALYSIS DOES NOT MEET JUSTIFICATION FOR EXCEPTION
- THREAT OF EROSION TO ADJACENT PROPERTIES
- INCREASED THREAT OF FLOOD RISK TO ADJACENT PROPERTIES
- PROTECTION OF EXISTING DEVELOPMENT DOES NOT JUSTIFY NEED TO GRANT EXCEPTION
- EXCEPTION SHOULD NOT BE GRANTED SIMPLY BECAUSE EXCEPTIONS IN THIS AREA HAVE ALREADY BEEN TAKEN
- THREAT OF BEACH ACCESSIBILITY ON STRETCH OF BEACH ADJACENT TO THE SUBJECT PROPERTIES

21

## DEVELOPMENT PERMIT DISCUSSION BEACH & DUNE OVERLAY ZONE, TCLUO SECTION 3.530

- **PERMITTED CONSTRUCTION OF A BPS REQUIRES GOAL EXCEPTION**
- *For the purposes of this requirement, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through the construction of streets and provision of utilities to the lot. Lots or parcels where development existed as of January 1, 1977, are identified on the 1978 Oregon State Highway Ocean Shores aerial photographs on file in Tillamook County.*
- **SITE DEVELOPMENT REQUIREMENTS & DETAILED SITE INVESTIGATION REQUIRED**
- *The report of a Detailed Site Investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations. The report shall include standards for:*
  - a. Development density and design;
  - b. Location and design of roads and driveways;
  - c. Special foundation design (for example spread footings with post and piers), if required;
  - d. Management of storm water runoff during and after construction.
- *Summary Findings and Conclusions. The Preliminary and Detailed Site Reports shall include the following summary findings and conclusion:*
  - 1. The proposed use and the hazards it might cause to life, property, and the natural environment;
  - 2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure.
  - 3. Measures necessary to protect the surrounding area from any hazards that are a result of the proposed development;
  - 4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.
- **BPS WILL NOT EXCEED 3-FOOT HEIGHT MAXIMUM**

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## DEVELOPMENT PERMIT DISCUSSION FLOOD HAZARD OVERLAY ZONE, TCLUO SECTION 3.510

- GENERAL STANDARDS
  - ANCHORING
  - CONSTRUCTION MATERIALS & METHODS
  - UTILITIES
- SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD AREAS
  - ELEVATION & PILING CONSTRUCTION (NOT APPLICABLE)
  - MUST BE ENGINEERED DESIGN
  - MUST BE LOCATED LANDWARD OF THE REACH OF MEAN HIGH TIDE
  - PROHIBIT MAN-MADE ALTERATION OF SAND DUNES, INCLUDING VEGETATION REMOVAL, WHICH WOULD INCREASE POTENTIAL FLOOD DAMAGE

23

## DEVELOPMENT PERMIT DISCUSSION FLOOD HAZARD OVERLAY ZONE CRITERIA, TCLUO SECTION 3.150

### *Development Permit Review Criteria*

- (1) *The fill is not within a floodway, Coastal High Hazard Area, wetland, riparian area or other sensitive area regulated by the Tillamook County Land Use Ordinance.*
  - (2) *The fill is necessary for an approved use on the property.*
  - (3) *The fill is the minimum amount necessary to achieve the approved use.*
  - (4) *No feasible alternative upland locations exist on the property.*
  - (5) *The fill does not impede or alter drainage or the flow of floodwaters.*
- *BPS is not a new or modified Flood Refuge Platform*

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**FINDINGS IN SUPPORT OF APPROVING THE GOAL 18 EXCEPTION REQUEST BY THE PLANNING COMMISSION**

- Unique and exceptional circumstances apply to these properties. The subdivision and subsequent development of the lots was done through appropriate land use and permitting processes and were done in good faith.
- Zoning allows for residential development of these properties within the Unincorporated Community of Barview/Twin Rocks/Watseco, an urbanized area committed to urban development through previously taken Goal Exceptions (3,4, 11 and 14).
- Because this area has historically been categorized as a stabilized dune, no Goal 18 Exceptions were needed to be considered or taken for this area at the time of adoption of the Tillamook County Comprehensive Plan.
- Request for Goal 18 Exception is not a self-created issue. At the time of permitting and land use review, development was sited on a stabilized dune. Site conditions that exist today did not exist at the time of development- specifically erosion and ocean flooding.
- In relation to adjacent lots not part of this exception request, granting a Goal 18 Exception does not prevent those who already have a right to rip rap or develop from pursuing same option in the future. It is not right to deny a property owner the same opportunities to protect their property that others are afforded due to grandfathered rights that allow them to take action for protection of their property. (Properties where "development" existed on January 1, 1977.)
- The development standards and criteria of the Flood Hazard Overlay Zone have been met through design and location of the proposed BPS.
- The development standards and criteria of the Beach and Dune Overlay Zone have been met through design and location of the proposed BPS.

26



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### ADDITIONAL FINDINGS BY THE PLANNING COMMISSION:

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

## Allison Hinderer

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**From:** Sarah Absher  
**Sent:** Wednesday, July 28, 2021 9:18 AM  
**To:** Allison Hinderer  
**Subject:** ORCA Testimony, Pine Beach Goal 18 Exception (#851-21-000086)  
**Attachments:** ORCA to Tillamook BOC re Pine Beach Goal 18 Exception July 2021.pdf; 1915, C-0129-Watseco Plat.pdf; 1932, C-0071- Plat of Pine Beach.PDF; 1950, A-0444- George Shand Tracts.pdf; 1986, B-1218, Patten Survey (Shows Lots W. of Ocean Blvd. in Pine Beach).pdf; 1996, C-0466- Pine Beach Replat, Unit 1.pdf; Pine Beach Area Survey Chronology May 2021.pdf

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**From:** Cameron La Follette <cameron@oregoncoastalliance.org>  
**Sent:** Wednesday, July 28, 2021 8:55 AM  
**To:** Melissa Jenck <mjenck@co.tillamook.or.us>; Sarah Absher <sabsher@co.tillamook.or.us>  
**Cc:** Sean Malone <seanmalone8@hotmail.com>  
**Subject:** EXTERNAL: ORCA Testimony, Pine Beach Goal 18 Exception (#851-21-000086)

[**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 Ms. Absher and Ms. Jenck,

Attached please find the testimony of Oregon Coast Alliance before the Tillamook County Board of Commissioners on the matter of the Pine Beach Goal 18 Exception request. There are also six additional attachments, for a total of **seven** documents attached to this email. Please respond that you have received this email, and opened and placed all seven documents in the record for this matter.

Thank you,

Cameron  
—

Cameron La Follette  
Executive Director  
Oregon Coast Alliance  
P.O. Box 857  
Astoria, OR 97103  
(503) 391-0210  
[cameron@oregoncoastalliance.org](mailto:cameron@oregoncoastalliance.org)  
[www.oregoncoastalliance.org](http://www.oregoncoastalliance.org)

# Sean T. Malone

## Attorney at Law

259 E. Fifth Ave.,  
Suite 200-C  
Eugene, OR 97401

Tel. (303) 859-0403  
Fax (650) 471-7366  
seanmalone8@hotmail.com

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July 28, 2021

### Via Email

Tillamook County Board of Commissioners  
c/o Melissa Jenck  
Tillamook County Department of Community Development  
1510-B Third Street  
Tillamook, OR 97141  
[mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)

Re: Oregon Coast Alliance testimony for a request for an Exception to Goal 18, and  
Development Permit Request for Construction of a Beachfront Protective Structure,  
#851-21-000086

Dear Board of Commissioners,

On behalf of Oregon Coast Alliance, please accept this testimony for the requested goal exception to Goal 18 for the installation of a beachfront protective structure (riprap revetment along roughly 880 feet) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone. The subject properties are Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123, of Section 7DD, and Tax Lots 3000, 3100, 3104, 3203, and 3204 of Section 7DA all in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The applicant has presented a moving target, with alternative requests. In essence, the applicant requests exceptions to Goal 18, implementation measure 2 and to Goal 18, implementation measure 5. Moreover, as the applicants do not already hold a Goal 18 exception, and no alternative request should be approved.

Goal 18 intends “to conserve, protect, where appropriate develop, and appropriate restore the resources and benefits of the coastal beach and dune areas.” Goal 18 places a limitation on permits for beachfront protective structures when the 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.”

Goal 18, Implementation Requirement 5. The subdivision at issue was first platted *after* 1977 and no development occurred prior to 1977, with the exception of an undisputedly vacated subdivision that did not include any development, as the term is defined in the rule.

The history of the platted area in and around Pine Beach is complex. Attached to this testimony is a chronological timeline of the platted areas, as well as copies of the original plats and surveys. To briefly recap, there was a 1915 survey of Watseco plat, but a subsequent plat vacation in 1931. Neither of these created or concerned any platting activity west of Ocean Boulevard. The 1932 plat of Pine Beach, to the south of Watseco Plat, also shows Ocean Boulevard as the westernmost platted land. Survey A-0444 of 1950, the George Shand Tracts, was the first time lots were platted west of Ocean Boulevard; a resurvey took place in 1967, and a partial resurvey in 1980. No houses were built on the George Shand tracts. It was not until 1986 that land was even platted west of Ocean Boulevard to the *west* of the Pine Beach plat. Partition plats of 1994, 1995, 1996 and 1999 divided land west of Ocean Boulevard in Pine Beach and George Shand tracts. The first houses on the Pine Beach lots were built in 1997 and 1998, with others added later. The first house on the Shand Tract lots was built in 1989. This history makes it clear that no development, as defined by the rules, took place in the Pine Beach area where a Goal 18 is now requested until 1997 in Pine Beach. Merely surveying and platting is not “development.”

ORCA agrees that “development did not exist[] ... on January 1, 1977[.]” Planning Commission Staff Report at 4.<sup>1</sup> Furthermore, the definition of “development” has not been satisfied. Because of this, an exception is necessary to place any beachfront protective structures, and, as demonstrated below, the applicants do not already possess an exception. As the area at issue in this application is not part of an exception area to Goal 18, a goal exception is necessary. Because a “committed” exception is focused on adjacent uses, and the applicant does not rely on adjacent uses, a “committed” exception is not applicable. Therefore, a reasons exception process is the applicant’s only path forward, even though an approval is foreclosed on that basis as well.

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<sup>1</sup> No development was in existence on January 1, 1977. Evidence from the agencies and records identified above confirms *development* as defined above and which requires more than simply the creation of the lots/parcels occurred after January 1, 1977.” Staff Report, Page 4.

<sup>2</sup> “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



Any request for an exception faces a high bar. The criteria for a “reasons” exception are found at OAR 660-004-0020(2).<sup>2</sup>

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<sup>2</sup> “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;

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

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

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

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

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

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

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

(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar



The applicant alleges that the public water and sewer systems that provide serve to the properties would be threatened, as well as the integrity of the systems themselves. This obviously proves too much. If ever these were threatened, they could be shut off or even removed. There is no evidence that the beach would be contaminated prior to some remedial action. This is a basic failure to provide substantial evidence. The application can be denied on this issue alone.

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types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

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

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

The applicants' focus on the particular design 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 entirely that does not come into play at this stage.

The applicant has not sufficiently presented alternatives that would not require a goal exception. Only through an analysis of alternatives can the applicant demonstrate that a goal exception is necessary. This principle is well established in caselaw. The applicant has also not demonstrated a particularly unique need for the proposed exception. Eroding shores are common throughout Oregon and the general area; that the Pine Beach houses were built on what was at the time a stabilized dune is likewise irrelevant. This is a high hazard area on the coast, and fluctuations in sand movement in such areas are recognized, common and continuous coastwide. If all eroding shorelands are eligible for a protective structure, then Goal 18 has simply become superfluous and nothing about this property is unique. This is not a situation where, as in Lincoln County at Gleneden Beach, the area is dominated by riprap. The applicant must demonstrate that this area is somehow different than other areas where shoreline armoring is not permitted. Moreover, the applicants must demonstrate alternatives to the use of a protective structure, which has not occurred.

Consistent with the purpose of Goal 18 the applicant must address the impacts of additional shoreline armoring on the beach, access to the beach, and adjacent or nearby properties. These are “relevant factors,” and the application obviously fails to address these impacts. For example, the use of riprap would affect other, non-armored areas of the cell. The applicant has not presented an analysis of these impacts, and, instead, presents a narrow view, one where “[t]he only ‘relevant factors’ to consider in this ‘reasons’ exception are the specific exception area as defined, and the above-cited specific characteristics of a beachfront protective structure that require its shoreline location on the subject properties.” The applicants have failed to consider the effect of the exception on surrounding properties.

The applicant is wrong to allege that no resource land is being used for the proposed shoreline protection. The properties are subject to Goal 17 and 18, and, therefore, the proposed protective structure is resource land. The applicant must consider other alternatives that would not require an exception on the subject property i.e., on resource land.

The proposed ESEE analysis remains deficient. For the environmental considerations, the applicants allege that the structure was “designed to reduce adverse impacts” but never explains the expected impacts. Even if it is assumed that the allegation is correct, some degree of impacts is conceded, yet unexplained and unanalyzed. It is incumbent upon the applicant and local government to address those impacts. The applicant essentially threatens the possibility of loss of homes and detritus after years of erosion with the certainty of riprap. The ESEE analysis must present a straightforward analysis of the impacts, not a skewed version.

The economic analysis continues to be deficient. It fails to acknowledge the economic impacts to other properties as a result of placing riprap. The applicant focuses almost exclusively on the value of the existing homes and the possibility of damage to water and sewer facilities. Moreover, the notion that remedial action would not occur for such facilities is far-fetched. The applicant has not provided a serious attempt at an economic analysis.

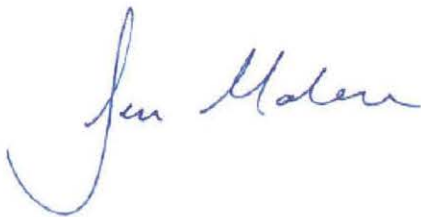
The applicant also includes four vacant oceanfront lots within the proposed exception area. The applicant has not demonstrated adequate reasons for the inclusion of these properties, as the alleged threats are not present on vacant land. As with other issues, the applicant has not presented a rational reason or even substantial evidence to include these properties

Finally, there is no alternative basis to approve an exception based on the allegation that an exception already exists. The applicants are simply wrong and the argument is half-hearted. The applicant would not have originally requested an exception if an exception already existed. Moreover, there is no dispute that no exception to what the applicant seeks here has ever been allowed. Exceptions are specific, not general. The applicants simply fail to present a cogent argument on this issue.

Tillamook County does not have a responsibility to protect private properties with residences built in high hazard zones; but it does have a responsibility to ensure that applications for a Goal 18 exception meet the requirements of state law, and to uphold state policies on protection of beach resources, both for public enjoyment and to limit rather than exacerbate the coastal erosion that follows placement of riprap and other shoreline armoring.

For the above reasons, ORCA respectfully requests that the Board of Commissioners deny the application for a Goal 18 exception.

Sincerely,

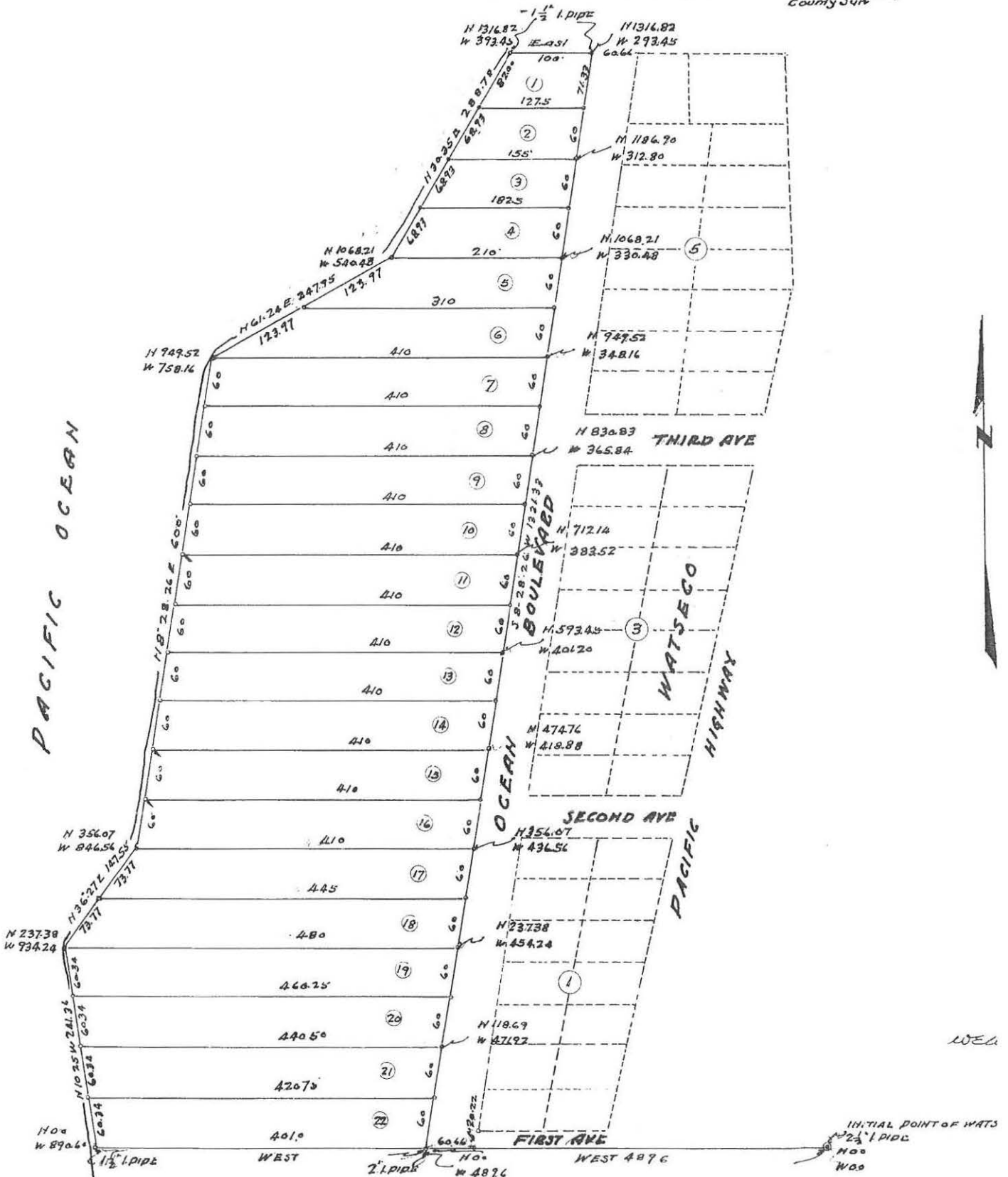
A handwritten signature in blue ink that reads "Sean T. Malone". The signature is written in a cursive style with a large, sweeping initial "S".

Sean T. Malone  
Attorney for Oregon Coast Alliance

Cc:  
Client

**SURVEYOR'S CERTIFICATE**

I, W. E. Anderson County Surveyor of Tillamook Oregon do hereby certify that this map was made from notes taken during an actual survey made by me in Oct. 1950, and that it correctly represents the property herein shown  
 W.E.A. County Sur



**GEORGE SHAND TRACTS**  
 LOCATED  
 IN SEC 7 T. 11 N. R. 10 W. W. T. 1  
 TILLAMOOK CO. OR.  
 SCALE 1" = 100'  
 W. E. ANDERSON

A  
 444

**851-21-000086-PLNG-Application, Tillamook County  
Plat & Survey Chronology May 2021**

- 1914 Tillamook, N. Jetty Constructed
- 1915 Survey C-0129, Watseco Plat, Ocean Blvd. is western most platted land
- 1916 Nehalem, S. Jetty Constructed
- 1918 Nehalem, N. Jetty Constructed
- 1931 Tillamook N. Jetty Reconstructed and Extended to full length
- 1931 Survey C-0111, Vacation Plat of a Portion of Watseco Plat, Ocean Blvd. western most platted land.
- 1932 Survey C-0071, Plat of Pine Beach (**land to the south of Watseco Plat**), Ocean Blvd. is western most platted land. Note reference to Watseco Blks. to the north.
- 1950 Survey A-0444, George Shand Tracts, **first time Lots are platted west of Ocean Blvd., west of Watseco Plat**
- 1967 Survey A-1502, Resurvey/Monument of George Shand Tracts
- 1969 Tillamook S. Jetty Construction Began and final segment completed in 1979
- 1980 Survey B-1033, Resurvey of a portion of George Shand Tracts
- 1986 Survey B-1218, George Patten Bdy. Survey, **first time land is platted west of Ocean Blvd., west of Pine Beach Plat**
- 1994 Partition Plat 1994-3, divided land west of Ocean Blvd. in B-1218 into three parcels.
- 1995 Partition Plat 1995-33, partition in George Shand Tracts.
- 1996 **Survey C-0466**, Pine Beach Replat, Unit 1- Note location of Ocean Blvd. relative to Pine Beach Subdivision Lots 11-20 where revetment is proposed.
- 1999 **Survey C- 0494**, Pine Beach Replat, Unit 2

**South to North**

1N10WS7DD, Pine Beach Lots:

- TL114-House Built 2004
- TL115-House Built 1997
- TL116-House Built 1998
- TL117-No House
- TL118- House Built 1997
- TL119- No House
- TL 120- House Built 1997
- TL121- House Built 1999
- TL122- House Built 1997
- TL123- House Built 2016

1N10WS7DA, Shand Tract Lots:

- TL3204-No House
- TL3203-No House
- TL3104-House Built 1997
- TL3100-House Built 1997
- TL3000- House Built 1989

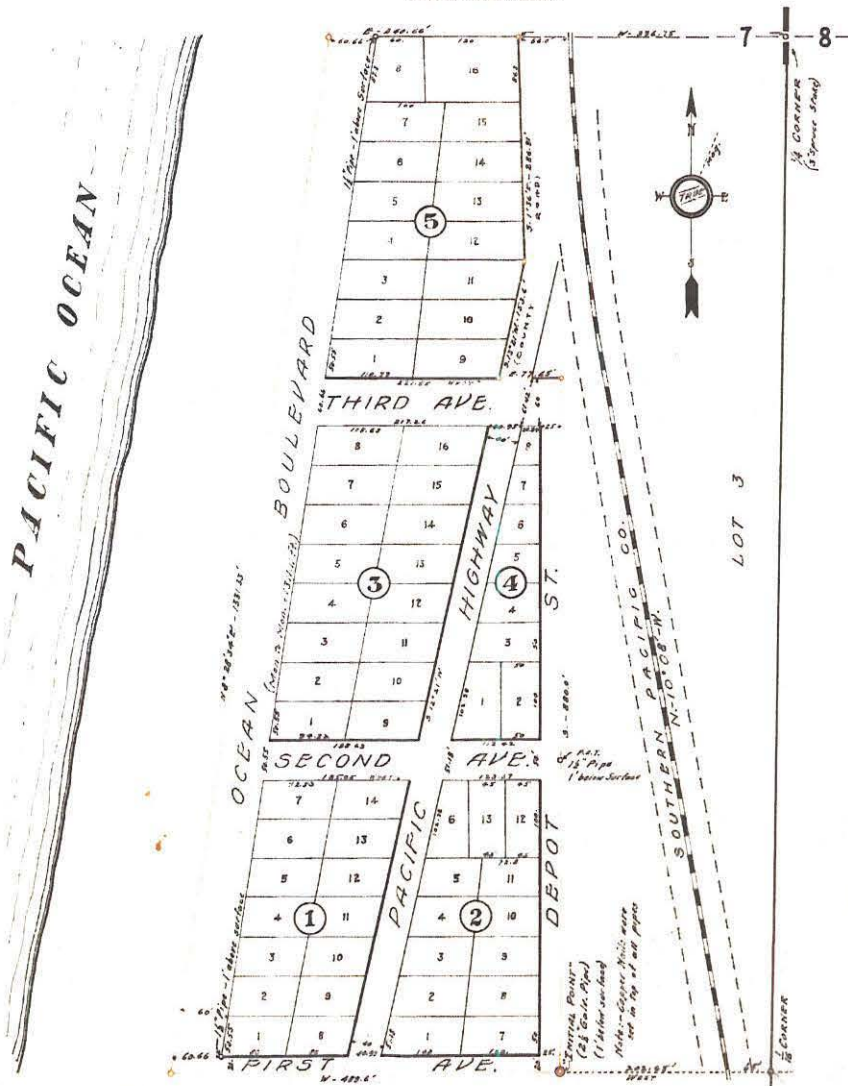
Rockaway Littoral Cell; Cape Meares to Cape Falcon.



MAP OF  
**WATSECO.**

SITUATED IN  
SECTION 7, T.1 N.-R.10 W.-W.M.

Scale: 1 in. = 100 ft.



DEDICATION

Know all men by these presents: that we, ROBERT WATT and LOIS WATT, his wife, and GEORGE WATT and HELEN S. WATT, his wife, have caused to be surveyed and subdivided into streets, avenues, boulevards, highways, blocks and lots; part of Lot 3 - Section 7, T. 1 N. - R. 10 W. - W. M., as appears in the following description to wit: - Beginning at the "INITIAL POINT", a point marked by a Copper Nail, set in cement, in the top of a Galvanized Iron Pipe, 2 1/2 inches in diameter and 4 feet long, driven 1 foot below surface and located 1316.75 ft. South and 283.95 ft. West of the "QUARTER SECTION CORNER" between SECTIONS 7 and 8, - T. 1 N. - R. 10 W. - W. M. - thence West, 489.6 ft.; thence N. 8° 28' 34" E., 1331.33 ft.; thence East, 240.86 ft.; thence S. 1° 36' E., 286.81 ft.; thence S. 12° 21' W., 153.60 ft.; thence East, 77.85 ft.; thence South, 880 ft., to "INITIAL POINT".

That we do hereby dedicate to the public, the perpetual use of the streets, avenues, boulevards and highways, as delineated and set forth on the map of WATSECO as hereon shown.

Witnessed: - John A. Roberts Signed: - Robert Watt  
L. F. Bloke Lois Watt  
George Watt  
Helen S. Watt

ACKNOWLEDGEMENT

State of OREGON }  
County of TILLAMOOK }<sup>22</sup>

This is to certify that on this, the 3<sup>rd</sup> day of JULY 1915 before me, the undersigned, a Notary Public, in and for the COUNTY and STATE aforesaid, personally appeared the abovenamed ROBERT WATT and LOIS WATT, his wife, and GEORGE WATT and HELEN S. WATT, his wife, who are known to me to be the identical persons described in, and who executed the foregoing instrument and severally acknowledged that they executed the same freely and voluntarily for the use and purposes therein mentioned. In testimony whereof, I have set my hand and Official Seal, the day and year last above mentioned.

D. A. Brude Notary Public for OREGON.  
Residing at BAY CITY, OREG.  
My Commission expires October 31, 1916.

SURVEYOR'S CERTIFICATE.

State of OREGON }  
County of TILLAMOOK }<sup>22</sup>

I, Geo. S. Beatty, being first duly sworn, depose and say that I have correctly surveyed the land embraced in the plat of WATSECO: - that the survey thereof is accurately delineated on the map hereon shown: that proper monuments have been placed and that a Copper Nail set in the top of a Galvanized Iron Pipe, 2 1/2 inches in diameter and 4 feet long, driven 1 foot below surface, marks the Initial Point of such survey.

Geo. S. Beatty Surveyor

Subscribed and sworn to before me, the 12<sup>th</sup> day of JULY 1915.

W. E. Jackson Notary Public for Oregon  
Residing at Barview, Oreg.  
My Commission expires Sept. 15, 1915.

All back taxes and assessments on the property described on the attached plat have been paid; dated this 22 day of JULY 1915.

Attest: J. H. Nelson COUNTY CLERK.

J. C. Cushman SHERIFF  
By W. Campbell depy.

APPROVED - JULY 22, 1915.

APPROVED - August 3<sup>rd</sup> 1915.

W. E. Jackson COUNTY SHERIFF.

A. M. Hall COUNTY JUDGE.

APPROVED - JULY 22, 1915.

Geo. R. McNamee COUNTY COMMISSIONER.

C. A. Johnson ASSESSOR.

Frank L. Brown COUNTY COMMISSIONER.

C-129

C-129

**NARRATIVE**

THE PURPOSE OF THIS SURVEY IS TO LOCATE IN THE FIELD THE FOUR PARCELS OF LAND WHICH COMPRISE THE PLAT OF PINE BEACH UNDER ONE OWNERSHIP. THE VACATED STREETS OF THE SOUTH 1/2 OF FIRST AVE.; THIRD AVE.; FOURTH AVE. AND LAKE SIDE DRIVE HAVE BEEN INCORPORATED INTO THESE PARCELS AND ARE NOT SHOWN SPECIFICALLY.

FOR THE BASIS OF BEARINGS SEE THE NOTE AT THE LOWER RIGHT HAND CORNER OF THIS DRAWING.

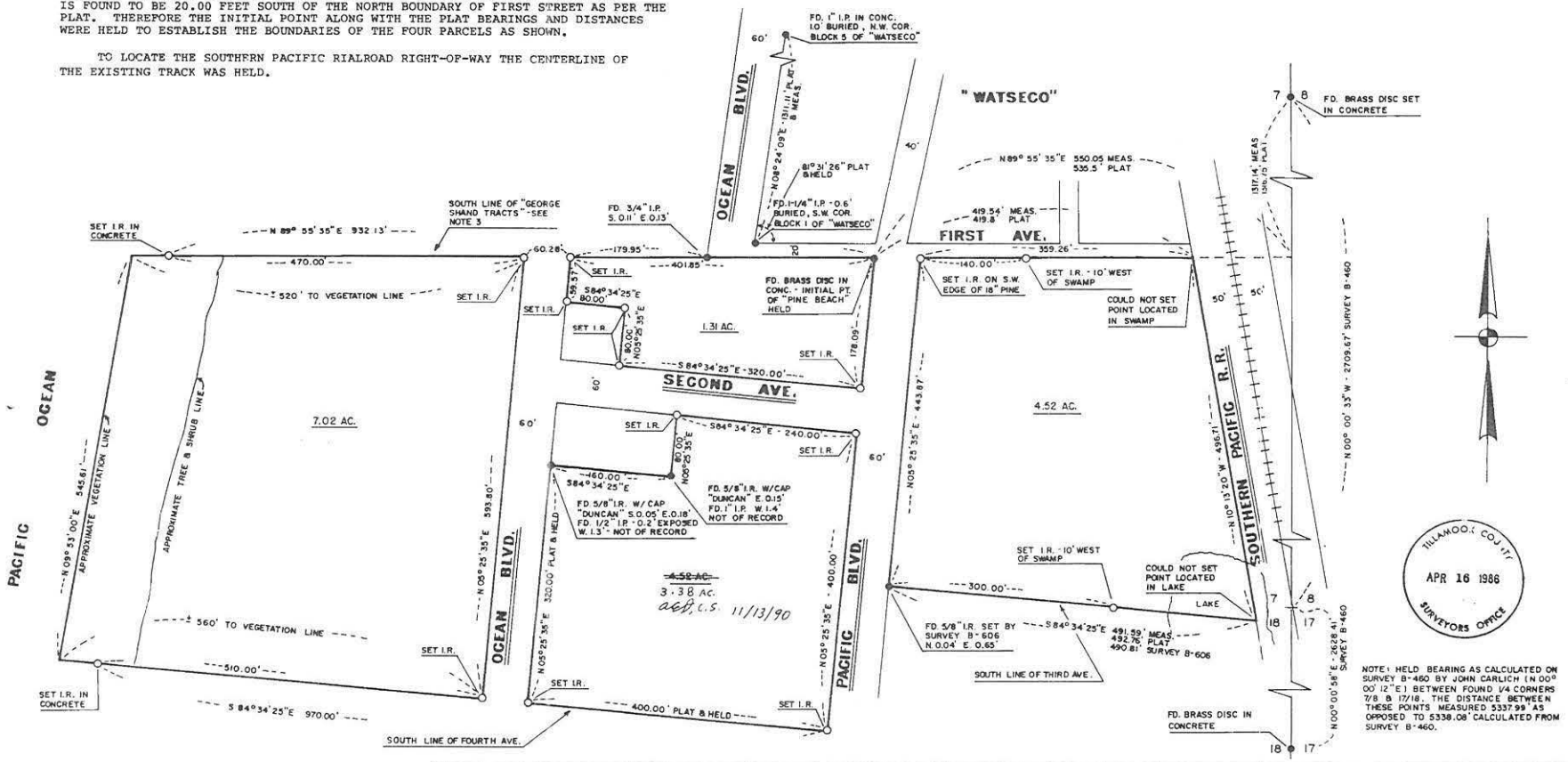
THE ONLY MONUMENT SET ON THE PINE BEACH PLAT IS THE INITIAL POINT AND SINCE "PINE BEACH'S" NORTH BOUNDARY IS EQUAL TO THE SOUTH BOUNDARY OF "WATSECO", THE TWO IRON PIPES FOUND ON THE EAST SIDE OF OCEAN BLVD, IN THE PLAT OF "WATSECO" WERE HELD TO ESTABLISH THE BEARINGS FOR THE PLAT OF PINE BEACH.

WHEN THE PLAT ANGLE OF  $81^{\circ}31'26''$  IS TURNED FROM THE EAST BOUNDARY OF OCEAN BLVD. TO THE NORTH BOUNDARY OF FIRST AVE., THE INITIAL POINT OF PINE BEACH IS FOUND TO BE 20.00 FEET SOUTH OF THE NORTH BOUNDARY OF FIRST STREET AS PER THE PLAT. THEREFORE THE INITIAL POINT ALONG WITH THE PLAT BEARINGS AND DISTANCES WERE HELD TO ESTABLISH THE BOUNDARIES OF THE FOUR PARCELS AS SHOWN.

TO LOCATE THE SOUTHERN PACIFIC RIALROAD RIGHT-OF-WAY THE CENTERLINE OF THE EXISTING TRACK WAS HELD.

**NOTES:**

- DENOTES MONUMENT FOUND.
- DENOTES 5/8" IRON ROD SET WITH A YELLOW PLASTIC CAP STAMPED "ZAROSINSKI-TATONE L.S. 1349".
- THE SOUTH LINE OF THE "GEORGE SHAND TRACTS" AS SURVEYED BY SURVEY A-444 HAS PROJECTED THE SOUTH BOUNDARY OF "WATSECO" WESTERLY ACROSS AN ACCRETED OCEAN FRONT AREA APPROXIMATELY 500 FEET. THIS PROCEDURE DOES NOT AGREE WITH THE COMMON LAW PRACTICE OF ESTABLISHING PROPERTY LINES ACROSS ACCRETED LANDS AT RIGHT ANGLES TO THE SHORELINE.

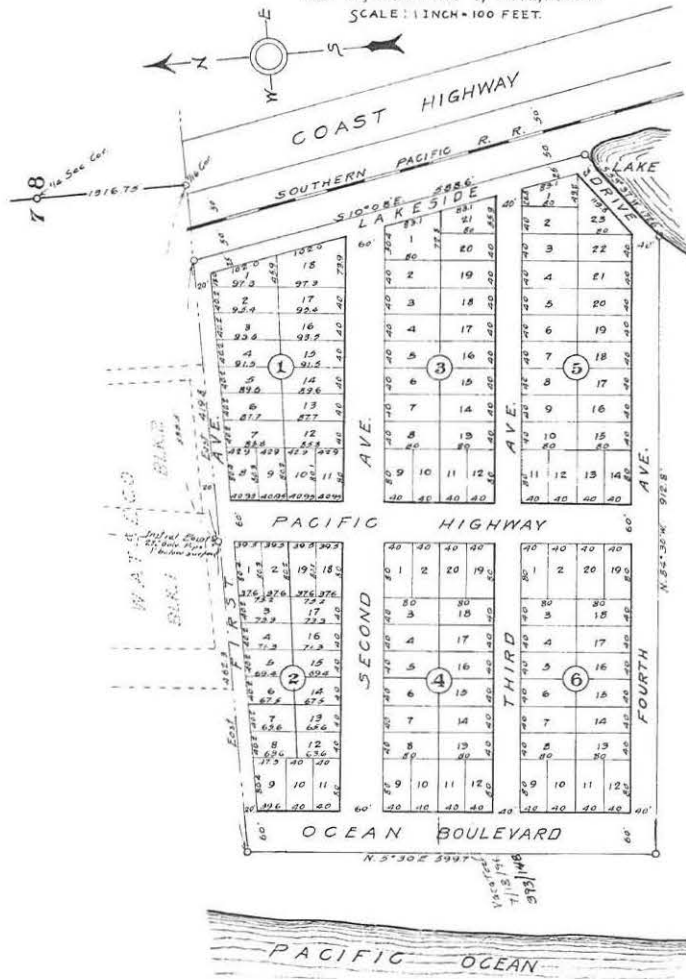


DRAWN: C.C.F. SCALE: 1" = 100' CHECKED: DATE: 3-18-86		<b>ZAROSINSKI-TATONE ENGINEERS, INC.</b> 3737 S.E. EIGHTH AVE. PORTLAND, ORE. LOCATED IN SECTION 7, T.1N., R.10W., WILLAMETTE MERIDIAN TILLAMOOK COUNTY, OREGON		GEORGE PATTEN BOUNDARY SURVEY	
				1269-1	

B-1218

# PLAT OF PINE BEACH

SITUATED IN LOT 4, SECTION 7, T.1N., R.10W. SCALE: 1 INCH = 100 FEET.



2-71

## DEDICATION

Know all men by these presents that we O. E. Jackson and Elizabeth E. Jackson his wife, and the owners of Lot 4, Section 7, T. 1N. S. 10 W. W. M. that we have caused such portion of the same to be surveyed and subdivided into streets, avenues, boulevards, lots and blocks as appears in the following description, to wit:

Beginning at the Initial Point marked by a copper nail set in cement on the top of a galvanized iron pipe 2 1/2 inches in diameter and 3 feet long, driven one foot below the surface and located 1316.75 feet South and 535.5 feet West of the quarter section corner between Sections 7 and 8 T. 1 N. R. 10 W. thence East 4 1/2 feet thence S 10° 08' E. 588.6 feet thence S 53° 37' W. 112.6 feet thence N 84° 30' W. 912.8 feet thence N 5° 30' E. 599.7 feet thence East 462.3 feet to the initial Point.

We caused said lots, blocks, streets and avenues to be laid out as herein marked, and dedicated and we hereby dedicate the same said map and plat, and the same said streets and avenues as herein marked out on said map and plat and names as streets and avenues to be used by and for public enjoyment forever.

O. E. Jackson  
Elizabeth E. Jackson

## ACKNOWLEDGMENT

State of Oregon  
County of Multnomah  
This 21st day of June, 1932, before me, the undersigned, a Notary Public in and for said county and state, personally appeared the within named O. E. Jackson and Elizabeth E. Jackson, his wife, who are known to me to be the actual and individualy described in and who executed the within instrument and acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

## SURVEYOR'S CERTIFICATE

State of Oregon  
County of Multnomah  
I, J. P. ... a registered Professional Engineer of the State of Oregon, being first duly sworn, depose and say that I have correctly surveyed the land embraced in the plat of Pine Beach, that the survey is as accurately delineated on the map herein shown, that proper monuments have been placed and that a copper nail set in the top of a galvanized iron pipe 2 1/2 inches in diameter and three feet long, driven one foot below the surface, marked the initial point of survey.

Subscribed and sworn to before me this 21st day of June, 1932.  
Notary Public for Oregon  
My Commission expires Jan 22 - 1934

Approved and accepted by the County Court of Tillamook County this 6th day of July 1932:  
... County Judge  
... County Commissioner  
... County Commissioner

Approved: ... County Surveyor  
Approved: ... County Sheriff  
Approved: ... County Assessor  
Attest: ... County Clerk



# PINE BEACH REPLAT UNIT 1

### DECLARATION:

KNOW ALL PEOPLE BY THESE PRESENTS THAT PINE BEACH DEVELOPMENT L.L.C., AN OREGON LIMITED LIABILITY COMPANY AND CENTENNIAL BANK, BEING THE OWNERS OF THE LAND HEREIN DESCRIBED, DO HEREBY MAKE, ESTABLISH, AND DECLARE THE ANNEXED MAP OF "PINE BEACH REPLAT UNIT 1", AS DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, TO BE A TRUE AND CORRECT MAP AND PLAT THEREOF. ALL LOTS BEING OF THE DIMENSIONS SHOWN ON SAID MAP. AREA "A" IS A COMMON AREA, WE DO HEREBY DEDICATE FOREVER THE EAST 10.00 FEET OF THAT PORTION OF PARCEL 3, PARTITION PLAT NO. 1994-003, THAT LIES WEST OF OLD PACIFIC HIGHWAY AS A PUBLIC WAY, WITHOUT RESERVATION. EASEMENTS E-1 THROUGH E-4 AS SHOWN HEREON ARE HEREBY GRANTED AS NON-EXCLUSIVE EASEMENTS FOR THE PURPOSES STATED HEREIN. ALL STREETS WITHIN THIS PLAT ARE PRIVATE.

SE 1/4 SECTION 7, T1N, R10W, W.M.  
COUNTY  
JUNE 24, 1996

### EASEMENTS OF RECORD:

RIGHTS AS CONTAINED IN PATENT FROM UNITED STATES OF AMERICA, TO LLOYD C. SMITH, HIS HEIRS AND ASSIGNS, AS DISCLOSED BY INSTRUMENT RECORDED SEPTEMBER 22, 1880, IN BOOK 1, PAGE 321, TILLAMOOK COUNTY DEED RECORDS.

### EASEMENTS:

- E-1: A 15.00' WIDE NON-EXCLUSIVE EASEMENT FOR SEWER SYSTEM IMPROVEMENTS, INGRESS AND EGRESS TO TWIN ROCKS SANITARY DISTRICT.
- E-2: A NON-EXCLUSIVE EASEMENT FOR SEWER SYSTEM IMPROVEMENTS, INGRESS AND EGRESS TO TWIN ROCKS SANITARY DISTRICT.
- E-3: A 8.00' WIDE NON-EXCLUSIVE EASEMENT FOR UTILITIES TO TILLAMOOK PEOPLE'S UTILITY DISTRICT.
- E-4: A 8.00' WIDE NON-EXCLUSIVE EASEMENT FOR ELECTRICAL UTILITIES TO TILLAMOOK PEOPLE'S UTILITY DISTRICT.

### CONDITIONS & RESTRICTIONS:

SEE BOOK 381, PAGE 172 TILLAMOOK COUNTY DEED RECORDS FOR DECLARATIONS, COVENANTS, RESTRICTIONS AND RESERVATIONS.

### SURVEYOR'S CERTIFICATE:

STATE OF OREGON >  
> S.S.  
COUNTY OF TILLAMOOK >

I, RONALD G. LARSON, CERTIFY THAT:

I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE TRACT OF LAND REPRESENTED ON THE ANNEXED MAP, THE EXTERIOR BOUNDARY OF "PINE BEACH REPLAT UNIT 1" BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF PACIFIC HIGHWAY WHICH POINT IS SOUTH 89°55'35" WEST 10.05 FEET AND SOUTH 05°25'35" WEST 357.13 FEET FROM THE INITIAL POINT OF PINE BEACH, RECORDED AS MAP C-71, PLAT RECORDS OF TILLAMOOK COUNTY, LOCATED IN SECTION 7, TOWNSHIP 1 NORTH, RANGE 10 WEST OF THE WILLAMETTE MERIDIAN, TILLAMOOK COUNTY, OREGON, SAID POINT BEING THE INITIAL POINT OF THIS SUBDIVISION PLAT AND MARKED BY A 5/8" X 40" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB ASSOC. INC. ";

THENCE NORTH 84°34'25" WEST 230.00 FEET TO A 5/8" X 40" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB ASSOC. INC. ";

THENCE NORTH 05°25'35" EAST 40.00 FEET TO THE SOUTHEAST CORNER OF LOT 7, BLOCK 4, PINE BEACH;

THENCE NORTH 84°34'25" WEST ALONG THE SOUTH LINE OF LOTS 7, 8 AND 10, BLOCK 4, PINE BEACH AND THE WESTERLY EXTENSION THEREOF 220.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF OCEAN BOULEVARD;

THENCE NORTH 05°25'35" EAST ALONG SAID WEST RIGHT-OF-WAY LINE 220.00 FEET TO THE INTERSECTION WITH THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 10, BLOCK 2, PINE BEACH;

THENCE SOUTH 84°34'25" EAST ALONG SAID WESTERLY EXTENSION 5.00 FEET TO A 5/8" X 40" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB ASSOC. INC. ";

THENCE NORTH 05°25'35" EAST 34.28 FEET TO THE EASTERLY EXTENSION OF THE NORTH LINE OF PARCEL 1, PARTITION PLAT NO. 1994-003, RECORDS OF TILLAMOOK COUNTY;

THENCE NORTH 89°55'35" WEST 520 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE PACIFIC OCEAN;

THENCE SOUTHERLY ALONG SAID MEAN HIGH WATER LINE 550 FEET, MORE OR LESS, TO SOUTH LINE OF PARCEL 3, PARTITION PLAT NO. 1994-003, THAT LIES WEST OF OLD PACIFIC HIGHWAY;

THENCE NORTH 84°34'25" EAST ALONG SAID SOUTH LINE 1048 FEET, MORE OR LESS, TO THE WEST RIGHT-OF-WAY LINE OF PACIFIC HIGHWAY;

THENCE NORTH 05°25'35" EAST ALONG SAID WEST RIGHT-OF-WAY LINE 636.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF FIRST AVENUE;

THENCE SOUTH 89°55'35" WEST ALONG SAID SOUTH RIGHT-OF-WAY LINE 10.05 FEET TO A POINT WHICH IS 10.00 FEET WESTERLY AS MEASURED PERPENDICULAR TO THE WEST RIGHT-OF-WAY LINE OF PACIFIC HIGHWAY;

THENCE SOUTH 05°25'35" WEST PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE 357.13 FEET TO THE INITIAL POINT.

**HLB & ASSOC., INC.**  
HANDFORTH LARSON & BARRETT  
SURVEYING • ENGINEERING • PLANNING  
TILLAMOOK COUNTY 180 LANEDA AVE. CLATSOP COUNTY  
2103 4283A HWY 101 N  
MANZANITA, OR 97130 GEARHART, OR 97138  
(503) 368-5394 (503) 738-3425  
FAX: (503) 368-5847 FAX: (503) 738-7455

12771601.DWG

### APPROVALS:

STATE OF OREGON >  
> S.S.  
COUNTY OF TILLAMOOK >

EXAMINED AND APPROVED BY THE FOLLOWING:

Allan E. Duncan 8-13-96 Ken Buedick 8-20-96  
COUNTY SURVEYOR DATE COUNTY COMMISSIONER DATE

Tim Jut 8-19-96 Josephine Keltzi  
COUNTY ASSESSOR DATE COUNTY COMMISSIONER DATE

Josephine Keltzi 9-11-96 Susan Holmes 9-11-96 James C. Rose 9/19/96  
COUNTY CLERK deputy DATE COUNTY COMMISSIONER DATE

TAXES ARE PAID IN FULL TO JUNE 30, 1997.

Dabi K. Pointa 9-10-96 Victoria M. Thompson 9-11-96  
COUNTY TAX COLLECTOR DATE CHAIRMAN DATE  
TILLAMOOK COUNTY PLANNING COMMISSION

### MONUMENT NOTES:

- (287) FOUND 1/2" IRON PIPE WITH PLUG AND TACK, TOP 0.2" ABOVE SURFACE SOUTH 0.38" AND WEST 1.45" OF CALCULATED POSITION FOR THE SOUTHWEST CORNER OF LOT 10, BLOCK 4, PLAT OF PINE BEACH. NO RECORD.
- (289) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "A DUNCAN LS 793", TOP 0.2" ABOVE SURFACE SOUTH 0.08" AND EAST 0.06" OF CALCULATED POSITION FOR THE SOUTHEAST CORNER OF LOT 7, BLOCK 4, PLAT OF PINE BEACH. SEE MAP A-5178.
- (293) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB INC.", TOP FLUSH WITH SURFACE. S 89°55'35" W 190.41' AND N 00°04'25" W 0.14' OF SET MONUMENT FOR THE MOST NORTHERLY NORTHEAST CORNER OF THE EXTERIOR BOUNDARY FOR PINE BEACH REPLAT. SEE MAP B-1760.

### SHEET INDEX:

<b>SHEET 1</b>	<b>SHEET 2</b>	<b>SHEET 3</b>
DECLARATION	BOUNDARY SURVEY MAP	NARRATIVE
ACKNOWLEDGEMENT	BASES OF BEARINGS	CERTIFICATE OF COUNTY CLERK
TAX STATEMENT	NOTES	COPY STATEMENT
APPROVALS		DETAILS A,B,C,D
MONUMENT NOTES		CURVE TABLE DATA
EASEMENTS		LINE TABLE DATA
SHEET INDEX		
SURVEYOR'S CERTIFICATE		
LEGEND		
CONDITIONS AND RESTRICTIONS		

### LEGEND:

- INDICATES 5/8" X 40" REBAR SET WITH YELLOW PLASTIC CAP MARKED "HLB ASSOC. INC."
- INDICATES MONUMENT FOUND AS NOTED HEREON USED FOR CONTROL
- INDICATES MONUMENT FOUND AS NOTED HEREON.
- ( )<sup>1</sup> INDICATES RECORD VALUE PER PARTITION PLAT NO. 1994-003.
- NO ( ) INDICATES MEASURED VALUE.
- S.F. INDICATES SQUARE FEET.
- (G & N) INDICATES GROSS AND NET AREA
- (G) INDICATES GROSS AREA
- (N) INDICATES NET AREA



REGISTERED PROFESSIONAL LAND SURVEYOR

Ronald G. Larson  
OREGON  
NO. 2103  
RONALD G. LARSON  
RENEWAL DATE: 06/30/2000

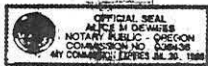
### ACKNOWLEDGEMENT:

STATE OF OREGON >  
> S.S.  
COUNTY OF WASHINGTON >

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON July 30<sup>th</sup>, 1996, BY DONALD E. NUSSHEIDER, AND DAVID L. FARR, AS MANAGING MEMBERS OF PINE BEACH DEVELOPMENT L.L.C., ON BEHALF OF THE COMPANY AND JEFFERY P. TARNER, AS ASSISTANT VICE-PRESIDENT OF CENTENNIAL BANK, ON BEHALF OF CENTENNIAL BANK.

Alci Dr. Dewers  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 7/30/98



### MONUMENT NOTES:

- (1) FOUND OSHD ALUMINUM CAP ON A 5/8" IRON ROD STAMPED "WAT 1973", TOP 0.3" BELOW GROUND, 3.5' NORTHEAST OF METAL WITNESS STAKE, AT SOUTHWEST QUADRANT OF OLD PACIFIC HIGHWAY AND HIGHWAY 101. USED FOR NGS TIE. SET BY OSHD AS BEACH ZONE LINE CONTROL.
- (2) FOUND OSHD ALUMINUM CAP ON A 5/8" IRON ROD STAMPED "AGU 1973", TOP FLUSH WITH GROUND, 1.0' WEST OF BROKEN METAL WITNESS STAKE, 10.3' EAST OF EAST EDGE OF PAVEMENT OF HIGHWAY 101. USED FOR NGS TIE. SET BY OSHD AS BEACH ZONE LINE CONTROL.
- (287) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "ZAROSINSKI TATONE LS 1349", TOP 0.1" ABOVE SURFACE, 2.5' SOUTH OF CENTERLINE OF A FOOT PATH, NORTH 0.04' AND WEST 0.07' OF CALCULATED POSITION FOR THE NORTHEAST CORNER OF PARCEL 1, PARTITION PLAT NO. 1994-003. SEE MAP B-1218.
- (288) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB INC.", TOP FLUSH WITH SURFACE AND IN CENTERLINE OF A FOOT PATH, S 89°55'35" W 85.14' AND N 00°04'25" W 0.06' OF SET MONUMENT FOR THE MOST NORTHERLY NORTHEAST CORNER OF THE EXTERIOR BOUNDARY FOR PINE BEACH REPLAT. SEE MAP B-1760.
- (289) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB INC.", TOP 0.5" BELOW SURFACE, SOUTH 0.08" AND WEST 0.03" OF CALCULATED POSITION. PULLED THIS MONUMENT. SEE PARTITION PLAT NO. 1994-003.
- (285) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "HLB INC.", TOP 0.6" BELOW SURFACE, SOUTH 0.07' AND EAST 0.19' OF CALCULATED POSITION. PULLED THIS MONUMENT. SEE PARTITION PLAT NO. 1994-003.
- (268) FOUND COUNTY SURVEYOR'S BRASS CAP SET IN CONCRETE, INITIAL POINT FOR PINE BEACH, TOP FLUSH WITH SURFACE, HELD FOR BASIS OF BEARINGS. SEE REWITNESS BIN #30
- (269) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "ZAROSINSKI TATONE LS 1349", TOP FLUSH WITH SURFACE, HELD FOR BASIS OF BEARINGS. SEE MAP B-1218.
- (272) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "ZAROSINSKI TATONE LS 1349", TOP FLUSH WITH SURFACE, BEARS N 84°34'25" W 0.74' FROM SOUTHEAST CORNER OF LOT 9, SEE MAP B-1218.
- (286) FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "A DUNCAN LS 793", TOP FLUSH WITH SURFACE, SOUTH 0.14' AND EAST 0.06' OF CALCULATED POSITION FOR THE SOUTHWEST CORNER OF LOT 10, BLOCK 4, PLAT OF PINE BEACH. SEE MAP A-5178.

# PINE BEACH REPLAT UNIT 1

## SE 1/4 SECTION 7, T1N, R10W, W.M. TILLAMOOK COUNTY

JUNE 24, 1995

SEE MAP B-1760  
BOOK 364 PAGE 219

BK. 313 PG. 167

DE. 313 PG. 166

BK. 302 PG. 275

BK. 301 PG. 777

BK. 301 PG. 52



**BASIS OF BEARINGS:**  
 THE LINE BETWEEN THE FOUND MONUMENTS (269) AND (268) AS SHOWN HEREON, BEARS NORTH 05°25'35" EAST, THE RECORD VALUE FROM PARTITION PLAT NO. 1994-003.

CAMP MAGRUDER



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
*Ronald G. Larson*  
 OREGON  
 No. 3, 1984  
 2192  
 RONALD G. LARSON  
 1800 S.W. 21ST ST., 1984

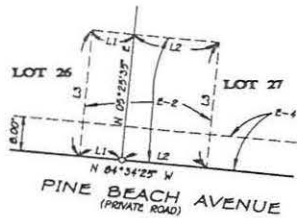
**HLB & ASSOC., INC.**  
 HANDFORTH LARSON & BARRETT  
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 TILLAMOOK COUNTY 180 LAKEDA AVE. CLATSOP COUNTY  
 MANZANITA, OR 97130 GEARHART, OR 97138  
 (503) 368-5394 (503) 738-3425  
 FAX: (503) 368-5847 FAX: (503) 738-7455



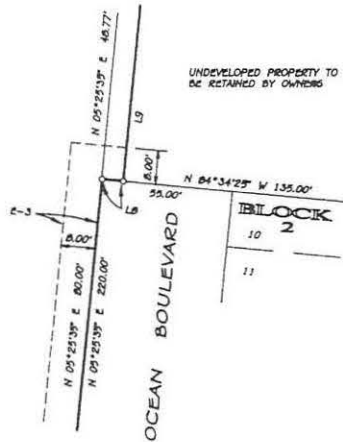
# PINE BEACH REPLAT UNIT 1

SE 1/4 SECTION 7, T1N, R10W, W.M.  
TILLAMOOK COUNTY

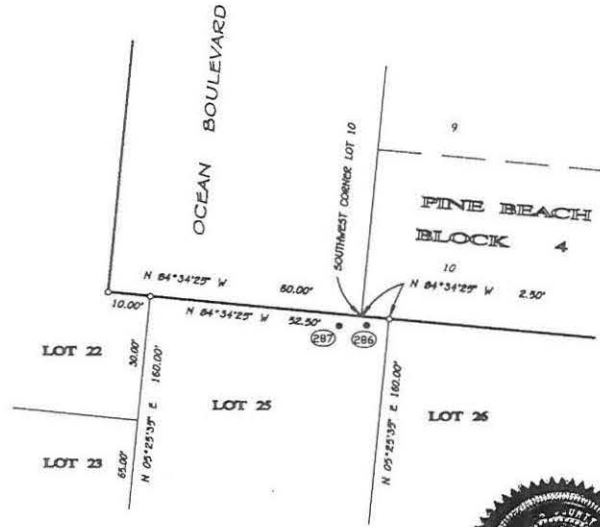
JUNE 24, 1996



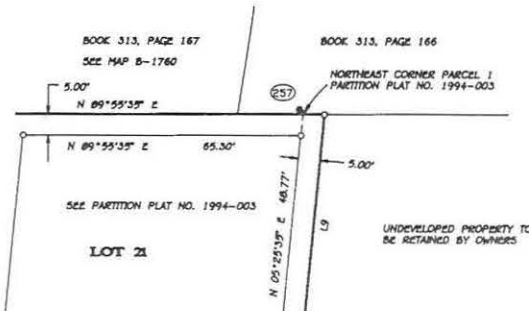
DETAIL 'A'  
NOT TO SCALE



DETAIL 'B'  
NOT TO SCALE



DETAIL 'D'  
NOT TO SCALE



DETAIL 'C'  
NOT TO SCALE

LINE TABLE DATA

LINE	DIRECTION	DISTANCE
L1	N 84°34'25" W	10.00'
L2	N 84°34'25" W	20.00'
L3	S 05°25'35" W	30.00'
L4	S 84°34'25" E	48.18'
L5	S 84°34'25" E	48.84'
L6	N 84°34'25" W	49.51'
L7	S 53°49'37" E	44.65'
L8	N 84°34'25" W	5.00'
L9	S 05°25'35" W	54.28'
L10	N 84°34'25" W	10.00'
L11	N 87°31'04" E	23.33'
L12	N 87°07'39" E	24.58'

NARRATIVE:

THIS SURVEY WAS CONDUCTED AS A DEPENDENT RESURVEY OF THE SUBJECT PROPERTY DESCRIBED AS PARCELS 1, 2 AND 3, PARTITION PLAT NO. 1994-003, RECORDED FEBRUARY 2, 1994, IN PLAT CABINET B, SLIDE 248, TILLAMOOK COUNTY RECORDS, EXCEPTING THEREFROM THAT PORTION OF SAID PARCEL 3 THAT LIES EAST OF OLD PACIFIC HIGHWAY AND WEST OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY. THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE THE SUBJECT PROPERTY INTO THIRTY-TWO LOTS AND A COMMON AREA. THE NORTH AND SOUTH 5.00 FEET OF SAID COMMON AREA ARE PRIVATE WALKWAYS FOR ACCESS TO THE BEACH.

HELD THE INITIAL POINT OF PINE BEACH AND MONUMENT (263) FOR BASIS OF BEARINGS. HELD RECORD ANGLES FROM PARTITION PLAT NO. 1994-003 TO ESTABLISH THE NORTH AND SOUTH LINES OF PLAT BOUNDARY.

PORTIONS OF OCEAN BOULEVARD ARE BEING VACATED WITH THE FILING OF THIS PLAT AND FILED AS ROAD VACATION PETITION #481. THE WEST RIGHT-OF-WAY LINE OF PACIFIC HIGHWAY IS BEING MONUMENTED THIS SURVEY TO INCLUDE THE 10.00 FOOT WIDE PUBLIC DEDICATION.

CURVE TABLE DATA

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	20.00'	34.11'	30.12'	N 55°42'52" W	97°43'05"
C2	45.00'	76.79'	67.78'	N 55°42'52" W	97°43'05"
C3	70.00'	119.39'	109.43'	N 55°42'52" W	97°43'05"
C4	70.00'	14.90'	14.87'	N 07°08'51" E	12°11'39"
C5	70.00'	30.20'	29.97'	N 11°24'40" W	24°43'22"
C6	70.00'	28.86'	28.69'	N 34°49'02" W	21°59'03"
C7	70.00'	25.74'	25.60'	N 56°17'27" E	21°04'07"
C8	70.00'	5.00'	5.00'	N 66°52'21" W	04°09'36"
C9	70.00'	18.58'	18.64'	N 77°44'48" W	13°39'18"
C10	70.00'	102.53'	92.11'	N 94°17'08" E	86°16'59"
C11	45.00'	64.62'	59.21'	N 94°17'08" E	86°16'59"
C12	20.00'	28.72'	26.32'	N 94°17'08" E	86°16'59"
C13	70.00'	27.14'	26.97'	N 24°19'04" E	22°18'46"
C14	70.00'	26.88'	26.13'	N 48°06'17" E	21°52'37"
C15	70.00'	30.10'	29.87'	N 69°11'10" E	24°38'10"
C16	70.00'	17.01'	16.97'	N 80°27'58" E	13°55'20"

STATE OF OREGON >  
> 5.5.  
COUNTY OF TILLAMOOK >

I HEREBY CERTIFY THAT THIS PLAT WAS RECEIVED FOR RECORDED ON THE 11<sup>th</sup> DAY OF SEPTEMBER 1996 AT 2:11 P.M. O'CLOCK AND RECORDED IN PLAT CABINET B-493-O TILLAMOOK COUNTY RECORDS, AS INSTRUMENT NO. 353590.

JOSEPHINE VETTRI, COUNTY CLERK.

By: *Josephine Veltre, by Susan Holmes, deputy*

CERTIFICATE OF COUNTY CLERK:

STATE OF OREGON >  
> 5.5.  
COUNTY OF TILLAMOOK >

I, JOSEPHINE VETTRI, DO HEREBY CERTIFY THAT I AM THE QUALIFIED CLERK OF TILLAMOOK COUNTY, OREGON AND THAT THIS COPY IS THE FULL, COMPLETE AND TRUE COPY OF THE ORIGINAL PLAT OF SAME, AS RECORDED IN PLAT CABINET B-493-O OF PLAT RECORDS OF TILLAMOOK COUNTY, OREGON, RECORDED SEPTEMBER 11, 1996 AT 2:11 P.M. O'CLOCK, AS INSTRUMENT NO. 353590.

*Josephine Veltre, by Susan Holmes, deputy*  
JOSEPHINE VETTRI

I, RONALD G. LARSON, DO HEREBY CERTIFY THAT THIS IS A FULL, COMPLETE AND TRUE COPY OF THE ORIGINAL PLAT AS REFERENCED ABOVE.

*Ronald G. Larson*  
RONALD G. LARSON, PLS 2102



**HLB & ASSOC., INC.**  
HANDFORTH LARSON & BARRETT  
SURVEYING • ENGINEERING • PLANNING  
TILLAMOOK COUNTY CLATSOP COUNTY  
180 LAHEDA AVE. 4233A HWY 101 N.  
MANZANITA, OR 97130 GEARHART, OR 97138  
(503) 388-8384 (503) 738-3425  
FAX: (503) 388-5847 FAX: (503) 738-7455

12771603.DWG

## Allison Hinderer

---

**From:** Teryn Yazdani <terynd@crag.org>  
**Sent:** Tuesday, July 27, 2021 8:48 PM  
**To:** Public Comments; Sarah Absher; Allison Hinderer; Melissa Jenck  
**Cc:** Anuradha Sawkar; phillip@oregonshores.org; orshores@teleport.com  
**Subject:** EXTERNAL: Or. Shores Comment for BOCC Pub. Hearing, Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG  
**Attachments:** 2021.07.27\_FINAL Or. Shores Tillamook G18 BOCC Comment.pdf

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Dear Sarah,

As you know, this office represents the Oregon Shores Conservation Coalition. Please find attached Oregon Shores' written testimony and materials for the aforementioned files. Please confirm receipt of this email and attached documents.

Sincerely,  
Teryn Yazdani

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**Teryn Yazdani**  
Legal Fellow  
Crag Law Center  
3141 E Burnside Street  
Portland, OR 97214  
Tel: (503) 234-0788  
Email: [terynd@crag.org](mailto:terynd@crag.org)  
*She/Her/Hers*

*Protecting and Sustaining the Pacific Northwest's Natural Legacy*



OREGON SHORES  
CONSERVATION COALITION

July 28, 2021

Tillamook Board of County Commissioners  
c/o Sarah Absher, Director  
Tillamook County Courthouse  
201 Laurel Avenue  
Tillamook, OR 97141

*Via Email to: [publiccomments@co.tillamook.or.us](mailto:publiccomments@co.tillamook.or.us), [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us),  
[ahindere@co.tillamook.or.us](mailto:ahindere@co.tillamook.or.us), [mjenck@co.tillamook.or.us](mailto: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  
Comments of Oregon Shores Conservation Coalition.**

Dear Chair Bell, Vice-Chair Yamamoto, and Commissioner Skaar,

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively, "Oregon Shores") to be included in the evidentiary record for the Board of County Commissioner's ("BOCC" or "Board") hearing on 851-21-000086-PLNG-01/851-21-000086-PLNG Land Use Applications for Goal Exception, Flood Plain Development Permit. Oregon Shores is a non-profit organization dedicated to protecting the Oregon coast's natural communities, ecosystems, and landscapes while preserving the public's access to these priceless treasures in an ecologically responsible manner. Our mission includes assisting local residents in land use matters and other regulatory processes affecting their coastal communities, as well as engaging Oregonians and visitors alike in a wide range of advocacy efforts and stewardship activities that serve to protect our state's celebrated public coastal heritage. For nearly half a century, Oregon Shores has been a public interest participant in legal processes and policy decisions related to land use, shoreline, and estuarine management in the State of Oregon.

Oregon Shores previously submitted comments and supplementary evidence materials for inclusion within the record for this matter before the Planning Commission on May 27, 2021,

June 3, 2021 Comment, and June 10, 2021. In addition, we submitted a letter on June 24, 2021 objecting to certain materials submitted by the Applicants in contravention of Planning Commission requirements originally provided at the May 27, 2021 public hearing. We hereby adopt in full and incorporate by reference our previous comments and materials in the record.

Please continue to notify us of any further decisions, reports, or notices issued as well as meetings or hearings held in relation to these Land Use Applications (“Applications”). Pursuant to ORS 197.763(4) and (6), Oregon Shores respectfully requests that the BOCC continue the hearing in order to allow for an opportunity to present additional evidence, arguments, and testimony regarding these Applications. Additionally, Oregon Shores requests that the BOCC leave the record open following the public hearing to allow for submission of additional information and rebuttal of information presented for at least seven days.<sup>1</sup> Oregon Shores will provide further comments as appropriate and allowed.

At its July 15, 2021 public hearing, the Planning Commission passed a motion to recommend approval of Development Permit request #851-21-000086-PLNG to the Board of County Commissioners.<sup>2</sup> Additionally, the Planning Commission recommended that the Board “work with staff on development of Conditions of Approval [incorporated into Development Permit #851-21-000086-PLNG] for construction of the BPS with required inspections during the construction phase to ensure the BPS is constructed as proposed and in accordance with the development standards outlined in the Beach and Dune Overlay Zone.”<sup>3</sup>

Our comment supports the view that the Planning Commission erred in its application of the requisite criteria, and misconstrued or otherwise failed to make adequate and substantiated findings regarding its recommendation to approve the Applicants’ requests. Oregon Shores argues that the Applications have not demonstrated compliance with the applicable approval criteria set forth in the Statewide Planning Goals (“Goals”), the requisite criteria for a Goal Exception within the Oregon Administrative Rules (“OAR”), the Oregon Revised Statutes (“ORS”), the Tillamook County Comprehensive Plan (“TCCP”), and the Tillamook County Land Use Ordinance (“TCLUO”). On the basis of the present record, a recommendation for denial is the most supported conclusion. Oregon Shores respectfully requests that this Board reject the recommendation of the Planning Commission and deny approval of the Applications for the following reasons.

**A. The Applications Do Not Meet the Mandatory Requirements for Granting a Reasons Exception under OAR 660-004-0020 and OAR 660-004-0022.**

In DLCD’s May 19, 2021 Letter, the Department determined that “the proper administrative rule provisions are those of OAR 660-004-0022(1) . . . because the houses that exist in this area were lawfully developed under the County’s regulations at the time of

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<sup>1</sup> ORS §§ 197.763(4), (6); TCLUO SECTION 10.080(5).

<sup>2</sup> Board of County Commissioners Hearing Packet at 1. At the time of writing this comment, Oregon Shores was unable to locate an official draft of the Planning Commission’s findings and recommendation to the Board on the County website. Thus, Oregon Shores references the Planning Commission decision as stated in the Board of County Commissioners Hearing Packet.

<sup>3</sup> *Id.* at 2.

development.”<sup>4</sup> DLCD also stated that it was the Department’s “position that a ‘reasons’ exception to Goal 18 is necessary in this case[]” and that because the Applications do not establish that adjacent uses are the basis for this exception request—a requirement for a “committed” exception under OAR 660-004-0028—they do not qualify for or need a “committed” exception.<sup>5</sup> The Department found “[o]nly a general ‘reasons’ exception to Goal 18, Implementation Requirement #5 is needed in this case.”<sup>6</sup> DLCD ultimately recommended “that the County deny [this] goal exception request” due to the Applications’ “problematic and missing analysis.”<sup>7</sup>

Oregon Shores agrees with DLCD’s assessment that the “demonstrated need” pathway or a reasons exception is the only available avenue for a goal exception in this instance. As noted previously and within this comment, the Applicants and Applications do not demonstrate that the proposal is consistent with the criteria for a reasons exception under OAR 660-004-0022(1)’s catch-all provision. Oregon Shores also agrees with DLCD that the County should deny the Applicants this goal exception request due to missing, problematic analysis and failure to meet the mandatory criteria. Oregon Shores incorporates by reference our previous analysis regarding OAR 660-004-0022 and OAR 660-004-0020 in our May 27, 2021 Comment, our June 3, 2021 Comment, and our June 10, 2021 Comment on this matter. Further, Oregon Shores incorporates by reference our previous analysis regarding ORS 197.732 in our May 27, 2021 Comment and our June 3, 2021 Comment.

As previously stated in detail in our June 10, 2021 Comment, which Oregon Shores incorporates by reference, the Applications also fail to meet the necessary, mandatory criteria for “built” and “committed” exceptions under Goal 2, Part II, ORS 197.732(2)(a)–(b), OAR 660-004-0025, and OAR 660-004-0028. However, even if the Applications met the mandatory criteria for these two exception pathways—which they do not—“built” and “committed” exceptions are neither necessary nor applicable in the current circumstance. As highlighted in DLCD’s June 10, 2021 Letter:

[T]he application does not warrant either a “built” exception or a “committed” exception . . . There is no [beachfront protective structure or BPS] at the proposed location yet, so it is not “built.” Likewise, there is only one BPS in the immediate area (the Shorewood RV Resort) which the applicants argue has not impacted the properties. Therefore, other BPS in the adjacent area have not “committed” this beach and dunes resource area to a non-resource use necessitating BPS here as well.<sup>8</sup>

<sup>4</sup> May 19, 2021 DLCD Letter to the Tillamook County Planning Department at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also June 10, 2021 DLCD Letter to the Tillamook County Planning Department at 3 (“Since there is not a specific section in OAR 660-004-0022 pertaining to reasons for an exception to allow [beachfront protective structures] for an ineligible development, a general ‘reasons’ exception is the appropriate pathway for the applicants.”).

<sup>7</sup> *Id.* at 5.

<sup>8</sup> June 10, 2021 DLCD Letter to the Tillamook County Planning Department at 3.



The Applications have still failed to demonstrate otherwise that the current circumstances necessitate "built" or "committed" exceptions. Because they fail to meet the relevant goal exception requirements of ORS and OAR, the Board of County Commissioners should deny the Applications.

**B. The Applications Do Not Meet the Mandatory Local Criteria Under the Tillamook County Land Use Ordinances ("TCLUO") and the Tillamook County Comprehensive Plan ("TCCP").**

**i. Applicable TCLUO Provisions**

The Applications fail to meaningfully address the local criteria as required in the TCLUO regarding the Flood Hazard Overlay Zone, the Beach and Dune Overlay Zone, the TCLUO's Comprehensive Plan Text Amendment Criteria under Article 9, and the TCLUO's Article 10 Administrative Provisions. Each local land use ordinance and the Applications' noncompliance will be discussed in further detail below.

*a. TCLUO Section 3.510: Flood Hazard Overlay ("FH") Zone*

*i. 3.510(1): Purpose*

The stated purpose of the FH zone is to:

[P]romote the public health, safety and general welfare and to minimize public and private losses or damages due to flood conditions in specific areas of unincorporated Tillamook County by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public;  
\* \* \*
- (e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards; "
- (f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;  
\* \* \*
- (h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

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,<sup>9</sup> 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<sup>10</sup> (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 Applications' analysis entirely overlooks the negative impacts that the proliferation of BSP will have on the shoreline and how adding riprap to a mostly untouched portion of the beach<sup>11</sup> will impact the public's safety and access. Additionally, as our colleague Surfrider noted in its June 3, 2021 comment, this proposal would likely have detrimental impacts on adjacent properties based on the well-known impacts of riprap on adjacent structures. "Property owners have . . . 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."<sup>12</sup> The Applications lack any analysis regarding the potential harms that this proposal will have on adjacent properties and infrastructure in relation to protecting human life and health and impacts to adjacent public facilities and utilities. Because this proposal will likely have many significant impacts on more than just the Applicants' privately owned homes and properties, more is needed in order for this proposal to accomplish the FZ zone's stated purpose.

ii. 3.510(10): Specific Standards for Coastal High Hazard Areas  
(V, VE, or V1–V30 Zones)

TCLUO Section 3.510(10) states that "[l]ocated within areas of special flood hazard established in Section 3.510(2) are Coastal High Hazard Areas. These areas have special flood hazards associated with high velocity waters from tidal surges" and must meet a number of mandatory standards. Because the Applicants' proposed site is located within a VE flood zone, the standards in this section apply. TCLUO Section 3.510(10)(h) requires that development in Coastal High Hazard Areas "[p]rohibit man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage." The Applications, in response to this requirement, state that the purpose of the beachfront protection structure is to "decrease potential flood damage and "in order to accomplish this purpose, the man-made alteration of sand dunes, including vegetation removal . . . is required[.]"<sup>13</sup> Although the Applications attempt to explain away removal of vegetation and area disturbance as "temporary," "minimal," and necessary for the long-term protection of the dune and its vegetation, their analysis is inconsistent and contrary to the plain language of the TCLUO. The Applications cannot justify TCLUO Section 3.510(10) by acting in conflict with TCLUO Section 3.510(10)—especially given the harmful, long-term impacts that increased proliferation of riprap and alteration of sand dunes will have on the public's beach and surrounding properties.

iii. 3.510(14)(b): Development Permit Review Criteria

Although much of the development review criteria apply to fill and is thus not applicable to this proposal, the Applications have not adequately analyzed 3.510(14)(b)(5)'s development

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<sup>11</sup> See Attachment A (showing the pristine nature of the Pine Beach Area).

<sup>12</sup> Surfrider Foundation's June 3, 2021 Comment at 2.

<sup>13</sup> Combined Application at 84.

permit review criteria requiring that “no feasible alternative upland locations exist on the property.” While the proposal states the BPS “is placed at the most landward point possible on the subject properties,” it is worth noting that in general, the Applications failed to look into adequate alternatives for preventing beach-front erosion outside of installing BSP. The Applications have provided no analysis regarding realistic, non-structural solutions to the issues the properties face. To satisfy this criterion, Oregon Shores argues that more complete examination of non-structural alternatives to BPS is needed.

b. *TCLUO Section 3.530: Beach and Dune Overlay Zone*

The stated purpose of the Beach and Dune Overlay Zone is to “regulate development and other activities in a manner that conserves, protects and, where appropriate, restores the natural resources, benefits, and values of coastal beach and dune areas, and reduces the hazard to human life and property from natural events or human-induced actions associated with these areas.” This zone applies “to dune areas identified in the Goal 18 . . . Element of the Comprehensive Plan and indicated on the Tillamook County Zoning Map.” TCLUO Section 3.530(4)(A) lays out specific permitted uses, including strict requirements under Section 3.530(4)(A)(4)(b) requiring beachfront protective structures on properties developed after January 1, 1977 to receive an exception to Statewide Planning Goal 18, IR 5.

The Applications fail to meaningfully address a number of required criteria under Section 3.530(4)(A)(4). For example, Section 3.530(4)(A)(2) requires a showing that “[n]on-structural solutions cannot provide adequate protection” to justify the placement of beachfront protective structures on the properties. The Applications merely state that “the instillation of the proposed beachfront protective structure is the only viable solution to stop rapid erosion, the loss of shoreline vegetation, and the threat of damage to property, dwellings and infrastructure”<sup>14</sup> in the proposal area. As stated above and in the record, this assertion is overly conclusory and fails to address how shoreline hardening will impact and increase future erosion rates on the site. The Applications have not explored other options to address the issues the properties face, including actions that would only impact the homeowners such as implementing better setbacks of structural changes to the homes themselves rather than to the public’s beach.

Another example of failure to meet the mandatory criteria relates to Section 3.530(4)(A)(6). This provision requires that “existing public access is preserved” when placing beachfront protective structures. In addressing this criterion, the Applications conclusively state that “[t]he proposed beachfront protective [structure] is designed such that these [existing public] accesses will be maintained,” therefore asserting that the proposal is consistent with this requirement. The Applications fail to meaningfully address the impacts to public access that the proliferation of riprap will have on this site and on the public’s beach, falling short of ensuring that public access is preserved. Thus, the Applications fail to meet vital criteria under TCLUO Section 3.530 and their proposal should be denied by the Board of County Commissioners.

*c. TCLUO Section 9.030(3) – Text Amendment Criteria*

The applicable criteria for amendments to the Tillamook County Comprehensive Plan under TCLUO Section 9.030(3) are:

- (a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- (b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);
- (c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and
- (d) The amendment must conform to Section 9.040 Transportations Planning Rule Compliance.

As explained elsewhere in this and related comments, the Applications fail to demonstrate consistency with Goals and OARs. Therefore, the Applications fail to meet the requirement of TCLUO Section 9.030(3)(a). The Applications' consistency with the Tillamook County Comprehensive Plan as required by Section 9.030(3)(b)<sup>15</sup> and the proposed amendment's conformity with Section 9.030(3)(d) will be discussed in more detail below.

The Applications state the proposal is consistent with subsection (c) of this criterion because “[i]t is in the public interest to protect this subdivision [at issue], which is part of a larger urban residential area . . . as well as to protect the water and sewer public facilities that serve[] that greater community and supporting street system.”<sup>16</sup> The Applications also state that this criterion is satisfied because the “proposal responds to natural changes in the community that were contrary to the 70-year trend of shoreline prograding that existed at the time of residential development.”<sup>17</sup> The Applications fail to meaningfully address this criterion and fail to show that this proposal is truly within the “public interest” regarding community conditions. As previously noted in Oregon Shores' prior comments and throughout the record, approval of this proposal will impose more coastal harm and negatively impact the public interest—particularly with impeding future and sustained public access to the beach. While the proposal's purpose is to prevent damage to private properties, the beachfront protection structures are going on land that belongs to Oregonians as a whole. The Applications fail to satisfy this criterion and thus are not in compliance with TCLUO Section 9.030(c)'s mandatory text amendment criteria.

The Applications also conclusively state that the proposed construction of the beachfront protective structure complies with TCLUO Section 9.040 because it “will not generate any additional traffic other than during construction, when traffic will be minimal.” While compliance with this criterion is only relevant to the proposal within the context of meeting the text amendment requirements in TCLUO Section 9.030(3)(d), the Applications still fail to

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<sup>15</sup> *Infra* Section B(ii).

<sup>16</sup> Pine Beach & Ocean Boulevard Combined Application for Shoreline Protection (“Combined Application”) at 95.

<sup>17</sup> *Id.*



meaningfully address it. Further, the Applications failed to meaningfully analyze or consider the temporary impacts of the construction.

Even if the Board finds that the Applications have meaningfully addressed compliance with TCLUO 9.040, that ultimately is inconsequential because the Applications fail to satisfy or address the mandatory criteria of TCLUO 9.030(3)(a)–(c) and thus fail to show that the proposal meets the text amendment criteria.

*d. TCLUO Article 10 Administrative Provisions*

While TCLUO Article 10 contains purely procedural steps, the most relevant portion of that mandatory criteria states, under TCLUO Section 10.010(3), that “[t]he processing of applications . . . under this Ordinance shall be consistent with the Oregon Revised Statutes (ORS)” As noted in Oregon Shores’ Prior Comments, throughout the record, and above, the Applications fail to show that this proposal is consistent with the Oregon Revised Statutes—namely, they fail to show that this proposal is compliant with and reasons exception under ORS 197.732. For that reason, the Applications fail to meet the mandatory criteria under TCLUO Article 10.

**ii. The Applications Do Not Comply with the Applicable Statewide Planning Goals, the Applicable Tillamook County Comprehensive Plan Provisions.**

The Applicants assert in both their Combined Application and Final Argument that the proposal satisfies a number of Statewide Planning Goals, and TCCP Goals, or Elements. However, the Applications fail to provide the necessary and adequate reasoning for such conclusory assertions and fail to demonstrate the proposal’s compliance with the relevant Statewide Planning Goals or the TCCP Goals. As previously 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. Post-acknowledgement plan amendments (“PAPAs”), such as the proposal at issue, must comply with Oregon’s Statewide Planning Goals under ORS 197.175(2)(a). The Applicant bears the burden of proof in showing that its proposal complies with all applicable criteria and standards. Tillamook County’s decision to approve the proposed PAPA must either explain why the rezoning is consistent with the Goals or adopt findings explaining why the Goal is not applicable. Each relevant Goal and its parallel (i.e., implementing) TCCP Goal Element is discussed in further detail below.

*a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; TCCP Goal 5, TCCP Goal 17*

The Applications fail to demonstrate compliance with Goal 5. The purpose of Goal 5 is to “protect natural resources and conserve scenic and historic areas and open spaces.” To be consistent with Goal 5, Tillamook County is required to inventory and adopt a program to protect and/or conserve several types of resources, findings, and related policies. The Combined Application asserts that because “[t]here are no identified Goal 5 resources on the subject property or on immediately surrounding properties,” the proposal “does not implicate and is



consistent with Goal 5.”<sup>18</sup> The Final Argument concludes that because “there are no Goal 5 resources on the Subject Properties . . . the proposal cannot be inconsistent with Goal 5.”<sup>19</sup> However, the Applicants fail to provide sufficient information or analysis to support these assertions. In fact, publicly available evidence suggests the opposite conclusion may be true. There are known inventoried Goal 5 resources, including significant wildlife habitat areas (Hidden Lake, Smith Lake, and Camp Magruder) which could be impacted by the Applicants’ proposal.<sup>20</sup> As noted previously, the Applications fail to meaningfully address impacts of the proposed BPS to Camp Magruder or other adjacent properties and therefore fail to meaningfully address the proposal’s consistency with Goal 5. Absent further analysis, the Applications fail to establish consistency with Goal 5.

*b. Goal 6 Air, Water, and Land Resources Quality; TCCP Goal 6*

The Applications fail to demonstrate compliance with Goal 6. The purpose of Goal 6 is to “maintain and improve the quality of the air, water[,] and land resources of the state.” Here, the Applications claim that the proposal’s approval “maintains ocean and sand resources so that they may be enjoyed by the public rather than risking the serious damage that would occur if the proposed BPS is not approved.”<sup>21</sup> There is no evidence to meaningfully support this conclusion, and as noted previously, publicly available scientific evidence suggests the opposite to be true. Namely, the proposed riprap structure will deplete sand resources, drown the public’s beach, and take the public’s beach in order to protect private property. As noted by DLCD “[t]he impacts of additional shoreline armoring on the beach, beach access, and surrounding properties are not adequately addressed in the [Applications].”

The Applications also state that the “proposed BPS protects water delivery systems” relied upon by the public and that the public “would suffer catastrophic damage if the proposal is not approved and the ocean rips out the homes and the water infrastructures serving them.” Again, there is no meaningful evidence to support the claim that the BPS would protect water delivery systems, or that it is a preferred way to do so in the case that such water systems are in fact threatened. Further, the Applications fail to explain how this is relevant to address compliance with Goal 6 (i.e., whether the proposal does in fact “maintain and improve the quality of air, water, and land resources of the state”).

Finally, in the TCCP, Goal 6 only specifically addresses requirements, findings, and policies on air quality, water quality, solid waste disposal, and noise control—none of which are specifically addressed by the Applications. The Applications focus only on the damages to the private properties and fail to meaningfully analyze the harmful impacts that the BPS would have on the land resources and the overall long-term health and safety of the beach. Absent such analysis, the Board of County Commissioners cannot conclude that this proposal is consistent with Goal 6.

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<sup>18</sup> Combined Application at 52.

<sup>19</sup> Applicants’ Final Argument (“Final Argument”) at 28–29; Combined Applications at 52.

<sup>20</sup> TCCP Goal 17, Sec. 3.2b; TCCP Goal 5 Sec. 1.3c.

<sup>21</sup> Combined Application at 53.

*c. Goal 7 Areas Subject to Natural Hazards; TCCP Goal 7*

The Applications fail to demonstrate compliance with Goal 7. The purpose of Goal 7 is “[t]o protect people and property from natural hazards.” Under Goal 7(A)(2), “coastal erosion” is one of the hazards the County should protect against. The Applicants correctly state that Goal 7 requires that appropriate safeguards be applied when planning for development in areas identified as a natural hazard. However, the Applications’ assertion that “approving the proposed BPS is the only way to ensure that the county can reasonably comply with Goal 7 at this location”<sup>22</sup> is not meaningfully supported by the record and provided analysis. While the beach at the proposed site has changed since the time of the subdivision’s approval and since construction of the residential dwellings, the current threats endangering the Applicants will only worsen with increased shoreline hardening. The Applicants ask for a solution to what are asserted as “immediate threats”<sup>23</sup> to the properties; however, the addition of riprap to the coastline will, in the long run, only exacerbate and escalate the coastal erosion and natural hazards the properties face. The Applications provide no meaningful discussion of the long-term hazard impacts to the beach and public safety within the context of Goal 7. Absent such analysis, the Board of County Commissioners cannot conclude that the proposed plan amendment and Goal 18 IR 5 exception is consistent with Goal 7 based on the current record.

Under Section 1.1(b)(4) of the TCCP Goal 7, implementation guidelines specify that “possible creation of new natural hazards by proposed developments should be considered, evaluated, and provided for.” The Applications have yet to meaningfully evaluate or provide solutions for the increase harm and hazards that the proliferation of riprap will have on the natural environment, neighboring properties, overall safety of the beach. They only focus their analysis on the hazards and impacts to the private property owners will face if hardening is denied. As stated throughout the record, increased shoreline hardening—especially riprap—on the coast increases the rate and amount of erosion, degrades the long-term stability of and access to the beaches, and results in the need for more shoreline to compensate for damage. The Applications failure to meaningfully address this aspect demonstrates noncompliance with TCCP Goal 7.

*d. Goal 8 Recreational Needs; TCCP Goal 8*

The Applications also fail to establish compliance with Goal 8. The purpose of Goal 8 is “[t]o satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.” In their Combined Application, the Applicants highlight that there are two beach accesses in the exception area that connect Pine Beach Loop and Ocean Boulevard to a long stretch of dry sandy beach.<sup>24</sup> The Applications then conclusively state that “[t]he proposed structure will improve the

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<sup>22</sup> Combined Application at 53.

<sup>23</sup> Oregon Shores agrees with DLCD that there does not appear to be a clear “specificity of a unique need” in this case, and strongly argues that the Applicants should address less impactful alternatives to their preferred method of mitigation of shoreline erosion. It should also be noted that four of the subject properties are currently undeveloped. Per Oregon Shores’ review, the Applications omit a discussion of need for the proposal for these properties, and fail to address compliance with Goal 7.

<sup>24</sup> See Combined Application at 54 (“There are two beach accesses in the exception area. One beach access

northern beach access[.]” “allows improved access to the beach[.]” and does not interfere with the southern beach access.”<sup>25</sup> The Applications further state that approval of the proposed riprap would “protect[] those public recreation interests from the harm that would occur to the ocean and beaches[.]”<sup>26</sup> These assertions are not only unsupported but also inaccurate. The Applications fail to address the harms and negative impacts to recreation that increased riprap will have on the public’s access to the beach. As stated in Oregon Shores’ prior comments and throughout the record, the addition of shoreline hardening to these sites—particularly the addition of riprap—would destroy recreational opportunities and greatly disturb the public’s access. Riprap not only reduces the walkability of a beach by making public walking and recreation spaces narrower and less safe but also continues beach erosion and causes beaches to disappear entirely over time.<sup>27</sup> The Applications provide no meaningful discussion of how the purpose of Goal 8 will be fulfilled. Absent such analysis, the Planning Commission cannot on the basis of the current record conclude that the proposed plan amendment is consistent with Goal 8.

*e. Goal 9 Economic Development; TCCP Goal 9*

The Applications also fail to demonstrate compliance with Goal 9. The purpose of Goal 9 is “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.” The Applications conclusively state that the proposal “does not implicate” yet is still “consistent with Goal 9.”<sup>28</sup> This assertion is overly conclusive and if the Applicants claim compliance with Goal 9, they must assert a more robust analysis. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 9.

*f. Goal 10 Housing; TCCP Goal 10*

The Applications also fail demonstrate compliance with Goal 10. The purpose of Goal 10 is “to provide for the housing needs of the citizens of the state.” It imposes an affirmative duty on local governments to ensure opportunities for the provision of adequate numbers of needed housing units at prices and rents that are affordable to Oregonians. *See* OAR 660-008-0000(1) (describing the purpose of Goal 10).

As noted in our prior June 10, 2021 Comment, the TCCP Goal 10 element satisfies the County’s planning obligation under Goal 10. The Applications conclusively assert that the “County's acknowledged Goal 10 Buildable Lands Inventory relies greatly upon its urban unincorporated communities, to include the Twin Rocks-Watseco-Barview urban unincorporated community that includes the subject properties, to provide medium density residential uses to the

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runs between Tax Lots 123 and 3204 to the beach. See Exhibit Q, p. 2. The other access runs from Pine Beach Loop between Tax Lots 113 and 114, and then along the southern boundary of Tax Lot 114 to the beach. Those beach accesses connect Pine Beach Loop and Ocean Boulevard to a long stretch of dry sandy beach. See Exhibit Q, p. 2; Exhibit F, Attachment 1, field photos.”).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *The True Cost of Armoring the Beach*, SURFRIDER (July 6, 2020) <https://sandiego.surfrider.org/the-true-cost-of-armoring-the-beach/> (last visited June 7, 2020).

<sup>28</sup> Combined Application at 54.

County.” However, even assuming this to be true, the Applications’ materials themselves acknowledge that this “need has largely been met, with a few more vacant lots available in the identified area.” The Applications fail to demonstrate that the existing structures are needed housing within the meaning of Goal 10, or that said existing upland structures and vacant lots are somehow necessary to meet the County’s identified need under Goal 10. The Applicants’ materials also fail to establish that there are *any* requirements or obligations on the County under Goal 10 that would necessitate the proposed exception to Goal 18 to allow the Applications’ preferred shoreline erosion mitigation use (i.e., hardened SPS). The Applications’ assertion that “[p]rotecting the existing lots planned, zoned and mostly developed with residences complies with the County’s buildable lands inventory and meets the County’s demonstrated housing needs under Goal 10” does not constitute an express obligation under Goal 10 that would require the County to take the proposed exception to Goal 18 allowing hardened SPS for otherwise ineligible properties. Because the Applicants’ materials fail to establish requirements or obligations on the County related to Goal 10, the Board of County Commissioners cannot conclude that the proposal is consistent with the demonstrated need rule on the basis of Goal 10 itself sufficient to justify an exception to Goal 18.

*g. Goal 11 Public Facilities; TCCP Goal 11*

The Applications also fail to demonstrate compliance with Goal 11. The purpose of Goal 11 is to “plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” The Applications assert that the proposal is consistent with Goal 11 without providing any reasoning other than the assertion that “[o]ne purpose of the proposed revetment is to protect . . . public facility investments from potential future beachfront erosion.”<sup>29</sup> The Applications fail to provide meaningful evidence to support this claim and fail to demonstrate how the preferred method of shoreline erosion mitigation (i.e., a hardened SPS) is consistent with Goal 11. Absent further analysis and evidence, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 11.

As noted in Oregon Shores’ June 6, 2021 Comment, the Goal 11 element of the TCCP fulfills the County’s planning obligations with respect to and directs development in accordance with Goal 11 (including the Watseco-Barview Water District and the Twin Rocks Water District). The Applicants’ materials do not establish that there are requirements or obligations on the County related to Goal 11 that necessitate either the proposed SPS or the proposed exception to Goal 18 to allow the SPS at the Pine Beach or Ocean Shore Boulevard properties.

*h. Goal 14 Urbanization; TCCP Goal 14*

The Applications also fail show compliance with Goal 14. The purpose of Goal 14 is to “provide for an orderly and efficient transition from rural to urban land use to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” The Applications state that the subject properties are “subject to an acknowledged goal exception that designates them to provide urban

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<sup>29</sup> *Id.* at 56.



levels of residential use and are served with urban public facilities and services[.]”<sup>30</sup> thus making them consistent with Goal 14. The Applications also state that the “proposed structure is consistent with the level of that development and will protect that development.”<sup>31</sup> However, the Applications fail to explain how the fact that the existing structures on the subject properties may have been subject to a previous Goal exception for residential development is relevant to the inquiry of whether the proposed SPS is compliant with Goal 14 for the purposes of taking an exception to Goal 18. As noted by DLCDC:

[T]he *homes* that exist in the application area were built in conformance with the provisions of Goal 18, Implementation Requirement (JR) 2. The *houses* were not built in an active foredune or in a dune area subject to ocean flooding, which means they did not need an exception to Goal 18, IR2. The other goal exceptions (to Goals 3, 4, 11, and 14) that allow for the Barview/Twin Rocks/Watseco community to be residentially developed, do not specify the exact location of development on each parcel in this unincorporated community...The *houses* were built in the eastern portions of their respective parcels to comply with the prohibition areas of Goal 18 for residential development. [DLCDC] understands the applicants to argue that the other goal exceptions allowed the development to be placed in a foredune and therefore, they have an exception to Goal 18, IR2. That is not reflected in the Tillamook County Comprehensive Plan. To reiterate, a goal exception is an affirmative act that is required to be incorporated into a comprehensive plan.

In other words, the proposed BPS requires an exception to Goal 18, and is not simply consistent with Goal 14 because the upland structures may be subject to an exception to said Goal.

Further, Goal 14 focuses mostly on managing urban growth using the urban growth boundary; this Goal—and its implementation in the TCCP—are about criteria to manage and control the phasing of development within an urban growth boundary.<sup>32</sup> The addition of riprap and BPS on the coast is not consistent with the overall purpose and requirements of Goal 14 which dictate urbanization. The fact that the BPS may “protect” the development that has taken place on the subject properties is not enough to make this specific proposal consistent with Goal 14. The Applicants reliance on this Goal and the prior Goal exception is misplaced. Even if the Board determines that this proposal is consistent with Goal 14 and takes the Applications’ assertions as truth, the proposal’s consistency with this Statewide Planning Goal should not be determinative of the proposal’s compliance with the applicable Goals criteria as a whole.

*i. Goal 17 Coastal Shorelands; TCCP Goal 17*

The Applications also fail to satisfy obligations under Goal 17. The purpose of Goal 17 is to “conserve, protect, *where appropriate*, develop and *where appropriate* restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and

<sup>30</sup> *Id.* at 56.

<sup>31</sup> *Id.*

<sup>32</sup> *See* TCCP Goal 1, 2.5: Purpose of the Urbanization Goal, Goal 14.



recreation and aesthetics.”<sup>33</sup> In other words, local governments must first conserve and protect “the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.” If development is consistent with Goal 17’s mandate to conserve and protect (i.e., “where appropriate”), only then can it be allowed to proceed. The Goal’s objective is also “[t]o reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, *resulting from* the use and enjoyment of Oregon’s coastal shorelands.”<sup>34</sup>

In their Combined Application, the Applicants state that Goal 17 does not apply to the subject properties because the properties were “planned for residential use and the findings for the Pine Beach Subdivision approval in 1994 noted that an exception to Goal 17 was taken for the area.”<sup>35</sup> As noted above, the fact that the subject properties may have an exception for the development of the subdivision or structures on the eastern portions of their relevant parcels (consistent with Goal 18’s prohibitions) does not automatically mean that the subject properties have an exception for the proposed BPS. DLCD has previously noted that the subject properties are, in fact, subject to both Goal 17 and Goal 18 as resource lands; therefore, the Applications err by claiming Goal 17 does not apply to this proposal. The Applicants should address compliance with Goal 17.

The Applications also state that the proposed BPS will not interfere with recreational uses in violation of Goal 17 because “the BPS is located on vegetative property, not on the beach” and therefore there is “no way” the BPS nor the location of the BPS will interfere with public access or recreational uses.<sup>36</sup> This assertion is overly conclusive and fails to recognize the erosive nature of riprap and the impacts BPS has on beaches. The Applications fail to meaningfully address the harmful impacts this proposal will have on the public’s beach and long-term beach access by limiting the scope of this proposal’s impact to private property interests. Without a more in-depth analysis of how this proposal will impact this coastal shorelands area, the Board should not determine the Applications are in compliance with Goal 17.

*j. Goal 18 Beaches and Dunes; TCCP Goal 18*

The purpose of Goal 18 is to “conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune area[]” and to “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.” As discussed previously, because the properties were not developed as of January 1, 1977, Goal 18 prohibits the Applicants’ from constructing their preferred method of shoreline erosion mitigation (i.e., hardened SPS) in order to protect the public’s beach. Hence, to lawfully develop the proposed SPS, the Applicants bear the burden of demonstrating that an exception to Goal 18 is justified.

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<sup>33</sup> Goal 17, (emphasis added).

<sup>34</sup> Goal 17, (emphasis added).

<sup>35</sup> Combined Application at 57.

<sup>36</sup> See Final Argument at 30.

As stated in Oregon Shores' prior comments and throughout the record, the Applicants' proposal for riprap proliferation 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 January 1, 1977. Oregon Shores incorporates by reference our previous robust analysis regarding the proposal's inconsistency with Statewide Planning Goal 18 in our June 3, 2021 Comment and our June 10, 2021 Comment on this matter. 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 Board of County Commissioners should recommend denial of the Applications.

Finally, as noted by DLCD, future uses of the four vacant oceanfront lots within the proposed goal exception location "would have to comply with the provisions of Goal 18, including to reduce hazards to human life and property." As discussed above, the Applications fail to provide specific analysis regarding these vacant lots, including addressing compliance with Goal 18. The Applicants should address compliance with Goal 18 with respect to these lots prior to any final decision in this matter.

As highlighted in our June 3, 2021 Comment, incorporated by reference, 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).

*k. Catch-all Analysis for Goals 1, 3, 4, 12, and 13*

For the sake of issue preservation, Oregon Shores notes that the Applications conclusively state compliance with Goals 1, 3, 4, 12, and 13. While it is true that Goals 3 and 4 are not implicated in this matter, the Applications cannot simply state that the project is consistent with the Goals without a more analysis. The Applications also state that the proposal is consistent with Goal 1 because the application is processed in accordance with the county's acknowledged land use regulations and procedures. Because the local criteria, as detailed above, are not satisfied, the proposal is not consistent with Goal 1 or Goal 2.

The purpose of Goal 12 is to “provide and encourage a safe, convenient and economic transportation system.” The Applications conclusively state that the proposal is consistent with Goal 12 without providing any reasoning other than the assertion that the traffic generated from structure construction will not have any significant impacts necessary to address under Goal 12. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 12. Even the Board determines that this overly conclusive assertion means that the proposal is consistent with Goal 12, the proposal’s consistency with this Statewide Planning Goal should not be determinative of the proposal’s compliance with the applicable Goals criteria as a whole. The purpose of Goal 13 is to “conserve energy.” The Applications conclusively state that the proposal “does not directly implicate” yet is still “consistent with Goal 13.”<sup>37</sup> This assertion is overly conclusive and if the Applications claim compliance with Goal 13, they must assert a more robust analysis. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 13.

**iii. The Applications Do Not Comply with the Applicable Tillamook County Comprehensive Plan Policies Contained in TCCP Goal 7, TCCP Goal 16, TCCP Goal 17, and TCCP Goal 18.**

*a. TCCP Goal 7, Policy 2.4(a)*

In addressing erosion Policy 2.4(a) in their Combined Application, the Applications only focused on the riprap’s immediate stabilization of the shoreline and failed to address how this beachfront protection structure impacts the stability of its surrounding area over time, the implications that this structure will have on public safety, and how this proposal may ultimately result in the proliferation of more shoreline hardening.<sup>38</sup> TCCP Goal 7, Section 2.4(a) does not require the County to use hardened SPS to prevent erosion much less approve an exception to Goal 7 and the TCCP’s Goal 7 element to allow private entities to do so, and the Applicants’ materials fail to argue otherwise. The Applications’ assertion that failure to approve the proposed exception for the Applicants’ preferred shoreline mitigation measure (i.e., hardened riprap) measure would mean the County would fail to comply with the TCCP implementation measure to fulfill its planning obligation under Goal 7, is unsupported and contrary to the case law governing OAR 660-004-0022(1)(a). Further, given that the proposed SPS will increase erosion and the need for remedial measures, the suggestion that it is needed is contrary to sound management of natural hazards on the shoreline. The Applications assert, absent any meaningful evidence and analysis, that “critical public infrastructure is at risk.” Even assuming this is true, again, there is no obligation identified by the Applications that require the County to use riprap as a preventative or remedial measure in this case.

*b. TCCP Goal 7, Policy 2.5(d)*

The Applications failed to specifically discuss compliance with TCCP Goal 7 Policy 2.5(d) for Flooding, which states that “permanent structures shall not be placed in channels

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<sup>37</sup> Combined Application at 55–56.

<sup>38</sup> Combined Application at 63.

subject to flash flooding.” The BPS the Applicants are proposing is a permanent shoreline hardening structure in an area that is subject to tidal flooding. The Applications fail to acknowledge this policy that seemingly opposes this proposal and fail to offer an analysis of how this proposal is still in compliance with this policy.

*c. TCCP Goal 16, Policy 7.5(2)*

The Applications state that that the “shoreline stabilization proposed here is the highest option left” as vegetated riprap. Goal 16 Policy 7.5(2) does state that the general priorities for shoreline stabilization within estuarine waters, intertidal areas, tidal wetlands, and along WDD shoreland zones and other shoreland areas are, from highest to lowest, proper maintenance of existing riparian vegetation; planting of riparian vegetation; vegetated riprap; non-vegetated riprap; groins, bulkheads and other structural methods. However, the Applications fail to discuss any other preferred alternatives to shoreline stabilization and insist that “vegetated riprap” is the only means of addressing the private homeowners’ issues. The Applications’ conclusive analysis fails to demonstrate compliance with this TCCP policy.

*d. TCCP Goal 16, Policy 7.5(4)*

Goal 16. Policy 7.5(4) states that structural shoreline stabilization methods shall be permitted *only if*:

- a. flooding or erosion is threatening a structure or an established use or there is a demonstrated need (i.e., a substantial public benefit) and the use or alteration does not unreasonably interfere with public trust rights; and
- b. land use management practices or non-structural solutions are inappropriate because of high erosion rates or the use of the site; and
- c. adverse impacts on water currents, erosion and accretion patterns and aquatic life and habitat are avoided or minimized.

The Applications conclusively state that each of the above-mentioned Policy 7.5(4) subsections are met; however, the Applications fail to meaningfully discuss each in detail. Even if the Board finds that the Applications are consistent with this TCCP Policy, that consistency should not be determinative of the Applications overall consistency with the TCCP.

*e. TCCP Goal 16, Policy 7.5(5)–(6)*

While these policies only apply to Estuary Natural/Estuary Conservation Aquaculture zones and Estuary Conservation 1/Estuary Conservation 2 zones respectively and may not specifically apply to these Applications, the Applicants state in their Combined Application that the proposal is consistent with both policies because the BOS will “protect existing dwellings and public water and sewer facilities” as well as “not adversely affect long term use of the beach resource and not cause alteration of the beachfront other than at the protected location.”<sup>39</sup> As stated throughout this record and in Oregon Shore’s previous comments, the Applications have only conclusively stated that the proposed BPS will “not adversely” impact the surrounding

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<sup>39</sup> Combined Application at 67.



and adjacent beaches and not impact public beach access. The proposal fails to offer any discussion addressing the harmful nature of riprap and thus, the Applications fail to meaningfully demonstrate compliance with these TCCP Policies.

*f. TCCP Goal 17, Policy 4.2*

To the extent that Goal 17, Policy 4.2 applies, the Applications have failed to meaningfully address compliance. This policy for shoreline development states:

New shoreland development, expansion, maintenance or restoration of existing development; or restoration of historic waterfront areas shall be sited, designed, constructed and maintained to minimize adverse impacts on riparian vegetation, water quality and aquatic life and habitat in adjacent aquatic areas, and to be consistent with existing hazards to life and property posed by eroding areas and flood hazard areas.

To accomplish this:

- a. The requirements of the National Flood Insurance Program shall be used to regulate development in flood hazard areas within coastal shorelands:
- b. Shoreland setbacks shall be established to protect riparian vegetation and to recognize eroding areas (See Section 9, of this element):
- c. Priority shall be given to nonstructural rather than structural solution to problems of erosion or flooding:
- d. Existing state and federal authorities referenced in the Water Quality policies shall be utilized for maintaining water quality and minimizing Goal 17 Coastal Shorelands Complete 62 man-induced sedimentation in aquatic areas.

The Applications have failed to meaningfully discuss how the proposed riprap will minimize adverse impacts and how it is consistent with existing hazards to life and property in these areas—especially related to safety of beach access and the hazardous impacts of riprap. As stated above, this policy gives priority to “nonstructural” solutions rather than structural solutions to address the problems of shoreline erosion or flooding. The Applications fail to offer solutions more in line with the TCCP’s shoreline development policy and thus fail to demonstrate compliance.

*g. TCCP Goal 17, Policy 4.3*

The Applications fail to meaningfully discuss compliance with Goal 17, Policy 4.3 related to scenic views and public access. The policy states:

New shoreland development, expansion, maintenance or restoration of existing development and restoration of historic waterfront areas shall be designed to promote visual attractiveness and scenic views and provide, where appropriate, visitor facilities, public viewpoints and public access to the water. Existing public access to publicly owned shorelands shall be maintained. Existing public ownerships, right-of-way and similar public easements in coastal shorelands which provide access to, or along coastal waters shall be retained or replaced if sold,



exchanged or transferred. Rights-of-way may be vacated to permit redevelopment or shoreland areas provided public access across the affected site is retained. This TCCP policy highlights the importance of the public's access to the County's shorelands—something implementation of this proposal threatens. The Applications fail to mention this policy and how the proposed BPS will comply with the County's policy to maintain existing public ownership and access to the coastal shorelands.

*h. TCCP Goal 18, Policy 2.4a and 4.4e*

The Applications failed to discuss compliance with Goal 18, Policy 2.4a which states, in relevant part:

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

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

\* \* \*

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

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

Goal 18, Policy 4.4e confirms that this policy "shall apply to beachfront protective structures"

As noted throughout the record and this comment, the Applications fail to fully address the hazardous impacts of BPS on access to the public's beach and on the long-term negative effects of riprap on erosion on the site and surrounding beach as a whole.

*i. TCCP Goal 18, Policy 2.4b*

As noted above in Section B(i)(a) analyzing Flood Hazard Overlay Zone compliance, the Applications have not demonstrated total compliance with certain FH zone criteria. Because of this, the Applications fail to demonstrate compliance with Goal 18, Policy 2.4b which requires that "[d]evelopment in beach and dune areas shall comply with the requirements of the Flood Hazard Overlay zone."

*j. TCCP Goal 18, Policy 4.4c*

This policy implements Goal 18, IR 5, stating that "[b]eachfront protective structures . . . are permitted only where development existed on January 1, 1977 or where buildings are authorized by Section 5." This is the main crux of the Applicants' request and because the Applications failed to justify an exception under Goal 18, IR 5, they cannot show compliance with this TCCP policy.

*k. TCCP Goal 18, Policy 4.4f*

This policy states that “[s]horeline protection measures shall not restrict existing public access.” The Applications conclusively argue throughout the record that there will be no issues with existing public access because “[t]he proposed structure will improve the northern beach access with a gravel path and ramp that goes over the rock revetment and allows improved [beach] access” and because “the proposal does not interfere with the southern beach access.” However, this argument fails to analyze the known impacts of riprap on the public’s beach and the sustained impacts that the proliferation of shoreline hardening will have on the beach and future adjacent sites. The Applications fail to meaningfully analyze address this in and fail to show compliance with this TCCP policy. As a whole, this proposal is not consistent with the TCCP and thus the Board should deny the Applications.

**C. Conclusion**

Allowing installation of hardened structures along the shore, which can deprive the beach of a sand source that may help to mitigate the progressive loss of sand from Oregon’s bluff-backed shorelines due to increasing erosion, does not protect the public’s interest in the beach as the County is required to do. Given the increases in storm surge and wave height we are already experiencing on the Oregon coast, and given what we know of further predicted changes resulting from long-term climate change and cyclical climatic events such as El Niño, these requests for protective structures permits are likely to increase. Further, allowing the installation of protective structures exacerbates the risks to public health and safety as well as to shorefront properties by encouraging investment in shorefront protection rather than incentivizing movement away from shoreline areas and coastal hazards. The result is prioritizing the protection of private property in the short-term to the detriment of the public’s long-term interest in preserving the beach, inconsistent with the Oregon Beach Bill and Goal 18. In the long run, armoring the ocean shore will prove futile against sea level rise and erosion. In the meantime, significant practical and policy questions arise in light of the effects of rising sea level on the ocean shore.

Oregon Shores strongly believes that the Board of County Commissioners needs to get in front of this crisis and make decisions on the basis of present and increasing risks, consistent with the principles of Goal 18 and ORS 390.610. The Applications fail to demonstrate reasons justifying an exception to Goal 18 and fails to satisfy the mandatory local criteria. On the basis of the present record and Oregon Shores’ previous comments, incorporated by reference, the Board of County Commissioners should deny these applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Phill", followed by a long horizontal line extending to the right.

Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG  
BOCC Public Hearing - Comments of Oregon Shores Conservation Coalition

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

## Attachment A

### Aerial Photos of the Pine Beach Area









## Allison Hinderer

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**From:** Sarah Mitchell <sm@klgpc.com>  
**Sent:** Tuesday, July 27, 2021 5:22 PM  
**To:** Sarah Absher; Allison Hinderer  
**Cc:** Wendie Kellington; Bill and Lynda Cogdall (jwcogdall@gmail.com); Bill and Lynda Cogdall (lcogdall@aol.com); Brett Butcher (brett@passion4people.org); Dave and Frieda Farr (dfarrwestproperties@gmail.com); David Dowling; David Hayes (tdavidh1@comcast.net); Don and Barbara Roberts (donrobertsemail@gmail.com); Don and Barbara Roberts (robertsfm6@gmail.com); evandanno@hotmail.com; heather.vonseggern@img.education; Jeff and Terry Klein (jeffklein@wvmeat.com); Jon Creedon (jcc@pacifier.com); kemball@easystreet.net; meganberglaw@aol.com; Michael Munch (michaelmunch@comcast.net); Mike and Chris Rogers (mjr2153@aol.com); Mike Ellis (mikeellispx@gmail.com); Rachael Holland (rachael@pacificopportunities.com); teriklein59@aol.com  
**Subject:** EXTERNAL: 851-21-000086-PLNG & 851-21-000086-PLNG-01 Pine Beach BOCC Hearing Packet - Powerpoint Presentation to BOCC Part 1  
**Attachments:** July 28 BOC Hearing PPT.pdf  
**Importance:** High

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

Hi Sarah and Allison,

Please include the attached powerpoint presentation in the record of 851-21-000086-PLNG /851-21-000086-PLNG-01 and in the Board of Commissioners' packet for the July 28, 2021 hearing on these matters. Would you please confirm your receipt? Thank you.

Best,  
Sarah



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

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# Pine Beach Combined Application for Shoreline Protection

Tillamook County Board of Commissioners  
July 28, 2021

Presented by:

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



KELLINGTON  
LAW GROUP, PC

# Subject Properties/Proposal

- Avoiding a piecemeal approach, the owners of 15 properties working together seek approval of a critically needed beachfront protective structure.
- Application is for Goal 18 exception and County Development Permit
- Proposal is supported by the Pine Beach HOA.
- Proposal is supported by the County Planning Commission
- Pine Beach Loop (Pine Beach Subdivision – first platted 1932; replatted 1994) and Ocean Blvd. (George Shand tracts platted 1950).
- Acknowledged urban unincorporated community (Twin Rocks/Barview/Watseco), long planned and zoned for medium density urban residential use under an acknowledged urban planning program.





### Proposed Exception Area and Adjacent Lands Map









Subject Properties





# Owners – personal responsibility Tillamook County is sole Decisionmaker

- The beachfront protective structure (“BPS”) is not on beach.
- The BPS is entirely in the backyards of the properties it will protect.
- All other BPS proposals including Shorewood RV Park’s was on the dry sand beach and County and OPRD had to approve.
- BPS here is entirely east of OPRD jurisdiction – east of established vegetation/SVL and east of the dry sand beach;
- Neither OPRD nor DLCD approval required – the Subject Properties are in an acknowledged urban unincorporated community that is part of an acknowledged and appropriate residential development program.
- △ Tillamook County is only the approval authority - local control.





# Beachfront Protection is Urgently Needed

- 70-plus years of prograding; residential development approved on stable ground.
- Sudden onset retrograding beach: winter 1997-98 El Nino/1998-1999 El Nina.
- Aggressive erosion ever since.
- Now, King Tides in 2020 and 2021 reached Subject Properties + 45' beyond
- Continued significant threat of severe flooding.
- At risk are human lives, residential development, public water and sewer infrastructure.
- The proposal protects people; public and private investments; avoids significant environmental harm from destroyed homes; garaged vehicles; broken sewer and water infrastructure; broken electrical connections, gas connections; proposal protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity; at minimum would cause significant strain districts' resources.
- Torn out infrastructure risks dangerous service disruptions to the larger community.

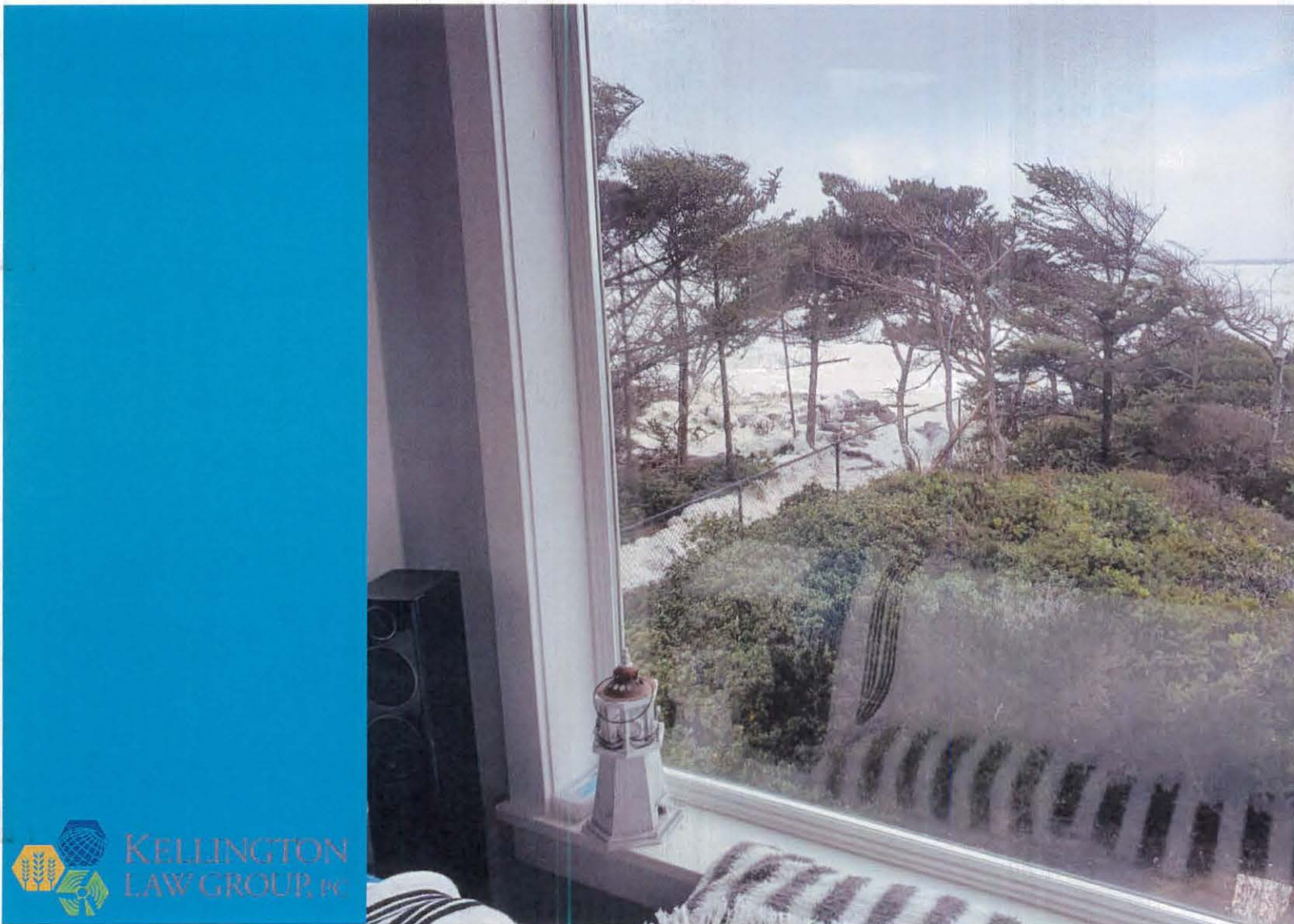














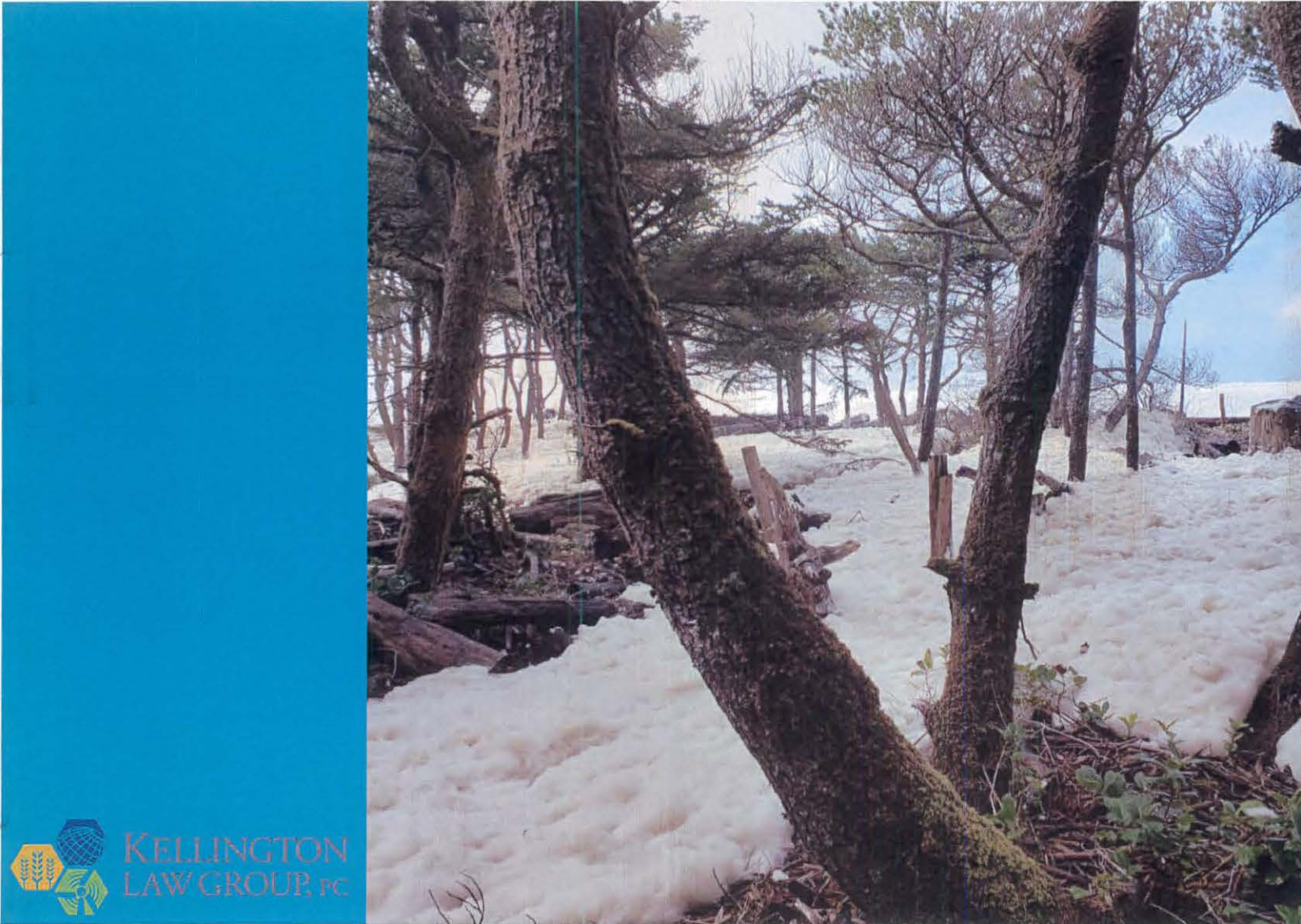






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LAW GROUP, PC

















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LAW GROUP, PC





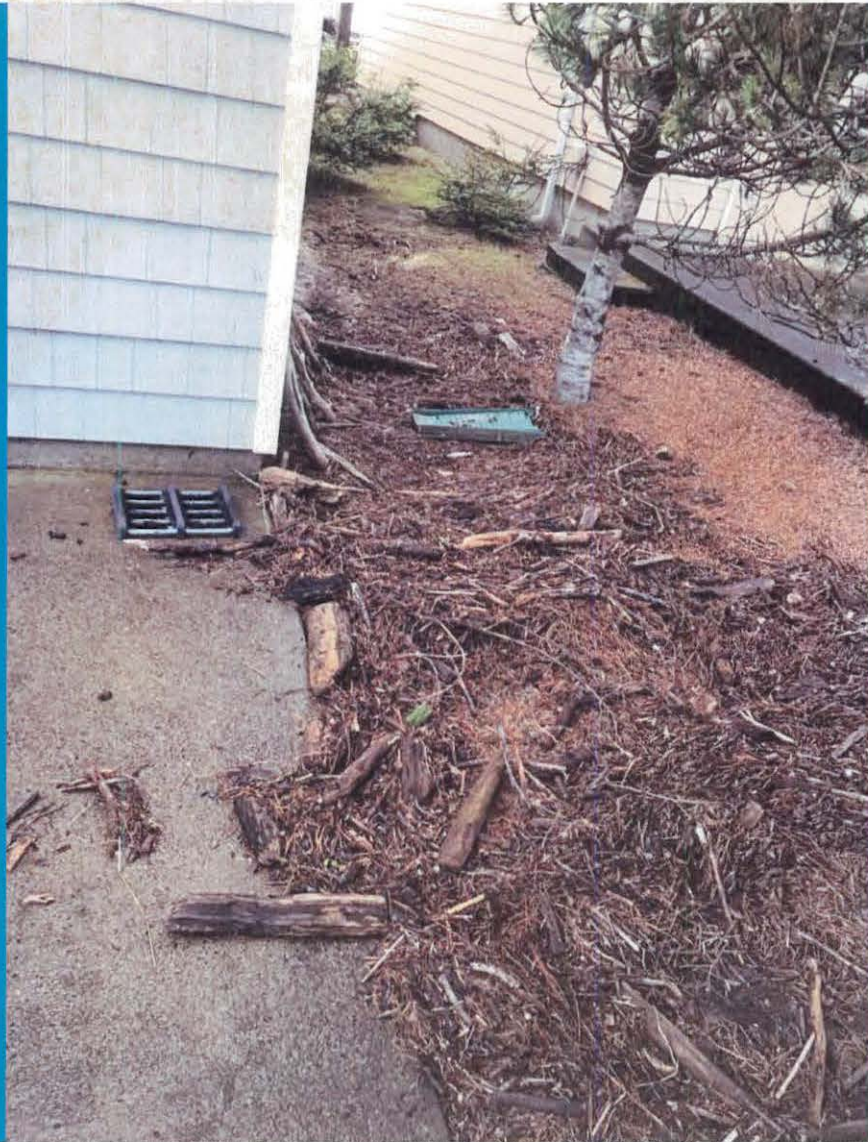


























# Properties and infrastructure are now in imminent peril

- 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
<b>TOTAL:</b>		<b>\$10,284,990</b>

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



# Property Owners Contribute \$75,000/year to County in Taxes

**Tax Statements 2020-21**

Account #	Map #	Tax 2020-21
399441	1N1007DD00114	\$8,969.35
399444	1N1007DD00115	\$5,075.78
399447	1N1007DD00116	\$5,456.46
399450	1N1007DD00117	\$2,329.53
399453	1N1007DD00118	\$5,566.80
399456	1N1007DD00119	\$2,329.53
399459	1N1007DD00120	\$5,249.30
399462	1N1007DD00121	\$5,451.05
399465	1N1007DD00122	\$5,181.77
399468	1N1007DD00123	\$7,609.27
62425	1N1007DA03000	\$5,787.17
62611	1N1007DA03100	\$5,419.97
355715	1N1007DA03104	\$5,261.53
62719	1N1007DA03203	\$2,647.78
322822	1N1007DA03204	\$2,647.78
<b>TOTAL:</b>		<b>\$74,983.07</b>

**TOTAL: \$74,983.07**





## Subject Properties are an Important Source of Property Taxes Supporting County Service Providers

- If Subject Properties are wiped out, \$75,000 in annual tax revenues will be irrevocably lost.
  - Police
  - Fire
  - Schools
  - Education Service Districts

Catastrophic loss not only would cause lost property tax revenues, but also impose fiscal strain:

- Allowing Subject Properties to be wiped out: strain emergency providers and social services networks.
- Allowing Subject Properties to be wiped out: strain public facilities district equipage and resources.
- Approval is necessary so the Applicants can protect themselves and their homes.



# Application Legal Framework for Decision

- The Oregon land use planning system consists of state statutes, administrative rules, the Statewide Planning Goals and local plans and regulations.
- The legislature ensured local authority:
  - DLCD is responsible to “acknowledge” local plans and regulations to certify that local plans and regulations comply with all the state land use rules.
  - But local governments are vested with authority and responsibility to approve land use requests like the proposal.
  - This application is a local land use request that is **exclusively within the control of the County Board of Commissioners.**
- The legislature **expressly authorizes** cities and counties to adopt goal exceptions to retain flexibility in the land use system. ORS 197.732.
- DLCD rules echo the same: “The intent of the exceptions process is to **permit necessary flexibility** in the application of the Statewide Planning Goals.” OAR 660-004-000(3).
- DLCD rules specifically say Goal 18 exceptions are permitted. OAR 660-004-0010(1)(g).
- Goal exceptions are site specific **amendments to the County’s Plan.**
- It is simply mistaken that Goal 18 exceptions can never be granted to provide beachfront protection.
- The legal framework allows them in proper circumstances, such as those here.



# Goal Exceptions

- The legislature outlines three appropriate types of exceptions. ORS 197.732. All are relevant here.
- They are:
  - The land is “**physically developed** to the extent that it is no longer available for the uses allowed by the applicable goal.”
  - The land is “**irrevocably committed** \*\*\* to uses not allowed by the applicable goal because adjacent uses and other relevant factors make the uses allowed by the applicable goal impractical.”
    - Often referred to together as “built and committed” exceptions – this is how County plan refers to them.
  - “**Reasons** justify why the state policy” in a goal should not apply.
    - DLCD rules expressly allow two types of “reasons” exceptions. One is specific to Goal 18, and one is called the “catch all” that applies generally.



## County is Familiar with Goal Exceptions and has Adopted them Previously

- County has taken and DLCD has acknowledged as completely appropriate a “built and committed” Goal 17 Exception for the entire urban unincorporated community of Twin Rocks/Barview/Watseco (including where the proposed BPS will be located and beach beyond)– from County Plan:
- **“8.2 \*\*\*"Built and Committed" Rural Shorelands from Goal 17 Rural shoreland Use Requirements 3e. Tillamook County finds that there are shoreland areas which are \*\*\*"built and committed" to a type and degree of development which is not rural in nature. These include the following communities \*\*\* which are necessary, suitable or intended for urban use (Netarts, Oceanside, Pacific City, Neskowin, Cloverdale, Neahkahnie and Twin Rocks-Watseco-Barview.)”**



Barview -  
Watseco -  
Twin Rocks  
Community Area

Location of Revetment



Community Boundaries

Location of Revetment





# Request is for a Limited Exception to Goal 18, Implementation Measures 2 and 5

## \*\*\* Exception to Goal 18, Implementation Measure 2 \*\*\*

- Goal 18, Implementation Measure 2 says the County should not allow residential development on dunes subject to wave overtopping/undercutting.
  - No one thought Goal 18, Implementation Measure 2 would be triggered here.
  - When the County approved residential development on the Subject Properties, the beach had been in a 70+ year period of prograding; the approved residential development was east of a coastal forest, safe and exactly where Goal 18, IM 2 said it should be – nothing was proposed on a dune subject to overtopping/undercutting.
  - In fact, all residential development was approved far away from such dunes.
  - Residential development was established on Subject Properties in good faith based upon compliance with all rules.
  - Later, the dune dramatically changed; now, the Subject Properties are in significant danger.
  - Now, Subject Properties are residential development on a type of dune that Goal 18, IM 2 forbids.
- The requested limited Goal 18, IM 2 exception will do two things:
  - Allow the County to continue its long planned urban residential development program in Twin Rocks/Barview/Watseco.
  - Allow the County to protect urban residential development in that long-planned program so the County can comply with its obligations to protect people and property from destruction caused by natural or man-made hazards.
- Approval of requested limited Goal 18, IM 2 exception will mean Goal 18 allows the proposed beachfront protective structure.



## \*\*\*Limited Exception to Goal 18, Implementation Measure 5 \*\*\*

- Goal 18, Implementation Measure 5 says the County should prohibit beachfront protective structures for property that was not “developed” on Jan 1 1977.
- The limited Goal 18, IM 5 exception will *also* allow the protective structure, even though properties not “developed” by 1977.
- Request for exceptions to both Goal 18, Implementation Measures 2 and 5 is to provide the best insurance that the Subject Properties are protected.
- Either exception will allow the proposed beachfront protection system.
- But approving both Goal 18, Implementation Measure 2 and Implementation Measure 5 exceptions, maximizes any County approval decision being sustained if there are appeals.



# The Proposed BPS Meets Standards for Exceptions

\*\*\* Physically developed/committed type \*\*\*

The Subject Properties are residentially developed/committed to residential development.

- All are in platted subdivisions;
- 11 are built with houses/garages; many occupied by full time residents;
- 4 do not yet have houses, but are developed with urban infrastructure (sewer, water, electricity, gas, telephone) and roads,
- All are in an acknowledged urban unincorporated community and zoned R-3 (med density residential). County Plan reinforces Twin Rocks-Barview-Watseco commitment to residential development:

Lands included within the community growth boundary are committed to development and can be easily served with sewer and water.

Environmental consequences are beneficial because committed areas are used for development.

The entire area is included within sewer and water districts. Developed areas are currently served and undeveloped areas are in close proximity to existing lines.

Economic consequences are favorable because sufficient land that can be easily served is included within the boundary.

- (5) County Plan states the County “needs” the Subject Properties and the rest of Twin Rocks-Barview-Watseco to maintain housing:

1) Demonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals:

There is a need to accommodate approximately 130 additional housing units by the year 2000. The community growth boundary will accommodate approximately 320 dwellings.

- In fact, the acknowledged County Comprehensive Plan defines facts here to meet “committed” exception type

Another form of “commitment” could consist of significant earlier public decisions, such as the approval and recording of a subdivision upon which construction has been started. Such construction might be the laying of a water or sewer line specifically designed and sized to permanently serve the subdivision.



## Proposed BPS Also Meets “Reasons” Exception Standards

- Demonstrated need for the County to amend its Plan to meet state Goal 7 obligations to protect persons and property from natural / man-made hazards.
- Demonstrated need for the County to comply with its acknowledged Goal 10 (housing) obligations to provide urban residential development on the Subject Properties.
- Demonstrated Goal 14 need to provide for the livability of the County designated urban unincorporated communities of Twin Rocks/Barview/Watseco.
- Demonstrated Goal 18 need to “reduce the hazard to human life and property from natural or man-made actions” in beach and dune areas.
- Denial would put County at risk of not complying with these state Goal obligations.



## “Reasons” Exception Standards

- “Areas that do not require a new exception cannot reasonably accommodate the use”.
  - **NOTE:** This is not an alternative *methods* issue, but an alternative *areas* issue.
  - Regardless, the evidence shows that there is no other area for the proposed BPS or other method that can protect the human lives and properties at severe risk.
- “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.”
- “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”
- **NOTE:** Rule defines meaning of “compatible”: “‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”
- Evidence demonstrates only that the proposal is compatible with other adjacent uses.



## Goal 18 Specific “Reasons” Exception Standards

- “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.”
- (c) meets other previously listed reasons exception standards.
- The evidence, opinions of experts, County Planning Commission and legal analyses show that all “reasons” exception standards are met.

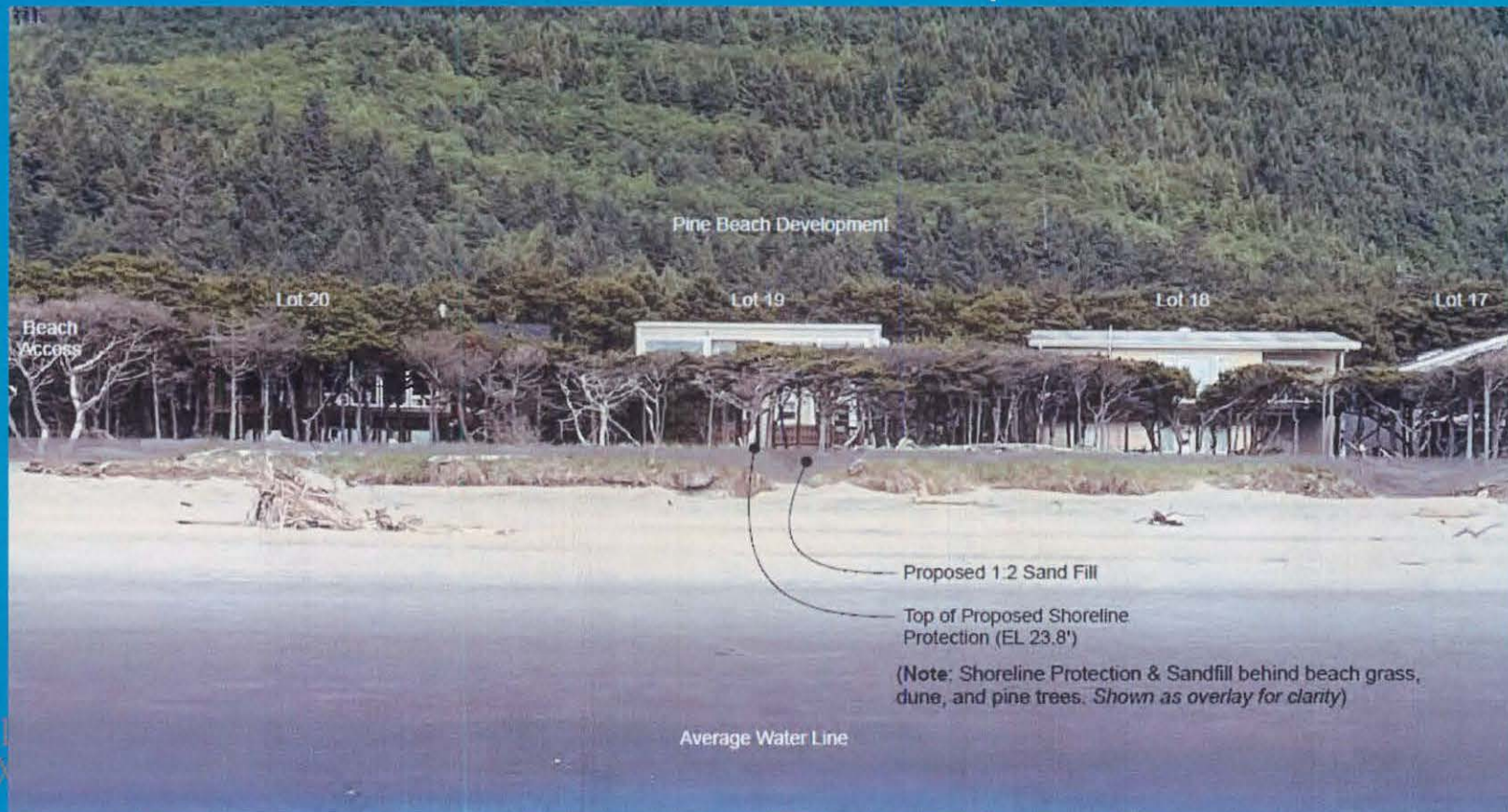


## Expert Analysis Establishes that Approval Furthers State and County Land Use Programs and Policies

- Planning Commission reviewed and agreed that approval is appropriate.
- Expert analysis backed by authoritative papers (DOGAMI and others) proves that all standards are met .
- Expert analysis proves that the proposed beachfront protection is compatible, minimizes adverse environmental effects, is properly designed and will not cause ocean flanking, accelerated wave runup, or any other harm.
- Evidence demonstrates that the proposal does not cause adverse impacts to persons on the beach walking north/south; no adverse impact on east/west private access points to the beach.
- Proposed protection cannot be easily seen by beachgoers.



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





- Approval is Consistent with DLCD’s “Goal 18 Focus Group” Expectations – the Exception Process is Appropriate

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**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.



# Claims that there is no severe, imminent flooding risk, are mistaken

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

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

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



The problem  
explained in  
graphics



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

Beach Erosion History - Google Earth

1994



1994



2000

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2000

8/2005

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August 2005



2011

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2011

2014

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2014



48



2016



2016

2017

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2017

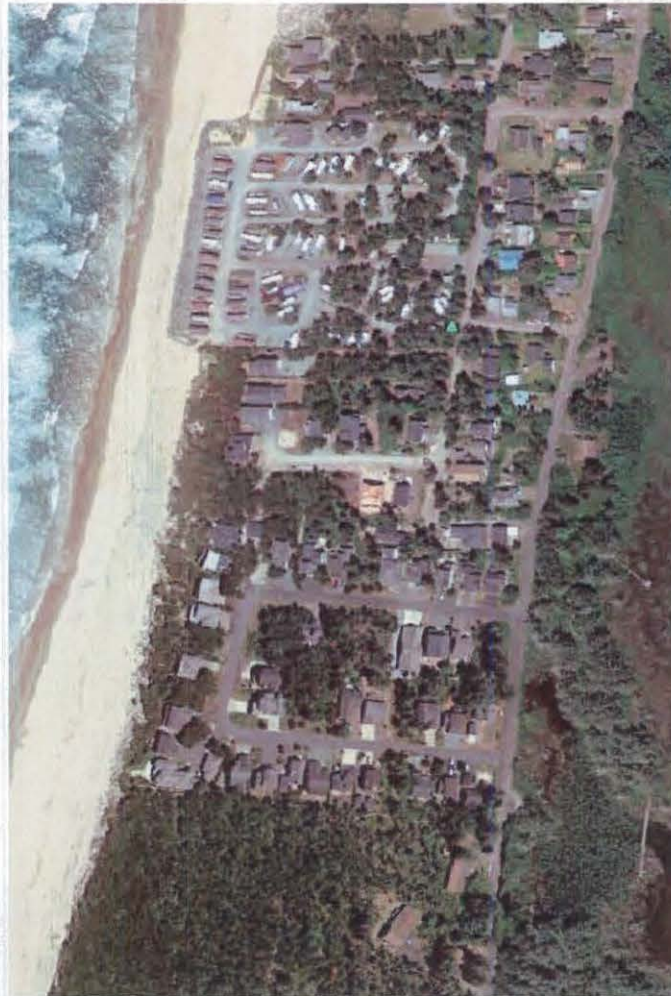


50



2020

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2020



51



# Dune Changes - 1975-2020

1975 (USDA):

- Younger stabilized dune
- Open dune sand conditionally stable

1994 (Pine Beach Dune Hazard Report):

- 70-year history of ocean prograding
- Coastal forest had grown on open dune sand
- Homes to be sited on younger stabilized dune
- No active foredunes
- No risk of wave overtopping undercutting

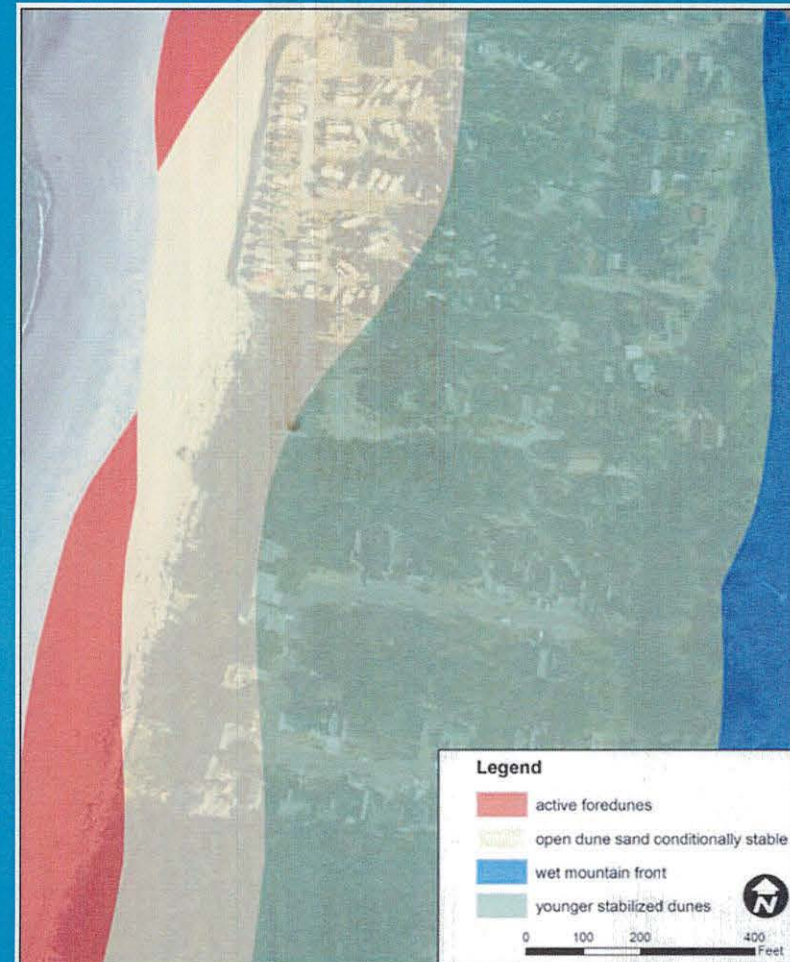


Figure 2. Beach and dune geomorphic mapping classifications at Subject Project (USDA, 1975)



# Dune Changes 1975-2020

## 2020 (DOGAMI):

- Subject Properties are now on “recently stabilized foredune” (DLCD classification: “conditionally stable foredune”).
- That dune is now subject to ocean undercutting / wave overtopping
- BPS will be on active foredune.

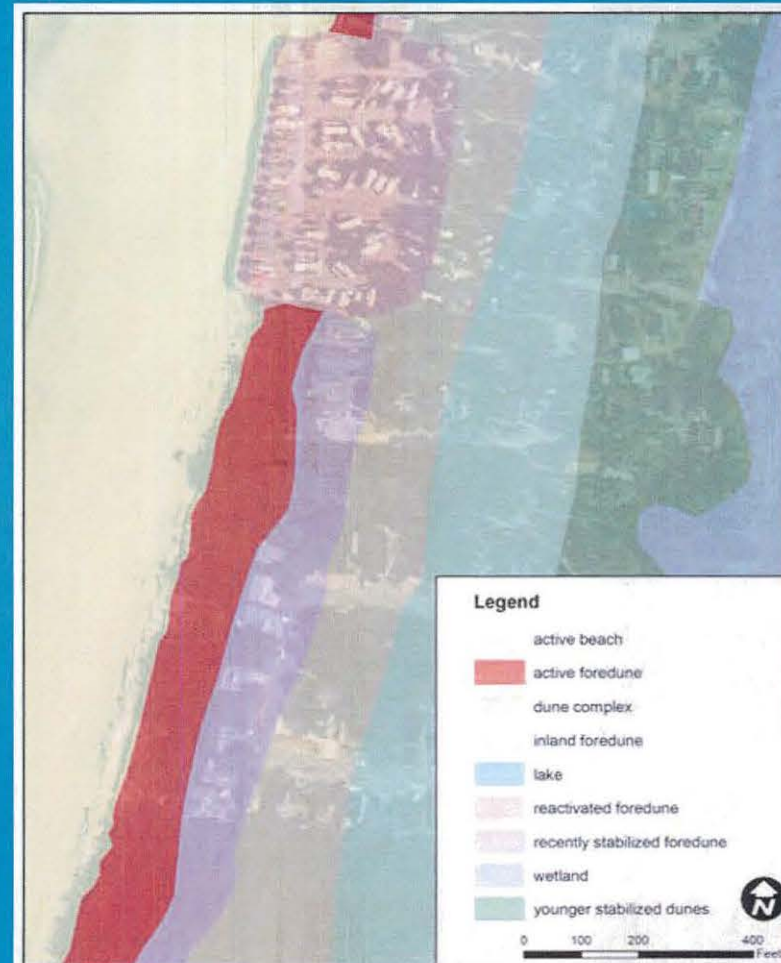


Figure 3. Beach and dune geomorphic mapping classifications at Subject Project (DOGAMI, 2020)



# Changes in 1975-2020

- Summary:
  - When the residential development on the Subject Properties was approved, the development was where Goal 18 said it should be - on a “younger stabilized dune” that was not subject to ocean undercutting or wave overtopping.
  - Now, the residential development on the Subject Properties is on a “conditionally stable foredune” that is subject to ocean undercutting and wave overtopping, where Goal 18, IM 2 forbids residential development without a goal exception.
  - Hence the requested exception to Goal 18, IM 2.

- Applicants respectfully request that the County Board follow the recommendation of its planning commission and approve the requested exceptions because the law and evidence supports doing so
- Applicants are willing and enthusiastic to work with County to help draft findings as desired.



# Alternative Request

- The Applicants request the County also make **alternative findings** that the existing built/committed exceptions to Goals 3, 4 and 17 that allow the approved residential development **to be exactly where it is**, is also a built and committed exception that allows the approved residential development **to continue to exist** where it is even when the dune changed and became subject to wave overtopping/undercutting.
- Recall that Goal 18, Implementation Measure 2, prohibits residential development on a dune subject to wave overtopping/undercutting without an exception that allows the residential development to be there.
- The Goal 3, 4 and 17 exceptions were approved on the basis that the Subject Properties and Twin Rocks-Barview-Watseco was committed to residential use.
- They allow the Subject Properties residential development to be where it is.
- Which is now on an eroding dune. Therefore, the existing exceptions allow residential development on an eroding dune.



## The Policy Underpinnings for Existing Exceptions Demonstrates Approved Residential Development may Remain in Place and, as such, Goal 18 Requires they be Protected from Harm

- It is true that exceptions to one goal do not “ensure compliance with any other applicable goal” (OAR 660-004-0010(3)).
- However, it is also the case that the existing exceptions that cover the Subject Properties, together with the acknowledged applicable urban planning program, commit the Subject Properties to residential development.
- Goal 18 states that its purpose is “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”
- Accordingly, it furthers the policy of Goal 18 to protect life and property from hazards, to interpret the existing committed exceptions that allow residential development on the Subject Properties, to be exceptions to Goal 18, Implementation Measure 2 such that Goal 18 allows Beachfront Protective Structures, without a new exception.



## Requested Board of Commissioners Decision:

1. The Subject Properties meet standards for a “committed” and a “built” exception to Goal 18, Implementation Measure 2 that otherwise prohibits residential development on a dune subject to wave overtopping/undercutting.
2. The Subject Properties meet standards for a “committed” and a “built” exception to Goal 18, Implementation Measure 5 that otherwise prohibits beachfront protection for property not “developed” on January 1, 1977.
3. The Subject Properties meet the standards for a Goal 18 specific “reasons” exception to Goal 18, Implementation Measure 2.
4. The Subject Properties qualify for the “catch all” reasons exception to Goal 18, Implementation Measure 2 and 5. (DLCD prefers).

**IN THE ALTERNATIVE ONLY**, the existing exceptions that cover the Subject Properties allow residential development on a dune that is now eroding and so they are in fact an exception to Goal 18, Implementation Measure 2. Which means Goal 18 allows the proposed BPS.



## The Request is Unique – not reproducible elsewhere

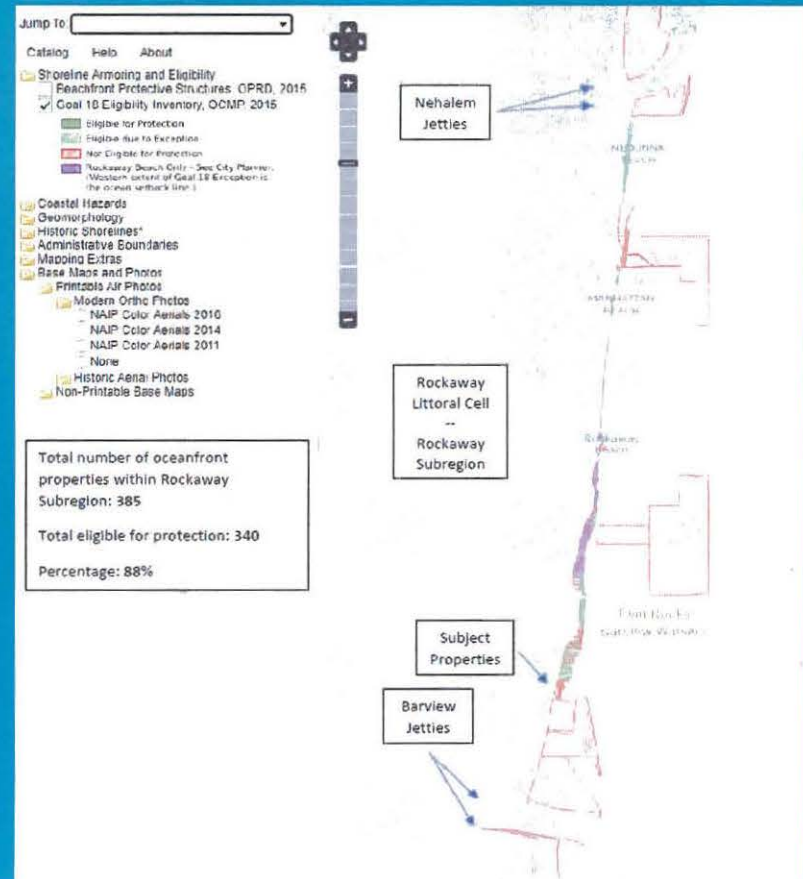
- When the Pine Beach subdivision was replatted (1994-1996); when the George Shand tracts were initially platted (1950); when water and sewer was extended to the subdivisions and when most houses were built, the ocean had been PROGRADING for 70-years— depositing sand, not taking it away.
- The professional reports of the time, stated residential development would be more than 237 feet away from the surveyed statutory vegetation line and further still from the ocean.
- A coastal forest separated residential development from the beach.
- The Subject Properties' residential development was approved in good faith in complete compliance with all state and County standards. No reason to punish good faith landowners.
- Coastal processes substantially influenced by two man-made jetties on either end of the Rockaway littoral subregion.
- No other known littoral cell or littoral subregion on Oregon Coast is bounded by jetties in such close proximity to one another.
- The unusual placement of the man-made jetties in the Rockaway subregion has caused extreme erosion in the subregion where the Subject Properties are located, yet sand is still being deposited the rest of the littoral cell. The problem is unique to the Rockaway subregion.
- Subject Properties are in an acknowledged and vibrant urban unincorporated community.
- Goal 3, 4 and 17 exceptions already.
- 90% of the properties in the Rockaway subregion either have or are entitled to have rip rap per DLCD's own "Atlas." This was the compelling reason that DLCD and others used to approve BPS in Lincoln County. No reason this justification does not also apply here.



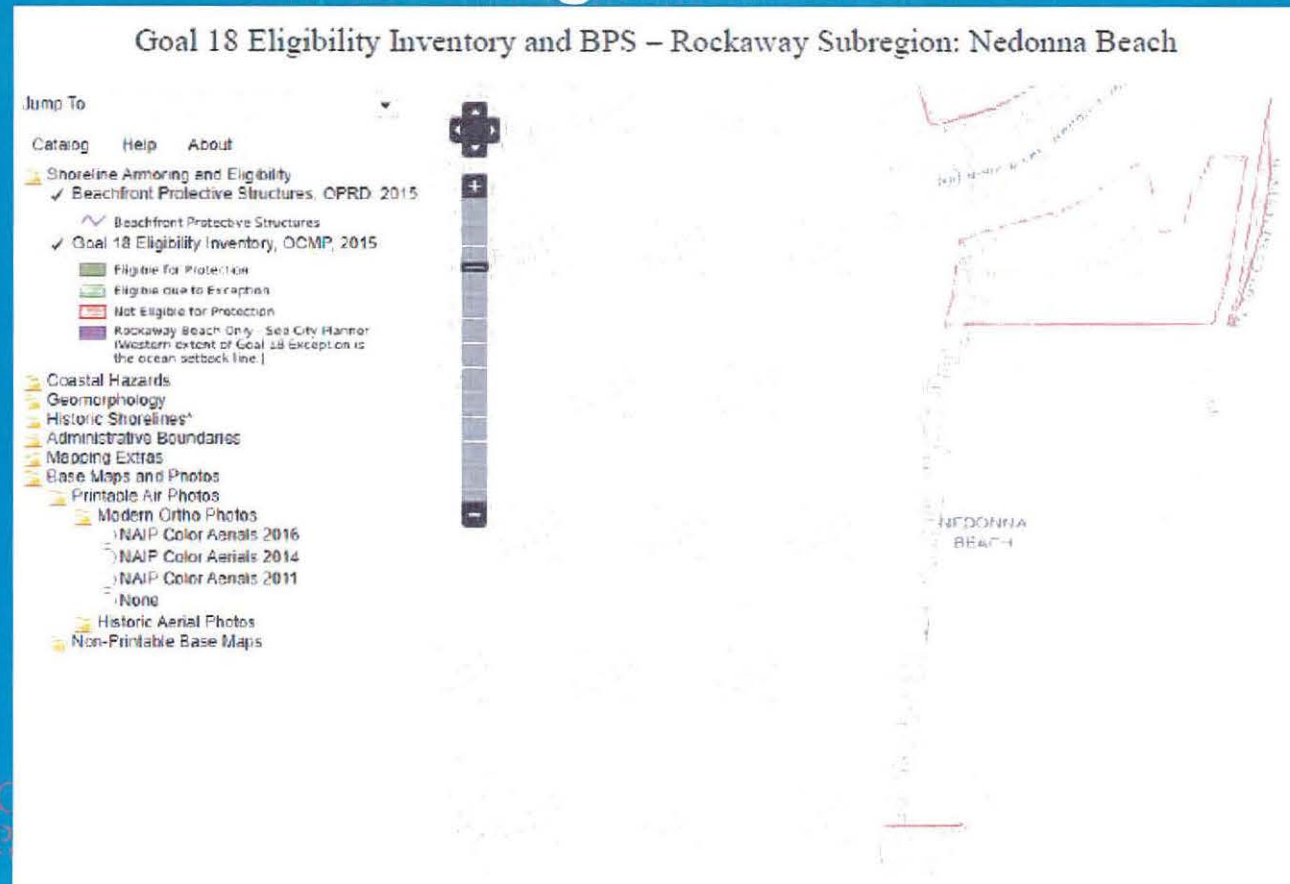


# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

- 90% of the residential properties with development are identified as eligible for protection on DLCD's "Coastal Atlas".
- Non-eligible properties are the Subject Properties and properties that are generally zoned RM and Open Space w/little to no development.



# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS





# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

## Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Manhattan Beach

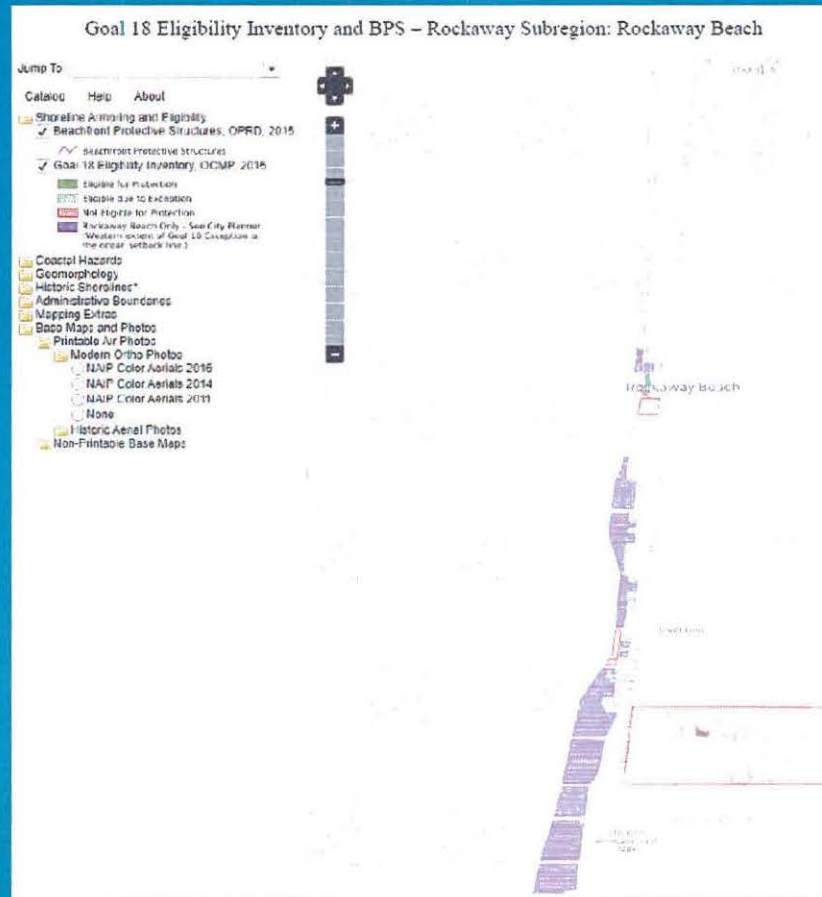
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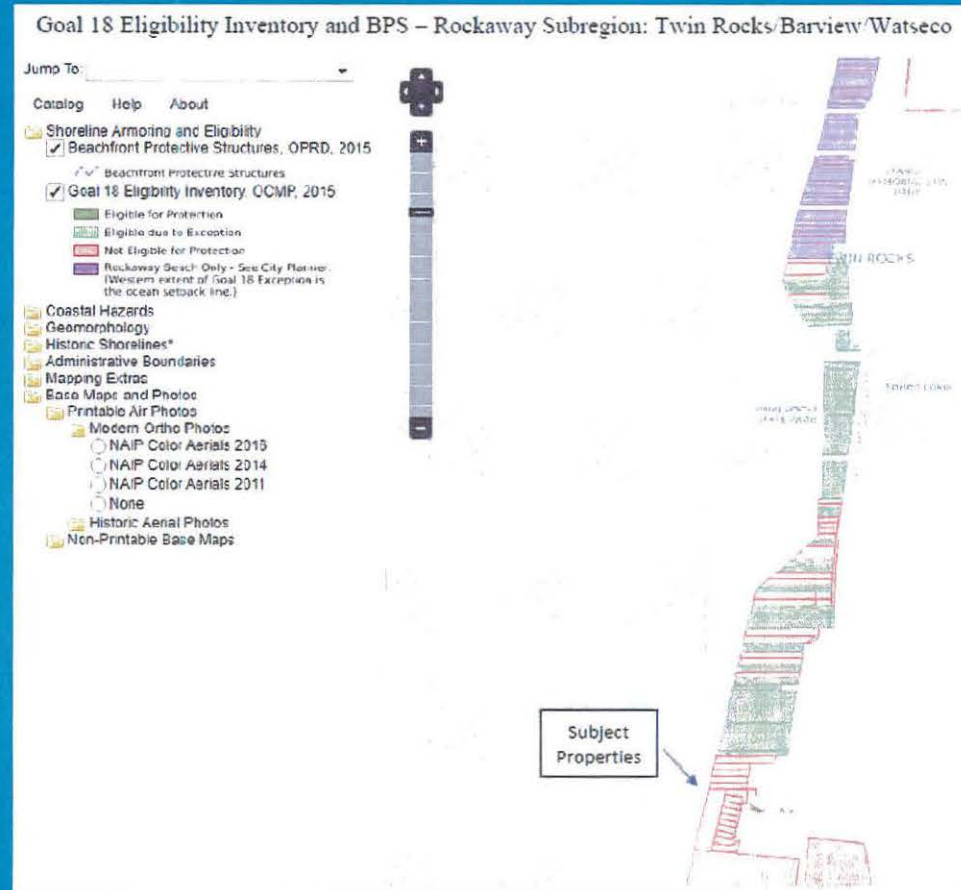
- Shoreline Armoring and Eligibility
  - Beachfront Protective Structures, OPRD, 2015
    - Beachfront Protective Structures
  - Goal 18 Eligibility Inventory, OCMR, 2015
    - Eligible for Protection
    - Eligible due to Exception
    - Not Eligible for Protection
    - Rockaway Beach Only - See City Planner. (Western extent of Goal 18 Exception is the ocean setback line)
- Coastal Hazards
- Geomorphology
- Historic Shorelines\*
- Administrative Boundaries
- Mapping Extras
- Base Maps and Photos
  - Printable Air Photos
    - Modern Ortho Photos
      - NAIP Color Aerials 2016
      - NAIP Color Aerials 2014
      - NAIP Color Aerials 2011
      - None
    - Historic Aerial Photos
  - Non-Printable Base Maps



# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS



# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS





## 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.

## Comment/Answer

- This section addresses comments made by people who objected to the proposal before the planning commission.